



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

MSMT
MINISTRY OF EDUCATION,
YOUTH AND SPORTS

S 17/128 E

FRAMEWORK PURCHASE CONTRACT

This framework 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,
("Buyer"); and
- (2) **Ecena spol. s r.o.,**
with its registered office at: Doubská 437, 463 12 Liberec 23 - Doubi,
registration no.: 60203561,
represented by: Ing. Oldřich Janeček
("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 a grant of the Ministry of Education, Youth and Sports of the Czech Republic for a project „ ELI: EXTREME LIGHT INFRASTRUCTURE – Phase 2“, reg. number: CZ.02.1.01/0.0/0.0/15_008/0000162 ("**Project**"), within the Operational Programme Research, Development and Education.
- (B) For the successful realization of the Project it is necessary to purchase the Objects of Purchase (as defined below) in accordance with Rules for the Selection of Suppliers within the Operational Programme Research, Development and Education.
- (C) The Seller wishes to provide the Objects of Purchase to the Buyer for consideration.
- (D) The Seller's bid for the public procurement entitled "*Laminar Fan Filter Units – reissue: Part No. 1 - Laminar Fan Filter Units of types A and B for cleanroom tents*", whose purpose was to procure the Objects 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 Seller shall (for the whole duration of this Contract), on the basis of written



requests, hand over to the Buyer devices, which shall meet requirements listed in Annex 1 (*Technical Specification*) to this Contract (“**Objects of Purchase**”) and shall transfer to the Buyer ownership right to the Objects of Purchase, and the Buyer shall take over the Objects 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 carry out following activities (“**Related Activities**”):

- a) transport the Objects of Purchase to the place of delivery,
- b) verify that the Objects of Purchase meet all requirements stipulated in this Contract;
- c) verify that the Objects of Purchase are fully functional; and
- d) cooperate with the Buyer during the performance of this Contract.

1.3 The Seller promises to the Buyer that if for the fulfillment of the requirements of the Buyer under this Contract or the proper operation of the Objects of Purchase are necessary other deliveries and activities not expressly mentioned in this Contract, the Seller shall procure such deliveries or shall carry out such activities at its own expense without any effect on the Purchase Price.

1.4 The Objects of Purchase shall be supplied new (not remanufactured).

2. **WRITTEN REQUESTS**

2.1 The Seller shall supply the Objects of Purchase on the basis of written request of the Buyer (“**Request**”).

2.2 In each Request the Buyer shall specify the Objects of Purchase that the Buyer wishes to procure and their quantity.

2.3 The Request is considered to be made in writing even if it was sent via email.

2.4 The expected quantities in Annex 2 (*Price sheet*) to this Contract are indicative only. Under this Contract the Buyer has no duty to order any minimum quantity of the Objects of Purchase.

3. **THE PLACE OF DELIVERY**

The place of delivery is at the address: ELI Beamlines, Průmyslová 836, post code 252 41, Dolní Břežany, Czech Republic or other address in Dolní Břežany specified by the Buyer prior to the delivery of Objects of Purchase.

4. **DURATION OF THE CONTRACT**

4.1 This Contract is concluded for the period of 2 years.

4.2 Under this Contract, the Buyer is not entitled to purchase Objects of Purchase in the total amount that exceeds 2.000.000,- Czech Crowns. This Contract shall terminate also if this amount is reached, i.e. the Buyer cannot purchase more Objects of Purchase without breaching the maximum amount. To determine whether or not the above mentioned limit is met, the middle exchange rate



of the Czech National Bank on the day, on which the payment was realized, shall be used.

5. THE TIME OF DELIVERY

- 5.1 The Seller shall deliver the Objects of Purchase and shall carry out Related Activities within 8 weeks from the day, on which received the Request.
- 5.2 The Seller is entitled to handover the Objects of Purchase during working days between 9:00 and 16:00 hours, unless otherwise agreed by the Parties. Exact working days shall be determined on the basis of mutual agreement. If the agreement is not reached, the Seller shall perform during the last day, on which it is possible to fulfill this Contract in time and the Buyer shall provide to the Seller for this purpose necessary cooperation.

