Purchase Contract

 (hereafter the “**Contract”**)

1. **CONTRACTUAL PARTIES**
	1. **Fyzikální ústav AV ČR, v. v. i.** (Institute of Physics of the Czech Academy of Sciences)**,**

with registered offices at: Na Slovance 1999/2, 182 00 Praha 8, Czech Republic,

represented by: RNDr. Michael Prouza, Ph.D., Director,

registered in the Register of public research institutions of the Ministry of Education, Youth and Sports of the Czech Republic.

ID No.: 68378271

Bank: UniCredit Bank Czech Republic and Slovakia, a.s.

Account No.: 2106535627/2700

(hereinafter referred to as the “**Buyer**”)

and

* 1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**

with registered offices at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

represented by: \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_,

registered in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

ID No.: \_\_\_\_\_\_\_\_\_\_\_\_

Tax ID No.: \_\_\_\_\_\_\_\_\_\_\_\_

Bank: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Account No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (TO BE FILLED IN BY THE BIDDER)

(hereinafter referred to as the “**Seller**”)

(the Buyer and the Seller are hereinafter jointly referred to as the “**Parties**” and each of them individually as a “**Party**”).

1. **FUNDAMENTAL PROVISIONS**
	1. The Buyer is implementing the project "**Teraferroics for ultra-high capacity, speed and energy-efficiency of information technology**” under the *Operational Programme Jan Amos Komenský* within the framework of EU funds, project registration number **CZ.02.01.01/00/22\_008/0004594** (hereinafter referred to as the “**Project**”). The subject of performance under this Contract is intended for the Project and mainly financed from the support provided for their implementation.
	2. The Seller has been selected as the winner of a public procurement procedure announced by the Buyer for the public contract with the title **“Helium-flow optical cryostat for far-infrared and middle infrared (IR) spectral range”** (hereinafter the “**Procurement Procedure**”).
	3. The documentation necessary for the implementation of the subject of performance hereof consist of
		1. **Technical specifications** of the subject of performance hereof attached as **Annex No. 1** hereto**.**
		2. The Seller´s bid submitted within the Procurement Procedure in its parts which describe the subject of performance in technical detail (hereinafter the “**Sellers’s Bid**”); the Sellers’s Bid forms **Annex No. 2** to this Contract and is an integral part hereof.

In the event of a conflict between the Contract and its Annex or between the Contract’s Annexes, the technical specification / requirement of the higher level / quality shall prevail.

* 1. The Seller acknowledges that it is essential for the Buyer that the Seller produces, delivers and handovers the subject of performance within the specified time and in the specified quality as stated in Annexes No. 1 and 2 of this Contract (including invoicing). If the Seller fails to comply with the contractual requirements, the Buyer may incur damages.
1. **SUBJECT-MATTER OF THE CONTRACT**
	1. The subject of this Contract is the Seller’s obligation to deliver and transfer into the Buyer’s ownership:

**Helium-flow optical cryostat for far-infrared and middle infrared (IR) spectral range** **s**pecified in detail in Annexes No. 1 and No. 2 hereto

(hereinafter as the **“Equipment”**)

and the Buyer's obligation to accept the Equipment and to pay the Seller the purchase price as defined below.

