



PURCHASE CONTRACT

(1) **Institute of Photonics and Electronic of the CAS, v. v. i.**

with its registered office at: Chaberská 1014/57, 182 51 Prague

registration no.: 67985882,

represented by: Prof. Ing. Jiří Homola, CSc., DSc., Director

("Buyer"); and

(2) **TESCAN Brno, s.r.o.**

with its registered office at: Libušina tř. 816/1, 623 00 Brno – Kohoutovice,

registration no.: 01733214,

represented by: Ing. Antonín Sedláček, Managing Director

("Seller").

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

IT WAS AGREED AS FOLLOWS:

1. INTRODUCTORY PROVISIONS

- 1.1 This Contract is closed based on the result of below-the-threshold public contract for supplies awarded in the form of simplified awarding procedure with the name "Nanoprobe for FIB-SEM" realized by the Buyer as a public contracting authority (hereinafter "the public tender").

2. BASIC PROVISIONS

- 2.1 The Seller contracts to sell and the Buyer contracts to purchase Nanoprobe for FIB-SEM ("**Object of Purchase**") in the Bid from 02/10/2018 (Annex 2) submitted in the above mentioned awarding procedure pursuant to the Tender Documentation attached as Annex 1 of this contract.
- 2.2 Detailed specification of Object of Purchase is stated in annexes of this Contract. Specification of Nanoprobe for FIB-SEM is in conformity with specification provided by winning bid, quoted by the seller in frame of the public tender and complies with all technical specifications required by the tender documents.
- 2.3 Under this Contract the Seller shall also carry out following activities (hereinafter "**Related Activities**"):
- a) to transport the Object of Purchase to the place of delivery,
 - b) adjust and install the Object of Purchase to the chamber of the Tescan Lyra 3GM FIB-SEM,

- c) to verify that the Object of Purchase meets all requirements stipulated in this Contract,
- d) to elaborate and hand over to the Buyer operational, installation and maintenance manuals of the Object of Purchase and other documents that are necessary for use of the Object of Purchase in English or Czech language, printed together with electronic version,
- e) to provide training in a length of 1 day at the public contract implementation place,
- f) to hand over the declaration of conformity of the Object of Purchase with the approved standards, if there are any.

3. THE PLACE OF DELIVERY

- 3.1 The place of delivery is the following address: Chaberská 1014/57, 182 51 Prague, Czech Republic.

4. THE TIME OF DELIVERY

- 4.1 The Seller shall deliver the Object of Purchase and shall carry out Related Activities on December 7, 2018, at the latest.
- 4.2 The Seller is entitled to handover the Object of Purchase and to carry out Related Activities during working days between 8:30 AM and 6:00 PM, 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.
- 4.3 Prior to the handover of the Object of Purchase and the execution of Related Activities the Seller may request the Buyer and the Buyer shall enable an inspection of premises to control the premises for installation of the Object of Purchase in such a way that their readiness for installation of the Object of Purchase is secured (e.g. a control of the location of electricity points, etc.) and possible deficiencies preventing timely and proper installation and demonstration of the operation of the Object of Purchase are eliminated.

5. PRICE AND PAYMENT TERMS

- 5.1 The purchase price for the Object of Purchase is 2.399.500,- CZK without value added tax ("VAT"), and with the VAT rate 21 % (if applicable in this case) is 2.903.395- CZK (hereinafter "**Purchase Price**").
- 5.2 The Purchase Price cannot be exceeded and includes all costs and expenses of the Seller related to the performance of this Contract. The Purchase Price includes, among others, all expenses related to the handover of the Object of Purchase and execution of Related Activities, costs of copyright, insurance, warranty service and any other costs and expenses connected with the performance of this Contract.
- 5.3 The price may only be modified in connection with any changes to tax regulations regarding the VAT. The modification is done in accordance with the act no. 134/2016 Coll., on public procurement.
- 5.4 The Purchase Price for the Object of Purchase shall be paid in CZK on the basis of a tax documents – invoices, to the account of the Seller designated in the invoice. The Purchase Price shall be paid in the following manner:

- a) 50 % of the Purchase Price shall be paid after the signature of this Contract; and
50 % of the Purchase Price shall be paid after the delivery of the final invoice to which the signed Handover Protocol shall be attached.
- b) The Buyer shall realize for each payment as itemized in previous section on the basis of duly issued invoices within 30 days from their receipt of the invoice via bank transfers. The invoice shall be considered to be paid for on the day when the invoiced amount is deducted from the Buyer's account on behalf of the Seller's account.

