**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

1. **STREICHER, spol. s r.o. Plzeň**

with its registered office at: Plzeňská 565, CZ-33209 Štěnovice

registration no.: 14706768,

represented by: Dr. Jiří Lopata, CEO

(“**Seller**”).

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

**whereas**

1. The Buyer is a public contracting authority and a beneficiary of the funding provided by the Ministry of Education, Youth and Sports of the Czech Republic for the project ADONIS - Pokročilý výzkum s využitím fotonů a částic vytvořených vysoce intenzivními lasery”, reg. č. CZ.02.1.01/0.0/0.0/16\_019/0000789 and other projects within the Operational Programme Research, Development and Education (“**Projects**”).
2. For the successful realization of the Projects it is necessary to purchase the Object of Purchase (as defined below) in accordance with the act no. 134/2016 Coll., on Public Procurement Awarding.
3. The Seller wishes to provide the Object of Purchase to the Buyer for consideration.
4. The Seller’s bid for the public procurement entitled “*MOB Vacuum Chamber For Beam Input into P3 Experimental Chamber TP20\_066*” (“**Public Procurement**”) was selected by the Buyer as the most suitable.

**it was agreed as follows:**

# basic provisions

## Under this Contract the Seller shall hand over to the Buyer a MOB vacuum chamber, which shall meet requirements listed in Annex 1 (*Technical Specification*) to this Contract (“**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.

## Under this Contract the Seller shall also carry out following activities (“**Related Activities**”):

#### to transport the Object of Purchase to the place of delivery in accordance with Annex 1 (*Technical Specification*) to this Contract;

#### to verify that the Object of Purchase meets all requirements stipulated in this Contract and adjust the Object of Purchase, if necessary;

#### to verify that the Object of Purchase is fully functional;

#### to carry out verification procedures as described in Annex 1 (*Technical Specification*) to this Contract;

#### to handover the declaration of conformity of the Object of Purchase with the approved standards, if there are any;

#### cooperate with the Buyer during the performace of this Contract (e.g. to control the readiness of premises for installation of the Object of Purchase, if necessary).

## (The Object of Purchase and the Related Activities are hereinafter jointly referred to as the “**Delivery**”.)

## The Object of Purchase and its components and parts shall be delivered new (not remanufactured).

# the Design and the manufacture of the object of purchase

## Parties acknowledge that at the time of the conclusion of this Contract the Object of Purchase does not exist and the Seller must design, manufacture and assemble the Object of Purchase.

## The Parties acknowledge that the Seller has to create and prepare its own 3D model, drawings, final manufacturing designs and other documents necessary for the manufacture and assembly of the Object of Purchase as stipulated in Annex1 (*Technical Specification*) to this Contract (“**Seller’s Drawings**”).

## The Seller’s Drawings must comply with this Contract and shall be approved by the Buyer prior to the manufacture and assembly of the Object of Purchase. If the Seller’s Drawings are not approved by the Buyer without giving any substantial reason within ten working days, the Seller is entitled to proceed with the manufacturing process.

## Parties acknowledge that the Buyer is not an expert in the area of vacuum chamber construction and, therefore, is not realiably able to verify that Seller’s Drawings are flawless. Therefore, the act of approval of Seller’s Drawings by the Buyer shall not be construed as a transfer of the responsibility for the meeting of technical requirements imposed on the Object of Purchase under this Contract.

## If the Buyer suggests modifications to Seller’s Drawings, the Seller shall incorporate such modifications or shall explain why it refuses to do so.

## Under this Contract, the Seller shall hand over to the Buyer copies of all Seller’s Drawings. The Seller agrees that any information from Seller’s Drawings or even the Seller’s Drawings itself may be made publicly available through scientific articles.

# Copyright of the seller

## The Seller grants to the Buyer a right to use Seller’s Drawings in the original or modified version, in connection with other work or independently (“**License**”).

## License is granted

#### free of charge;

#### as exclusive;

#### for all manners of use within the meaning of the Section 12(4) of the Copyright Act, as amended;

#### without any time restriction;

#### for the whole world (i.e. without any geographical restriction); and

#### under following conditions: i) the Buyer is entitled not to use the License, and ii) the Buyer is entitled to grant wholly or partially the License any third party (sublicense) or to transfer the License on a third person in case that the ownership of the Object of Purchase shall pass on such third person.

## The Seller hereby grants permission to the Buyer to change or modify the Seller’s Drawings. The Buyer is entitled to realize the changes or modifications alone, or with the assistance of third persons (contractors). The Buyer is entitled to combine Seller’s Drawings with other drawings and designs, alone or with the assistance of third persons (contractors).

## The Seller hereby represents and warrants to the Buyer that:

#### is entitled to use and enforce all author’s rights to Seller’s Drawings, in particular if the Seller’s Drawings were created by employees or by more than one author, and, therefore, the Seller received all consents and permissions from authors and ensured that the Buyer may use the Seller’s Drawing properly and without any interference;

#### all rewards to the authors of Seller’s Drawings were provided;

#### did not grant license to Seller’s Drawings to any other person in the extent that could disturb the License of the Buyer; and

#### is entitled to grant License to the Buyer in the extent specified in this Contract.

# THe place of delivery

## The place of delivery is located at the address Za Radnicí 835, Dolní Břežany, post code 252 41, Czech Republic. The exact location within the ELI Beamlines centre is stated in Annex 1 (*Technical Specification*) to this Contract.

# the time of delivery

## The Seller shall carry out factory acceptance tests within 13 months from the effectiveness of this Contract.

## If the factory acceptance tests are successful, the Buyer shall determine the date of delivery of the Object of Purchase to the place of delivery. The Buyer shall inform the Seller of the delivery date within 2 weeks from the successful acceptance tests. The Buyer shall choose the delivery date in such a manner that it will be no less than 1 month and no more than 7 months from the day, on which the Buyer informed the Seller of the date of delivery. The Buyer may also request the Seller to delivery the Object of Purchase outside the above mentioned time interval, however, the Seller must agree to it. If the factory acceptance tests are not successful, the Seller shall have 4 weeks to remedy the deficiencies. If the deficiencies are not remedied within this period of 4 weeks (however, such deficiencies can be objectively remedied in the coming weeks), the Buyer is entitled to determine the date of delivery regardless of the fact that the factory acceptance tests have not been successful so far. The Seller shall adopt such measures to ensure that the deficiencies are remedied prior to the delivery and the delivery is executed in time and due manner.

## At the request of the Seller, the Buyer shall extend the time of factory acceptance tests, delivery or final acceptance, if the Seller is not able to meet the deadline due to the obstacles that Seller had no control over and were hard to foresee. The Seller shall provide evidence that supports its request and proves that the conditions stipulated in the preceding sentence have been met. In such a case, the Buyer shall extend the time of delivery by the period during which the obstacles lasted.

## The Seller is entitled to handover the Object of Purchase and to carry out Related Activities during working days between 9:00 and 17:30 hours, unless otherwise agreed by the Parties. Precise working days shall be determined on the basis of mutual agreement. If the agreement is not reached, the Seller shall perform during the last 20 working days, on which it is possible to fulfill this Contract in time and the Buyer shall provide to the Seller for this purpose necessary cooperation.

## Prior to the handover of the Object of Purchase and the execution of Related Activities the Seller (at the request of the Buyer) shall control the premises for installation of the Object of Purchase in such a way that their readiness for installation of the Object of Purchase is secured (e.g. a control of the location of electricity points, etc.) and possible deficiencies preventing timely and proper installation and demonstration of the operation of the Object of Purchase are eliminated.

# 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.

# price and payment terms

## The purchase price for the Object of Purchase is 16.685.000,- CZK without value added tax (“**Purchase Price**”). Value added tax shall be paid in accordance with the applicable legal regulations.

## 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 design, manufacture, assembly and handover of the Object of Purchase, execution of Related Activities, costs of copyright, insurance, warranty service and any other costs and expenses connected with the performance of this Contract.

## The Purchase Price for the Object of Purchase shall be paid in euro on the basis of a tax documents – invoices, to the account of the Seller designated in the invoice. The Purchase Price shall be paid in the following manner:

#### 20 % of the Purchase Price shall be paid after the signature of this Contract (as advance payment);

#### 20 % of the Purchase Price shall be paid after the final version of Seller’s Drawings is approved by the Buyer;

#### 35% of the Purchase Price shall be paid after factory acceptance tests are carried out and accepted by the Buyer;

#### 20 % of the Purchase Price shall be paid after the signature of the acceptance protocol. The copy of the acceptance protocol must be attached to the invoice. If there are defects or deficiencies listed in the acceptance protocol, the Buyer shall pay only 10 % of the Purchase Price and the remaining 10 % of the Purchase Price shall be paid after the last defect or deficiency in the acceptance protocol are removed; and

#### 5 % of the Purchase Price shall be paid after the Seller provided the installation support in the extent specified in Annex 1 (*Technical Specification*) to this Contract. If the installation of the Object of Purchase lasts longer than 3 months from the signature of the acceptance protocol, this last payment shall be paid after this period of 3 months elapses.

## 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.

## 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:

#### name and registered office of the Buyer,

#### tax identification number of the Buyer,

#### name and registered office of the Seller,

#### tax identification number of the Seller,

#### registration number of the tax document,

#### scope of the performance (including the reference to this Contract),

#### the date of the issue of the tax document,

#### the date of the fulfilment of the Contract,

#### Purchase Price,

#### registration number of this Contract, which the Buyer shall communicate to the Seller based on Seller’s request before the issuance of the invoice,

#### declaration that the performance of the Contract is for the purposes of a project within the Operational Programme Research, Development and Education. The name of the project and its registration number shall be communicated to the Seller at his request.

## 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.

## Last invoice of every calendar year must be delivered to the Buyer on December 15 of that calendar year, at the latest.

## The Buyer prefers electronic invoicing on the following address: efaktury@fzu.cz.

# Seller’s duties

## 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.

## 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.

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

## During the work and movement at Buyer’s premises (e.g. during installation), the Seller shall observe the rules that are attached as Annex 2 (*Entry conditions for outsources*) to this Contract.

# Handover and acceptance of the Object of purchase

## Related Activities must be performed in the presence of representative of both Parties prior to the handover and takeover of the Object of Purchase. Prior to the handover and takeover of the Object of Purchase, the Seller must hand over to the Buyer Seller’s Drawings.

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

## If the Seller does not hand over to the Buyer all above mentioned documents or 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 defects and deficiencies within ten (10) working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) takeover the Object of Purchase despite the above mentioned defects and deficiencies, in particular if such defects or 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 defects and 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 defects or deficiencies within ten (10) working days.

# warranty

## The Seller shall provide a warranty of quality of the Object of Purchase for the period of ­­­­­­­­­­­­­­­­­5 years. 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.

## The warranty period shall begin on the day of the signature of the acceptance protocol by both Parties. If the acceptance protocol lists any defects or deficiencies, the warranty period shall be extended by the period, during which the last defect or deficiency was removed.

## The Seller shall remove defects that occur during the warranty period free of charge. The Seller shall bear all the expenses (e.g. travelling, accommodation expenses and price of equipment rental or purchase) related with removal of the defect.

## 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.

## The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: benda@streicher-machinery.cz. The Seller shall confirm within five working days from the receipt of the notification.

## In the notification the Buyer shall describe the defect and the manner of removal of the defect. The Buyer has the right to:

#### ask for the removal of the defect by the delivery of any individual parts that may be required, or

#### ask for the removal of the defect by repair, or

#### ask for the reasonable reduction of the Purchase Price.

## The choice among the above mentioned rights belongs to the Buyer. However, the Buyer shall take into account reasonable recommendation by the Seller. The Buyer is also entitled to withdraw from this Contract, if by delivering the Object of Purchase with defects this Contract is substantially breached.

## The Seller shall remove the defect within 30 days from its notification, unless Parties (due to the nature of the defect and circumstances of the case) agree otherwise.

## The Seller shall remove the defect within terms stipulated in this Contract even if the notification of the defect is in his opinion unjustified. In such a case the Seller is entitled to ask for reimbursement of the costs of removal of the defect. If Parties disagree on whether the notification of the defect is justified or not, the Buyer shall ask an expert for the expert’s opinion, which shall determine whether the notification of the defect was justified or not. In the case that the expert shall consider the notification as justified, then the Seller shall bear costs of the expert’s opinion. If the expert considers the notification to be unjustified, then the Buyer shall reimburse the Seller for verifiably and effectively incurred costs of removal of the defect.

## 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.

## 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 30 days after the Buyer’s request to do so.

# representations and warranties of the seller

## The Seller represents and warrants to the Buyer that

#### has all the professional prerequisites necessary for the proper fulfilment of this Contract,

#### is fully authorized to perform this Contract, and

#### there are no obstacles on the Seller’s side that would preclude him from the due performance of this Contract.

# penalties

## If the Seller is in delay with the delivery of the Object of Purchase , 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.

