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: xxxxxxxxxxxxxxxxxxxxxxxx

Account No.: xxxxxxxxxxxxxxxxxxxxxxxx

(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 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 Seller has been selected as the winner of a public procurement procedure announced by Fyzikální ústav AV ČR, v. v. i. (Institute of Physics of the Czech Academy of Sciences) as an executive participant in an association formed on the basis of a joint procurement contract in accordance with Act No. 134/2016 Coll., on Public Procurement, as amended (hereinafter the **“Act”**), for the public contract with the title **“Operational renewal and lifetime extension of Physical Property Measurement Systems with 9T and 14T magnets”** (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 “**Seller’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 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:

**Upgrades and expansion equipment for Physical Property Measurement Systems with 9T magnet** (hereinafter the **“Equipment”**)

**s**pecified in detail in Annexes No. 1 and No. 2 heretoand consisting of three parts:

* + 1. Helium-3 refrigerator insert for PPMS;
    2. Vibrating Sample Magnetometer extension/option for PPMS;
    3. Heat Capacity Option for measuring Heat capacity in PPMS

(hereinafter jointly referred to as the “**Parts of the Equipment**” and each of them individually as a “**Part (1, 2, or 3) of 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. Submission of a list containing conditions which are recommended to be met at the place of performance in order to install the Equipment;
     2. 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;
     3. Installation of Parts of the Equipment and all components necessary to operate the Equipment including connection to installation infrastructure at the place of performance;
     4. Verification of the functionality of the Equipment, performing acceptance tests, issuing reports on the outcome of these tests at the place of performance after installation of each Part of the Equipment,
     5. Delivery of detailed instructions and manuals in English or Czech, in electronic form (MS Office or PDF format),
     6. Free-of-charge warranty Equipment service 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 complete Equipment to the Buyer within **14 months** of the conclusion of the Contract.
   2. The Seller is obliged to notify the Buyer of the date of delivery and installation of each Part of the Equipment at least 20 working days in advance. Every time, 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 **\_\_\_\_\_\_\_\_ CZK** (in words: \_\_\_\_\_\_\_\_\_\_\_) (TO BE FILLED IN BY THE BIDDER)excluding VAT for the Equipment (hereinafter the **“Price”**) of which the prices of the individual Parts of the Equipment correspond to:
      1. Part 1: \_\_\_\_\_\_\_\_ TO BE FILLED IN BY THE BIDDER)CZK excl. VAT,
      2. Part 2: \_\_\_\_\_\_\_\_ TO BE FILLED IN BY THE BIDDER)CZK excl. VAT,
      3. Part 3: \_\_\_\_\_\_\_\_ TO BE FILLED IN BY THE BIDDER)CZK excl. VAT.
   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, installation and testing of the Equipment upon handover.
   4. The Parties agreed that the Seller shall invoice the Price, or the price attributable to the relevant Part of the Equipment in the event that Parts of the Equipment are handed over successively, after the handover protocol in accordance with Section 10.3 (hereinafter the **“Handover Protocol”**) will have been signed (for the Equipment as a whole, or partial for a Part of the Equipment); in the case the Equipment or its Part will be handed over with minor defects, invoicing will take place after removal of these minor defects.
   5. All invoices issued by the Seller must contain all information required by the applicable laws of the Czech Republic and, in addition, they must
      1. contain 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. state 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,
      3. comply with the double taxation agreements, if applicable.
   6. The Buyer prefers electronic invoicing with the invoices being sent to [efaktury@fzu.cz](mailto:efaktury@fzu.cz).
   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 Buyer upon proper handover and acceptance of the Equipment according to Section 10.3, i.e. by drawing up the Handover Protocol and its signature by an authorized representative of the Buyer.

1. **PLACE OF PERFORMANCE**

The place of performance, i.e. the place of delivery, installation and handover of the Equipment, shall be the room No. C035 at the premises of the Buyer at V Holešovičkách street No. 747/2, 180 00 Praha 8, Czech Republic.

1. **NOTIFICATION OF DELIVERY**

The Seller shall notify the Buyer in writing of the exact date of delivery, installation and handover of the Equipment or any of its Parts in advance and in the manner according to Section 4.2, ensuring that the deadline for the performance hereunder is maintained.

1. **INTERACTION OF THE PARTIES**
   1. The Seller is obliged to notify the Buyer of the unsatisfactory state of readiness of the place of performance, if possible.
   2. The Seller undertakes to notify the Buyer of any obstacles on his part, which may negatively influence proper and timely delivery and/or handover of the Equipment.
   3. The Seller undertakes to provide the Buyer with cooperation in the event of inspections by authorized entities in connection with the Projects.
2. **DELIVERY, INSTALLATION, HANDOVER AND ACCEPTANCE**
   1. The Seller shall transport the Equipment as a whole, or its Parts individually, 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 perform and document the installation of the Equipment and launch experimental tests in order to verify whether the Equipment is functional and meets the technical requirements of Annexes No. 1 and 2 hereof.
   3. The handover procedure shall be completed by handover of the Equipment confirmed by the Handover Protocol containing specifications of all performed tests The Handover Protocol may be replaced by partial handover protocols for individual Parts of equipment. Handover Protocol shall contain the following mandatory information:
      1. Identification of the Seller, the Buyer and any subcontractors;
      2. Description of the Equipment / Part of the Equipment including description of all components and their serial / production numbers;
      3. Description of executed tests according to the relevant part of Section 3.2.4 of the Contract and their results;
      4. List of technical documentation according to Section 3.2.5 of the Contract;
      5. Buyer’s possible objections to minor defects of the 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 his 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 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 10 days of handover.
3. **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 11.1 and 11.2 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 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](mailto: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 (discussions on the Equipment testing, 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 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 8 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 10.6.
      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.
      4. Facts emerge bearing evidence that the Seller will not be able to deliver or handover the Equipment.
   3. In all cases according to Section 12.2, the Buyer may also withdraw from the Contract only to the extent of the part relating to the mentioned breach of the Contract.
   4. The Seller is entitled to withdraw from the Contract in the event of the Buyer is in default with the payment for more than 1 month 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.
   5. 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 (or its part in the case of withdrawal according to Section 12.3) prior to withdrawal shall be duly returned.
   6. 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 removal of the Equipment must be preceded by the return of any already paid part of the Price to the Buyer’s account. The Buyer will provide the Seller with the necessary cooperation similar to the cooperation during the installation of the Equipment. The cost of removal shall be paid by the Party which caused the early termination of the Contract by breaching it. If the Seller does not ensure the removal of the Equipment or its part from the place of performance within the period according to the first sentence, the Buyer is entitled to sell the Equipment to a third party and use the funds to satisfy his claims against the Seller. The Buyer shall then transfer the remaining funds (if any) to the Seller's account specified in the header of this Contract.
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 (or Part 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. For each Part of the Equipment, the Seller shall provide warranty for the quality thereof 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 10.3 hereof or, in the event that the Equipment has been handed over with minor defects, on the day following the date of removal of all such defects. In the event that Parts of the Equipment are handed over successively, the provisions set out above in this paragraph shall apply separately to each Part of the Equipment.
   3. 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.
   4. The Seller undertakes to provide free Equipment service through authorized technicians and free regular service inspection at the place of performance to the extent specified by the Equipment manufacturer and by the Contract for the entire warranty period according to this Contract, including repairs, delivery of spare parts, transport and work of an authorized service technician.
   5. 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). 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 48 hours (within business days) from its receipt. If the nature of the defect claimed requires an authorised technician to deal with it, this person must be present at the relevant place of performance within 120 hours from receipt of the above-mentioned warranty claim. All the above shall remain in force unless agreed otherwise by the Parties.
   6. During the warranty period, the Seller shall be obliged to remove any claimed defects within 10 business days from the arrival of the authorized technician at the place of performance / within 15 days from receipt of the warranty claim in cases where the claimed defect does not require the intervention of an authorised technician. In case of unusual defects when a special component is needed, the Seller shall be obliged to remove the defect within a period corresponding to the nature of the defect and to set a deadline for handing over the repaired Equipment.
   7. 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.
   8. 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.
   9. The repaired part (component) 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.
4. **CONTRACTUAL PENALTIES**
   1. The Buyer shall be entitled to a contractual penalty in the amount of 0.05 % of the 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 0.01 % of the Price for each commenced day of delay with the performance pursuant to Section 14.5 hereof and with the removal of defects claimed within the warranty period pursuant to Section 14.6 hereof.
   3. In the event of default in payment of any due receivables (monetary debt) under the Contract, the defaulting Party (the debtor) shall be obliged to pay a contractual penalty of 0.05 % of the amount due for each commenced day of delay in payment.
   4. The total amount of contractual penalties for the Seller shall not exceed 30% of the Price and the same shall apply to the Buyer.
   5. Contractual penalties are payable within 30 days of receipt of the demand for payment.
   6. Payment of the contractual penalty shall be without prejudice to the rights of the Parties to claim compensation for damages incurred.
   7. 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. The Parties expressly refuse to amend the Contract in any other way.
   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 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 “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)

Annex No. 3: Affidavit according to § 6 paragraph 4 of the Act No. 134/2016 Coll.

* 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**

**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 | Helium-3 refrigerator insert compatible with PPMS sample chamber with continuous operation down to 0,5K and one-shot operation to 0,4K for 40min. System has automated gas handling system for user easy operation. Compatible with current PPMS options for heat capacity, resistivity (AC and DC). Cooling power at 0,5K at least 5 μW. Compatible with +-9T.  Software-automated cooperation with PPMS system, sequence control with PPMS available. |  |  |
| 2 | Vibrating Sample Magnetometer extension/option for PPMS.  Base noise floor less than 6.0∙10-7 emu plus 6.0∙10-7 emu/T with integration time 1s. Max moment at least 40 emu. Oscillation frequency minimum range 10-45Hz. Sample size up to 5mm diameter. Temperature range 1.8-350K, Field range +-9T. Additional extension can upgrade system to temperature 1000K or sample diameter up to 11mm and max moment 75emu.  Software-automated cooperation with PPMS system, sequence control with PPMS available. |  |  |
| 3 | Heat Capacity Option for measuring Heat capacity in PPMS of samples in temperature range 0,4K – 350K and field +-9T. Possibility of first-order transitions analysis. Resolution 10 nJ/K @ 2 K. Sample can be up to 3x3mm size.  Software-automated cooperation with PPMS system, sequence control with PPMS available. |  |  |

(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)

**Annex No. 3**

**Affidavit according to § 6 paragraph 4 of the Act No. 134/2016 Coll.**

(to be attached before the conclusion of the Contract)