

Purchase Contract

entered into pursuant to Section 2079 et seq. of Act No. 89/2012 Coll., the Civil Code (hereinafter the "Civil Code")

I. CONTRACTUAL PARTIES:

1. Buyer:

Charles University, Faculty of Mathematics and Physics
with its registered office at: Ke Karlovu 2072/3, 121 16 Praha 2,
identification No.: [REDACTED]
represented by doc. RNDr. Mirko Rokyta, CSc., Dean
(Hereinafter the "Buyer")

and

2. Seller:

Active Fiber Systems GmbH
Ernst-Ruska-Ring 17
07745 Jena
Germany
VAT ID: [REDACTED]
[REDACTED]

,

(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. INTRODUCTORY PROVISIONS:

1. The Seller was selected as the winner of a public procurement procedure called "Femtosecond laser system" (hereinafter the "Procurement Procedure").
2. The Seller acknowledges that the Buyer is not, in connection to the subject matter of this Contract, an entrepreneur, and also that the subject matter of this Contract is not related to any business activities of the Buyer.
3. The Seller represents that it has all the professional prerequisites required for the supply of the Device

under the Contract, is authorised to perform the Contract and there are no obstacles on the part of the Seller that would prevent the Seller from fulfilling the Contract. The Seller is aware that the Buyer considers the participation of the Seller in the Procurement Procedure as a confirmation of the fact that the Seller is within the meaning of section 5(1) of the Civil Code capable of acting with due care and diligence that is connected with its profession and that, if the Seller does not act with the due care and diligence, it shall be to its disadvantage. The Seller shall not exploit its status as a professional nor its market position to the disadvantage of the Buyer and to achieve obvious and unreasonable imbalance in the mutual rights and duties of the Parties.

4. The Parties declare that accept the “risk of changed circumstances” within the meaning of Sec 1765(2) of the Civil Code.
5. The Parties declare that they shall maintain confidentiality with respect to all facts and information they learned in connection with the Contract or during the performance of the Contract, and the disclosure of such facts or information could cause damage to the other Party. This confidentiality provision does not affect duties of Parties with respect to applicable legislation.

III. SUBJECT OF THE CONTRACT:

1. The subject matter of this Contract is the obligation of the Seller to deliver to the Buyer a Femtosecond laser system (hereinafter the “**Device**”) with qualities and technical parameters described in the Annex No. 1 – Technical specification in accordance with the terms and conditions of the Contract.
2. The following activities form an integral part of the performance to be provided by the Seller:
 - a) packing and transportation of the Device to the place of performance, unpacking and checking in the extent specified in the Technical Specification,
 - b) preparation of and the handover of the instructions and manuals and other documents in the extent specified in the Technical Specification,
 - c) installation of the Device in the place of installation defined below, verification that the Device is fully functional and that fulfils all requirements stipulated in the Contract, testing of the Device and demonstrating its functionality (hereinafter the “**Verification**”),
 - d) training of the persons designated by the Buyer in the extent 1 hour for 5 persons (hereinafter the “**Training**”)

(The Device and the activities required under para 2 above are hereinafter referred to as the “**Delivery**”).

3. The Buyer shall take over properly and timely delivered Device and shall pay the Seller the Purchase Price under the terms and conditions of the Contract.
4. The Seller hereby undertakes, under the terms and conditions hereof, to deliver to the Buyer, properly and in timely manner the Device, to hand over the Device to the Buyer and to carry out activities specified in paragraph 2 above. The Seller shall ensure the compliance of the Device with the Seller’s Bid and with all valid legal, technical and quality standards in the extent specified in the

Annex No. 1 – Technical Specification, and the Seller shall ensure that the Device shall have a properly issued and valid CE certificate, if applicable.

5. During the performance of the Contract, the Seller shall cooperate with the Buyer and shall follow the instructions of the Buyer unless such instructions contravene the Contract.

IV. OWNERSHIP TITLE:

The ownership right passes to the Buyer upon the signature of the Handover protocol (as is defined below).

