

Soft X-ray spectrometer

PURCHASE CONTRACT

CU_DIAG-100_PTD_Annex No. 2 - Binding draft of Contract_Soft X-ray spectrometer

concluded in accordance with Section 2079 et seq. of Act No. 89/2012 Coll., Civil Code, as amended (hereinafter the "**Civil Code**")

between the following Parties:

Ústav fyziky plazmatu AV ČR, v.v.i.

(Institute of Plasma Physics of the Czech Academy of Sciences)

With its registered seat at: U Slovanky 2525/1a, 182 00 Prague 8

ID No.: 61389021

VAT No.: CZ61389021

Registered with the Register of public research institutions kept by the Ministry of Education, Youth and Sports of the Czech Republic in compliance with Act No. 341/2005 Coll., on public research institutions

Represented by: prof. RNDr. Radomír Pánek, Ph.D., Director

Bank details: Československá obchodní banka, a. s.

EUR Account No.: 164465621/0300; IBAN: CZ11 0300 0000 0001 6446 5621; SWIFT CEKOCZPP

Data mailbox No.: "zipnqqk"

(hereinafter the "**Buyer**")

and

HP Spectroscopy GmbH

With its registered seat at: Forggenseestrasse 25, 68219 Mannheim, Germany

ID No.: HRB 740174 Amtsgericht Mannheim

VAT No.: DE344225094

Registered with Amtsgericht Mannheim

Represented by [REDACTED]

Bank details: Deutsche Bank, BIC DEUTDEDB683

Account No.: IBAN DE26 6837 0024 0018 1230 00

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(hereinafter the "**Seller**")

(the Buyer and the Seller jointly also as the "**Parties**" or individually as the "**Party**")

on the day, month and year specified below (this Purchase Contract hereinafter the "**Agreement**").

1. FUNDAMENTAL PROVISIONS

- 1.1. The Seller acknowledges that the subject of performance under this Contract is delivery of Soft X-ray spectrometer, which is intended to be used for diagnostic causes and to equip a high magnetic field tokamak under the name of COMPASS-U and that it is co-funded pursuant to the Guidelines of the Academy Council of the Czech Academy of Sciences No. 2, dated 8 February 2022, on Support for Instrumentation (the purpose and the rules governing its financing hereinafter referred to as the "**Project**"). The Seller acknowledges that, since the purchase price is financed by a grant, the failure of the Seller to comply with any of its obligations may have an impact on the financing and that the determination of the expenditure as ineligible or the imposition of any levy or administrative penalties on the Buyer as a result of the Seller's breach of this obligation may constitute damage incurred by the Buyer.
- 1.2. The Seller won the public procurement procedure announced by the Buyer pursuant to Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the "**Public Procurement Act**" or "**PPA**"), for tender entitled "**Soft X-ray spectrometer**" (hereinafter the "**Tender**").
- 1.3. Performance hereunder shall be based on the following annexes which form an integral part hereof:
- a) technical specification which relates to the supply to be purchased and is attached as Annex No. 1 hereto (hereinafter the "**Technical Specification**"). This Technical Specification also formed a part of the Tender documentation in the Tender as its Annex No. 1;
 - b) specific statement of the Seller that the Product [see chapter 8.1.1. f) of the Tender documentation] will fulfil all of the requirements contained in the Technical Specification and the Contract; the specific statement mentioned above was submitted by the Seller in its bid placed within the Tender (hereinafter the "**Bid**"); the statement is attached as Annex No. 2 hereto;
 - c) detailed breakdown of the Total Purchase Price in the form of detailed itemized budget showing the prices of the individual parts of the supply while the Total Purchase Price is a sum of individual partial prices (hereinafter the "**Detailed Itemized Budget**"), as submitted by the Seller in its Bid. The Detailed Itemized Budget is attached as Annex No. 3 Annex No. 2 hereto. Any change to the Detailed Itemized Budget proposed by the Seller is subject to the Buyer's approval.
- 1.4. This Agreement shall be considered for the comprehensive unit and obligations and rights shall be always interpreted in accordance with these documents. In case of any discrepancy between the provisions of this Agreement and the provisions of its Annexes the provisions of this Agreement shall prevail, except for the provisions of Annexes containing conditions and specifications that are more favourable to the Buyer (i.e., better technical specification values and/or more technically advanced or demanding solutions or results etc.), in which case such provisions of Annexes shall prevail. In case of any discrepancy between the provisions of the Annexes the provisions containing conditions and specifications that are more favourable to the Buyer shall prevail.
- 1.5. The Seller acknowledges that the Buyer considers the Seller's participation in the Tender, provided that he has met all qualification criteria, as constituting sufficient confirmation that the Seller will be able to act, within the meaning of Section 5 Paragraph 1 of the Civil Code, during performance hereunder, with all necessary knowledge, professional care and diligence pertaining to his profession or status, and that the Seller shall be liable for any acts lacking such required professional care, knowledge or diligence. The Seller shall not abuse his professional knowledge or economic position to create dependence on the part of the weaker party or to establish an apparent and unjustified imbalance in the mutual rights and obligations between the Parties hereto.
- 1.6. The Seller declares that he has all required professional qualifications that are necessary to deliver the subject-matter of performance hereof and that there are no obstacles on his part that would prevent him

from providing the subject-matter pursuant this Agreement to the Buyer.

- 1.7. The Seller is aware that the Buyer does not act as an entrepreneur in relation to the subject-matter of this Agreement.
- 1.8. The Seller declares that he assumes the risk of change in circumstances within the meaning of Section 1765 Paragraph 2 of the Civil Code.
- 1.9. The Parties declare to maintain confidentiality about all information acquired in relation to this Agreement and its performance whose disclosure could harm the other Party. This shall not inflict the Buyer's obligation ensuing from legal regulations.
- 1.10. The Seller acknowledges that with view to the fact that the purchase price of the object of purchase is financed from the subsidy, failure to comply with Seller's obligation may affect the financing. Any expenditure declared ineligible, imposed payments or administrative sanctions resulting from breaching of such obligation on basis of this Agreement shall represent damage that occurred to the Buyer.
- 1.11. The Seller further acknowledges that he is aware of the importance to the Buyer of the fulfilment of this Agreement in terms of quality and schedule and that in the event of a failure by the Seller to meet them (e.g. in case of delay with delivery and/or in the case if the supply do not meet the stipulated requirements) the Buyer may incur substantial damage. Duly and timely performance hereunder is essential for the Buyer, in particular, given the follow-on activities within the framework of the Project and observation of the respective deadlines for their completion.
- 1.12. The Seller declares that in connection with this Agreement he complies and shall further comply with all legal regulations imposing international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security.

