



PURCHASE CONTRACT

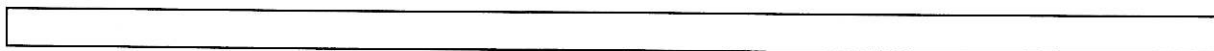
between

Acellent Technologies, Inc.

and

University of West Bohemia in Pilsen

Entered into on *DECEMBER 10th 2013*





PURCHASE CONTRACT
(Hereinafter referred to as “the Contract”)

Entered into pursuant to the Commercial Code, Act no. 513/1991, Coll., section 409 as amended, the Copyright Act no. 121/2000, Coll., section 46 et sequentes (Copyright and Rights Related to Copyright and on Amendment to Certain Acts) as amended

I.

Contracting Parties

- 1.1. Purchaser: University of West Bohemia in Pilsen**
Address: Univerzitní 8, 306 14 Plzeň
Represented by: doc. PaedDr. Ilona Mauritzová, Ph.D., Rector
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

- 1.2. Seller: Acellent technologies, Inc.**
Address/place of business: 835 Stewart Drive, Sunnyvale, California, 94085
Acting through/ represented by: Irene Li
Bank: Bank of the West, Mountain View Branch
Account no.: 007104307
Identification no.: Q41113A
Tax identification no.: 770377143

(Hereinafter referred to as “**the Seller**”) as the other Contracting Party

(Together also referred to as “**the Contracting Parties**”)

WHEREAS

- a) This Contract is concluded based on a result of the Tender held pursuant to the Public Contracts Act no. 137/2006, Coll., as amended awarding the Public Contract entitled “**Delivery of System for Active Monitoring of Composite Structures in Real Time for the NTIS Project**”;
- b) The Seller confirms that they have become fully acquainted with the scope and nature of the Contract concerning the said subject matter of the Public Contract, and that they are aware of all technical, qualitative and other conditions and have the capacities and expertise needed to deliver the Contract;
- c) The Seller explicitly confirms that they have studied all the Contracting Authority’s documents and instructions received by the date of execution of this Contract as well as instructions



contained in the requirements that the Purchaser defined for the Contract, that the Seller has found these requirements to be appropriate, that the purchase price and the method of the Contract delivery contains and takes into consideration all the above specified conditions and circumstances.

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 a new fully-functional and complete delivery of a multi-channel measurement and diagnostic system (hereinafter referred to as "the Goods") to the Purchaser, 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 to supply the Goods also includes the commitment to supply user manuals in English language in hard copy as well as in electronic copy.
- 2.3. The Seller's commitment also includes transportation of the Goods to the place of delivery. The Goods must be equipped with the relevant full-fledged software including relevant licenses. The Seller hereby expressly declares that the Supplier is, based on its legal relation with the author/person exercising the copyright, authorized to grant or mediate granting of the license specified in article 2.3 herein. The Seller is fully liable for this statement being true.
- 2.4. 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

- 3.1. The Seller undertakes to supply the Goods to the Purchaser and meet all its obligations pursuant to articles II herein within twelve (12) weeks after this Contract is signed at the latest. Should the Seller be in delay with the delivery of the Goods and meeting of all the obligations specified in article II herein, the Purchaser will be entitled to request the Seller to pay a contractual penalty of USD 250 for every, even started, day of the delay, the right of Purchaser to request damages will not be prejudiced.
- 3.2. 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.
- 3.3. If the Goods accepted 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. Provisions of article VI herein will apply.
- 3.4. Delivery of Goods will be pursuant to INCOTERMS 2010 DAP (Univerzitní 22, 310 00 Plzeň, Czech Republic), unless otherwise stipulated herein. The place of delivery is University of West Bohemia in Pilsen, Univerzitní 2762/22, 301 00 Plzeň, Czech Republic.

IV.

Contractual Price and Payment Terms



- 4.1. The Purchaser undertakes to pay the Seller the stipulated **price of USD 58,000 excluding VAT** (in words: fifty-eight thousand US dollars).
- 4.2. The purchase price is stipulated including all fees and any other costs associated with the Goods delivery pursuant to this Contract. The price includes in particular transportation including insurance.
- 4.3. The contract price may only be exceeded as a result of amendments to the tax regulations concerning VAT.
- 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:
 - 1) Seller sends "proforma invoice" for 70% of total price within 30 days from the day the Contract is signed
 - 2) Purchaser pays the 70% within 30 days of receipt of the proforma invoice
 - 3) Seller sends the product an "remaining invoice" for 30%
 - 4) Purchaser pays the 30% within 30 days of receipt of the Goods and the remaining invoice.

V.

Rights and Obligations of the Contracting Parties

- 5.1. The Seller will be obliged to deliver the Goods in accordance with the herein terms and conditions, the Goods delivered must correspond to the technical requirements specified in annex no. 1 hereto and must be free of any defects.
- 5.2. 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.
- 5.3. 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.
- 5.4. 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.
- 5.5. The Seller will be obliged to properly maintain the Contract including its annexes, tax document originals as well as other documents associated with the delivery of the Contract 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 allow persons authorised to check the project to review the documents associated with the execution of the Contract, in particular provide requested information and documents to employees or agents of the authorised audit bodies for 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. Furthermore, all documents and contract-related documents must be secured from loss, theft or degradation.
- 5.6. The Seller acknowledges that pursuant to the Financial Control in Public Administration Act no. 320/2001, Coll., section 2 (e) and changes to other laws (Financial Control Act) 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 access those parts of the bid, Contract and relating documents that are subject to special legal regulations (such as trade secret, proprietary information) for a period of 3 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 audit at the Seller's subcontractors, as the case may be.
- 5.7. The Seller undertakes that if in connection with the implementation of the Contract herein the employees of the Seller are provided with personal/sensitive data pursuant to the Personal Data



Protection Act no. 101/2000, Coll., as amended, when performing their duties, they will adopt all and any measures to prevent unauthorised or accidental access to this data, changes, damage or loss of this data, unauthorised transfer, unauthorised processing of the data and misuse of the data.

- 5.8. The Seller will not be entitled to change the subcontractor that had been listed in the bid submitted to the Tender before signing this Contract without obtaining a prior consent of the Purchaser. The Purchaser undertakes to inform the Seller about its decision within 10 calendar days of receipt of an appropriate request of the Seller; the Seller will also be obliged to submit to the Purchaser (i) a description of activities of the proposed subcontractor and (ii) documents evidencing that the proposed subcontractor possesses the qualifications corresponding to the activities of the proposed subcontractor together with the request. The Purchaser will be authorized to reject the consent in case the newly proposed subcontractor does not possess the qualifications required to perform the activities specified by the Purchaser. Violation of the obligation to obtain the Purchaser's consent with the change of the subcontractor will be a gross violation of this Contract.
- 5.9. If the subcontractor does not meet (or no longer meets) the basic qualification criteria pursuant to the Public Contracts Act as amended, or no longer possesses sufficient qualifications to perform the specified part of the subject-matter of the Contract, the Purchaser will be entitled to request the Seller to remove the subcontractor with immediate effect, and the Seller will be obliged to comply with the request within twenty (20) days of receipt of the Purchaser's written request. In case the Seller fails to terminate participation of an unsatisfactory subcontractor in the delivery of the subject-matter of the Contract within twenty (20) days of receipt of the Purchaser's written request, and to agree on another adequate subcontractor within the same period, the Purchaser will be entitled to terminate the Contract for gross violation of the Contract.
- 5.10. The Seller will be obliged to observe all the commitments that had been stated in its bid submitted to the Tender before this Contract was signed.
- 5.11. 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).
- 5.12. The right to use the software – the licence – is granted without any time and territorial limits; the compensation for the granted license is included in the purchase price of the Goods, it is transferrable with the right to sublicense, and can be passed to a third party without consent of the Seller. The Purchaser is not obliged to use this license.
- 5.13. The Seller hereby declares that it is authorized to grant such a license in favour of the Purchaser, that there are no limitations imposed by third parties, and that the relevant software is not subject to any rights of third parties pursuant to the Copyright Act no. 121/2000, Coll., as amended, or any other regulations. The Seller agrees and acknowledges that should the rights of the Purchaser relating to the provided license be limited by a third party, 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
- 5.14. Should the declaration stated by the Seller in 5.13 herein turn out to be untrue, or the license is, contrary to the declaration of the Seller, invalid or insufficient, the Purchaser will be entitled to charge the Seller a contractual penalty of USD 250, 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, the Purchaser will be entitled to terminate the Contract.



Quality Guarantee

- 6.1 The Seller provides 24-month guarantee on the Goods. The guarantee period starts to run on the day following the day when the Goods is delivered to the Purchaser.
- 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 no later than within 60 calendar days from the date a defect is reported by the Seller, unless stipulated otherwise by the Contracting Parties. Should the Seller fail to meet the defined deadline for repair under guarantee, the Purchaser will be entitled to request a contractual penalty of 0.05% from the total purchase price from the Seller for every, even started, day of delay. Payment of the contractual penalty will not prejudice the Purchaser's right to claim damages. The Seller will be obliged to remove 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. 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 removal by the Seller.

VII.

Termination of the Contract

- 7.1 The Contract can only be terminated for reasons stipulated in the Contract or specified by law.
- 7.2 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 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) removal of defects by the Seller is delayed for more than 4 weeks from the deadline specified in article 6.2 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.
- 7.3 The Contract becomes terminated only after the termination becomes effective. Provisions of the Commercial Code, Act no. 513/1991, Coll., section 347, as amended, will not apply to obligations stipulated by this Contract. Upon termination, the rights and obligations of the parties concerning the part of the contractual obligation that has not been met by the effective date of the termination cease to exist. The contractual obligations met by the effective date of the termination will remain subject to the Contractual terms and conditions.
- 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 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.

Common and Closing Provisions



- 8.1 This Contract becomes valid and effective on the date it is entered into, i.e. on the date of signature by authorised representatives of the Contracting Parties.
- 8.2 Contractual penalties claimed pursuant to this Contract are due thirty (30) days of the date when the party obliged to pay the penalty receives a written notice concerning payment of the contractual penalty from the entitled party, the payment will be credited to the account of the entitled party specified in the heading of this Contract.
- 8.3 All and any 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.
- 8.4 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.
- 8.5 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.
- 8.6 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 solved 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 Contracting Parties stipulate that 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).
- 8.7 The Contract is made out in 4 (four) identical copies, each of which is valid as original. Each of the Contracting Parties will receive 2 (two) identical copies.
- 8.8 The following annex forms an integral part of this Contract:
Annex no. 1 – Detailed Technical Parameters of the Goods,
- 8.9 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 ... DEC. 10th 2013 ...

in ... SUNNY VALE, CA, USA
Date ... NOV. 14, 2013

On behalf of the Purchaser:



.....
University of West Bohemia in Pilsen
doc. PaedDr. Ilona Mauritzová, Ph.D.
Rector

On behalf of the Seller:

.....
Acellent Technologies, Inc.
Irene Li, CEO & President



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

Acellent Technical Bid

Proprietary Information

Acellent Technologies, Inc. has provided quote #Q41113A, for the following Goods:

Acellent High Voltage Scan Sentry hardware, basic software, sensors, and necessary cables and accessories

The following are the specifications of the system listed in Acellent quote #Q41113A:

1. Hardware:

- a. 32 dedicated output and 32 dedicated input channels
- b. 1 temperature sensor connection
- c. Through transmission mode only
- d. 12MS/s, 24MS/s and 48MS/s selectable sampling rates
- e. 12-bit resolution
- f. Up to 120v peak-peak/Up to 600 KHz: output voltage range/frequency
- g. PZT sensors, in the signal range of 5mv up to 50mv and bandwidth 10kHz-1MHz
- h. Possibility of individual PZT sensors/actuators as well as SMART Layers with customized connection block
- i. Minimized crosstalk with Acellent special electrical design
- j. A dedicated connector to connect to an external amplifier
- k. Compatibility with 220V power supply
- l. Automatic-adjustable input high-pass and low-pass filter
- m. Necessary connectors, cables and other accessories required for operating the system.

2. Software:

- a. Arbitrary waveform generator, like pulse, chirp, pure tone, random waveforms, etc.
- b. Possibility of measuring the actuation voltage signal
- c. FFT signal processing tool
- d. Visual interface/ability to import CAD models/actuator/sensor geometry, path setting, etc.
- e. Visual interface/path definition feature available
- f. Computation of time of flight, peak amplitude of selected signal window feature available
- g. Data retrieval feature or post processing in other software like MATLAB available
- h. Diagnostic imaging tools for damages/hotspots available
- i. Sensor self-diagnostics capability: This is an additional feature which is not available with the basic software. The price for this additional feature is included in the quote.

3. Number of Sensors: 32

4. Laptop



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- a. Minimum Spec: Windows 7 Pro OS (or equivalent)
- b. Dell Latitude with 2GB minimum memory and 120GB minimum hard drive.

Acellent Terms and Conditions to supplement the base contract:

1. The Purchaser agrees to provide to the Seller, a pre-payment of 70% for the Goods. An invoice for the balance will be sent to the Purchaser with the Goods. The Purchaser agrees to provide the balance of the payment within 30 days of receipt of the Goods.
2. **Limited Hardware Warranty:** The standard warranty for Acellent hardware included with the product is 1 year (12 months) from the date it is shipped out to the customer. This limited warranty is void if failure of the product has resulted from accident, abuse, misapplication, modification, improper calibration by the customer, use of an improper hardware or software key, or unauthorized maintenance or repair. Hazards such as lightning, flood, exceeding voltage specifications, or customer abuse are not covered under warranty. Increased warranty time can be obtained for additional cost
3. **Limited sensor warranty:** Acellent warranties the sensors for one month after the Purchaser receives them or until the sensors are installed, whichever comes first. Any damage during shipping will be sought from the shipping carrier.
4. **Acellent does not warranty its software.**
5. Acellent software purchase provides a single license to the customer. Multiple licenses can be obtained from Acellent for an additional cost.
6. Only Acellent products and services (if requested) are provided as per the contract. **No License or Patent Rights are Granted through this contract.** Nothing in this contract grants or confers any rights on the part of Acellent by license or otherwise, express or implied, to any Intellectual property such as inventions, discoveries, or patents covering the invention or discovery.

In Sunnyvale, California, USA, date August 12, 2013

Irene Li, CEO & President, Acellent
Technologies, Inc.