

ANNEX NO. 2 OF DOCUMENTATION OF PROCUREMENT PROCEDURE

**DRAFT PURCHASE CONTRACT**

**Purchase contract**

**I. CONTRACTING PARTIES**

**1. Buyer**

**Charles University**

**Faculty of Mathematics and Physics**

represented by: doc. RNDr. Mirko Rokyta, CSc., dean of the Faculty of Mathematics and Physics

registered office: Ovocný trh 560/5, 116 36 Praha 1

Company Reg. No.: 00216208

TAX Identification No.: CZ00216208

VAT payer: YES

bank details (account number): Komerční banka, a.s., account number: 38330021/0100

contact person: doc. RNDr. Miroslav Cieslar, CSc.

phone number: +420 951 551 356

e-mail: Miroslav.Cieslar@mff.cuni.cz

Data Box ID: piyj9b4

(hereinafter referred to as the "**Buyer**")

and

**2. Seller**

**[It will be completed before the conclusion of the contract]**

represented by: [It will be completed before the conclusion of the contract]

registered office: [It will be completed before the conclusion of the contract]

Company Reg. No.: [It will be completed before the conclusion of the contract]

TAX Identification No.: [It will be completed before the conclusion of the contract]

VAT payer: [It will be completed before the conclusion of the contract]

registered in [It will be completed before the conclusion of the contract] (*e.g. in the Commercial Register*) maintained by [It will be completed before the conclusion of the contract] (*e.g. by the Regional Court in*) [It will be completed before the conclusion of the contract]

under the File No.: [It will be completed before the conclusion of the contract]

bank details (account number): [It will be completed before the conclusion of the contract]

contact person: [It will be completed before the conclusion of the contract]

phone number: [It will be completed before the conclusion of the contract]

e-mail: [It will be completed before the conclusion of the contract]

Data Box ID: [It will be completed before the conclusion of the contract]

(hereinafter referred to as the "**Seller**")

(the Buyer and the Seller hereinafter are also jointly referred as to the "**Contracting Parties**" or individually as the "**Contracting Party**")

concluded in accordance with Section 2079 et seq. of the Act No. 89/2012 Coll., Civil Code, as amended (hereinafter just the "**Civil Code**") this purchase contract (hereinafter just the "**Contract**").

## II. INTRODUCTORY PROVISIONS

3. The Contract is concluded on the basis of the results of the procurement procedure (hereinafter just the "**procurement procedure**") for an above-threshold public contract called **High-speed camera system for 4D STEM**, the contract registration number in the Tenders Electronic Daily: **[It will be completed before the conclusion of the contract]** (hereinafter just the "**public contract**"). The individual provisions of the Contract shall be interpreted in accordance with the conditions of the procurement procedure and the tender of the Seller submitted in the procurement procedure.
4. The purpose of the Contract is to ensure the supply of the further specified high-speed camera system for 4D STEM to the Buyer and to provide additional performance to the Buyer in accordance with the terms and conditions stated in the Contract in a way, to ensure the increased quality of professional education of the Buyer's students at the Faculty of Mathematics and Physics and increased quality of VVI facilities.
5. The Contracting authority intends to (co)finance the public contract the EU funds – i.e. from the OP JAK programme (hereinafter just the "**Operational programme**"), project: ERDF Kvalita na UK, registration number of project: CZ.02.02.01/00/23\_023/0009064 (hereinafter just the "**Project**"). The procurement procedure was realised in comply with the rules of the Operational programme.
6. Within the fulfilling the obligations arising from the Contract, the Seller is obliged to comply with the requirements set forth in the terms and conditions for the provision of the grant from the Operational programme, with which the Seller was demonstrably familiar. Within the fulfilling the obligations arising from the Contract, the Seller is obliged to provide the Buyer with sufficient cooperation to fulfil the Buyer's obligations established by the rules of the Operational programme.

## III. SUBJECT OF PURCHASE

7. The subject of purchase according to this Contract is the supply of specified high-speed camera system for 4D STEM including all components and accessories (hereinafter just the "**Subject of purchase**").
8. The exact specification of Subject of purchase is given in the annex of the Contract (Annex No. 1 of the Contract), which form an integral part of the Contract (hereinafter just the "**Specification**").
9. The Subject of purchase will serve the following purpose: a device enabling the improvement of the quality of scientific research and the improvement of professional education.

10. The Subject of purchase must be new at the time of delivery to the Buyer, in the quantity, quality and design stipulated in the Specification. Furthermore, the Subject of purchase must be of such quality and design,
  - 10.1. that it corresponds to the to the characteristics described by the Seller or the manufacturer which the Buyer expected with regard to the nature of the Contract and on the basis of the advertising carried out by them. The Subject of purchase shall correspond to the performance offered by the Seller in the tender submitted to the Public contract, based on which the Contract is concluded;
  - 10.2. that it is suitable for the purpose arising from the Contract,
  - 10.3. that meets the legal regulations applicable and effective at the time of handing over the Subject of purchase to the Buyer.
11. The Seller is obliged to supply to the Buyer only such the Subject of purchase that meets all the Buyer's requirements for its use by the Buyer and which also complies with applicable and effective legislation.

