

Učtov



**MS
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MINISTERSTVO ŠKOLSTVÍ,
MLÁDEŽE A TĚLOVÝCHOVY



EVROPSKÁ UNIE
EVROPSKÝ FOND PRO REGIONÁLNÍ ROZVOJ
INVESTICE DO VAŠÍ BUDOUCNOSTI



OP Výzkum a vývoj
pro inovace

PURCHASE CONTRACT no. 9026/0040/14

(Hereinafter referred to as "the Contract")

Entered into Pursuant to the Civil Code, Act no. 89/2012, Coll., section 2079 et sequentes and section 2358 et sequentes, as amended, and the Copyright Act, Act no. 121/2000, Coll., as amended

I.

Contractual Parties

1.1. The Purchaser: University of West Bohemia in Pilsen
Address: Univerzitní 8, 306 14 Plzeň, Czech Republic
Person authorized to act on behalf of the Purchaser: Doc. Ing. František Vávra, CSc.,
Dean of the Faculty of Applied Sciences,
authorized to act on behalf of University of West Bohemia
Bank account: Komerční banka a.s., Plzeň-město
Account number: 4811530257/0100
Identification no.: 49777513
Tax identification no.: CZ49777513
(Hereinafter referred to as "the Purchaser") as one Contractual Party

and

1.2. The Seller: microTOOL GmbH
Address: Voltastraße 5, 13355 Berlin, Germany
Acting through/ represented by: Mario Müller
Bank account: 100 700 00
Account number: 77 39 600 00
Identification no.: HRB 21623 B
Tax identification no.: DE 136566474
Registered in the Commercial Register of HRB 21623 Arbeitsgericht Berlin-Charlottenburg
(Hereinafter referred to as "the Seller") as the other Contractual Party
(Together also referred to as "the Contractual Parties")

Handwritten signatures

Enter into the following Contract based on the result of the Tender for the Small-scale Contract entitled "STRUCTURED SYSTEM ANALYSIS METHODS AND SOFTWARE DESIGN SUPPORT TOOL" as follows:

II.

Subject of the Contract

- 2.1. The Seller undertakes to supply a software product including two (2) perpetual commercial licenses; the software product is a CASE (computer-aided software engineering) type tool supporting structured system analysis methods and software design (hereinafter referred to as "the Goods") and related services to the Purchaser within the scope and pursuant to the terms and conditions of the herein Contract, and to transfer the ownership rights to the Goods on the Purchaser. The Goods is specified in detail in Annex no. 1 to this Contract and forms its integral part.
- 2.2. The Seller's commitment also includes transportation of the Goods, including possible transport insurance, to the place of delivery pursuant to Article III herein. Furthermore, the Seller undertakes to supply to the Purchaser a license for the use of software for 2 (two) work stations (PC) enabling proper and fully-functional use of the Goods from the date of receipt of the Goods. The right for the use of software – license is provided as licence unlimited in time and territory, and its price is included in the purchase price of the Goods, it will be transferable including the right of sub-licensing and may be transferred without the Seller's consent. The Purchaser is not obliged to use the license.
- 2.3. The Seller declares that he is authorized to provide this license to the benefit of the Purchaser without any limitations relating to third parties, natural and legal, and that the said software is not encumbered by any third party rights in accordance with the Act no. 121/2000, Coll., Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended, nor pursuant to any other law. The Seller acknowledges and agrees that should the rights of the Purchaser relating to the granted license be constrained by any person, or should any person prevent the Purchaser from proper exercise of such rights, the Seller shall be obliged to prevent such activity and compensate the Purchaser for the loss incurred at the Seller's own charge.
- 2.4. In case the representation provided by the Seller in clause 2.3 herein proves false, or the license is contrary the Seller's representation above invalid or the scope of the license provided is insufficient, the Purchaser will be entitled to terminate the Contract and request the Seller to refund the total amount of the purchase price. In such a case, the Purchaser will also be entitled to request the Sell-



er to provide sufficient license within the scope required, if the Seller fails to accommodate this request within 30 days of the delivery of the Purchaser's note at the latest, the Purchaser will be entitled to terminate this Contract. This provision does not prejudice the Purchaser's right to claim damages for the Seller's failure to perform this Contract.

- 2.5.** The Purchaser undertakes to accept the Goods supplied by the Seller, and to pay the stipulated purchase price for the Goods using the payment method, and by the due date, stipulated herein.

III.

Time and Place of Delivery

- 3.1.** The Seller undertakes to supply the subject matter of the Contract to the Purchaser within two months after the Contract is signed by both Contractual Parties at the latest. Should the Seller be in delay with the delivery pursuant to this article, the Seller undertakes to pay a contractual penalty of 0.5% of the total purchase price excluding VAT for every, even started, day of the delay to the Purchaser. The contractual penalty will not prejudice the right to claim damages.
- 3.2.** The Purchaser will be entitled to reject the Goods delivery, if the Goods demonstrate apparent defects.
- 3.3.** The place of delivery is University of West Bohemia in Pilsen (NTIS), Univerzitní 22, 306 14 Plzeň, Czech Republic.
- 3.4.** If the Seller is a foreigner Seller, the delivery of Goods will follow the INCOTERMS 2010 DAP method (delivery at place), unless stipulated otherwise herein.

IV.

Price and Payment Terms

- 4.1.** The purchase price for the Goods and volume stipulated herein under the terms and conditions of the Contract was determined by an agreement of the Contractual Parties and results from the price bid submitted by the Seller calculated for the purposes of the Tender concerning the delivery of the subject-matter of this Contract.

- 4.2. The Purchaser undertakes to pay the Seller for the duly and timely delivered supply of the Goods pursuant to article II herein the stipulated **purchase price of CZK 326625,79 excluding VAT** (in words: Three hundred twenty-six thousand, six-hundred twenty-five and seventy-nine Czech crowns).

VAT in the legal amount, based on self-assessment, will be paid by the Purchaser.

- 4.3. The purchase price is stipulated as the highest possible price including all fees and any other costs associated with the delivery of the subject matter of the Contract. The price includes transportation as well as relevant transport insurance, handling as well as any administrative charges, approval procedure costs, required testing, declaration of conformity, certificates and attests, transfer of rights, insurance, transportation charges etc. The bid price may only be exceeded as a result of changes in tax legislation concerning VAT.
- 4.4. The Purchaser will settle the purchase price in the Czech currency against a tax document – invoice. The purchase price for the Goods supplied pursuant to this Contract will be invoiced by the Seller within 20 days of the Goods delivery to the Purchaser.
- 4.5. The tax document (the invoice) must contain all elements of a proper accounting and tax document pursuant to the relevant legislation, namely the Value Added Tax Act no. 235/2004, Coll., as amended. The Purchaser will be entitled to return an invoice missing the relevant elements to the Seller to be amended before its due date, and the Purchaser will not be in delay with the payment in such a case. The payment period will start to run again after the duly amended or corrected invoice is received by the Purchaser.
- 4.6. The invoice will be due 30 days after it is demonstrably delivered to the Purchaser.
- 4.7. The Purchaser will not provide any advance payments.
- 4.8. Should the Purchaser be in default with payment of the invoice, the Seller will be entitled to request an interest on late payment of 0.05% of the amount due for every, even started, day of the delay from the Purchaser. The interest on late payment will not be charged, if the payment is postponed due to late allocation of funding from the Operational Programme RDI.

- 4.9.** The Purchaser will be entitled to unilaterally – without the Seller's content – offset any contractual penalties that the Seller is obliged to pay, against the invoiced amount.

V.

Rights and Obligations of the Contractual Parties

- 5.1.** The Seller will be obliged to deliver the Goods in the agreed volume, quality and design. All the Goods supplied by the Seller to the Purchaser according to this Contract must meet the quality requirements stipulated herein.
- 5.2.** The Seller will be obliged to supply the Goods to the Purchaser free of any defects and according to the terms and conditions stipulated herein, the Goods will be considered duly delivered when accepted by the Purchaser.
- 5.3.** The Seller will be obliged to supply exhaustive technical and other documents necessary for the use of the Goods to the Purchaser together with the Goods including instructions for use in the English and/or Czech language.
- 5.4.** The Purchaser assumes the ownership right to the Goods on the day the Goods is duly delivered and accepted by the Purchaser. The risk of damage to things is assumed by the Purchaser on the same day.
- 5.5.** The Seller is obliged to immediately inform the Purchaser about possible risk that the deadline will not be met, and about any circumstances that might prevent delivery of the subject matter of the Contract.
- 5.6.** The Seller is obliged to maintain appropriate qualifications demonstrated in the course of the Tender preceding this Contract throughout the entire duration of the Contract. If this provision is breached, the Purchaser will be entitled to terminate this Contract for gross violation of the Contract.
- 5.7.** The Seller is not entitled to assign any rights or obligations arising from this Contract to a third party without obtaining a previous written consent of the Purchaser.
- 5.8.** The Seller agrees that any receivables that may be claimed from the Purchaser and that come to existence based on this Contract may not be assigned or set off by a unilateral legal act.

- 5.9.** The Seller will be liable to the Purchaser for any damage caused by violation of duties stipulated in this Contract or obligations stipulated by applicable law.
- 5.10.** The Contractual Parties agreed, and the Seller determined, that the person authorized to act on behalf of the Seller in the matters relating to the herein Contract and its execution is/are:
- Name: Marie-Christin Ehbrecht
E-mail: Marie-Christin.Ehbrecht@microTOOL.de
Phone: +49 (30) 467086-19
- 5.11.** The parties agreed and the Purchaser determined, that the person authorized to act on behalf of the Purchaser in the matters relating to the herein Contract and its execution is:
- Name: Ing. Miloš Fetter
E-mail: fetter@kky.zcu.cz
Phone: +420 377 632 536
- 5.12.** All and any correspondence, instructions, notices, requests, notes and other documents made out by the Contractual Parties based on this Contract or in relation to it will be made out in writing in Czech or English, and will be delivered either in person or by registered mail, fax or e-mail to the mailing addresses of the personnel authorized pursuant to this Contract and to their attention. In case of collision of the two language versions, the relevant version of the document in the Czech language will take precedence.
- 5.13.** The Seller acknowledges that pursuant to the Financial Control in Public Administration Act no. 320/2001, Coll., section 2 (e), as amended, the Seller is a person obliged to cooperate in exercising financial control. A controlling body of the Operational Programme RDI will be authorized to perform an audit and access those parts of the Proposal, Contracts and relating documents that are subject to separate legal regulations (such as trade secret, proprietary information) for a period of three years after the operational programme is closed, provided that the requirements defined by the law (for example the State Control Act no. 552/1991, Coll., section 11 (c) and (d) and section 12, subsection 2 (f), as amended) are met. The controlling body of the Operational Programme RDI is similarly authorized to perform audit at the Seller's subcontractors (see Annex no. 2 to the Guide-

lines for OP RDI Applicants and Beneficiaries – Contractor Selection Guidelines
<http://www.msmt.cz/file/14585>).

- 5.14.** The Seller will be obliged to provide the Purchaser with free of charge telephone and e-mail consulting concerning the operation and use of the Goods for the entire period of the use of the Goods.
- 5.15.** The Seller will be obliged to properly maintain all documents (original of this Contract including its annexes, accounting documents originals etc.) relating to the execution of the subject-matter of the Contract, including accounting books, for at least three years after the OP RDI project is closed, i.e. at least until 2021. During the same time period, the Seller will be obliged to provide requested information and documents to the employees or agents of bodies authorized to audit projects performed under OP RDI and will be obliged to create conditions for these personnel to be able to carry out the audit of the project implementation and cooperate in the audit.
- 5.16.** If any part of the supply of the Goods pursuant to this Contract is to be subcontracted, the Seller must provide identification data of a relevant subcontractor:
None
Any changes of the subcontractor pursuant to this Contract are subject to a previous written consent of the Purchaser.
- 5.17.** The Seller undertakes to observe all and any obligations set out in the Seller's Proposal submitted to the Public Tender specified in Article I herein.

VI.

Validity and Effect of the Contract

- 6.1 The Contract becomes valid and effective on the day it is signed by authorized representatives of the two Contractual Parties.
- 6.2 The Contract can only be terminated for reasons stipulated in the Contract or specified by law.

- 6.3 A contractual party affected by the other party's failure to meet its obligation may unilaterally terminate this Contract for a gross violation of the Contract; in particular, the following will be considered gross violation of this Contract:
- a) Purchaser's failure to pay the purchase price in accordance with this Contract within 30 days after the due date of a relevant invoice,
 - b) Seller's failure to duly deliver the Goods, or even part of the Goods, on the agreed dates,
 - c) Seller's failure to supply Goods possessing the characteristics declared by the Seller in this Contract,
 - d) If the Seller submitted information or documents failing to truly describe the reality in the Seller's Proposal submitted to the Tender, and such information or documents could have affected the result of the Tender.
- 6.4 Once the Contract becomes ineffective, all and any obligations of the Contractual Parties arising from this Contract will cease to exist. The ineffectiveness or termination of the Contract will not affect the existence of the right to claim damages and contractual penalties in case of violation of the contractual obligations existing before the Contract becomes ineffective, and obligations of the Contractual Parties that are to survive this Contract pursuant to the Contract or by their nature or by law.

VII. Closing Provisions

- 7.1 The relationship between the parties will be governed by the Czech law. Unless expressly stipulated otherwise in the Contract, the relationships that come to existence based on this Contract and arising from this Contract are governed by the relevant provisions of the Commercial Code, Act no. 513/1991, Coll., as amended, and other applicable laws.
- 7.2 All and any changes and amendments to the Contract may only be made by a written agreement of the Contractual Parties. Such agreements must be in the form of dated and numbered amendments to the Contract signed by both Contractual Parties.
- 7.3 If any of the parties is unable to duly perform this Contract due to circumstances preventing it to do so, the party will be obliged to inform the other party about the fact without undue delay and initiate a meeting of the Purchaser's and Seller's representatives.

- 7.4 If a reason causing one provision to be invalid only affects a certain provision of the Contract, only this particular provision will be invalid, unless its nature or circumstances, under which it was stipulated, indicate that it is not severable from the rest of the Contract.
- 7.5 The Contractual Parties will always strive to reach an amicable settlement of possible disputes arising out of the Contract. If the amicable settlement is impossible to reach within 30 business days of the first notification of the other party, any of the Contractual Parties will be entitled to file its claim at a competent court. Arbitration procedure is excluded.
- 7.6 The Contract is made out in 4 (four) identical copies, each of which is valid as original. Each of the Contractual Parties will receive 2 (two) identical copies.
- 7.7 The Contractual Parties declare that they have read the Contract before signing, and have no reservations to its content whatsoever. The Contract expresses their sincere, real, free and serious will. To demonstrate that these statements are authentic and true the authorized representatives of the Contractual Parties attach signatures in their own hand.

Annexes:

Annex no. 1 – Detailed Technical Specification of the Goods

Annex no. 2: Authorization of the Dean of the Faculty of Applied Sciences of University of West Bohemia in Pilsen to Act on Behalf of the Public University

In Berlin date 2014-06-20

In Pilsen date 29. 6. 2014

microTOOL

microTOOL GmbH
Software Methoden Training
Voltastraße 5
13355 Berlin
Tel.: +49 (30) 467086-0

On behalf of the Seller
Dipl.-Inform. Mario Müller
CEO, microTOOL GmbH

On behalf of the Purchaser
Doc. Ing. František Vávra, CSc.
Dean of the Faculty of Applied Sciences
authorized to act on behalf of the
University

Annex no. 1 to the Contract – Detailed Technical Specification of the Goods

Data Sheet and detailed technical Specification of case/4/0

Hardware Requirements

- Pentium III 500 MHz or higher
- 256 MB RAM
- 150 MB available hard disk space

Software Requirements

- MS Windows 2000/XP/Vista/7
- MS Word 2000 (or higher)

Function	YES/NO
Support of system analysis methods, at least FSD (Function Structure Diagrams), IFD (Information Flow Diagrams), DSD (Data Structures Diagrams), ERA (Entity-Relationship-Attribute diagrams)	YES
Support for relational database design (at minimum), DDL (Data Definition Language) (or equivalent) script generation	YES
Module and algorithm design, source code generation	YES
Documentation generation, at least in the form of text and HTML	YES
User-specific (user customization) –at least for GUI (Graphical User Interface), DDL generation, source code and documentation generation	YES
Support for at least version and configuration administration, teamwork and reverse engineering	YES
Two (2) perpetual commercial licenses (floating license or HW key/dongle) – 2 (two) licenses for 2 work stations.	YES

POVĚŘENÍ

(v souladu se zák. č. 262/2006 Sb.; zákoník práce, ve znění pozdějších předpisů, zák. č. 111/1998 Sb., o vysokých školách, ve znění pozdějších předpisů; zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů)

Západočeská univerzita v Plzni, IČO: 49777513, se sídlem Plzeň, ul. Univerzitní 8/2732, PSČ: 306 14, jednající doc. PaedDr. Ilonou Mauritzovou, Ph.D., rektorkou, tímto

p o v ě ř u j e

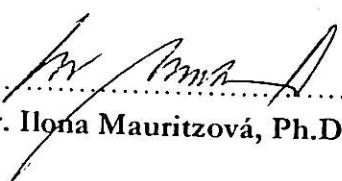
v souladu (i) s Rozhodnutím rektora č. 25R/2012 - Organizačním řádem Západočeské univerzity v Plzni ze dne 28.08.2012, ZCU 028615/2012, (ii) se zák. č. 111/1998 Sb., o vysokých školách; (iii) Statutem Západočeské univerzity v Plzni ze dne 20.12.2012 a (iv) zák. č. 111/1998 Sb., o vysokých školách, ve znění pozdějších předpisů,

k e d n i 1. 8. 2013

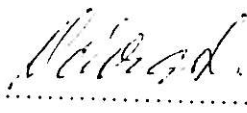
jméno: **FRANTIŠEK** příjmení: **VÁVRA** narozen dne: 22. dubna 1949, bytem: Alej Svobody 52, 323 00 Plzeň, funkce: **děkan Fakulty aplikovaných věd, zaměstnanec Západočeské univerzity v Plzni, zejména k:**

- zajištění všech úkonů souvisejících s organizací, koordinací a výkonem činností při zadávání veřejných zakázek ve smyslu zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů, v rámci Operačního programu Výzkum a vývoj pro inovace, projekt NTIS, CTPVV;
- k podpisu všech právních úkonů souvisejících se zadáváním veřejných zakázek ve smyslu zák. č. 137/2006 Sb., o veřejných zakázkách, ve znění pozdějších předpisů, v rámci Operačního programu Výzkum a vývoj pro inovace, projekt NTIS, CTPVV.

V Plzni, dne 17. července 2013


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doc. PaedDr. Ilona Mauritzová, Ph.D., rektorka ZČU

Uvedené pověření přijímám:


.....
doc. Ing. František Vávra, CSc., děkan FAV

