**FRAMEWORK PURCHASE AGREEMENT**

*concluded pursuant to relevant provisions of the Act No. 134/2016 Coll., on Public Procurement Awarding,
and pursuant to § 2079 et seq of the Act No. 89/2012 Coll., Civil Code, as amended*

Contractual parties:

1. **Fyzikální ústav AV ČR, v. v. i.**

Seat: Na Slovance 2, 182 21 Praha 8

Authorized representatives:

* in contractual matters: RNDr. Lukáš Brabec, Ph.D., Director
* in technical matters: Lukáš Brabec (ELI: EXTREME LIGHT INFRASTRUCTURE)

tel. +420 266 05 1247; e-mail: lukas.brabec@eli-beams.eu

Bank: UniCredit Bank Czech Republic, a.s.

Account No.: 2106551053/2700

ID No.: 683 78 271

Tax ID No.: CZ68378271

Legal form: public research institution

(hereinafter the “**Buyer**”), and

1. **Vakuum servis s.r.o.**

Seat: Hasičská 2643, 756 61 Rožnov pod Radhoštěm

Authorized representatives:

* in contractual matters: Ing. Jiří Kubáň
* in technical matters: Mgr. Pavel Petřvalský

tel. +420 571 115 661, e-mail: petrvalsky@vakuum-servis.cz

ID No.: 26793075

Tax ID No.: CZ26793075

Registered in Business register led by Regional court in Ostrava , section C , file 27262

(hereinafter the “**Seller**”);

both parties jointly may be referred to as the “**Parties.**”

The Parties have agreed, on the day, month and year specified below, and on the basis of a completed public procurement procedure, seeking performance of a public contract entitled “Framework contract for Vacuum valves in 2018” (hereinafter the “**Procurement procedure**”), to conclude the following Framework Purchase Contract (hereinafter the “**Contract**”):

**I. Subject of the Contract and Initial Provisions**

1. The subject of this Contract is the commitment of the Seller to deliver vacuum valves (hereinafter the “**Equipment**”) corresponding to the agreed parameters and certain associated services to the Buyer in the quality requested by the Buyer, under the terms agreed upon herein or within additional orders (“**Performance**”). Any provisions hereof must be interpreted in accordance with the terms of the Procurement procedure and the bid submitted by the Seller there within. The subject of this Contract is also the commitment of the Buyer to pay the purchase price agreed upon between the Parties in Art. III. hereof.

2. Detailed specification of the Equipment is provided in Annexes 1 and 2 hereto which form an integral part hereof. Specification of the Equipment under the previous sentence represents a set of technical conditions that the Equipment must comply with and that were previously offered by the Seller, and which correspond to the technical minimum, or which improve upon this minimum as it had been defined in the terms of the Procurement procedure.

3. The Seller acknowledges that the Buyer considers the Seller’s successful qualification and subsequent participation in the Procurement procedure as the confirmation of the fact that the Seller has the capacity, pursuant to § 5 (1) of the Czech Civil Code (CCC), to perform this Contract with all due professional care and knowledge associated with his professional status and business activities, and that the Seller shall be fully liable for any performance or conduct failing short of this standard of due professional care. The Seller is expressly prohibited to abuse his professional status or economic position to create or exploit weaknesses of the weaker party and / or to achieve an apparent and unjustified imbalance in mutual rights and obligations of the Parties.

4. The Seller acknowledges that the Buyer is not, in relation to the Performance agreed upon hereunder, in a position of an entrepreneur and that the Performance is no manner related to business activities of the Buyer.

5. The Equipment shall be brand new (unused).

**II. Place of Performance and Deadlines**

1. Place of Performance shall be the Buyer´s ELI Beamlines facility: Průmyslová 836, 252 41 Dolní Břežany, Czech Republic.

2. The Buyer is entitled to execute individual orders as specified herein within the entire term of validity of this Contract..

3. The Seller shall deliver the Equipment as per the Buyer’s individual orders to be made in writing. The Buyer shall have the right to issue an order for the Equipment in writing at any time during the terms hereof, and the Seller acknowledges that the amount / numbers of the Equipment depends solely on the discretion of the Buyer, unless this Contract stipulates otherwise.

4. The deadline for the delivery of the Equipment to the Place of Performance shall be 12 weeks from the date when the Seller received a written order from the Buyer.

**III. Price and Payment Terms**

1. The price for delivery of the Equipment is defined in Annex 2 hereto as a unit price. VAT shall be added on top of the unit price in accordance with valid legislation.

2. The price has been agreed as the highest acceptable (maximum) price including any and all associated costs, fees and payments and reflects any and all costs of the Seller associated with the Performance of the Seller hereunder. The price encompasses all costs of the Seller accrued in production, delivery, support that may be provided by the Seller by telephone, operational overhead, IP rights, insurance, taxes, custom and warranty and any other costs that may be in any manner associated with Performance hereunder.

3. The Buyer shall have the right not to buy all Equipment hereunder, without any sanctions being levied against him by the Seller.

 Should the Buyer not buy certain type of Equipment units in the numbers anticipated in Annex 2 hereto as “Estimated quantity”, the Buyer shall have the right, in the financial extent in which he did not buy these types of Equipment units, to order any other types of units (Performance) agreed hereunder notwithstanding the fact that the number of such other types of Equipment units has already been delivered in anticipated numbers.

 The Buyer does not have the right to purchase from the Seller during the term hereof Equipment in the overall price exceeding the price defined in Art. VIII.2 hereof.

4. [intentionally left blank]

5. In cases when the Buyer orders Equipment defined in Annex 2 hereto and this Equipment will no longer be available, primarily due to the technological development of the product, the Seller shall offer to the Buyer, in order to fulfil any such individual partial order, other corresponding Equipment. The technical parameters of this Equipment shall not be in any manner below the standard that was defined and agreed by the Parties in Annexes 1 and 2 hereto if this Equipment is available to the Seller for a price that is not higher that the price defined and agreed for the original type of Equipment unit that is now unavailable. In cases when the price of such Equipment is lower than the originally agreed price, the Seller shall be obliged to offer it to the Buyer at such lower price. Should production of any of the types of Equipment units defined in Annex 2 hereto cease or should such Equipment become unavailable for other reasons, the Seller shall be obliged to inform the Buyer of such fact in sufficient advance so that the Buyer may choose to order and take delivery of the necessary or anticipated number of such Equipment units.

6. The price for the Performance hereunder (as defined in Art. I. herein) shall be paid to the Seller in EUR on the basis of invoices – tax receipts, by bank transfers to the Seller’s account provided in individual invoices. The Seller shall be authorized to issue invoices only after timely and proper delivery and acceptance of Equipment; all invoices must be accompanied by copies of the bills of delivery signed by the authorized representatives of both Parties.

7. The invoices shall be due in 30 days of their receipt by the Buyer.

8. Payment date shall be understood as the day the invoiced amount was remitted from the Buyer’s account to the Seller’s account.

9. Invoices issued by the Seller shall comply with all requirements defined by applicable legislation, primarily by provisions of Act No. 563/1991 Coll., on Accounting, as amended, and Act No. 235/2004 Coll., on VAT, as amended (for tax receipts). The Seller shall be obliged to define in each invoice the precise number of units delivered, number of the Buyer’s order or other clear and precise identification of the Equipment delivered. The invoices shall be sent to the address as may be defined in each particular order. In case of any invoice failing to meet the requirements the Buyer shall be authorized to return such invoice before payable date to the Seller to be corrected. Once corrected and delivered to the Buyer the due period starts to run anew.

10. Any invoice issued hereunder shall contain the information that the performance provided thereunder was provided for the purposes of the project, which name and number the Buyer tells the Seller. Failure to provide this information authorises the Buyer to return the invoice to the Seller to be corrected as provided above.

**IV. Right and Obligation of the Parties**

1. The Seller shall be obliged to deliver the Equipment to the Buyer in accordance with the terms defined herein and within particular written orders; delivery of the Equipment shall be constituted by its acceptance at the Place of Performance specified herein.

2. Acceptance of the Equipment shall be subject to integrity and absence of defects on the packaging in which the Equipment will be delivered. Given the nature of the Equipment and in some cases the need to unpack and install the Equipment under special conditions (for instance in clean premises), the Buyer shall be authorized to inspect the Equipment and to identify apparent defects within 60 days of taking the delivery.

3. [intentionally left blank]

4. The Seller shall be obliged to deliver, along with the Equipment, all documentation as required in Annex No 1 hereto.

All documentation under the previous sentence shall be in the Czech or English language unless the Buyer accepts other language version in his order.

5. The Buyer shall be obliged to inform the Seller of any defects that he may identify during the inspection of delivered Equipment without delay.

6. The ownership right to the delivered Equipment and the risk of damage thereto pass to the Buyer by the acceptance of the Equipment from the Seller (specifically by the Buyer’s signature of the bill of delivery).

7. The Seller undertakes to inform the Buyer in writing of any facts or circumstances having impact on his Performance hereunder, in no case later than within 7 days of this fact or circumstance arising or the Seller becoming aware that it could arise.

8. The Seller acknowledges the fact that the Buyer has no storage available to store original packaging from the delivered Equipment and for this reasons the Buyer shall not be obliged to store the packaging. Absence of original packaging thus cannot constitute the reason for denial of potential claims related to the Equipment or their returns.

10. The Seller shall not be authorized to assign any rights or obligations hereunder to third persons without a previous written consent of the Buyer.

11. The Seller expressly agrees that he shall not have any right to assign or unilaterally set off any of the receivables he may have against the Buyer arising in connection with this Contract.

12. The Seller shall be obliged to provide, at his own cost and expense, transportation of all Equipment ordered hereunder to the Place of Performance for the acceptance by the Buyer.

**V. Defects and Warranties**

1. The Seller shall provide guarantee for the quality of the delivered Equipment for the period of two years from the date of their delivery to the Buyer. The warranty period begins to run on the date of execution of the bill of delivery by authorized representatives of the Parties. The Seller undertakes to rectify any claimed defects on the Equipment covered by this warranty free of charge within deadlines agreed herein.
2. The Buyer shall inform the Seller without delay of any defects on the delivered Equipment discovered during the warranty period. Defects may be claimed until the very last day of the warranty period; any defect claim sent on the last day of the warranty period shall be deemed to have been exercised in time.
3. The Buyer shall be obliged to make any defect claims in writing (in writing shall include the form of a simple email). The Seller shall be obliged to establish a special email address for defect claims. The Seller shall accept defect claims during the entire term hereof and the warranty period at: **office@vakuum-servis.cz**.
4. The Buyer shall specify, in the claim and in writing, the description of the defect and provide, if available, additional documentation (photo or other documentation). Should the Seller not be able to assess existence of the defect without inspecting the Equipment, the Parties shall agree whether the Equipment shall be shipped to the Seller or whether the Seller will inspect the Equipment at the Buyer’s site. Should the Buyer incur any costs in relation to claiming the defect (such as shipping costs), for which the Seller is liable, the Seller shall compensate the Buyer for any such costs. The Seller undertakes to confirm to the Buyer the receipt of the defect claim within 24 hours of its delivery and to inform the Buyer, within 3 days from receiving the claim, carrying out the inspection or receiving the shipped Equipment for inspection, whether he recognizes the claim or not, and propose the method of rectifying the defect in accordance with this Contract. Saturdays, Sundays and public holidays are not included in these deadlines.
5. The Seller undertakes to rectify the defect by repair within 4 weeks from receiving the defect claim in writing or by providing a replacement within the period defined in Art. II. 4 herein; this period is counted from the date when the defect claim in writing was delivered, unless agreed otherwise by the Parties in writing due to the existence of objective obstacles.
6. With respect to removable defects, the Seller undertakes to carry out the repairs on the defective Equipment or to replace the Equipment unit per his own discretion. In case of defects that cannot be removed, the Seller undertakes to deliver to the Buyer a new Equipment unit within deadline specified in Section 5 of this Article unless the Buyer agrees to be provided with adequate discount from the price of the defective Equipment.
7. The Seller shall be obliged to rectify any defects on the Equipment within deadlines defined in Section 5 of this Article also in cases when the Seller is of the opinion that he is not liable for such defects. Cost of rectifying defects in these contentious cases shall be borne by the Buyer by the time the legitimacy of the defect claim will have been confirmed by an expert assessment secured by the Buyer. In cases when the defect claim will have been confirmed as legitimate by an expert, the Seller shall return to the Buyer (in those instances when the Seller claimed the cost of rectifying such defect and received payment) the amount paid for rectifying the defect plus the Seller shall compensate the Buyer for the price of the expert assessment.
8. Once the defect will have been rectified, the Parties shall prepare and sign a protocol confirming the rectification. In case of removal of any defect by repair the warranty period shall extend accordingly by the period of time during which the Buyer was prevented from using the Equipment for its intended purpose.
9. In cases when the Seller fails to rectify any defect within deadlines defined in Section 5 of this Article, or within additional period that may be agreed in writing between the Parties not exceeding 30 days, the Buyer shall be authorized to have the defect rectified by a third person at his own cost and the Seller shall be obliged to compensate the Buyer for these costs within 15 business days from the Buyer claiming these in writing against the Seller. The Seller’s liability (warranty) shall not be in any manner prejudiced by such actions.
10. Warranty does not cover defects caused by unprofessional handling, incorrect or inappropriate maintenance, failure to follow instructions of the manufacturers related to operation or maintenance of the Equipment, which were provided to the Buyer at the delivery or notified to the Buyer in writing post-delivery.
11. Should any unit of the Equipment suffer defect in 3 consecutive instances, the Buyer shall be entitled to demand replacement of such Equipment and the Seller shall be obliged to provide such replacement having the same or better technical properties / parameters.
12. The Seller undertakes to provide post-warranty service for the Equipment for the period of 3 years after the warranty period expires at the Buyers request and against corresponding payment. The Seller shall be obliged to inspect any defective Equipment within 5 days of its delivery to the Seller by the Buyer and to identify the defect. The Seller undertakes to rectify the defect on any such defective Equipment within 30 business days from delivery of the Equipment or within other agreed time period in case proven objective reasons prevent the Seller from meeting the deadline, if the Buyer agrees to a price requested by the Seller. The cost of this post-warranty service, especially the salary of the employees and cost of material and parts, may not exceed the price that is usual at the location at the time. The Buyer shall be entitled to request service, under identical terms, for defects appearing on the Equipment during the warranty period which are not covered by the warranty.
13. The Seller shall be obliged to ensure, for the period of 3 years from the last expired warranty period, against payment, availability of all spare parts to the Equipment and their delivery to the Buyer, within 30 business days from these being ordered by the Buyer, for the price that is usual at the location at the time. This obligation does not apply when the spare parts production for certain units will have been certifiably discontinued.

**VI. Delays, Penalties**

1. In cases when the Seller is in delay with delivery of any Equipment to the Buyer within the deadlines specified herein, the Buyer shall be entitled to claim a contractual penalty against the Seller in the amount of 0.1% of the price of the undelivered Equipment for each commenced day of delay; such contractual penalty shall not exceed 10% of the price of the undelivered Equipment.

2. In cases when the Seller is in delay with rectifying defects, claimed by the Buyer during the warranty term, within the deadlines defined herein, the Seller undertakes to pay a contractual penalty in the amount of 0.1% of the price of such defective Equipment for each commenced day of delay; such contractual penalty shall not exceed 10% of the price of the defective Equipment. In cases when the Seller is in delay with rectifying defects or providing service during post-warranty or out-of-warranty service within the deadlines defined herein, the Seller undertakes to pay a contractual penalty in the amount of 0.01% of the price of such defective Equipment for each commenced day of delay, such contractual penalty shall not exceed 5% of the price of such Equipment.

3. In cases when the Buyer is in delay with payment of invoices, the Buyer shall be obliged to pay late interest to the Seller in the amount specified by applicable legislation (Government Resolution No. 351/2013 Coll., as amended, or law replacing this resolution).

4. Contractual penalties shall be payable within 15 days of delivery of the claim to the other Party. Payment of contractual penalty does not prejudice the right to damages in the extent such damages exceed the amount of contractual penalty.

5. The Buyer shall be entitled to unilaterally set off any contractual penalty against any payments invoiced by the Seller, even against those which have not become payable yet.

**VII. Special Provisions**

The Seller acknowledges that as a supplier of goods paid for by public money, he is a person legally obliged to cooperate during financial inspections pursuant to § 2 letter e) of Act No. 320/2001 Coll., on Financial Control in Public Administration Sphere, as amended. The Buyer will provide access, to the Managing Authority of the Operational Programme Research, Development and Education (hereinafter the “OPRDE MA“) or other operational programme, which may replace OPRDE, and to other inspection and auditing bodies, to all parts of submitted bids, contracts concluded and all other related documentation that may relate to the legal relationship created by this Contract. This obligation also relates to all documents, which may be protected by special legislation (commercial secrets, sensitive information etc.) provided that the auditing / control body complies with requirements stipulated in law (for instance § 11 letters c) and d), § 12 (2) letter f) of Act No. 552/1991 Coll., on State Audits, as amended). The Seller shall be obliged to ensure that all its potential subcontractors hereunder will be made subject to these audits undertaken in connection with this Article. The Seller must ensure that possibility to facilitate effective inspection / audit must be maintained until 2028.

**VIII. Term, Validity and Effective Date**

1. This Contract becomes valid and effective on the date of signature hereof by authorized representatives of both Parties.

2. This Agreement is concluded for a definite period of time until 31 July 2019 or until exhausting the financial limit of 75.000 EUR without VAT,whichever comes first.

3. This Contract may be terminated by:

1. Expiry of its term, or exhausting the financial limit,whichever comes first;
2. Agreement of the Parties in writing;
3. Termination notice in writing subject to conditions described below;
4. Withdrawal from the Contract by either Party due to reasons defined herein or by law.

4. The Buyer shall be entitled to terminate this Contract by a three-month termination notice in writing, without specifying the reason; the termination notice period commences running on the first day of the month following the month in which the notice was delivered to the Seller.