6. THE OWNERSHIP RIGHT

The ownership right to the Objects of Purchase shall be transferred to the Buyer upon the signature of the Handover Protocol (as defined below) by both Parties.

7. PRICE AND PAYMENT TERMS

- 7.1 The purchase price of Objects of Purchase is stated in Annex 2 (*Price sheet*) to this Contract (“Purchase Price”).
- 7.2 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 of the Objects 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.
- 7.3 The Purchase Price for the Objects of Purchase shall be paid in the currency specified in Annex 2 (*Price sheet*) to this Contract on the basis of a tax document – invoice, to the account of the Seller designated in the invoice. The Seller is entitled to issue an invoice after the signature of the Handover Protocol. The copy of the Handover Protocol must be attached to the invoice.
- 7.4 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.
- 7.5 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,
- k) declaration that the performance of the Contract is for the purposes of a project „ELI: EXTREME LIGHT INFRASTRUCTURE – Phase 2“, reg. number: CZ.02.1.01/0.0/0.0/15_008/0000162,

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

- 7.6 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.
- 7.7 Last invoice of every calendar year must be delivered to the Buyer on December 15 of that calendar year, at the latest.

8. SELLER'S DUTIES

- 8.1 The Seller shall ensure that the Objects of Purchase and Related Activities are in compliance with this Contract including all its annexes and applicable legal (e.g. safety), technical and quality norms.
- 8.2 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.
- 8.3 All things necessary for the performance of this Contract shall procure the Seller, unless this Contract stipulates otherwise.

9. HANDOVER OF THE OBJECTS OF PURCHASE

- 9.1 Each handover and takeover of the delivered Objects of Purchase shall be realized on the basis of a handover protocol (“**Handover Protocol**”). The Handover Protocol must contain a declaration that the performance of the Contract is for the purposes of a project „ELI: EXTREME LIGHT INFRASTRUCTURE – Phase 2“, reg. number: CZ.02.1.01/0.0/0.0/15_008/0000162.
- 9.2 If the Objects of Purchase do not meet requirements of this Contract, the Buyer is entitled to refuse



the takeover of the Objects of Purchase. In such a case the Seller shall remedy the deficiencies within 5 working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) takeover the Objects of Purchase despite the above mentioned deficiencies, in particular if such deficiencies do not prevent the Buyer in the proper use of the Objects of Purchase. In such a case the Seller and the Buyer shall list the deficiencies in the Handover Protocol, including the manner and the date of their removal (remedy). If the Parties do not reach agreement in the Handover Protocol regarding the date of the removal, the Seller shall remove the deficiencies within 5 working days.

10. WARRANTY

- 10.1 The Seller shall provide a warranty of quality of the Objects of Purchase for the period of 24 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.
- 10.2 The warranty period shall begin on the day of the signature of the Handover Protocol by both Parties. If the Handover Protocol lists any deficiencies, the warranty period shall begin on the day, which follows the day, in which the last deficiency was removed.
- 10.3 The Seller shall remove defects that occur during the warranty period free of charge.
- 10.4 If the Buyer ascertains a defect of the Objects 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.
- 10.5 The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: ecena@ecena.cz. The Seller shall confirm within 24 hours from the receipt of the notification.
- 10.6 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 Objects 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 Buyer, however, the Buyer shall take into consideration reasonable suggestions of the Seller. The Buyer is also entitled to withdraw from this Contract, if by delivering the Objects of Purchase with defects this Contract is substantially breached.

- 10.7 The Seller shall remove the defect within 30 days from its notification, unless Parties agree otherwise.
- 10.8 The Seller shall remove the defect within terms stipulated in this Contract even if the notification of the defect is in his opinion unjustified. In such a case the Seller is entitled to ask for reimbursement of the costs of removal of the defect. If Parties disagree on whether the notification



of the defect is justified or not, the Buyer shall ask an expert for the expert's opinion, which shall determine whether the notification of the defect was justified or not. In the case that the expert shall consider the notification as justified, then the Seller shall bear costs of the expert's opinion. If the expert considers the notification to be unjustified, then the Buyer shall reimburse the Seller for verifiably and effectively incurred costs of removal of the defect.