2. SUBJECT-MATTER OF THE AGREEMENT

- 2.1. The subject-matter of this Agreement is the obligation of the Seller to deliver, under the terms and conditions agreed herein, the Soft X-ray spectrometer (hereinafter the **"Product"**) which shall fully comply with the requirements and specification, including, but not limited to, the identification of the Product, quantity and technical parameters stipulated in the Technical Specification and to transfer ownership right to the Product to the Buyer.
- 2.2. The delivery of the Product hereunder shall also comprise as follows, as further specified in the Agreement:
 - a) transport of the Product to the place of delivery covered with insurance (risks, responsibility, etc.) related to their delivery and transport and the payment of other fees related to transport of the Product, if any;
 - b) delivery of documents related to the Object of Purchase as specified in the Technical Specification (hereinafter **"Documentation"**);
 - c) provision of warranty service for the Product.

The supply of the Product shall also include necessary research and development activities, potential additional works and/or deliveries, including those which are necessary for the completion of the Product or the need for which is caused by the Seller, and provision of free licenses to any intellectual property needed for using the Product according to the purposes of this Agreement including any follow-up research, development, education and publication activities (the Product and other supplies and related activities to be made hereunder shall be

referred to jointly as the "**Object of Purchase**").

- 2.3. The Seller undertakes to duly deliver, under the terms and conditions agreed herein and within the time frame agreed herein, at his own cost and risk the Object of Purchase including the Product to/for the Buyer at the prescribed location and to hand it over to the Buyer. The Seller shall be liable for the aforementioned delivery fully in accordance with this Agreement and its Annexes, its Bid submitted within the Tender and applicable legal, technical and quality regulations. For the sake of clarity, the Seller's obligations hereunder to deliver the Object of Purchase, performance of which has been included in the purchase price specified herein, shall also include all the performances pursuant to the above paragraphs of this Article.
- 2.4. The Product shall be delivered as new, previously unused and in top quality, corresponding, with its construction and other properties, to the highest international quality standards in the segment of science and technical development. The Product shall meet all relevant requirements specified in the generally applicable legal regulation and technical standards of the European Union and/or the Czech Republic for legal and adequate operation by the Buyer, which is entirely the Seller's responsibility.
- 2.5. The delivery of the Product hereunder shall also comprise the handover of Documentation related to the Product that is required to handle the Product and to operate it or that is required by generally applicable legal regulation and technical standards of the European Union and /or the Czech Republic.
- 2.6. This Agreement further stipulates the obligation of the Buyer to take over the duly and timely delivered Object of Purchase or its individual parts (i.e. individual parts of the Product specified in the Detailed Itemized Budget that was submitted by the Seller in the Bid) and pay corresponding part(s) of the purchase price, under the terms and conditions agreed herein to the Seller. For the sake of clarity, the Buyer shall be hereunder obliged to accept and take over only the parts of the Object of Purchase that are fully in compliance with all requirements specified in this Agreement (including its Annexes).

3. TIME OF DELIVERY, PLACE OF DELIVERY AND HANDOVER

- 3.1. The Seller undertakes to produce, deliver and hand-over the Object of Purchase to the Buyer within the delivery period until 30/11/2024.
- 3.2. Place of delivery of the Object of Purchase: U Slovanky 1770/3, 182 00 Praha 8, Czech Republic. Address for any communication purposes: the Buyer's postal address (i.e., U Slovanky 2525/1a, 182 00 Praha 8, Czech Republic), unless the Buyer communicates otherwise (Please note, that the Buyer's registered seat address is different from the Buyer's postal address).
- 3.3. The Seller shall execute the performance and deliver the Object of Purchase in compliance with this Agreement (including all requirements of Annex No. 1 - Technical Specification), generally applicable legal regulation and the technical standards of the European Union and/or the Czech Republic.
- 3.4. The Buyer shall be entitled, at its discretion, to takeover individual parts of the Product specified in the Detailed Itemized Budget; individual parts of the Product must be in accordance with requirements stipulated in the Technical Specification and further requirements of this Agreement.
- 3.5. As soon as the Object of Purchase or individual parts of the Product are considered from the Seller's point of view to be in accordance with requirements stipulated in the Technical Specification and further requirements of this Agreement to be accepted through acceptance of the Handover Protocol of Acceptance or the Individual Part Handover Protocol of Acceptance (hereinafter the "**Handover Protocol**")

of Acceptance” and “Individual Part Handover Protocol of Acceptance” or jointly also as the "**Handover Protocols of Acceptance**"), the Seller shall be obliged to notify in writing (electronic communication through the authorised representatives is permitted) the Buyer's authorized employee specified herein or communicated to the Seller otherwise of the same and shall prepare and submit to the Buyer for approval the Handover Protocols of Acceptance, in accordance with the Technical Specification and upon meeting of all requirements in accordance with this Agreement.

