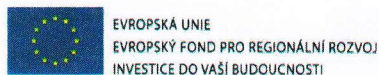


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ZAV/0124/0002/14



Annex No. 5 to the Invitation to the Tender

PURCHASE CONTRACT No. /..... /14

(hereinafter referred to as the "Contract")

Entered into pursuant to the Civil Code, Act no. 89/2012, Coll., Section 2079 et sequentes, as amended

I.

Contracting Parties

1.1. Purchaser: University of West Bohemia in Pilsen

Address: Univerzitní 8, 306 14 Plzeň, Czech Republic
Represented by: Ing. Arch. Hynek Gloser, Ph.D., Bursar
Bank: Komerční banka a.s., Plzeň-město
Account no.: 4811530257/0100
Identification no.: 49777513
Tax identification no.: CZ49777513

(hereinafter referred to as the "Purchaser") as one Contracting Party

and

Seller: balticFuelCells GmbH
Address: Hagenower Str. 73, 19061 Schwerin, GERMANY
Represented by: Dr. Bastian Ruffmann
Bank: Deutsche Bank AG
Account no.: IBAN: DE98130700000320026800
Identification no.:
Tax identification no.: DE249654848

Registered in the commercial register of Schwerin, HRB9177

(hereinafter referred to as the "Seller") as the other Contracting Party

(together also referred to as the "Contracting Parties")

enter into the following Contract based on the result of the Tender for the small-scale Public Contract entitled "**System for Fuel Cell Testing**":

II.

Subject of the Contract

- 2.1. The Seller undertakes, within the scope, and pursuant to the terms and conditions of the Contract herein, to supply new fully-functional and complete equipment for the diagnostics of a membrane-electrode assembly for the research of polymer-electrolyte-membrane fuel cells – namely the **System for Fuel Cell Testing**, including all components (hereinafter referred to as the “**Goods**”) to the Purchaser, including all relevant, and to transfer the ownership rights to the Goods to the Purchaser. The Goods are specified in detail in **Annex No. 1** to this Contract and constitutes its integral part.
- 2.2. The use of this system for precise diagnostics of fuel cells (membrane-electrode assemblies) will result in the possibility of a unique comprehensive analysis of the operating characteristics of a membrane-electrode assembly. Another consequence of the use of this system is its important contribution to accomplishing the currently ongoing project (CENTEM) and future projects.
- 2.3. The Seller shall deliver fully operational equipment for membrane-electrode assembly testing without the necessity of any complementary deliveries, such as operating fluids, etc.
- 2.4. The Purchaser undertakes to accept the Goods supplied by the Seller, and to pay the stipulated purchase price for the Goods to the Purchaser by the due date, stipulated herein.
- 2.5. The Seller’s commitment also includes transportation of the Goods to the place of delivery pursuant to Article III herein (including possible insurance of the Goods during transportation); installation of the Goods and its setting into operation; the duty to demonstrate, to the Purchaser, all the required functions and parameters of the Goods specified in Annex No. 1 herein. The Purchaser has the right not to accept the Goods, should the Seller fail to demonstrate duly and properly all the required functions and parameters of the Goods specified in Annex No. 1 herein.
- 2.6. The Seller undertakes to supply the relevant technical documentation for the Goods, in particular user’s manuals in the Czech or English language in a written form (hard copy).

- 2.7.** The Seller is also obliged to carry out training of operation staff members, in the place of delivery directly on the delivered equipment. The scope of the training shall be at least eight (8) hours, with the minimum of two (2) operation staff members undergoing the training. In the training, the operation staff will learn, to the full extent, how to operate the Goods. There will be a written record of the training of the operating staff. This record shall be dated and signed by both Contractual Parties; the Buyer shall be the person referred to in Article V, Section 5.12. The Seller shall then transmit the record of staff training to the Buyer.
- 2.8.** The Seller declares that the Goods meet all requirements of the Purchaser stated in the Invitation to the Tender "**System for Fuel Cell Testing**" and its annexes.

III.

Time and Place of Delivery

- 3.1.** The Seller is committed to deliver the Goods immediately upon the signing of the Contract, at the latest by five (5) months after the signing of the Contract by both Contracting Parties to the Purchaser. Should the Seller be in delay fulfilling the obligations pursuant to Article III, Section 3.1 of the Contract herein, the Purchaser will be entitled to request the Seller to pay a contractual penalty of 0.5% of the purchase price without VAT for every, even incomplete, day of the delay. The total amount of the penalty is not limited.
- 3.2.** The Goods will be transferred by the Seller and accepted by the Purchaser based on the Memorandum on Transfer of the Device duly signed by both Contracting Parties.
- 3.3.** The place of delivery is the University of West Bohemia in Pilsen, New Technologies – Research Centre, Veleslavínova 42, 306 14 Plzeň, Czech Republic.

IV.

Price and Payment Terms

- 4.1.** The purchase price for the Goods is stipulated based on the agreement of the Contracting 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 supplied Goods, the stipulated purchase price pursuant to Article II herein:

- For the delivery of the System for Fuel Cell Testing, including its attachments, the purchase price in the amount of CZK 1.495.000,- , excl. VAT (in words: one million fourhundredandninetyfive thousand Czech crowns), VAT rate is 0 %, VAT is CZK 0, the purchase price incl. VAT is CZK 1.495.000,-.

The purchase price will include all costs incurred in connection with performance of the Public Contract and it is stipulated as the highest possible price including all fees and any other costs associated with the supply of the Goods pursuant to this Contract. The price includes transportation as well as relevant insurance, installation of the Goods, electrical installation and its setting into operation, and training of the operation staff members of the Purchaser to the required extent. The Goods will be ready for immediate operation without any need to be completed, in particular by operational fluids, other necessary materials for the initial operation of the equipment, etc.

The purchase price also includes any administrative charges, taxes, duties, approval procedure costs, required testing, compliance statement, certificates, transfer of rights, insurance, transportation charges, etc.

- 4.3.** The purchase price can only be exceeded in relation to an amendment to tax laws concerning VAT. In case of tax regulations concerning VAT having changed, the purchase price will be changed accordingly.
- 4.4.** The Purchaser will settle the purchase price in Czech currency against the tax document (invoice). The purchase price for delivery of the Goods under the Contract will be paid to the Seller on the basis of a tax document (invoice) issued not later than 15 days from the day of delivery of the Goods to the Purchaser, i.e. from the day of signing the Memorandum on Transfer of the Device by both Contracting Parties.
- 4.5.** Enclosed with the invoice issued by the Seller must be a Memorandum on Transfer of Device put into writing and duly signed by the authorized representatives of both Contracting Parties.

- 4.6.** A 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 again after the duly amended or corrected invoice is received by the Purchaser.
- 4.7.** The invoice will be due 30 days after it is demonstrably received by the Purchaser.
- 4.8.** The Purchaser will not provide any advance payments.
- 4.9.** Should the Purchaser be in default with payment of the invoice, the Seller will be entitled to request interest on late payment of 0.05% of the amount due for every, even incomplete, 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 State Budget or Grant.
- 4.10.** The Purchaser will be entitled to offset any contractual penalties that the Seller is obliged to pay, against the invoiced amount.

V.

Rights and Obligations of the Contracting Parties

- 5.1.** The Seller will be obliged to deliver the Goods in the agreed quantity, quality and design. All the Goods supplied to the Purchaser according to this Contract must meet the qualitative requirements as stipulated herein.
- 5.2.** The Seller will be obliged to supply to the Purchaser Goods free of any defects and according to the terms and conditions stipulated herein. The Memorandum on Transfer certifying the handover of the Goods may not be signed before a complete delivery of the Goods is supplied to the Purchaser, including relevant installation tasks and services stipulated herein.
- 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 or Czech language.
- 5.4.** The Seller will be obliged to provide the Purchaser, together with the delivery of

the device, with the installation of the attachments, setting the device into operation, the equipment being ready for immediate operation, with no need to be filled, for example, with operational fluids, etc.

- 5.5.** The Purchaser assumes the ownership right to the Goods on the day the Goods are properly delivered and accepted by the Purchaser on grounds of a signed Memorandum of Transfer confirming the receipt of the Goods. The risk of damage to the Goods is assumed by the Purchaser on the same day.
- 5.6.** 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 the Goods from being delivered.
- 5.7.** 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.
- 5.8.** 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.
- 5.9.** The Seller agrees that any receivables that may be claimed from the Purchaser and that come into existence based on this Contract may not be assigned or set off by a unilateral legal act.
- 5.10.** The Seller will be liable to the Purchaser for any damage caused by violation of duties stipulated in this Contract or obligations stipulated by generally binding legal regulations. No contractual penalty provided for in this Agreement shall prejudice the right of the Purchaser to compensation for damage incurred in connection with defective performance, including the Seller's delay in fulfilling the contract. The Seller further agrees that, in the event of defective performance, including delay, it shall reimburse the Purchaser for losses that demonstrably arise.
- 5.11.** The Contracting Parties agreed, and the Seller determined, that the person/s

authorized to act on behalf of the Seller in matters relating to the Contract herein and its execution is/are:

Name: Dr. Bastian Ruffmann
E-mail: ruffmann@balticfuelcells.de
Phone: +49 385 3993-212

- 5.12.** The parties agreed, and the Purchaser determined, that the persons authorized to act on behalf of the Purchaser in matters relating to the Contract herein and its execution are:

Name: Ing. Tomáš Kovářik, Ph.D.
E-mail: toko@ntc.zcu.cz
Phone: +420 377 634 808

- 5.13.** All correspondence, instructions, notices, requests, notes and other documents made out by the Contracting Parties based on this Contract or in relation to it will be made out in writing in Czech or in English language 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.

- 5.14.** The Seller acknowledges that, pursuant to the Financial Control in Public Administration Act no. 320/2001, Coll., Section 2 (e), 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 bid, Contracts and relating documents that are subject to protection according to special legal regulations (such as trade secrets, 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)) are met. The controlling body of the Operational Programme RDI is similarly authorized to perform an audit of the Seller's subcontractors, as the case may be (see Annex no. 2 to the Guidelines for OP RDI Applicants and Beneficiaries – Contractor Selection Guidelines <http://www.msmt.cz/strukturalni-fondy/spolecne-prilohy-prirucek-pro-zadatele-a-prijemce-op-vavpi-3>).

- 5.15.** The Seller is obliged, during the performance of this Contract, to follow and respect the Manual of Visual Identity of OP RDI published on the website of the

Ministry of Education, Youth and Sport: <http://www.msmt.cz/strukturalni-fondy/manual-vizualni-identity-op-vavpi>, in all relevant documents concerning the said Tender Process or Procedure, in particular in the Contract and other documents related to the said Public Contract.

- 5.16.** The Seller will be obliged to properly maintain all documents relating to the execution of the subject matter of the Contract, and archive the original copy of the Contract and its amendments, the original accounting and other documents, for at least three years after the OP RDI project is closed, i.e. at least until 2025. 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 enable them to carry out an audit of the documents related to the execution of the Contract. The Seller will be obliged to create conditions for these personnel to be able to carry out an audit of the project implementation and cooperate in the audit. All documents and the Contract written documents must also be secured against loss, theft or depreciation.
- 5.17.** Should part of the delivery of the Goods pursuant to this Contract be fulfilled by a subcontractor, the Seller is obliged to state the identification data of the said subcontractor. Should part of the delivery of the Goods pursuant to this Contract be fulfilled through a subcontractor, the Seller is obliged to state the identification data of the said subcontractor. Any change in the subcontractor under this contract shall be subject to prior written agreement from the Purchaser.

VI.

Guarantee on the Goods

- 6.1.** The Seller assumes a quality guarantee on the Goods for the period of 12 months. The guarantee period starts on the day the Goods are delivered to the Purchaser, i.e. on the day the Memorandum on Transfer confirming delivery and receipt of the Goods is signed.
- 6.2.** The Purchaser is obliged to inform the Seller about any defects covered by the guarantee as soon as they are identified. The Seller will carry out any repairs covered by the guarantee free of charge and without undue delay, taking into consideration the nature of the defect, including, if need be, the transportation of the Goods to the servicing premises and back, unless agreed otherwise in writing with the Purchaser.

- 6.3.** The Seller will be obliged to remedy the claimed defects, or as the case may be, satisfy other claims of the Purchaser arising from unsatisfactory performance, in the course of the guarantee period; the Seller will start to deal with the defect within 48 hours after being informed about the defect by the Purchaser, by phone on business days between 8:00 a.m.–2:00 p.m., or in writing. The presence for defect elimination shall mean the presence of the Seller at the place designated by the Contracting Authority as the place where the reported defects in the Product shall be eliminated. The Seller is obliged to eliminate the defect within five (5) business days from the accession to the elimination of defects, at the latest, unless agreed otherwise. If a defect is identified in the course of the guarantee period, the guarantee period will be extended by the time elapsed between the moment when the Purchaser reports the defect to the Seller and its elimination by the Seller.
- 6.4.** In case the Seller's arrival and elimination of the defects reported by the Purchaser in accordance with Article 6.3 herein is delayed, the Seller undertakes to pay a contractual penalty of 0.1% of the purchase price of the Goods without VAT for every, even incomplete, day of the delay to the Purchaser. The total amount of the contractual penalty is not limited.
- 6.5.** The claims may be raised by the last day of the guarantee period at the latest; also claims mailed on the last day of the guarantee period will be considered duly raised claims.
- 6.6.** The guarantee does not cover defects caused by unprofessional manipulation of or mechanical damage to the Device by the Purchaser.
- 6.7.** The Seller undertakes, for the purpose of eliminating the claimed defects, to provide services relating to the Goods, including any transport of the Goods to the service premises and back to the place of delivery under Article III thereof, at its own expense, at least for the duration of the warranty period.

VII.

Validity and Effect of the Contract

- 7.1** The Contract becomes valid and effective on the day it is signed by authorized representatives of the two Contracting Parties.
- 7.2** The Contract can only be terminated for reasons stipulated in the Contract or

specified by law. Withdrawal from this Contract will come into effect on the date when the written withdrawal of the withdrawing Party is delivered to the other Party. In the event of termination of this Contract, the Parties are required to settle their mutual claims and obligations set out by law or in this Agreement, within 30 days from the legal effect of the withdrawal, or within the agreed period.

- 7.3** A Contracting 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 a gross violation of this Contract:
- a) Purchaser's failure to pay the purchase price in accordance with this Contract within 60 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 date,
 - c) Seller's failure to supply Goods possessing the characteristics declared by the Seller in this Contract,
 - d) Seller's failure to start dealing with a claim to eliminate any defects on time, and failure to eliminate the defect itself, pursuant to Article 6.3 herein,
 - e) Seller's failure to provide correct information or documents indicative of the actual situation in the Bid that had been submitted to the Tender before this Contract was signed, which have or could have affected the result of the Tender.
- 7.4** Furthermore, the Purchaser is entitled to terminate the Contract without recourse, provided that the Purchaser is not allocated the funding needed to purchase the subject matter of the Contract.
- 7.5** The Purchaser is also entitled to terminate this Contract without recourse in case the costs that would have been incurred by the Purchaser in relation to this Contract are found to be non-eligible costs by the OP RDI controlling body, or another audit body. (See Annex No. 2 of the Guidelines for OP RDI Applicants and Beneficiaries – Contractor Selection Guidelines <http://www.msmt.cz/strukturalni-fondy/spolecne-prilohy-prirucek-pro-zadatele-a-prijemce-op-vavpi-3>).
- 7.6** Once the Contract becomes ineffective, any and all obligations of the Contracting 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

Contracting Parties that are to survive this Contract by their nature or by law.

VIII.

Closing Provisions

- 8.1.** The relationship between the Parties will be governed by Czech law. Unless expressly stipulated otherwise in the Contract, the relationships that come into existence based on this Contract and arising from this Contract are governed by the relevant provisions of the Civil Code, Act no. 89/2012, Coll., as amended, and other applicable laws.
- 8.2.** Any and all changes and amendments to the Contract may only be made by a written agreement of the Contracting Parties. Such agreements must be in the form of numbered amendments to the Contract signed by both Parties and dated.
- 8.3.** If either of the Parties is unable to duly perform this Contract due to circumstances preventing it from doing 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.
- 8.4.** 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 the circumstances under which it was stipulated indicate that it is not severable from the rest of the Contract.
- 8.5.** The Contracting Parties will always strive to reach amicable settlement of possible disputes arising from the Contract. Should no amicable settlement be reached within 30 business days after the first notification of the dispute to the Other Party, either of the Parties is entitled to apply its claim to the competent court. Arbitration is excluded.
- 8.6.** The Contract is made out in four (4) identical copies, each of which is valid as an original. Each of the Contracting Parties will receive two (2) identical copies.
- 8.7.** The following annexes constitute an integral part of the Contract:
 - a) Annex no. 1 – Detailed Technical Specification of the Goods.
- 8.8.** The Contracting Parties declare that they have read the Contract before signing, and agree with its content without any reservations. The Contract expresses their sincere, real, free and serious will. To demonstrate that these statements are

authentic and true, the authorized representatives of the Contracting Parties attach signatures in their own hand.

In Pilsen..... Date~~1.9.09~~ 2014

In Schwerin Date 29.09.2014

On behalf of the Purchaser:

University of West Bohemia in Pilsen

západočeská univerzita v Plzni
investor

On behalf of the Seller:

balticFuelCells GmbH

.....
Ing. Arch. Hynek Gloser, Ph.D.,
Bursar

.....
Dr. Bastian Ruffmann
CEO

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

The Bidders are obliged to state technical parameters for the Goods that are to be purchased as specified in Article 3 of the Invitation to the Tender; information may be extended by a specification of the supplied Device; however, it must comply with the Tender Documents.

Please refer to Quotation AN-2014-111 **and** the data sheets attached.