V. PURCHASE PRICE AND PAYMENT TERMS

1. The Purchase Price for the Delivery is the maximum price that cannot be exceeded and is 3,149,248.00 CZK without value added tax, (hereinafter the “**Purchase Price**”).
2. Unless provided otherwise in this Contract, all the prices in this Contract are exclusive of value added tax, which shall be paid according to the applicable regulations or international agreements.
3. The Purchase Price includes all the costs related with the performance of the Contract, including the cost of transport of the Device to the place of delivery, the costs of Verification and Training, the costs of insurance including unloading until the Delivery, licenses, taxes and fees, etc. The Purchase Price is fixed and shall not be changed regardless of the changes of prices or changes in the foreign exchange rates.
4. The Purchase Price shall be paid in the following manner:
 - a) 50 % of the Purchase Price shall be paid to the Seller after the delivery of the Order by the Buyer to the Seller,
 - b) 50 % of the Purchase Price shall be paid after the signature of the Handover protocol.
5. The Buyer shall pay the Purchase Price on the basis of an invoice issued by the Seller.
6. Invoices shall be payable within thirty (30) days of the date of their delivery to the Buyer. Payment of the invoiced amount means 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 the following details:
 - the business name/designation and registered office of the Buyer
 - the tax identification number of the Buyer
 - the business name/designation and registered office of the Seller
 - the tax identification number of the Seller
 - the registration number of the tax document
 - the scope and object of the Delivery or Services
 - the date of issue of the tax document

- 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
- the price
- the registration number of the Contract, which the Buyer shall communicate to the Seller at his request before the invoice is issued
- a declaration that the charged price is provided for the purposes of the "Delivery of femtosecond laser system"

must also comply with any double taxation treaties applicable to the given case.

7. The last invoice in each calendar year must be delivered by the Seller to the Buyer's no later than by December 15 of the given calendar year. If a tax document – invoice does not comply with the payment terms stipulated by the Contract or if it does not comply with the requirements stipulated by law or if it is not delivered to the Buyer by the aforementioned date, the Buyer is entitled to return the tax document – invoice to the Seller as incomplete, or incorrectly issued, for supplementation or issue of a new invoice, as appropriate, within five (5) business days of the date of its delivery to the Buyer. In that case, the Buyer is not in delay in payment of the Purchase price or part thereof or the Price for Services and the Seller shall issue a corrected invoice with a new identical Maturity Period, which shall commence on the date of delivery of the corrected or newly issued tax document – invoice to the Buyer.
8. The Buyer's invoicing details are set out in Art. I hereof.

VI. TIME OF PERFORMANCE OF THE THE CONTRACT:

1. The Seller shall deliver the Device to the place of delivery within 6 months from the delivery of the Order by the Buyer to the Seller.
2. The Buyer and the Seller shall do their best to agree on a time for the Verification and Training as soon as possible after the delivery.

VII. PLACE OF DELIVERY AND INSTALLATION

The place of delivery shall be Charles University, Faculty of Mathematics and Physics, Ke Karlovu 3, 12116 Prague 2, Czech Republic. At the request of the Seller made prior to the transport of the Device to the place of delivery the Buyer shall inform the Seller of the exact number of the room in the building with address written above. The place of installation shall be Charles University, Faculty of Mathematics and Physics, Ke Karlovu 3, 12116 Prague 2, Czech Republic. The Buyer is responsible for the passage of the Device from the place of Delivery to the nearby place of Installation. The Seller shall have a representative present during the transport from the place of delivery to the place of installation.

VIII. HANDOVER OF THE DEVICE

1. The Device shall be at the place of installation handed over on the basis of handover protocol, which shall contain the following information:
 - identification of the Seller, the Buyer and all subcontractors, if there are any,
 - description of the Device including the list of individual items of the Device,
 - the list of defects and deficiencies of the Device, if there are any, and the deadlines for their removal,
 - the signature and the date of the handover

(hereinafter the “**Handover protocol**”).