- 3.6. The Handover Protocols of Acceptance must include details on the Seller and Buyer, description of the Product or its individual parts that are the subject of handover and takeover, the date of execution of the protocol on handover and takeover of the supply and it shall be signed by competent (authorized) representatives of both Parties.
- 3.7. The Seller undertakes to deliver all required Documentation to the Buyer by the dates specified in the Technical Specification; where no such date is specified therein, the Seller shall deliver such parts of Documentation to the Buyer no later than along with the submission of Handover Protocols of Acceptance.
- 3.8. The Seller shall be obliged to notify in writing (electronic communication through the authorised representatives is permitted) the Buyer's authorized employee specified herein or communicated to the Buyer otherwise of the exact date of delivery of the Product or any individual part always not later than fourteen (14) days prior to the delivery.
- 3.9. The necessary prerequisite for the Buyer's approval with the Handover Protocols of Acceptance shall be fulfilment of all obligations on the part of the Seller under this Agreement, including, without limitations, the handover of the Object of Purchase (including the handover of Documentation) without legal or factual defects to the Buyer.
- 3.10. In case of any defects of the delivered Object of Purchase or any part thereof, in particular, but not limited to, if the Seller fails to deliver the Object of Purchase in agreed technical condition and quality or, in particular, if the Object of Purchase shows apparent defects or it is damaged or broken or the Seller fails to deliver required Documentation or fails to take all actions related to the commissioning of the Product or ensuring its proper functionality in compliance with this Agreement, the Buyer shall be entitled to refuse the takeover of that defective delivery. Whenever technically possible the Seller shall remedy the deficiencies within thirty (30) calendar days, unless the Parties agree otherwise. The Buyer shall be entitled at his discretion (but not obliged) to take over the defective part(s) of the Object of Purchase despite its defect, in particular if such defect does not have a material impact on its functionality. The Parties shall make a list of ascertained defects in the Handover Protocols of Acceptance, including the manner of and deadline for their removal. Till the defect remedy confirmed in the Handover Protocols signed by both Parties, (i) any invoice for the delivery of the Object of Purchase or any part thereof shall be issued by the Seller only upon the Buyer's consent or request; the Seller undertakes to issue and deliver the invoice to the Buyer without undue delay, but no later than in five (5) business days after the Buyer's request, and (ii) the Buyer shall be entitled, at its discretion, to postpone due payments (if any) up to the amount corresponding to the price of the defective part(s) of the Object of Purchase. However, these periods do not imply that the Seller is not in delay with delivery.
- 3.11. Should the Object of Purchase or any part thereof have defects, which are not apparent at the handover (i.e. hidden defects), the Parties shall follow regulation stipulated in Section 2112 Paragraph 1, second sentence, of the Civil Code to make claims.

- 3.12. The Parties exclude application of Section 2126 of the Civil Code and they agree that the Seller shall not be authorized to use institutes established therein, i.e., self-help sale in the event of the Buyer's delay in takeover.
- 3.13. The rights of the Buyer according to the provisions of Sec. 2106 and Sec. 2107 Civil Code, including claim for a new supply of the Product, reasonable price discount or withdrawal from this Agreement, resulting from a defective performance of the Seller, are not affected by this Agreement.
- 3.14. The ownership title of the Object of Purchase or individual parts of the Product shall pass to the Buyer as of the moment when the Handover Protocols of Acceptance are signed by both Parties in compliance with this Article.
- 3.15. The Seller shall bear the risk of damage to the Object of Purchase or individual parts of the Product until passing that risk to the Buyer. The Buyer assumes the risk of damage to the Object of Purchase or individual parts of the Product along with the transfer of the ownership right to those parts; this fact shall not relieve the Seller from his liability for damage caused as a consequence of defects of the Object of Purchase or part thereof.

4. PURCHASE PRICE AND PAYMENT CONDITIONS

- 4.1. The total purchase price for the Object of Purchase according to this Agreement shall be 349500EUR, excluding VAT
(in words: three hundred forty-nine thousand five hundred EUR), excluding VAT
(hereinafter the "**Total Purchase Price**").
- 4.2. The Total Purchase Price is divided according to detailed breakdown of the Total Purchased Price in the form of individual partial prices of individual parts of the Product (i.e. according to Detailed Itemized Budget). The Total Purchase Price is a sum of individual partial prices (i.e., sum of the purchase prices of the individual parts of the Product).
- 4.3. The Total Purchase Price and the purchase prices of the individual parts of the Product cannot be exceeded, are independent of the development of prices and changes in the foreign exchange rates and may be changed only in accordance with the Public Procurement Act.
- 4.4. VAT shall be imposed on top of all payments of prices excl. VAT made hereunder according to valid legislation.
- 4.5. The Parties declare that the Total Purchase Price shall cover any and all performance provided by the Seller hereunder and include all of the Seller's activities executed and all of the Seller's costs accrued or associated with the proper performance hereof as well as costs related with the deliveries of the Object of Purchase and its individual parts. The Total Purchase Price shall include especially all expenses related to production engineering, production, transport (including loading, transportation and unloading costs), delivery and handover of the Object of Purchase, including Documentation, warranty service, any customs duties (including export and import duties), administrative or other fees, insurance, packaging and its disposal, shipping and other documents for the Object of Purchase and all other Seller's costs required to meet his obligations hereunder as well as the costs associated with creation and protection of intellectual property and Seller's claims arising on the basis of intellectual property laws.
- 4.6. The Parties have agreed that the Seller shall be authorized to invoice the Total Purchase Price as follows:
- 4.6.1. The Seller shall be authorized to invoice the purchase prices of the individual parts of the Product (as

defined in Detailed Itemized Budget) upon execution of the Individual Part Handover Protocols of Acceptance that has been delivered in compliance with this Agreement.

