

PURCHASE AGREEMENT

for the design and construct and delivery of a:

Absorber and desorber setup unit

between

TNO Netherlands Organization for Applied Scientific Research

and

[●]

CONFIDENTIAL

Parties Non-binding draft

This **purchase agreement** (hereinafter '**Agreement**') takes effect on [_____] (Effective Date),
between

1. **TNO Netherlands Organization for Applied Scientific Research**, a public law body based on Article 3 of the TNO Act, with its registered office at Anna van Buerenplein 1, 2595 DA The Hague, entered in the Trade Register of the Chamber of Commerce under number 27376655, hereinafter referred to as '**TNO**', legally represented in this matter by its Executive Board in the person of [_____] ([_____] [in the case of a deputy followed by: with [name of Deputy] acting in his/her place.],
2. [●], [●], established under the law of [●], with its registered office at [●], [●], [●] hereinafter referred to as '**Supplier**',
hereinafter jointly referred to as '**Parties**' and individually also referred to as '**Party**';

whereas,

1. TNO wishes to purchase a Absorder and desorber setup unit;
2. Supplier supplies the Absorder and desorber setup unit and accompanying services (hereinafter: 'Unit');
3. A European public tender procedure for the award of a contract to participate in this Master Agreement has taken place based on the Tender Documentation (as described below) pursuant to the Tendering Act 2012;
4. TNO has assessed the Tender from Supplier as the economically most advantageous tender;
5. TNO wishes Supplier to design and construct a Absorder and desorber setup unit for research and development;
6. Parties have set out in this Agreement the arrangements applicable between TNO and Supplier concerning the design and construct a Absorder and desorber setup unit;

AGREE AS FOLLOWS:

1. EXPLANATION OF THE AGREEMENT
 - 1.1 **General conditions.** The Agreement is exclusively subject to the AIV-2014, unless the Agreement states otherwise. General and Special Conditions of Supplier are not applicable to the legal relationship between Parties and are expressly rejected.
 - 1.2 **Definitions.** Terms in the Agreement with an initial capital letter have the meaning as defined in Article 1 of the General Purchase Conditions of TNO June 2014. In addition, the following terms have the following meanings in the Agreement:

AIV-2014: General Purchase Conditions of TNO, June 2019.

Tender Documentation: the documents used by TNO in connection with the Tender Procedure of 16-11-2020, with reference 2020 FPL/INK173 Absorder and desorber setup unit.

Tender Procedure: the procurement procedure for the purchase of the Unit resulting in the selection of and award to one Supplier.

Specifications: all functional, technical and operational specifications and characteristics determined in the program of requirements.

Effective Date is the date stated in the first line of the Agreement.

1.3 Order of precedence. The following documents jointly constitute the Agreement. In case of conflict between these documents, the higher-listed document shall prevail over the lower-listed document:

- (a) this document;
- (b) the Tender Documentation namely
 - (i) Contract Notice of [...datum...], with reference [.....] with appendices
 - (ii) Information Notice
 - (iii) Descriptive document plus Appendices (including the Schedule of Requirements) with reference
 - (iv) The AIV-2014
- (c) the other Appendices;
- (d) the Tender issued by Supplier to TNO of [.....], with reference [.....].

2. EFFECTIVE DATE AND TERM OF THE AGREEMENT

2.1 Term. The Agreement takes effect on the xx of xx 2021 and ends [date] after the expiry of warranty.

3. SUBJECT OF THE AGREEMENT

3.1 Purchase. TNO agrees to purchase the design and construct a Absorder and desorber setup unit from Supplier and Supplier agrees to sell the Unit to TNO, in accordance with the Tender issued by Supplier on the basis of the Tender Documentation, unless stipulated otherwise in the Agreement.

3.2 Warranty and Maintenance. TNO entrusts the Preventive and Corrective Maintenance of the Unit to Supplier.

4. TESTS

4.1 Factory Acceptance Test (FAT). TNO shall subject the Unit to a Factory Acceptance Test (FAT) no later than <time> before the Supply of the Unit as set out in 5.1 which shall take place at <place> no later than <time> before the Supply of the Unit as set out in 5.1. TNO shall provide Supplier with the FAT Report no later than <time> after this test.

4.2 Site Acceptance Test (SAT). TNO shall subject the Unit, no later than within <time> after the Supply of the Unit as set out in 5.1, to a pre-operational Site Acceptance Test (SAT). TNO shall provide Supplier with the SAT Report no later than <time> after this test.

5. DELIVERY

- 5.1 **Delivery.** The complete installation SHALL be ready BEFORE xxx at the following delivery address: xx in Delft, including in all instances the assembly and installation required for use.
- 5.2 If the supplier culpably falls short and therefore delivers too late, TNO can claim a fine. The amount of the fine will be determined on the basis of the damage suffered as a result of the late delivery and will not exceed Euro 1000,- per day.

6. ACCEPTANCE

- 6.1 **Acceptance.** The Acceptance of the Unit by TNO shall only take place after a Test Period has demonstrated that the Unit meet all the relevant provisions in the Agreement as well as the Specifications.

7. PRICE

- 7.1 The Price for the unit is the following:
- 7.2 The Price offer covers all design & construct of Unit in connection with the Agreement as well as related assembly or installation work, materials and documentation, such as user instructions and so forth, and installation.

8. PAYMENT

- 8.1 Payment shall take place as follows:
- (a) The schedule of payments will be determined between the parties.;
- 8.2 Supplier shall submit the invoices electronically in the manner prescribed in the Request for Tender or what will be agreed on.

9. DOCUMENTATION AND SERVICE SOFTWARE

- 9.1 Parties supplement the provisions in Articles 1 and 9 of the AIV-2014 as follows:
- 9.2 The Documentation shall also comprise the following:
- (a) This is described in the program of requirements.
- 9.3 Supplier shall make the Documentation available to TNO in English (and Dutch), both in PDF format and on paper.

10. TRAINING

- 10.1 Supplier shall provide free training to employees nominated by TNO to ensure that TNO can use the Unit to the best possible effect. This training shall at least include the operation of the Unit and simple daily maintenance.
- 10.2 Supplier shall inform TNO in writing at least four weeks in advance of the date and time of the planned training. If a proposed time for the training is not convenient for TNO, Parties shall confer to determine a time for the training that is suitable for both parties.

11. GUARANTEE

- 11.1 Parties shall supplement the provisions in Article 11 of the AIV-2014 as follows:
- (a) The Consumables are excluded from the guarantee under Article 11 AIV-2014.

- (b) Supplier shall specify in Appendix <..> Parts of the Unit that have an inherently shorter useful life than the Unit as a whole, also stating the measures that Supplier shall take to keep the Unit as a whole operational during their useful life.

12. CONTINUITY OF PARTS AND EQUIPMENT-SPECIFIC CONSUMABLES AND MATERIALS

- 12.1** Supplier shall supply TNO, at first request, with original parts of the Unit (or functionally equivalent alternative parts) as well as any Materials and Consumables that are required for or related to the most effective possible use of the Unit.
- 12.2** Without prejudice to the provisions in 12.1, Supplier shall inform TNO without delay of any stagnation in the delivery of original parts of the Unit (or functionally equivalent alternative parts) or any Materials and Consumables that are required for or related to the most effective possible use of the Unit.

13. LIABILITY

- 13.1** Supplier's total liability based on whatever legal ground is (cumulatively) limited to the amount payable in that specific case under the liability insurance taken out by Supplier. If, for whatever reason, no damages are paid out under the aforementioned liability insurance or this Article 17.1 is, for whatever reason, not applicable, the aforementioned total (cumulative) liability is limited to € 2.000.000
- 13.2** Supplier is only liable for the loss or damage arising directly from Supplier's culpable failure to fulfil its obligations under the Agreement.
- 13.3** The guarantee as referred to in Article 11 of the AIV-2014 ends 2(two) years after Delivery.

14. TERMINATION

- 14.1** Parties supplement the provisions in Article 24.3 of the AIV-2014 as follows:
 - (a) TNO can furthermore unilaterally cancel or dissolve the Agreement with immediate effect by sending a statement to this effect if the Dutch government imposes measures on TNO so that TNO cannot be reasonably required to fulfil its obligations under the Agreement, in which case TNO is obliged to reimburse Supplier, within reason, for costs incurred and earnings lost on work already performed, under deduction of any revenues that Supplier may expect from work already performed.
 - (b) Termination of the Agreement pursuant to this Article does not give Supplier any right to claim damages from TNO, save for the provisions under Article 16.1 (a).
- 14.2** Unforeseen circumstances can cause the project to be stopped after a phase (for example the design phase), with mutual consultation, both parties will ensure that the current phase is completed correctly. Payment will be granted up until the phase in which the project is, and further payment will be canceled.

15. OTHER CONDITIONS

- 15.1** Other conditions are described in the program of requirements.

16. INTEGRITY STATEMENT

- 16.1** Supplier states that it has neither directly or indirectly offered or given any benefits or advantages to employees, subordinates or auxiliaries of TNO in order to obtain the contract.

Nor shall Supplier do this in the future to induce such persons to perform or refrain from any actions whatsoever.

17. MISCELLANEOUS

17.1 **Notifications.** Notifications in relation to the Agreement shall be addressed as follows:

If **TNO** is the addressee:
TNO Netherlands Organization for Applied
Scientific Research
Attn. Procurement
Anna van Buerenplein 1
2595 DA The Hague
Netherlands

17.2 **Contact Persons.** Both Parties shall nominate a contact person to maintain the contacts about the performance of the Agreement. Parties shall notify each other of the person they have nominated as contact person.

17.3 **Representation.** Contact Persons can only represent and legally bind Parties in matters relating to the performance of the Agreement. They are not authorized to amend the Agreement.

(a) Contact Person for TNO is

(b) Contact Person for Supplier is

18. FINAL PROVISIONS

18.1 **Extended effectiveness.** Provisions which, by nature, are intended to remain effective after the termination of the Agreement, including but not limited to, provisions on confidentiality, guarantees, NDA's shall remain applicable after the termination of the Agreement, irrespective of the reason of said termination.

18.2 **CISG.** Parties expressly agree that the United Nations Convention for the International Sale of Goods, Vienna 11 April 1980, Treaty Series 1981, 184 and 1986, 61 (CISG) is not applicable to their legal relationships.

18.3 Deviations from this Agreement are only binding insofar as expressly agreed in writing between Parties.

THUS, drawn up in duplicate on the first date written above

**TNO Netherlands Organization for Applied [●]
Scientific Research**

by:
position:

by:
position:

by:
position:

CONCEPT

Annex 1. <OPTIONEEL Description of the unit>

[description]

[specifications]

CONCEPT

Annex 2. <Optional price sheet>

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CONCEPT

Annex 3. [Request for Tender]

CONCEPT

Annex 4. [Tender]

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