

***Purchase Agreement***

On the day, month and year specified below, the contractual parties:

**Czech Technical University in Prague**

**Faculty of Nuclear Sciences and Physical Engineering**

Registered office: Břehová 7, 115 19 Praha 1, Czech Republic

ID No.: 68407700

Tax ID No.: CZ 68407700

Represented by: prof. Ing. Igor Jex, DrSc. – dean

Represented in technical matters by: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, e-mail: xxxxxxxxxxxxxxxxxxxxxx, tel. xxxxxxxxxxxxxxxxxxxx

Banking contact: xxxxxxxxxxxxxxxxxxxx

Account no.: xxxxxxxxxxxxxxxxxxxx

(hereinafter referred to as the “Purchaser”)

and

**PN Detector GmbH**

registered office: Otto-Hahn-Ring 6, 81739, München, Germany

registered in the Commercial Register: Handelsregister B des Amtsgerichts München

represented by: Dr. Adrian Niculae, Dr. Heike Soltau

ID No.: HRB 169 066

Tax ID No.: DE255275467

banking contact: xxxxxxxxxxxxxx

account no.: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

contact person: xxxxxxxxxxxxxxxxx, tel.: xxxxxxxxxxxxxxxxxxxx, e-mail: xxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(hereinafter referred to as the “Seller”)

Concluded, in accordance with Section 2079 and ff of Act No. 89/2012 Coll., Civil Code, as amended, (hereinafter referred to as the “CC”),

**Purchase Agreement**

(hereinafter referred to as the “Agreement”)

**PREAMBLE**

The Seller is the economic operator selected to provide delivery under the public contract titled ***“X-ray optics for XRF”***, (hereinafter referred to as the "Public Contract"), awarded by the Purchaser, pursuant to Section 31 of Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter referred to as the "PPA") outside the regime of this PPA.

With regard to the fact that the conditions were fulfilled analogously pursuant to Section 63 par. b) of the PPA, it has been proceeded in accordance with the point 12.1 par. 3 of the Rules for Applicants and Beneficiaries and according to the Rector´s Order no. 11/2018 regarding public procurement of the CTU, resp. according to the article IX point 1 c) of the Dean´s Order no. 1/2019.

 The Seller who is the sole source provider of the Polycarpellary X-Ray Optics to be combined and operated with the Colour X-Ray Camera was approached directly to conclude the contract.

The Seller acknowledges that the Public Contract is financed by the European Union within the framework Operational Program Research, Development and Education

Project: Centre of Advanced Applied Sciences

Reg. No. CZ.02.1.01/0.0/0.0/16\_019/0000778

**I.**

**Subject-matter of the Agreement**

1. The Seller undertakes to deliver to the Purchaser, at the place of performance at its own expense and risk, under the terms of this Agreement, **X-ray optics for XRF** specified in this Agreement (hereinafter referred to as the "Equipment") and to transfer ownership of the Equipment to the Purchaser. The Equipment is specified in detail in Appendix No. 1 to this Agreement.
2. The Equipment must be new, unused, fully functional, unrenovated, complete, not lent, not leased, not having any other legal defects, and not infringing upon the rights of third parties under patent or other forms of intellectual property, and must comply with the specification presented in Appendix 1 to this Agreement, such that the it can be fully utilised.
3. Furthermore, the subject-matter of performance under this Agreement includes:
4. all components belonging to the Equipment;
5. transport of the Equipment to its intended site of use;
6. any fees connected with the importation of the Equipment, customs duties, taxes, import and export surcharges, royalties and any other charges connected with the delivery of the Equipment until such time as it is functionally handed over at the place of performance;
7. technical or system documentation for the Equipment;
8. user manuals and conditions for the operation and service of the Equipment, in Czech or English (manuals).

**II.**

**Purchase price and payment conditions**

1. The total purchase price of the Equipment is:

**EUR 28 500,00 exclusive of VAT**

1. The price stated in Article II (1) of this Agreement, represents the maximum acceptable and non-negotiable price. VAT will be paid directly by the Purchaser.