- 4.6.2. The Seller shall be authorized to invoice the Total Purchase Price of Object of Purchase upon execution of the Handover Protocol of Acceptance that has been delivered in compliance with this Agreement.
- 4.7. The Buyer shall provide the Seller with an advance payment in the amount of 35% of the Total Purchase Price (i.e., price for the complete delivery of the Object of Purchase, excluding VAT), based on a pro forma invoice issued by the Seller after the Contract becomes effective.
- 4.8. The Buyer shall provide the Seller with an advance payment in the amount of 35% of the Total Purchase Price (i.e., price for the complete delivery of the Object of Purchase, excluding VAT), based on a pro forma invoice issued by the Seller after the Design Review is successfully passed as specified in the Technical Specification.
- 4.9. The due date of the invoice issued hereunder shall be thirty (30) days from the date of its delivery to the Buyer. The Buyer shall be obliged to pay the Seller invoiced amounts to his bank account specified in heading of this Agreement. A payment of the invoiced amounts shall be understood to be effective on the day such are remitted to the bank account of the Seller. The tax documents – invoices issued by the Seller hereunder shall comply with all applicable legal regulations of the Czech Republic and include the following data:
- a) Commercial name and seat of the Buyer,
 - b) Tax identification number of the Buyer,
 - c) Commercial name and seat of the Seller,
 - d) Tax identification number of the Seller,
 - e) Number of the tax document – invoice,
 - f) Quantity and nature of the Product or individual parts of the Product supplied (specification of the relevant part of the Object of Purchase performed),
 - g) The date of issue of the tax document – invoice,
 - h) The day of the performance supply, in so far as it differs from the issue date of the tax document – invoice
 - i) Due date,
 - j) Purchase Price (or its part for the relevant part of the Object of Purchase),
 - k) Statement that the Product or individual parts of the Product are provided in connection with the Project (if applicable), the content of which the Buyer shall specify or state that it is not required,
- and, furthermore, the tax document – invoice shall also be in compliance with agreements on avoidance of double taxation, if applicable in particular cases. The Buyer is entitled to request itemization of the invoiced Purchase Price for individual parts of the Object of Purchase in accordance with his determination. The Buyer is obliged to inform the Seller about this request in advance.
- 4.10. Should a tax document – invoice not be issued in compliance with payment terms defined herein or should it not meet the statutory requirements, the Buyer is entitled to return the tax document – invoice back to the Seller as incomplete, or incorrectly issued, for its correction, or re-issue, within ten (10) business days from the date of its delivery to the Buyer. In such a case, the Buyer shall not be in default with the remittance of the Total Purchase Price or any portion thereof, and the Seller shall issue a corrected invoice with a new but identical maturity period which shall commence to run on the day of delivery of the corrected or re-issued tax document – invoice to the Buyer.
- 4.11. The Buyer's and the Seller's invoicing details are given in heading of this Agreement.
- 4.12. Payment on tax document – invoice issued by the Seller does not constitute acceptance of the Object of

Purchase or any individual parts of the Product or a statement on flawlessness of invoiced performance or conclusive acceptance of flawlessness of the Object of Purchase or any individual parts of the Product.

- 4.13. The Seller shall not be authorized to perform set offs of its receivables against the Buyer, unless prior written consent is granted by the Buyer.

5. RIGHTS AND OBLIGATIONS OF THE PARTIES

- 5.1. The Seller undertakes to fulfil all obligations arising therefrom with due professional care, within the deadlines specified herein and/or hereunder, at his expense and risk and for the Total Purchase Price defined herein.
- 5.2. Unless otherwise specified in this Agreement, all things necessary to perform pursuant to this Agreement shall be ensured by the Seller. If any cooperation from the Buyer is necessary, the Seller shall invite the Buyer to provide such cooperation in writing in good time beforehand.
- 5.3. During the performance of this Agreement the Seller proceeds independently, unless hereunder stated otherwise. The Seller shall be obliged to take into account, in the performance of this Agreement, all requirements of the Buyer that are aimed at achieving the highest quality of the objectives hereof, unless such are contrary to the law. 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 Agreement. If the Seller finds out or should have found out by exercising professional care that the instructions are inappropriate or contradicting valid standards of the European Union or the Czech Republic or are in contradiction to this Agreement, then the Seller must promptly notify the Buyer.
- 5.4. The Seller agrees to the specifications as defined in Technical Specification, and declares, at the time of execution hereof, that he is not aware of any deficiencies therein and that he will be able, on the basis of these specifications, to deliver the Object of Purchase in the required quality without the need for any additional work.
- 5.5. In the event that at the time of delivery of the Object of Purchase or any part thereof hereunder the laws or technical standards of the European Union or the Czech Republic, or technical conditions governing goods and its operation in force shall be different from legal or technical standards in effect at the time of execution of this Agreement, the Seller shall take into account the content of such standards or legislation.
- 5.6. The Seller shall be obliged, in relation to third persons, to maintain confidentiality about all facts that he learned during the implementation hereof and in relation hereto, in particular, those that are protected with applicable generally binding legal regulations (in particular, business secret, personal data, confidential information) or that the Buyer declared to be confidential. The obligation to maintain confidentiality shall continue even after the termination of this Agreement. The Seller agrees to secure the meeting of that obligation also in case of all his employees or other persons that the Seller uses to implement this Agreement.
- 5.7. If personal data are processed during the performance hereof within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and other related legal regulation of the Czech Republic, the Seller shall comply with all obligations arising from this Regulation. For the avoidance of doubt, any breach of legal obligations or agreement between the Parties hereto in relation

to the processing of personal data on the part of the Seller shall be considered to constitute a material breach hereof.

- 5.8. The Seller undertakes, under the terms and conditions hereof, in accordance with instructions issued by the Buyer and using all due professional care, to:
- a) duly archive all documents produced in connection with the performance hereunder for a period of 15 calendar years after the calendar year of completion of the Project for which the performance hereunder was provided, but at least until the end of 2041. The Seller further undertakes to allow the Buyer access to these archived documents at any time during that archiving period. The Buyer shall be entitled to take possession of the above documents from the Seller free of charge after the archiving period. The Seller shall contractually bind its potential subcontractors to adhere to the same archiving rules;
 - b) cooperate within the framework of potential financial control procedures pursuant to Act No. 320/2001 Coll., on financial control, as amended, which includes, but is not limited to, allowing the sponsor or the competent managing authority of the relevant operational programme access to also those portions of the Bid submitted within the Tender, the Agreement, subcontracts and related documents that might be subject to protection under special legal regulation, provided that all requirements set forth by legal regulation with respect to the manner of conducting such controls will have been observed; the Seller shall contractually bind its potential subcontractors to comply with this obligation accordingly;
 - c) enable observance of any publicity obligations stemming from the rules of the relevant operational programme; and
 - d) enable the Buyer to fulfil its obligations pursuant to the Public Procurement Act.
- 5.9. The Buyer undertakes to deliver to the Seller any and all source documents, materials or other information which are necessary for the delivery of the Object of Purchase or any part thereof and which the Seller can reasonably request from the Buyer under the condition that the Seller raised any such requirement with sufficient advance ensuring fulfilment of the deadlines for the delivery of the Object of Purchase or any part thereof.
- 5.10. No changes or deviations of the Object of Purchase from the requirements of this Agreement or Technical Specification are permitted to be carried out by the Seller without the Buyer's previous written consent.
- 5.11. The Seller shall be obliged to carry out the works on the Object of Purchase through the person(s) who has (have) demonstrated their qualifications within the Seller's qualification in the Tender and involve such person(s) in the activities provided under this Agreement in the extent to that the Seller's qualification was demonstrated through them. Any change in that(those) person(s) shall be subject to the Buyer's approval, which should not be withheld if the Seller demonstrates at least the same level of qualification of the replacing person(s) compared to the replaced one(s) and compliance with international sanctions.
- 5.12. The Seller shall be obliged to inform the Buyer without undue delay about any and all significant changes of circumstances affecting or threatening the performance of this Agreement. As regards international sanction(s) applicable against the Seller and/or at least one of its subcontractors, the Seller shall be obliged to constantly monitor whether he or his subcontractors are subject to international sanctions imposed by legal regulations (including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security), inform immediately the Buyer about any affection by such sanctions and, with his consent, replace according to Article 5.11 hereof its subcontractor(s) against which sanction(s) preventing or endangering the performance of the Agreement applies(y).

- 5.13. The Buyer reserves the right to either remove the Product or individual parts of the Product (i.e., components of the Object of Purchase) from the Object of Purchase or request the Supplier for adequate replacement of the particular Item or their parts in case that:
- a) the Product or individual parts of the Product are affected by international sanctions including those imposed as coercive measures applied against States, non-State entities or individuals that pose a threat to international peace and security; or
 - b) the Product or individual parts of the Product should be performed by a Seller's subcontractor (including those given on the list of subcontractors within the Bid indicating which performances will each of the subcontractors perform; with possible changes by procedure under Article 5.11 hereof) affected by the above international sanctions and the subcontractor has not been replaced.

Such procedure is without prejudice to all performances of the rest of the Object of Purchase (Object of Purchase minus its part/component affected by the international sanction) under this Agreement.

6. WARRANTY, WARRANTY AND POST-WARRANTY SERVICE

- 6.1. The Object of Purchase has defects if it or its any part does not correspond to the result set forth in this Agreement.
- 6.2. The Seller shall be liable for any defects of the Object of Purchase or any part thereof at the time of their handover and takeover, and shall also be liable for any defects of the Object of Purchase or any part thereof found during the entire warranty period (quality warranty).
- 6.3. The Seller guarantees that in the course of the warranty period, the Object of Purchase shall have properties laid down in this Agreement, applicable legal regulations and standards and usual properties, if applicable.
- 6.4. The Seller provides a quality warranty on the Object of Purchase and all its parts of twenty-four (24) months, except conditions stipulated in the Technical Specification (see Article 3.14). The warranty period for the Object of Purchase (i.e., the Product including all its individual parts taken over by the Buyer) shall start on the day of the signature of the Handover Protocol of Acceptance by both Parties in compliance with this Agreement. If the Handover Protocol of Acceptance lists any deficiencies, the warranty period shall begin on the day, which follows the day, in which the last deficiency was removed. In order to avoid any doubt, the Parties declare that the warranty period for the Object of Purchase shall start on the day of the signature of the Handover Protocol of Acceptance or on the day of the signature of the last Individual Part Handover Protocol of Acceptance, after which the delivery of the Object of Purchase is completely handed over.
- 6.5. The Seller shall pass any existing components warranty to the Buyer along with acceptance of the Handover Protocol of Acceptance. If on the warranty list or other document submitted by the Seller the warranty period is of longer duration, then this longer warranty period shall have priority over the period stated in this Agreement.
- 6.6. The Buyer shall request the Seller to remove the defects of the Object of Purchase or any part thereof during the warranty period in writing without undue delay upon their discovery, but no later than on the last day of the warranty period (hereinafter the "**Claim**"). Even the Claim asserted by the Buyer on the last day of the warranty period is considered to have been asserted in due time.
- 6.7. The Seller undertakes to arrive to examine the Claim, notify the Buyer of whether or not he accepts the

Claim, and provide in writing the deadline for the removal of the defect within two (2) weeks from the delivery of the Claim by the Buyer.

- 6.8. The Seller undertakes to gratuitously remove any defects of the Object of Purchase or any part thereof without undue delay and shall bear all the expenses related to the removal of the defects. The deadline for the removal of the defect is thirty (30) calendar days from the delivery of the Claim, unless otherwise agreed between the Parties. In case that the character, significance and extent of the defect objectively does not allow to fulfil the stipulated period to remove the defect by the Seller, a reasonable longer period can be agreed with the Buyer. If it shows that a defect in the Object of Purchase or any part thereof is irremovable, the Seller agrees to deliver free of charge, without undue delay, to the Buyer a replacement Object of Purchase or any part thereof having the same quality and parameters as it was agreed for the Object of Purchase herein.
- 6.9. The Seller shall be obliged to remove the defects within the specified time limit, even if he believes that he is not liable for the defects. The costs of removing the defects in these disputed cases shall be borne by the Seller until the clarification or resolution of the conflict.
- 6.10. The Parties shall make a report concerning the removal of the claimed defect which will confirm such removal. The warranty period is extended by the period that elapsed between the assertion of the Claim and the removal of the defect.
- 6.11. In case that the Seller does not remove the defect within the stipulated or mutually agreed period or if the Seller refuses to remove the defect, the Buyer shall be entitled to remove the defect at his own costs and the Seller shall reimburse these costs within one (1) month after the Buyer's request to do so. In such a case the existing warranty remains intact.
- 6.12. The acts of the Parties constitute the Claim if they are made in writing or by electronic communication by one of the representatives of one Party stipulated herein to the address of the representative of the other Party stipulated herein.
- 6.13. Usage and storage of the delivered Object of Purchase and/or any part thereof must be done by the Buyer in accordance with the Seller's instructions provided in writing. In the event that a defect of the Object of Purchase is caused by the Buyer's non-compliance with these instructions, the defect is not covered by the quality warranty.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. This Article applies only if in connection with the performance of this Agreement, the Object of Purchase or any of its part constitute an author's work within the meaning of Act No. 121/2000 Coll., on copyright, on rights related to copyright and amending certain acts, as amended (hereinafter the "**Copyright Act**"). In such case it is deemed to be a contract work in the sense of Section 61 of the Copyright Act (hereinafter the "**author's work**") and the Seller grants to the Buyer a royalty-free license to use the author's work (or any of its parts) for the purposes of this Agreement and for the purposes of research, development and education or publication activities for the duration of the property rights to the author's work on the territory of the whole world, including sub-license for the purpose of implementing the Project, including its follow-up phases.
- 7.2. For the purposes of this Agreement, author's work and industrial rights are hereinafter jointly referred to as intellectual property rights. In the event that the author's work or part thereof is created in connection with the performance of this Agreement, and the Seller is entitled to register such author's work or part

thereof through any of the forms of industrial property rights (i.e. trademark, patent or invention, utility or industrial design, etc.) protected under applicable legislation of the Czech Republic, other country or an international or supranational organization, the Seller shall grant to the Buyer, for the duration of the protection of the relevant industrial property rights, a royalty-free license to use the author's work for the purposes of the Project and other research, developmental and educational activities or publication activities, as well as for the purposes of this Agreement on the territory of the whole world. The Buyer shall be entitled to disclose the results of the author's work to any third party without the prior consent of the Seller.

- 7.3. The Parties declare that they have agreed that the Seller's remuneration for license(s) granted under this Article is already reflected and included in the Total Purchase Price agreed herein.
- 7.4. The Seller declares that the provision of license(s) to the Buyer does not infringe the intellectual property rights of third parties and that he is entitled to transfer the license to the Buyer. If the Seller fails to comply with this provision, he undertakes to pay all third-party claims for infringement of the intellectual property rights of third parties and compensation for damages caused by the Buyer.
- 7.5. The Seller undertakes to transfer the complete documentation created in connection with the performance of this Agreement, which is relating to the subjects of intellectual property under this Article.
- 7.6. In the event that the author's work or its part has been produced as a result of joint effort of the Seller and the Buyer, the Parties undertake to submit a joint application for any industrial rights as co-applicants. All natural persons participating on the creation of the author's work or its part shall be co-authors.
- 7.7. All licences and other entitlements under this Article shall be provided as irrevocable. Termination of this Agreement has no influence on granting of licences.
- 7.8. The intellectual property rights according to this Article shall pass to the legal successor of the Buyer or to the future operator/owner of the Object of Purchase, for the duration of the protection period granted to that particular intellectual property right and/or period of existence of ownership rights to copyrighted work or without any restriction to other intangible goods within the meaning of this Agreement.

8. LIABILITY, SANCTIONS

- 8.1. In the event that the Seller is in delay with delivery of the Product by the deadline specified in Article 3.1 hereof, the Seller shall be obliged to pay to the Buyer a contractual penalty in the amount of 0.05 % from the Total Purchase Price (i.e. the Total Purchase Price excluding VAT according to Article 4.1 hereof) per each commenced day of delay until the Product is delivered by the Seller to the Buyer and take over by the Buyer, while the maximum total amount of the agreed contractual penalty shall not exceed 10 % of the Total Purchase Price. In the event that some individual parts of the Product were taken over by the Buyer before the deadline specified in the Article 3.1 hereof, the amount of contractual penalty will be calculated only from the value of the undelivered parts of the Product according to the prices stipulated in the Detailed Itemized Budget.
- 8.2. The Seller shall be further obliged to pay to the Buyer contractual penalties in the following cases:
 - 8.2.1. if the Seller is in delay with any of his obligation according to Article 5.12 hereof in connection with international sanctions, the Seller shall be obliged to pay to the Buyer a contractual penalty in the amount of EUR 250.- per each commenced day of delay;
 - 8.2.2. if the Seller fails to remove ascertained defects of the Product in the Handover Protocol of Acceptance

within the deadlines stipulated therein, the Seller shall be obliged to pay to the Buyer a contractual penalty in the amount of 0.05 % of Total Purchase Price (i.e., the Total Purchase Price excluding VAT according to Article 4.1 hereof) per each commenced day of delay beyond any of these deadlines;

- 8.2.3. if the Seller fails to remove ascertained defects of its individual part of the Product in the Individual Part Handover Protocol of Acceptance within the deadlines stipulated therein, the Seller shall be obliged to pay to the Buyer a contractual penalty in the amount of 0.05 % of prices of individual parts of the Product excluding VAT stipulated in the Detailed Itemized Budget per each commenced day of delay beyond any of these deadlines;
- 8.2.4. if the Seller is in delay with the removal of a defect (including those under warranty) which timely removal is not secured by other contractual penalty explicitly agreed above, the Seller shall be obliged to pay to the Buyer for each of such defect a contractual penalty in the amount of EUR 250.- per each commenced week of delay.
- 8.3. For the sake of avoidance of any doubt, the Parties have agreed that in the event of a simultaneous Seller's default on more his obligations under this Agreement, the contractual penalties imposed hereunder shall add up.
- 8.4. The due date of all contractual penalties stipulated herein shall be thirty (30) days from delivery of the complaining Party's notification to the other Party. The notification under this paragraph shall include description and date of the particular event that entitles one of the Parties to impose a contractual penalty on the other Party. In case of delay with payment of the contractual penalty the breaching Party undertakes to pay to the other Party also an interest at the statutory rate.
- 8.5. In derogation from the provisions of Section 2050 of the Civil Code, the Parties agree that the Buyer shall be entitled, in addition to the contractual penalty hereunder, to seek damages (including actual damage incurred and lost profits due to the Seller's delay or other breach) for the Seller's breach of the same obligation as the contractual penalty in excess of such contractual penalty. Neither the accrual of the Seller's obligation to pay the contractual penalty nor its actual payment shall affect the Buyer's right to seek compensation for damage or to withdraw from the Agreement. Withdrawal from the Agreement shall not extinguish the right to the contractual penalty.
- 8.6. The Buyer shall be entitled to set off any receivables he may have at any time on the basis of his right to claim contractual penalty hereunder, against any of the Seller's receivables arising from his right to claim the Total Purchase Price or the purchase prices of the individual parts of the Product.
- 8.7. In case of delay with the payment of the Total Purchase Price or any part thereof the Buyer undertakes to pay to the Seller also an interest at the statutory rate.
- 8.8. If either Party breaches its duty arising from this Agreement or it should or could know about such a breach, it shall inform the other Party, which may incur damage, without undue delay and warn it of potential consequences; in such a case, the Party suffering damage has no right to be compensated for damage which it could avoid after being notified hereunder.