5. The Parties are entitled to withdraw from the Contract in case of substantial breaches of contractual obligations by the other Party, if such substantial breaches affected the contractual rights of the withdrawing Party. Withdrawal must be made in writing and must be evidently delivered to the other Party. The Buyer shall be entitled to withdraw from this Contract also only in relation to a specific part of the Performance sought hereunder (specific partial order).

6. The following instances represent substantial breaches of the Contract, including but not limited to:

1. Seller’s delay with delivery of the Equipment within the agreed deadlines, exceeding 90 days;
2. Seller’s delay with rectifying defects within the agreed deadlines within the framework of warranty period exceeding three times the period granted hereunder;
3. Repeated refusal to delivery partial order by the Seller;
4. Repeated delay on the Buyer’s part with payment of invoiced amounts for Performance hereunder exceeding 30 days after due date of individual invoice.

7. The Buyer shall have the right to terminate this Contract with immediate effect, or to refuse to take receipt of the already ordered Equipment in cases when the costs arising to the Buyer in connection with the delivery of the Equipment would be declared ineligible by OPRDE MA or MA of other operational programme or another control / audit body, if applicable, in cases where the ineligibility has been caused solely by the Seller (e.g. by providing incorrect information in the bid for Procurement procedure). In such cases the Buyer shall have also the right to return to the Seller already properly delivered and accepted Equipment and to demand return of the paid purchase price (which may be reduced by reasonable wear and tear).

8. All obligations of the Parties hereunder cease to exist when this Contract becomes ineffective. The rights related to damages compensation and the rights to contractual penalties arising before this Contract became ineffective survive as well as those obligations of the parties which are, by law, under this Contract or by their nature, meant to survive.

**IX. Final Provisions**

1. Relations between the Parties shall be governed by the laws of the Czech Republic, in particular by the Civil Code.

2. This Contract constitutes the entire agreement between the Parties.

4. If the reason of invalidity applies to any provision of the Contract, only such provision shall be considered invalid provided that based on its nature, contents or circumstances under which it has been agreed it shall not be implied that such provision cannot be severed from the remainder of this Contract.

5. The Parties shall always endeavour to amicably resolve disputes arising from this Contract. If amicable settlement of any dispute has not been reached within 30 calendar days since the first notification thereof to the other Party any of the Parties is entitled to claim their rights before the competent court. The arbitration is excluded between the Parties.

6. Any and all notices between the Parties relating to this Contract or that are to be made pursuant to this Contract shall be in writing and delivered to the other Party either in person or by registered mail or by any other form of registered postal service to the address specified on the title page of this Contract unless agreed otherwise within this Contract.

7. In case of the change to their address, the Parties undertake to inform the other Party thereof within three days.

8. The Parties confirm they shall keep confidentiality about the information they are to learn in relation to this Contract and during its performance and disclosure of which could cause any harm or damage. The Buyer’s duties arising from legal regulations shall not be affected.

9. This Contract may be supplemented or amended solely by the way of written and numbered amendments supplied with time and place of destination and signed by duly authorised representatives of both Parties. In accordance with § 564 of CCC, the Parties explicitly exclude executing any change to the Contract in any other way.

10. Following annexes form an integral part of the Contract:

 Annex No. 1: Technical Specifications (Requirements Specification Document)

 Annex No. 2: Products and Prices

11. The Contract is executed in 4 (four) counterparts having the same legal effect with each of Parties obtaining two counterparts.

1. The Parties confirm they have read the Contract before signing and they understand and agree to its contents. Both Parties confirm their agreement by signing.

In Prague on …………………… In Rožnov pod Radhoštěm on

On behalf of the Buyer: On behalf of the Seller:

**Fyzikální ústav AV ČR, v. v. i.** **Vakuum servis s.r.o.**

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RNDr. Michael Prouza, Ph.D., Director Ing. Jiří Kubáň, Managing director

**Annex No. 1 – Technical Specifications (Requirements Specification Document)**

*(Note: Annex No. 2 to the tender documentation issued within* ***Procurement procedure*** *shall be annexed to this Contract as Annex No. 1 after* ***Procurement procedure*** *is completed but before executing (signing) of the Contract with the selected bidder.)*

**Annex No. 2 – Products and Prices**

*(Note: Annex No. 3 to the tender documentation issued within the* ***Procurement procedure*** *as completed and submitted by the Seller as a part of its bid submitted within the* ***Procurement procedure****, shall be annexed to this Contract as Annex No. 2 after* ***Procurement procedure*** *is completed but before executing (signing) of the Contract with the selected bidder.)*