



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



MINISTRY OF EDUCATION,
YOUTH AND SPORTS

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

- (2) **MIT, spol. s r.o.**

with its registered office at: Praha 4, Klánova 71/56, PSČ 14700,

registration no.: 46348395

represented by: Martin Moser – managing director

("Seller").

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

WHEREAS

- (A) The Buyer is a public contracting authority and the beneficiary of public grants for projects within the Operational Programme Research, Development and Education.
- (B) For the successful realization of 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, and Rules for the Selection of Suppliers within the Operational Programme Research, Development and Education.
- (C) The Seller wishes to provide the Object of Purchase to the Buyer for consideration.
- (D) The Seller's bid for the public procurement entitled "***Deformable mirror for FSYNC TP22_016***", 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:



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1. **BASIC PROVISIONS**

1.1 Under this Contract the Seller shall hand over to the Buyer a product that is described in Annex 1 (*Technical Specification*) to this Contract in the quality and with the properties 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 Seller the Purchase Price (as defined below), all under the terms and conditions stipulated in this Contract.

1.2 Under this Contract the Seller shall also:

- a) prepare drawings of the Object of Purchase as further described in Annex 1 (Technical Specification);
- b) provide all materials needed for the manufacturing of the Object of Purchase;
- c) manufacture, inspect, clean and test the Object of Purchase;
- d) transport the Object of Purchase to the place of delivery; the delivery terms are DAP Fyzikální ústav AV ČR v.v.i/ELI beamlines, Průmyslová 836, 252 41 Dolní Břežany, Czech Republic
- e) carry out other activities specified in Annex 1 (Technical Specification) and
- f) cooperate with the Buyer during the performance of this Contract

(“**Related Activities**”).

1.3 The Object of Purchase (all of its parts) shall be new (not remanufactured).

2. **THE PLACE OF DELIVERY**

2.1 The place of delivery is ELI beamlines facility at the address Průmyslová 836, post code 252 41, Dolní Břežany, Czech Republic or any other address in Dolní Břežany, Czech Republic, which the Buyer communicated to the Seller prior to the delivery of the Object of Purchase.

2.2 Delivery conditions not governed by this Contract shall be governed by DAP Incoterms, however in a case of any discrepancy between the provisions of this Contract and DAP Incoterms, the provisions of this Contract shall prevail. DAP Incoterms shall not apply to acquisition of ownership right of the Object of the Purchase.

3. **THE TIME OF DELIVERY**

3.1 The Seller shall deliver the Object of Purchase within 32 weeks from the effectiveness of this Contract. The Object of Purchase is considered delivered once the acceptance protocol according to the article 7.5 of this contract is signed. The Seller is entitled to deliver the Object of Purchase earlier, if the Buyer agrees to it. The Buyer is entitled to postpone the



delivery time by up to another 3 months if the premises at the place of delivery are not due to construction reasons prepared for acceptance of the Object of Purchase.

- 3.2 At the request of the Seller, the fulfillment date can be extended by the time for which the Seller or Seller's 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 or war in Ukraine). In the application, the Seller 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. However, this does not affect the right of the Buyer to withdraw from this Contract in accordance with the Article 10.

4. **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.

5. **PRICE AND PAYMENT TERMS**

- 5.1 The purchase price for the Object of Purchase is **78.300,- EUR** ("**Purchase Price**"). 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 Seller related to the performance of this Contract. The Purchase Price includes, among others, all expenses related to the handover and acceptance of the Object of Purchase, 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 on the basis of a tax document – invoice, to the account of the Seller designated in the invoice. The Purchase Price shall be paid in the following manner:
- a) 30% of the Purchase Price shall be paid after the Buyer approves Qualified Design (as defined in Annex 1) of the Object of Purchase; and
 - b) 70% of the Purchase Price shall be paid after the signature of the acceptance protocol as defined in article 7.5 of this contract. The copy of the acceptance protocol shall be attached to the invoice.
- 5.4 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.
- 5.5 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:
- a) name and registered office of the Buyer,



- b) tax identification number of the Buyer,
- c) name and registered office of the Seller,
- d) tax identification number of the Seller,
- 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 Seller based on Seller's request before the issuance of the invoice.

5.6 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.

6. **SELLER'S DUTIES**

6.1 The Seller shall ensure that the Object of Purchase is in compliance with this Contract including all its annexes and applicable legal (e.g. safety), technical and quality norms.

6.2 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.

6.3 If this Contract (including Annex 1) states that the Seller and the Buyer shall agree on certain matter or issue and such agreement is not reached, then the Seller must follow Buyer's decision on this matter or issue.

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

7. **HANDOVER AND TAKEOVER 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 Handover and takeover of the Object of Purchase shall be realized on the basis of an acceptance protocol.



- 7.3 The Object of Purchase shall be delivered to the place of delivery within 28 weeks from the conclusion of this Contract and installed, verified and handed over by the Buyer within 32 weeks from the conclusion of this Contract.
- 7.4 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).
- 7.5 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.
- 7.6 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 Seller shall provide a warranty of quality of the Object of Purchase for the period of 12 months. If any document of the Seller states the warranty of longer duration in relation to the Object of Purchase, then such warranty of longer duration shall be applied instead.
- 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 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.
- 8.4 The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: servis@mit-laser.cz. The Seller shall confirm within 24 hours from the receipt of the notification.
- 8.5 In the notification the Buyer shall describe the defect. The Buyer has the right to:
- a) ask for the removal of the defect by the delivery of new Object(s) of Purchase or its individual parts, or
 - b) ask for the removal of the defect by repair, or



c) ask for the reasonable reduction of the Purchase Price.

The choice among the above mentioned rights belongs to the Seller. The Buyer is also entitled to withdraw from this Contract, if by delivering the Object of Purchase with such defects this Contract is substantially breached.

- 8.6 The Seller shall remove defects that occur during the warranty period free of charge within 4 months from their notification, unless Parties due to the nature of the defect agree on the shorter or longer period of time.
- 8.7 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.
- 8.8 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 10 days after the Buyer's request to do so.
- 8.9 The warranty does not cover defects caused by unprofessional manipulation or by the failure to follow Seller's instructions for the operation and maintenance of the Object of Purchase.

9. **PENALTIES**

- 9.1 If the Seller is in default regarding the delivery of the Object of Purchase, i.e. the Seller breaches its duty to perform this Contract in time and due manner, the Seller 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 Seller is in delay with the removal of the defect, 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.
- 9.3 The Seller 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 Seller for the payment of the Purchase Price.



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:

- a) the Seller shall be in delay with the fulfilment of this Contract and such delay lasts more than 12 weeks;
- b) The Object of Purchase during testing does not fulfil the requirements stipulated in this Contract, in particular in Annex 1 (*Technical Specification*) and the deficiencies cannot be remedied;
- c) the insolvency proceeding is initiated against the Seller; or
- d) 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.

11. **PUBLICITY**

Parties are aware 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.

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.



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13. REPRESENTATIVES OF THE PARTIES

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

In technical matters:

Name: Thomas Meier

E-mail: [REDACTED]

Tel.: [REDACTED]

In contractual matters:

Name: Martin Moser

E-mail: [REDACTED]

Tel.: [REDACTED]

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

In technical matters:

Jméno: Jakub Novák

E-mail: [REDACTED]

The appointed representatives of the Buyer are entitled to communicate with the Seller regarding all technical aspects of this Contract including issuing all the approvals foreseen by this Contract and signing the acceptance protocol. The appointed representatives of the Buyer are not entitled to change or supplement this Contract.

14. 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 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 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 2033.



15. FINAL PROVISIONS

- 15.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.
- 15.2 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.
- 15.3 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.
- 15.4 All modifications and supplements of this Contract must be in writing.
- 15.5 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.
- 15.6 This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.
- 15.7 An integral part of this Contract is Annex 1 (*Technical Specification*). If Annex 1 (*Technical Specification*) uses the term "Contracting Authority" or "contracting authority" it means Buyer. If Annex 1 (*Technical Specification*) uses the term "Supplier" or "supplier" it means Seller.
- 15.8 This Contract shall be valid on the date of the signature of both Parties and effective on the day, on which it was published in the register of contracts within the meaning of the Act no. 340/2015 Coll., on the Register of Contracts.
- 15.9 The Buyer makes the Seller 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 Seller (The Parties consider this to be a consent of the Seller within the meaning of the Section 1895 of the Civil Code). The Buyer shall inform the Seller 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 Seller.



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IN WITNESS WHEREOF attach Parties their handwritten signatures:

Buyer

Signature: _____

Name: RNDr. Michael Prouza, Ph.D.

Position: director

Date:

Seller

Signature: _____

Name: Martin Moser

Position: managing director

Date:



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