9. TERMINATION OF AGREEMENT, VIS MAIOR

- 9.1. This Agreement may be terminated by its completion, by agreement of the Parties or by withdrawal from the Agreement for reasons specified by law or the Agreement.
- 9.2. The Buyer is entitled to withdraw from this Agreement without any sanction if any of the following

circumstances occur:

- 9.2.1. the Seller loses the license to execute activities, which constitute the subject-matter hereof; the Seller shall be obliged to inform the Buyer without delay about the mere fact that he may be subject to proceedings leading to potential withdrawal of his authorization to perform activities hereunder;
- 9.2.2. the Seller enters liquidation;
- 9.2.3. insolvency proceedings were commenced against the assets of the Seller (or similar proceedings under the laws of another country), where a decision on bankruptcy was issued, or insolvency petition rejected because of insufficient assets to cover the costs of insolvency proceedings, or where bankruptcy was cancelled because property was completely insufficient or receivership was introduced by special legislation;
- 9.2.4. it has become obvious, considering all pertinent facts and circumstances, that the Seller's activities do not lead to the fulfilment of a material part of objectives defined herein due to reasons on the part of the Seller;
- 9.2.5. it is revealed that the Seller stated in the Bid certain information or submitted documents which do not correspond to reality and which had or could have had impact on the results of the Tender that lead to the execution of this Agreement [Section 223 Paragraph 2 letter c) PPA];
- 9.2.6. it is revealed that, at the time of the procurement procedure for the Tender including the period from the expiry of the deadline for the submission of bids to the date of signature of this Agreement by both Parties, there were prohibitions or restrictions resulting from international sanctions in force, for instance, in connection with a Russian involvement on part of the Seller or any of its subcontractors affecting the Tender or Agreement, especially if contrary to the affidavit of the Seller or any of its subcontractors on no Russian involvement declared in the Seller's Bid;
- 9.2.7. international sanctions imposed after signing this Agreement apply on any part of the Object of the Purchase, the Seller and/or at least one of its subcontractors; or
- 9.2.8. the Seller breaches this Agreement in a material manner (as presumed in Article 9.3 hereof).
- 9.3. The following shall be considered to constitute a material breach hereof by the Seller:
 - 9.3.1. the Seller is in delay with delivery of any supply hereunder for a period exceeding four (4) months, except where the delay has been caused solely by the Buyer;
 - 9.3.2. the Object of Purchase or any of its parts delivered to the Buyer under this Agreement do not meet the technical or other parameters foreseen by this Agreement, even after the Buyer has requested the Seller twice to meet them, or the defects have shown irreparable;
 - 9.3.3. in the event that the Seller yields, transfers or assigns its rights and obligations hereunder to a third party without prior consent in writing from the Buyer;
 - 9.3.4. the Seller breaches his obligations in relation to the processing of personal data within the meaning of Article 5.7 hereof;
 - 9.3.5. the Seller violates continuously or repeatedly laws, regulations, technical standards and norms of the Czech Republic or other countries, which he agreed to observe herein; or
 - 9.3.6. the Seller breaches this Agreement in such a manner that the Buyer will not be able to meet his objectives for which he concluded this Agreement, or if such conduct on the part of the Seller causes considerable damage to the Buyer.
- 9.4. The Seller is entitled to withdraw from this Agreement without any sanction if the Buyer is in delay with

the payment of the Total Purchase Price or its part for more than two (2) months after an additional period for the payment of the relevant part thereof specified by the Seller in written notification had been provided.

- 9.5. The Party which is hereunder entitled to withdraw from this Agreement may withdraw entirely or just with respect to a part of the Object of Purchase. If in the act of withdrawal not expressly stated otherwise, it means entire termination of this Agreement.
- 9.6. The act of withdrawal from this Agreement shall become effective on the day of delivery of the notification in writing from one Party to the other. Withdrawal for reasons specified by the Agreement shall terminate the Agreement with effects and consequences in the "ex tunc" regime, unless stipulated hereby or by the Parties otherwise. In case of the Agreement's termination due to reasons given in Article 9.4 hereof, the Seller shall be eligible for payment for the actually delivered, handed-over and accepted parts of Object of Purchase to the Buyer, if such had been executed in accordance with the terms and conditions agreed herein.
- 9.7. The withdrawal from the Agreement is without prejudice to the arrangements on a contractual penalty and indemnification.
- 9.8. Circumstances precluding liability shall be deemed to have been constituted by such obstacle(s) which arose independently of the will of the obliged Party, and which temporarily or constantly prevent fulfilment of that Party's obligation, provided that it could not be reasonably expected that the obliged Party could overcome or avert this obstacle or its consequences, and furthermore that such Party could foresee such obstacle when it entered into the respective covenants (hereinafter the "**Vis Maior**"). Liability cannot be precluded by obstacles that arose only after the obliged Party was in default with fulfilment of its obligations, or which arose in connection with its economic situation. The effects precluding liability shall be limited to the period during which the obstacles causing these effects persist.
- 9.9. As long as the definition in Article 9.8 above is satisfied, a Vis Maior event shall also include exceptional events or circumstances of the following kind: (i) war, hostilities, invasion, military attack or similar act of foreign enemies, (ii) terrorism, revolution, rebellion, military or usurped power or civil war, (iii) munitions of war, explosive materials, ionizing radiation leakage or contamination by radio-activity, (iv) pandemic or local spread of a severe disease and (v) natural catastrophes such as earthquake, volcanic activity, tsunami, flooding, hurricane or typhoon, etc.
- 9.10. Should a situation occur, which the Party could reasonably consider to constitute Vis Maior, and which could affect fulfilment of its obligations hereunder, such Party shall immediately notify the other Party and shall attempt to continue in its performance hereunder in a reasonable degree. Simultaneously, such Party shall inform the other Party of any proposals, including alternative modes of performance; however, without consent of the other Party, it shall not proceed to effect such alternative performance.
- 9.11. If a situation constituting Vis Maior occurs, the deadlines imposed hereunder shall be extended by the period of the duration of the said Vis Maior event.
- 9.12. In case of withdrawal from Agreement under Article 9.2.6, the Buyer is entitled to keep (it depends on his discretion) and acquire ownership to all already performed and/or obtained parts of the Object of Purchase free of any payment for these parts of the Object of Purchase (without obligation to pay any part of the Total Purchase Price or any other price) and to claim repayment of all advance payments already paid to the Seller; the Seller shall bear this in consequence for his misrepresentation or assumption of unreasonable risk with respect to the international sanctions, save for the Buyer's right to

pay any part of the price either to the Seller or directly to his subcontractor(s), provided that the payment does not conflict with applicable international sanctions.