2. Instructions and manuals and other documents in the extent specified in the Annex No. 1 shall be attached to the Handover protocol.
3. The delivery of the Device marks the passage of the risk of damage to the Device from the Seller on the Buyer; however, this passage of risk of damage does not in any manner prejudice the Seller’s liability for damage due to the defects of the Device.
4. The Buyer shall not be obliged to take over the Device with defects or deficiencies, regardless of the fact that such defects or deficiencies may not compromise the functionality and use of the Device. Should the Buyer not exercise its right not to accept the Device even when manifesting defects or deficiencies, the Parties shall list these in the Handover Protocol, including the manner and deadline for their removal. Should the Parties not specify a deadline for the removal of defects or deficiencies in the Handover protocol, then these must be removed within 14 days from the date of the handover.

IX. WARRANTY

1. The Seller shall provide the warranty for the Device for a period of 12 months.
2. The warranty period shall commence on the date of the signature of the Handover Protocol. However, if the Device is taken over with defects or deficiencies, the warranty period shall commence on the date of the removal of the last defect or deficiency by the Seller.
3. If the Device which contains its own warranty documents, then the warranty period shall be the period specified in such documents, unless does not exceed the warranty period stipulated in the Contract.
4. The Buyer shall raise a claim for removal of a defect of the Device without undue delay after discovering the 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 (hereinafter the „**Warranty Claim** “). An email is considered to be an adequate way to initiate a warranty claim. Warranty Claim sent by the Buyer on the last day of the warranty period shall be deemed to have been made in time.

5. In the Warranty Claim the Buyer shall describe the defect and the manner in which the defect is to be removed. The Buyer is entitled to:
 - request the removal of defects by substitute delivery, or
 - request that the defects are repaired, or
 - request an appropriate discount on the Purchase Price.

The choice among the above specified claims shall be made by the Buyer.

6. The Seller agrees to remove the defects of the Device free of charge.
7. Defects must be removed within the period of fourteen (14) days from the date, on which the Warranty Claim was notified to the Seller, at the latest, unless the Buyer and the Seller agree otherwise.
8. The Seller shall remove defects of the Device within periods stated in the Contract also in the instances when the Seller is of the opinion that he is not liable for such defects. In cases when the Seller will not recognize the defect and the Buyer will not agree with such conclusion, the validity of the Warranty Claim shall be ascertained by an expert, which is to be commissioned by the Buyer but on which the Supplier also must agree. In the event the expert declared the Warranty Claim as justified, the Seller shall bear the costs of the expert's assessment. If the Warranty Claim is raised unjustly (according to expert's assessment), the Buyers shall reimburse the Seller all reasonably incurred costs associated with removing the defect.
9. The Parties shall execute a record on removal of the defect, in which they shall confirm that the defect was removed. The warranty period shall extend by the time that expires from the date of exercising the Warranty Claim until the defect is removed.
10. In case the Seller fails to remove the defect within the time period set out in the Contract, or within other period as may be agreed by the Parties, or in case the Seller refuses to remedy the defect, the Buyer shall be entitled to have the defect removed at his own cost, and the Seller shall be obliged to compensate the Buyer for all reasonably incurred costs associated with removing the defect within 30 days of the Buyer's request to do so. Under the condition that the repair was professionally done, the scope and length of the warranty remains unaffected by this provision.
11. The warranty shall not cover defects caused by unprofessional handling, non-compliance with the manufacturers' rules of operation and maintenance of equipment accepted by the Buyer from the Seller upon handover, or those of which the Seller advised the Buyer in writing. The warranty shall also not apply to defects caused by intentional conduct.
12. Parties exclude application of the section 1925 (the sentence behind semi-colon) of the Civil Code.
13. The Seller shall provide to the Buyer technical support (consultation of operational, maintenance and

other issues regarding the Device) free of charge on the phone no.: [REDACTED]

