**Purchase contract**

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

1. **Fyzikální ústav AV ČR, v.v.i.,**

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

with its registered office at: Na Slovance 2, Praha 8, PSČ: 182 21,

registration no.: 68378271,

represented by: RNDr. Michael Prouza, PhD. – director

(“**Buyer**”); and

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

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

registration no.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

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

(“**Seller**”).

(The Buyer and the Seller are hereinafter jointly referred to as “**Parties**” and individually as “**Party**”.)

**whereas**

1. The Buyer is a public contracting authority and the beneficiary of a grant of the Ministry of Education, Youth and Sports of the Czech Republic funded from the Operational Programme Research, Development and Education.
2. The Seller’s bid for the public procurement entitled “***Set of dielectric chirped mirrors for femtosecond pulse compressor TP22\_032***”, whose purpose was to procure the Object of Purchase (“**Public Procurement**”), was selected by the Buyer as the most suitable.

**it was agreed as follows:**

# basic provisions

## Under this Contract, the Seller shall deliver to the Buyer set of dielectric chirped mirrors including relating services as described in Annex 1 (*Technical Specification*) to this Contract in the quality and number as stipulated in the Technical specification, and with the properties described therein (the mirrors jointly as “**Object of Purchase**” and each of them also as “**Individual mirror**”) and shall transfer to the Buyer ownership right to the Object of Purchase, and the Buyer shall take over the Object of Purchase and shall pay the Seller the Purchase Price (as defined below), all under the terms and conditions stipulated in this Contract.

# THe place of delivery

## The place of delivery is at the address: Fyzikální ústav AV ČR v.v.i/ ELI-Beamlines, Průmyslová 836, ZIP 252 41, Dolní Břežany, Czech Republic.

# the time of delivery

## The Seller shall deliver the Object of Purchase and shall carry out relating activities **within 3 months from the date of the signature of this Contract**.

## At the request of the Seller, the fulfillment date will be extended by the time for which the Seller is unable to fulfill this Contract in time due to circumstances that occurred independently of its will and which are difficult to predict (e.g. measures in connection with and various impacts of the covid-19 pandemic or of the war in Ukraine). In the application, the Seller shall state the facts and provide documents (evidence) needed for the assessment of whether the conditions for the extension are met, unless they are generally known facts or publicly available information.

# The ownership right

## The ownership right to the Object of Purchase (or to any Individual mirrors if relevant) shall pass to the Buyer upon the signature of the acceptance protocol by the Buyer pursuant Sec 6.5.2 of the Technical specification (hereinafter the “Acceptance protocol”). Partial acceptance of Individual mirrors is possible.

#  price and payment terms

## The purchase price for the Object of Purchase is \_\_\_\_\_\_\_\_\_amount **EUR** (“**Purchase Price**”) without value added tax (“**VAT**”). VAT will be paid in accordance with the applicable legal regulations. The price of each Individual mirror shall be one fortieth (1/40) of the Purchase Price (“**Price of single mirror**”).

## The Purchase Price cannot be exceeded and includes all costs and expenses of the Seller related to the performance of this Contract. The Purchase Price includes, among others, all expenses related to the handover of the Object of Purchase and execution of related activities, costs of copyright, insurance, customs, warranty service, development of currency exhnage rates and of prices of materials and any other costs and expenses connected with the performance of this Contract.

## The Purchase Price for the Object of Purchase shall be paid on the basis of tax documents – invoices, to the account of the Seller designated in the invoice, within 30 days from their receipt. If the Seller stipulates any shorter due period of the invoiced amount in an invoice such different due period shall not be deemed relevant and the due period stipulated herein prevails. The invoice shall be considered to be paid for on the day when the invoiced amount is deducted from the Buyer’s account on behalf of the Seller’s account.

## The Seller is entitled to invoice the Purchase Price as follows:

## 40 % of the Purchase Price after the signature of this Contract and

## 60 % of the Purchase Price after the signature of the acceptance protocol by the Buyer pursuant to this Contract relating to the complete Object of Purchase or to the last accepted Individual mirror.

