**Purchase contract**

This purchase contract (”**Contract**”) was concluded pursuant to Sec. 2079 et seq. of the Act No. 89/2012 Coll., Civil Code (“**Civil Code**”), on the day, month and year stated below by and between:

1. **Ústav termomechaniky AV ČR, v. v. i.**

*(Institute of Thermomechanics of the Czech Academy of Sciences, public research institution)*

with its registered office at: Dolejškova 1402/5, 182 00 Praha 8

registration No.: 613 88 998

represented by: doc. Ing. Miroslav Chomát, CSc., Director

(“**Client**”); and

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

with its registered office at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

registration No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

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

bank account: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“**Supplier**”);

(the Client and the Supplier are hereinafter jointly referred to as “**Parties**” and individually as “**Party**”.)

**whereas**

1. The Client intends to procure performance from the Supplier as part of a scientific project „Feroické multifunkcionality“ (FerrMion).
2. For the successful realization of the above-mentioned project, it is needed to purchase the Object of Purchase (as defined below) in accordance with the Act No. 134/2016 Coll., on public procurement, as amended.
3. The Supplier’s bid for the public contract titled *“3D Atom Probe Tomography – design, manufacture and delivery of the system,”* whose purpose was to procure the Object of Purchase (hereinafter the “**Bid**” and “**Public Contract**”), was selected by the Client within the negotiated procedure without publication based on the Section 64 letter a) and Section 63 (3) letter b) of the Act No. 134/2016 Coll., on public procurement, as amended.

**THE PARTIES agreed as follows:**

# basic provisions

## Under this Contract, the Supplier shall elaborate the design, manufacture, test, transport to and install in the laboratory of the Client of 3D Atom Probe Tomography as specified in Annex 1 (Summary of Deliverables, Time Schedule and Payments), Annex 2 (Technical Specifications), Annex 3 (Supplier’s Bid) and Annex 4 (Factory and Site Validation) to this Contract (“**Object of Purchase**”) and shall transfer to the Client ownership right to the Object of Purchase,

## and the Client shall take over the Object of Purchase and shall pay the Supplier the Purchase Price (as defined below), all under the terms and conditions stipulated herein.

## The Supplier shall arrange unloading of the Object of Purchase from arriving means of transportation at the place of destination in front of the respective building and transportation from the loading dock to the laboratory on costs of the Client, if any. The costs shall be documented to the Client and paid together with the D5 delivery payment under Annex 1 to this Contract.

## If for the fulfilment of the requirements of the Client under this Contract other deliveries and activities not expressly mentioned in this Contract are necessary, the Supplier shall procure such deliveries or shall carry out such activities at its own expense without any effect on the Purchase Price.

## The Object of Purchase and its components and parts shall be delivered new (i.e. not remanufactured).

## The Supplier shall perform this Contract in Deliverables defined in Annex 1 (*Summary of Deliverables, Time Schedule and Payments*).

# SUPPLIER’s duties

## The Supplier shall ensure that the Object of Purchase complies with all technical specifications and performance requirements stipulated in Annex 2 (*Technical Specifications*).

## During the performance of this Contract the Supplier proceeds independently, unless hereunder stated otherwise. If the Supplier receives instructions from the Client, the Supplier shall follow such instructions unless those are in contradiction to the applicable law or this Contract. If the Supplier finds out or should have found out by exercising professional care that the instructions are technically inappropriate or are in contradiction to this Contract, then the Supplier must notify the Client.

## The Object of Purchase shall fulfil all legal regulations and technical and quality Czech or EU standards.

## The Supplier shall provide technical documentation on the delivered parts of the Object of Purchase detailed enough so that the Client can carry out mandatory assessment of the compliance of the future fully completed 3D Atom Probe Tomography with legally binding Czech and EU standards.

# confidential information

## Should any Party disclose to the other Party information that is of confidential nature (“**Confidential Information**”), the receiving Party may use the Confidential Information solely for the purposes of the fulfilment of this Contract, i.e. for the manufacture, delivery and operation of the Object of Purchase. Confidential Information provided in written must be labelled as such when provided. Confidential Information provided orally must be identified as confidential without undue delay after the disclosure.

## The receiving Party shall ensure that the Confidential Information will be accessed only by persons (e.g. employees and/or subcontractors) that need such access for the fulfilment of this Contract. The receiving Party shall take all reasonable measures to ensure that the Confidential Information will not be accessed by any other third party and/or by any unauthorized person. The Disclosing Part may require that the Confidential Information is provided to the receiving Party or by the receiving Party to any other person only based on a non-disclosure agreement containing reasonable penalties for breach.