* 1. The following activities are an integral part of the performance to be provided by the Seller:
		1. Transport of the Equipment incl. all accessories specified in Annexes No. 1 and 2 hereto to the place of performance, un-packaging and control thereof;
		2. Delivery of instructions and operating and repair manuals to the Equipment in Czech or English language to the Buyer, in electronic (MS Office or PDF format) or hardcopy (printed) versions;
		3. Free-of-charge warranty Equipment service during the warranty period;
		4. Free-of-charge provision of technical support in the form of consultations (at least telephone and email support in Czech or English on working days) during the warranty period.
	2. The Seller shall be liable for the Equipment and related services to be in full compliance with this Contract, its Annexes and all valid legal regulation, technical and quality standards and shall also be liable that the Buyer will be able to use the Equipment for the defined purpose. In case of any conflict between applicable standards, it is understood that the stricter standard or its part shall always apply.
	3. The Equipment and all its parts and accessories must be brand new and unused.
1. **PERFORMANCE PERIOD**
	1. The Seller undertakes to deliver and hand over the Equipment to the Buyer within **30 weeks** from the date of conclusion of the Contract.
	2. The Seller is obliged to notify the Buyer of the date of delivery of the Equipment at least 10 working days in advance. This term is subject to the consent of the Buyer.
2. **PURCHASE PRICE, INVOICING, PAYMENTS**
	1. The purchase price is based on the Seller’s submitted bid and amounts to \_\_\_\_\_\_\_\_ USD (in words: \_\_\_\_\_\_\_\_\_\_\_) (TO BE FILLED IN BY THE BIDDER) excluding VAT (hereinafter the **“Price”**).
	2. VAT shall be settled in accordance with the valid Czech regulation.
	3. The Price includes any and all performance provided by the Seller in connection with meeting the Buyer’s requirements for the proper and complete delivery of the Equipment hereunder, as well as all costs that the Seller may incur in connection with the delivery.
	4. The Parties agreed that the Price shall be invoiced after the handover protocol in accordance with Section 8.2 will have been signed. In case the Equipment will be delivered with minor defects and / or unfinished work, the Price shall be invoiced after removal of these minor defects and / or unfinished work.
	5. The invoice issued by the Seller as a tax document must contain all information required by the applicable laws of the Czech Republic (esp. all requirements by the Act No. 235/2004 Coll., on value added tax, as amended) and, in addition, they must contain registration number of this Contract and state that the Equipment is supplied for the purposes of the Project with its registration number.
	6. The Buyer prefers electronic invoicing, with the invoices being delivered to efaktury@fzu.cz. All issued invoices shall comply with any international double taxation agreements, if applicable.
	7. Invoices shall be payable within thirty (30) days of the date of their delivery to the above address. Payment of the invoiced amount means the date of its remittance to the Seller’s account.
	8. If an invoice is not issued in conformity with the payment terms stipulated by the Contract or if it does not comply with the requirements stipulated by law, the Buyer shall be entitled to return the invoice to the Seller as incomplete, or incorrectly issued, for correction or issue of a new invoice, as appropriate, within five (5) business days of the date of its delivery to the Buyer. In such a case, the Buyer shall not be in delay with the payment of the Price or part thereof and the Seller shall issue a corrected invoice with a new and identical maturity period commencing on the date of delivery of the corrected or newly issued invoice to the Buyer.
	9. The Buyer shall be entitled to unilaterally set off any of their payments against any receivables claimed by the Seller due to:
		1. damages caused by the Seller,
		2. contractual penalties.
	10. The Seller shall not be entitled to set off any of his receivables against any part of the Buyer’s receivable hereunder.
3. **OWNERSHIP TITLE**

The ownership right to the Equipment and at the same time the associated risk of damage shall pass to the Buyers upon proper handover and acceptance of the Equipment according to Section 8.2 by drawing up the Handover Protocol and their signature by an authorized representative of the Buyer.

1. **PLACE OF** **PERFORMANCE**

The place of performance, i.e. the place of delivery and handover of the Equipment, shall be the room No. 132 in the Institute of Physics of the Czech Academy of Sciences at Na Slovance 1999/2, 182 00 Praha 8, Czech Republic (hereinafter the **“Place of performance”**).

1. **DELIVERY, INSTALLATION, HANDOVER AND ACCEPTANCE**
	1. The Seller shall transport the Equipment at his own cost to the Place of performance. If the shipment is intact, the Buyer shall issue delivery note for the Seller.
	2. The Seller shall assist the Buyer in installing the Equipment and verifying its functionality, to the maximum extent possible, i.e. in the form of telephone consultations, video calls, etc.
	3. The handover procedure shall be completed by their handover confirmed by the Handover Protocol. The Handover Protocol shall contain the following mandatory information:
		1. Identification of the Seller, the Buyer and any subcontractors;
		2. Description of the Equipment including description of all components and their serial / production numbers;
		3. Description of executed tests and compliance with technical parameters according to Annexes No. 1 and 2;
		4. List of technical documentation according to Section 3.2.2 of the Contract;
		5. Buyer`s possible objections to minor defects of the Equipment including the manner of and deadline for their removal and
		6. Signatures of authorized representatives of the Buyer and the Seller, with the date indicated.
	4. Handover of the Equipment does not relieve the Seller from liability for damage caused by its defects.
	5. The Buyer shall not be obliged to accept the Equipment or any part thereof which is defective (even if such defects - on their own or in connection with other defects – do not constitute an obstacle to the use of the Equipment). In such a case, the Buyer shall issue a report containing the reason for their refusal to accept the Equipment or its part. If the Equipment or its part upon handover does not meet the parameters defined in Annexes No. 1 and 2 to this Contract, such non-compliance is considered a defect of the Equipment.
	6. Should the Buyer not exercise his right not to accept the Equipment or its part with a defect, the Seller and the Buyer shall list all defects detected in the relevant Handover Protocol, including the manner of and deadline for their removal. Should the Parties not be able to agree in the Handover Protocol on the deadline for removal of the defects, it shall be understood that all above shall be removed / rectified within 14 days of handover.
2. **REPRESENTATIVES, NOTICES**
	1. The Seller authorized the following representatives to communicate with the Buyer in all matters relating to the Equipment delivery, installation and handover:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

e-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

tel. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (TO BE FILLED IN BY THE BIDDER)