The Seller assures that the price agreed includes all of its costs entailed by the performance of duties stipulated by this Agreement (e.g., the cost of customs clearance of the Equipment for the export from the country of the manufacturer or the Seller, the costs of packaging, storage, transport, and insurance of the Equipment for the transport to the place of performance, unloading of the Equipment in the place of performance, handling equipment, approval process, required testing, supplying the declaration of qualities, certificates, attestations, transfer of ownership etc.).

1. The Seller is not entitled to charge any other costs related to the performance of this Agreement.
2. The Purchaser will pay the purchase price by means of a bank transfer to the bank account of the Seller, based on a tax document (invoice) issued by the Seller after proper handover and acceptance of the fully functional Equipment, on the basis of an acceptance protocol. The invoice must contain reference to the Agreement and name and registration number of the project.

5. The invoice shall be due and payable within 30 calendar days. The Purchaser's obligation to pay the purchase price agreed shall be fulfilled on the date that the invoiced amount is deducted from the Purchaser's bank account.

1. The invoice must be issued in EUR and at a value corresponding to the purchase price stated in Article II (1) of this Agreement.
2. In addition to the particulars stated in Section 29 of Act No. 235/2004 Coll., on Value Added Tax, as amended, the invoice must contain:
3. ID No.;
4. due date;
5. designation of the Seller’s bank and number of the account to which the payment is to be made, constant and variable symbols;
6. indication of the accounting document and its serial number;
7. reference to the Agreement
8. name and registration number of the project
9. stamp and signature of the persons authorized to issue final accounting documents
10. list of annexes.

8. Together with the invoice (as a separate document), the Seller is obliged to provide a copy of the acceptance protocol confirmed by both contractual parties.

9. Should the invoice contain any incorrect or incomplete data or lack the required appended documents as stated above, the Purchaser is entitled to return it to the Seller before its due date without risk of being in default. The Seller must correct the returned invoice or issue a new, faultless one. In such cases, a new payment period will run for the Purchaser, in accordance with paragraph 5 of this Article, starting from the delivery date of the corrected or newly issued invoice.

**III.**

**Place and period of performance**

1. The Seller is obliged to deliver the Equipment to the Purchaser **within 6 months** from the effective date of this Agreement.

The Purchaser and the Seller reserves the ability to extend the deadline for the delivery or implementation of the subject of performance due to a delay of the Purchaser or the Seller caused by a force majeure event or circumstances caused by SARS-CoV-2 or other unforeseeable events that could not be averted or prevented. In such a case, the delivery date may be extended by the number of days after which it was not possible to deliver or implement the subject of the contract for the above reasons.

1. The Seller is obliged to come to an agreement with the Purchaser, at least 7 days in advance in writing (by e-mail) about the date for delivery of the Equipment to the place of performance.
2. The place of performance (hand-over and acceptance of the Equipment): **Czech Technical University in Prague, Faculty of Nuclear Sciences and Physical Engineering, Department of Dosimetry and Application of Ionizing Radiation, Břehová 7, 115 19 Prague 1, Czech Republic, room 204, 2nd floor.**
3. The Purchaser issues the acceptance protocol on the hand-over and acceptance of the Equipment, which he sends to the Seller electronically (e-mail) for approval.
4. The Purchaser shall not be obliged to accept the delivery of the Equipment if there are defects or unfinished work, regardless of the fact that these may not, in and of themselves or in connection with others, prevent due use of the Equipment. If the Purchaser fails to exercise its right to not accept the Equipment with minor defects or unfinished work, the Purchaser and the Seller shall draw up a list of such defects or unfinished work in the hand-over and acceptance protocol, including the manner and timeline for their remedy.
5. In the acceptance protocol, the Purchaser shall state the following information:
6. designation of the contractual parties;
7. designation of the Equipment (serial number, model) and its quantity;
8. deadline for finalization of commissioning of the Equipment such that it functions fully and free of defects; which in the case of no defects is latest 2 months after delivery;
9. the start date of the warranty period; which is the final commissioning date; the warranty period is 12 months;
10. the Purchaser's declaration of acceptance or non-acceptance;
11. a description of possible defects or unfinished work and agreement on the date and method of their removal;
12. list of documentation submitted.

