

P14V00000057

Purchase Contract

“TOOL SCANNER - RAPID
PROTOTYPING”



Purchase Contract

(hereinafter referred to as "the Contract")

entered into pursuant to section 2079 et seq. and section 2358 et seq. of the Act No. 89/2012 Sb., the Civil Code

I

Contracting Parties

- 1.1. The Buyer:** **University of West Bohemia in Pilsen**
- Registered office: Univerzitní 8, Plzeň, 30614, Czech Republic
Represented by: doc. PaedDr. Ilona Mauritzová, Ph.D., the Rector
Bank account: Komerční banka a.s., Plzeň-město
Account number: 4811530257/0100
IBAN: CZ8101000000004811530257
SWIFT: KOMBCZPPXXX
Registration number: 497 77 513
Tax identity number: CZ49777513

(hereinafter referred to as "the Buyer")

and

- 1.2. The Seller:** **FOCUS GmbH**
- Registered office / place of business: Neukirchner Str., 655 10 Hünstetten, Germany
Represented by: Dr. Michael Merkel, CEO
Bank account: VR BANK Untertaunus
Account number: 11524400
IBAN : DE17 5109 1700 0011 5244 00 (CZK)
SWIFT: VRBUDE51
Registration number: HRB 18884
Tax identity number: DE113844887
registered in the Commercial Register administered by Amtsgericht Wiesbaden

(hereinafter referred to as "the Seller")

(collectively also "the Contracting Parties")

WHEREAS:

- a) The present Contract is entered into on the basis of the result of a negotiated procedure without publication, pursuant to the Act No. 137/2006 Sb., on public contracts, as amended, (hereinafter referred to as "the PCA") for awarding the public supply contract "TOOL SCANNER - RAPID PROTOTYPING".
- b) The Seller confirms to have acquired full knowledge of the scope and nature of the supply of the subject-matter of the above-described public contract, as well as all technical, quality-related, and other terms and conditions. The Seller confirms to possess the capacity and expertise necessary for the performance.
- c) The Seller hereby expressly confirms that it examined all documents and instructions by the Buyer which the Seller had received by the date of this Contract, as well as the instructions included in the tender conditions formulated by the Buyer for making the contract and that it found them acceptable and that the price agreed and the manner of performing the Contract include and reflect all the above-mentioned conditions and circumstances.

THE CONTRACTING PARTIES ENTER INTO THE FOLLOWING CONTRACT.

II

Subject-Matter of Contract

- 2.1 Within the scope of and under the terms set out in this Contract, the Seller undertakes to supply to the Buyer the following:
Tool Scanner - Rapid Prototyping (hereinafter referred to collectively as "the Goods").
- 2.2 Definite specifications of the Goods are listed in **Annex. 1**, an integral part of this Contract.
- 2.3 The Seller undertakes to transfer to the Buyer the title to the Goods (with the exception of software) and the Buyer undertakes to collect and pay the purchase price for the Goods.
- 2.4 The performance of the Contract includes the delivery of the Goods to the place of performance, installation and commissioning of the Goods and a verification of their error-free function, delivery of accompanying documentation, including a user manual in Czech or English languages in both the printed and electronic forms and a demonstration of all obligatory functions and parameters required. The Goods shall be provided with the corresponding fully-fledged software with a corresponding licence. The Seller shall conduct **training** of the Buyer's operators on the Goods delivered in the scope of 8 hours for three (3) persons (its content shall consist of mastering the operation of the Goods, all its parts and the software).
- 2.5 The performance includes **providing technical support by telephone** in Czech or English language on working days (between 8 a.m. and 2 p.m.) during the entire warranty period. The performance shall include the **delivery of all consumables** as necessary for the operation of the Goods during the warranty period or for at least 2,000 operating hours. The performance includes **providing written consultancy free of charge** throughout the warranty period and for the subsequent 72 months through the Seller's e-mail: service@focus-gmbh.com.

III

Time and Place of Performance

- 3.1 The Seller undertakes to supply the Goods to the Buyer and fulfil all of its obligations under articles 2.1, 2.2 and 2.4 of this Contract no later than eight (8) months upon entering into this Contract. Should the Seller default on delivering the Goods and meeting all obligations stipulated in articles 2.1, 2.2 and 2.4 of this Contract, the Buyer shall be entitled to demand that the Seller pay a contractual penalty amounting to 0.5 % of the total purchase price, excluding VAT, for each full day of delay, as well as the commenced one. This does not impact the Buyer's right to damages.

- 3.2 A handover certificate shall be issued in regard to the handover and acceptance of the Goods and shall be signed by both Contracting Parties. The handover certificate for the handover and acceptance of the Goods shall include a confirmation of fulfilment of all obligations of the Seller according to articles 2.1, 2.2 and 2.4 of this Contract. The Buyer shall be entitled not to collect the Goods if they appeared defective.
- 3.3 The title to the Goods (except software) shall pass from the Seller to the Buyer on the date the handover certificate for the handover and acceptance of the Goods according to the Contract is signed by the Contracting Parties. The risk of damage to the Goods shall be borne by the Seller until the title passes to the Buyer.
- 3.4 The place of performance is University of West Bohemia in Pilsen, Univerzitní 22, Plzeň, Czech Republic.

IV

Purchase Price and Terms of Payment

- 4.1. The purchase price of the Goods is determined by agreement of the Contracting Parties and results from the Seller's tendered price for the subject-matter of this Contract calculated as part of the contract award procedure.
- 4.2 The Buyer undertakes to pay in full and in due time to the Seller for delivery of the Goods the agreed **purchase price in the amount of CZK 5.460.000,- effective, exclusive of VAT** (in words: five million four hundred and sixty thousand Czech korunas),
VAT shall be paid in the amount required by law by the Buyer on the basis of self-assessment.
- 4.3 The purchase price has been agreed as the highest permissible price, including all fees and all additional costs associated with the delivery of the Goods according to this Contract.
- 4.4 The purchase price will be paid as a single amount by the Buyer in Czech koruna based on a tax document – an invoice. The Seller shall issue the invoice for the purchase price within 30 days of receipt of the Goods, i.e. of the date the handover certificate was signed by both Contracting Parties and all obligations stipulated in section II of this Contract were fulfilled.
- 4.5 Attached to the invoice shall be a copy of the handover certificate signed by both Contracting Parties.
- 4.6 The tax document – the invoice – shall contain all elements of a proper accounting and tax document, as stipulated in applicable legal regulations, including without limitation the Act No. 235/2004 Sb. on value added tax, as amended. If the invoice lacks the required elements, the Buyer is entitled to return it within the repayment term to the Seller for completion, without being in arrears. The repayment term shall begin running anew once the duly completed or corrected invoice is delivered to the Buyer.
- 4.7 The invoice payment term has been agreed as 45 days from the date the invoice was demonstrably delivered to the Buyer.
- 4.8 The purchase price shall be paid by the Buyer to the Seller's bank account specified in the identification section of this Contract. The obligation to pay the purchase price shall be discharged by the Buyer at the moment the entire purchase price is credited to the Seller's bank account.
- 4.9 The Buyer shall make no advance payments in respect of the price.
- 4.10 Should the Buyer be in arrears with the payment of the invoice, the Seller shall be entitled to charge the Buyer a contractual late payment fee in the amount of 0.1 % of the outstanding amount for each day of delay full or commenced.
- 4.11 The Buyer is entitled to set off any contractual penalty, which the Buyer is obliged to pay to the Seller, against the invoiced purchase price.

V

Rights and Obligations of the Contracting Parties

- 5.1 The Seller is obliged to supply the Goods under the terms of this Contract. The Goods shall meet the technical requirements specified in Annex 1 to this Contract and shall be free of any defects.
- 5.2 The Seller is not authorized to assign any rights or obligations arising from this Contract to third persons without the prior written consent of the Buyer.
- 5.3 The Seller agrees that it may not undertake a unilateral legal act to assign or set off any of its claims against the Buyer arising from this Contract.
- 5.4 The Seller shall be liable to the Buyer for damage caused by the breach of obligations arising from this Contract or obligations stipulated in a generally valid legal regulation.
- 5.5 The Seller shall archive the original Contract, including its amendments, original accounting documents and other documents related to execution of the Contract for no less than three years upon the completion of the OP RDI but in any case at least until 2021. Throughout this period, the Seller shall allow persons authorized to monitor projects to inspect the documents related to the performance of the Contract, in particular to provide requested information and documents to employees of or persons authorized by project monitoring bodies in OP RDI and shall cooperate with and provide these persons with conditions for conducting the inspection of project implementation. Furthermore, all documents and the Contract-related documents shall be secured against loss, theft and deterioration.
- 5.6 The Seller acknowledges that, pursuant to section 2, paragraph e) of the Act No. 320/2001 Sb., on financial control in public administration and amendment to certain laws (the Financial Control Act), as amended, it is a person obliged to cooperate in the performance of financial control. In the scope of inspection and for three years following the end of the Operational Programme, the managing authority of the Operational Programme Research and Development for Innovation (OP RDI) shall have the right to access those parts of the Tender, the Contract and related documents which are protected under special legal regulations (e.g. as the trade secret and classified information), provided that the requirements stipulated in legal regulations are met. The managing authority of the Operational Programme Research and Development for Innovation has the right to inspect in an equivalent manner the Seller's subcontractors, if applicable (*see Annex 2 to the guidelines for applicants and beneficiaries of OP RDI – Rules for Selection of Contractors at <http://www.msmt.cz/strukturalni-fondy/spolecne-prilohy-prirucek-pro-zadatele-a-prijemce-op-vavpi-3>*).
- 5.7 The Seller agrees that if, in relation to the execution of this Contract and as part of discharge of their duties, its authorized persons come into contact with personal/sensitive information, as defined in the Act No. 101/2000 Sb., on protection of personal data, as amended, it shall take all measures necessary to prevent unauthorized and/or accidental access to such data, their alteration, destruction or loss, unauthorized transmission or any other unauthorized processing or misuse.
- 5.8 The Seller is obliged to uphold all obligations contained in its Tender for the public contract that preceded this Contract.
- 5.9 The Seller acknowledges and agrees that this Contract will be published under the Buyer's profile pursuant to section 147a of the PCA. Likewise, the price actually paid for performing this Contract will be published within time limits and in a manner stipulated in section 147a of the PCA. Pursuant to section 147a, subsections 4 and 5 of the PCA, the Seller is obliged to submit to the Buyer a list of subcontractors within time limits and scope defined therein. In the event of breach of statutory duties imposed on the Seller by section 147a, subsections 4 and 5 of the PCA, the Seller shall be liable in full for the damage suffered by the Buyer as a result of the breach of duty.
- 5.10 The right to use the software, the licence, shall be provided as unlimited in duration and territory and its price shall be included in the purchase price of the Goods. The licence shall be transferable with a right to sublicense and shall be assignable without the Seller's consent. The Buyer has no obligation to use this licence.

- 5.11 The Seller hereby declares that it is authorised to provide the licence to the benefit of the Buyer without any restrictions from third parties. The software in question is not encumbered by any third-party rights pursuant to the Act No. 121/2000 Sb., on copyright, as amended, or any other legal regulations. The Seller agrees and is aware that if anyone restricts the Buyer's rights in connection with the licence provided and prevents it from duly exercising its rights, the Seller is obliged to prevent such action at its own cost and to compensate the Buyer for the damage incurred.
- 5.12 If the declaration made by the Seller in article 5.11 of this Contract proves to be untrue or if the licence is, contrary to the Seller's declaration, invalid or in an insufficient extent, the Buyer is entitled to demand that the Seller pays a contractual penalty of CZK 500,000, without prejudice to the Buyer's right to damages. In such case, the Buyer is also entitled to request that the Seller subsequently supplies the licence in the necessary extent. If this obligation is not met by the Seller within 30 calendar days of the Seller's receipt of the invitation, the Buyer has the right to withdraw from this Contract.

VI

Warranty of Quality and Additional Obligations of the Seller

- 6.1 The Seller provides a 24-month warranty of quality of the Goods. The warranty period begins to run on the date following the day the Goods were delivered to the Buyer or the day both Contracting Parties signed the handover certificate regarding the handover and receipt of the Goods.
- 6.2 During the period of warranty of quality, the Supplier shall provide warranty services free of charge, in the following scope and under the following conditions:
- As part of the warranty services, the Seller shall perform all servicing tasks to ensure that, throughout the above-mentioned warranty period, the Goods meet the Buyer's requirements set out in the Tender Dossier for the public contract that preceded this Contract;
 - Services provided as warranty services shall be interpreted as the replacement/repair of defective (failed) parts and accessories, remedying any defects in the Goods or caused by operation of the Goods, and performing adjustment and verification of the Goods.
 - Mandatory items of the warranty services shall include the delivery of all spare parts, accessories, consumables and other devices or accessories required for the operation/functions of the Goods, while the Buyer anticipates that the Goods would be operated for a total of 2,000 hours within the period of 24 months upon acceptance of the Goods by the Buyer.
- 6.3 In addition to commissioning the Goods, the Seller shall provide to the Buyer subsequent technical support by telephone which shall be available during the warranty period on working days (between 8 a.m. and 2 p.m. CET or CEST, as applicable) in Czech or English language.
- 6.4 The Buyer is required to notify the Seller in writing (by e-mail to the address: service@focus-gmbh.com) of warranty defects immediately upon detecting them.
- 6.5 The Seller acknowledges that it should commence the remedy of defects on working days between 8 a.m. and 2 p.m. CET or CEST, as applicable. The commencement of the remedy of defect shall be interpreted as the Seller's arrival in the place specified by the Buyer for the purpose of remedying the reported defect in the Goods. If a defect occurs in the course of the warranty period, the warranty period shall be extended by the period between the Buyer's notification of the defect to the Seller and the day the Goods were reinstated to the performance standard in the place of performance.
- 6.6 The Seller shall remedy the defects without delay and within twenty (20) calendar days at the latest, unless a different period has been agreed in writing with the Buyer (via e-mail with the contact person listed in article 6.4 of this Contract).
- 6.7 Should any of the time limits stipulated in articles 6.1 through 6.6 of the present Contract or time limits otherwise agreed in accordance with articles 6.1 through 6.6 of the present Contract fail to be met, the Buyer shall be entitled to charge the Seller a contractual penalty in the amount of 0.5 % of

the total contract price, exclusive of VAT for each day of delay commenced, without prejudice to the Buyer's right for full-scale compensation for damage.

- 6.8 The warranty defect shall be deemed to have been duly claimed if reported before and including the last day of the warranty period.
- 6.9 The warranty shall not cover defects resulting from incompetent handling or intervention and/or mechanical damage to the Goods caused by the Buyer.
- 6.10 The Seller hereby undertakes to provide written post-warranty consultancy (via e-mail) in Czech or English language free of charge for the subsequent 72 months following the end of the period of warranty of quality of the Goods pursuant to article 6.1 of the present Contract. The Seller shall be obliged to respond to a written (e-mail) request by the Buyer within 96 hours upon the receipt of the e-mail message, unless otherwise agreed in writing with the Buyer.
- 6.11 Should the Seller fail to respond in writing to the Buyer's request in accordance with the provisions of article 6.10, the Seller agrees to pay to the Buyer a contractual penalty in the amount of 0.05 % of the total contract price, exclusive of VAT, for each day of delay commenced, without prejudice to the Buyer's right for compensation for damage.

VII

Withdrawal from Contract

- 7.1 Contracting Party may only withdraw from this Contract on the grounds stipulated herein or defined by the law.
- 7.2 The Contracting Party affected by a breach of obligations may unilaterally withdraw from the Contract due to a serious breach of this Contract by the other Contracting Party. The following, without limitation, shall be considered a serious breach of this Contract:
- a) By the Buyer, payment of the purchase price according to this Contract later than 45 days upon the issue date of the pertinent invoice.
 - b) By the Seller, failure to deliver even a part of the Goods within the agreed time.
 - c) By the Seller, if the Goods lack the properties stated by the Seller in this Contract.
 - d) By the Seller, the Seller's failure to remedy a defect within the time limit from the Buyer's written notification of the defect to the Seller, as set out in the Contract or in case of a recurring defect.
 - e) By the Seller, if the Seller's Tender submitted for the public contract preceding this Contract contains information or documents which do not correspond to the facts and have had or may have had impact on the outcome of the contract award procedure.
- 7.3 Obligations of the Contracting Parties resulting from the Contract extinct when the Contract ceases to be in effect. The cessation of the effect or discharge of the Contract does not terminate the right to damages or the right to payment of contractual penalties agreed in regard to the breach of contractual obligations which occurred before the cessation of the effect of the Contract, or those obligations of the Contracting Parties which, according to the Contract or given their nature, should continue to exist or which are defined by law.

VIII

Miscellaneous and Closing Provisions

- 8.1 This Contract comes into effect on the day it is signed by authorized representatives of both Contracting Parties.
- 8.2 The contractual penalties imposed according to this Contract shall be payable within thirty (30) days of the date the liable party receives the written demand for payment issued by the entitled party to the account of the entitled party specified in the identification section of this Contract.
- 8.3 Any and all changes or amendments to the Contract may be made solely on the basis of written agreement between the Contracting Parties. Such agreement shall be in the form of dated and numbered amendments signed by both Contracting Parties.
- 8.4 If facts preventing the due performance of this Contract occur with either of the parties, such party shall be obliged to notify the other party immediately and without undue delay and call a meeting of the representatives of the Buyer and the Seller.
- 8.5 If the grounds for invalidity apply only to some provisions of the Contract, only those provisions shall be invalid, unless their nature, content or circumstances under which they were agreed make them inseparable from the other content of the Contract.
- 8.6 The Contracting Parties will always strive to settle any disputes arising from the Contract amicably. Disputes arising from this Contract will be resolved in accordance with valid legislation by those authorities of the Czech Republic with subject-matter and territorial jurisdiction. Pursuant to the section 89a of the Act No. 99/1963 Sb., Civil Procedure Code, as amended, the Contracting Parties agree that for disputes arising from or associated with this Contract, the District Court for Pilsen – City and, if need be, the Regional Court in Pilsen shall have territorial jurisdiction.
- 8.7 The Contract is executed in four (4) counterparts, with each having the force of an original. The Contracting Parties each receive two (2) counterparts.
- 8.8 If the Seller's registered office or place of business is outside the Czech Republic, this Contract shall be drawn up in Czech, as well as English language. In the event of inconsistencies between the language versions, the Czech version shall prevail. In such a case, the Contract shall be executed in four counterparts in English language and four counterparts in Czech language. Each of the Contracting Parties shall receive two (2) counterparts in each language version. If the Seller's registered office or place of business is in the territory of the Czech Republic, this Contract shall be made in Czech language only.
- 8.9 The following Annex is an integral part of this Contract:
Annex 1 – Detailed Technical Specifications of the Goods
- 8.10 The Contracting Parties hereby declare that before signing, they have read the Contract and agree with its contents without reservation. The Contract is an expression of their genuine, true, free and solemn will. To attest to the genuineness and accuracy of these statements, the authorised representatives of the Contracting Parties hereby affix their signatures.

In Plzeň, date: - 2 - 10 - 2014

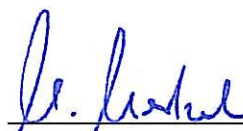
On behalf of the Buyer:



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

In Hünstetten date: 29.9.2014

On behalf of the Seller:


FOCUS GmbH
Dr. Michael Merkel (CEO)



Neukirchner Straße 2
D-65510 Hünstetten-Kesselbach
phone: +49 61 26 / 40 14-0
fax: +49 61 26 / 40 14-10
e-mail: info@focus-gmbh.com
http://www.focus-gmbh.com

Annex 1 to the Purchase Contract – Detailed Technical Specifications of the Goods

The Goods supplied features and meets the following parameters:

TECHNOLOGY

- The Equipment is capable to apply the following processes:
 - Electron beam welding;
 - Heat treatment of the surface layer;
 - Providing a platform for selective melting (the gun of the EB welding machine is equipped with a deflection system, which is crucial to the selective EB melting process);
 - Surface texturing and engraving by means of electron beam;
 - Weld cladding, welding along curved paths;
 - Observation of the chamber interior using the imaging principle of a scanning electron microscope.

BASIC PARAMETERS

- The interior of the cylindrical working chamber shall have a maximum diameter of 300 mm, max. depth of 160 mm; and must be extensible by fitting extension pieces to the final total length of no less than 3 metres.
- The working pressure in the vacuum chamber is 1×10^{-4} mbar or less.
- Continuously variable acceleration voltage in the 6 kV-60 kV range.
- The beam current is adjustable in the range of 0.15 mA - 40 mA or wider.
- Minimum electron beam power of 1.5 kW.
- Minimum power density of 10^4 W/mm².

SPECIFICATIONS OF THE DEFLECTION SYSTEM

- The electron gun is equipped with a deflection system (deflecting the electron beam across the workpiece in two perpendicular directions), offering the following features:
 - Computer-controlled deflection;
 - Minimum beam deflection of 30° at 60 kV;
 - Minimum frequency of the deflection system: 10 kHz in at least one direction.

SPECIAL SPECIFICATIONS AND REQUIREMENTS

- Fully digital electronic equipment of the system.
- The Equipment can be controlled by means of a manual control device and a computer workstation.
- The minimum filament life is 2 hours.
- Quick filament replacement - time of replacement by a trained user is no more than 12 minutes.
- The delivery shall include a workstation optimised for operating the equipment and for running advanced office applications (drafting documentation), including full accessories and one LCD monitor of at least 22in size and one LCD monitor of at least 24in size.
- The Equipment is designed for 240 V AC/50 Hz power supply with a standard plug for a standard wall socket in the Czech Republic.

SPECIFICATIONS OF SCANNING ELECTRON MICROSCOPE MODE

- The Equipment offers the SEM mode for observation of the interior of the chamber and the workpiece, offering the following parameters:

- Resolution better than 0.05 mm;
- Imaging equipment in the form of at least 15in LCD;
- Maximum magnification is no less than 5×;
- TV mode: 20 images/second;
- Adjustable gain of the video line (adjustable brightness).

SPECIFICATIONS OF VACUUM CHAMBER AND VACUUM PUMP SYSTEM

- The working chamber evacuation time to 10^{-4} mbar pressure shall be less than 4 minutes (provided that the chamber is empty and clean).
- The time for air readmission into the working chamber is no more than 1 minute.
- The position of the electron gun in the chamber is variable (for radial or axial welding).

CONTROL SOFTWARE SPECIFICATIONS

- The scope of delivery includes fully-fledged software for operating and controlling the machine supplied.
- The software performs at least the following functions:
 - Design of trajectory for curved welding paths (basic geometric forms);
 - Design of welding trajectory based on the SEM image;
 - Measurement of welds or weldments in the SEM image;
 - Engraving module with a user-friendly interface (image data to be imported as JPG, BMP files);
 - Storage of still images for documentation purposes (via SEM);
- The delivery includes one (1) node-locked or floating licence for commercial use.
- The language of the software is either Czech or English.

MANIPULATOR

- Three or four-jaw chuck for clamping the welded material with the range of outer diameters of at least 5 - 60 mm.
- It permits vertical movement (linear movement along the rotation axis) of 60 mm with a positioning repeatability: 0.03 mm.
Linear travel speed: variable in the range from 0.05 m/min to 0.2 m/min.
It offers 360 degree motorized and controlled rotation.
Continuously variable speed of 0 – 32 rpm

- Nr. 436 Jahrgang 2014 der Urkundenrolle -

Ich beglaubige, dass

Herr Dr. Michael **Merkel**, geboren am 08.01.1956,
geschäftsansässig Neukirchner Straße 2, 65510 Hünstetten-Kesselbach,

– mir von Person bekannt –

die vorstehende Unterschrift vor mir als von ihm eigenhändig vollzogen anerkannt
hat.

Der Notar befragte Herrn Dr. Merkel nach einer Vorbefassung im Sinne
von § 3 Absatz 1 Nr. 7 Beurkundungsgesetz. Sie wurde von ihm verneint.

Wiesbaden, den 30. September 2014



Ulrich
(Ulrich)
Notar