* 1. The Buyer authorized the following representatives to communicate with the Seller in all matters relating to the Equipment delivery, installation and handover:

xxxxxxxxxxxxxxxx
e-mail: xxxxxxxxxxxxxxxx
tel. (+420) xxxxxxxxxxxxxxxx

* 1. The representatives according to Sections 9.1 and 9.2 can be changed by a unilateral written declaration of the Buyer / Seller delivered to the Seller / Buyer.
	2. All notifications to be made between the Parties hereunder must be made out in writing and delivered to the other Party by hand (with confirmed receipt) or by post (to the address of the Seller’s or Buyer’s registered offices), or in the form of electronic delivery incorporating electronic signature (qualified certificate) to epodatelna@fzu.cz in the case of Buyer and to …….@...... (TO BE FILLED IN BY THE BIDDER) in the case of the Seller.
	3. In all technical and expert matters (notification of the need to provide warranty or post-warranty service, technical assistance etc.), electronic communication between technical representatives of the Parties will be acceptable using e-mail addresses specified in Sections 9.1 and 9.2.
1. **TERMINATION**
	1. The Buyer is entitled to withdraw from the Contract without any penalty from the Seller in any of the following events:
		1. The Seller is in delay with the delivery of the Equipment longer than 4 weeks after the date pursuant to Section 4.1 hereof.
		2. The Seller is more than 4 weeks in delay with the removal of Equipment defects listed in the list of detected defects of the Handover Protocol according to Section 8.5.
		3. The technical parameters or other conditions set out in the technical specifications defined in Annexes No. 1 and 2 to this Contract and in the relevant applicable technical standards will not be met by the Equipment at handover.
	2. The Seller is entitled to withdraw from the Contract in the event of the Buyer is in default with the payment for more than 2 months except of the cases if the Buyer refused an invoice due to defect on the Equipment or its part or due to the breach of the Contract by the Seller.
	3. Withdrawal from the Contract shall be effective on the date the notice of withdrawal is delivered to the Seller / Buyer. In the event of withdrawal, the performances received under this Contract prior to withdrawal shall be duly returned within 30 days from the date of sending the notice of withdrawal by the withdrawing Contracting Party, unless the withdrawing Contracting Party sets a longer period.
	4. In the event of early termination of the Contract, the Seller shall ensure the removal of the Equipment or its part from the Place of performance within 30 days from the date on which withdrawal from the Contract became effective. The cost of removal shall be paid by the Party which caused the early termination of the Contract by breaching it.
2. **INSURANCE**
	1. The Seller undertakes to insure the Equipment against all risks, in the amount of the Price for the entire period from the commencement of the transportation of the Equipment until duly handed over to the Buyer. In the event of a breach of this obligation, the Seller shall be liable to the Buyer for damages incurred in connection therewith.
	2. The Seller is liable for the damage that he has caused. The Seller is also liable for damage caused by third parties which have undertaken to carry out performance or part thereof under this Contract.
3. **WARRANTY TERMS**
	1. The Seller shall provide warranty for the quality of the Equipment for a period of 12 months.
	2. The warranty period shall commence on the day following the date of signing of the Handover Protocol, pursuant to Section 8.2 hereof.
	3. Should the Buyer discover a defect, he shall notify the Seller to remove such defect using the e-mail address: …….@...... (TO BE FILLED IN BY THE BIDDER).
	4. The Seller shall be obliged to
		1. within 48 hours of sending the request according to paragraph 12.4, propose a way to eliminate the defect,
		2. within 5 working days of sending the request according to paragraph 12.4, to initiate warranty repair, if necessary,
		3. remove the defect within 30 days of sending the request according to paragraph 12.4.
	5. In case of unusual defects the Seller shall be obliged to remove the defect within a special period agreed upon by the Parties and corresponding to the nature of the defect.
	6. During the warranty period, any and all costs associated with defect removal / repair including transport and travel expenses of the Seller shall be always borne by the Seller.
	7. The repaired part of the Equipment shall be handed over by the Seller to the Buyer on the basis of a protocol confirming the removal of the defect (hereinafter the “**Repair Protocol**”). If the part of the Equipment is duly repaired and defect-free, the Buyer will confirm the Repair Protocol.
	8. The repaired part (component) shall be subject to a new warranty term in accordance with Section 12.1 which commences to run on the day following the date when the Repair Protocol was executed.
	9. If any part of the Equipment has defects, due to which it cannot be demonstrably used in full for more than 60 days (period of defects) during six or less consecutive months of the warranty period, the Seller is obliged to deliver new part of Equipment without defects within 120 days after being requested to do so in writing, unless the Parties agree otherwise.
	10. The Seller undertakes to provide the Buyer with all updates of the software controlling the Equipment free of charge for the entire warranty period.
4. **CONTRACTUAL PENALTIES**
	1. The Buyer shall be entitled to a contractual penalty in the amount of 0.1 % of Price for each commenced day of delay with the performance pursuant to the relevant part of Section 4.1 hereof.
	2. The Buyer shall be entitledto a contractual penalty in the amount of 0.1 % of the Price for each commenced day of delay with the performance pursuant to Section 12.4 hereof and with the removal of defects claimed within the warranty period pursuant to Section 12.5 hereof.
	3. In case of default in payment of any due receivables (monetary debt) under the Contract, the defaulting Buyer or Seller (the debtor) shall be obliged to pay a contractual penalty in the legal amount for each commenced day of delay with the payment.
	4. Contractual penalties are payable within 30 days of receipt of the demand for payment.
	5. Payment of the contractual penalty shall be without prejudice to the rights of the Parties to claim compensation for damages incurred.
	6. Payment of any contractual penalty cannot be demanded if the breach of the contractual obligation is caused by force majeure.
5. **DISPUTES**

