



PURCHASE CONTRACT

By and between

Zpulser LLC

and

University of West Bohemia in Pilsen

PURCHASE CONTRACT

(Hereinafter referred to as the "Contract")

Entered into pursuant to the Commercial Code, Act no. 513/1991, Coll., Section 409 et sequentes, as amended

I.

Contracting Parties

1.1. **Purchaser:** **University of West Bohemia in Pilsen**

Registered office: Univerzitní 8, 306 14 Plzeň, Czech Republic
Represented by: doc. PaedDr. Ilona Mauritzová, Ph.D., Rector
Bank: Komerční banka a.s., Plzeň-město
Account no.: 4811530257/0100
Identification no.: 497 77 513
Tax identification no.: CZ49777513

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

and

1.2. **Seller:** **Zpulser LLC**

Registered office: Massachusetts, USA / registered in Delaware, USA
Represented by: Bassam Abraham
Bank: Bank of America
Account no.: 004612628973; Bank Routing Number: 011000138
Swift code: BOFAUS3N
Identification no.: 20-8491826
Tax identification no.: 20-8491826

Registered in the commercial register of The Commonwealth of Massachusetts,
Secretary of the Commonwealth, State House, Boston, Massachusetts 02133

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

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

Based on the result of the Tender entitled "**Delivery of Impulse Sources for Magnetron Sputtering deposition for the NTIS Project**: Delivery of a Unipolar Impulse Power Generator Cyprium for High Power Unipolar Impulse Magnetron Sputtering Using a Single Target", the Contracting Parties enter into the following Contract:

II.

Subject of the Contract

- 2.1. The Seller undertakes, pursuant to the terms and conditions of the herein Contract, to supply to the Purchaser one (1) unit of a new fully-functional and complete **unipolar impulse power generator for high power unipolar impulse magnetron sputtering using a single target** including accessories and including relevant full-fledged software and software license enabling proper use of the Goods, software and hardware compatibility of the Goods must be ensured (hereinafter referred to as **"the Goods"**), and to transfer the ownership title 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 to supply the Goods also includes the commitment to supply relevant technical documentation and user manuals in English language necessary for everyday operation of the Goods.
- 2.3. The Purchaser undertakes to accept the Goods supplied by the Seller under the terms and conditions specified in this article, check completeness of the Goods and make sure the Goods is free from any defects and pay the stipulated purchase price for the Goods to the Seller using the payment method, and by the due date, stipulated herein.

III.

Time and Place of Delivery, Use of Software

- 3.1. The Seller undertakes to supply the Goods to the Purchaser and meet its obligations pursuant to article II herein within ten (10) weeks **after this Contract is signed at the latest**. Should the Seller be in delay with the performance of the obligations specified in the previous sentence, the Purchaser will be entitled to request the Seller to pay a contractual penalty of 0.05% from the total purchase price specified in art. 4.2 for every, even started, day of the delay, the right of Purchaser to request damages will not be prejudiced. The total amount of the penalty is limited to 5% of the purchase price.
- 3.2. Unless stipulated otherwise in the Contract, **the Goods will be delivered** pursuant to INCOTERMS 2010 DAP (Univerzitní 22, Plzeň, Czech Republic). **The place of delivery is** University of West Bohemia in Pilsen, Univerzitní 22, Plzeň, Czech Republic.
- 3.3. The Purchaser is obliged to check completeness of the Goods and that the Goods is free from any defects immediately after the Goods is accepted from an authorised carrier. The Purchaser is obliged to confirm in writing to the Seller that the Goods was delivered complete and free from any defects within five (5) business days after accepting the Goods from the authorised carrier at the latest.
- 3.4. If the Goods accepted by the Purchaser pursuant to the above article is found to be defective, or incomplete, the Purchaser will inform the Seller about the fact in writing within five (5) business days after the Goods is accepted from the authorised carrier at the latest. Next steps will be in accordance with the provisions of article VI herein.
- 3.5. In accordance with the Contract, the Seller undertakes to transfer to the Purchaser the right to use the software within the scope necessary for the proper and full use of the Goods on the day the Goods is delivered. The right to use the software – the licence – is granted without any time and territorial limits, the price of the license is included in the purchase price of the Goods. The Purchaser is not obliged to use this license.
- 3.6. The Seller expressly declares that the Seller is authorised to provide the licenses specified in art. 2.1 herein based on its legal relationship with the author/person exercising the ownership rights to copyright. The Seller will be fully liable for the correctness of the herein declaration and agrees and acknowledges that should the rights of the Purchaser be limited by a third party in connection with

the licenses, or should a third party prevent the Purchaser from proper exercise of these rights, the Seller undertakes to stop such behaviour at its own expense and to compensate the Purchaser for possible damage.

- 3.7. Should the declaration stated by the Seller in art. 3.6 turn out to be untrue, or the license is, contrary to the above declaration, invalid or insufficient, the Purchaser will be entitled to request from the Seller a contractual penalty of USD 5,000, this will not prejudice the Purchaser's right to claim damages. In such a case, the Purchaser will also be entitled to request the Seller to obtain the appropriate license additionally; if the Seller fails to meet such an obligation within 30 calendar days after receiving the request from the Purchaser at the latest, the Purchaser will be entitled to terminate the Contract.

IV. Price and Payment Terms

- 4.1. The purchase price for the Goods was stipulated based on an 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 to the Seller for the supplied Goods the stipulated **purchase price of USD \$45,000.00 – excluding VAT** (in words: forty five thousand US dollars);
- 4.3. The purchase price 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 in particular the transportation, including insurance, and costs associated with obtaining of certificates of conformity, certificates, attests and transfer of rights. The purchase price also includes all costs associated with customs clearing of the Goods for export as well as all duties, taxes and other export costs.
- 4.4. The Purchaser will settle the purchase price in US dollars (USD) against a tax document - invoice made out by the Seller as follows:

FIRST REQUEST of Payment:

Down Payment of 50 % of the total net price in between 14 days after the date of the signed tender / contract.

SECOND REQUEST of Payment of 50% of the total net price in between 14 days days after the date of delivery to the Place of delivery specified in art. 3.2.

The tax documents (invoices) must contain all elements of a proper accounting and tax document pursuant to the relevant legislation. 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.

The invoice maturity is stipulated 30 days after it is demonstrably delivered to the Purchaser.

Should the Purchaser be in default with payment of invoices, 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 Purchaser will be entitled to off-set 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 is obliged to deliver the Goods in the agreed quantity, quality and design. All the Goods supplied by the Seller to the Purchaser according to this Contract must meet the qualitative requirements as stipulated herein.
- 5.2. The Seller is obliged to supply to the Purchaser Goods free of any defects and according to the terms and conditions stipulated herein. The ownership title to the Goods is transferred to the Purchaser on the day the Goods is duly accepted from the authorized carrier. At the same moment, the risk of damage is also transferred to the Purchaser.
- 5.3. The Seller is obliged to immediately inform the Purchaser about possible risk of not meeting the deadline, and about any circumstances that might prevent the Goods from being delivered.
- 5.4. Throughout the entire duration of the Contract, the Seller is obliged to maintain appropriate qualifications demonstrated in the course of the Tender preceding signing of this Contract. If this provision is breached, the Purchaser will be entitled to terminate this Contract.
- 5.5. 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.
- 5.6. 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.
- 5.7. The Seller is liable to the Purchaser for any damage caused by violation of duties stipulated in this Contract or obligations stipulated by generally binding legal regulations.
- 5.8. The Contracting Parties agreed, and the Seller determined, that the person authorized to act on behalf of the Seller in matters relating to the Contract herein and its execution is:

Name: Bassam Abraham
Email: babraham@zpulser.com
Phone: 508-207-6157

The Purchaser acknowledges that requests for any service tasks to be carried out pursuant to Section 6.2 herein will be addressed to this contact person. The Purchaser must always be immediately informed in writing about any personnel changes concerning this position; such a change becomes effective at the moment of delivery of the written notice to the Purchaser.

- 5.9. The Contracting Parties agreed, and the Purchaser determined, that the person authorized to act on behalf of the Purchaser in matters relating to the Contract herein and its execution is:

Name: Ing. Jiří Rezek
Email: jrezek@kfy.zcu.cz
Phone: +420 377 632 269 , +420 723 175 039

All letters, 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 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.

- 5.10. 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, Contract 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 at the Seller's subcontractors.

- 5.11. The Seller will be obliged to properly maintain all documents 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.
- 5.12. The Seller is obliged to observe all the commitments contained in the Tender Documents and in its Bid submitted to the tender before this Contract was signed. The Bid is enclosed as Annex no. 2 herein.
- 5.13. The Seller acknowledges and agrees that this Contract will be made public on the Purchaser's website pursuant to the Public Contracts Act, Section 147 (a), and that the actual price paid for the supply of the subject matter of the Contract will also be made public by the deadlines and in a manner defined by the Public Contracts Act Section 147 (a).

VI.

Guarantee on the Goods

- 6.1. The Seller provides 12-month guarantee on the Goods from the moment the Goods is delivered to the Purchaser, i.e. the day when the Goods is delivered by an authorized carrier.
- 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 at the Seller's cost and without undue delay, depending on the type of defect, no later than within 3 (three) weeks from the date a defect is reported by the Purchaser, unless stipulated otherwise in writing, or unless provisions of art. 6.6 herein apply to the situation. Should the Seller fail to meet the defined (or otherwise stipulated) deadlines for repair under guarantee, the Purchaser will be entitled to request a contractual penalty of 0.5% from the total purchase price from the Seller for every, even started, day of delay, this will not prejudice the Purchaser's right to claim damages. The total amount of the contractual penalty is limited to 5% of the purchase price.
- 6.3. 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 and its removal by the Seller.
- 6.4. Any claims may be raised by the last day of the guarantee period at the latest; claims mailed on the last day of the guarantee period will be considered duly raised claims.
- 6.5. The guarantee does not cover defects caused by unprofessional manipulation or mechanical damage of the device by the Purchaser.
- 6.6. The Seller undertakes to provide servicing for the supplied devices in order to remove the claimed defects at least in the course of duration of the guarantee period. Should it be necessary to send the device for repair to its manufacturer, the Seller would be obliged to comply with the maximum repair period of 3 (three) weeks of the moment the goods is accepted by the Seller for servicing, unless stipulated otherwise.

- 6.7. Should the Seller fail to meet the defined deadline pursuant to article 6.6 herein, the Seller undertakes to pay to the Purchaser a contractual penalty of 0.5% from the total purchase price for every, even started, day of delay, this will not prejudice the Purchaser's right to claim damages. The total amount of the contractual penalty is limited to 5% of the contractual price.

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.
- 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 for more than 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) Removal of defects by the Seller is delayed for more than four (4) weeks from the deadline specified in article 6.2 herein, or as the case may be, article 6.6 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. Once the Contract becomes ineffective, all and any 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 stipulated 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 (in particular the obligations stipulated in art. 5.10 and 5.11 herein) 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 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.
- 8.2. All and any changes and amendments to the Contract may only be made by a written agreement of the Contracting Parties and must respect provisions of the Public Contracts Act, Section 82, subsection 7. Such agreements must be in the form of numbered amendments to the Contract signed by both Parties and dated.

- 8.3. If any 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, contents 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. Possible disputes arising from this Contract will be resolved in accordance with the valid laws by local authorities with appropriate competences in the Czech Republic. In accordance with the Civil Procedure Code, Act no. 99/1963, Coll., Section 89(a) as amended, the disputes arising from this Contract or relating to this Contract will be resolved by the district (Okresní soud Plzeň – město) or regional court in Pilsen (Krajský soud v Plzni).
- 8.6. The Contract is made out in four (4) identical copies, each of which is valid as original. Each of the Contracting Parties will receive two (2) identical copies.
- 8.7. Annex no. 1 – Detailed Technical Specification of the Goods is an integral part of the Contract.
- 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. The authorized representatives of the Contracting Parties attach signatures in their own hand to confirm that these statements are authentic and true.

In Pilsen 3/14/2014

In Mansfield, MA, date 2/21/2014
USA

On behalf of the Purchaser:

University of West Bohemia in Pilsen

On behalf of the Seller:

Zpulser LLC



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doc. PaedDr. Ilona Mauritzová, Ph.D.
Rector

.....
Mr. Bassam Abraham
President

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

Technical Specification of the Goods:

The unipolar impulse power generator for high power impulse magnetron sputtering using a single target. Usable for deposition of metallic films and reactive deposition of oxide, nitride and oxynitride films with sputtering target diameter of 50 to 100 mm.

Parameters of the power generator:

- Mean output: 12 kW
- Max. voltage: -1200 V
- Max. current: 300 A
- Voltage impulse duration: 2-16 μ s
- Impulse repeat frequency: 1-62.5 kHz