## Should the confidential information have the form of an object possessed by the Supplier protected by intellectual property rights laws or should it form know-how of the Supplier, Art. 4 of this Contract applies.

# LICENCE of the Supplier

## If any part of the Object of Purchase forms an object protected by intellectual property rights laws and/or forms know-how of the Supplier, the Supplier grants to the Client a right to use such part of the Object of Purchase, including related documentation (“**Supplier’s Proprietary Information**”) in the original or modified version (“**Licence**”) for the purposes listed in Art. 4.3. The Supplier provides 5 (five) Licences.

## The License is granted:

#### royalty free worldwide;

#### for the period of validity of the rights to each of the licensed intellectual property objects, which applies adequately to the related know-how.

## The Licence comprises the right to use the Object of Purchase for research and development activities including necessary modifications of the Object of Purchase including software and limited handover of necessary documentation upon signature of a non-disclosure agreement to third parties for the purposes of operation, servicing and further development of the Object of Purchase.

## This granted License also includes the Supplier’s permission to the Client to modify and/or alter and/or otherwise change any part of the Supplier’s Proprietary Information; either by itself or with assistance of any third party. This permission shall apply *mutatis mutandis* to the Client’s entitlement to combine and/or merge any part of the Supplier’s Proprietary Information with any other work; either by itself or with assistance of any third party.

## The Client is entitled to transfer/ assign the License on a third party if the ownership to the Object of Purchase shall pass on such third party*.* The Client shall inform the Supplier within undue delay thereon.

## The Client is not required to use the Licence, unless maintenance of any right depends on the exercise thereof.

## The Supplier hereby represents and warrants to the Client that:

#### it is entitled to use and enforce all intellectual property rights to the Supplier’s Proprietary Information, in order to be ensured that the Client may use the Supplier’s Proprietary Information properly and without any interference; and

#### it is entitled to grant the License to the Client in the extent specified in this Contract.

## If the Licence is endangered or infringed, the Client shall inform the Supplier accordingly without undue delay after ascertaining this fact. The Supplier shall provide the Client with cooperation to ensure the legal protection of the Licence. It is hereby explicitly agreed that the Supplier shall give the Client consent to enforce the industrial property rights and/or related know-how rights covered by the License.

# Monitoring of performance of the Contract

## The Supplier shall enable the Client to exercise inspections of the performance of this Contract. For this purpose, the Supplier shall provide to the Client all information regarding the status of the design and manufacture of the Object of Purchase at the request of the Client, anytime during performance of this Contract.

## The Supplier shall report to the Client about the progress of the Contract fulfilment every month either in a form of written report or periodic conference meetings.

## If the Client, especially during an inspection, ascertains any breach of the Supplier’s duties under this Contract, the Client shall notify in written the Supplier of such breaches. The Supplier has to respond to such notification and suggest, in an appropriate detail, remedying the deficiencies, within fourteen (14) calendar days, unless the Parties agree otherwise.

# delivery TERMS

## The place of delivery shall be the registered office of the Client: Dolejškova 1402/5, Praha 8, ZIP 182 00, the Czech Republic.

## The Supplier shall carry out performance and verification tests of the Objects of Purchase at his premises (factory acceptance tests), prior to shipment of the system according to Annex 4 (*Factory and Site Validation*). The Supplier is required to provide the factory acceptance test with the brief report to the Client. The Supplier is entitled to begin the transportation of the Object of Purchase only after the acceptance of the factory acceptance test and the report by the Client and after reaching an agreement on the date of beginning of the transportation with the Client.

## Following delivery and installation of the Objects of Purchase, the Supplier shall carry out performance and verification tests of the installed system at the Client’ site (site acceptance test), according to Annex 4 (*Factory and Site Validation*). Subsequently the personnel training lasting at least 3 (three) days provided by the Supplier will take place.

The training must include standard operation of the Object of Purchase and daily maintenance typically performed by the user. Furthermore, the software for reconstruction and data evaluation must be demonstrated. The handling of the vacuum/cryo transfer system must be demonstrated.

## The Supplier shall be responsible for all duties and formalities related to the export of the Object of Purchase from the country of origin. Customs duties, if any, related to the export from the country of origin are included in the Purchase Price.