- 10.9 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.
- 10.10 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.
- 10.11 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 Objects of Purchase.

11. PENALTIES

- 11.1 If the Seller is in default 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 default.
- 11.2 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.
- 11.3 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.

12. TERMINATION BY NOTICE

- 12.1 The Buyer is entitled to terminate this Contract by a written notice anytime without stating its reasons.
- 12.2 The notice period is one (1) month and shall start on the first day of the month that follows the month in which the Seller received the written notice.

13. RIGHT OF WITHDRAWAL

- 13.1 The Buyer is entitled to withdraw from this Contract or individual purchase contracts without any penalties, if any of the following circumstances occur:
- d) the Seller shall be in delay with the fulfilment of this Contract (with the delivery of Object of Purchase and execution of Related Activities) and such delay lasts more than 7 days;
 - e) the Objects of Purchase do not meet requirements specified in Annex 1 (*Technical Specification*) to this Contract;



- f) the insolvency proceeding is initiated against the Seller; or
- g) 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 award procedure, which preceded the conclusion of 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 2027.

15. CONFIDENTIALITY

Parties shall not disclose information that shall become available to them in connection with this Contract and its performance and whose disclosure could harm the other Party. Duties of the Parties ensuing for the applicable legal regulations remain unaffected. The Parties are particularly aware that the Contract including all its annexes and/or individual purchase contracts must be made publicly available in the Register of contracts in accordance with the act no. 340/2015 Coll., on Register of contracts.

16. REPRESENTATIVES OF THE PARTIES

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

In technical matters:

Name: Ing. Oldřich Janeček

E-mail: ecena@ecena.cz

Tel.: 602350884

In contractual matters:

Name: Ing. Oldřich Janeček

E-mail: ecena@ecena.cz

Tel.: 602350884



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

In technical matters:

Jméno: Martin Laub

E-mail: Martin.Laub@eli-beamlines.eu

17. FINAL PROVISIONS

- 17.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.
- 17.2 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.
- 17.3 The Seller bears the risk of changed circumstances within the meaning of Section 1765 of the Civil Code.
- 17.4 The Seller takes into account that the Buyer is not in relation to this Contract an entrepreneur, nor the subject matter of this Contract is connected with the business activities of the Buyer.
- 17.5 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.
- 17.6 All modifications and supplements of this Contract must be in writing.
- 17.7 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.
- 17.8 If any Party breaches any duty under this Contract and knows or should have known about such breach, it shall notify it to the other Party and shall warn such Party of possible consequences of the breach.
- 17.9 This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.
- 17.10 An integral part of this Contract is Annex 1 (*Technical Specification*) and Annex 2 (*Price sheet*). If in Annex 1 (*Technical Specification*) is used term "Contracting Authority", it is meant Buyer and by term "supplier" is meant the Seller.
- 17.11 This Contract shall be valid on the date of the signature of both Parties and effective on the date, on which it is published in the Register of contracts in accordance with the Act no. 340/2015 Coll., on Register of contracts.



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IN WITNESS WHEREOF attach Parties their handwritten signatures:

Buyer

Signature: M. P.
Name: RNDr. Michael Prouza, Ph.D.
Position: director
Date: 31.7.2017

Seller

Signature: [Handwritten Signature]
Name: Ing. Oldřich Janeček
Position: managing director
Date: 19/7/2017





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ANNEX 2
PRICE SHEET

**ANNEX 2
PRICE SHEET**

Currency: CZK

Type of unit	Expected quantity [pcs]	Price per unit without VAT [CZK]	Price per expected quantity without VAT [CZK]
A1	30	27 325,00	819 750,00
A2	5	26 775,00	133 875,00
B1	5	44 625,00	223 125,00
B2	5	42 900,00	214 500,00
Total bid price for Part No. 1 [CZK]			1 391 250,00