#### IV. SUBJECT OF OBLIGATION

12. The Seller undertakes to hand over the Subject of Purchase to the Buyer with all its components and accessories and to transfer to the Buyer the right of ownership in the Subject of purchase and to provide the Buyer with the related services defined in the Contract.
13. The Buyer undertakes to take over the Subject of purchase with all its components and accessories, to accept it as his ownership, to accept the related performance defined in the Contract and to pay the Seller the agreed price and the relevant VAT, if the Seller is obliged under Act No. 235/2004 Coll., On Value Added Tax, as amended (hereinafter referred to as "**ZoDPH**"), to pay VAT.
14. The Seller is obliged to hand over the Subject of purchase to the Buyer under the Contract includes the following performance:
  - 14.1. to supply the Subject of purchase to the Buyer in suitable packaging in the appropriate quantity to the place of performance according to paragraph 43 of the Contract;
  - 14.2. to unload the Subject of purchase from the means of transport in which the Subject of purchase was delivered to the place of performance in accordance with paragraph 43 of the Contract, according to the Buyer's instructions;
  - 14.3. to place the Subject of purchase at the place of performance according to paragraph 43 of the Contract, according to the Buyer's instructions;
  - 14.4. to assemble, connect and put the Subject of purchase into operation at the place of performance according to the paragraph 43 of the Contract, according to the Buyer's instructions;
  - 14.5. to hand over to the Buyer the documents required to take over and to use the Subject of purchase in the Czech or English language with the exception of professional technical terms (hereinafter referred to as "**Documents**"). According to the express will of the Contracting Parties, the Documents are accessories of the Subject of purchase. The Seller is obliged to hand over to the Buyer, in particular, Documents:
    - 14.5.1. from which the manner of use, maintenance, identification of the manufacturer, etc. of the Subject of purchase must be shown, while all data must be given in the Czech or English language, with the exception of professional technical terms;

- 14.5.2. from which it must be shown that the Subject of purchase, delivered under the Contract, meets the requirements for its use by the Buyer for the given purpose in accordance with the legal regulations valid and effective on the date of delivery of the Subject of purchase to the Buyer.
15. The Seller further undertakes to provide to the Buyer, according to his instructions, following related performance (hereinafter just the "**Related performance**"): 15.1. the necessary cooperation in order to become familiar with the properties or the way of using the delivered Subject of purchase; 15.2. acquainting the Buyer's employees in the ways of using the Subject of purchase.
16. The Subject of purchase must meet all requirements based on the technical and safety standards valid in the Czech Republic for this type of device. Delivery of complete equipment documentation and other documents required for proper operation and maintenance is part of the performance.
17. The Seller is obliged to fulfil the obligations of the Contract at his own expense and risk, properly and in due time.
18. The Seller is obliged to cooperate with the provider of the exclusive service for the existing microscope JEOL JEM2200FS to ensure that the Subject of Purchase is installed in such a manner that it is compatible with the existing device and in accordance with the requirements of the existing device.

## V. LICENSE CONDITIONS

19. The Seller hereby grants the Buyer a license within the meaning of Section 2358 et seq. of the Civil Code (hereinafter the "**License**") to all parts of the Subject of purchase, which will be an author's work within the meaning of Act No. 121/2000 Coll., on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended (hereinafter referred to as "**Author's work**" or "**Author's works**"), from the moment the Buyer takes over the relevant Author's work.
20. The reward (payment) for the provision of any License is a part of the Price.
21. The Seller grants the Buyer the Licence: 21.1. as irrevocable and non-exclusive, 21.2. in the case of software (of any kind), which is part of the Seller's performance under this Contract, the License applies to the same extent to any other versions of this software modified on the basis of the Contract as non-exclusive, 21.3. for payment, 21.4. to all known ways of use, 21.5. in terms of time scope for the duration of the property rights to the relevant Author's work, 21.6. in terms of territorial scope as unlimited, 21.7. in terms of quantitative scope as unlimited.
22. The Buyer is not obliged to use the License, not even in part, the Buyer is entitled to grant sub-licenses and transfer the License or its part to a third person.
23. The Buyer accepts the authorization according to this article of the Contract.

24. If the performance under this Contract includes so-called proprietary software (hereinafter the "**Proprietary software**") for which the Seller cannot provide the Buyer with authorization according to paragraphs 18 to 19 of the Contract or cannot fairly be required to do so, it is sufficient for the Buyer to acquire a non-exclusive right to use such software in any way at least for the duration of the Contract, without territorial restrictions and in the quantitative range that is necessary to cover all the needs of the Buyer on the date of conclusion of the Contract.
25. If part of the Seller's performance under the Contract is so-called open source software, for which the Seller cannot provide the Buyer with authorization according to paragraphs 18 to 19 of the Contract or cannot fairly be required to do so, the Seller is obliged to ensure that it is open source software, which is provided to the public free of charge, including source codes, complete original user, operational and administrative documentation and the right to change such software, as well as the possibility of using such software by the Buyer for the purpose agreed in the Contract according to the terms of the Contract.
26. The granting of all rights specified in this article of the Contract cannot be terminated by the Seller and their award is not affected by the termination of the Contract.
27. The Seller declares that all performance delivered by him under the Contract will be free of legal defects and undertakes to reimburse the Buyer in full in the event that a third person successfully asserts a copyright or other claim arising from a legal defect in the performance provided under the Contract. In the event that a third person claim arising in connection with the Seller's performance under the Contract, regardless of its legitimacy, would lead to a temporary or permanent injunction or restriction of the use of the Subject of purchase or part thereof, the Seller undertakes to provide an alternative solution and minimize the effects of such situation, without affecting the performance price agreed in accordance with the Contract, while at the same time the Buyer's claims for damages will not be affected.

## VI. PRICE

28. The purchase price for the Subject of purchase according to the Contract is **[It will be completed before the conclusion of the Contract],- CZK without VAT** (hereinafter referred to as "**Price**").
29. The Price is stated at the highest and non-exceed able, with the exemptions set in the Contract.
30. The Price includes all the expenses of the Seller associated with the fulfilment of Seller's obligations, which are agreed in the Contract. The Price includes, in particular, the price for handing over the Subject of purchase to the Buyer and the provision of Related performance. The Buyer is not obliged to pay any other financial amount other than the Price and eventually relevant VAT in connection with the performance of the Contract. The content of this paragraph is without prejudice and doesn't affect the Seller's right to any contractual penalty, interest on arrears, or other sanctions and the right to compensation for damages or non-material damages caused by the Buyer.

## VII. PAYMENT TERMS

31. If the Seller is obliged to pay VAT in accordance with the ZoDPH, in relation with the performance under the Contract, the Buyer is obliged to pay such VAT to Seller next to the Price. The Seller is responsible for ensuring, that the VAT rate related to the performance under

the Contract is set in accordance with the valid and effective legal provisions of the Czech Republic at the time of the chargeable event or the transaction.

32. The Seller shall account the Price and any relevant VAT by invoices (hereinafter referred to as the "**Invoice**").
33. The Seller is entitled to account the Price and any relevant VAT by the Invoice only after the Buyer has taken over the Subject of purchase in accordance with Article X of the Contract.
34. The Invoice must be in comply with all the standards of the tax document according to the ZoDPH. In case when the Seller is not registered as a VAT payer, the Invoice must be in comply with all the requirements of the tax document pursuant to Act No. 563/1991 Coll., On Accounting, as amended. The Invoice must always be in comply with all the requirements according to the Section 435 of the Civil Code. The Invoice must also meet the requirements set out in the terms and conditions for the provision of the grant from the Operational programme (in particular, it must contain the name of the Project and the registration number of the Project).
35. The maturity date of the Invoice must be set so that it is not shorter than 30 calendar days from the date of delivery of the Invoice to the Buyer.
36. If the Invoice sets a longer maturity date than the minimum set out in the previous paragraph, the Buyer is entitled to pay the Price and any relevant VAT within the maturity date specified in the Invoice.
37. The Price and any relevant VAT are always paid on the day they are debited from the Buyer's bank account.
38. If it follows from the information published by the tax authority in terms of the ZoDPH that the Seller is an unreliable VAT payer, the Buyer is entitled to pay the relevant VAT directly to the Seller's tax authority.
39. If the Invoice contains a bank account intended for payment of the Price and any VAT, which is not published by the tax authority in the sense of ZoDPH as a bank account number used by the Seller for economic activity, the Buyer is entitled to pay the Price and any VAT to the bank account published by the tax authority in the sense of ZoDPH as a bank account that is used by the Seller for economic activity.
40. If the relevant Invoice does not contain any mandatory or agreed information, or if the Price or VAT, or any other requirement of the Invoice is incorrectly determined, the Buyer is entitled to return the Invoice to the Seller for corrections. In that case the Buyer marks the reason for the return of the Invoice. The Seller is obliged to correct the Invoice accordingly to the Buyer's instructions and deliver the corrected Invoice to the Buyer without undue delay.
41. The Buyer does not provide the advance payments to the Seller.
42. Due to the financing of the public contract from the Operational programme, the issued Invoices are being checked by the grant provider. If the grant provider within his inspection finds deficiencies in the Invoice or the documents attached to the Invoice, the Buyer is also entitled to return this Invoice to the Seller. The Seller is obliged to such Invoice, or its attachments, correct according to the Buyer's instructions and immediately deliver the corrected Invoice to the Buyer.

## VIII. PLACE OF PERFORMANCE

- 43. The Seller is obliged to deliver the Subject of purchase to the Buyer at the following address: Charles University, Faculty of Mathematics and Physics, Ke Karlovu 5, 120 00 Prague 2, Czech Republic (hereinafter referred to as "**Place of performance**").
- 44. The Seller is obliged to deliver the Subject of purchase to the agreed place of performance in a suitable manner, given the transport accessibility of the given place.

## IX. PERIOD OF THE PERFORMANCE

- 45. The Seller is obliged to fulfil the obligation to hand over the Subject of purchase to the Buyer by no later than **7 months** after the date of effectiveness of the Contract.
- 46. The Seller is obliged to fulfil the obligation to provide the Related performance upon handing over the Subject of purchase to the Buyer.
- 47. The Seller is obliged to hand over the Subject of purchase to the Buyer at the Place of performance on a working day between 9:00 to 15:00.
- 48. The Seller is obliged to notify the Buyer of the delivery date of the Subject of purchase at least 10 working days in advance.
- 49. If the end of the agreed performance period falls on a Saturday, Sunday or holiday, the Seller is not in default if he delivers the Subject of purchase on the nearest working day within the time frame according to paragraph 47 of the Contract.
- 50. Provisions of paragraphs 47 to 49 of the Contract shall apply similarly to the provision of Related performance by the Seller.
- 51. Contracting parties agreed that Section 1912 of the Civil Code as well as the commercial practices, which are in their meaning or effects the same or similar to the said provision, shall not be applied.

## X. DELIVERY AND ACCEPTANCE OF THE SUBJECT OF PURCHASE

- 52. The obligation to hand over the Subject of purchase to the Buyer is fulfilled:
  - 52.1. if the Buyer takes over the Subject of purchase, or
  - 52.2. if the Seller allows the Buyer to dispose of the Subject of purchase at the Place of performance and the Buyer refuses, in violation of paragraph 56 of the Contract, to take over the Subject of purchase or, in violation of paragraph 56 of the Contract, he does not provide the necessary cooperation.
- 53. The Seller is obliged, based on the Buyer's request, to check the Subject of purchase in front of the Buyer or to demonstrate its functions. The demonstration of functions of the Subject of purchase means the achieving of parameters written in the technical specifications (mainly related to the sample measurement temperature and operational gas pressures).

54. Before taking over the Subject of purchase, the Buyer is entitled to check whether the Subject of purchase has all required properties and meets all requirements according to valid and effective legal regulations and the Contract. Information about meeting all requirements according to this Contract and valid and effective legal regulations will be a part of the protocol about the taking over the Subject of purchase.
55. The Seller is obliged to write a written document about the delivery of the Subject of purchase. The Seller is entitled to hand over the Subject of purchase to the Buyer in parts; however, this does not affect the fulfilment of the Seller's obligation to comply with the periods and deadlines specified in the Contract.
56. The Buyer is entitled to refuse to take over the Subject of purchase or not to cooperate with its takeover in particular in the following cases:
- 56.1. the Subject of purchase does not have the properties required by the Contract or
  - 56.2. the Subject of purchase does not have the properties required by valid and effective legal regulations or
  - 56.3. the Subject of purchase shows signs of obvious damage or contamination or
  - 56.4. the Seller delivers the Subject of purchase to a place other than as agreed in paragraph 43 of the Contract or
  - 56.5. the Seller delivers the Subject of purchase outside the time agreed in paragraph 47 of the Contract or
  - 56.6. the Seller delivers the Subject of purchase at a price contrary to the Contract or
  - 56.7. the Seller fails to fulfil the obligation set forth in paragraph 48 of the Contract or
  - 56.8. the Seller fails to fulfil any of his obligations according to paragraph 12, 13 or 53 of the Contract.
57. In the case that the Buyer refuses to take over the Subject of purchase, a record is drawn up between the Contracting parties stating the reason for not accepting the Subject of purchase and stating the views of the Contracting parties. The Seller ensures the processing of the record. If the record is not written in accordance with this paragraph, the Buyer communicates the reasons for refusing to take over the Subject of purchase to the Seller at his request. After the Seller removes the alleged defects, the Contracting parties agree on a new date for handing over the Subject of purchase to the Buyer. The agreement on the re-delivery date of the Subject of purchase to the Buyer does not change the performance period according to paragraph 45 of the Contract.

## **XI. ACQUISITION OF TITLE AND PASSING OF RISK OF DAMAGE**

58. The Buyer acquires the ownership right to the Subject of purchase when the Seller fulfils the obligation to hand over the Subject of purchase to the Buyer pursuant to paragraph 52 of the Contract.
59. The risk of damage to the Subject of purchase passes to the Buyer at the moment when the Seller fulfils the obligation to hand over the Subject of purchase to the Buyer in accordance with paragraph 52 of the Contract.
60. The Contracting parties agreed that Sections 2121 – 2123 of the Civil Code as well as business practises that are the same or similar in meaning or effects to the afore provision shall not be applied.



