Purchase Contract

 (hereafter the “**Contract”**)

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

with seat: 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

Tax ID No.: CZ68378271

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

Account No. IBAN: CZ3127000000002106535627; SWIFT (BIC): BACXCZPP

(hereinafter the “**Buyer**”)

and

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

with seat: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

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

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

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

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

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

Account No. IBAN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; SWIFT (BIC): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (TO BE FILLED IN BY THE BIDDER)

(hereinafter 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. 2.1 The Buyer is a Partner of the Beneficiary of the project "Materials Growth & Measurement Laboratory" under the *Operational Programme Jan Amos Komenský* within the framework of EU funds, project registration number CZ.02.01.01/00/23\_015/0008184 (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 its implementation.
	2. The Buyer wishes to acquire the subject of performance hereof toreplace the outdated single crystal sample cooler on the Oxford Diffraction Gemini diffractometer.
	3. The Seller was selected as the winner of a public procurement procedure for the public contract called **“Single-crystal diffractometer sample cooling system”** (hereinafter the “**Procurement Procedure**”).
	4. The documentation necessary for the execution 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’s Annexes, the technical specification / requirement of the higher level / quality shall prevail.

* 1. The Seller declares that he has all the professional prerequisites required for the supply of the subject of performance under this Contract, is authorised to supply the subject of performance and there exist no obstacles on the part of the Seller that would prevent him from supplying the subject of this Contract to the Buyer.
	2. The Parties declare that they shall maintain confidentiality with respect to all facts and information, which they learn in connection herewith and / or during performance hereunder, and whose disclosure could cause damages to either Party. Confidentiality provisions do not prejudice obligations arising from valid legislation.
1. **SUBJECT-MATTER OF THE CONTRACT**
	1. The subject of this Contract is the obligation on the part of the Seller to deliver and transfer into the Buyer’s ownership:

the **single-crystal diffractometer** **sample cooling system**

(hereafter the **“Equipment”**)

and the Buyer undertakes to take delivery of the Equipment and to pay to the Seller the agreed upon price.

* 1. The following activities form an integral part of the performance to be provided by the Seller:
		1. Formulation of conditions which are recommended to be met at the place of Buyer in order to install the Equipment;
		2. Transport of the Equipment incl. all accessories specified in Annexes 1 and 2 of the Contract to the place of delivery;
		3. Telephone or on-line assistance with the installation of the Equipment;
		4. Delivery of detailed instructions and manuals for operation and maintenance, including list of spare parts, electrical connection schemes, etc. - all in Czech or English language, in electronic or hardcopy (printed) versions;
		5. Free-of-charge warranty service during the warranty term;
		6. Provision of free technical support in the form of consultations, e.g. regarding fine tuning of the Equipment. The Seller shall provide the Buyer with this free support even after the warranty expires.
	2. The subject of performance (Equipment) is specified in detail in Annexes No. 1 and No. 2 hereto.
	3. The Seller shall be liable for the Equipment and related services to be in full compliance with this Contract, its Annexes and all valid and applicable legal regulation, technical and quality standards and 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.
	4. The delivered Equipment and all its parts and accessories must be brand new and unused.
1. **PERFORMANCE PERIOD**

The Seller undertakes to manufacture and deliver the Equipment to the Buyer within **6 months** of the conclusion of the Contract.

1. **PURCHASE PRICE, INVOICING, PAYMENTS**
	1. The purchase price is based on the Seller’s submitted bid and amounts to **\_\_\_\_\_\_\_\_ EUR** (in words: \_\_\_\_\_\_\_\_\_\_\_) (TO BE FILLED IN BY THE BIDDER)excluding VAT (hereinafter the **“Price”**). VAT shall be paid by the Buyer and settled in accordance with the valid Czech regulation.
	2. The Price represents the maximum binding offer by the Seller and 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, and including all other costs or expenses that may arise in connection with creation of an intellectual property and its protection.
	3. The Seller is entitled to invoice the Price after the acceptance protocol in accordance with Section 10.4 will have been signed. In case the Equipment will be delivered with minor defects, the Price shall be invoiced after removal of these minor defects.
	4. All invoices issued by the Seller 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, the following:
		1. registration number of this Contract, which the Buyer shall communicate to the Seller based on Seller’s request before the issuance of the first invoice,
		2. statement, that the Equipment is supplied for the purposes of the project "Materials Growth & Measurement Laboratory" with the registration number CZ.02.01.01/00/23\_015/0008184.
	5. The Buyer prefers electronic invoicing, with the invoices being delivered to efaktury@fzu.cz. All invoices issued shall comply with any international double taxation agreements, if applicable.
	6. Invoices shall be payable within thirty (30) days of the date of their delivery to the Buyer. Payment of the invoiced amount means the date of its remittance to the Seller’s account.
	7. 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.
	8. The Buyer shall be entitled to unilaterally set off any of his payments against any receivables claimed by the Seller due to:
		1. damages caused by the Seller,
		2. contractual penalties.
	9. The Seller shall not be entitled to set off any of his receivables against any part of the Buyer’s receivable hereunder.
2. **OWNERSHIP TITLE**

The ownership right to the Equipment shall pass to the Buyer by delivery.