X. CONTRACTUAL PENALTIES

1. In the event the Seller is in delay with performance as stipulated by Art. VI para 1 of this Contract by more than 30 days, the Seller shall pay to the Buyer the contractual penalty in the amount of 0.05% of the Purchase Price for each, even commenced day of delay and for every individual case of delay.
2. In the case where the Seller fails to remove defects within the periods stipulated in the Contract, the Seller shall pay to the Buyer a contractual penalty in the amount of 2.500 CZK for each defect and for each day of delay.
3. If the Buyer fails to pay the Purchase Price or the Price for Services within the deadlines set out in this Contract, the Buyer shall pay the Seller interest on delay in the amount set forth by the law for each day of delay unless the Buyer proves that the delay with the payment of the Purchase Price was caused by late release of the funds by the provider of the support.
4. The obliged party must pay any contractual penalties to the entitled party not later than within 15 calendar days of the date of receipt of the relevant claim from the other party.
5. Payment of the contractual penalties pursuant to this article shall in no way prejudice the Buyer's right to claim compensation for damage incurred by the Buyer as a result of the Seller's breach of obligations to which the penalty applies.
6. Total amount of contractual penalties, which the Buyer is entitled to enforce pursuant to this Contract, shall not exceed 30 % of the Purchase Price.

XI. TERMINATION OF THE CONTRACT

1. This Contract may be terminated by completing the performance required hereunder, by agreement of the Parties or by withdrawal from the Contract on the grounds stipulated by law or in the Contract.
2. The Buyer is entitled to withdraw from the Contract without any penalty if any of the following events occur:
 - a) The Seller has materially breached the obligations imposed thereon by the Contract, specifically i) by being delayed with the performance hereunder by more than 4 months, or ii) Device fails to meet technical parameters and qualities or other requirements defined in the Annex No. 1.,
 - b) Insolvency proceedings are initiated against the Seller's assets,
 - c) should it become apparent that the Seller provided information or documents in the Seller's bid, which are not true, and which could, therefore, influence the outcome of the Procurement Procedure leading to the conclusion of this Contract.

3. The Seller is entitled to withdraw from the Contract in the event of material breach of the Contract by the Buyer and in case of events outside the control of the Seller (e.g., natural disasters, etc.).

XII. REPRESENTATIVES OF THE PARTIES

1. The Seller has appointed the following authorised representatives for communication with the Buyer in relation to the subject of performance hereunder:

In technical matters: [REDACTED]

2. The Buyer has appointed the following authorised representatives for communication with the Seller in relation to the subject of performance hereunder:

In technical matters: [REDACTED] Faculty of Mathematics and Physics, Charles University, Ke Karlovu 3, 12116 Prague 2, Czech Republic, [REDACTED]
[REDACTED]

XIII. CHOICE OF LAW

1. This Contract and all the legal relationships arising out of it shall be governed by the laws of the Czech Republic.
2. Any disputes arising out of this Contract or legal relationships connected with the Contract shall be resolved by the Parties amicably. In the event that a dispute cannot be resolved amicably within sixty (60) days, the dispute shall be resolved by the competent court in the Czech Republic based on application of any of the Parties.

XIV. FINAL PROVISIONS

1. The Contract with all annexes represents the entire and complete agreement between the Buyer and the Seller.
2. In the event that any of the provisions of this contract shall later be shown or determined to be invalid, putative, ineffective or unenforceable, then such invalidity, putativeness, ineffectiveness or unenforceability shall not cause invalidity, putativeness, ineffectiveness or unenforceability of the Contract as a whole. In such event the Parties undertake without undue delay to subsequently clarify any such provision using Sec 553(2) of the Civil Code, or to replace after mutual agreement such invalid, putative, 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.

3. This Contract becomes valid as of the day of its execution by the authorised persons of both Parties.
4. This Contract may be changed or supplemented solely in writing.
5. This Contract is executed and signed only electronically.
6. The following Annexes form an integral part of the Contract:
Annex No. 1: Technical specification.

In case of any discrepancies between this Contract and its annexes, the provisions of this Contract shall prevail. In case of any discrepancies between Annex No. 1 and the other annexes of this Contract, the provisions of Annex No. 1 shall prevail.

7. The Parties, manifesting their consent with the entire the Contract, affix their signatures below.

In
Seller:

In
Buyer:

Name: Oliver Herrfurth
Position: Technical Sales Manager

Name:
Position: