



## 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, PhD. – director

("Buyer"); and

- (2) **EDLIN, s.r.o.,**

with its registered office at: Za Kralupkou 440/19, 277 11 Libiš,

registration no.: 26130386,

represented by: Alexandr Zemek - director

("Supplier")

(The Buyer and the Supplier are hereinafter jointly referred to as "**Parties**" and individually as "**Party**".)

### WHEREAS

- (A) The Supplier's bid for the public procurement entitled "Ion sputter coater **TP22\_018**", whose purpose was to procure the Object of Purchase ("**Public Procurement**"), was selected by the Buyer as the most suitable.

### IT WAS AGREED AS FOLLOWS:

#### 1. BASIC PROVISIONS

- 1.1 Under this Contract the Supplier shall supply to the Buyer the ion sputter coater and will provide the Buyer with related services as stipulated in Annex 1 (*Technical Specification*) to this Contract, in the quality described therein ("**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 Supplier the Purchase Price (as defined below), all under the terms and conditions stipulated in this Contract.
- 1.2 The Supplier promises to the Buyer that if for the fulfillment of the requirements of the Buyer under this Contract or the proper operation of the Object of Purchase are



necessary other deliveries and activities not mentioned in this Contract, the Supplier shall procure such deliveries or shall carry out such activities at its own expense without any effect on the Purchase Price.

## 2. THE PLACE OF DELIVERY

The place of delivery is: Fyzikální ústav AVČR, v.v.i / ELI-Beamlines, Za Radnicí 836, 252 41 Dolní Břežany, Czech Republic.

## 3. THE TIME OF DELIVERY

3.1 The Supplier shall deliver the Object of Purchase and shall carry out related activities within 10 weeks from the signature of this Contract.

3.2 At the request of the Supplier, the fulfillment date will be extended by the time for which the Supplier is unable to fulfill this Contract in time due to circumstances that occurred independently of its will and which are difficult to predict (e.g. measures in connection with covid-19). In the application, the Supplier shall state the facts and attach documents (evidence) that are important for the assessment of whether the conditions for the extension are met, unless they are generally known facts or publicly available information.

## 4. THE OWNERSHIP RIGHT

The ownership right to the Object of Purchase shall pass to the Buyer upon signature of the Acceptance Protocol (as defined below) by both Parties.

## 5. PRICE AND PAYMENT TERMS

5.1 The purchase price of Objects of Purchase is 47.700,- EUR ("**Purchase Price**") without value added tax ("**VAT**"). VAT will be paid in accordance with the applicable legal regulations.

5.2 The Purchase Price cannot be exceeded and includes all costs and expenses of the Supplier related to the performance of this Contract. The Purchase Price includes, among others, all expenses related to the handover of the Object of Purchase and execution of related activities, costs of copyright, insurance, customs, warranty service and any other costs and expenses connected with the performance of this Contract.

5.3 The Purchase Price for the Object of Purchase shall be paid in EUR on the basis of a tax document – invoice, to the account of the Supplier specified in the invoice. The Supplier is entitled to issue the invoice after signature of the Acceptance Protocol. Copy of the Acceptance Protocol must be attached to the invoice. The invoice must be delivered to the Buyer without undue delay after the signature of the Acceptance Protocol.

5.4 If this Contract is being performed in line herewith without substantial breaches hereof by the Supplier and if it might ease or speed up performance of this Contract by the Supplier and if the Supplier will present plan of performance of activities that are to come



to deliver Object of purchase the Buyer reserves the right to provide the Supplier with Purchase price or part of the Purchase price sooner than after signature of the Acceptance Protocol. If the conditions stipulated above are met the Buyer is entitled to modify the payment in favor of the Supplier and to provide it with any prepayment.

- 5.5 The Buyer shall realize payments on the basis of duly issued invoices within 30 days from their receipt. If the Supplier stipulates any shorter due period of the invoiced amount in an invoice such different due period shall not be deemed relevant and the due period stipulated herein prevails. 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 Supplier's account.
- 5.6 The invoice issued by the Supplier as a tax document must contain all information required by the applicable laws of the Czech Republic. Invoices issued by the Supplier in accordance with this Contract shall contain in particular following information:
- a) name and registered office of the Buyer,
  - b) tax identification number of the Buyer,
  - c) name and registered office of the Supplier,
  - d) tax identification number of the Supplier,
  - e) registration number of the tax document,
  - f) scope of the performance (including the reference to this Contract),
  - g) the date of the issue of the tax document,
  - h) the date of the fulfilment of the Contract,
  - i) purchase Price,
  - j) registration number of this Contract, which the Buyer shall communicate to the Supplier based on Supplier's request before the issuance of the invoice,

and must comply with the double tax avoidance agreements, if applicable.

- 5.7 In case that the invoice shall not contain the above mentioned information, the Buyer is entitled to return it to the Supplier 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.

## 6. SUPPLIER'S DUTIES

- 6.1 The Supplier shall ensure that the Object of Purchase and Related Activities are in compliance with this Contract including all its annexes.
- 6.2 During performance of this Contract the Supplier proceeds independently. If the Supplier receives instructions from the Buyer, the Supplier shall follow such instructions unless these are against the law or in contradiction to this Contract. If the Supplier 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 Supplier must notify the Buyer.

## 7. **HANDOVER OF THE OBJECT OF PURCHASE**

- 7.1 Prior to the handover and takeover of the Object of Purchase the Seller shall test the Object of Purchase in accordance with Annex 1 (Technical Specification) to this Contract.
- 7.2 The Object of Purchase shall be delivered to the Buyer along with delivery note or other similar document confirming the delivery. By delivering the Object of Purchase to the place of delivery the Buyer only takes custody of the Object of Purchase (i.e. the Buyer does not accept the Object of Purchase).
- 7.3 Handover and takeover of the Object of Purchase shall be realized on the basis of an acceptance protocol ("**Acceptance protocol**"). The acceptance of the Object of Purchase shall be realized after installation and final verification on the basis of an acceptance protocol in accordance with Annex 1 (Technical Specification).
- 7.4 If the Object of Purchase does not meet requirements stipulated in this Contract, the Buyer is entitled to refuse the takeover of such Object(s) of Purchase. In such a case the Seller shall remedy the deficiencies within ten (10) working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) to takeover the Object(s) of Purchase despite the above mentioned deficiencies, in particular if such deficiencies do not prevent the Buyer in the proper operation of the Object(s) of Purchase. In such a case the Seller and the Buyer shall list the 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 deficiencies within ten (10) working days.

## 8. **WARRANTY**

- 8.1 The Supplier shall provide a warranty of quality of the Object of Purchase for the period of 36 months. 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.
- 8.2 The warranty period shall begin on the day of the signature of the Acceptance Protocol by both Parties. If the Acceptance Protocol lists any deficiencies, the warranty period shall begin on the day, which follows the day, in which the last deficiency was removed.
- 8.3 The Supplier shall remove defects that occur during the warranty period free of charge and in the terms stipulated in this Contract.
- 8.4 If the Buyer ascertains a defect of the Object of Purchase during the warranty period, the Buyer shall notify the Supplier such defect without undue delay. Defects may be notified on the last day of warranty period, at the latest.



- 8.5 The Buyer notifies defects in writing via e-mail. The Supplier shall accept notifications of defects on the following e-mail address: zemek@edlin.cz. The Supplier shall confirm within 2 working days from the receipt of the notification.
- 8.6 In the notification the Buyer shall describe the defect and the manner of removal of the defect. The Buyer has the right to:
- a) ask for the removal of the defect by the delivery of new Object of Purchase or its individual parts, or
  - b) ask for the removal of the defect by repair, or
  - c) ask for the adequate reduction of the Purchase Price, if the repair cannot be fulfilled by the Supplier.

The choice among the above mentioned rights belongs to the Buyer. However, the Supplier is not entitled to request delivery of a new Object of Purchase or its parts in case of removable defects unless the same defect occurs repeatedly. The Buyer is also entitled to withdraw from this Contract, if by delivering the Object of Purchase with defects this Contract is substantially breached.

- 8.7 The Supplier shall remove the defect within 21 calendar days from its notification, unless Parties agree otherwise – the Buyer will accept longer period than stated in a case the Supplier will prove, he is unable to remove the defect in 21 calendar days limit.
- 8.8 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 and its removal if the Buyer was prevented from using the Object of Purchase due to the defect removal.
- 8.9 In case that the Supplier does not remove the defect within stipulated time or if the Supplier refuses to remove the defect, then the Buyer is entitled to remove the defect at his own costs and the Supplier shall reimburse these costs within 10 days after the Buyer's request to do so.
- 8.10 The warranty does not cover defects caused by unprofessional manipulation or by failure to follow Supplier's instructions for the operation and maintenance of the Object of Purchase.
- 8.11 Parties exclude the application of Section 1925 of the Civil Code.

## 9. **PENALTIES**

- 9.1 If the Supplier is in default regarding the delivery of the Object of Purchase, i.e. the Supplier breaches its duty to perform this Contract in time and due manner, the Supplier shall pay to the Buyer a contractual penalty in the amount of 0.05% from the Purchase Price (excl. VAT) for each (even commenced) day of default.



- 9.2 If the Supplier is in default with the removal of the defect of individual part of the Object of Purchase, the Supplier shall pay to the Buyer a contractual penalty in the amount of 0.02% calculated from relevant part of the Purchase Price of the Object of Purchase for each (even commenced) day of default.
- 9.3 The Supplier shall pay contractual penalties within fifteen (15) 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.
- 9.4 Total amount of contractual penalties that the Buyer is entitled to claim shall not exceed 5 % of the Purchase Price.
- 9.5 The Buyer is entitled to unilaterally set off claims arising from the contractual penalties against the claim of the Supplier for the payment of the Purchase Price.
- 9.6 Parties exclude the Section 2050 of the Civil Code.

#### 10. **RIGHT OF WITHDRAWAL**

- 10.1 The Buyer is entitled to withdraw from this Contract without any penalties, if any of the following circumstances occur:
- d) the Supplier shall be in delay with the fulfilment of this Contract and such delay lasts more than two (2) months;
  - e) The Object of Purchase shall not repeatedly fulfil the requirements stipulated in this Contract, in particular in Annex 1 (Technical Specification);
  - f) the insolvency proceeding is initiated against the Supplier; or
  - g) the Buyer ascertains that the Supplier 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.

#### 11. **SPECIAL PROVISIONS**

By signing this Contract, the Supplier 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 Research, Development and Education Operational Program or other control bodies access 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 Supplier 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 2028.



## 12. **ECOLOGICAL, SOCIAL AND INNOVATIVE ASPECTS OF THIS CONTRACT**

The Buyer aims to conclude contracts with suppliers that take into account and implement the principles of social responsibility, ecological sustainability and innovation. Therefore, the Supplier shall ensure that:

- a) this Contract shall be fulfilled only by persons that are employed in accordance with the applicable legal regulations (no illegal or child workers);
- b) while performing this Contract, all applicable health and safety regulations and rules at work place are observed;
- c) all persons performing this Contract are employed under fair and non-discriminatory working conditions;
- d) if presented with different manners of fulfilling this Contract, the Supplier shall select the solution/process that is in accordance with the principles governing nature conservation and nature protection, ecological sustainability and ecological waste management; and
- e) if presented with different manners of fulfilling this Contract, the Supplier shall select the solution/process that is the most innovative.

## 13. **FINAL PROVISIONS**

- 13.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.
- 13.2 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.
- 13.3 The Supplier bears the risk of changed circumstances within the meaning of Section 1765 of the Civil Code.
- 13.4 The Supplier is not entitled to set off any of its claims or his debtor's claims against the Buyer's claims. The Supplier is not entitled to transfer its claims against Buyer that arose on the basis or in connection with this Contract on third parties. The Supplier is not entitled to transfer rights and duties from this Contract or its part on third parties.
- 13.5 All modifications and supplements of this Contract must be in writing.
- 13.6 If any of provisions of this Contract are invalid or ineffective, the Parties are bound to change this Contract in 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.
- 13.7 This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.



- 13.8 Integral parts of this Contract is Annex 1 (*Technical Specification*) and Annex 2 (Price sheet). In case of any discrepancy between the provisions of this Contract and the provisions of Annex 1 (*Technical Specification*) the provisions of this Contract shall prevail.
- 13.9 This Contract shall be valid on the date of the signature of both Parties and affective on the day of its publication in the register of contracts according to the respective legal regulation.
- 13.10 The Buyer makes the Supplier aware that the Buyer is going to transfer the ELI Beamlines research facility (as of today owned and operated by the Buyer) to the Extreme Light Infrastructure ERIC (ELI ERIC). The Extreme Light Infrastructure ERIC (ELI ERIC) is a legal person set up under the Regulation (EC) No 723/2009 and it is the future long term owner and operator of the ELI Beamlines facility. The Seller by entering this Contract agrees that the Buyer is entitled to assign all rights and obligations from this Contract to Extreme Light Infrastructure ERIC (ELI ERIC) without further consent of the Supplier (The Parties consider this to be a consent of the Supplier within the meaning of the Section 1895 of the Civil Code). The Buyer shall inform the Supplier on the completed assignment without undue delay and in accordance with Section 1897 of the Civil Code, the assignment shall become effective at the moment of its notification to the Supplier.



**IN WITNESS WHEREOF** attach Parties their handwritten signatures

**Buyer**

Signature: \_\_\_\_\_

Name: RNDr. Michael Prouza, PhD.

Position: Director

Date:

**Supplier**

Signature: \_\_\_\_\_

Name: Alexandr Zemek

Position: Director

Date:



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



**ANNEX 1**  
**TECHNICAL SPECIFICATION**  
**(REQUIREMENTS SPECIFICATION DOCUMENT FOR THE PUBLIC PROCUREMENT)**