**IV.**

**Cooperation between the parties**

1. The contractual parties shall make every effort to create the necessary conditions for the implementation of the subject matter of this Agreement, in correspondence to their contractual status. This shall also apply in cases where this is not expressly laid down in the individual provisions of this Agreement.
2. If any of the contractual parties is aware of circumstances preventing it from complying with its contractual obligations, it shall immediately inform the other contractual party thereof in writing. The contractual parties undertake to, without delay and insofar as possible, remove the circumstances preventing them from fulfilling their contractual obligations. If the circumstances are not remedied, the other contractual party shall be entitled to request the fulfilment of the obligation by a substitute date, which shall be determined taking into account the nature of the matter.
3. The Seller will be a person obliged to cooperate in the performance of financial control, in accordance with Section 2 (e) of Act No. 320/2001 Coll., on Financial Control and on Amending Certain Acts. At the same time, the Seller undertakes to the archive all written documents relating to the fulfilment of the subject of the purchase under this Agreement. The Purchaser is further obliged to provide all information required, document its activity, provide all documentation related to the project, and allow authorized persons to enter their premises and land to verify the conditions of performance of the subject of purchase under this Agreement. The above cooperation will also be provided by the Seller in the case of a check by the provider of institutional support.

**V.**

**Contractual warranty**

1. The Purchaser is responsible for an incoming inspection to detect obvious defects e.g. by transport damage within 14 days after delivery. The Seller should be informed immediately.

2. The Seller is responsible for defects found in the Equipment at the time of delivery, any defects found between the delivery of the Equipment to the Purchaser and the beginning of the warranty period which were not able to be detected by the incoming inspection, and the defects found during the warranty period provided the defect is a warranty case which has to be agreed between Seller and Purchaser. The Seller assures to the Purchaser quality and parameters of the Equipment that correspond to the specifications of this Agreement for a period of **12 months**.

3. The warranty period begins to run on the day of signing of the acceptance protocol concerning the acceptance of fully functional, flawless Equipment, by the Purchaser. If the Equipment is accepted by the Purchaser with at least one defect or incompletion, the warranty period begins to run when the last defect has been removed or outstanding work completed unless otherwise agreed in writing. The final acceptance should be fulfilled latest 2 months after delivery.

4. The Purchaser is obliged to lodge its claims concerning defects detected in the Equipment ("Claim" or "Notification of Claim") in writing (by e-mail) with the Seller, without undue delay after they are detected. The Purchaser shall describe the defects in the claim and also state its requirements, including the term for the removal of the defects by the Seller; provided that the claim is legitimate, it is entitled to:

1. if the defects are immaterial (Section 2107 CC), the Purchaser is entitled to the delivery of the missing Equipment, the removal of other defects in the Equipment, or a discount from the purchase price;

5. The Seller is obliged to confirm to the Purchaser the receipt of the claim, within 5 working days after receiving it, in writing (by e-mail) and then initiate a "fault diagnosis" or initiate "defect removal", by having the defect object sent to seller for analysis.

6. The Seller is obliged to remove any defects claimed, which it has acknowledged, in accordance with the warranty conditions provided the defect is an agreed warranty case.

7. The manner by which the claim is resolved shall be determined by the Seller.

8. The warranty period is automatically extended by the number of days elapsed from the report of the defect to the signature of the defect removal protocol of the Seller.

9. The Seller undertakes to provide basic diagnoses of failures by telephone or e-mail, and any verification of solutions with the Purchaser by phone or e-mail will be provided free of charge. The technical support provided to the Purchaser by phone or e‑mail will also be provided free of charge.

10. The rights and obligations arising from the warranty do not expire, either in respect of the Purchaser of Equipment subject to transfer or in the case of the withdrawal of one of the parties from the Agreement. Claims for liability for defects do not prejudice claims for damages or contractual penalties.

**VI.**

**Acquisition of Ownership, transfer of risk**

1. Ownership of the Equipment shall pass from the Seller to the Purchaser upon the full payment of the Equipment. The risk of damage to the Equipment will pass to the Purchaser at the time of delivery.

**VII.**

**Contractual penalties and default interest**

1. If the Seller is in default on the delivery of Equipment for more than 14 days after the agreed time, under Article III (1) of this Agreement, the Purchaser is entitled to require that the Seller pay a contractual penalty of 0.05 % of the total purchase price of the Equipment, exclusive of VAT, for each day of default or part thereof, max. 5% of the applicable value, until full performance of the obligation.

2. If the Seller is in default on compliance with the time limit for the commencement of the removal of defects set in this Agreement for more than 14 days after, it shall pay to the Purchaser a contractual penalty of 0.05 % of the total purchase price of the Equipment, exclusive of VAT, for each day of default or part thereof max. 5% of the applicable value, until full performance of the obligation.

3. In the event of non-compliance with the due date of invoices issued by the Seller for more than 14 days, the Seller is entitled to claim default interest from the Purchaser, in the amount of 0.05 % of the outstanding amount for each day of default, or part thereof, on the payment of the invoice max. 5% of the applicable value.

1. The right to invoice and collect a contractual penalty and default interest arises for the Purchaser on the 15th day after the expiry of the period specified for performance, and for the Seller on the 15th day following the expiry of the invoice maturity.
2. Contractual penalties and default interest are payable within 14 calendar days from the date of the delivery of the written notice by which they are rightfully claimed.
3. The contractual parties have agreed that the payment of a contractual penalty shall be without prejudice to the right to compensation for the full amount of financial or non-financial damage incurred, i.e., including the amount in excess of the contractual penalty invoiced or paid, and it is also without prejudice to the proper performance of the obligations under this Agreement.

**VIII.**

**Termination of obligations**

The contractual obligations of the contractual parties shall expire by:

1. Performance;

2. Written agreement of the contractual parties in the form of an addendum.

3. Withdrawal from the Agreement

Either contractual party may withdraw from the Agreement if the other party materially breaches its contractual obligations in spite of having been notified of this in a demonstrable manner (by registered letter).

If the entitled contractual party sets a substitute (additional) period for the other party to fulfil its obligation, the right to withdraw from the Agreement shall arise only after the expiry of that period in vain. This does not apply if the other party states within this period that it will not fulfil its obligation. In that case, the entitled contractual party may withdraw from the Agreement even before the expiry of the additional performance period, upon receipt of the declaration of the other contractual party.

The Purchaser is also entitled to withdraw from the Agreement with prior written notice:

1. if the Seller is in default on the delivery of the Equipment for more than 90 calendar days; excluding force majeure and/or
2. if it is determined that the Equipment that is the subject of performance is not new, is used, pledged, borrowed, leased or otherwise legally defective, and infringes on the rights of third parties under a patent or other forms of intellectual property; and/or
3. if insolvency proceedings are commenced pursuant to Act No. 182/2006 Coll., on Bankruptcy and Methods of Its Resolution, as amended, the subject of which will be the bankruptcy or impending bankruptcy of the Seller, the Seller is obliged to inform the Purchaser of this fact without delay, no later than 7 calendar days from the day of initiation of the proceedings;

Withdrawal from this Agreement for the reasons mentioned in this section VIII.3 shall be in writing and shall take effect 5 days after the delivery of this written notice to the other party.

