



(Annex 3) Draft Agreement

for the

**Purchase and installation of a
“Powder Bed system”**

Eindhoven, the Netherlands
Date:[2022]
Ref:

The undersigned:

A. The Institutes Organization of NWO (NWO-I) / DIFFER,

having its principal place of business in Utrecht and having its registered office
at De Zaale 20, 5612 AJ in Eindhoven, duly represented in this matter by:

[name], [function]

and

B. [name Supplier]

having its principal place of business in [city] and having its registered office
at [address] duly represented in this matter by:

[name], [function]

state that they have agreed as follows:

1. Definitions

In this agreement, the following terms are used with an initial capital letter. These terms have the following meanings:

1.1 **Acceptance**: The approval of an POWDER BED SYSTEM as referred to in article 6 of this agreement.

1.2 **Annexes**: Appendices to this agreement which form part of this agreement. The terms and conditions referred to in this agreement are stated in this agreement and in the **Annexes**.

1.3 **Delivery**: The supply of an POWDER BED SYSTEM to the location of the NWO-I.

1.4 **Defect**: The failure the POWDER BED SYSTEM to comply or comply fully with the agreed specifications as included in **Annex I and II** of this agreement, or any other failure of the POWDER BED SYSTEM is function properly.

1.5 **Documentation**: The Documentation relating to the POWDER BED SYSTEM to be supplied by the supplier to the NWO-I.

1.6 **Equipment**: The Equipment and other peripherals to be delivered by the supplier under this agreement, inclusive of the associated Materials and Documentation.

1.7 **Installation**: Installing the POWDER BED SYSTEM in such a way that the system functions in accordance with the agreed specifications.

1.8 **License**: The entitlement of the NWO-I to use the Software in accordance with the stipulations of this agreement.

1.9 **Materials/Components**: The resources required for the use, Acceptance, Installation, implementation and modification of the POWDER BED SYSTEM not including tools and test materials.

1.10 **Purchase Price**: The payment to be paid by the NWO-I to the supplier under this agreement for the POWDER BED SYSTEM together with the work and services to be performed in consequence of this agreement.

1.11 **Site Acceptance Test (SAT)**: The test (or test process) which will demonstrate that under normal operational conditions the POWDER BED SYSTEM meets and will continue to meet the agreed specifications and comply with the guaranteed properties as referred to in this agreement, this according to the description of the SAT in the Request for Proposal dated 24th October 2022 with reference: TN366783.

1.12 **Turnkey Setup**: The operation of the POWDER BED SYSTEM in such a way that after its Acceptance it is fully available and operational to the satisfaction of the NWO-I , to the effect that the technical and functional qualities of the POWDER BED SYSTEM are such that the agreed facilities can be achieved and can be used in full.

1.13 **POWDER BED SYSTEM**: The Equipment, software, Materials/Components, necessary wiring and Documentation referred to in this agreement and his **Annexes**.

1.14 **Working Days:** Calendar days during business hours (8.00 -17.30 hours), excluding weekends and public holidays, on which the agreed work is to be carried out.

2. SUBJECT OF THIS AGREEMENT

2.1 Supplier hereby sells to the NWO-I and the NWO-I hereby purchases from supplier the POWDER BED SYSTEM as specified in **Annex I and II** of this agreement.

2.2 Supplier shall deliver the POWDER BED SYSTEM to the NWO-I and arrange for the Installation, implementation and a successful Site Acceptance Test of the systems in accordance with the terms and conditions of this agreement and its associated **Annexes**.

2.3 The Turnkey Setup coincides with the signing of the handover protocol as referred to in article 6 of this agreement.

2.4 In addition, the training of personnel from the NWO-I in the management and use of the POWDER BED SYSTEM is also included as scope of the delivery.

2.5 The following annexes form an integral part of this agreement:

Annex I Request for Proposal, EU tender POWDER BED SYSTEM dated October 24th, 2022, with reference: TN366683;

Annex II Tender of [name supplier] dated [.....], 2022 with reference: [.....];

Annex III Handover protocol model Site Acceptance Test (SAT);

Annex IV Standard Bank guarantee.

In case of contradictions between this agreement and the **Annexes**, this agreement prevails. Furthermore, the above mentioned ranking is applicable, where an **Annex** with a lower number prevails over an **Annex** with a higher number.

2.6 Each of the Parties will designate (a) contact(s), who will be in charge of the communication relating to the contract.

The NWO-I contact will be: [name], [function].

Supplier contact will be: [name], [function].

2.7 Both parties will arrange for a suitable replacement in the case of emergencies (e.g. illness). The supplier may only involve its personnel or third parties in the performance of this agreement after express consent has been given by the NWO-I.

3. DELIVERY LOCATION

3.1 The Delivery Location of the POWDER BED SYSTEM is:

TU/e campus eindhoven

Reference: [.....]

Date: [.....] 2022

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The Netherlands

3.2 If at any time supplier becomes aware that the environment referred to does not meet or no longer meets the requirements set by the supplier or if it is foreseeable that this will be the case, supplier is obliged to warn the NWO-I immediately in writing, and also to make provision – at the request of the NWO-I and for their account – to remedy this unsatisfactory situation.

3.3 The NWO-I guarantees that the location where the POWDER BED SYSTEM will be placed meets the requirements for the POWDER BED SYSTEM.

4 SOFTWARE

4.1 On delivery as referred to in article 5 of this agreement the NWO-I will receive from supplier a nonexclusive, non-transferable right of use for an unlimited time to the Software, including the associated Documentation and Materials, in return for the payment referred in article 8 of this agreement. The Licence(s) cannot be cancelled by supplier. Further, the right of use is not tied to any location.

4.2 The NWO-I is entitled to copy the Software provided and the associated documentation for back-up purposes. References to property rights and copyrights may not be removed in this process.

4.3 If software has been lost or in the opinion of the NWO-I is or has become faulty or unreliable, supplier will on first request make replacement software available to the NWO-I in return for the cost of data media for up to ten years from the date of delivery referred to in article 5.2 of this agreement.

4.4 Supplier is responsible for the Implementation of the software.

5 DELIVERY, INSTALLATION AND IMPLEMENTATION

5.1 Supplier will deliver the POWDER BED SYSTEM “Delivered Duty Paid” (Incoterms 2020) to the NWO-I and install and implement it at the Delivery Location, excluding taxes.

5.2 The by both parties agreed delivery time of the POWDER BED SYSTEM is latest: [to be agreed by both parties]

5.3 If Supplier does not deliver the POWDER BED SYSTEM in the time that is mentioned in article 5.2 of this contract NWO-I is entitled to charge supplier penalty of € 1.000,-- excluding VAT for every day the agreed delivery time is exceeded with a maximum of € 50.000,-- excluding VAT.

5.4 Immediately on Delivery the NWO-I will sign the receipt of the freight forwarder.

5.5 After delivery of the POWDER BED SYSTEM Supplier will begin with the Installation in a time that both parties mutually are agreed of the POWDER BED SYSTEM.

5.6 As soon as the Installation and a function test have been completed in the opinion of both parties, a Site Acceptance Test will be done.

6 SITE ACCEPTANCE TEST

6.1 The Site Acceptance Test will be carried out by both the supplier and the NWO-I on site of the NWO-I. In this Acceptance Test is demonstrated that the POWDER BED SYSTEM works properly on the site of the NWO-I according to the description of the Site Acceptance Test in the Request for Proposal, dated October 24th, 2022 with reference: TN366783.

6.2 During the Site Acceptance Test, checks will be made that the POWDER BED SYSTEM functions properly; the NWO-I will test the system(s) under normal operational conditions.

6.3 Once the Site Acceptance Test has been completed successfully and the POWDER BED SYSTEM has been proven fully operational, the system will be accepted by the NWO-I; this will be effected by both supplier and the NWO-I signing the handover protocol laid out in **Annex III** of this agreement.

6.4 If a successful completion of the Site Acceptance Test cannot be achieved, the NWO-I will have the right either to refuse the POWDER BED SYSTEM without any cost or to determine in consultation with supplier the further procedure to be followed.

7 PURCHASE PRICE

7.1 The Purchase Price for the POWDER BED SYSTEM including all costs, also including collaboration (support) is as follows:

[.....] excluding VAT.

7.2 The Purchase Price is inclusive all costs, such as design, fabrication, delivery, installation, guarantees, collaboration, any additional costs for traveling and accommodation training and education of employees of NWO-I and guarantees as well as all costs in order to meet the mandatory requirements as mentioned in the Request for Proposal, dated October 24th, 2022 with reference: TN366783.

7.3 The prices and rates agreed in this agreement, including the **Annexes**, are fixed.

8 PAYMENT

8.1 Supplier will charge the Purchase Prices referred to in article 7 of this agreement to the NWO-I.

For the POWDER BED SYSTEM separate invoicing is in three installments:

- After ordering against bank guaranty: 20% of the Purchase Price;
- After the Delivery of the POWDER BED SYSTEM: 60% of the Purchase Price;
- When the completed installation, Site Acceptance Test has been completed successfully and Annex III has been signed by both parties: 20% of the Purchase Price.

8.2 The NWO-I will pay the amounts owed by it under this agreement to supplier within 30 days of receipt and approval of the relevant invoice.

Reference: [.....]

Date: [.....] 2022

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9 WARRANTY

9.1 Supplier guarantees that for 12 months after the successful Site Acceptance Test;

- the POWDER BED SYSTEM will comply with the agreed properties, specifications and functionality in accordance with the stipulations in **Annex I** of this agreement and also with the functionality, specifications and characteristics of the POWDER BED SYSTEM as published by supplier or notified to the NWO-I in writing;

- the system is free of design, manufacturing or material defects.

9.2 Supplier further guarantees that for a period of at least seven years after Acceptance it will be possible to supply parts and components or equivalent interchangeable, functionally equivalent equipment and system software for the POWDER BED SYSTEM at appropriate market terms and rates, to be further agreed at the time.

9.3 During the guarantee period referred to in article 9.1 of this agreement, the services will be provided continuously by supplier, on Working days. For this purpose, supplier will have free access to the POWDER BED SYSTEM, subject to the internal regulations of the NWO-I.

9.4 Supplier undertakes that within eight business hours of receiving a written or telephone report of the Defects it will take the measures, which will result in these being remedied in the shortest possible time.

10 LIABILITY

10.1 Should supplier fail to comply with one or more of its obligations under this agreement, the NWO-I shall give notice of default, unless compliance with the obligations concerned was already permanently impossible, in which case the party in breach shall be immediately in default. The notice of default shall be given in writing with the supplier granted a reasonable further period to meet its obligations. This period shall apply as a deadline.

10.2 Notwithstanding anything stated to the contrary in this Agreement, neither Party shall be liable for any commercial losses, loss of revenues or profits, liquidated damages, loss of good will, inconvenience, or exemplary, special, incidental, indirect, consequential or punitive damages whatsoever, regardless of the form of any claim whether in contract or tort, whether from breach of this Agreement, or defective goods or services, even if such Party has been advised or should be aware of the possibility of such damage. Each Parties liability for loss or damages shall not exceed the purchase price of this Agreement.

11. PATENT RIGHTS AND ROYALTIES

11.1 Supplier shall fully indemnify the NWO-I against all claims and proceedings for or on account of infringement of any letters patent, registered design, copyright, trademark or trade name or industrial property right protected at the date of the agreement in the world, arising by reason of the construction of the POWDER BED SYSTEM or by the use of the POWDER BED SYSTEM supplied by supplier.

12. CONFIDENTIALITY

12.1 The supplier undertakes that he shall not - and that he shall take every reasonable precaution to see that his employees do not - cede, grant, dispose of or give in any way whatsoever to any third party information and/or know-how, whether in part or in whole, transmitted by or obtained from the other party (whether orally or in writing), and undertake to take appropriate measures that these data shall not be divulged, without the other party's prior consent in writing, except in so far as the data necessarily have to be disclosed with respect to information and/or documentation required for sub-contractors and in handbooks for the customers or for reasons of acquisition.

12.2 All information obtained about the other party's production capabilities, rates of production, customers and similar material originating from such party shall be kept confidential by the receiving party.

12.3 These requirements of confidentiality shall survive expiration and/or termination of this agreement.

13. INSTRUCTION

13.1 Supplier will train and instruct the NWO-I. The training and instruction will be performed during the supervision of the execution of the installation and putting into operation of the POWDER BED SYSTEM.

13.2 On request of the NWO-I supplier will train and assist the qualified technicians for the daily maintenance of the systems during the supervision of the execution and after the installation.

13.3 Supplier will be responsible that qualified engineers will be present at all times training and instructions are given according to the agreed schedule.

14. DOCUMENTATION

14.1 Supplier shall provide the NWO-I with sufficient Documentation on the properties and use options of the POWDER BED SYSTEM, including those of its component parts. The Documentation must be such that it gives a full, complete and detailed description of the POWDER BED SYSTEM, including the associated Equipment and Software and their functions.

14.2 Supplier shall ensure that the Documentation supplied by it is replaced, changed or amended as quickly as possible at its expense if it should appear at any time during the use of the systems by the NWO-I that the Documentation contains incorrect information or is otherwise incomplete, inadequate or outdated.

15. CONTRACTING WORK OUT TO THIRD PARTIES

15.1 Supplier will require the NWO-I prior permission in writing in order to contract services out to third parties. The NWO-I may impose terms and conditions upon its approval; it may not however withhold its permission on unreasonable grounds.

16. FORCE MAJEURE

16.1 The supplier shall not be considered in default in the performance of its respective obligations if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, epidemic, accident, fire, wind, flood or by any law, order, proclamation, regulation (such as import restrictions) or ordinance of any act of God or any similar cause beyond the reasonable control of the supplier, hereinafter referred to as "force majeure". If the supplier is prevented from fulfilling its contractual obligation by force majeure, the parties shall consult with each other regarding the compliance with and implementation of this contract.

17. TERMINATION OF THE CONTRACT

17.1 If the supplier is in default under this agreement on account of the failure to perform or observe any obligation on its part under this agreement, the NWO-I may by notice in writing to the supplier, terminate this agreement in whole or in part without prejudice to any right of action or remedy that has accrued or that may accrue in favor of either party.

17.2 Where the default is capable of being remedied, the NWO-I shall not exercise its rights of termination unless it has first given to the supplier notice in writing specifying the default and requiring the supplier to remedy it within the time (being not less than 5 (five) working days) specified in the notice and the default is not remedied within the time allowed.

17.3 If the supplier:

(a) goes into liquidation or a receiver or receiver and manager or mortgagee's or charge's agent is appointed; or

(b) becomes bankrupt or enters into a scheme of arrangements with creditors, the NWO-I may, by notice in writing, terminate this agreement without prejudice to any right of action or remedy that has accrued or that may accrue in favor to either party.

18. APPLICABLE LAW AND DISPUTES

18.1 The contracts between the parties are governed by Dutch law.

18.2 In case of proceedings, these will always take place at the District Court of Oost-Brabant, located at 's-Hertogenbosch.

Digital signed in:

Eindhoven,

NWO-I DIFFER,

[name]

[function]

Reference: [.....]

[place]

[name supplier]

[name]

[function]

Date: [.....] 2022

INDEX OF ANNEXES

(to the agreement for the purchase of an POWDER BED SYSTEM)

- Annex I Request for Proposal, EU tender POWDER BED SYSTEM, dated October 24th 2022, with reference: TN366783.
- Annex II Tender of contractor, dated [.....], 2022, with reference: [.....];
- Annex III Handover protocol model Site Acceptance Test (SAT);
- Annex IV Standard of Bank guarantee.

In case of contradictions between this agreement and the Annexes, the agreement prevails. Furthermore, the above mentioned ranking is applicable, where an Annex with a lower number prevails over an Annex with a higher number.

ANNEX I

Request for Proposal, EU tender POWDER BED SYSTEM, dated October 24th 2022, with reference: TN366783.

ANNEX II

Tender of contractor dated [.....], 2022, with reference: [.....].

ANNEX III

HANDOVER PROTOCOL SITE ACCEPTANCE TEST

Relating to the handover technical of the POWDER BED SYSTEM in accordance with the terms and conditions of the agreement for the purchase of an POWDER BED SYSTEM

dated [.....].

[name supplier] and

The NWO-I:

The Undersigned,

.....,

duly representing the NWO-I in this matter, hereby declares that the POWDER BED SYSTEM supplied under the above-mentioned agreement has been proven to operate technically, that it has been demonstrated that the system works properly and that the system is hereby accepted for the Site Acceptance Test over without reservation/subject to reservations. * In the event that the POWDER BED SYSTEM is accepted subject to reservation, this reservation must be specified on an attached annex.

Eindhoven, (date)For the NWO-I

Represented by:

Name.....

Post :

Signature.....

In the presence of [supplier]

Represented by:

Name :

Post :

Signature :

Annex to HANDOVER PROTOCOL SITE ACCEPTANCE TEST

Refers to the handover of the POWDER BED SYSTEM.

Supplier and NWO-I:

dated []

RESERVATION

Below a specification is given of the minor defects and imperfections which are still present at the point on which the POWDER BED SYSTEM is accepted for the Site Acceptance Test; but which as the parties hereby declare do not affect the proper operation of the POWDER BED SYSTEM.

declares that the defects and imperfections listed below will be remedied by at latest [date].

.....
.....
.....
.....
.....
.....
.....

For [supplier]

Name :

Post :

Signature :

For the NWO-I:

Name :

Post :

Signature :

Annex IV

Standard of bank guarantee

Bank guarantee number bank guarantee:

The signee, name bank, registered at **registered address** and whose address for service is at **service address**, hereinafter called "the bank", hereby declares to act irrevocably and unconditionally as guarantor for a maximum of EUR [.....].
(in words: [] EURO's) on behalf of Supplier,

towards the Eindhoven University of Technology, to guarantee the fulfilment of the obligation of [name supplier] towards the Eindhoven University of Technology with relation to agreement for the purchase and installation of an POWDER BED SYSTEM with reference number [.....], dated [.....], 2022.

The bank therefore undertakes, at the first written request from the Eindhoven University of Technology, to comply with all obligations, all that the Eindhoven University of Technology in this matter shall claim from [supplier] taking into account the maximum amount stated above.

This bank guarantee relates to agreement [with reference:dated [.....], 2022.

This bank guarantee shall remain valid until the Site Acceptance Test has been accepted by the Eindhoven University of Technology.

place , date

name bank or stamp

signature (s)

name(s) signee(s)

Reference: [.....]

Date: [.....] 2022