## Invoices issued by the Seller as a tax documents must contain all information required by the applicable laws of the Czech Republic. Furthermore, invoices shall contain:

#### registration number of this Contract,

#### a declaration that the invoiced performance is provided for the purposes of the "Advanced Research Using High Intensity Laser Produced Photons and Particles” project, reg. No. CZ.02.1.01/0.0/0.0/16\_019/0000789 or any other project in accordance with instructions provided by the Buyer in advance,

## and must comply with the double tax avoidance agreements, if applicable. The Buyer shall advice the Seller on the proper contents of invoices if needed.

## Should any invoice not contain the above mentioned information, the Buyer is entitled to return it to the Seller during it maturity 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 Buyer.

# Seller’s RIGHTS AND duties

## During the performance of this Contract the Seller proceeds independently. If the Seller receives instructions from the Buyer, the Seller shall follow such instructions unless these are against the law or in contradiction to this Contract. If the Seller finds out or should have found out if professional care was exercised that the instructions are for any reason inappropriate or illegal or in contradiction to this Contract, then the Seller must notify the Buyer.

# Handover and acceptance of the Object of purchase

## Handover and takeover of the Object of Purchase shall be realized on the basis of a Handover/takover protocol (delivery note). Handover/takeover protocol shall be issued by the Buyer if the Object of Purchase is delivered to the Buyer in appropriate and undamaged packaging; the signature of the Handover/takover protocol by the Buyer doesn´t mean the acceptance of the Object of Purchase pursuant to this Contract. Handover/takeover of only some of the mirrors is possible.

## The Buyer undertakes to verify within 4 weeks after the issuing of the Handover/takeover protocol, whether the Object of Purchase fulfills requirements of the Buyer stipulated in the Technical specification.

## If any Individual mirror does not meet requirements of this Contract, the Buyer is entitled to refuse the acceptance of such Individual mirror. In such a case the Seller shall remedy the deficiencies within forty (40) working days, unless Parties agree otherwise. The Buyer is entitled (but not obliged) to accept any Individual mirror despite the above mentioned deficiencies, in particular if such deficiencies do not prevent the Buyer from the proper operation of the mirror. In such a case the Seller and the Buyer shall list the deficiencies in the acceptance protocol, including the manner and the date of their removal (remedy). If the Parties do not reach agreement in the acceptance protocol regarding the date of the removal, the Seller shall remove the deficiencies within forty (40) working days.

# warranty

## The Seller hereby provides a warranty of quality of the Object of Purchase, resp. for each Individual mirror (DCM), for the period of 3 (three) months. The warranty period shall begin for each Individual mirror separately, starting from the date of unpacking of the Individual mirror by the Buyer from the Seller's original packaging. The warranty period terminates at latest 12 months from the date of due delivery of the Object of Purchase/respective Individual mirror to the Buyer. The Parties have expressly agreed that for the determination of the beginning of the warranty period is decissive the date announced by the Buyer to the Seller as the date of the unpacking of Individual mirror from the original packaging.

## Under this Contract, “defects” shall be understood any incompliances of the Object of Purchase with this Contract. The Seller shall remove defects that occur during the warranty period free of charge.

## If the Buyer ascertains a defect of any Individual mirror during the warranty period, the Buyer shall notify such defect without undue delay to the Seller. Defects may be notified on the last day of warranty period, at the latest.

## The Buyer notifies defects in writing via e-mail. The Seller shall accept notifications of defects on the following e-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## In the notification the Buyer shall describe the defect and the manner of removal of the defect. The Parties shall agree on the manner of defects removal. If the Parties do not reach the agreement, the Buyer has the right to:

#### request removal of the defect by the delivery of a new Individual mirror, or

#### request removal of the defect by repair, or

#### request adequate discount from the Purchase Price.

## The choice among the above mentioned rights belongs to the Buyer. However, in case of a removable defect that occurs for the first time the Buyer shall not request removal of the defect by delivery of new a new Individual mirror.

## The Seller shall remove the defect within 40 working days. In cases where it is not possible for objective reasons proven to the Buyer by the Seller the Parties shall agree on another sufficient deadline.

## Parties shall execute 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 by a period of time that elapses between the notification of the defect until its removal in cases where the Buyer was prevented from using the respective Individual mirror for its intended purpose.

## In case that the Seller does not remove the defect within stipulated time or if the Seller refuses to remove the defect, then the Buyer is entitled to remove the defect at his own costs and the Seller shall reimburse these costs within 20 calendar days after the Buyer’s request to do so.

## The warranty does not cover defects caused by unprofessional manipulation or by the failure to follow Seller’s instructions for the operation and maintanence of the Object of Purchase.

# right of withdrawal, contractual Penalties

## The Buyer is entitled to withdraw from this Contract, if any of the following circumstances occur:

#### the Seller is in delay with the fulfilment of this Contract and such delay lasts more than 8 weeks; or

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

## If the Seller is in delay with the due delivery of any Individual mirror the Seller shall pay to the Buyer a contractual penalty in the amount of 0.05% from the Price of single mirror (excl. VAT) for each (even commenced) day of delay.

Should a delay in delivery be caused by damage to an Individual mirror during transport the Parties shall agree on a new delivery deadline regarding the affected Individual mirror that shall be as short as practically possible. For the time of the new delivery period no delay penalty applies.

## If the Seller is in delay with the removal of a defect of any Individual mirror the Seller shall pay to the Buyer a contractual penalty in the amount of 0.02% from the Price of single mirror (excl. VAT) for each (even commenced) day of delay.

## The Seller shall pay contractual penalties within fifteen (15) days from the day, on which the Buyer enumerated its claims. The payment of contractual penalties shall not affect the right of the Buyer to damages in the extent to which such damages exceed the contractual penalty.

## Total amount of contractual penalty for delay with due delivery of any Individual mirror shall not exceed 5 % of the Price of single mirror (without VAT).

## Total amount of contractual penalties for delays with defect removals shall not exceed 10 % of the Purchase Price (excl. VAT).

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

# ECOLOGICAL, SOCIAL AND INNOVATIVE ASPECTS of this contract

## The Buyer aims to conclude contracts with Sellers that take into account and implement the principles of social responsibility, ecological sustainability and innovation. Therefore, the Seller shall ensure that:

## a) this Contract shall be fulfilled only by persons that are employed in accordance with the applicable legal regulations (no illegal or child workers);

## b) while performing this Contract, all applicable health and safety regulations and rules at work place are observed;

## c) all persons performing this Contract are employed under fair and non-discriminatory working conditions;

## d) if presented with different manners of fulfilling this Contract, the Seller 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

## e) if presented with different manners of fulfilling this Contract, the Seller shall select the solution/process that is the most innovative.

# ASSIGNEMENT

## The Seller shall not be entitled to assign any rights or obligations arising in connection herewith to a third party.

## The Buyer makes the Seller aware that the Buyer is going with anticipated effect as of 1.1.2023 to transfer the ELI Beamlines research facility (now owned and operated by the Buyer) for construction and operation of which is the supply under this Contract being agreed to to The Extreme Light Infrastructure ERIC (ELI ERIC). The ELI ERIC is a legal person set up under Regulation (EC) No 723/2009 and it is the future long term owner and operator of the ELI Beamlines facility. The Seller by entering this Contract agrees to the assignment of all rights and obligations from this Contract by the Buyer to ELI ERIC. The Buyer shall inform the Seller on the completed assignment without undue delay and the assignment shall become effective at the moment of its notification to the Seller. The supply supplied under this Contract will be used exclusively in the ELI Beamlines facility.

# 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 preferable 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.

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

## If any of provisions of this Contract are invalid or ineffective, the Parties are bound to change this Contract is 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.

## This Contract is executed in four (4) counterparts and every Party shall receive two (2) counterparts.

## An integral part of this Contract is Annex 1 (*Technical Specification -\_RSD*).

## This Contract is subject to publication according to Act. No. 340/2015 Coll, on the register of contracts (hereinafter the “Act”). This Contract shall be effective from the date of it´s publication pursuant to this Act.

**in witness whereof**  both Parties attache their handwritten signatures:

**Buyer**

|  |
| --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: RNDr. Michael Prouza, PhD. |
| Position: directorDate:  |

**Seller**

|  |
| --- |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |

**Annex 1**

**technical specification - RSD**

*(Note: Annex No 3 to the Invitation to bid within the Public Procurement shall be attached hereto by the Contracting Authority before final signature hereof with the sellected bidder)*