1. **PLACE OF DELIVERY**

The place of delivery of the Equipment shall be the premises of the Institute of Physics of the Czech Academy of Sciences at Cukrovarnická 112/10, 162 00 Praha 6, Czech Republic.

1. **NOTIFICATION OF DELIVERY**

The Seller shall notify the Buyer in writing of the exact date of delivery of the Equipment at least 15 days prior to such date, ensuring that the deadline for the performance hereunder is maintained.

1. **COOPERATION OF THE PARTIES**
	1. The Seller undertakes to notify the Buyer of any obstacles on his part, which may negatively influence proper and timely delivery of the Equipment.
	2. The Seller undertakes to provide the Buyer with cooperation in the event of inspections by authorized entities in connection with the Project.
2. **DELIVERY AND ACCEPTANCE**
	1. The Seller shall transport the Equipment at his own cost to the place of delivery. If the shipment is intact, the Buyer shall confirm the delivery note for the Seller.
	2. The Buyer shall verify whether the Equipment is functional and meets the technical requirements set out in Annexes No. 1 and 2 hereof within 3 weeks of the delivery of the Equipment.
	3. The delivery shall include all technical documentation pertaining to the Equipment, user manuals and certificate of compliance of the Equipment and all its parts and accessories with approved standards.
	4. The procedure shall be completed by acceptance of the Equipment confirmed by the acceptance protocol. The protocol shall contain the following information:
		1. Information about the Seller, the Buyer and any subcontractors;
		2. Description of the Equipment including description of all components and their serial numbers;
		3. Description of executed acceptance tests: type of test, duration and achieved parameters;
		4. List of technical documentation including the manuals;
		5. Eventually reservation of the Buyer regarding minor defects including the manner and deadline for their removal and
		6. Date and signature of the representative of the Buyer specified in Section 11.2 hereof.
	5. Acceptance of the Equipment does not release the Seller from liability for defects that were not detected during the acceptance procedure.
	6. The Buyer shall not be obliged to accept Equipment, which would show defects that would otherwise not form a barrier, on their own or in connection with other defects, to using the Equipment. In this case, the Buyer shall issue a record containing the reason for his refusal to accept the Equipment.
3. **REPRESENTATIVES, NOTICES**
	1. The Seller authorized the following representatives to communicate with the Buyer in all matters relating to the Equipment delivery:

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

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:

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

* 1. 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 registered post (to the Buyer’s or Seller’s address), or in some other form of registered post or electronic delivery incorporating electronic signature (qualified certificate) to epodatelna@fzu.cz in case of the Buyer and to …….@...... (TO BE FILLED IN BY THE BIDDER) in case of the Seller.
	2. In all technical and expert matters (discussions on the Equipment testing and demonstration, notification of the need to provide warranty or post-warranty service, technical assistance etc.) electronic communication between representatives of the Parties will be acceptable using e-mail addresses defined in Sections 11.1 and 11.2.
1. **TERMINATION**
	1. This Contract may be terminated early by agreement of the Parties or withdrawal from the Contract on the grounds stipulated by law or in the Contract.
	2. 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 1 month after the date pursuant to Section 4. hereof.
		2. The technical parameters or other conditions set out in the technical specifications set out in Annexes 1 and 2 to this Contract and in the relevant applicable technical standards will not be met by the Equipment at acceptance.
		3. Facts emerge bearing evidence that the Seller will not be able to deliver the Equipment.
		4. The Seller has breached the obligations specified within the conditions of the Procurement Procedure, in particular the obligations arising from the affidavit which forms Annex No. 3 to this Contract, necessary for the selection of an economic operator according to Section 2.3 of this Contract.
	3. The Seller is entitled to withdraw from the Contract in the event of the Buyer being in default with the payment for more than 2 months with the exception of the cases when the Buyer refused an invoice due to defect on the delivered Equipment or due to breach of the Contract by the Seller.
	4. Withdrawal from the Contract becomes effective on the day the written notification to that effect is delivered to the other Party. The Party which had received performance from the other Party prior to such withdrawal shall duly return such performance.
2. **INSURANCE**
	1. The Seller undertakes to insure the Equipment against all risks, in the amount of the Price of for the entire period commencing when transport of the Equipment starts until duly delivered to the Buyer. In case of breach of this obligation, the Seller shall be liable to the Buyer for any damages that may arise.
	2. The Seller is liable for the damages that he has caused. The Seller is also liable for damages caused by third parties undertaken to carry out performance or its part under this Contract.
3. **WARRANTY TERMS**
	1. The Seller shall provide warranty for the quality of the Equipment for a period of **24 months**.
	2. The warranty term shall commence on the day following the date of signing of the acceptance protocol pursuant to Section 10.4 hereof. The warranty does not cover consumable parts. Consumable parts for the purposes of the Contract are the items contained in the Equipment which are consumed at regular intervals during the normal use of the Equipment, i.e. parts which have a specified typical lifetime, that does not exceed the warranty period provided the Equipment is used with normal frequency.
	3. Should the Buyer discover a defect, he shall notify the Seller to rectify such defect using the e-mail address: …….@...... (TO BE FILLED IN BY THE BIDDER). The Seller is obliged to notify the Buyer without delay about any change of this e-mail address. The Seller shall be obliged to review any warranty claim within 72 hours (within business days) from its receipt and to propose solution, unless agreed otherwise by the Parties.
	4. During the warranty period, the Seller shall be obliged to rectify any claimed defects within 30 days from the date on which the Equipment was delivered to the Seller for repair or within 30 days from receipt of the Buyer’s notification if the Seller sends a technician to perform the repair on-site. In cases of unusual defects, the Seller shall be obliged to rectify the defect in the period corresponding to the nature of the defect and to define the deadline for the completion of the repair or for shipping of the rectified Equipment.
	5. During the warranty period, any and all costs associated with defect rectification / repair including transport and travel expenses of the Seller shall be always borne by the Seller.
	6. The repaired Equipment shall be delivered by the Seller to the Buyer along with a protocol confirming removal of the defect (hereinafter the “**Repair Protocol**”). If the Equipment is delivered duly repaired and defect-free, the Buyer will confirm the Repair Protocol.
	7. The repaired portion of the Equipment shall be subject to a new warranty term in accordance with Section 14.1 which commences to run on the day following the date when the Repair Protocol was executed. However, the aggregate warranty period for any part of the Equipment shall not exceed 36 months.
	8. The Seller undertakes to provide the Buyer with updates of the software controlling the Equipment for the entire term of warranty.
4. **CONTRACTUAL PENALTIES**
	1. The Buyer shall have the right to a penalty in the amount of 0.1 % of the Price for each commenced day of delay with the performance pursuant to Section 4. hereof.
	2. The Buyer shall have the right to a penalty in the amount of 0.05 % of the Price for each commenced day of delay with rectifying of defects claimed within the warranty period.
	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 amount of 0.1 % of the owed amount for each commenced day of delay with the payment.
	4. Contractual penalties are payable within 30 days of notification demanding payment thereof.
	5. Payment of the contractual penalty does not prejudice the rights of the Parties to claim damages.
	6. Payment of the contractual penalty cannot be demanded if the breach of the contractual obligation causes force majeure.
5. **DISPUTES**

In the event that any dispute arising out of this Contract cannot be resolved by negotiations, it shall be resolved by a court in the Czech Republic; the court having jurisdiction will be the court where the seat of the Buyer is located. Disputes shall be resolved exclusively by the law of the Czech Republic.

1. **FINAL PROVISIONS**
	1. This Contract represents the entire agreement between the Buyer and the Seller. The relationships between the Parties not regulated in this Contract shall be governed by the Czech Act No. 89/2012 Coll., the Civil Code, as amended (hereinafter the **“Civil Code”**).
	2. This Contract may be changed or supplemented solely by means of numbered amendments in writing, furnished with the details of time and place and signed by duly authorised representatives of the Parties. The Parties expressly reject modifications to the Contract in any other manner.
	3. The Parties expressly agree that the Contract 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 use and disclosure without setting any additional conditions. The Buyer shall ensure the publication of the Contract in the Contract Register.
	4. This Contract becomes effective as of the day of its publication in the Contract Register.
	5. The following Annexes form an integral part of the Contract:

Annex No. 1: Technical specification on the subject of performance (In the table Tab. 1, the Bidder shall fill in the columns “Description and specification of the Equipment offered by the Seller” and “Complies YES / NO”. In the table Tab. 2, the Bidder shall indicate value in the second column.)

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.**

|  |  |  |  |
| --- | --- | --- | --- |
| No. | 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 |
| 1 | Temperature range 80-500 K |  |  |
| 2 | Temperature stability 0.1 K |  |  |
| 3 | Construction - separated cooling and shield flow |  |  |
| 4 | Shield flow from dry air |  |  |
| 5 | Automatic refill system including dewar vessel |  |  |
| 6 | Installable into Oxford Diffraction diffractometer Gemini |  |  |
| 7 | Communication with the Oxford Diffraction Gemini's controlling software CrysAlis |  |  |

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

**Tab. 2 – Data for evaluation criterion “Technical characteristics of the bid”**

|  |  |
| --- | --- |
| **Description** | **Value** |
| **Speed of reaching temperature 100K** (*in minutes*) | **\_\_\_** |
| **Nitrogen consumption** (*in litres / minute at 100K*) | **\_\_\_** |

(Bidders shall fill in the second column.)

**Annex No. 2**

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

(Bidder shall present in his bid)