

**Appendix No. 3 to STC**

**Procedure mark: CEZAMAT/ZP15/2023**

**AGREEMENT NO. CEZAMAT/ZP/15/2023**

concluded on ..... 2023 in Warsaw between:

Warsaw University of Technology, 00-661 Warsaw, Plac Politechniki 1, NIP: 525-000-58-34, REGON: 000001554, represented by Mr. Mariusz Wielc - Director of the Center for Advanced Materials and Technologies CEZAMAT, hereinafter referred to as the "Ordering Party" and

....., represented by ....., hereinafter referred to as the "Contractor".

**§ 1. Subject and term of the contract**

1. The subject of the contract is the purchase and delivery of the device ....., hereinafter referred to as "the apparatus", in accordance with the Contractor's offer constituting Appendix No. 1 to the contract and the description of the subject of the order constituting Appendix No. 2 to the contract.

2. The subject of the Agreement also includes:

- 1) assembly of apparatus,
- 2) conducting instruction on the operation of the apparatus and service activities for the employees of the Ordering Party (4 people),
- 3) provision of post-training support services in the field of operation, use and servicing of apparatus,
- 4) granting a warranty for the subject of the contract, according to § 8.

3. The licenses for the supplied software dedicated to the control (computer) station, as well as the software of the operating system of the control computer should be non-exclusive, for an indefinite period, unlimited in terms of territory, for commercial use and enabling the installation of the software on the number of stations specified in Appendix 2 to the Agreement.

4. Together with the apparatus, the Contractor shall provide technical documentation in Polish or in English and manuals in Polish or in English in electronic or paper version.

5. Deadline for the performance of the contract: no later than ..... months from the date of conclusion of the contract, whereby:

- 1) delivery of apparatus will be made within ..... months from the date of conclusion of the contract;
- 2) assembly of the apparatus will be carried out no later than 2 months from the date of delivery of the apparatus;
- 3) training for the employees of the Ordering Party will be carried out within no more than 2 months from the date of delivery of the apparatus.

6. The date of completion of the subject of the contract is understood as the date of signing the final acceptance report by both Parties.

7. Prior to the acceptance of the apparatus, the Contractor shall instruct the indicated employees of the Ordering Party, in the number of 4 people. The training will be carried out in English, at the place of final installation indicated by the Ordering Party. The scope of instruction for the apparatus is described in Appendix 2 to the Agreement.

8. The place of the order is the Center for Advanced Materials and Technologies CEZAMAT, ul. Poleczki 19, 02-822 Warsaw.

9. The supplied apparatus should be brand new, manufactured not earlier than 12 months before the date of delivery and installation of the apparatus, unused, which should be understood in particular as unused in the technological laboratory or on the technological line, no presentations at conferences, fairs, etc.

10. The Contractor confirms that before signing the contract, with due diligence, he became acquainted with the conditions related to the delivery, installation and commissioning of the apparatus, in particular those indicated in Appendix No. 2 to the contract, raises no objections and undertakes to perform the subject of the contract in accordance with the contract and for the remuneration set out in the contract.

