**CONTRACT**

**The present Public Procurement Contract, signed on ……………………………….., in Krakow by and between:**

**Jagiellonian University**

with the seat at ul. Gołębia 24, 31-007 Kraków, Poland (PL),

hereinafter referred to as the **‘Purchaser’**, represented by:

**…………………………………………………………..**

with the financial counter signature of the Jagiellonian University **Bursar.**

**and**

**……………………………………….,**

hereinafter referred to as the **‘Contractor’.**

represented by

**………………………………………………….**

Together called the **‘Parties’**

This Public Procurement Contract was concluded in result of the procedure of public invitation to submission of the offers pursuant to the regulations of art. 4d sect. 1 point 1 of the Act of 29th January 2004 on Public Procurement Law (consolidated text: Polish Journal of Laws of 2018 item 1986, as amended) and the Act of 23rd April 1964 – Civil Code (consolidated text: Polish Journal of Laws of 2018 item 1025 as amended).

**§ 1**

1. The scope of the Contract covers delivery of ion pumps together with controllers, connectors, power cables and the controller’s rack shelf for synchrotron SOLARIS. The scope of the delivery includes delivery, unloading and bringing in the indicated room, warranty services i.e. removal of faults and defects during warranty period. The contract hereto covers delivery of the basic scope of the delivery indicated in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| **Pos.** | **Scope of delivery** | **Model** | **Quan.** |
| 1 | Ion pump typeA |  | 1 |
| 2 | Ion pump type B |  | 1 |
| 3 | Ion pump type C |  | 1 |
| 4 | Ion pump type D |  | 1 |
| 5 | Ion pump type E |  | 1 |
| 6 | Ion pump type F |  | 1 |
| 7 | Ion pump type G |  | 1 |
| 8 | Ion pump type H |  | 1 |
| 9 | Ion pump type I |  | 1 |
| 10 | Ion pump type J |  | 1 |
| 11 | Ion pump type K |  | 1 |
| 12 | Heater Kit for Ion pump type A |  | 2 |
| 13 | Heater Kit for Ion pump type B |  | 2 |
| 14 | Shelf for the SPCe 19in controller |  | 6 |
| 15 | Connector for ion pump cable |  | 46 |
| 16 | Ceramic high-voltage passage |  | 12 |
| 17 | Sublimation titanum pump’s cable 30 m length. |  | 1 |
| 18 | Cartridge for sublimation titanium pump |  | 1 |

1. The detailed description of the Subject of the contract is included in the Appendix No 1 to the Invitation for submission of the bids dated …………………….. and in the Contractor’s bid.
2. The Subject of the contract shall be delivered on DAP conditions (Incoterms 2010) within …………………. weeks form the date of contract signing by both Parties.

The Contractor shall inform the Purchaser via e-mail: ………………………………. about the planned delivery time, at least 5 days before, and ask for an exact delivery address.

1. The contact persona responsible for acceptation of the delivery on behalf of the Purchaser is ……………………………. , phone: +48 ……………… , e-mail: …………………………….
2. At the time of delivery the Contractor shall submit the following documents:

* List of delivered equipment, including in particular: name of the device, manufacturer, year of manufacture, serial number,
* Warranty cards for equipment, operating manuals in Polish or English,
* Approvals, Certificates, Declaration of Conformity, and other documents required by the Invitations.

At the time of delivery the Purchaser’s employee will verify completeness of the delivered devices and carry out a visual inspection aimed at detection of eventual damages done during transport. Completion of the delivery will be confirmed by a delivery protocol signed by the Purchaser. Any defect or damage found will be stated in the delivery protocol, with the restriction as in the point 10 below.

1. The Contractor declares that the Subject of the contract (in particular the equipment and components thereof) is new and its purchase and use according to its purpose does not injure any regulations, including the rights of third parties, and it is also compliant with the CE standard for electric equipment safety.
2. The invitation for submission of the offers, together with its appendixes, as well as the Contractor’s offer are an integral part of this contract.
3. The Contractor undertakes to deliver the additional devices in the scope of option, under the conditions set out in the Invitation and in the Contractor’s offer. If the official price list of the Contractor is reduced in relation to the prices indicated in the offer, the Contractor will execute orders under the options at reduced prices indicated in the official price list, which does not require an annex to this contract. The optional deliveries shall be executed on the basis of a written purchase order. The optional deliveries shall be completed not later than 3 months after purchase order and the Purchaser has the right to place an order in the scope of the option within 12 months from contract signature. The maximum accumulated value of the orders under option is 200 000 PLN net. In case the contract currency is EUR, the value of each purchase order under the option will be converted into PLN using an exchange rate for sale of foreign currencies published by Narodowy Bank Polski (Table C NBP) on the dated of purchase order is submitted.
4. Subcontracts for fabrication of any part of the Subject of the contract shall not alter the Contractor’s obligation towards the Purchaser, resulting from the Contract. The Contractor shall be liable for actions and omissions of subcontractors to the same extent as for its own actions and omissions.
5. The Purchaser has 10 work days to inform the Contractor of any incomplete, damaged or missing goods. The Purchaser will provide the Contractor with written (also by e-mail) evidence (for example photos) of what is missing and/or damaged and the Contractor shall rectify those at its cost, if the claim is a valid warranty claim. An invalid warranty claim would include: improper or inappropriate use, incorrect storage, assembly or disassembly. This list is not exhaustive.

**§ 2**

1. Under this contract and the resulting remuneration of the Contractor indicated in § 3 sec. 2 below, the Purchaser acquires an irrevocable and unlimited by time licence to use any software necessary for the proper functioning of the Subject of the contract, in the scope specified in the art. 75 sec. 2 of the Act of 4 February 1994 on copyright  
   And related rights (Polish Journal of Laws 2017, item 880, as amended), that is, in the following fields of use:
2. permanent or temporary reproduction of a computer program, in whole or in part, by any means and in any form, including to the extent that it is necessary to multiply it for the introduction, display, use, transmission and storage of a computer program;
3. translation, adaptation, layout changes or any other changes to the computer program;

and when it comes to software elements that are not a computer program, the license is granted in the scope of:

1. recording and reproduction of the copies of the work, production of copies by a specific technique, including printing, reprographic, magnetic recording and digital technique;
2. trade in the original or copies on which the work has been recorded - placing on the market, lending or rental of the original or copies;
3. distribute the work in a way other than specified in point 2 - public performance, displaying, displaying, reproducing and broadcasting and reemitting, as well as making the work publicly available in such a way that everyone can have access to it in a place and time chosen by them.
4. The parties agree that the termination of the license is possible after 5 years from the date of its granting, however the period of notice is 5 years.

**§ 3**

1. The Contractor’s remuneration for the delivery of the Subject of the contract has been established on the basis of the Contractor’s offer.
2. **The total contract price for the Subject of the contract is: …………………… (in words: ………………………………).** The Contractor’s remunerations includes also transfer of the licencefor the indicated fields of use.
3. The Purchaser is a value added tax payer, and its VAT Number is: PL 675-000-22-36.
4. The Contractor is/or is not value added tax (VAT) payer in the territory of the Republic of Poland and its VAT registration number is …………………………………………….
5. The remuneration specified in the sec. 2 above shall be paid in the following instalments:
   1. The first payment for the amount of up to 50% of the first part of the order (pumps and accessories for SOLARIS machine) net price shall be paid as an advanced payment after the Contract signing. The payment shall be done upon submission to the Purchaser an appropriate proforma invoice together with an irrevocable, paid on the first demand and unconditional bank or insurance guarantee for the same amount. The bank guarantee shall be valid up to the 30 days after the day on which the delivery date is according to the § 1 sec. 3 of the contract.
   2. The second payment up to the remaining part of the Contractor’s remuneration, shall be paid after the acceptance protocol as in the § 1 sec. 5 of the contract is signed.
6. The advance payment as stated in the sec. 5 point 5.1 above shall be paid within 14 days of the date of delivery of the appropriate proforma invoice together with the required bank or insurance guarantee. The payments as stated in the sec. 5 point 5.2 above shall be paid after signing the acceptance protocol and within 21 days of delivery of the properly issued invoice to the Purchaser.
7. The Contractor has to issue a separate invoice for the following parts of the order:

**Part I – SOLARIS machine:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Pos.** | **Scope of delivery** | **Model** | **Quan.** |
| 1 | Ion pump typeA |  | 1 |
| 2 | Ion pump type B |  | 1 |
| 3 | Ion pump type C |  | 1 |
| 4 | Ion pump type D |  | 1 |
| 5 | Ion pump type E |  | 1 |
| 6 | Ion pump type F |  | 1 |
| 7 | Ion pump type G |  | 1 |
| 8 | Ion pump type H |  | 1 |
| 9 | Ion pump type I |  | 1 |
| 10 | Ion pump type J |  | 1 |
| 11 | Ion pump type K |  | 1 |
| 12 | Heater Kit for Ion pump type A |  | 2 |
| 13 | Heater Kit for Ion pump type B |  | 2 |
| 14 | Shelf for the SPCe 19in controller |  | 3 |

**Part II – XMCD beamline:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Pos.** | **Scope of delivery** | **Model** | **Quan.** |
| 1 | Shelf for the SPCe 19in controller |  | 3 |
| 2 | Connector for ion pump cable |  | 46 |
| 3 | Ceramic high-voltage passage |  | 12 |
| 4 | Sublimation titanum pump’s cable 30 m length. |  | 1 |
| 5 | Cartridge for sublimation titanium pump |  | 1 |

1. The Contractor’s remuneration shall be paid by a bank transfer to the bank account indicated on the invoice.
2. The payment place is the Purchaser’s bank.
3. The invoices shall be delivered to the SOLARIS office: ul. Czerwone Maki 98, 30-392 Kraków or sent be email to: ……………………………………..

**§ 4**

1. The Contractor shall deliver the Subject of the contract without defects, and is obliged to verify compliance of the symbols (numbers etc.) placed at the delivered devices with those stated in a guarantee document (the guarantor declaration) indicated in the sec. 3 below. The Contractor shall also verify the status of seals and any other security measures, if they were used.
2. The Contractor shall assure delivery of the Subject of the contract covered by a manufacturer’s guarantee valid for **………………………** after delivery date, according to the Contractor’s bid and respecting the Purchaser’s requirements stated in the sec. 3 below.
3. The Contractor at the time of delivery shall submit a guarantee document (the guarantor declaration), which text has to include at least the following information:
   1. The guarantor name and address, or its representative in Poland.
   2. The period of guarantee counting from a date of delivery confirmed by a delivery protocol.
   3. Declaration that in case of repair, the warranty time shall be automatically extended for a period matching that of the original warranty period identified in the bid applicable to the goods repaired/replaced only.
   4. Territorial coverage of the guarantee.
   5. The Purchaser’s rights under guarantee in case of defect or fault, in particular:
      1. The declared reaction time (i.e. start of a necessary service action, or remote, by e-mail or phone, solving of a problem) counted from a moment of a defect notification (by phone or e-mail), excluding public holidays, but not longer than 3 working days.
      2. The declared repair action time or replacement of a faulty device for a new one, assuming that it cannot be longer than delivery time.
   6. Declaration that guarantee services shall be provided by a manufacturer or its authorized service, at the guarantor expense including shipping of a faulty element to the place of repair and back to the Purchaser. Faults that are caused by the Purchaser do not fall under the warranty.
   7. Declaration that in case any element of the Subject of the contract was two times a subject of repair, the Purchaser may demand its replacement for a new one and free of defects.
4. In the event of a warranty claim, the Purchaser must promptly provide by e-mail the manufacturer with
   * + - 1. Details of the defect or fault. Faults that are caused only by the Purchaser do not fall under the warranty.
         2. Photographic evidence where necessary.
         3. Access to the location to repair the goods.
5. The Manufacturer takes no responsibility for unauthorised repair/changes/amendments to the goods without the supervision or permission of the Manufacturer.
6. In case the guarantor does not realize its guarantee obligations in within the above time frame, the Purchaser has the right to ask a third party to remove the defect at the Contractor’s risk and expense, what does not exclude the other rights of the Purchaser under this contract. In such a case, the Contractor shall cover the repair cost within 14 days after the Purchaser’s request accompanied by a proof of payment.
7. The Purchaser undertakes to comply with the conditions of exploitation specified by a manufacturer in the guarantee documents and/or manual instruction provided by the Contractor, to the extent that it is not in conflict with the provisions of this paragraph of the contract.
8. Regardless of the guarantee granted, the Purchaser is entitled to warranty rights for defects, according to Polish Civil Code (§10 sec. 3 below).

**§ 5**

1. The Parties reserves the right to demand contractual penalties for the improper or inconsistence with the Contract terms, performance of the contractual obligations.
2. The Contractor, with the restriction as in the sec. 3 below, shall pay the Purchaser a contractual penalty in following cases:
3. withdrawal from the Contract by one of the Parties due to reasons not attributed to the Purchaser, in the rate of 5% of the total Contract price net according to the § 3 sec. 2 of the contract.
4. delay longer than 10 working days in delivery of the Subject of the contract. The penalty rate is 0,2% of the net value of undelivered parts, estimated according to the § 3 sec. 2 or the Contractor’s offer, counted for each day of delay starting from its first day after the deadline as in the § 1 sec. 3. The maximum level of delay penalty is 5% of the total contract value as in the § 3 sec. 2. The penalty stated here is the sole remedy for delay in delivery.
5. delay longer than 10 working days in removal of defects found at the moment of delivery takeover. The penalty rate is 0,2% of the net value of defected part, estimated according to the Contractor’s offer. The penalty shall be calculated for each day of delay in respect to the deadline date determined by the Purchaser, but not more than 5% of the total contract value as in the § 3 sec. 2.
6. delay longer than 10 working days in removal of defects found during the warranty period. The penalty rate is 0,2 % net value of the defected part, estimated according to the Contractor’s offer. The penalty shall be calculated for each day of delay in respect to the deadline date determined by the Parties or by a guarantor, but not more than 5% of the total contract value as in the § 3 sec. 2. This clause does not apply to replacement parts.
7. The maximum accumulated level of the contractual penalties which the Contractor would have to pay to the Purchaser is 10% of the contract net price as in the § 3 sec. 2. Notwithstanding the penalties under the warranty as stated in the § 5 sec. 2 letter d).
8. The Purchaser has the right to deduct the eventual penalties from an invoice which has to be paid and has the right to demand compensation on the basis of general rules of Civil Code, over the contractual penalties.
9. The claim for payment of contractual penalties becomes due from the day following the date on which the actual circumstances set forth in this contract give rise to the calculation of the contractual penalties.
10. Any payment of contractual penalties does not release the Contractor from obligation to complete this contract.
11. The Contractor is not entitled to compensation for withdrawal from the Contract by the Purchaser due to fault of the Contractor.
12. In case of withdrawal the Contract, the Parties shall retain the right to execute contractual penalties.

**§ 6**

* 1. Apart from the situations regulated by the act of 23rd April 1964 – Civil Code, the Purchaser may withdraw from the Contract within 30 days from the date of being informed of the occurrence of the following circumstances:

1. The liquidation proceedings in respect to the Contractor has started,
2. The charging order of the Contractor has been made,
3. In case the Contractor due to its insolvency is not able to regulate its financial debts for a period of at least 3 months,
4. The Contractor’s delay in delivery of the Subject of the contract in respect to the deadlines as stated in the § 1 sec. 3 is longer than 30 calendar days.
5. The delivered Subject of the contract does not meet the contractual requirements and in an additional given by the Purchaser deadline not shorter than 10 days, the Contractor does not fulfil its contractual obligation.
6. In the event of major financial difficulties of the Contractor, in particular the occurrence of bailiffs or other claims of authorized bodies with a total value exceeding PLN 200,000.00 (in words: two hundred thousand zloty);
   1. Any withdrawal from the Contract shall be done in writing under pain of nullity of such a statement and shall include a justification.
   2. In the case of withdrawal, the Parties retain the right to demand contractual penalties.
   3. The Purchaser reserves the right to withdraw from the Contract only with respect to some specified parts of the Subject of Contract, retaining the ownership of remaining parts of the Subject of Contract. To the extent that the Party has not withdrawn from the Contract the provisions of the Contract, in particular those concerning payments and warranty, shall remain in force.

**§ 7**

* + 1. As the force majeure the Parties understand unexceptional events over which the Party has no control and which the Party could not reasonably have been expected to foresee and prevent, in particular: a war, a state of emergency, a flood, a fire or a fundamental change in the socio-economic situation.
    2. In the event of a Party being prevented from fulfilling of all or part of the obligations under this Contract due to force majeure, the said Party shall immediately inform the other Party about it. In such a case, the Parties shall agree the way and terms of the contract continuation or the contract will be terminated.
    3. The deadlines stated in this contract shall be suspended for a period of time, for which the force majeure prevented contract realization.

**§ 8**

* + - 1. Any statements of will of the Parties shall be made in writing under pain of nullity and submitted by a registered letter or with a confirmation of delivery.
      2. The mail correspondence shall be made at the below listed addresses of the Parties:

1. National Synchrotron Radiation Center SOLARIS

Ul. Czerwone Maki 98,

30-392 Kraków, Poland.

and

**……………………………………….**

* + - 1. The invalidity of one or more provisions of this contract shall not affect the validity of the contract in its entirety. In such a case the Parties shall replace the invalid provision with a provision consistent with the purpose and other provisions of the contract.

**§ 9**

1. The Parties mutually consent to change the contract through an appropriate annex, under the pain of nullity, in following situations:
2. Extension of the deadline for completion of the Contract, due to reasons attributable to the Purchaser, in particular when the place of installation is not ready for it, or due to reasons being beyond the Parties control caused by a force majeure as stated in the § 7.
3. Extension of the deadline for completion of the Contract, due to reasons attributable to the Contractor, in particular due to delays of its subcontractors in performing of theirs contractual obligations in respect to the Contractor. Amendment of the foregoing deadlines, is made at the Contractor’s request and requires the Purchaser’s approval. The Purchaser may refuse acceptation when the foregoing amendment would expose him to an inconvenience associated with exploitation of the synchrotron, or may incur losses related to e.g. a risk of losing the specific subsidy for this purchase.
4. Changes that do not relate to contractual provisions, for example, if for organizational reasons it will be necessary to change the contact details specified in the contract, if the bank account number of one of the Parties changes, they will occur by submitting a written statement of the Party affected by these changes to the other Party.).

**§ 10**

* + - 1. Neither this Contract nor other rights and obligations hereunder shall be assigned or otherwise transferred to a third party by one Party without prior written consent of the other Party. In particular, the Contractor is not entitled to transfer its claims arising from this Contract to third parties without the prior written consent of the Purchaser.
      2. Any changes or supplements to the contract may be done through a mutual consent of the Parties and in a written form under pain of nullity.
      3. In matters not stipulated herein, the provisions of the act of 23rd April 1964 – Civil Code [Polish Journal of Laws of 2018, item 1025 as amended] shall apply.
      4. Any disputes resulting from this Contract shall be subject exclusively to the Polish court competent for the Purchaser’s place of residence.
      5. For working days, the Parties recognize days from Monday to Friday, with the exclusion of public holidays in the territory of the Republic of Poland.
      6. The Contract has been written in four (4) copies – two (2) in Polish and two (2) in English and each Party receives one (1) copy in each language.[[1]](#footnote-1) In the event of a discrepancy between the language versions, the Polish version takes prevails.

*......................................... .....................................*

*The Purchaser The Contractor*

1. In case of the Supplier being registered outside of Poland. [↑](#footnote-ref-1)