The Client shall be responsible for all duties and formalities related to the import of the Object of Purchase to the EU/ the Czech Republic. Customs duties, if any, related to the import are excluded from the Purchase Price.

## The Supplier shall secure/ obtain the export license for export of the Object of Purchase to the Czech Republic, if needed, within 3 months from the conclusion of this Contract.

## Should it not be possible despite due efforts of the Supplier to secure the export licence within the deadline above, the Supplier shall inform the Client on the status of the application for the license and on the expected extra time needed to secure the license. The Parties may in written (even repeatedly) agree on an additional time period provided to the Supplier in order to secure the export license. Should the export license be secured within the extra time, all deadlines of this Contract extend by the time period that elapsed between the original deadline of 3 months and the actual time of obtaining the export license.

## Should any Party not agree on the extension or on the repeated extension of the deadline above, both Parties are entitled to withdraw from this Contract according to Art 12.3. hereof.

## The Supplier shall perform individual Deliverables in terms stipulated in Annex 1 (*Summary of Deliverables, Time Schedule and Payments*).

## The Client is entitled to extend the deadlines under this Contract by the time period needed to prepare the laboratory for installation of the equipment. Should this extension exceed 3 (three) months the Supplier is entitled to ask for reimbursement of the costs related with the stowage of the Object of Purchase.

# price and payment terms

## The total purchase price for the Object of Purchase is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without value added tax (“**VAT**”) (“**Purchase Price**”). The Purchase Price represents the Supplier´s binding maximum price which consists of:

|  |  |
| --- | --- |
| The LEAP 6000 XR | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |
| A fully-integrated, automated plasma cleaner | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |
| The Productivity Enhancements Package | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |
| The LEAP 6000 XR Accessory Package | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |
| Simplex Manual Electropolish Station without Microscope | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |
| FREIGHT | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,-EUR without VAT |

The price for post-warranty service (duration one year) according to Art. 11 of this Contract is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,- EUR without VAT. The price for post-warranty service shall be paid in four payments regularly in the period of 3 months in the sum of (\_\_\_\_\_\_\_\_\_\_\_\_\_\_=1/4 of the price for post-warranty service),- EUR without VAT. Similar rules relating to the Purchase Prices stated in this Contract shall *mutatis mutandis* apply on the price for post-warranty service unless otherwise provided.

## VAT shall be imposed on top of all payments made hereunder according to valid legislation.

## The Purchase Price and price of the post-warranty service cannot be exceeded. The Purchase Price includes all costs and expenses of the Supplier related to the performance of this Contract especially the design, manufacture, assembly, factory testing, cleaning, delivery to the Client, installation and on-site integral testing and performance verification of the Object of Purchase, costs of the Licence, insurance, bank-guarantees, development of prices of materials and development of foreign currency exchange rates. The Purchase Price includes also costs of the export licence, customs duties (if applicable), warranty service and any other costs and expenses connected with the performance of this Contract.

## The Purchase Price may be changed only in accordance with the valid legislation on public contract awarding.

## If the Supplier performs the subject-matter hereof duly in line herewith without substantial breaches of the Contract and if there are no obvious reasons for doubts on continuing of due performance hereof by the Supplier taking into account the overall approach of the Supplier to the Contract performance (presented particularly by due preparation for performance of activities that are to come) and if it might ease further performance hereof by the Supplier, the Client reserves the right fully on its discretion to provide the Supplier with the Purchase Price partial instalments (Payments) or any parts of them sooner than scheduled hereunder or in higher amount than stipulated by Annex No 1 hereto, Summary of Deliverables, Time Schedule and Payments (i.e. any Payments might be increased with proportional decreasing of future payments). If the conditions stipulated above are met the Client is entitled to modify the payment schedule included in the Annex No 1 hereto anyhow in favour of the Supplier and to provide it with any prepayment.

## The Purchase Price shall be paid on the basis of tax documents – invoices, to the account of the Supplier designated in the invoice which shall be same as the bank account designated in this Contract. The Purchase Price shall be invoiced and paid upon acceptance of any Deliverable following the payment schedule set out in Annex 1 (*Summary of Deliverables, Time Schedule and Payments*). The price for the post-warranty service shall be invoiced quarterly and retrospectively with the accounting date at the end of a third calendar month of respective quarter. The Supplier is entitled to issue any invoice no sooner than on the moment a Deliverable is duly completed and accepted by the Client in accordance with this Contract.

## The Client shall execute payments on the basis of duly issued invoices within 30 days from their receipt. If the Supplier stipulates any shorter due period in an invoice such different due period shall not be deemed relevant and the due period stipulated herein prevails. Any invoice shall be considered to be paid for on the day when the invoiced amount is deducted from the Client’s account on behalf of the Supplier’s account.

The invoices shall be sent to the Client solely in the electronic form to the address [xxx](mailto:efaktury@fzu.cz)

## The invoice issued by the Supplier as a tax document must contain all information required by the applicable laws of the Czech Republic. The Client shall advice the Supplier on proper contents of invoices if requested prior to invoicing.

## Invoices shall contain also a registration number and a title of a grant project if requested by the Supplier prior to invoicing,

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

## Should the invoice does not contain the above-mentioned information, the Client is entitled to return it to the Supplier during its due 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 Client.

# ACCEPTANCE OF DELIVERables, Handover of individual parts of Object of purchase, acceptance of complete object of purchase

## Upon receiving any documents or reports necessary for completion of Deliverables D1 to D3, the Client shall provide the Supplier **within 15 working days** with its comments to the submitted documents. The Supplier shall be obliged to take the Client’s comments into account, i.e. the Supplier shall accept all justified and materially correct comments and requirements for changes made by the Client. Should the Supplier consider any of the comments or requirements made by the Client as materially incorrect or unacceptable, the Supplier shall specify in writing his reasons for refusing to accept them. The Supplier will produce final documents containing all justified and materially correct comments and requirements for changes raised by the Client.

## Should any Deliverable D1 to D4 be duly completed and comply with this Contract, the Client shall issue to the Supplier, without undue delay, a confirmation on the due execution of the Deliverable (hereinafter the “**Deliverable Acceptance Protocol**“). The Client shall not be obliged to verify the correctness of all calculations and/or technical solution details during the course of the review and acceptance of the Deliverables. Acceptance of the individual Deliverables does not release the Supplier from his liability for the technical compliance and completeness of the entire Object of Purchase.

## On-site final acceptance, and handover and takeover of the Object of Purchase (Deliverable D5) shall be realized on the basis of a Factory and Site Validation test stated in Annex 4 (hereinafter the “**Final Acceptance Protocol**“) which shall contain at least the following information:

#### identification of the Supplier, Client and subcontractors, if there are any;

#### identification of the Deliverable;

#### declaration of the Client that he received from the Supplier all technical information and documentation covering all delivered equipment and software, its operation, maintenance, and service;

#### declaration of the Client that the personnel training was duly realized by the Supplier,

#### statement of the Client on acceptance of the Deliverable;

#### list of defects, and/or backlogs or performance deficiencies, if any;

#### date of the signature.

## In case of defects of the delivered system related to Deliverable D5, for which the Supplier is responsible, the Client is entitled to refuse the acceptance of that Deliverable. The Supplier is required to suggest the manner and time limit of removal of the defect within ten (10) working days from the date of Client’s refusal of the acceptance. The Supplier shall remedy the defects within one (1) month from the date on which the Supplier received the defective device back from the Client or from the date of Client’s refusal of the acceptance in case that the defective device stays in the lab of the Client with its written consent, unless Parties agree otherwise (particularly due to the fact that period of 1 month is technically impossible).

## The Client is entitled at his discretion to accept the respective Deliverable despite the above-mentioned defects, in particular if such defects do not prevent the Client from the proper operation of the Object of Purchase. In such a case, the Parties shall list the defects in the Final Acceptance Protocol, including the manner and the date of their removal (remedy). The Client is entitled to require a reasonable discount on the Purchase Price instead of the removal of defects. If the Parties do not reach agreement in the protocol regarding the date of the removal, the Supplier shall remove the deficiencies within twenty (20) working days. Until the remedy of the deficiencies, the Client shall be entitled to postpone the last payment according to Annex 1.

## Should it be necessary to modify any part of the already accepted Deliverable in order to meet any requirement stipulated herein, the Supplier undertakes to perform such modifications and accepts that the costs related thereto are included in the Purchase Price.

# The ownership right and risk of loss and damage

## The ownership right to the subsystems of the Object of Purchase corresponding to the Deliverable D5 shall pass to the Client upon its acceptance confirmed by the signature of the Final Acceptance Protocol by both Parties.

The risk of loss and damage to the subsystems of the Object of Purchase corresponding to the Deliverable D5 shall pass to the Client upon its takeover by the Client from the Supplier.

# warranty

## The Supplier provides a warranty of quality of the Object of Purchase for the period **2 years**. The warranty period starts on the date of execution of the Final Acceptance Protocol. If on a warranty list or other document submitted by the Supplier the warranty period is of longer duration, then this longer warranty period shall have priority over the period stated in this Contract.

## If the Final Acceptance Protocol lists any defects, the warranty period shall begin on the day on which the last defect was removed.

## The Supplier shall bear all the expenses (e.g. travelling, accommodation expenses and price of equipment rental or purchase, transport of subsystems to the Supplier and back) related to the removal of defects for which it is responsible.

## If the Client ascertains a defect of the Object of Purchase during the warranty period, the Client shall notify such defect without undue delay to the Supplier. Defects may be notified on the last day of warranty period, at the latest.

## The Client notifies defects in writing via e-mail. The Supplier shall accept notifications of defects on the following e-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Supplier shall confirm receipt of the notification within five working days.

## In the notification, the Client shall describe the defect and suggest the manner of removal of the defect. The defect can be removed by:

#### replacement,

#### repair, or

#### adequate reduction of the price particularly in case of irremovable defects.

## The Supplier shall remove the warranty defect within 20 working days from its notification, unless Parties agree otherwise. The Client shall agree an extended deadline for defect removal with the Supplier if the Supplier submits evidence (e.g. subcontractors bid etc.) that removal of the defect within 20 working days is impossible for objective reasons (i.e. independent of the will of the Supplier), or if technical nature of the defect makes not possible its removal within 20 working days.

## The Supplier 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 Supplier 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 Client shall secure an expert opinion. If the expert considers the notification to be justified, then the Supplier shall return the reimbursement amount paid to him in accordance with the second sentence of this paragraph.

## Parties shall sign 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 in case of defects preventing the Client from use of the Object of Purchase for intended use by the period of time that elapses between the notification of the defect and its removal. The warranty period extension applies both on the defective component and all other (even non-defective) components that could not have been used for intended use due to the technical dependence.

## In case that the Supplier does not remove the defect within the stipulated or mutually agreed term or if the Supplier refuses to remove the defect, then the Client is entitled to remove the defect at his own costs and the Supplier shall reimburse these costs within 30 days after the Client’s request to do so. In such a case the existing warranty remains intact.

# Post-warranty service

## The Supplier provides a post-warranty service contract package of the Object of Purchase for the period **1 year**. The post-warranty period starts on the day after the day of expiry of the warranty period according to Art. 10 of this Contract.

## The purpose of the post-warranty service is to ensure operability and full functionality of the Object of Purchase through the service activities of the Supplier who is obliged to perform the service activities within requested time periods, properly and under the conditions of this Contract, in accordance with legal regulations.

## The post-warranty service means providing full service of the Object of Purchase, i.e. removing all defects of the Object of Purchase including delivery of required spare parts. Article 10 relating to removing of defects including time limits shall apply *mutatis mutandis.*

## The post-warranty service includes unlimited parts and labour for non-consumable instrument parts (coverage effective Monday through Friday, except holidays), all the expenses (e.g. travelling, accommodation expenses and price of equipment rental or purchase, transport of subsystems to the Supplier and back) related to the removal of defects, one preventive maintenance procedure (visit and parts), unlimited AP Suite software updates, free IVAS software updates (to a maximum of 5 licences), priority for remote and on-site support and preferred pricing on parts.

## The Parties agreed following time limits for performance within post-warranty service:

## The date of the preventive maintenance procedure shall be chosen by the Client and notified to the Supplier no later than 30 days before realization unless Parties agrees on other date of realization in writing.

## The Supplier undertakes to provide and carry out updates of the software for the Client whenever the Supplier and/or its subcontractor develops a newer version thereof, or if such a newer version of the software is made available in the market by an authorised person. The Supplier is required to notify the Client of the Software update in writing in good time together with sufficiently detailed description of the changes it contains and, in the event of the Client’s instruction, not to perform the update. The Supplier is required to provide the software update within the agreed period otherwise within 30 days from the announcement.

## The Supplier is required to answer to the Client’s question within remote support in two working days.

## The Supplier performs the service activities at its own expense and on its own responsibility. The price of post-warranty service can not be exceeded. The means of performance of the service activities is stated by the Supplier in order to meet the contractual or individual requirements. The Supplier is obliged to arrange the items necessary for the performance of the service activities.