## XII. DEFECTS AND WARRANTY

61. The Subject of purchase must be free of all factual and legal defects and the Seller is obliged to ensure that the delivery and use of the Subject of purchase do not violate the rights of the Seller or other persons resulting from intellectual property rights. The Subject of purchase has a legal defect if another person claims the right to it.
62. The Seller provides the Buyer with a guarantee for the quality of the Subject of purchase, by which the Seller guarantees that the Subject of purchase will be fit for use for the purpose specified in the Contract during the warranty period and that it will retain the properties agreed upon in the Contract and will not have legal defects. The warranty period is 12 months (hereinafter referred to as "**Warranty period**"). The Warranty period for the delivered Subject of purchase begins on the day when the Seller fulfils the obligation to hand over the Subject of purchase to the Buyer in accordance with paragraph 52 of the Contract.
63. The Subject of purchase will be defective if it is not:
  - 63.1. upon acceptance by the Buyer or at any time during the Warranty period have the properties agreed in the Contract or
  - 63.2. upon acceptance by the Buyer or at any time during the Warranty period suitable for use for the purpose specified in the Contract or
  - 63.3. free of legal defects upon acceptance by the Buyer or at any time during the Warranty period.
64. The Related performance must be free of factual and legal defects. The Related performance will be defective if they are not in accordance with the Buyer's instructions, the Contract or legal regulations. If the defects related to the Related performance, the provisions of paragraphs 78 – 85 of the Contract shall apply mutatis mutandis.
65. The Buyer has rights from defective performance even if it is a defect that he had to have known with the usual attention when concluding the Contract or when taking over the Subject of purchase.
66. The Seller is not responsible for defects caused by the Buyer or other persons, unless the Buyer or such persons acted in accordance with the documents or instructions they received from the Seller.
67. The Buyer has no rights from defective performance, if the defect was caused by an external event after the risk of damage to the goods passed to the Buyer. This does not apply if the defect was caused by the Seller or any other person through whom he fulfilled his obligations arising from the Contract.
68. The Seller is not responsible for defects resulting from wear and tear of the Subject of purchase, which is usual for items of the same or similar type as the Subject of purchase.
69. The Seller is responsible for defects consisting in wear and tear of the Subject of purchase, which should not have occurred by the end of the Warranty period due to the requirements of the Contract for the quality and performance of the Subject of purchase.

### **XIII. ASSERTING RIGHTS FROM A DEFECTIVE PERFORMANCE**

70. If the Subject of purchase has a defect and the Seller is responsible for this defect of the Subject of purchase, the Buyer has rights from defective performance.
71. The Buyer is entitled to claim defects from the Seller in any way. The Seller is obliged to confirm receipt of the complaint in writing without undue delay. In the complaint, the Buyer shall provide a description of the defect or indicate how the defect manifests itself.
72. The defect is claimed in time if the written form of the complaint is sent to the Seller no later than the last day of the Warranty Period or if the complaint is communicated to him in any other form on the last day of the Warranty Period. If the end of the Warranty Period falls on a Saturday, Sunday or holiday, the defect is claimed in time if the written form of the complaint is sent to the Seller on the nearest working day, or if the complaint is communicated to him in any other form on the nearest working day.
73. If the Subject of purchase has a defect and the Seller is responsible for this defect of the Subject of purchase, the Buyer has right to:
  - 73.1. delivery of a new Subject of purchase without defects, if this is not clearly unreasonable due to the nature of the defect, if the defect concerns only a part of the Subject of purchase, the Buyer may only demand the replacement of such a part; if this is not possible, the Buyer may withdraw from the Contract, or
  - 73.2. delivery the missing part of the Subject of purchase, or
  - 73.3. remove the defect by free repair of the Subject of purchase, or
  - 73.4. a reasonable discount from the Price, or
  - 73.5. withdraw from the Contract.
74. The Buyer is entitled to request the removal of the defect by delivery of a new Subject of purchase or replacement of its part, if the same defect occurs again after its first repair or if the Buyer cannot properly use the Subject of purchase due to many defects.
75. The Buyer shall notify the Seller of the choice of claim from the defect in the complaint, or without undue delay after the complaint. The choice made cannot be changed by the Buyer without the consent of the Seller; this does not apply if the Buyer requested the repair of the defect which proves to be irreparable.
76. If the Buyer does not inform the Seller of the right he has chosen even without undue delay after the Seller has asked him to do so, the Seller must remove the defects, at his option, by repairing or delivering a new Subject of purchase or part thereof; the choice must not cause unreasonable costs to the Buyer.
77. The Buyer has the right to reimbursement of costs purposefully incurred in connection with the notification of defects to the Seller.

### **XIV. CONDITIONS FOR DEFECT REMOVAL**

78. The Seller is obliged to remove the defect claimed by the Buyer no later than 10 working days from the date of notification of the defect to the Seller, unless the Buyer and the Seller agree otherwise.

79. If the defect is not removed within the period according to the previous paragraph, the Buyer is entitled:
- 79.1. to ensure the defect is removed by another professionally qualified person, or
  - 79.2. to ensure the procurement of substitute performance by another professionally qualified person, or
  - 79.3. to demand a discount from the Price, or
  - 79.4. to withdraw from the Contract.
80. The Seller is obliged to reimburse the Buyer for all costs incurred by the Buyer in connection with the removal of the defect in accordance with the previous paragraph. In particular, the Seller undertakes to pay the price charged to the Buyer by another professionally qualified person according to paragraph 79.1 of the Contract, or according to paragraph 79.2 of the Contract.
81. The Seller is obliged to remove the defect, regardless of whether the claim of the defect is justified or not. However, if it is proven at any time later that the Buyer's claim of the defect was not justified, i.e. that the Seller was not responsible for the defect, the Buyer is obliged to reimburse the Seller for all costs purposefully incurred by him in connection with the removal of the defect.
82. The Buyer is obliged to provide the Seller with the cooperation necessary to removal the defect.
83. Until the defect is removed, the Buyer does not have to pay the still unpaid part of the Price and any applicable VAT estimated to be reasonably corresponding to his right to a discount.
84. Upon delivery of a new Subject of purchase or a part thereof, the Buyer shall return the Subject of purchase or a part thereof originally delivered to the Seller at the Seller's expense.
85. After removing the defect, the Seller is obliged to confirm in writing to the Buyer that the defect has been removed, indicate the method of its removal and the time for which the defect was removed.
86. The Warranty period does not commence from the moment the complaint is communicated to the Seller until the moment the defect is removed. The removal of the defect means the Seller making a remedy or exercising one of the rights according to paragraph 79 of the Contract by the Buyer
87. The Seller is obliged to take over and take away the Subject of purchase delivered in violation of the conditions agreed in the Contract, or which does not meet the requirements of the legal regulations valid and effective on the date of delivery of the Subject of Contract to the Buyer.
88. Contracting parties agreed that Section 1917 - 1924, Section 2099 - 2101, Section 2103 - 2117 and Section 2165 - 2172 of the Civil Code as well as the commercial practices, which are in their meaning or effects the same or similar to the said provision, shall not be applied.

## **XV. SANCTIONS**

89. If the Seller breaches the obligation to hand over the Subject of purchase to the Buyer within stated period, the Seller shall pay the Buyer a contractual penalty in amount of 0.1 % of the Price for each commenced day of the delay.

90. If the Seller breaches the obligation to provide the Related performance within stated or specified period, the Seller shall pay the Buyer a contractual penalty in amount of 0.1 % of the Price for each commenced day of the delay.
91. If the Seller breaches the obligation to remove the defects of the Subject of purchase within the stipulated period, the Seller shall pay the Buyer a contractual penalty in amount of 0.1 % of the Price for each commenced day of the delay. Any delay in fulfilling the obligations confirmed by the contractual penalties according to previous sentence of this paragraph of the Contract shall be terminate at the time when the Seller is remedied or exercise any of the rights according to paragraph 79 of the Contract by the Buyer.
92. The payment of the contractual penalty does not relieve the Seller of the obligation to fulfil the obligation confirmed by the contractual penalty.
93. The Buyer is also entitled to claim the compensation for damages and non-material damages caused by the breach of the Seller's obligation to which the contractual penalty applies, in full.
94. The maturity of the contractual penalties under the Contract shall be 15 days from the delivery of the written request for payment of the contractual penalty to the Seller, resp. to the Buyer.
95. If the Buyer breaches the obligation to pay the Price within the agreed time, the Buyer is obliged to pay the Seller a statutory interest on arrears in accordance with the legal regulations of the Czech Republic.

#### **XVI. WITHDRAWAL FROM THE CONTRACT**

96. The Buyer is entitled to withdraw from the Contract for reasons established by legal regulations for withdrawal from a contract or for the reasons established by the Contract.
97. The Buyer is entitled to withdraw from the Contract particularly in the following cases:
  - 97.1. if the Seller will be in delay with delivery of the Subject of purchase;
  - 97.2. if the Seller will be in delay with providing the Related performance;
  - 97.3. if the Subject of purchase will be suffered from defects that will render it unusable in relation to the purpose for which it is intended to be used according to paragraph 4 of the Contract or
  - 97.4. if the Subject of purchase will not have the properties specified in the Contract or
  - 97.5. if the Subject of purchase will not meet the conditions stipulated by legal regulations applicable and effective on the date of delivery of the Subject of purchase to the Buyer or
  - 97.6. if any of the Seller's statements referred to in para. 98 of the Contract appear to be untrue or if the Seller is in a state of bankruptcy or impending bankruptcy or
  - 97.7. if the Buyer is not provided with the grant from the Operational programme.

#### **XVII. DECLARATION OF THE CONTRACTING PARTIES**

98. The Seller declares that he is not in bankruptcy or in a state of imminent bankruptcy and that he is not aware of any insolvency proceedings to be held against him. The Seller further declares that against him there is in force no judicial decision, or decision of an administrative, tax, or other authority, that could be the reason for initiating the execution proceedings

against the property of the Seller and that he is not aware of any such proceedings to be started.

99. The Seller declares that he has become sufficiently acquainted with all Buyer's requirements under the Contract without being aware of any barriers that would prevent him from providing the agreed performance in accordance with Contract.
100. The Seller assumes the risk of changing circumstances in accordance with Section 1765 of the Civil Code.
101. Due to the public nature of the Buyer, the Seller expressly declares that he is aware of this fact and agrees to the publication of the Contract to the extent and under the conditions resulting from the relevant legal regulations.
102. The Seller is fully aware that he is, within the meaning of Section 2 letter e) of Act No. 320/2001 Coll., on Financial Control in Public Administration and on amendments to certain Acts, as amended, obliged to cooperate in the performance of financial control.
103. The Contracting parties declare that the identification data specified in art. I of the Contract correspond to the current state and that the persons acting upon the conclusion of the Contract are authorized to act for the Contracting parties without any limitation by the internal regulations of the Contracting parties.
104. The Contracting parties are obliged to notify the other Contracting party in writing form and without undue delay about any changes in the data specified in the art. I of the Contract, which occur after the conclusion of the Contract.
105. In the case, when any of the statements of any Contracting party stated in the Contract prove untrue, that Contracting Party shall be liable for any damage and non-material damage suffered by the other Contracting Party due to the untruthfulness of such declaration or in connection with it.
106. The Seller is obliged to keep all documentation related to the implementation of the Project (including accounting documents) until at least the end of 2035. If a longer period is stipulated in Czech legal regulations, the Seller is obliged to keep all documentation related to the implementation of the Project (including accounting documents) for established by Czech legal regulations.
107. The Seller is obliged to provide, at least until the end of 2035, the required information and documentation related to the implementation of the Project to the employees or representatives of the authorized authorities and is obliged to create the conditions for the above-mentioned persons to carry out an inspection related to the implementation of the Project and to provide them with cooperation during the inspection.

#### **XVIII. OTHER PROVISIONS**

108. If more than one person forms the Seller, the following rules shall apply:
  - 108.1.all persons constituting the Seller are bound by the Contract jointly and severally;
  - 108.2.the conduct of any of the persons constituting the Seller is attributed to the Seller regardless of the internal relations between the individual subjects constituting the Seller;

108.3.any individual subject constituting the Seller may act on behalf of the Seller.

109. The Seller is obliged to inform the Buyer in writing without delay about any facts that may have a potential effect on the fulfilment of the obligations according to the Contract, and if this is not possible, at the latest on the day after the relevant event occurs or the Seller finds out that it could occur. At the same time, the Seller is obliged to take all necessary steps to eliminate any potential damage to the Buyer, in particular to obtain replacement of the performance without delay and to bear any price difference.
110. When delivering the Subject of purchase, the Seller is obliged to comply with all principles applicable to the movement of people, vehicles and handling of thing in the Buyer's premises, as well as to respect the established security measures. For the purposes of the Contract, all premises use by the Buyer that are or may be affected by the delivery of the Subject of purchase to the Contract are considered the Buyer's premises.
111. The Seller acknowledges that the Buyer is a legally bound subject under the Act No. 106/1999 Coll., on Free Access to Information, as amended.
112. The Seller agrees with the publication of the Contract in accordance with the Buyer's obligations under the conditions of the applicable legal regulations valid and effective in the Czech Republic, in particular, the Seller agrees with the publication of the Contract, including all its changes and amendments, the amount of the actually paid price based on the Contract and other data on the Contracting Authority's (Buyer's) profile according to Section 219 of the Public Procurement Act, as amended (hereinafter the "**Public Procurement Act**"), and in the Register of Contracts according to Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Disclosure of These Contracts and the Register of Contracts, as amended (hereinafter the "**Act on the Register of Contracts**"). The Economic operator declares that the content of the Contract or any part thereof is not trade secrets of the Economic operator in accordance with Section 504 of the Civil Code.
113. The Seller is obliged to protect personal data and to proceed with its protection in accordance with the relevant legal regulations, in particular Act No. 110/2019 Coll., Personal Data Processing Act, as amended, and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), as amended.
114. The Seller is not entitled to assign any receivables from the Buyer arising from the Contract or arising in connection with the Contract.
115. The Seller is not entitled to set off unilaterally any of its receivables from the Buyer arising from the Contract or arising in connection with the Contract against any Buyer's claim for the Seller.
116. The Buyer is entitled to set off unilaterally any due and non-due receivables from the Seller arising from the Contract or arising in connection with the Contract (in particular the contractual penalties) against the due and non-due receivables of the Seller for the Buyer.
117. If the Seller breaches any of its obligations in connection with the Contract, he shall compensate the Buyer for any damage and non-material damage resulting therefrom. The Seller shall not be liable for compensation of the damage if he proves that an exceptional, unforeseeable and insurmountable obstacle, irrespective of his will, prevented him from fulfilling his obligation. However, an obstacle arising from the Seller's personal circumstances

or occurred in the time when the Seller has been in delay with the performance, nor an obstacle which the Seller has obliged to overcome, will not relieve the Seller of his obligation to compensate the damage to the Buyer.

- 118. The Seller is obliged to ensure fair subcontracting relationships in the Seller's supply chain, decent working conditions and adequate remuneration for all workers participating in the fulfilment of the subject of the Contract and occupational safety for all workers participating in the implementation of the subject of the Contract.
- 119. The Seller is obliged to ensure the disposal of waste generated in connection with the performance of the Contract in accordance with valid and effective legal regulations, in particular in accordance with Act No. 541/2020 Coll., on waste, as amended.
- 120. A written form means particularly a document signed by an authorized person of the Contracting party, a message sent to the Contracting party Data Box or an e-mail signed by the guaranteed electronic signature of the authorized person of the Contracting party.

### **XIX. SUBCONTRACTORS**

- 121. The Seller is entitled to entrust the fulfilment of his obligations arising from the Contract only to other persons listed in the annex to the Contract (Annex No. 2 of the Contract), or to persons announced by the Buyer (hereinafter referred to as individually "**Subcontractor**" or collectively "**Subcontractors**").
- 122. The Seller is responsible for the performance of the Subcontractor as if he had performed it himself.
- 123. The Seller declares and undertakes that, as a guarantor, will fully satisfy its obligation to compensate the damage caused by the Subcontractor to the Buyer during the performance or in connection with the performance of the obligations under the Contract, if the Subcontractor does not fulfil the obligation to compensate the damage. The Buyer accepts the Seller as guarantor according to the previous sentence.
- 124. The Seller undertakes that the Subcontractors, with whom he demonstrated the fulfilment of the qualification in the procurement procedure, will participate in the fulfilment of the Seller's obligations arising from the Contract to the extent according to the Seller's tender submitted to the procurement procedure.
- 125. The Buyer is entitled to demand and the Seller is obliged to ensure a change of Subcontractor, in case where the Subcontractor or the services provided by him are subject to international sanctions in accordance with Section 2 of Act No. 69/2006 Coll., on the Implementation of International Sanctions, as amended. In this case the Seller is obliged to propose the new Subcontractor within 10 days of delivery of the Buyer's request. If the Seller demonstrated the qualification of the original Subcontractor in the procurement procedure, the new Subcontractor must meet the qualification specified in the procurement procedure demonstrated by the original Subcontractor being replaced and must provide relevant documents proving the fulfilment of this qualification.

## XX. FINAL PROVISIONS

126. All rights and obligations of the Contracting parties resulting from the Contract are governed by the Czech law. The Contracting parties have agreed that non-coercive provisions of the law take precedence over commercial practices unless the Contracts provides otherwise. The Contracting parties exclude the use of the UN Convention on Contracts for the International Sale of Goods.
127. All disputes arising from this Contract and in connection with this Contract will be decided by the courts of the Czech Republic, as the courts with exclusive jurisdiction, according to the will of the Contracting parties.
128. The Contract can be changed only by written amendments. Changes to the Contract made in a non-written form are excluded.
129. The Contract is written in electronic form and will be signed by the electronic signs of authorised people of both Contracting parties.
130. The Contract becomes valid on the date of its signature by both Contracting parties and becomes effective on the day of its publication in the Register of Contracts in accordance with the Act on the Register of Contracts.

### Annexes

**Annex No. 1** Specification of the Subject of purchase

**Annex No. 2** List of Subcontractors

In \_\_\_\_\_ on \_\_\_\_\_

In \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
**Buyer**

\_\_\_\_\_  
**Seller**



**Annex No. 1  
of the Contract**

**Specification of the Subject of purchase**

**Instructions for the economic operator:**

***Specification of the Subject of purchase will be added to the Contract before the conclusion of the Contract with the economic operator according to the data from the procurement procedure and from the tender submitted by the economic operator to the procurement procedure.***

***Specification of the Subject of purchase will be attached to the Contract as an annex when the Contract is concluded with the supplier.***

**Annex No. 2  
of the Contract**

**List of Subcontractors**

**Instructions for the economic operator:**

***List of Subcontractors will be added to the Contract before the conclusion of the Contract with the economic operator according to the data from the procurement procedure and from the tender submitted by the economic operator to the procurement procedure.***