10. REPRESENTATIVES, NOTIFICATIONS

- 10.1. The Buyer has appointed the following authorised representatives for communication with the Seller in relation to the Object of Purchase hereunder:

In technical and contract matters:

[REDACTED]

Telephone number: [REDACTED]

E-mail: [REDACTED]

- 10.2. The Seller has appointed the following authorised representatives for communication with the Buyer in relation to the Object of Purchase hereunder:

In technical matters:

[REDACTED]

Telephone number: [REDACTED]

E-mail: [REDACTED]

In contract matters:

[REDACTED]

Telephone number: [REDACTED]

E-mail: [REDACTED]

- 10.3. In order to change the authorized persons, a notification to the other Party by e-mail is sufficient if accompanied by requesting a confirmation of delivery (unless the Parties agree otherwise) not later than three (3) calendar days as of such change.
- 10.4. Unless this Agreement provides otherwise, all notifications between the Parties hereunder must be made in writing and delivered to the other Party by an authorised delivery service, in person (with written confirmation of receipt), by registered mail sent using a postal service provider, or may be made by electronic communication with an electronic signature or by using data mailbox (data mailbox numbers are given in heading of this Agreement). If a document notifying a certain legal action is to be delivered hereunder, such document is regarded as delivered on the day when it was received by its addressee. If such document is sent by registered mail and if its receipt by the addressee is not reported, it is regarded as delivered or the legal effects of the notified legal action shall start on the tenth (10th) day after its repeated dispatching in the above manner, unless the law stipulates in a specific case otherwise. Simultaneously, the copy of such document shall be sent via e-mail to the above representatives for communication in technical and contract matters.
- 10.5. In technical matters (including among others claiming the warranty), electronic communication through the above representatives is permitted.

11. GOVERNING LAW AND DISPUTE SETTLEMENT

- 11.1. Both Parties declare that this Agreement and any and all legal relationships arising therefrom are governed by the laws of the Czech Republic. The Parties acknowledge that areas not expressly regulated by this Agreement are governed by the relevant provisions of the Civil Code.

- 11.2. Any and all disputes arising out of this Agreement or legal relationships related thereto shall be settled by mutual negotiation between the Parties. If a dispute cannot be settled amicably by negotiation within sixty (60) days, such a dispute shall be decided by the competent court in the Czech Republic having jurisdiction according to the registered office of the Buyer based on application of any of the Parties. Any and all disputes shall be always governed by Czech law.

12. FINAL PROVISIONS

- 12.1. This Agreement represents a complete agreement between the Buyer and the Seller.
- 12.2. The Seller shall not be entitled to transfer rights and duties from this Agreement or its part on third parties, to transfer his claims against the Buyer that arose on the basis or in connection with this Agreement on third parties, nor to set off any of its claims or his debtor's claims against the Buyer's claims, unless prior written consent is granted by the Buyer.
- 12.3. If any Party breaches any duty under this Agreement and knows or should have known about such breach, the Party shall notify and warn the other Party of possible consequences.
- 12.4. Should any of the provisions hereof appear or shall be determined invalid, ineffective, non-existent or unenforceable at a later date, then such invalidity, ineffectiveness, non-existence or unenforceability shall not cause the invalidity, ineffectiveness, non-existence or unenforceability hereof as a whole. In such a case, the Parties undertake, to clarify without undue delay any such defective provisions herein within the meaning of Section 553 Paragraph 2 of the Civil Code, or to replace it, by mutual agreement, by a new provision that most closely reflects the intentions of the Parties at the time of conclusion hereof, to an extent permitted by the laws and regulations of the Czech Republic.
- 12.5. The Parties agree on publishing of this Agreement and related information according to Public Procurement Act and Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Disclosure of These Contracts and the Register of Contracts (Act on the Register of Contracts), as amended.
- 12.6. This Agreement becomes valid on the date of its signature by the authorized representatives of both Parties and effective on the date of its registration into the Register of Contracts.
- 12.7. This Agreement (including all its annexes) may be amended or modified exclusively in the form of written and numbered amendments specifying the time thereof, and signed by the authorized representatives of the Parties; electronic form of an amendment hereto shall be deemed written form if signed by qualified signature(s) according to eIDAS Regulation. In accordance with Section 564 of the Civil Code, the Parties explicitly exclude executing amendments hereto in any other manner or form.
- 12.8. This Agreement is made out in English and executed in one (1) electronic counterpart.
- 12.9. The Annexes listed below form an integral part of this Agreement:
- 12.9.1. Annex No. 1 - Technical Specification;
- 12.9.2. Annex No. 2 - The Seller's specific statement (that has been part of the Bid); and
- 12.9.3. Annex No. 3 - Detailed Itemized Budget (that has been part of the Bid).
- 12.10. By attaching their signature hereto, the Parties express their consent with the content of the Agreement

hereof in its entirety.

In Prague on _____

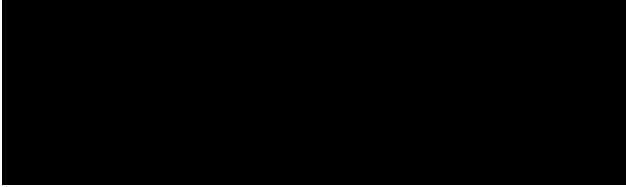
In Mannheim on 23.04.2024

On behalf of the Buyer:

On behalf of the Seller:

Ústav fyziky plazmatu AV ČR, v. v. i.

HP Spectroscopy GmbH



Name: prof. RNDr. Radomír Pánek, Ph.D.

Function: Director