## The Supplier shall perform the post-warranty service in accordance with the Contract, with relevant regulations, technical and other standards, directly or indirectly related to performing the post-warranty service.

## The Supplier agrees to use exclusively original spare parts when meeting the contractual requirements. The use of other than original spare parts is subject to the express consent of the Client.

# representations and warranties of the Supplier and Liability

## The Supplier represents and warrants to the Client that

#### he possesses all professional qualifications to supply the Objects of Purchase, has all the professional prerequisites necessary for the proper fulfilment of this Contract and is able to carry out activities foreseen hereunder with the due care, skill and knowledge of well-experienced experts in his particular professional field,

#### is fully authorized to perform this Contract, and

#### there are no obstacles on his side that would preclude him from the due performance of this Contract.

## The Supplier is aware of the importance to the Client of the fulfilment of this Contract in terms of quality, performance and schedule. In the event of a failure by the Supplier to meet them (e.g. in case of delay with delivery of Deliverables and/or in the case if any of the Object of Purchase does not meet the performance requirements), substantial damage may arise to the Client.

## **Indemnity clause:** Seller shall defend, indemnify, and hold harmless the Client and its affiliates, officers, directors, employees, agents or other persons authorized by the Client to use the Object of Purchase (collectively, "**Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, incurred by Indemnified Party (collectively, “**Losses**") arising out of a third party claim to the extent caused by a breach of the Contract by the Seller in connection with sale of the Object of Purchase to the Client; except (i) where such Losses are caused by an Indemnified Party or (ii) where an Indemnified Party failed to follow the written instructions or training materials with respect to such product.

## **Indirect Liability:** In no event, whether as a result of breach of Contract, warranty, tort (including negligence of any degree, strict liability or patent infringement) or otherwise, shall the Seller, its affiliates, subcontractors, or suppliers be liable for any loss of profit or revenues, loss of use of the products or services, or any associated equipment, cost of capital, loss of use of the products or services, or any associated equipment, cost of capital, cost of substitute goods, facilities, services or replacement power, downtime costs or claims of the Client’s customers for damages or for any special, proximate, consequential, punitive, incidental, indirect, exemplary or other similar damages. The provisions of the Civil Code relating to non-material damages caused by defects of the Object of Purchase are not affected by this provision.

## The Client is not liable for indirect/consequential damages as described in Art. 12.4.

## The total liability of the Seller on any claim, whether in contract, tort (including negligence of any degree and strict liability) or otherwise arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement or use of the Object of Purchase, shall not exceed the Purchase Price.

## The Supplier undertakes for a lifetime of the Object of Purchase (i.e. \_\_\_\_\_\_\_\_\_\_\_\_years) but always for a period at least of thirteen (13) years from the date of the Final Acceptance Protocol

## to ensure the availability of spare parts for the Object of Purchase,

## to provide remote support by a technician (email address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) at own costs,

## to provide repair services in the event that the Object of Purchase is out of service for more than 1 (one) year. The Client is obliged to inform the Supplier without undue delay about the malfunction of the Object of Purchase.

# Bank Guarantee

## To secure its obligations, the Seller shall provide the Client with a bank guarantees issued by a bank with a minimum rating of A-/A-/A3 according to at least one of the ratings published by S&P/Fitch/Moody's valid on the date of issue of the bank guarantee (the “**Bank Guarantee**”). Every single Bank Guarantee shall be issued for an amount corresponding to the respective Payment for Deliverable within that the Bank Guarantee is required according to Annex 1.

## The Seller shall hand over the original counterpart of the Bank Guarantee to the Client within a respective Deliverable according to Annex 1 (i. e. along with a respective performance within Deliverable D1 and D2 where the Bank Guarantee is required). The Bank Guarantees shall be valid until signing the Final Acceptance Protocol by the Parties. The Bank Guarantee shall be always prolonged or replaced by a new Bank Guarantee by the Seller, in sufficient time prior to its expiry, in order to maintain its validity until the minimum term above.

## The Seller is obliged to ensure (and the Bank Guarantee must clearly states) the Client is entitled to draw on the Bank Guarantee at the first demand and without any objections or reservations from the bank (in particular, the Seller will ensure the Client will not be obliged to prove or document the reason for drawing on the Bank Guarantee in any way, respectively prove or document the Seller’s breach of any obligation) in the event that the Seller (or a Subcontractor) breaches any obligation under this Contract, applicable laws or technical standards, and the Client will be entitled to contractual penalties, damages or any other remedy (whether punitive, compensatory, restitutionary, or otherwise) as a result of such breach.

## The Client shall be entitled to reject the Bank Guarantee and/or any related document or documents that do(es) not match the amount, conditions and date of issue of the Bank Guarantee according to this Contract. In that case, these documents will not be considered a valid Bank Guarantee.

## The Bank Guarantee will be issued by the Seller’s bank, namely \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Nevertheless, should the rating of the issuing bank decreases during the duration of this Contract Seller shall provide the Client with another Bank Guarantee issued by another bank complying with the rating required in Article 13.1, without the need of concluding a written amendment to this Contract.

## The Seller shall provide the Client with documents proving the validity of the Bank Guarantee within five (5) days of the Client’s request. For the avoidance of doubt, the Client is entitled to file requests pursuant this Article 13.6 repeatedly at any time during the duration of this Contract; however, the Client shall not abuse this right and shall submit such request with reasonable time intervals.

# penalties

## If the Supplier is in delay with the Deliverables D1 or D2, the Supplier shall pay to the Client a contractual penalty in the amount of 0.01% of the Purchase Price (excl. VAT) for every even incomplete day of delay.

## If the Supplier is in delay with the Deliverables D4 or D5, the Supplier shall pay to the Client a contractual penalty in the amount of 0.05% of the Purchase Price (excl. VAT) for every even incomplete day of delay.

## If the Supplier is in delay with the removal of a defect of the Object of Purchase (either under Art. 10 or Art. 11 of this Contract) preventing the Client from proper operation of the Object of Purchase, the Supplier shall pay to the Client a contractual penalty in the amount of 0.04% of the Purchase Price (excl. VAT) for every even incomplete day of delay. In case of defects that do not prevent the Client from proper operation of the Object of Purchase the contractual penalty shall amount to 0.02% of the Purchase Price (excl. VAT) for every even incomplete day of delay.

## If the Supplier is in delay with fulfilment of obligation set out in Art. 11.5 of this Contract, the Supplier shall pay to the Client a contractual penalty in the amount of 0.3% of the price of the post-warranty service for every even incomplete day of delay. If the Supplier breaches its duty to announce to Client the newer version of the software, the Supplier shall pay to the Client a contractual penalty in the amount of 0.5% of the price of the post-warranty service for each breach of this obligation and for every even incomplete day of delay.

## If the Client does not pay the Purchase Price or price of post-warranty service in accordance with this Contract, it shall pay the Supplier a statutory default interest pursuant to applicable Czech laws of the outstanding amount for each day of delay. The statutory default interest on late payments according to the previous sentence is the only monetary sanction available to the Supplier in the event of the Client’s default in payment. The Client’s default in payment will not alter the fact the Supplier is obliged to deliver the Object of Purchase or provide post-warranty service in a proper and timely manner (i.e., in full compliance with this Contract) within the time limit according to the Annex 1. The Supplier shall not be entitled to withhold performance in such an event and there shall be no extension of any of the agreed terms for delivery under this Contract.

## The Supplier shall pay any of the contractual penalties charged under this Contract within thirty (30) days from the day, on which the Client enumerated its claim for the contractual penalty. The payment of contractual penalties shall not affect the right of the Client to damages in the extent in which such damages exceed the contractual penalty.

## Total amount of contractual penalties for delay according to Art. 14.1 and 14.2 hereof shall not exceed 10% of the Purchase Price (excl. VAT).

## The Client is entitled to unilaterally set off claims arising from the contractual penalties against the claim of the Supplier for even yet undue payment of the Purchase Price.

# right of withdrawal AND Vis major

## The Client is entitled to withdraw from this Contract without any penalties, in cases stated in this contract and, furthermore, if any of the following circumstances occur:

#### the Supplier breaches this Contract in a substantial manner;

#### the Supplier fails to report on the implementation progress for more than 60 consecutive days;

#### the Supplier is in delay with any Deliverable stipulated in Annex 1 for a period exceeding 4 (four) calendar months;

#### results of the factory testing, even after third testing attempt, do not meet the requirements stipulated in Annex 2; or

#### the insolvency proceeding is initiated against the Supplier.

## The Supplier is entitled to withdraw from this Contract in the following cases:

1. the Client breaches this Contract in a substantial manner;
2. the Client is in delay with any payment for a period longer than 2 calendar months.

## Both Parties are entitled to withdraw from this Contract if the Supplier does not secure/ obtain the export licence in accordance with Art. 6.4 hereof.