5.5 The invoice issued by the Seller as a tax document must contain all information required by the applicable laws of the Czech Republic. Invoices issued by the Seller in accordance with this Contract shall contain in particular following information:

- a) business name of the Seller, address of his settlement, registered place of business, eventually his premise, and his VAT number,
- b) Seller' s bank connection (title and address of seller's bank, SWIFT code),
- c) Seller' s number of bank account (also in IBAN version),
- d) business name of the Buyer, address of his settlement, registered place of business, eventually his premise and his VAT number,
- e) sequence number of invoice,
- f) date of subject of contract delivery, if this date can be determined and if it is different from date of invoice issue,
- g) date of invoice issue,
- h) quantity and kind of delivered goods,
- i) total price required to pay in currency CZK rounded to two decimal places,
- j) number and title of Contract.

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

5.6 In case that the invoice shall not contain the above mentioned information, the Buyer is entitled to return it to the Seller during its maturity period and this shall not be considered as a default. The new maturity period shall begin from the receipt of the supplemented or corrected invoice to the Buyer.

5.7 Final invoice must be delivered to the Buyer on December 14, 2018, at the latest.

6. **THE OWNERSHIP RIGHT**

The ownership right to the Object of Purchase shall be transferred to the Buyer upon the signature of the Handover Protocol (as defined below) by both Parties and after the payment of the total net Purchase Price specified under the conditions specified in Clause 5.

7. **SELLER'S DUTIES**

7.1 The Seller shall ensure that the Object 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.

7.2 The Seller shall be responsible for all expenses related to the performance of this Contract, unless this Contract stipulates otherwise.

7.3 The Seller is aware that the Buyer does not have at its disposal premises for the storage of packaging and, therefore, shall not store packaging of the Object of Purchase after the installation. The absence of original packaging cannot be an excuse for refusal of elimination of defects of the Object of Purchase.

8. **HANDOVER OF THE OBJECT OF PURCHASE**

8.1 Related Activities must be performed in the presence of representative of both Parties prior to the handover and takeover of the Object of Purchase.

8.2 Handover and takeover of the Object of Purchase shall be realized on the basis of a handover protocol, which shall contain following information ("**Handover Protocol**"):

- a) identification of the Seller, Buyer and subcontractors, if there are any,
- b) declaration of the Seller and Buyer that all Related Activities were carried out,
- c) description of the Object of Purchase, and
- d) date of the signature.

8.3 If the Seller does not hand over to the Buyer all above mentioned documents or if the Seller fails to duly carry out all Related Activities or if the Object of Purchase does not meet requirements of this Contract, the Buyer is entitled to refuse the takeover of the Object of Purchase. In such a case the Seller shall remedy the deficiencies within ten (10) working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) to take over the Object of Purchase despite the above mentioned deficiencies, in particular if such deficiencies do not prevent the Buyer in the proper operation of the Object 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 or remedy, the Seller shall remove the deficiencies within ten (10) working days.

8.4 In case that the Seller notifies the Buyer that the Object of Purchase is eligible for handover and takeover and during the course of the handover procedure it will be ascertained that the conditions under this Contract for the signature of the Handover Protocol are not fulfilled and based on this reason the Buyer will refuse to sign the Handover Protocol, then the Seller shall reimburse the Buyer for all costs that were incurred by the Buyer due to unsuccessful handover.

9. **WARRANTY**

9.1 The Seller shall provide a warranty of quality of the Object 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.

9.2 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.

9.3 The Seller shall remove defects that occur during the warranty period free of charge and in the terms stipulated in this Contract.

- 9.4 If the Buyer ascertains a defect of the Object of Purchase during the warranty period, the Buyer shall notify such defect without undue delay to the Seller. Defects may be notified on the last day of warranty period, at the latest.
- 9.5 The Buyer notifies defects in writing via Seller's Service portal. The Seller shall accept notifications of defects via TESCOAN service portal. Access will be given after installation. The Seller shall confirm in writing the receipt of the notification within 72 hours from the receipt of the notification.
- 9.6 The Seller shall remove the defect within 14 days from the receipt of notification of the Buyer, unless Parties agree otherwise.
- 9.7 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.
- 9.8 Parties shall execute a protocol on the removal of the defect, which shall contain the description of the defect and the confirmation that the defect was removed. The warranty period shall be extended by a period of time that elapses between the notification of the defect until its removal.
- 9.9 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.
- 9.10 The warranty does not cover defects caused by unprofessional manipulation or by the failure to follow Seller's instructions for the operation and maintenance of the Object of Purchase

10. **POST-WARRANTY SERVICE**

- 10.1 The Seller is obliged to ensure paid post-warranty service upon the Purchaser's request for a period of at least 5 years after the expiry of the warranty period's last day. The provisions of Art.9 and Art.12 hereof, pertaining to defect removal and liability for failure to remove defects, shall apply similarly to the post-warranty service.