## **§ 2. Terms of delivery**

1. The Contractor is obliged to perform the subject of the contract with due diligence, in accordance with the description of the subject of the contract, the principles of technical knowledge, as well as taking into account the requirements arising from the documentation provided by the Ordering Party, and the provisions applicable to the implementation of the subject of the contract.
2. The Contractor shall deliver the apparatus to the Ordering Party's location: Center of Advanced Materials and Technologies CEZAMAT, 02-822 Warsaw, ul. Poleczki 19, technological building, ground floor, using the Contractor's own transport, at its own expense and risk.
3. The Contractor shall deliver the apparatus being the subject of the contract together with all the accessories necessary for its assembly and commissioning in one delivery.
4. The Contractor shall notify the Ordering Party of the date of delivery at least 7 days before the date of delivery.
5. Delivery will take place on working days between 8.30-15.30. The Ordering Party may refuse delivery of the apparatus on non-working days and on weekdays outside the hours of 08.30-15.30.
6. The Contractor is responsible for the apparatus in the period from the date of delivery to the date of final acceptance of the subject of the contract.
7. If the apparatus being the subject of the contract is delivered to a place other than indicated in § 1 sec. 8 of the contract as the place of performance of the contract, the Ordering Party shall not be liable for this apparatus.
8. In the event of the situation referred to in § 2 sec. 7 above, the Contractor is obliged to organize the unloading of the apparatus to the place indicated mentioned in § 1 sec. 8 of the contract no later than within 2 business days from the date of delivery. If the Contractor fails to meet the deadline referred to in the preceding sentence, the Ordering Party has the right to commission another company to perform this task at the Contractor's cost and risk.
9. Upon completion of delivery, in accordance with the provisions of sections 2 - 8, the Parties shall sign a protocol of partial acceptance.
10. After the delivery, in accordance with the provisions of § 2 sec. 2 - 8, the Contractor shall assemble the apparatus in the scope specified in Appendix No. 2 in a manner ensuring the proper functioning of the delivered elements as a whole.
11. In order to confirm that the delivered apparatus meets the functionalities and parameters specified in the description of the subject of the order, the Contractor shall conduct test processes of crystallization of 2D materials listed in Appendix No. 2 to the Agreement. The test results will be attached to the final acceptance protocol of the apparatus.
12. Carrying out the activities referred to in § 2 sec. 2, 3, 10, 11 and the training of the employees of the Ordering Party will be confirmed by the signature of the final acceptance report by the Ordering Party representative and the Contractor's representative.
13. The completion of the activities referred to in sections 2, 3, 10, 11 and 12 shall be confirmed by the signing of a final acceptance protocol by a representative of the Ordering Party and a representative of the Contractor.
14. In each case, the Contractor bears full responsibility for the part of the order which he entrusts to Subcontractors.

15. The Contractor bears full responsibility for non-performance or improper performance of the obligations specified in the contract, including for damages caused by persons authorized by Contractor, persons acting on Contractor's behalf and/or for the benefit of the Contractor.

### **§ 3. Software and intellectual property rights**

1. The Contractor, as part of the remuneration referred to in § 5 sec. 1 of the Agreement, grants or ensures that the owner of the software grants the Ordering Party a license to use it for an indefinite period of time from the Contractor's own software supplied with the apparatus: non-exclusive license, for an indefinite period, unlimited in terms of territory, for commercial use.

2. The Contractor ensures that:

- 1) the licensed rights are not and will not be encumbered with third party rights that would prevent the use of the license granted, in particular, the person holding these rights has not committed to transfer these rights in whole or in part to a third party, if this would result in the loss or limitation of the license rights of the Ordering Party;
- 2) persons entitled under moral copyrights to the licensed software will not exercise such rights in relation to the Ordering Party. In the event of such a claim against the Employer, the Contractor shall fulfill this provision, releasing the Employer in this respect;
- 3) the licenses will entitle the Ordering Party to use from the software and its individual elements, at least on the territory of the Republic of Poland;
- 4) the licenses will not contain restrictions on the possibility of free administration of the software, its configuration, tuning, parameterization by the Ordering Party and the use of software data by the Ordering Party;
- 5) the license may not contain restrictions according to which the Ordering Party may use software that implements a specific functionality to a lesser extent than provided for in written or electronic arrangements between the Parties, in particular the contract and its attachments;
- 6) these licenses may not contain restrictions such that the software may be used only with other software or may be implemented, serviced, etc. only by a specific entity or group of entities;
- 7) the license for any of the software elements may not contain restrictions as to its use in the event of a change of the entity providing warranty service or other similar services (maintenance, etc.) to the Ordering Party;
- 8) Ordering Party may make one (1) copy of the software for backup purposes, but Ordering Party shall not sublicense, assign, delegate or otherwise transfer the softwares (or any part thereof) or the license granted hereby or any of the related rights or obligations for any reason. Any attempt to make any such sublicense, assignment, delegation or other transfer by Ordering Party shall be void.
- 9) All supplied software is copyrighted. Ordering Party may not copy any software (including with-out limitation any related documentation) except to provide a backup copy and to load the software into the computer as part of executing the software. Any and all other copies of the softwares made by Ordering Party are in violation of this license.
- 10) The Ordering Party shall not and shall not allow anyone to analyse, reverse engineer, or otherwise attempt to derive the composition, structure, or underlying information of the software, unless explicitly permitted by statutory laws.

3. The rights to use the software are transferred to the Ordering Party upon its release to the Ordering Party.

4. The software license will be granted on the standard terms of the software producer, and they will include at least the terms and conditions contained in the Agreement.

5. Upon obtaining the license, the Ordering Party acquires the ownership of the carriers on which the

software and documentation of the manufacturer have been recorded, as part of the remuneration for the performance of the contract, if the software and relevant manufacturer documentation were released on the media.

6. The Contractor warrants that the apparatus sold to the Ordering Party does not infringe any third party intellectual property right.

The Contractor shall defend, indemnify and hold Ordering Party harmless from all costs and expenses, including settlement or judgement arising out of any infringement claim or suit filed, by a third person, which asserts that the apparatus sold to Ordering Party by the Contractor infringes intellectual property rights of such third person; provided, however, that Ordering Party shall provide the Contractor with reasonable notice of such claim or suit. It is expressly provided, by way of example but not limitation, that the Contractor shall not indemnify Ordering Party for claims or suits by a third person which assert that such third person's intellectual property rights have been infringed through or by: (i) the method of operation of the apparatus, other than generic use to control the technical features as provided by the hardware and related operational software of the apparatus; (ii) the processes used in the apparatus; (iii) the materials and/or devices produced using the apparatus; or (iv) the hardware of the apparatus, if the hardware has been modified by Ordering Party (or a third person), customized by Ordering Party (or a third person), and/or used or combined in any manner with (whether by Ordering Party or a third person) hardware and/or software other than Contractors hardware and/or Contractors software (collectively, "Non-Seller Products"), unless such Non-Seller Products have been supplied to Ordering Party by the Contractor or the use by Ordering Party of such Non-Seller Products has been approved in advance, in writing, by the Contractor.

7. Ordering Party shall indemnify and hold Contractor harmless from any suits, claims, costs, liabilities or expenses incurred or suffered by Ordering Party arising from any claim by a third person of infringement of patent, copyright, trademark, or other proprietary right or intellectual property right, at common law or otherwise, or claim of unfair trade or of unfair competition, arising from or otherwise occasioned by, (i) the method of operation of the apparatus, other than generic use to control the technical features as provided by the hardware and related operational software of the apparatus; (ii) the processes used in the apparatus; (iii) the materials and/or devices produced using the apparatus; or (iv) the hardware of the apparatus, if such hardware has been modified by Ordering Party (or a third person), customized by Ordering Party (or a third person), and/or used or combined in any manner with (whether by Ordering Party or a third person) hardware and/or software other than the Contractor hardware and/or the Contractor software, unless such Non-Seller Products have been supplied to Ordering Party by the Contractor or the use by Ordering Party of such Non-Seller Products has been approved in advance, in writing, by the Contractor.

#### **§ 4. Collection of the subject of the contract**

1. The Ordering Party is prepared to accept the delivery together with the assembly of the apparatus and the instruction of the Ordering Authority's employees, subject to the performance of successful acceptance tests, and to pay the remuneration - on the terms and within the time limits specified in the contract.

2. The Ordering Party is entitled to control the correctness of the delivery in terms of quality, compliance with the contract, materials, technologies and components used in accordance with the description of the apparatus, including the drawing up of reports stating the results of such checks.

3. The Ordering Party is entitled to raise objections to the entities and/or persons performing the delivery at the Center for Advanced Materials and Technologies CEZAMAT, if these entities/persons do not have the authorization and qualifications to perform the tasks entrusted to them as required by law and the provisions of the contract.

4. The Ordering Party is entitled to demand removal from the premises of the Center of Advanced Materials and Technologies CEZAMAT of entities and / or persons performing the delivery or assembly

of apparatus, if these entities / persons do not have the authorization and professional qualifications to perform the tasks entrusted to them required by law and the provisions of the contract or in any way threaten the safety of people, apparatus and devices located on the premises of the Center for Advanced Materials and Technologies CEZAMAT.

5. The above-mentioned rights of the Ordering Party do not exclude the Ordering Party's use of other rights specified in the contract.

#### **§ 5. Remuneration and terms of payment**

1. For the performance of the subject of the contract, the Contractor is entitled to remuneration in the amount of PLN /EUR ..... net (in words: ..... net), which, together with the VAT due at the applicable rate of ...%, gives a gross remuneration in the amount of ..... PLN/ EUR (in words: ..... gross), subject to section 2.

2. The remuneration specified in sec. 1 is the maximum value of the Ordering Authority's liability for the remuneration due to the Contractor.

3. The Contractor's remuneration, determined on the basis of sec. 1 and 2, covers all costs related to the performance of the subject of the contract, including the cost of brand new apparatus as described in § 1 of the contract and the Contractor's offer, as well as all accessories necessary to assemble and first time run the apparatus (for the avoidance of doubt, Contractor will not provide any chemicals or other consumables other than offered in Contractor's offer), costs of assembly, apparatus testing, license costs for software, costs of technical and operational documentation, packaging, transport along with unloading and bringing to the place of order performance indicated in § 1 section 8 of the contract, insurance costs, costs related to the warranty granted and the applicable warranty for defects.

4. In the case of delivery of apparatus from a country outside the European Union, the Contractor is obliged to deliver the apparatus within the European Community, i.e., after customs clearance.

5. Settlement for the performance of the subject of the contract will take place after the completion of the subject of the contract, on the basis of a VAT invoice issued by the Contractor, subject to the provisions of § 6 of the contract.

6.cThe Contractor shall be entitled to issue a VAT invoice:

- 1) bearing an amount corresponding to 40% of the Remuneration referred to in sec. 1, after the Parties have signed the protocol of partial acceptance referred to in § 2 sec. 9 of the Agreement;
- 2) bearing an amount corresponding to the remaining amount of the Remuneration referred to in paragraph 1, remaining after settlement of the partial invoice and the advance payment granted, after signing by the representatives of the Parties of the final acceptance protocol in accordance with the provisions of § 2 sec. 13 of the Agreement.

7. Payment will be made within 30 days from the date of issuing the correct VAT invoice by bank transfer to the bank account indicated on the invoice. The Contractor is obliged to immediately deliver a properly issued VAT invoice, not later than within 3 working days from the date of issue. The payment date shall be the date of debiting the Ordering Party's account by the bank.

8. The VAT invoice should contain:

- 1) the name of the subject of the contract,
- 2) contract number,
- 3) Contractor's account number,
- 4) payment date in accordance with the provisions of sec. 7,
- 5) indicate the Warsaw University of Technology, 00-661 Warszawa Pl. Politechniki 1 as a buyer, and the Center for Advanced Materials and Technologies CEZAMAT, 02-822 Warsaw, ul. Poleczki 19 as a recipient.

9. In the case of intra-EU acquisition of goods or import of goods, after receiving a correctly issued invoice, the Ordering Party shall pay VAT in accordance with not in accordance with applicable

regulations to the tax office in Poland.

10. The Ordering Party allows the submission of a structured electronic invoice - meeting the requirements for sending via the electronic invoice platform referred to in art. 2 point 32 of the Act of March 11, 2004 on tax on goods and services.

11. If the Contractor uses the option of sending a structured invoice via the ICT system referred to in sec. 10, the Contractor will be obliged to inform the Ordering Party about it by e-mail to the following e-mail address: ..... with acknowledgment of receipt, at least 2 days before issuing the invoice.

12. Subject to completion of Final Acceptance by Ordering Party and full payment of the purchase price for apparatus according to this Contract, Contractor shall transfer title to the apparatus to the Ordering Party.

### **§ 6. Advance payment**

1. The Ordering Party allows for an advance payment to be made to the Contractor for the performance of the subject of the contract.

2. The Ordering Party may grant an advance payment for the delivery of the apparatus after the Contractor submits a justified request. The Ordering Party reserves the right to make a decision on granting an advance payment. The Contractor is not entitled to claim an advance payment.

3. The Contractor is entitled to apply to the Ordering Party for an advance payment no later than 2 weeks from the date of conclusion of the contract.

4. The Ordering Party shall consider the Contractor's request for an advance payment for the delivery of the apparatus within 14 days. Consent or refusal to grant the advance payment will be given in writing.

5. The advance payment for the delivery of the Device shall not exceed 50% of the remuneration specified in § 5 section 1 of the contract.

6. If the Ordering Party agrees to grant an advance payment, it shall be paid to the Contractor immediately after the Contractor submits and delivers the advance payment security to the Ordering Party in the manner specified in section 7.

7. The Ordering Party requires the Contractor to provide customary security for the advance payment on account of the delivery of the apparatus, established for a period corresponding to the period of settlement of the advance payment. The security may be provided in the financial form (non-cash), bank surety, bank guarantee, or insurance guarantee. The surety and guarantee should be an irrevocable, unconditional obligation, payable on first demand up to the amount of the secured advance payment in cases where the Contractor fails to perform the delivery for which the advance payment was granted in accordance with the provisions of the contract, or fails to settle the advance payment in the manner and within the time limits specified in the contract. The content of the surety and guarantee may not include a condition regarding the need to confirm the creditor's (Ordering Party's) claim against the debtor (Contractor) by a court or a third party.

8. The advance payment will be made once in the amount not higher than specified in sec. 5.

9. The Contractor shall issue an advance invoice for the delivery of the apparatus on the day of making the payment by the Ordering Party or within a period not longer than 7 days from the date of making such payment by the Ordering Party.

10. The advance payment granted for the delivery of the apparatus shall be included and settled as part of the final invoice referred to in § 5 sec. 5 of the Agreement.

11. As soon as the security for the advance payment is provided, the Ordering Party has the right to retain the amount of the security or its relevant part in the event of the Contractor's failure to fulfill its obligations under the contract regarding the settlement of the advance payment.

12. The Ordering Party shall return the security for advance payments immediately, not later than within 15 days from the date of settlement of the advance payment by the Contractor in accordance



with the provisions of the contract.

#### **§ 7. Representatives of the parties**

1. On behalf of the Ordering Party, supervision over the implementation of the contract will be exercised by ....., e-mail: ....., phone number .....
2. On behalf of the Contractor, supervision over the implementation of the contract will be exercised by ....., e-mail: ....., phone number .....
3. Representatives of the parties indicated in sec. 1 and 2 are authorized to supervise and manage the implementation of the contract.
4. Change of persons indicated in par. 1 or 2 takes place by notifying the other party in writing, no later than 3 days before the change is made and does not constitute a change to the content of the contract.

#### **§ 8. Warranty**

1. Contractor warrants that delivered apparatus shall conform to the Contractor's quotation in terms of quality, technical specifications and packaging.
2. Contractor shall not be liable for the apparatus being fit for a particular purpose except as explicitly stipulated in this Contract, for the merchantability of the apparatus, or for their compliance with legal requirements existing outside of manufacturer's country.
3. The warranty period for defects is 12 months. The warranty period for defects begins on the date of signing the final acceptance report by the Parties. If the installation is delayed by Ordering Party by more than 60 days from the date of dispatch then the warranty period will be calculated from the end of the 60 day period.
4. Contractor's warranty and liability does not apply for any defects which have arisen from the following circumstances:
  - a) any alteration, addition, or attachment or modification of the apparatus without the prior written consent of Contractor
  - b) movement or relocation of the apparatus after installation without the prior written consent of Contractor
  - c) unsuitable operating equipment, lightning, electrical over- or under charge or surge voltage and other external influences
  - d) non-compliance with environmental specifications as provided by Contractor for the installation of the apparatus; or
  - e) normal wear or tear to the apparatus, and, without limitation, neglect, misuse, repair, or maintenance by any party other than Contractor not authorized in advance by Contractor, accidents, failure of electrical power, air conditioning, humidity control, or any other acts not within the reasonable control of Contractor. The Contractor is not liable for quartz and graphite parts, filters, lamp heaters, O-Rings, consumable and contaminated parts, as well as normal wear and tear parts.
5. The Ordering Party shall notify the Contractor each time about a defect no later than one month from the date of its detection by e-mail or in writing to the Contractor's address describing in detail the alleged defect.
6. Defects revealed within the warranty period for defects will be removed at the Contractor's expense (applies to all materials, parts, labour, transport, insurance, packaging, customs duties and actions taken in connection with the removal of defects in the subject of the contract), on dates mutually agreed each time by the Parties.
7. Defects will be removed in the place where the subject of the contract is used, unless the essence of the defect opposes it.
8. If it is necessary to remove defects in a place other than the place of use of the subject of the contract, the cost and responsibility for its transport shall be borne by the Contractor. The cost and

liability of the Contractor shall be borne from the moment of handing over the defective apparatus to its authorized representative, until receipt of the defect-free subject of the contract by an authorized representative of the Ordering Party.

9. A report will be written on the acceptance of the subject of the contract after the defect has been removed.

10. In the event of a defect of the apparatus the warranty rights of the Ordering Party shall be limited to repair or replacement; any reduction of the purchase price or compensation for damage are excluded. Contractor shall decide at its sole discretion whether Contractor will repair or replace a apparatus that is not in conformity with the Contract

### **§ 9. Contractual penalties**

1. The Contractor is obliged to pay the Contracting Party the contractual penalties referred to in points 1)-4) regardless of whether the damage actually occurred:

1) for termination of the agreement for reasons attributable to the Contractor or withdrawal from the agreement by the Ordering Party for reasons attributable to the Contractor, the Contractor is obliged to pay a contractual penalty in the amount of 2% of the amount of net remuneration referred to in § 5 sec. 1 of the agreement;

2) for delay in delivery of apparatus within the period specified in § 1 sec. 5 item 1 of the agreement, the Contractor is obliged to pay a contractual penalty in the amount of 0.02% of the amount of net remuneration referred to in § 5 sec. 1 of the agreement for each day of delay;

3) for a delay in the Contractor's performance of the subject matter of the agreement - excluding the case referred to in item 2), the Contractor shall pay a contractual penalty in the amount of 0.01% of the amount of the net remuneration referred to in § 5 sec. 1 of the agreement for each day of delay in relation to the deadlines specified in or under the agreement;

4) in the amount of 0.1% of the amount of net remuneration referred to in § 5 sec. 1 of the agreement for each case other than those specified in points 2) and 3) of non-performance or improper performance of the agreement, in particular for the delivery of apparatus inconsistent with the description of the subject of the order or delivered in the wrong number, or in the case of failure to take into account a previously reported complaint under the guarantee.

2. Contractual penalties will be payable within 14 days from the date of receipt by the Contractor of the request for their payment.

3. In the event of ineffective expiry of the period referred to in § 9 sec. 2, the Ordering Party may set off its claim for contractual penalties from the Contractor's monetary claims against the Ordering Party, including claims for remuneration due under the contract, to which the Contractor agrees. The Ordering Party shall notify the Contractor in writing about the deduction not later than on the day following the deduction.

4. The maximum amount of contractual penalties that may be claimed by the Ordering Party shall not exceed the amount of 30% of the remuneration specified in § 5 sec. 1 of the Agreement, with the proviso that this limit does not include the Ordering Party's entitlement referred to in sec. 6.

5. The calculation of contractual penalties by the Ordering Party does not release the Contractor from the obligation to properly perform the contract.

6. If, as a result of non-performance or improper performance of the contract subject, damage occurs in amount exceeding the reserved contractual penalty, or the damage arises for reasons other than those for which the contractual penalty was reserved, the Ordering Party reserves the right to claim supplementary compensation up to the amount of the damage actually suffered general rules in accordance with the provisions of the Civil Code.

7. Neither Party shall be liable for delays in the performance of the Agreement and failure to perform its own obligations under the Agreement, provided that such delay or failure to perform is caused by factors beyond the control of the Parties, in particular caused by force majeure events, which is



understood as catastrophic acts of nature (e.g. unusual frosts), acts of the legislative and executive authorities (e.g. expropriation) and some disturbances in collective life (e.g. street riots, excluding labor protests), including announced pandemics and related restrictions, preventing the performance of part or all of the Parties' contractual obligations.

8. The occurrence and termination of the event caused by force majeure shall be communicated to the other Party promptly not later than ten (10) days in writing. The date of notification of the event caused by force majeure shall be the date of receipt of the written notification by the other Party. The performance of the contract is suspended for the duration of such an event, and the performance of the contract is extended by the duration of the suspension.

#### **§ 10. Early termination of the contract**

1. The Ordering Party may terminate the contract for reasons attributable to the Contractor by demanding the payment of contractual penalties referred to in § 9 sec. 1 point 1) of the contract. The reasons for termination of the contract attributable to the Contractor are:

- 1) the Ordering Party finds a legal defect in the subject of the contract or its part,
- 4) delay in performance of the contract or part of the contract exceeding 30 calendar days.

2. A declaration of termination or withdrawal from the contract must be made in writing.

#### **§ 11. Performance bond**

1. On the date of conclusion of the Agreement, the Contractor shall submit a performance bond in the amount of 2% of the price for the performance of the subject of the Agreement, i.e. the amount of the Remuneration specified in § 5 sec. 1 including VAT, in the form of: cash, which is equivalent to the amount of ..... (in words: .....). The security serves to cover the Ordering Party's claims for non-performance or improper performance of the Agreement.

2. The parties agree that 70% of the security for the proper performance of the contract is a guarantee of the performance of the subject of the Agreement in accordance with the contract (this part of the security, equivalent to the amount of ....., is at the disposal of the Ordering Party for the period from the date of conclusion of the Agreement until the end of the 30<sup>th</sup> day after the completion of the final acceptance of the subject of the Agreement), while the remaining part of the security, i.e. 30%, is used to secure the Ordering Party's claims under the warranty for defects (this part of the security, equivalent to the amount of ....., The Ordering Party has the right for a period ending on the 15th day after the expiry of the 12-month warranty period for defects).

3. In the event of a change (extension) specified in § 1 sec. 5, regardless of the circumstances causing its shift, and if the Contractor fails to notify the subject of the Agreement for final acceptance within the time limit specified in § 1 section 5, the Contractor is obliged to extend the period of validity of the security referred to in sec. 1 and presenting to the Ordering Party a document confirming the extension of the validity period of the security at the latest 30 days before the expiry of the current validity period of the security. The expiry date of the security referred to in the preceding sentence is the expiry date of the Ordering Party's claims for non-performance or improper performance of the subject of the Agreement. The extension of the validity period of the collateral should take into account the dates specified in sec. 2.

4. If the Contractor fails to fulfill the specified obligation in sec. 3, the Ordering Party has the right to use the security referred to in sec. 1 or from the deduction of the amount corresponding to the amount of security from the remuneration due to the Contractor specified in § 5 sec. 1 of the Agreement.

5. The Ordering Party shall return the performance bond to the Contractor in the following amounts and dates:

- a) part of the security constituting a guarantee of the Agreement's compliance and proper performance, reduced in particular by any contractual penalties specified in § 9 section 1 of the Agreement - within 30 days of signing the final acceptance report of the subject of the Agreement,

b) the remaining part of the security, reduced in particular by any contractual penalties specified in § 9 sec. 1 item 3) of the Agreement - within 15 days after the expiry of the 12-month warranty period for defects, counted from the date of signing the final acceptance protocol of the subject of the Agreement.

6. The security provided in cash will be returned by the Ordering Party together with interest resulting from the interest-bearing bank account agreement where it was kept, less the cost of running this account and the bank commission for transferring money to the Contractor's bank account.

7. The Ordering Party shall withhold the return of part of the performance bond, used to secure the Ordering Party's claims under the warranty for defects, if the Contractor has not removed the defects found during the acceptance period or is in the process of removing these defects.

### **§12 Valorization of the remuneration**

1. The Ordering Party shall provide for the possibility of valorization of the Contractor's remuneration in the event of a change in the prices of materials or costs caused by circumstances beyond the control of the Contractor - provided that the Contractor demonstrates that this change will affect the cost of performance by the Contractor of the subject of the contract.

2. The change in the prices of materials or costs referred to in section 1 shall be understood as an increase in prices or costs, respectively, as well as their decrease, relative to the price or cost adopted for the purpose of determining the Contractor's remuneration, resulting in changes in the Contractor's remuneration.

3. The Ordering Party establishes the following principles, which are the basis for the introduction of a change in the amount of remuneration due to the Contractor:

1) the level of change in costs, entitling the Parties to the Agreement to request a change in the remuneration due to the Contractor, shall be set at 6% in relation to the prices or costs prevailing in the market on the date of submission of the offer or in relation to the prices or costs prevailing in the market established in an earlier valorization,

2) the part of the remuneration due to the Contractor from the moment of the Party's request for valorization of the remuneration will be covered by the change, if the conditions entitling to valorization of the remuneration are met,

3) the change in remuneration will be calculated on the basis of the quarterly consumer price index, announced in the communiqué of the President of the Central Statistical Office,

4) the Party requesting a change in the amount of remuneration due to the Contractor shall submit to the other Party a duly justified request, no later than 30 days from the date of increase/decrease in costs in relation to the level resulting from item 1,

5) the request must include a detailed description of the proposed change, together with a detailed cost calculation and the principles of preparation of such calculation, which should specify:

(a) the current costs associated with the execution of the contract,

(b) indication of the difference between the market cost existing on the date of signing the Contract or in relation to the market cost on the date of earlier valorization, and the current cost, which is to be the amount of change in the part of the Contractor's due remuneration,

6) In case of doubt as to the amount of the cost change, the Parties may request additional information and evidence (including invoices, price lists, catalogs with prices, etc.),

7) The Party receiving the request has 30 days to verify the request for a change in remuneration. Either Party may request the other Party's consent to extend the deadline for verification of the request indicating the minimum period, but not more than another 30 days, necessary to resolve the matter. The consent of the other Party shall also apply to the proposed minimum term,

8) in the case of comments, the Party verifying the application, shall request in writing to supplement or clarify it, within a period that takes into account the laboriousness of preparing a

response, but not less than 7 calendar days. Failure to provide clarification or supplementation within the prescribed period, may result in refusal to consider the application,

9) the time limit for verification of the application stops its course, from the moment the letter for clarification or supplementation of the application is addressed, until the designated deadline for submission of a response,

10) in the absence of comments on the application, after the expiration of the deadline / or extended deadline based on the procedure referred to in point 7, the application shall be considered accepted without objection. The above deadlines are calculated from the date the application is received by the Party.

4. The first valorization of remuneration is possible after 6 months from the date of signing of the Agreement.

5. In the event that the above-mentioned index is no longer available, other, most similar, indexes published by the President of the Central Statistical Office shall apply.

6. The maximum value of the change in remuneration due to the Contractor, resulting from the valorization will not exceed 15% of the value of the contractual remuneration.

### **§ 13. Confidentiality**

The confidentiality agreement between the Parties dated ..... ("NDA") and the provisions contained therein shall apply mutatis mutandis to this Agreement and any Confidential Information (as defined in the NDA) shared thereunder.

### **§ 14. No Assignment, no set-off or retention**

1. Ordering Party may not assign any rights or claims under this Agreement without the prior consent of the Contractor in writing.

2. Except as otherwise provided for in this Agreement, Contractor is not entitled to set-off any claims against Ordering Party it may have under this Agreement or to refuse to perform any obligation it may have under this Agreement on the grounds that it has a right of retention unless the rights or claims of the Ordering Party are not disputed or have been finally and non-appealably established.

### **§ 15. Final provisions**

1. In the event of a dispute related to the performance of the contract, the Parties shall strive to resolve it amicably, and in the absence of an agreement, the Parties shall submit the dispute to the common court competent for the registered office of the Ordering Party.

2. In matters not covered by the Agreement, the provisions of the Act of April 23, 1964. Civil Code and the provisions of the Act of September 11, 2019 Public Procurement Law.

3. If one or more of the provisions of the Agreement turns out to be invalid by operation of law, or its implementation will be impossible, the remaining provisions will remain in force, and the Parties will start talks in order to amend or supplement the Agreement accordingly.

4. This Agreement, and all attachments hereto, set forth the entire understanding of the Parties with respect to the subject matter hereof. This Contract may be amended, modified or supplemented only by a written instrument duly executed by each of the Parties. The provisions of the terms of the contract may be changed in the following cases:

1) in the part concerning the methods of performing individual activities described in the contract in the event of the need to adapt these provisions to current market or regulatory standards required for the correct and acceptable level of the provided supply;

2) in the scope of updating the Contractor's data by change in particular: name of the company, address of the registered office, legal form of the Contractor;

3) in the event of a change in the applicable legal provisions relating to the order;

4) in the event of force majeure, which is understood as the circumstances referred to in § 9 sec. 7

of the contract, resulting in the need to change the original terms of the service provided for in the contract, when the delivery under the existing conditions would prevent the Contractor from meeting the essential provisions of the contract, despite the Contractor's best efforts;

5) in the event of circumstances, for objective reasons beyond the control of the Parties to the Agreement, resulting in the need to change the original terms of delivery and assembly of the equipment provided for in Appendix 2 to the Agreement, when further performance of the subject of the Agreement under the existing conditions would prevent the Contractor from meeting the essential terms of the Agreement, despite the Contractor's best efforts.

5. Any changes to this Agreement must be made in writing under pain of nullity.

6. If an agreement is concluded in Polish and English, the agreement in Polish shall take precedence in interpretation.

7. The contract has been drawn up in two identical copies, one for the Ordering Party and one for the Contractor.

**Attachments:**

Appendix No. 1 - Contractor's offer form

Appendix No. 2 - Description of the subject of the order (technical specification of the apparatus)

ORDERING PARTY

CONTRACTOR