

Purchase and supply contract (ARIV 2018)

**Plasma Enhanced Atomic Layer Deposition
(PE-ALD)
System**

DRAFT

The undersigned:

1. STICHTING NEDERLANDSE WETENSCHAPPELIJK ONDERZOEK INSTITUTEN, registered in the Netherlands under number 41150068 whose registered office is at Winthontlaan 2, 3526 KV Utrecht, the Netherlands and its institute AMOLF, Science Park 104, 1098 XG Amsterdam, legally represented for these purposes by its Institute Manager Dr. Paula van Tijn, hereinafter referred to as the Purchaser,

and

2. [COMPANY NAME], which has its registered office at [ADDRESS], legally represented in this matter by [SIGNATORY'S NAME], hereinafter referred to as the Supplier,

WHEREAS:

- The Purchaser requires a plasma enhanced atomic layer deposition system (the Product).
- Supplier issued a Quotation on [QUOTATION DATE] with quote number [QUOTATION NUMBER].
- The Purchaser accepts this quotation insofar the terms and conditions of Supplier are not contradictory to the ARIV-2018 or this present contract.

AGREE AS FOLLOWS:

The General Purchasing Conditions of Dutch Government (ARIV-2018) apply to the present contract, insofar conditions of Supplier are conflicting with the ARIV-2018. A number of terms in this Contract are written with initial capitals. These terms are defined in article 1 of the ARIV-2018.

1. Object of the Contract

- 1.1 The Purchaser hereby purchases the Product, as described in the quotation of Supplier dated [QUOTATION DATE], from the Supplier, and the Supplier hereby sells the Product to the Purchaser in accordance with the Quotation issued by the Supplier, unless this Contract provides otherwise.
- 1.2 The following documents form part of the Contract. In the event of mutual inconsistencies, a higher ranked document takes precedence over a lower ranked document:
 1. this document.
 2. the banking guaranty as referred to in article 4.5.
 3. the ARIV-2018.
 4. the Quotation issued by the Supplier.

2. Entry into force of the Contract

This Contract enters into force on the date on which it is signed by both Parties.

3. Delivery

- 3.1 Notwithstanding the provisions of article 3.1 and 10.1 of the ARIV-2018, the Delivery of the Product by the Supplier will take place in accordance with DDP Incoterms 2020.
- 3.2 The Product will be delivered no later than 9 months after the signing of this agreement to the following address: Science Park 102 1098 XG Amsterdam The Netherlands.
- 3.3 Delivery of the Product will include documentation among other things user manuals, and specifications of the default process conditions for these processes:
 - Al₂O₃ deposition (thermal and plasma)

- AlN deposition (plasma)
- HfO₂ deposition (thermal and plasma)
- In₂O₃ deposition (plasma)
- ITO deposition (plasma)
- NiO deposition (thermal and plasma)
- Ru deposition (thermal and plasma)
- Pt deposition (thermal and plasma)
- SiO₂ deposition (plasma)
- SnO₂ deposition (thermal and plasma)
- TiN deposition (plasma)
- TiO₂ deposition (thermal and plasma)
- ZnO deposition (thermal and plasma)

3.4 Delivery of the Product and payment for delivery does not imply transfer of ownership of the Product to the Purchaser.

4. Price and other financial provisions

4.1 The agreed price for the Product including service is € [PRICE] excl. VAT.

4.2 Billing by the Supplier will follow the following schedule:

- an amount of € [PRICE] excl. VAT (50%) at order of the Product.
- an amount of € [PRICE] excl. VAT (40%) at delivery of the Product.
- an amount of € [PRICE] excl. VAT (10%) after installation and acceptance of the Product by the Purchaser as described in 5.1 of this document.

4.3 The Supplier must submit invoices electronically.

4.4 Notwithstanding the provisions of article 11.2 of the ARIV 2018 on electronic invoicing, the Supplier will send the invoice(s) to the Purchaser by email to: finances@amolf.nl.

4.5 In accordance with Article 12.1 of the ARIV-2018 a banking guaranty is required in order to execute the contract. Payment of the first instalment shall be due only after the relevant invoice and bank guarantee, amounting the first instalment of 50%, has been received by Principal hereunder and issued by a bank or similar financial institution that has been approved by Principal. Said bank guarantee shall be returned to the bank after the signing of the site acceptance certificate.

5. Acceptance and take back

5.1 The Purchaser together with a representative of the Supplier will conduct a Site Acceptance Test (SAT) immediately after delivery and installation of the Product in order to ascertain that the working of the Product complies with the functionalities required. The system is accepted by the signing the performance testimony, registered in Appendix 1, by both Supplier and Purchaser.

5.2 Should Purchaser not approve the System before this date by reason only of Supplier's failure to comply with its obligations in this Agreement, Purchaser has the right to annul the Agreement extra judicially, either provisionally or partly, without this requiring any notice or proof of default. This jurisdiction may not be used if the Supplier can prove that the extent of the unrepaired defects and/or the time involved in their repair is so slight that such an annulment cannot be warranted. In case of annulment Supplier is liable for the losses sustained by Purchaser, the scope of which is calculated as stipulated in Article 14. Undiminished his right to damages, Purchaser can allow Supplier to still remedy the defects at Supplier's own expense. At the agreed moments in time the System has to meet the Tender Specifications; if this is not the case, Purchaser has the right to annul the Agreement as stated before.

- 5.3 If the acceptance test fails, Supplier will have the possibility for recovery of the Product in order to meet the second acceptance test.
- 5.4 If the second acceptance test fails, Supplier will take back the Product at his expense. In the event that Supplier received the payments as agreed for order and delivery, these payments will be returned to Purchaser within ten (10) working days.
- 5.5 Minor defects and imperfections that do not affect the functionality and proper working of the System shall not give Purchaser the right to defer the signing of the performance testimony.

6. Contacts

The Purchaser's contact is Dr. Isabelle Palstra. The Supplier's contact is [NAME].

7. Other Terms and Conditions

- 7.1 The other rights and claims referred to in article 13.3 of the ARIV-2018 may be exercised instead of or in addition to the rights and claims under article 13.2.
- 7.2 Article 5 of the ARIV-2018 does not apply.
- 7.3 Notwithstanding article 14 of the ARIV 2018, the Party that imputably fails to discharge its obligations is liable to the other Party for any loss incurred by the other party.
- 7.4 In accordance with article 14 of the ARIV 2018, the Supplier indemnifies the Purchaser against any claims brought by third parties for damages as a result of its failure to discharge its obligations as referred to in that article.

8. Declaration of integrity

The Supplier hereby declares that it has not offered or given the Purchaser's staff, subordinates or auxiliary persons any benefit in order to obtain the order, nor arranged for them to be offered or given any such benefit. It will not do so in the future with a view to inducing such persons to perform or refrain from performing any act.

9. Final provisions

- 9.1 Any derogations from this Contract are binding only if they have been expressly agreed by the Parties in writing.
- 9.2 Any written or oral agreements previously made by the Parties about the order(s) placed under this Contract for the Delivery of the Product will be nullified by the signature of the Contract.

Done on the later of the two dates stated below and signed in duplicate.

Amsterdam, [DATE]

[PLACE], [DATE]

For AMOLF

For [SUPPLIER'S NAME]

P. van Tijn
Institute Manager

[SIGNATORY'S NAME]
[SIGNATORY'S POSITION]

Schedules already in possession of Parties:

1. the ARIV-2018.

Schedules to be appended:

2. the Quotation issued by the Supplier
3. Description of Site Acceptance Test
4. Banking guaranty
5. Description of Factory Acceptance Test
5. Form performance testimony Factory Acceptance Test
6. Form performance testimony Site Acceptance Test

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