## The act of withdrawal from the Contract shall become effective on the day of delivery of the notification in writing from one Party to the other with consequences of the Contract termination effective in the “ex tunc” regime, unless the Parties agree otherwise.

## Circumstances precluding liability shall be deemed to have been constituted by such circumstances / obstacles which arose independently of the will of the obliged Party, and which prevent fulfilment of that Party’s obligation, provided that it could not be reasonably expected that the obliged Party could overcome or avert this obstacle or its consequences, and furthermore that such Party could foresee such obstacle when it entered into the respective covenants. Liability cannot be precluded by obstacles that arose only after the obliged Party was in default with fulfilment of its obligations, or which arose in connection with its economic situation. The effects precluding liability shall be limited to the period during which the obstacles causing these effects persist.

## Should a situation occur, which a Party could reasonably consider to constitute vis major (force majeure), and which could affect fulfilment of its obligations hereunder, such Party shall immediately notify the other Party and attempt to continue in its performance hereunder in a reasonable degree. Simultaneously, such Party shall inform the other one of any and all its proposals, including alternative modes of performance, however, without the other Party’s consent, the Party shall not proceed to carry out such alternative performance. If a situation constituting vis major occurs, the deadlines imposed hereunder shall be extended by the period of the duration of the said vis major.

# Confidentiality

Parties shall not disclose information that shall become available to them in connection with this Contract and its performance and whose disclosure could harm the other Party. Duties of the Client ensuing for the applicable legal regulations remain unaffected.

# representatives of the parties

## The Supplier appoints the following representative for the communication with the Client:

In technical matters:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tel.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## The Client appoints the following representative for the communication with the Supplier:

In technical matters:

Name: xxx

E-mail: xxx

# SOCIAL, ECOLOGICAL AND INNOVATIVE ASPECTS

The Client aims to conclude contracts with suppliers that take into account and implement the principles of social responsibility, ecological sustainability and innovation. Therefore, the Supplier shall ensure that:

1. this Contract shall be fulfilled only by persons that are employed in accordance with the applicable legal regulations (no illegal or child workers);
2. while performing this Contract, all applicable health and safety regulations and rules at work place are observed;
3. all persons performing this Contract are employed under fair and non-discriminatory working conditions;
4. if presented with different manners of fulfilling this Contract, the Supplier shall select the solution/process that is in accordance with the principles governing nature conservation and nature protection, ecological sustainability and ecological waste management; and
5. if presented with different manners of fulfilling this Contract, the Seller shall select the solution/process that is the most innovative.

# Final provisions

## This Contract is governed by the laws of the Czech Republic, especially by the Civil Code.

## All disputes arising out of this Contract or out of legal relations connected with this Contract shall be preferably 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.

## The Supplier takes into account that the Client is not in relation to this Contract an entrepreneur, nor the subject matter of this Contract is connected with the business activities of the Client.

## The Supplier is not entitled to set off any of its claims or his debtor’s claims against the Client’s claims. The Supplier is not entitled to transfer its claims against the Client that arose on the basis or in connection with this Contract on third parties. The Supplier is not entitled to transfer rights and duties from this Contract or its part on third parties.

## All modifications and supplements of this Contract must be in writing.

## If any of provisions of this Contract are invalid or ineffective, then such invalidity, ineffectiveness or unenforceability shall not cause the invalidity, ineffectiveness, or unenforceability hereof as a whole and 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 as well as most closely reflects the intentions of the Parties at the time of conclusion hereof, to an extent permitted by the laws and regulations of the Czech Republic.

## 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.

## Integral parts of this Contract are:

## Annex 1 (*Summary of Deliverables, Time Schedule and Payments*)

## Annex 2 (*Technical Specifications*)

## Annex 3 (*Supplier’s Bid*)

Annex 4 (*Factory and Site Validation*)

## In case of any discrepancy between any provisions of this Contract and any provisions of its Annexes the provisions of this Contract shall prevail. In case of any discrepancy between any provisions of Annexes hereof the provisions containing conditions and specifications that are more favourable to the Client (i.e. higher technical specification values and/or more technically advanced or demanding solutions etc.) shall prevail.

## This Contract shall be valid on the date of the signature of both Parties and effective on the date of its publication in the Register of contracts according to special legal regulation.

**in witness whereof** attach Parties their signatures:

**Client**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: doc. Ing. Miroslav Chomát, CSc.

Position: Director

**Supplier**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_