

Agreement
for
the manufacturing, delivery, and installation
of
Cryogen-free Dilution Refrigerator

AMOLF

v.1.0
2024

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Enclosures:

- Appendix 1 Request for a quotation, including relevant tender documentation
- Appendix 2 Quotation
- Appendix 3 Description of Factory Acceptance Test and Site Acceptance Test
- Appendix 4 Model testimony of Performance after Site Acceptance Test
- Appendix 5 Form bank guarantee
- Appendix 6 Contact Persons
- Appendix 7 Delivery Site(s)
- Appendix 8 Planning including Installation Schedule
- Appendix 9 Model Testimony of Performance after Factory Acceptance Test
- Appendix 10 General terms and conditions AMOLF

This CONTRACT is made

BETWEEN

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 represented by **AMOLF**, Science Park 104, 1098 XG Amsterdam (to be referred to hereinafter as the "PRINCIPAL");

legally represented for these purposes by its AMOLF Institute Director Dr. H.J. Bakker,

AND

2. [CONTRACTOR], a company registered in [country] under number [number] whose registered office is at [address], (to be referred to hereinafter as the "CONTRACTOR");

legally represented for these purposes by [name], [function],

PRINCIPAL and CONTRACTOR are hereinafter collectively referred to as the Parties.

WHEREAS:

- Principal intends to enter into an agreement with regard to the manufacturing, delivery and installation of a Cryogen-free Dilution Refrigerator (hereinafter: 'System');
- Contractor is willing and able to manufacture, sell and deliver the required SYSTEM to Principal in accordance with the conditions stipulated hereinafter;
- Principal and Contractor wish to record the relevant agreements made in this contract;

DECLARE TO HAVE AGREED TO THE FOLLOWING:

Article 1 Concept description

From here on forth it is understood by:

- 1.1 **Agreement:** this agreement for manufacturing, delivery and installation of the System;
- 1.2 **Defect:** Failure to comply in all material respects with the requirements as indicated in the agreed technical and functional specifications and Documentation, or material incorrect functioning of the System.
- 1.3 **Delivery:** The consignment of the System to the Site of delivery.
- 1.4 **Delivery in operational order:** delivery of the System in accordance in all material respects with the technical and functional specifications agreed upon including successful SAT.
- 1.5 **Delivery site:** The place in the Netherlands as referred to in Appendix 7, where the Delivery in operational order of any of the System shall take place in accordance with the terms and conditions of this Agreement.
- 1.6 **Documentation:** The documentation associated with the System to be furnished by the Contractor for the benefit of the Principal.
- 1.7 **Enclosures:** The appendices to this Agreement that form part of the agreement.
- 1.8 **Factory Acceptance Test (FAT):** The testing of the System on site at the Contractor's facilities, where it shall be ascertained that the System satisfies and will continue to satisfy in all material respects the agreed specifications and that it possesses in all material respects the guaranteed characteristics as set out in this Agreement.
- 1.9 **Parties:** The Principal and the Contractor
- 1.10 **Purchase price:** The compensation payable to Contractor by Principal in consideration for the undertakings given herein by the Contractor.
- 1.11 **Site:** shall mean the site as referred to in Appendix 7.
- 1.12 **Site Acceptance Test (SAT):** The testing of a System, after it has been consigned in operational order at the Delivery site, under Principal's ordinary operational conditions, when the System is checked to ascertain whether it satisfies and can continue to satisfy in all material respects the agreed specifications as well as possessing in all material respects the guaranteed characteristics as set out in this agreement.
- 1.13 **SYSTEM(s):** The by Contractor manufactured Cryogen-free Dilution Refrigerator system in accordance with the agreed specifications.
- 1.14 **Workday:** the calendar days, except for generally acknowledged holidays and other days which at the beginning of the calendar year have been established as obligatory days off by Principal, on which the agreed activities shall be performed. Working hours are from 8.30 hours to 16.00 hours on workdays.

Article 2 Subject of the Agreement

- 2.1 Contractor undertakes to manufacture and deliver the System in operational order. The stipulations of this Agreement shall be in force, unless they are departed from, and then only manifestly by written agreement between the parties.
- 2.2 The following documents form part of this Agreement as Appendices 1 to 10 At all times this agreement shall prevail over the appendices. Should the content of the

appendices mentioned hereunder be contradictory, the following order is in force, whereby the first mentioned document prevails over the latter one.

- Appendix 1 Request for a quotation, including relevant tender documentation
- Appendix 2 Quotation by Contractor
- Appendix 3 Description of Factory Acceptance Test and Site Acceptance Test
- Appendix 4 Model testimony of Performance after Site Acceptance Test
- Appendix 5 Form bank guarantee
- Appendix 6 Contact Persons
- Appendix 7 Delivery Site(s)
- Appendix 8 Planning including Installation Schedule
- Appendix 9 Model Testimony of Performance after Factory Acceptance Test
- Appendix 10 General terms and conditions AMOLF

- 2.3 Contractor is not authorised to deliver other than the agreed System without previous written approval from Principal.

Article 3 Manufacture and delivery

- 3.1 Contractor undertakes vis-à-vis Principal, in accordance with this agreement, to manufacture and deliver in operational order the System as stipulated in this Agreement for the benefit of Principal.
- 3.2 Principal is authorised to supervise that the activities are being performed according to the agreed planning at the location of Contractor on a Workday and upon reasonable notice. Contractor may be present at the inspection if desired.

Article 4 Delivery site

- 4.1 The System shall be delivered at the Delivery site indicated in Appendix 7. Delivery of the System must take place in consultation with Principal.
- 4.2 In relation to that stipulated in Article 8, Principal shall afford Contractor with entrance to the Delivery site, undiminished that stipulated in Article 8.

Article 5 Delivery

- 5.1 Contractor shall deliver the System DDP and DAP (DDP= delivery duties paid; DAP = delivery at place) (in accordance with Incoterms 2020) at the agreed Delivery site of Principal, promptly within [*number of months stated by Contractor in quotation or other tender documentation*] calendar months.
- 5.2 Contractor is responsible for sound packing and transportation procedures.
- 5.3 Contractor is responsible for unloading of the System.

Article 6 Delivery in operational order

- 6.1 Contractor shall deliver in operational order the System for the Site Acceptance Test, in accordance with the technical and functional specifications.
- 6.2 The Delivery in operational order of the System shall have been accomplished within the delivery time mentioned in Appendix 8 (Planning including Installation Schedule) of this Agreement.

- 6.3 The Delivery in operational order implies that the System is fully available and functions well, in other words, that the agreed technical and functional specifications of the System have been met and the System functions in accordance with such technical and functional specifications.
- 6.4 Delivery in operational order is considered to have taken place when Principal notifies Contractor to that effect in writing.

Article 7 Factory and Site Acceptance Tests, takeover and property transfer

- 7.1 The Factory Acceptance Test ('FAT') shall be done by Contractor, without (virtual) presence of Principal and shall be conducted before Delivery of the System within the schedule agreed upon in Appendix 8 of this Agreement.
- 7.2 The Factory Acceptance Test shall consist of:
- a. A visual inspection of the System;
 - b. A test of the System's functioning and capabilities, according to the protocol agreed upon by both parties and described in Appendix 3.
- 7.3 Contractor shall inform Principal, well before the execution of the Factory Acceptance Test, with possible additions to this protocol. As the FAT shall be carried out solely by the Contractor it is understood that any unilateral acceptance by the Contractor does not commit the Principal to anything. Receiving and acknowledging any protocol resulting from this FAT does not imply a consent to the FAT.
- 7.4 Immediately after the Factory Acceptance Test has been successfully completed, the SYSTEM is ready for shipment and delivery by Principal. This is accomplished by the signing the performance testimony, registered in Appendix 9, by both Contractor and Principal. Only after this performance testimony is signed, delivery of the system will commence.
- 7.5 The Site Acceptance Test by Contractor, in the presence of Principal, shall start immediately upon completion of the Delivery and installation in operational order of the System and shall be conducted within the schedule agreed upon in Appendix 8 of this agreement. The Site Acceptance Test by Contractor and Principal must have been successfully completed by the dates mentioned in this Agreement at the latest. Should Principal not approve the System before this date by reason only of Contractor's failure to comply with its obligations in this Agreement, Principal 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 Contractor 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 Contractor is liable for the losses sustained by Principal, the scope of which is calculated as stipulated in Article 14. Undiminished his right to damages, Principal can allow Contractor to still remedy the Defects at Contractor's own expense. At the agreed moments in time the System has to meet the Tender Specifications; if this is not the case, Principal has the right to annul the Agreement as stated before.
- 7.6 Minor defects and imperfections that do not affect the functionality and proper working of the System shall not give Principal the right to defer the signing of the performance testimony.
- 7.7 If a successful completion of the Factory Acceptance Test is not reached in accordance with the procedures described in 7.1, 7.2, 7.3, 7.4, and 7.5, Principal has the right to annul the Agreement.
- 7.8 The Site Acceptance Test shall consist of:

- a. A visual inspection of the System;
 - b. A comprehensive test of the System, according to the protocol agreed upon by both parties and described in Appendix 3, and the common functional requirements for this System;
 - c. An evaluation by Principal of the documentation provided by Contractor.
- 7.9 The protocol for approval is described in Appendix 3. Contractor shall present Principal, well before the execution of the Site Acceptance Test, with possible additions to this protocol.
- 7.10 Immediately after Delivery in operational order of the System, the Site Acceptance Test shall be initiated for the benefit of the acceptance of the SYSTEM. During the Site Acceptance Test, the SYSTEM shall be tested on its functioning as required, in other words, that each phase of the acceptance criteria approved by Principal is satisfied.
- 7.11 Immediately after the Site Acceptance Test has been successfully completed, the SYSTEM shall be accepted by Principal, which shall be accomplished by the signing the performance testimony, registered in Appendix 4, by both Contractor and Principal.
- 7.12 The Site Acceptance Test by Contractor and Principal must have been successfully completed by the dates mentioned in this Agreement at the latest. Should Principal not accept the System before this date by reason only of Contractor's failure to comply with its obligations in this agreement, Principal 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 Contractor 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 Contractor is liable for the losses sustained by Principal, the scope of which is calculated as stipulated in Article 14. Undiminished his right to damages, Principal can allow Contractor to still remedy the Defects at Contractor's own expense. At the agreed moments in time the System has to meet the Tender Specifications; if this is not the case, Principal has the right to annul the agreement as stated before.
- 7.13 Property of the System are transferred to Principal at the moment DPU delivery has taken place. Until title of the System has passed to the Principal, the Principal shall:
- 7.13.1 hold the System on a fiduciary basis as the Contractor's bailee;
 - 7.13.2 store the System separately from all other goods held by the Principal so that they remain readily identifiable as the Contractor's property;
 - 7.13.3 not remove, deface or obscure any identifying mark or packaging on or relating to the System;
 - 7.13.4 maintain the System in satisfactory condition and keep it insured against all risks for its full price from the date of delivery;
 - 7.13.5 notify the Contractor immediately if it becomes subject to any of the events listed in Article 19.3; and
 - 7.13.6 give the Contractor such information relating to the System as the Contractor may require from time to time,
- but the Principal may resell or use the System in the ordinary course of its business.
- 7.14 If before title to the System passes to the Principal the Principal becomes subject to any of the events listed in Article 19.3, or the Contractor reasonably believes that any

such event is about to happen and notifies the Principal accordingly, then, provided that the System has not been resold, or irrevocably incorporated into another product or system, and without limiting any other right or remedy the Contractor may have, the Contractor may at any time require the Principal to deliver up the System and, if the Principal fails to do so promptly, enter any premises of the Principal or of any third party where the System is stored in order to recover it.

- 7.15 The performance testimony must be drawn up in duplicate and signed. One copy is for Principal and must be handed over to Principal immediately upon signing. The second copy is for Contractor. The performance testimony shall be conclusive evidence of the System's conformity with this Agreement and of its acceptance by Principal. The performance, as described in the performance testimony, shall be considered the minimum specifications as accepted by Contractor for operation and warranty purposes of the System.
- 7.16 Minor defects and imperfections that do not affect the functionality and proper working of the System shall not give Principal the right to defer the signing of the performance testimony.
- 7.17 If a successful completion of the Site Acceptance Test is not reached in accordance with the procedure described in 7.8, 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, and 7.16, Principal has the right to annul the agreement.

Article 8 Execution of activities

- 8.1 In as much as activities are executed on location at Principal's, these shall take place in such a way that it causes minimum interference with Principal's business; appropriate instructions given by Principal to Contractor shall be followed at once.
- 8.2 Principal shall see to it that Contractor's personnel has access to the location(s) concerned in order to execute the agreed activities at such times as are agreed for the purpose.
- 8.3 Contractor shall engage sufficient, skilled and qualified personnel for the execution of the work.
- 8.4 Contractor shall see to it that all personnel set to work by him at Principal, conduct themselves in accordance with the reasonable rules and regulations as set up by Principal from time to time..
- 8.5 In case of manifest misconduct, appraised as such by Principal, acting reasonably, which, in any case, is understood to include violation of the pledge of confidentiality as provided in Article 11 of this Agreement (Confidentiality), Principal shall be authorised to remove, or have removed, Contractor's personnel without being or becoming beholden to any reimbursement for cost and/or losses.
- 8.6 Should Principal have exercised the powers as referred to in the preceding paragraph, he shall inform Contractor of this immediately in writing and well-motivated.
- 8.7 Principal is authorised to request the immediate removal and/or replacement of an employee set to work by Contractor if Principal determines a reason exists for this; Contractor shall accede immediately to such a motivated request without being able to charge any additional costs.
- 8.8 Contractor is responsible and shall pay for the accommodation of personnel and the storage of materials.

Article 9 Order, safety, calamities, health and environment

- 9.1 Contractor, those who work for and with Contractor, as well as those who have been engaged by Contractor in the execution of this Agreement and/or an Agreement arising from it, are beholden to observe all applicable and /or under legislation and regulations imposed safety, health and environment regulations; also company rules and regulations by Principal related to order, safety, health and environment shall be observed at all times by Contractor as well as by persons engaged by Contractor in the execution of this Agreement and/or any agreement arising from it.
- 9.2 Contractor shall use reasonable endeavours to minimise any environmental impact through (the manufacture of) his products, packing and activities.
- 9.3 At the discovery of an unsafe situation or work method caused by Contractor, Principal is authorised to require Contractor to make changes immediately; in that event Principal retains the right to discontinue the execution of the deliveries without being beholden to any form of compensation.
- 9.4 Principal warrants that the site where the installation of the System and Site Acceptance Test is to take place is in all respects suitable for (i) the safe and lawful installation by the Principal of the System and (ii) operation of the System. Contractor is responsible for the timely safe and lawful installation of the System. Principal shall prepare the relevant site ready for use and will assist Contractor at Site where reasonably required by commissioning and testing.
- 9.5 Principal shall obtain any certificates or other approvals required in good time before performance of the Site Acceptance Test and shall inform Contractor of all relevant safety, building and electrical codes and other requirements relevant to such testing and shall indemnify Contractor against any liability or expense resulting from failure so to do.
- 9.6 Principal shall:
- 9.6.1 procure that the System is used only for the purposes and in the manner for which it was designed and supplied; that all persons likely to use or come into contact with the System receives appropriate training and copies of applicable literature supplied by Contractor; that all third parties who use or may be affected by or rely upon the System are given full and clear warning of any hazards (both patent and latent) associated with it or limitations of its effectiveness and that safe working practices are adopted and complied with. Any warning notices displayed on the System must not be removed or obscured; Principal shall procure that any third party to whom the System is supplied agrees not to remove or obscure such warning notices and shall take such steps as are reasonable to enforce such agreement;
 - 9.6.2 promptly comply with any safety recommendation made to it in respect of the System (including recall of it) and shall procure compliance by all relevant persons;
 - 9.6.3 maintain and make available to Contractor all records necessary to enable the System to be traced to its ultimate buyer or user;
 - 9.6.4 indemnify Contractor against any liability in relation to any breach of Principal's obligations under this Article 9.6.

Article 10 Obligation to provide information

- 10.1 During the term of this Agreement, Contractor shall inform Principal monthly about relevant developments relating to the manufacturing and delivery of the System.

- 10.2 Contractor shall promptly report any anticipated or foreseeable disruptions with regard to the timely, complete and correct execution of the obligations arising from the present Agreement or any agreement resulting from it.
- 10.3 Contractor shall in any case be accountable for any shortcoming in the timely and complete provision of information as referred to in this Article; any damage which at the date of this Agreement it is reasonably foreseeable would be incurred by Principal as a direct result of any failure so to do shall immediately be reimbursed by Contractor to Principal provided that Principal takes all steps reasonably available to it to mitigate the extent of any such damage.
- 10.4 That which is specified in the preceding paragraphs leaves undiminished the consequences in case Contractor fails to meet any of his obligations under this agreement and/or the law.
- 10.5 Contractor retains ownership of all its inventions, designs, copyrights and processes and all and any other intellectual / industrial property rights whether or not registered or registrable and all goodwill associated thereto relevant to the System and all specifications, designs, programs or other material issued by or on behalf of Contractor. Principal acknowledges that any such item is confidential and agrees not to use it or any other confidential information of Contractor for any purpose (other than the purpose for which it was disclosed) nor reproduce it in any form nor disclose it to third parties. Principal shall not seek to abstract from the System any confidential information regarding their design, construction or otherwise (and without limitation to the foregoing shall not decompile any software comprised in the System) and all rights subsisting in such material are reserved.

Article 11 Confidentiality

- 11.1 Contractor guarantees and is committed to ensure that strict confidentiality is observed by Contractor, by those who work for and with Contractor, and by anyone who has or shall be engaged by Contractor in the execution of this Agreement and/or any agreement arising from it, regarding all they learn and/or have learned through the negotiations about and the realisation of and execution of those agreement(s) regarding the management of Principal and the scientific cooperation; no such information shall be made public without Principal's written consent. Further specific terms shall be agreed concerning the scientific cooperation between the parties.

Article 12 Documentation

- 12.1 Contractor must deliver all the Documentation that is necessary for use and administration of the System.
- 12.2 The documentation must be made fully and completely available to Principal before delivery of the System.
- 12.3 Documentation material must be kept up-to-date by Contractor, free of charge.

Article 13 Force majeure

- 13.1 In case of force majeure (inevitable shortcoming), as referred to in Article 6:75 of the Dutch Civil Code, discharge of the obligations arising from this Agreement shall be wholly or partially deferred for both parties for the duration of such a force majeure and for such period as is reasonably necessary to take into account the effects of the event of force majeure, without parties being bound to any damages either way, subject to the party prevented from discharging his obligations under the Agreement being obliged to inform the other party of the event of force majeure in writing, as

soon as reasonably practicable, and in any case if reasonably possible within the period of time agreed for the discharge of the relevant obligation.

- 13.2 That which is stipulated in the first paragraph of this Article leaves undiminished that which is stipulated elsewhere in the Agreement, as in Articles 10.1 up to and including 10.4 (Obligation to provide information), Articles 20.1 up to and including 20.4, excepting paragraph 1, second dash, if and in as much as the circumstances referred to there are the result of force majeure (Shortcoming, bankruptcy, work stagnation, withdrawal of security, undue incentives, etc.).
- 13.3 Should a case of force majeure, or another circumstance that is not imputable to either party, cancel in all reasonableness and fairness the obligation to discharge the Agreement, as in any event shall be deemed to be the case as soon as a situation of force majeure has lasted more than 3 (three) months or if it is certain that it shall last for at least 3 (three) months, Principal shall be authorised to cancel the Agreement in whole or in part by forwarding relevant advice by registered mail, without this being able to result in any form of compensation for costs or damages.

Article 14 Liability and insurance

- 14.1 Contractor recognises the right of Principal to bring a claim for damages sustained by Principal or third parties as a direct result of breach of this Agreement or negligence on the part of the Contractor, on the part of his personnel or of those who have been engaged by him in the execution of this Agreement.
- 14.2 Contractor shall indemnify Principal against all liabilities, costs, expenses, damages and losses suffered or incurred by Principal arising as a direct result of any claim made against Principal for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply of the System ("a Claim") provided that Principal:
- 14.2.1 notifies Contractor as soon as it becomes aware of any Claim;
 - 14.2.2 permits Contractor to defend, negotiate and settle any such Claim as it sees fit and makes no admission in respect of such Claim without the prior written consent of Principal;
 - 14.2.3 provides, at the request and expense of Contractor, such assistance as Contractor reasonably requires in relation to the defence and/or settlement of such Claim.

Nothing in this clause shall restrict or limit Principal's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity

- 14.3 Personnel and employees of Principal are regarded as third parties for the applicability of this Article.
- 14.4 Contractor shall insure himself sufficiently against liability as referred to in this Article, and, if required, shall allow Principal access to relevant written proof thereof.
- 14.5 Should Principal and/or the insurance company of Principal find themselves in the necessity of reimbursing loss inflicted on third parties due to circumstances as referred to in this Article, Contractor and/or the insurance company of Contractor shall immediately reimburse Principal and/or the insurance company of Principal for any losses sustained as a result.
- 14.6 Principal acknowledges that Contractor's obligations and liabilities in respect of the System are exhaustively defined in these Terms and that such express obligations

are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory or otherwise relating to the System including, without limitation, as to the condition, quality, performance or fitness for the purpose of the System or any part of it.

- 14.7 Contractor shall not be liable for any consequential or indirect loss which represents loss of profit, revenue, benefit, anticipated savings or goodwill, loss of use of any asset, loss of data, business interruption, management costs or third party liability.
- 14.8 The aggregate liability of Contractor (whether in contract, tort, breach of statutory duty or otherwise) for all breaches under or non-performance of its obligations or contemplated by this Agreement shall not exceed a sum equal to the amount paid for any System save that this sub-clause shall not limit or exclude any liability of Contractor which cannot be effectively excluded in law.
- 14.9 The limitations of liability in clause 14.7 and 14.8 shall not apply in relation to any claim as a result of gross negligence or wilful intent of the Contractor or any liability in relation to death of personal.
- 14.10 Principal shall not rely upon any representation concerning the System unless made by Contractor in writing in this Agreement save that nothing in this agreement shall exclude liability for fraudulent misrepresentation.

Article 15 Financial conditions

- 15.1 The Purchase price of the System is determined on the basis of the prices and rates as stated in Appendix 2. The total price is EUR [price] excl. VAT, and consists of the following items:

Item #	Description	Price (EUR) excl. VAT
1	"System Price"	€ [price]
2	[optional item(s)]	€ [price]
Total price		€

- 15.2 All other costs associated with this Agreement shall be included in the Purchase Price, unless otherwise stated. Each party shall each bear their own costs for professional consultancy and personnel.
- 15.3 Invoicing and payment shall be effected in Euro - and shall include all costs and reimbursements following from Contractor's fulfilment of his obligations under this Agreement and any agreement arising from it; consequently Contractor shall not charge for prices, costs and/or reimbursements other than that which has been agreed upon in writing in advance.

Article 16 Invoicing and payment

- 16.1 Payment of the total price as referred to in Article 15.1, increased by the obligatory VAT (B.T.W.), shall occur in conformity with the following schedule for each offered solutions separately:

Instalment	Percentage	Condition
1	40%	After order placement

2	50%	After delivery DDP and DAP
3	10%	After successful site acceptance

- 16.2 If Principal delays installation and therefore final acceptance for more than 30 days following delivery, the goods will be deemed accepted. The site acceptance certificate will be signed by the Parties.
- 16.3 Payment shall occur not later than 30 calendar days after the day on which the pertinent invoice was received by the Principal.
- 16.4 For invoices to be payable they must be submitted to Principal in pdf format by email with reference to the Agreement.
- 16.5 Payment of the first instalment shall be due only after the relevant invoice and bank guarantee, amounting the first instalment of 40%, 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.
- 16.6 Payment of the last instalment shall be due only after the relevant invoice has been received by Principal and the site acceptance certificate has been signed by both parties.

Article 17 Contact persons

- 17.1 Each party shall appoint one or more persons and/or officers who shall perform as contacts on behalf of the other party in relation to the work performed under the Agreement. The names of said contact persons are stated in Appendix 6 to this Agreement.

Article 18 Transfer of rights and obligations

- 18.1 Contractor shall not be allowed to partially or entirely transfer or outsource any of the rights, obligations and/or work pursuing from this Agreement, to one or more parties, unless with the prior written permission from Principal.
- 18.2 A concession as referred to in the preceding clause may be requested from and granted by the appropriate persons(s) and/or officer(s) named in Appendix 6 with this Agreement.
- 18.3 The Principal shall be able to stipulate conditions to a concession as referred to in Article 18.1 above.
- 18.4 A concession to allow transfer or outsourcing as in the meaning of Article 18.1 above shall never diminish Contractor's responsibilities in relation to the timely and correct execution of the Agreement in question.
- 18.5 The principal shall be authorised to partially or entirely transfer or outsource any of the rights, obligations or work pursuing from this Agreement to another party or parties, without requiring Contractor's prior permission.

Article 19 Shortcomings, bankruptcy, discontinuation, revoking of security, undue incentives, etc.

- 19.1 In the event that:

- Contractor fails to fulfil, or to timely or properly fulfil any of his remaining obligations under the Agreement notwithstanding that Principal has notified Contractor of such breach and provided Contractor with a reasonable opportunity, not being less than thirty days, to remedy the same, and/ or
- If Contractor is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or Principal has reasonable grounds for believing it will fail to discharge its obligations under this Agreement or steps are taken to propose any composition, scheme or arrangement involving Contractor and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, Contractor or any of its property or enforce any security over Contractor's property, or repossess any goods in its possession or wind up or dissolve Contractor, or sequester its estate or dissolve it or file a petition in bankruptcy or other relief from creditors, or anything corresponding to any of the above occurs in any jurisdiction (any one of which events being "a Contractor Insolvency Event"); or, and / or
- If there is evidence that the assurances provided on behalf of the Principal in the form of bank guarantees, bonds, etc. are revoked or prejudiced by the Contractor or his co-debtors or sureties, etc. and / or
- If an illegal advantage, incentive or gift is offered or given by or on behalf of Contractor or by any person employed by or on behalf of Contractor or by any person engaged by Contractor on behalf of the performance of the agreement or any agreement arising from it, to person(s) employed by or on behalf of Principal;

Principal shall be authorised, at his own discretion and without requiring intervention of the court, and without being held to providing any form of compensation, to:

- demand compliance, recovery and / or replacement and / or
- cancel the agreement partly or entirely by written notification to Contractor and / or
- (in case of breach of this agreement by the Contractor) claim damages.

The above applies in as much as one does not exclude the other and undiminished all other rights and / or claims of Principal under the law and/or the terms and conditions of the agreement.

19.2 In the event that:

- with respect to Contractor, a Contractor Insolvency Event (as defined in Article 19.1) occurs

Principal shall be authorised, entirely at his own discretion and without being held to any form of compensation or damages, to:

- require fulfilment, repair and / or replacement and / or
- dissolve the agreement partially or entirely by forwarding written notice of termination to Contractor.

The above applies in as much as one does not exclude the other and undiminished all other rights and / or claims of Principal under the law and / or the terms and conditions of the agreement. If, within fourteen 14 (fourteen) days after the date of the written notification advising that the Agreement is to be partially or entirely cancelled, Contractor has not collected all non-accepted goods, Principal shall be authorised to have those goods returned for Contractor's account; furthermore, Contractor shall forward a credit note to Principal concerning the goods already invoiced within 14 (fourteen) days after the goods have been returned.

19.3 In the event that:

- Principal fails to fulfil, or to timely or properly fulfil any of his remaining obligations under the Agreement notwithstanding that Contractor has notified Principal of such breach and provided Principal with a reasonable opportunity, not being less than thirty days, to remedy the same, and/ or
- If Principal is, or is deemed to be, insolvent or suspends payment or performance of its obligations or threatens to do so, or Contractor has reasonable grounds for believing it will fail to discharge its obligations under this agreement or steps are taken to propose any composition, scheme or arrangement involving Principal and its creditors or obtain an administration order or appoint any administrative or other receiver or manager in relation to, or put in force any legal process against, Principal or any of its property or enforce any security over Principal's property, or repossess any goods in its possession or wind up or dissolve Principal, or sequester its estate or dissolve it or file a petition in bankruptcy or other relief from creditors, or anything corresponding to any of the above occurs in any jurisdiction (any one of which events being "a Principal Insolvency Event");

Contractor shall be authorised, at his own discretion and without requiring intervention of the court, and without being held to providing any form of compensation, to:

- cancel the agreement partly or entirely by written notification to Principal and / or (in case of breach of this Agreement by the Principal) claim direct damages.
- The above applies in as much as one does not exclude the other and undiminished all other rights and / or claims of Contractor under the law and/or the terms and conditions of the agreement.

19.4 All claims of either party on the other at the time that an Insolvency Event occurs, as well as all current or future claims of either party arising from that stated in the present Article, shall be immediately and fully payable.

Article 20 Dissolution / termination

20.1 In the event of full or partial dissolution of the present Agreement, Principal shall be authorised, without prejudice to all his other rights, to re-assign the execution of its order or request for quotation, partially or entirely, to another party or parties.

Article 21 Appendices

21.1 The appendices attached to this Agreement and initialled by both parties form an integral part of the Agreement and are inextricably linked to it.

Article 22 Changes

- 22.1 Changes and /or additions to this Agreement and the appendices forming part of it shall be valid and effective only after having been agreed upon in writing by Principal and Contractor, and shall take effective as per the pertinent date agreed by parties in writing.
- 22.2 Changes to regulations under or pursuing from the law or other relevant guidelines, requirements, conditions and the like which bear impact on the execution of this Agreement or an agreement arising from it shall take effect as of the date on which they are introduced.
- 22.3 Should one or more stipulations contained in this Agreement or in the appendices be declared void or invalid, the other stipulations of the relevant Agreement(s) shall remain intact in as much as this is possible; the parties shall deliberate on the invalid

or void stipulation so as to settle on a suitable replacing condition that ensures that the purport of the original stipulation is retained.

Article 23 Survival of rights and obligations after expiry

- 23.1 All rights and obligations under the Agreement, which, in nature, are destined to remain intact after termination of the agreement, shall remain intact thereafter.

Article 24 Other

- 24.1 Contractor shall see to it and ensure that all which is stated in this Agreement is respected and observed, also if and to the extent that this concerns obligations of other parties than Contractor (e.g. subcontractors engaged by him on behalf of the implementation of the Agreement).
- 24.2 No rights shall be able to derived from the contents table and article titles at the head of this Agreement.

Article 25 Applicable law and legal competency

- 25.1 All disputes relating to the establishment, interpretation or execution of the Agreement or any other disagreement concerning or connected with the Agreement shall be submitted to the competent court of Amsterdam (Netherlands). Principal and Contractor shall, however, refrain from seeking judicial intervention before having exhausted every other possibility of arriving at a suitable compromise.
- 25.2 The Parties may agree that a dispute as referred to in the preceding clause is to be settled by mediation or arbitration in conformity with a formal deed of arbitration or may decide to seek binding advice in the matter.
- 25.3 A dispute shall be deemed to exist if either party advises the other accordingly by registered letter.
- 25.4 This Agreement shall be governed by Dutch law.

Thus agreed and done and signed in twofold

For AMOLF

by:

Name:

Signature:

Title:

Date:

For [CONTRACTOR]

by:

Name:

Signature:

Title:

Date:

APPENDIX 1 Request for a quotation, including all relevant tender documentation.

APPENDIX 2 Quotation by Contractor

APPENDIX 3 Description of Factory Acceptance Test and Site Acceptance Test

FAT:

During the Factory Acceptance Test (FAT) the system will be tested on functionality and performance prior to shipment. The FAT should include verifying:

[protocol to be determined and agreed upon by Contractor and Principal]

The system should be fully fabricated, assembled and in working order. All instrument calibrations, standard working and maintenance procedures, and all documentation regarding technical drawings should be available.

SAT:

During the Site Acceptance Test (SAT) the system will be tested on functionality and performance at the Site. The SAT should include:

- a. A visual inspection of the System;
- b. A comprehensive test of the System, according to the protocol to be agreed upon by both Parties, and the common functional requirements for this System;
- c. An evaluation by Principal of the documentation provided by Contractor.

[protocol to be determined and agreed upon by Contractor and Principal]

APPENDIX 4 Model Testimony of Performance after Site Acceptance Test

Concerns approval of : Cryogen-free dilution refrigerator

Contractor :

Principal : AMOLF

Date :

The Undersigned,

.....
duly representing AMOLF in this matter, declares that the SYSTEM delivered under the terms and conditions of the above Agreement has been delivered in proper operational condition and that the proper functioning of the SYSTEM has been demonstrated and that the SYSTEM therefore is considered as having been unconditionally/ conditionally approved. The warranty period as stipulated in the Agreement shall take effect as of the date on which this performance testimony is signed.
Amsterdam, date

For AMOLF:

Name :

Function :

Signature :

In presence of Contractor, represented by:

Name :

Function :

Signature :

* NOTE. If the transfer is conditional the applicable condition(s) must be specified in an attached enclosure.

Enclosure with Performance Testimony

Concerns : Cryogen-free Dilution Refrigerator
Contractor :
Principal : AMOLF
Date :

CONDITION

Specified below are minor defects and imperfections which were found to be present in the SYSTEM at the time it was tested for approval and which were recognised by both parties as being of no consequence for the proper functioning of the SYSTEM.

The Contractor declares that the minor defects and imperfections specified hereunder shall be fixed and alleviated before the second Site Acceptance Test.

Amsterdam, date.
(fill in date)

For Contractor:

Name :
Function :
Signature :

For AMOLF:

Name :
Function :
Signature :

APPENDIX 5 Form Bank Guarantee

The undersigned, **(name of bank)**....., with registered offices established at **(bank's official place of business)**....., at **(street)**.....: referred as the "bank" hereunder;

WHEREAS

NWO-I/its institute AMOLF, established at Utrecht, hereinafter referred as the "Principal" of Contractor [**Contractor**], established at [**address**], has granted to "the Contractor" on [**date of agreement**] a contract for manufacturing and delivery of a Cryogen-free Dilution Refrigerator (hereinafter: "the SYSTEM") on behalf of AMOLF;

THE BANK UNDERTAKES VIS-À-VIS THE PRINCIPAL

that it shall be directly indebted to Principal, upon Principal's first and sole notification in writing advising that the Contractor has defaulted on his obligations under the terms and conditions of the aforesaid agreement, for such an amount as principal claims is owed to him by Contractor, subject to an amount of 40% of the agreed price for the manufacturing and delivery of the SYSTEM; including VAT, which amount shall be increased by legal interest owed as from the day on which the aforesaid written notification has reached the undersigned and until the day of his total fulfilment of the Manufacture Phase.

Thus done and signed at (place) on (date)

(signature of bank official)

APPENDIX 6 Contact persons

TECHNICAL MATTERS:

(AMOLF)
Prof. dr. Ewold Verhagen
AMOLF
Science Park 104
1098 XG Amsterdam
The Netherlands
Tel: +31 20 754 7100
Email: verhagen@amolf.nl

Daniël Koletzki
AMOLF
Science Park 104
1098 XG Amsterdam
The Netherlands
Tel: +31 20 754 7100
Email: D.Koletzki@amolf.nl

FINANCIAL AND LEGAL MATTERS:

(AMOLF):
Dr. Paula van Tijn
AMOLF
Science Park 104
1098 XG Amsterdam
The Netherlands
Tel: +31 20 754 7100
Email: p.v.tijn@amolf.nl

APPENDIX 7 Delivery Site(s)

AMOLF
Science Park 102
1098 XG Amsterdam
The Netherlands

APPENDIX 8 Planning including Installation Schedule

	Start date	End date
Completion and approval of drawings		
Factory Acceptance Test		
Instrument delivery		
Assembly, connection		
Site Acceptance Test		
Customer training		

Acceptance complete at;

Scheduled total time:
(between signing contract to acceptance)

APPENDIX 9 Model Testimony of Performance after Factory Acceptance Test

Concerns approval of : Cryogen-free Dilution Refrigerator

Contractor :

Principal : AMOLF

Date :

The Undersigned,

.....
duly representing AMOLF in this matter, declares that the SYSTEM ordered under the terms and conditions of the above Agreement has been inspected to be in proper operational condition and that the SYSTEM therefore is considered as being unconditionally/conditionally approved for shipment to and delivery at AMOLF.

....., date

For AMOLF:

Name :

Function :

Signature :

In presence of Contractor, represented by:

Name :

Function :

Signature :

* NOTE. If the transfer is conditional the applicable condition(s) must be specified in an attached enclosure.

Enclosure with Performance Testimony

Concerns : Cryogen-free Dilution Refrigerator

Contractor :

Principal : AMOLF

Date :

CONDITION

Specified below are minor defects and imperfections which were found to be present in the SYSTEM at the time it was tested for approval and which were recognised by both parties as being of no consequence for the proper functioning of the SYSTEM.

The Contractor declares that the minor defects and imperfections specified hereunder shall be fixed and alleviated before delivery.

....., date.
(fill in place and date)

For Contractor:

Name :

Function :

Signature :

For AMOLF:

Name :

Function :

Signature :

APPENDIX 10 General terms and conditions AMOLF

For this Agreement, the General Government Terms and Conditions for Public Service Contracts 2018 (ARVODI 2018) is in effect.