

**Agreement on delivery of a
Cryogen free dilution refrigerator**

model agreement for purchase and delivery ARIV-2018

between

NWO-I\SRON

and

[Contractor's Name]

The undersigned:

1. The Foundation for Dutch Scientific Research Institutes (KvK 41150068), with its institute SRON, in this regard represented by the Institute Manager Mr. P. Krutzen, established at Niels Bohrweg 4 (2333 CA) Leiden, hereinafter referred to as "**SRON**" or "**Buyer**",

and

2. **[contractor's full name and legal form]**, (statutory) having its registered office in **[location]**, represented in this regard by the **[Function]**, Mr. Ms **[name]**, hereinafter referred to as: '**Contractor**',

Buyer and Contractor jointly referred to as "**Parties**",

Whereas:

- a) SRON requires a Cryogen free dilution refrigerator;
- b) A Tender has taken place for the aforementioned purpose, via the TenderNed tendering platform with tender number **[TenderNed number]** under the Public Procurement Act 2012;
- c) The Tender contains all relevant documents for Candidates to be able to issue an offer;
- d) **[name of company]** has sufficiently informed itself of what SRON wants to achieve with the Assignment;
- e) **[name of company]** on **[date]** has issued an entry on the Tender;
- f) SRON has accepted the Registration of **[name of company]**;
- g) The assessment has shown that the Registration of **[name of company]** has the best value for money for SRON;
- h) The Parties wish to record the resulting legal relationship in writing in an Agreement;
- i) This Agreement sets out the terms and conditions applicable to all deliveries and services provided by **[name of company]** to SRON, resulting from the Tender;

agree as follows:

In this Agreement, a number of capitalized terms are used. These terms shall have the meaning given to them in Article 1 of the General Government Procurement Conditions 2018 (ARIV-2018), attached to this Agreement as Appendix 1. In addition, the following terms shall be understood in this Agreement:

- Tender documents: All documents drawn up by the Buyer and placed in TenderNed.
- Registration: The Tenderer's offer that has been submitted digitally by means of TenderNed d.d. [date] attribute [.....].
- Tender: The digital request for the assignment as described in the Tender Documents as placed by the Buyer on TenderNed with reference [].

Words used in the singular shall retain their meaning when used in the plural and vice versa, unless the context of the text clearly indicates otherwise.

Artikel 1. Object of the Agreement

- 1.1 The buyer hereby purchases the Product of the Contractor, as the Contractor hereby sells the Product to the Buyer, in accordance with the Registration issued by the Contractor on the basis of the Tender Documents, unless otherwise provided for in this Agreement.
- 1.2 The following documents together constitute the Agreement. To the extent that these documents contradict each other, the aforementioned document shall prevail over the following documents:
1. This document;
 2. the ARIV-2018 (Annex 1);
 3. the Tender Documents (Annex 2);
 4. *optional: the other Annexes (Annex 3);*
 5. the Registration issued by the Contractor to the Buyer of [date] with reference [] (Annex 4).

Artikel 2. Entry into force of the Agreement

- 2.1 This Agreement shall enter into force as of the date of signature of this Agreement by both Parties and shall terminate upon completion of Delivery of the Product including a successful Site Acceptance Test as referred to in article

Artikel 3. Delivery

- 3.1 Contrary to the provisions of Article 3.1 of the ARIV-2018, the Delivery of the Product by the Contractor shall take place in accordance with DDP (Delivery Duty Paid) as defined in Incoterms 2020.
- 3.2 The Product will be delivered no later than [date] will be delivered to the following delivery address:
*SRON
Niels Bohrweg 4
2333 CA Leiden
The Netherlands.*
- 3.3 If the Product is not delivered within the agreed period, the Contractor will owe the Buyer an immediately due and payable penalty of 0.1% of the price of the Product in question for each day that this failure continues, up to a maximum of 10% thereof. If the Delivery has become permanently impossible other than due to force majeure, the penalty of a total of 10% of the price of the Product in question is immediately due in full.

The penalty shall be payable to the Buyer, without prejudice to all other rights or claims, including:

- a. its claim for compliance with the agreed obligation to deliver the Product (insofar as performance has not become permanently impossible);
- b. his right to compensation.

The penalty will be set off against the payments owed by the Buyer, regardless of whether the claim for payment thereof has been transferred to a third party.

Artikel 4. Software

- 4.1 On delivery as referred to in article 3 and 5 of this Agreement Client will receive from the Contractor a nonexclusive, non-transferable right of use for an unlimited time to the software (hereafter: the "Licence"), including the associated Documentation and materials, in return for the payment referred in article 7 of this Agreement. The Licence(s) cannot be cancelled by the Contractor. Further, the right of use is not tied to any location.
- 4.2 Client receives general software updates for a minimum period of 5 years from the date of approval by Client as referred to in article 5.6 of this Agreement.
- 4.3 Client 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.
- 4.4 If software has been lost or in the opinion of Client is or has become faulty or unreliable, the Contractor will on first request make replacement software available to Client in return for appropriate market terms and rates for up to 15 years from the date of approval by Client as referred to in article 5.6 of this Agreement.
- 4.5 The Contractor is responsible for the implementation of the software.

Artikel 5. Acceptance

- 5.1 Acceptance of the Product will take place by means of a Factory Acceptance Test (FAT) and a Site Acceptance Test (SAT).
- 5.2 The FAT is to commence before the delivery as referred to in article 3.3 of this Agreement.
- 5.3 The SAT is to commence within thirty (30) days following the delivery date as referred to in article 3.2.
- 5.4 The SAT will be carried out by both the Parties on site of Client. In this SAT, the Contractor demonstrates that the Product works properly on site of Client according to the description of the Acceptance Procedure in Annex [...].
- 5.5 During the SAT, checks will be made that the Product functions properly; Client will test the system(s) under normal operational conditions.
- 5.6 Once the SAT has been completed successfully and the Product has been proven fully operational, the Product will be approved by Client.
- 5.7 If a successful completion of the FAT or SAT cannot be achieved since one or more requirements have not been met, Client will have the right to terminate the Agreement immediately and refuse the Product without any liability or an obligation on any legal ground to compensate for Contractors' costs and/or damages. In this case, Contractor will refund all payments to Client that have already been made, within ten (10) days after the termination by Client.

Artikel 6. Warranty

- 6.1 The Contractor warrants to Client that the Product will be free of defects for a period of **[three (3) years – or more years as provided in offering of Contractor]**, to commence on the date of final acceptance as referred to in article 5.6. The warranty is expressly in lieu of any other express or implied warranties, including the warranty of merchantability and fitness for a particular purpose. The Contractor's obligation under the foregoing warranty is initially limited to repairing or replacing the defective Product, at the Contractor's option. Replacement parts will be new or of equal functional quality and warranted for the remaining portion of the original warranty or 90 days, whichever is longer. If Contractor fails to resolve the defect through repairing or replacing within 30 days after Client's written request, Client may invoke the provisions of article 11.2.
- 6.2 Contractor assumes no liability under the warranties as referred to in article 6.1 for equipment or system failures resulting from:
- a) abuse, misuse, modification or mishandling;
 - b) damage due to forces external to the machine including, but not limited to, flooding, power surges, power failures, defective electrical work, transportation or Client-supplied replacement parts or utilities or services such as gas;
 - c) improper operation or maintenance, contrary to the user/maintenance instructions by the Contractor and/or documentation;
 - d) failure to perform preventive maintenance in accordance with the Contractor's recommendations (including keeping an accurate log of preventive maintenance).
- 6.3 The Contractor further guarantees that for a period of at least ten (10) years after delivery it will be possible to supply parts or components or equivalent interchangeable, functionally equivalent equipment for the Product at appropriate market terms and rates, to be further agreed at the time.
- 6.4 During the guarantee period referred to in article 6.1 of this Agreement, the services will be provided continuously by the Contractor, on working days. For this purpose, the Contractor will have free access to the Product, subject to the internal regulations of Client.
- 6.5 The Contractor undertakes that upon receipt of a written or telephone report of a defect, it will, as promptly as possible, take measures, to remedy such defect in the shortest possible time.
- 6.6 Client is not allowed to make larger / significant modifications to the Product during the warranty period as referred to in article 6.1, only after written approval by Contractor. If Client makes modifications to the Product without written approval, the warranty as referred to in article 6.1 is void for consequences which are directly related to these modifications.
- 6.7 In exemption to article 6.6, the Contractor has been notified in the Tender Documents of planned modifications. In case of planned modifications Contractor will be informed when these modifications will be performed and has the opportunity to take precautions to keep the warranty as referred to in article 6.1.

Artikel 7. Price and other financial provisions

- 7.1 The agreed price for the Product is: € **[amount]** (excl. VAT). The price relates to all the Products to be delivered under this Agreement, together with any accompanying materials and Documentation, such as user manuals and the like.
- 7.2 Payment will be made as follows:
- 40% of the total amount for the Product after signing the Contract, as soon as the Contractor has submitted the bank guarantee referred to in article 12.1 of the ARIV 2018. This bank guarantee will provide security for 40% of the total amount of the

Product and shall be returned to the bank after the Factory Acceptance Test (FAT) as referred to in article 5.3 of this Agreement. The amount of the guarantee will in no way limit the Contractor's liability under this Agreement;

- 40% of the total amount for the Product after a successfully executed Factory Acceptance Test (FAT);
- 20% of the total amount for the Product after a successfully executed Site Acceptance Test (SAT).

7.3 Contractor invoices Buyer electronically by sending a PDF file to: invoices@sron.nl.

Invoices should always have a purchase order number, a clear description of the products and/or services supplied, and the data that, according to the Tax and Customs Administration, needs to be on the invoice. Invoices that do not comply with the regulations will not be processed.

Artikel 8. Contacts

- 8.1 Contact person for Buyer is: [name].
Contact person for Contractor is: [name].

Artikel 9. Instruction

- 9.1 The Contractor will train and instruct Client. The training and instruction will be performed during the supervision of the execution of the installation, implementation and putting into operation of the Product.
- 9.2 The Contractor will provide a user training at Client's location within a month after the approval of the Product as referred to in article 5.8 of this Agreement. This training must include the operation of the full setup and all SPM modes of the Product.
- 9.3 On request of Client, the Contractor will train and assist the qualified technicians for the daily maintenance of the Product during the supervision of the execution and after the installation and implementation. After the first training that is included in the Quotation from Contractor, the Contractor shall be compensated for any training and assistance after installation, implementation and acceptance by Contractor, after a written offer based on appropriate market terms and rates, to be further agreed at the time.
- 9.4 The Contractor will be responsible that qualified personnel will be present at all times training and instructions are given according to the agreed schedule.

Artikel 10. Documentation

- 10.1 The Contractor shall provide Client with sufficient Documentation on the properties and use options of the Product, including those of its component parts. The Documentation must be such that it gives a full, complete and detailed description of the Product, including the associated equipment and software and their functions.
- 10.2 The Contractor 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 Product by Client that the Documentation contains incorrect information or is otherwise incomplete, inadequate or outdated.

Artikel 11. Other Terms and Conditions

- 11.1 This Agreement is exclusively governed by the *General Government Procurement Conditions 2018* (ARIV-2018), insofar as this Agreement does not deviate from them. The

applicability of (possible) general and special terms and conditions of the Contractor is excluded.

- 11.2 The other rights and claims referred to in Article 13.3 of the ARIV-2018 may be exercised as an alternative to or in addition to the rights and claims set out in Article 13.2.

Artikel 12. Declaration of integrity

The Contractor hereby declares that it has not offered or given the Client'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.

Artikel 13. Final provision

- 13.1 Deviations from this Agreement are only binding insofar as they have been expressly agreed between the Parties in writing.
- 13.2 By signing this Agreement, all any verbal and written agreements previously made by the Parties regarding the order(s) placed in accordance with this Agreement for the Delivery of the Product will lapse.

Thus agreed, recorded in duplicate and signed by:

Place:
Date:

Place:
Date:

The Netherlands Research Institutes Foundation,
behalf of the latter, the institute manager SRON

[name and legal form of contractor], on
behalf of this the [position signatory]

Mr. P. Krutzen

[name]

Annexes:

1. the ARIV-2018
2. the Tender Documents
3. *Optional: the other Annexes*
4. the Registration issued by the Contractor to the Buyer of [date] with reference [redacted].