In the event of withdrawal from of this Agreement, the contractual parties shall settle their mutual obligations and receivables set out by law or in this Agreement, within 90 calendar days of the legal effects of the withdrawal or within an agreed period.

Termination of this Agreement by withdrawal from the Agreement or by another manner shall be without prejudice to the right to contractual penalties and compensation for damages and to other obligations, which by their nature survive the termination of this Agreement.

1. Subsequent impossibility of performance

The obligation shall expire due to the impossibility of performance if the debt becomes unpayable after the establishment of the obligation (Section 2006 and ff of CC).

1. Termination or expiration of the Agreement

With the termination or expiration of the Agreement, all obligations of the contractual parties arising from the Agreement shall cease to exist. Termination or expiration of the Agreement shall not extinguish claims to compensation of damages, the payment of contractual penalties agreed in the case of breach of contractual obligations, and those obligations of the contractual parties which survive by virtue of the Agreement, their nature, or statutory provision.

**IX.**

**Concluding provisions**

1. In matters not explicitly addressed in this Agreement, the rights and obligations of the contractual parties shall be governed by the relevant provisions of generally binding legal regulations in force in the Czech Republic, in particular the CC and other legal provisions related to the subject matter of this Agreement.
2. Changes or amendments to this Agreement can only be made in the form of written amendments which are agreed by both parties, are numbered in an ascending order, and which shall become integral parts of the Agreement.
3. All text documents submitted by the Seller to the Purchaser in the performance of this Agreement must be submitted in Czech or English.
4. The Seller is not entitled to assign a claim arising from this Agreement to a third party without the prior written consent of the Purchaser.
5. Any disputes which the contractual parties are unable to resolve through amicable settlement will be settled by the court having subject-matter and local jurisdiction in relation to the Purchaser.
6. This Agreement shall be executed in three counterparts in paper form. Each counterpart shall be valid as an original. Purchaser shall receive two counterparts and Seller one counterpart.
7. If, for any reason, any provision of this Agreement is found to be invalid, that fact will not invalidate the entire Agreement. In such a case, the contractual parties are obliged to replace the invalid clause with a new valid one that will accord with the meaning and purpose of this Agreement.
8. This Agreement shall enter into force on the date of its signature by the last contractual party and take effect on the date of its publication in the Register of Contracts.
9. The contractual parties explicitly agree to the publication of this Agreement in the profile of the Contracting Authority (The Purchaser) according to PPA and in the Register of Contracts in accordance with Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Public Disclosure of These Contracts.
10. The Purchaser undertakes to ensure the publication of the Agreement through a register of contracts in accordance with the Act on a Register of Contracts.
11. **GDPR:** By signing this Agreement, the Seller, as a data subject, confirms that the Purchaser, as a data controller, has fulfilled an obligation to inform it, in the meaning of the provisions of Act No. 110/2019 Coll., on the Processing of Personal Data, as amended, concerning, in particular, the scope, purpose, method, and places of the processing of the data of the data subject, and the possibilities of their handling, as well as the processor. By signing this Agreement, the Seller agrees to the processing of personal data. The consent to the processing of personal data is voluntary and the Seller may at any time withdraw it in full or in part. In the event of withdrawal of consent by the Seller, the Purchaser will no longer process the personal data, except that for which the Seller does not require the Purchaser´s consent, according to the law.
12. The contractual parties declare that they have read this Agreement, and that it has been negotiated after mutual deliberation, according to their free will, certainly, seriously, and comprehensibly, in witness whereof the authorized representatives of the contractual parties affix their handwritten signatures.
13. The following appendices form an integral part of this Agreement:

Appendix 1: Technical Specifications

In Prague, on 22. 10. 2020

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Czech Technical University in Prague

Faculty of Nuclear Sciences and Physical Engineering

prof. Ing. Igor Jex, DrSc. – dean

In Munich, on 14/10/2020

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For the Seller

PN Detector GmbH

Dr. Heike Soltau