Any and all disputes arising from or relating to this Contract shall be settled by the Parties by mutual negotiations. In the event that any dispute cannot be resolved by negotiations within sixty (60) days, the dispute shall be resolved by a competent court in the Czech Republic upon a legal action brought by either Party; the competent court shall be determined by the location of the registered office of the Buyer. Disputes shall be settled exclusively under the law of the Czech Republic.

1. **FINAL PROVISIONS**
	1. This Contract constitutes the entire agreement between the Parties. The relations between the Parties not regulated by this Contract shall be governed by Czech law, in particular by the Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the **“Civil Code”**).
	2. This Contract may be amended or supplemented solely by written amendments, if this Contract or legal regulation does not allow unilateral changes.
	3. The Parties expressly agree that the Contract as a whole, including all attachments, will be published in accordance with Act No. 340/2015 Coll. on special conditions for the effectiveness of some contracts, publication of these contracts and Contract Register, as amended. The Parties hereby declare that all information contained in the Contract and its Annexes is not considered trade secrets under § 504 of the Civil Code and grant permission for their disclosure without setting any additional conditions.This Contract becomes effective as of the day of its publication in the Contract Register, which shall be provided by the Buyer.
	4. The Seller undertakes to provide the Buyer with cooperation in the event of inspections by authorized entities in connection with the Project.
	5. The Parties declare that they are governed by the terms and conditions of this Contract from the date of its conclusion and consider all their possible mutual performance provided from the date of conclusion of this Contract to the date of entry into force of this Contract as performance provided under this Contract.
	6. The following Annexes form an integral part of the Contract:

Annex No. 1: Technical specification on the subject of performance (The Bidder shall fill in the columns of TAB 1 “Description and specification of the Equipment offered by the Seller” and “Complies YES / NO”)

Annex No. 2: Technical description of the Equipment as presented in Seller’s bid (Bidder shall present in his bid)

* 1. The Parties, manifesting their consent with the entire contents of this Contract, attach their signature hereunder.

In Prague

For the Buyer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RNDr. Michael Prouza, Ph.D.

Director

In \_\_\_\_\_\_\_\_\_\_

For the Seller

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_ (TO BE FILLED IN BY THE BIDDER)

**Annex No. 1 - Technical specification on the subject of performance**

**Tab. 1 - The Equipment must meet the technical conditions and include components listed in this table.**

|  |  |  |
| --- | --- | --- |
| Description and minimum specification of the Equipment as defined by the Buyer | Description and specification of the Equipment offered by the Seller | Complies YES/NO |
| **Obligatory requirements:** |  |  |
| 1. Optical cryostat for samples placed in high-vacuum 10-5 mbar (or better).
 |  |  |
| 1. Temperature range at least 4.2-300 K.
 |  |  |
| 1. Two windows from high-pressure polyethylene (for far IR range).
 |  |  |
| 1. Two windows from KBr (for middle IR range).
 |  |  |
| 1. At least three sample positions (distance between samples more than 15 mm).
 |  |  |
| 1. Motorized z-translator of sample holder controlled by computer.
 |  |  |
| 1. Cryostat must fit into the vacuum chamber of spectrometer and its diagonal diameter cannot exceed 88 mm.
 |  |  |
| 1. The centre of the optical windows must be less than 64 mm from the bottom of the cryostat.
 |  |  |
| 1. Optical windows should be larger than 30 mm.
 |  |  |
| 1. Cryostat should have radiation shielding.
 |  |  |
| 1. Two temperature sensors and one temperature controller are required.
 |  |  |
| 1. Helium dewar, transfer line and vacuum pump are not required.
 |  |  |

(Bidders shall fill in the columns “Description and specification of the Equipment offered by the Seller” and “Complies YES / NO”.)

**Annex No. 2**

**The Seller’s bid in the extent it describes technical parameters of the Equipment**

(Bidder shall present in his bid)