## 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 0,01% of the Purchase Price for every (even commenced) day of default.

## The Seller shall pay contractual penalties within thirty (30) 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.

## Total amount of contractual penalties that the Buyer is entitled to claim shall not exceed 7 % of the Purchase Price.

## 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.

# right of withdrawal

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

#### the Seller breaches this Contract in a substantial manner;

#### the Seller is in delay with the delivery of the Object of Puchase and such delay lasts for more than 4 months;

#### the Seller is in delay with the factory acceptance testing and such delay lasts more than 4 weeks;

#### the factory acceptance tests are unsuccessful even after the additional period of 4 weeks (according to Article 5.2);

#### the Object of Purchase does not meet all the requirements stipulated in this Contract at the time of the handover and takeover (acceptance) and such deficiencies cannot be remedied;

#### 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;

#### the insolvency proceeding is initiated against the Seller; or

#### 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.

## The Seller is entitled to withdraw from this Contract if the Buyer breaches this Contract in a substantial manner.

## If any of the Parties intends to withdraw from this Contract due to the breach of this Contract in a substantial manner by the other Party, then it must notify in writing the breaching Party of its intention to withdraw from this Contract and provide to the breaching Party a reasonable period of time (but no less than 21 days) to remedy such breach. Any of the Parties is entitled to withdraw from this Contract due to its breach in a substantial manner by the other Party only after the breaching Party failed to remedy the breach in the reasonable period of time provided by the other Party.

## If any of the Parties withdraw from this Contract, then each Party shall return to the other Party all things and funds that were provided under this Contract and the Parties shall restore the status that existed prior to the conclusion of this Contract, unless Parties agree otherwise.

# 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 acces 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 2030.

# Confidentiality

Parties shall not disclose information that shall become available to them in connection with this Contract and its performance and whose disclosure could harm the other Party. Duties of the Buyer ensuing for the applicable legal regulations remain unaffected.

Parties agree 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.

# representatives of the parties

## The Seller appoints following representatives for the communication with the Buyer:

In technical matters:

Name: Michal Benda

E-mail: benda@streicher-machinery.cz

Tel.: +420 377 150 126

In contractual matters:

Name: Jiri Lopata

E-mail: lopata@streicher-machinery.cz

Tel.: +420 377 150 121

## The Buyer appoints following representatives for the communication with the Seller:

In technical matters:

Name: Taylor Matthew

E-mail: Matthew.Taylor@eli-beams.eu

Name: Weber Stefan Andreas

E-mail: Stefan.Weber@eli-beams.eu

Any of the above listed representatives of the Buyer is entitled to approve the Seller’s Drawings and to sign the acceptance protocol or the protocol on the removal of defects or deficiencies.

# Final provisions

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

## All disputes arising out of this Contract or out of legal relations connected with this Contract shall be preferable 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.

## The Seller takes into account that the Buyer is not in relation to this Contract an entrepreneur, nor the subject matter of this Contract is connected with the business activities of the Buyer.

## 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.

## All modifications and supplements of this Contract must be in writing.

## If any of provisions of this Contract are invalid or ineffective, the Parties are bound to change this Contract is 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.

## If any Party breaches any duty under this Contract and knows or should have known about such breach, it shall notify it to the other Party and shall warn such Party of possible consequences of the breach.

## This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.

## An integral part of this Contract is Annex 1 (*Technical Specification*) and Annex 2 (*Entry conditions for outsources*). In case of any discrepancy between the provisions of this Contract and the provisions of its annexes the provisions of this Contract shall prevail. In Annex 1 (*Technical Specification*) the term CA means the Buyer and the term Supplier/supplier means the Seller.

## This Contract shall be valid on the date of the signature of the second Party and effective on the date, on which it was published in the register of contracts in accordance with the Act no. 340/2015 Coll., on the Register of Contracts.

**in witness whereof** attach Parties their handwritten signatures:

**Buyer**

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| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: RNDr. Michael Prouza, Ph.D. |
| Position: director  Date: |

**Seller**

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| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: Dr. Jiří Lopata |
| Position: CEO  Date: |

**Annex 1**

**technical specification**

**Annex 2**

**entry conditions for outsources**