11. **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

- 11.1 The Seller represents and warrants to the Buyer that
- a) has all the professional prerequisites necessary for the proper fulfilment of this Contract,
 - b) is fully authorized to perform this Contract, and
 - c) there are no obstacles on the Seller's side that would preclude him from the due performance of this Contract.

12. **PENALTIES**

- 12.1 If the Seller is in default regarding the delivery of the Object of Purchase, i.e. the Seller breaches its duty to perform this Contract in time and due manner, the Seller shall pay to the

Buyer a contractual penalty in the amount of 0,1% of the Purchase Price for every (even commenced) day of default.

- 12.2 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.
- 12.3 The Seller shall pay contractual penalties within fifteen (15) days from the day, on which the Buyer enumerated its claims. The payment of contractual penalties shall not affect the right of the Buyer to damages even to the extent to which such damages exceeds the contractual penalty.
- 12.4 Total amount of contractual penalties that the Buyer is entitled to claim shall not exceed 30 % of the Purchase Price.
- 12.5 The Buyer is entitled to unilaterally set off claims arising from the contractual penalties against the claim of the Seller for the payment of the Purchase Price.

13. **RIGHT OF WITHDRAWAL**

- 13.1 The Buyer is entitled to withdraw from this Contract without any penalties, if any of the following circumstances occur:
- a) the Seller shall be in delay with the fulfilment of this Contract and such delay lasts more than two (2) months,
 - b) the Object of Purchase shall not fulfil the requirements stipulated in this Contract,
 - c) the insolvency proceeding is initiated against the Seller; or
 - d) the Buyer ascertains that the Seller provided in its bid for the Public Tender information or documents that do not correspond to the reality and that had or could have had impact on the result of the tendering procedure, which preceded the conclusion of this Contract.

14. **REPRESENTATIVES OF THE PARTIES**

- 14.1 The Seller appoints following representatives for the communication with the Buyer:

Name: Stanislav Prčík

E-mail: stanislav.prcik@tescan.com

- 14.2 The Buyer appoints following representatives for the communication with the Seller:

In technical matters

Name: Jan Vaniš

E-mail: vaniš@ufe.cz

Tel.: +420 266 773 439

In contractual matters:

Name: Jan Grym

E-mail: grym@ufe.cz

Tel.: +420 266 773 428

15. FINAL PROVISIONS

- 15.1 This Contract is governed by the laws of the Czech Republic, especially by the Civil Code (Act. No 89/2012 Coll., Civil Code).
- 15.2 All disputes arising out of this Contract or out of legal relations connected with this Contract shall be preferable settled by a mutual negotiation. In case that the dispute is not settled within sixty (60) days, such dispute shall be decided by courts of the Czech Republic in the procedure initiated by one of the Parties.
- 15.3 The Seller bears the risk of changed circumstances within the meaning of Section 1765 of the Civil Code.
- 15.4 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.
- 15.5 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.
- 15.6 All modifications and supplements of this Contract must be in writing.
- 15.7 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.
- 15.8 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.
- 15.9 This Contract is executed in two (2) copies and every Party shall receive one (1) copy.
- 15.10 This Contract shall be valid on the date of signature of both Parties and effective on the day, on which it was published in the register of contracts within the meaning of the Act No. 340/2015 Coll., on the register of contracts. Both parties are aware of this legal obligation to publish this Contract pursuant to Act. No. 340/2015 Coll., on the register of contracts, and by signing this Contract agree to it. The publishing of the Contract shall ensure the Buyer.

Enclosures:

1. Tender documentation
2. Bid Submitter by the Seller/Bidder

IN WITNESS WHEREOF attach Parties their handwritten signatures:

Buyer

Signature: _____

Name: Prof. Ing. Jiří Hájek, CSc., DSc.

Position: Director

Date: 22. 10. 2018

Seller

Signature: _____

Name: Ing. Antonín Sedláček

Position: Managing Director

Date: