**Draft contractual provisions**

**AGREEMENT NO. .........................**

concluded in Gliwice, on ............. between:

**Łukasiewicz Research Network - Upper Silesian Institute of Technology** with registered office at ul. Karola Miarki 12 - 14, 44-100 Gliwice, entered in the register of entrepreneurs of the National Court Register kept by the District Court in Gliwice, 10th Commercial Division under KRS number: 0000846236, NIP: 6312691891, REGON: 000026867,

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based at ........................................ registered at ............................................. under the number : ..................................... NIP : ......................... REGON : ..................................

hereinafter referred to as ***the Contractor***,

On the basis of the conducted public procurement procedure by means of an open tender under the Act of 11 September 2019. Public Procurement Law (i.e. Journal of Laws of 2024, item 1320 - hereinafter referred to as ***PPL***), this Agreement is concluded, the subject of which is the **supply of an electric vacuum induction furnace with a melting weight of 250 kg** (hereinafter referred to as the "***Equipment" or the "Subject of the Agreement"***).

**SUBJECT MATTER OF THE CONTRACT**

**§ 1**

1. The Ordering Party orders, and the Contractor accepts, the task of supplying the Equipment, together with its installation and commissioning, in accordance with the Terms of Reference (ToR) and the Contractor's submitted offer (Annex 1 to the Contract).
2. A detailed description of the Equipment - type, model ................................... *(to be entered after the selection of the most advantageous offer)*, is specified in the Contractor's offer, constituting Annex No. 1 to the Agreement.
3. The subject matter of this Agreement covers:
   1. Carrying out design work including the design of the Device in accordance with the Ordering Party's requirements contained in the description of the subject of the contract (hereinafter referred to as OPZ in the body of the contract) and all necessary issues related to its connection, foundation and preparation for operation at the Ordering Party's premises;
   2. Obtaining the Purchaser's approval of the completed design work, as referred to in § 3(5) of the contract;
   3. the execution of the Equipment in accordance with the design prepared and approved by the Purchaser;
   4. delivery of the Equipment to a location indicated by the Purchaser's authorised personnel, located at the Purchaser's premises and meeting the basic conditions for the foundation of the Equipment, i.e. room dimensions, power supply, etc.; and Information on the required foundation conditions must be included in the design of the Equipment;
   5. installation and start-up of the Equipment, including installation work, necessary electrical connections, etc., with the proviso that all works interfering with the Contracting Authority's infrastructure shall be carried out in agreement with the relevant services; preparation of the hall in which the Equipment will be placed and basic construction works related to adjustment of the area for the location of the Equipment are the responsibility of the Contractor. The Contractor shall agree in advance the scope and timing of the preparatory works with the relevant services of the Contracting Authority;
   6. obtaining all technical and formal approvals for the Equipment is the responsibility of the Contractor, including Health and Safety, Fire Safety and others if required;
   7. to carry out the acceptance tests referred to in §3.7 and §3.8 of the Agreement confirming the efficiency of the Equipment and its compliance with the requirements of the CSG;
   8. training of the Purchaser's nominated personnel in the use of the Equipment, confirmed by the issue of certificates for the trained persons;
   9. handing over the warranty documents, certified (signed) by the Contractor of the Contract (warranty conditions, completed and stamped warranty cards);
   10. the handing over of all relevant technical documents DTR, hard copy and electronic drawing documentation in "dwg" format, operating and maintenance manuals, guarantee cards, safety documents or other similar documents;
   11. the provision of a list of fast-wearing parts, together with a time limit for their replacement, necessary for the correct operation of the Equipment;
   12. provision of a list of entities authorised by the manufacturer/contractor to carry out maintenance activities (during the warranty and post-warranty period), if applicable;
   13. Connecting the Device's computers to the Lukasiewicz-GIT IT network; the details in this regard should be agreed with the Ordering Party's IT Department (IO), in particular with regard to ensuring compatibility and security of the hardwar and softwar platform;
   14. ongoing service and maintenance resulting from the operating conditions indicated in the technical documents handed over with the equipment,
   15. providing warranty and post-warranty service for the equipment.

- All documents required by Polish law to be submitted to the Contracting Authority must be in Polish.

1. The Contractor declares that:
   1. has the necessary knowledge, experience and has the appropriate organisational, economic and personnel potential to perform the Contract in accordance with all the requirements of the Awarding Authority;
   2. is insured (holds a policy or other insurance document) against civil liability in respect of its business activity for the period of performance of the contract - should the Contractor's existing insurance expire during performance of the contract, the Contractor shall, without being summoned by the Contracting Authority, provide the Contracting Authority with a new document confirming that it is insured in accordance with the Contracting Authority's requirements;
   3. all supplied components and products (Equipment) will be brand new, of high quality and manufactured by European companies, not reconditioned, and will comply with the essential health and safety requirements for the design and construction of machinery placed on the market or put into service, as well as with the conformity assessment procedure, method of marking machinery and the CE mark design, specified in the Regulation of the Minister of Economy of 21 October 2008 on essential requirements for machinery (Journal of Laws of 2008, No. 199, item 1228, as amended).
2. In the event that the Contractor entrusts a subcontractor with the performance of a part of the Subject Matter of the Agreement - the Contractor alone shall be liable to the Contracting Authority and third parties for the acts or omissions of the subcontractor - as for its own acts or omissions; this shall also apply to any settlements between the Contractor and the subcontractor.

**TERM OF THE CONTRACT**

**§ 2**

The Contractor undertakes to perform the Subject of the Contract, within twelve months from the date of signing the contract, and the contract shall be deemed signed on the date of the last signature by the person signing the contract (qualified signature). In the case of a handwritten signature, the date of signing the contract shall be deemed to be the date of conclusion of the contract as indicated in the contract's compary.

**DELIVERY AND ACCEPTANCE CONDITIONS**

**§ 3**

1. The Contractor shall provide designated employees of the Purchaser with all information and documents relating to the correct operation and maintenance of the Equipment.
2. Until the protocol acceptance of the subject of the contract - Equipment, materials and other assets shall remain the property of the Contractor, and the risk related to their possible damage, destruction or theft shall be borne by the Contractor.
3. Within 5 working days of signing the contract, the Contractor shall submit to the Contracting Authority for approval a schedule for the execution of the contract, including the deadlines for each stage (to the nearest 1 month).
4. The parties envisage performing partial acceptance of the following stages of the contract:
   1. Carrying out all the necessary design work for the ordered Equipment and the conditions for its installation at the Purchaser's premises
   2. Acceptance of the finished Equipment at the Contractor's premises ;
   3. Final acceptance of the Equipment at the Purchaser's premises, after installation of the Equipment, including the "cold" and "hot" tests referred to in paragraph 7 and paragraph 8.
5. The condition for the partial acceptance referred to in subsection 4, item a. is that the Contracting Authority's approval is obtained (signed by both parties in the partial protocol without comments) regarding the proposed design solutions.
6. The condition for the partial acceptance referred to in paragraph 4.b is that an initial acceptance of the Equipment is carried out at the Contractor's premises, consisting of a visual inspection of the completed Equipment combined with instruction in the operation of the Equipment, software operation, etc., and instruction in occupational health and safety, confirmed by a partial protocol signed by the parties without comments;
7. The condition for the partial acceptance referred to in paragraph 4, point c. The Equipment shall be subject to **positive "cold" acceptance tests,** which shall be understood as: checking the correct functioning of all mechanisms (e.g. vacuum generation, lance ejection, operation of feeders, etc.), correctness of installation work, functioning of software and hardware attached to the Equipment, etc.
8. The condition for the final acceptance of the Equipment referred to in paragraph 4 c. is the successful completion **of acceptance tests: "hot",** which is to be understood as: failure-free performance of min. 7 melts for 4 grades of steel (Maraging steel MS300, bearing steel 100Cr6, high-alloy steel 316L, structural steel C40 or other as agreed with the Contractor) on the Device and casting of ingots without internal and external defects, in which the area of occurrence of equiaxial crystals will be for carbon steel (e.g. C40) min. 25% of the ingot volume. Financing of the input materials, smelting and quality testing of the ingots are the responsibility of the Purchaser.
9. If the acceptance tests: 'hot' result in inferior parameters to those specified in §3 point 8, the Purchaser shall charge the contractual penalties specified in §8 point 1.
10. If, in the course of the partial/final acceptance activities, the Principal establishes that the subject of acceptance contains defects, faults or has not been performed in accordance with this agreement, the Principal shall be entitled to withdraw from the acceptance activities and to call upon the Contractor, within a time limit set by the Principal, to rectify the defects or faults or to perform the defectively performed element a second time.
11. The subject of the contract will be carried out in accordance with a work schedule in which the parties will specify in particular which works will be subject to partial acceptance.
12. In order to make a partial settlement, the contractor shall inform the Contracting Authority that the work subject to partial acceptance has been carried out and provide the Contracting Authority with a summary of the work carried out, together with an accounting of its value.
13. Once the Principal has approved the scope and value of the works carried out in the manner set out in paragraph 6, the contractor shall issue a partial VAT invoice for the performance of the aforementioned works.
14. Upon completion of the subject matter of the contract, the Contractor shall report the subject matter of the contract to the Contracting Authority for acceptance and provide the Contracting Authority with a statement of the value of the work carried out and an accounting of its value.
15. Upon the Principal's approval of the scope and value of the works performed as specified in paragraphs 7 and 8, the Contractor shall issue a final VAT invoice for the performance of the subject matter of the agreement. The invoice shall be issued for the amount determined in the aforementioned settlement, less the amounts previously invoiced on the basis of partial invoices.
16. The Contractor declares that it guarantees to the Purchaser and its successors in title maintenance services, access to original spare parts for the delivered Equipment or their equivalents for a period of at least 10 years after the expiry of the warranty period; the use of equivalents to original spare parts requires the prior approval of the Purchaser.
17. Within the scope of execution of the Subject of the Agreement, it is envisaged to carry out training of the employees indicated by the Ordering Party - in the number of no less than 5 persons - 3 operators and 2 technologists (max. 8 persons). The Contractor is obliged to determine the necessary time required for reliable and complete training of employees. The Ordering Party undertakes to provide premises for training.
18. The Contractor will, at the end of the training provided, issue a training certificate to each person trained and provide the Contracting Authority with an attendance list (or certified copy).
19. The parties will agree on a timetable for the delivery of training.

**OBLIGATIONS OF THE PARTIES AND ACCEPTANCE ACTIVITIES**

**§ 4**

1. **The contractor shall:** 
   1. perform the subject of the contract in accordance with the relevant regulations, principles of contemporary technical knowledge with due diligence, taking into account the professional nature of his business, with the maximum limitation of nuisance of the effects of the works on the Ordering Party, and with respect for health and safety regulations;
   2. the performance of all preparatory works necessary for the execution of the subject matter of the contract, in accordance with the provisions of the relevant provisions of Polish law, including: Construction Law ( i.e. Journal of Laws 2024 item 725 as amended);
   3. to carry out electrical works in accordance with the current Energy Law (i.e. Journal of Laws 2024, item 266 as amended);
   4. inform the Principal of any hazards arising in the performance of the subject matter of the contract, the removal of which may be assisted by action on the part of the Principal;
   5. cooperation with the designated representatives of the Principal;
   6. attend meetings as designated by the Contracting Authority to discuss matters relating to the performance of the Contract;
   7. maintain tidiness during installation of the Equipment and systematically tidy up the work site;
   8. the immediate remedy in a targeted manner of any damage or failure caused by the Contractor during the installation of the Equipment, and the replacement at the Contractor's own expense of damaged components;
   9. to hold - during the term of this agreement - a contract (or contracts) of insurance for liability connected with the performance of the subject contract in the scope of civil liability insurance (OC) of the Contractor for his business activity, covering at least the damage resulting from the performance of construction works and other works included in the subject contract, for the amount of insurance not lower than PLN 5 000 000.00, to timely pay the due insurance premiums resulting from the above-mentioned insurance contract(s) and to submit to the Contracting Authority a certified copy of the above-mentioned insurance contract(s) together with a confirmation of payment of the due insurance premiums resulting from the above-mentioned insurance contract(s). The contractor shall be obliged to timely pay due insurance premiums resulting from the abovementioned insurance agreement(s) and to submit to the Contracting Authority a certified copy of the abovementioned insurance agreement(s) together with a confirmation of payment of due premiums resulting therefrom;
   10. notify readiness for acceptance of the subject matter of the Agreement and participate in the acceptance activities;
   11. training of representatives of the Purchaser/User in the use of the installed systems and Equipment;
   12. to carry out commissioning and testing of the Equipment and systems installed as part of the performance of the Contract;
   13. to perform other activities not specified above in connection with the Contractor's functions for the proper performance of the subject matter of the contract.
2. **The purchaser is obliged to:** 
   1. cooperation with the Contractor for the proper execution of the subject matter of the contract,
   2. to provide the Contractor with all the information available to the Contractor necessary for the proper execution of this contract,
   3. payment of the remuneration to the Contractor, under the conditions and within the time limits specified in §5(1) of the contract; The acceptance and payment shall not deprive the Purchaser of the right to raise objections on account of defects and to assert claims by the Purchaser on the same account,
   4. to carry out acceptance activities resulting in a final/partial acceptance protocol within 14 working days of the start of the acceptance activities.
   5. to control the Contractor's activities within the scope of the contract in order to verify the actual use of third parties' potential in the performance of the contract, to the extent to which they make available their resources needed for the performance of the contract, by requesting in particular: e.g. documents concerning settlements between the Contractor and third parties, cooperation agreement between them, equipment handover protocols.

**3. acceptance activities:**

1. The Contractor shall notify the Purchaser of the delivery of the finished Equipment in writing or by e-mail to: harald.kania@git.lukasiewicz.gov.pl, no later than 21 days before the scheduled delivery. Should the Contractor fail to do so, the Principal reserves the right to refuse to accept the Equipment.
2. The Contractor shall notify the Principal of the completion of the work covered by the partial/final acceptance and of its readiness for acceptance. The partial acceptance shall be confirmed by the partial acceptance protocol signed by the Parties without reservations.
3. The condition for issuing a partial/final invoice is that the Parties sign a protocol of acceptance of the whole/part of the Subject of the Agreement, without reservations.
4. After completion of the Subject of the Agreement, i.e. performance of all activities indicated in § 1.3.a-l, the Contractor shall notify the Ordering Party of its readiness to proceed with the acceptance activities, and the Ordering Party undertakes to proceed with the acceptance activities as soon as possible, however no longer than within 7 working days of the notification.
5. Completion of the entire subject of the Agreement will be documented by a final acceptance protocol signed by both Parties to the Agreement; the acceptance protocol will be drawn up, inter alia, after conducting quality tests of the ingots cast into the crystalliser, which will confirm that the Equipment meets the requirements, resulting from the Agreement.
6. If, in the course of the final acceptance activities, the Purchaser determines that the delivered Equipment is incomplete or is inoperative or does not meet the conditions required by the Purchaser or the Contractor has not provided a complete set of the required documents or has not performed all the activities indicated in § 1.3, the acceptance activities for the Equipment shall be discontinued and the Contractor shall be charged with the contractual penalty specified in § 8.1(a), subject to item g below.
7. If the reason for withdrawal from the acceptance activities is removed before the deadline specified in § 2 and the final acceptance protocol is signed within this period - the contractual penalty in § 8 section 1 a) will not be charged.
8. All costs related to the rectification of defects identified during the acceptance activities or the possible return of a defective Object of Contract and its redelivery shall be borne by the Contractor.
9. The signing of the aforementioned protocol by the Ordering Party shall not release the Contractor from responsibility for any irregularities in the performance of the Contract, in particular from the obligation to rectify any defects in the subject matter of the Contract discovered at a later date.

**CONTRACTOR'S REMUNERATION AND TERMS OF PAYMENT**

**§ 5**

1. For the performance of the Subject of the Agreement specified in § 1 of the Agreement, the Parties agree on a total lump sum remuneration equal to the Contractor's bid price in the amount of:

- net price ............................ /word....................................../,

- VAT ............ %,

- gross price .............. PLN /word....................................../. *(to be entered after selection of the most advantageous offer),*

Settlement for the performance of the subject matter of the contract will be made on the basis of partial VAT invoices and a final VAT invoice.

Phase I - issued upon completion of the design phase - 30% of the contract value,

Stage II - issued after testing the Equipment at the Contractor's premises - 30% of the contract value,

Stage III - final invoice - issued after final acceptance of the subject of the contract.

1. The Contracting Authority will honour invoices issued on paper or in the form of a structured electronic invoice prepared and sent in accordance with the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for works or services and public-private partnership (i.e. Journal of Laws 2020, item 1666, as amended).
2. The amount due for the performance of the Subject of the Agreement shall be payable by transfer within **30** days of the date of issue of the invoice by the Contractor to the Contractor's bank account indicated on the invoice. The date of payment of the amount due shall be deemed to be the date on which the Purchaser's bank account is debited.
3. Where works are carried out with agreed subcontractors, the Contractor shall provide the following documents before submitting the invoice:
4. a statement of amounts due to subcontractors for work carried out, including:

- name of subcontractors;

- the scope of work carried out by subcontractors;

- the amount of the invoice receivable attributable to individual subcontractors;

- the bank account numbers of the subcontractors;

The statement of receivables, should be signed by the individual subcontractors, the Contractor and confirmed by the Supervisor;

1. a copy of the subcontractors' invoices to the Contractor for the scope of work to be billed;
2. a copy of the certified true copy of the proof of payment of the due remuneration to the subcontractors.

**WARRANTY CONDITIONS**

**§ 6**

1. The Contractor shall provide the Ordering Party and its successors in title with **a guarantee**, for the complete Equipment for the period ......... *(to be entered after the selection of the most favourable offer),* counting from the date of the protocol acceptance without reservation of the entire Subject of the Agreement and undertakes, during this period, to remove, at its own cost and risk, all defects and restore the functional and technical efficiency of the Equipment.
2. The Contractor assumes all responsibility for defects in the delivery which are discovered after the date of final acceptance, until the expiry of the period under the guarantee. These include both delivery and installation defects that are revealed after the date of final acceptance but which arose prior to this date, as well as defects that arise after final acceptance for which the Contractor is responsible.
3. Under the guarantee, the Contractor is obliged to repair or replace the faulty device or its parts free of charge and to carry out, at its own expense and risk, warranty inspections, technical inspections and calibrations. The cost of consumables and other materials used/worn during the inspection shall be covered by the Contractor. The Purchaser requires that technical inspections be carried out in accordance with the manufacturer's recommendations, but at least every 12 months, with the proviso that the last inspection should be carried out before the warranty period expires - not earlier than 14 days.
4. In the event of a malfunction, preventing the correct and safe use of the Equipment in accordance with its intended purpose, the Contractor shall be obliged to diagnose the Equipment and determine the cause of the malfunction within **96** hours of its notification (this applies to working days) and proceed without undue delay to its removal.
5. In the event that the Contractor refuses to rectify the defects or fails to rectify the defects within 10 working days from the date of notification of the failure, the Contracting Authority shall have the right to have the defects rectified by a third party at the Contractor's expense and risk and to deduct the costs of the substitute rectification from the Contractor's remuneration or the performance bond, to which the Contractor agrees. The Contracting Authority shall notify the Contractor of the commissioning of the aforementioned service to a third party at min. ‑3 days in advance.
6. All inspections and repairs must be recorded in the Equipment's guarantee book or other document, specifying the name, serial number of the Equipment, the scope and date of the work carried out, a list of the components replaced and including a note that the Equipment is approved for use.
7. The purchaser requires that technical inspections are carried out in accordance with the manufacturer's recommendations.
8. If some or all of the products, components, materials used by the Contractor are guaranteed by the manufacturer for a longer period of time than the Contractor, the Purchaser shall be entitled to make use of such a guarantee.
9. The Contractor declares that all parts and equipment replaced during the repair will be brand new and have the same technical parameters as the parts/assemblies to be replaced.
10. The warranty covers all defects that have occurred, with the exception of: unauthorised modification, misuse (including use not in accordance with the intended use of the Equipment) or improper handling, dismantling or opening, negligence or damage due to accident; operation outside the environmental specifications or product ratings; use by the Purchaser of user software or interfaces; components and accessories not authorised by the Manufacturer of the Equipment, improper or inappropriate installation, inadequate maintenance or failure to observe the information and precautions contained in the operating instructions.
11. During the warranty period, the Contractor, as part of the remuneration received, shall enable the Ordering Party to update all delivered software to the latest versions offered by the software manufacturer, as well as to access product-specific technical support services. Where such access requires a user name, password or serial number, the Contractor shall provide these to the Ordering Party prior to signing the acceptance protocol.
12. The purchaser may also assert his rights after the end of the guarantee period specified in paragraph 1 of this section, provided that the notification of the defect by the purchaser has been made before the end of the guarantee period.
13. The Parties unanimously agree that the provisions of the Civil Code on warranty at sale shall apply to the warranty provided, in matters not regulated herein. In the event of any doubt when assessing the Contractor's obligations under the guarantee it has provided, the Contractor shall be deemed to be a seller within the meaning of the provisions of the Civil Code on warranty at sale in respect of the Equipment supplied together with all components and work performed.
14. Any claims by the Purchaser under the warranty for the Equipment shall be directed solely to the Contractor of the Contract and not to the manufacturer of the Equipment.

**§ 7**

1. The Purchaser shall report faults/defects and failures of the Equipment by e-mail to: ..............., or by telephone at: ......................., *(to be entered after the selection of the most advantageous offer),* and the Contractor shall be obliged to confirm by e-mail or fax the acceptance of the report with the indication of a specific date of arrival of the service technician.
2. It is the responsibility of the person carrying out the repair/overhaul to report the entry to the facility in Research Group: Raw Material Processes.
3. If the repair of individual modules of the Equipment cannot be carried out at the Employer's premises, the Employer shall accept the possibility of repair at the Contractor's premises. In this case, all activities related to the transport of the Equipment shall be carried out by the Contractor at its own cost and risk, including responsibility for damage, theft, accidental loss, insurance of the Equipment and timely delivery. The above shall also apply to the possible ordering of a courier and packing of shipments, as well as any other possible costs and expenses.
4. In exceptional, particularly justified cases, which make it impossible to carry out repairs within the deadline set by the Customer, the Contractor is obliged to notify the Customer of the circumstances before the deadline expires. Only a notification supported by a comprehensive explanation may be the basis for an extension of the performance deadline by the Contracting Authority. The decision in this respect will be taken in agreement between the Contracting Parties.
5. Failure by the Contractor to comply with its obligations under the guarantee shall entitle the Purchaser to charge the Contractor with liquidated damages in accordance with § 8 of this Agreement.

**CONTRACTUAL PENALTIES**

**§ 8**

1. The contractor shall be liable to pay liquidated damages:
   1. for delay in performing the subject of the agreement in the amount of 0.1% of the gross remuneration specified in § 5 item 1, for each day of delay, calculated from the day set for the completion of the subject of the Agreement in accordance with § 2;
   2. in the event of withdrawal from the Agreement or termination of the Agreement by the Principal or the Contractor for reasons attributable to the Contractor - in the amount of **15% of** the gross remuneration specified in §5 item 1;
   3. for a delay in rectifying faults/defects or failures ascertained during the warranty period - in the amount of **0.03% of** the gross remuneration specified in § 5 section 1, for each day of delay beyond the deadlines specified in § 6 sections 4 and 5;
   4. If, as a result of the acceptance tests: 'hot', the parameters specified in §3 item. 8 of the contract, the Purchaser shall charge contractual penalties for each percentage deviation (deterioration) from the values indicated in the Contractor's offer in the amount of PLN 4,000.00,
   5. if the works covered by the Agreement are performed by an entity other than the Contractor or other than the Subcontractor directed to perform the works in accordance with the procedure specified in § 9 - a contractual penalty of PLN 5,000.00 for each such identified case;
   6. for failure to submit a copy of the concluded Subcontract Agreement or any amendment thereto, certified to be in conformity with the original, by the due date, in accordance with § 9 section 4, in the amount of PLN 2,000.00 for each day of delay; ;.
   7. for late payment of remuneration due to subcontractors or further subcontractors - in the amount of **0.2% of** the gross contractual remuneration resulting from the subcontract agreement to which the payment relates - for each day of delay in payment.
2. The Contractor shall be liable for any damage caused to the Contracting Authority and third parties in connection with the performance of this Contract. If the Contractor is assisted in the performance of this Contract by third parties, the Contractor shall be liable for the acts and omissions of such third parties as for its own acts and omissions; in this respect, the parties exclude the application of the provision of Article 429 of the Civil Code, insofar as this provision allows the Contractor to be freed from liability by proving the lack of fault in choosing or entrusting the performance of the activity to a person, company or establishment that is professionally involved in the performance of such activity.
3. Fines may be deducted from the Contractor's remuneration.
4. The total amount of contractual penalties charged to the Contractor shall not exceed **50% of** the gross remuneration specified in § 5(1).
5. If the stipulated penalties do not cover the damage resulting from non-performance or improper performance of the Agreement - the Parties reserve the right to claim additional compensation exceeding the amount of the stipulated penalties.

**SUBCONTRACTORS**

**§ 9**

1. The scope of supplies - the performance of which it intends to entrust to Subcontractors - is specified in the offer, constituting Annex 1 to the contract.
2. The Parties agree that the Contractor's failure to meet the deadline for payment of remuneration to the Subcontractor on account of the Subcontractor's deliveries/services and the Subcontractor's failure to submit to the Ordering Party the original statement of the Subcontractor that it has received from the Contractor the remuneration due to it for the executed scope of the Subject of the Agreement entitles the Ordering Party to direct payment of the Contractor's monetary obligation towards the Subcontractor from the Contractor's remuneration.
3. The consent of the Principal and the Contractor shall be required for the conclusion of agreements with further subcontractors by the Subcontractors, otherwise they shall be ineffective and null and void.
4. The Contractor shall, within 3 working days from the date of conclusion, submit the agreement with subcontractors to the Contracting Authority.
5. The Contractor shall be liable for any damage caused by the Contractor or subcontractors, to the Contracting Authority and to third parties, in connection with the performance of this Contract. If the Contractor uses the assistance of third parties (entities, subcontractors) in the performance of this Contract, it shall be liable for the acts and omissions of such third parties as for its own acts and omissions, including being obliged to cover fines and other financial penalties that have been imposed on the Contractor by the competent authorities concerning the activities performed by the Contractor under this Contract.
6. The Parties agree that all rights and obligations of the Contractor under this Contract shall also apply to Subcontractors in accordance with the above terms.

**PERFORMANCE BOND**

**§10**

1. The Contractor has lodged a performance bond in the amount of 5% of the total price quoted in the tender, i.e. .................. PLN (in words: .................. PLN) in the form of ........... . *(it will be entered after the selection of the most favourable offer),*
2. 70% of the performance security lodged will be refunded within 30 days of the completion of the subject matter of the contract and acceptance by the Purchaser as duly executed.
3. The remaining part of the performance bond, i.e. 30%, shall constitute security for claims under the warranty for defects or guarantee and shall be provided to the Contractor no later than on the 15th day following the expiry of the warranty period.

**AMENDMENTS TO THE CONTRACT**

**§ 11**

* + - 1. The Contracting Authority specifies the following conditions under which it envisages the possibility of amending the provisions of the concluded Contract:

1. change the deadline for completion of the Subject of the Agreement in the event of the occurrence of the following circumstances, provided that they affect the deadline for completion of the entire Subject of the Agreement:
2. delays due to reasons attributable to the contracting authority,
3. Circumstances that may cause a change in the deadline resulting from force majeure, i.e. natural disasters, hurricane, flood, transport disasters, fire, explosions, war, strike, epidemics, pandemics and other extraordinary events whose occurrence is beyond the reach and control of the Parties;
4. a change resulting from changes in generally applicable legislation to the extent affecting the performance of the Subject of the Agreement, and in particular in the event of a statutory change in VAT - to the extent caused by the introduction of the change;
5. changes to the subcontractor, and the scope of performance after the Contractor's request for changes has been approved by the Contracting Authority. The Contractor, upon conclusion of the contract, shall be obliged to provide a copy of the contract within no more than 3 working days from the date of conclusion.
   * + 1. Any amendments and additions to the provisions of the Contract shall only be permissible in the event of the circumstances referred to in Article 455(1) of the PPL Act described in § 11(1) of the Contract and shall require for their validity the written form of an annex signed by duly authorised representatives of the Parties.
       2. The Contractor's remuneration specified in § 5 item 1 may be amended at the Contractor's request, not more often than once in 6 months, on the basis of the material or cost price change index announced by the President of the Central Statistical Office, if the price increase index exceeds at least 8% in relation to the prices of the month in which the offer was submitted, if such changes affect the Contractor's costs of contract performance.
       3. The change in remuneration referred to in paragraph 3 may be made after a period of 6 months from the date of conclusion of the Contract, only after prior negotiations with the Purchaser. A change to the remuneration shall require a written annex to the Contract, specifying the effective date.
       4. It is the Contractor's responsibility to prove the impact on remuneration of changes in material prices or costs related to the contract.
       5. The maximum value of the change in remuneration allowed by the Contracting Authority is a total of 3% in relation to the value of the total gross remuneration specified in § 5(1) of the contract.
       6. A contractor whose remuneration has been amended in accordance with the provisions of this paragraph shall be obliged to amend the remuneration payable to a subcontractor with whom he has concluded a contract to the extent that it corresponds to changes in material prices or costs relating to the subcontractor's obligation.
       7. Amendments to this Agreement must be made in writing under pain of nullity.

**WITHDRAWAL FROM THE CONTRACT**

**§ 12**

1. The Contracting Authority shall have the right to withdraw from this Contract within **30** days of becoming aware of the occurrence of a material change of circumstances resulting in the performance of the Contract not being in the public interest, which could not have been foreseen at the time the Contract was concluded, or further performance of the Contract may jeopardise a fundamental interest of state security or public safety.
2. In the cases referred to in paragraph 1, the Contractor may claim only the remuneration due for the performance of a part of the Contract.
3. In addition, the Contracting Authority shall have the right to withdraw from this Contract or parts thereof in the following cases:
4. The Contractor fails to perform the Subject of the Contract in accordance with the Contract or the written objections of the Principal, or neglects or interrupts the works through his fault for more than **14** days, or is in default in performing the Subject of the Contract,
5. a blatant violation of the quality of the delivery, significant differences between the parameters achieved by the device and those indicated in the offer,
6. deviation (deterioration) of the parameters obtained from the acceptance tests: "hot" from those specified in §3 pt. 8, by at least 5% .
7. The Contractor shall be in default in commencing the performance of the Subject Matter of the Contract despite receiving a further written request from the Principal,
8. the commencement of the liquidation of the Contractor.
9. The Purchaser shall be entitled to declare the withdrawal from the Contract within **30** days of the occurrence of the reasons indicated in paragraphs 1 and 3 of this section.
10. In the event of withdrawal from the Agreement, the Contractor, with the participation of the Principal, shall draw up a protocol of inventory of the work in progress - within **3** working days from the date of withdrawal from the Agreement.
11. The Contractor shall be paid the remuneration for the works completed up to the date of withdrawal, the scope of which shall be specified in the protocol referred to in paragraph 5 above.

**CONTACT PERSONS**

**§ 13**

(1) Dr Harald Kania, Eng, harald.kania@git.lukasiewicz.gov.pl, tel. 32 23 45 130 , is authorised to contact the Contractor in matters concerning the execution of the Agreement on the part of the Contracting Authority.

2. ............................................................... *(to be entered after the selection of the most advantageous tender)* is authorised on the part of the Contractor to contact the Contracting Authority in matters concerning the execution of the Contract,

(3) A change in the data referred to in paragraphs 1 - 2 shall not constitute an amendment to the Agreement and shall be made by written notification.

**PROTECTION OF PERSONAL DATA AND CONFIDENTIAL INFORMATION**

**§ 14**

1. The Contractor is aware that the Contract and the data identifying it are subject to access to public information and constitute public information within the meaning of the Access to Public Information Act of 6 September 2001.
2. Each Party declares that it is the controller of the personal data of its employees and associates and is entitled to share the personal data of such persons for the purpose of performing the Agreement.
3. The Parties unanimously declare that as soon as personal data of employees or associates is shared with the other Party, the Party to whom the data has been shared becomes the controller of the data to the extent that it has been shared.
4. The parties declare that they are familiar with the obligations and responsibilities of the controllers under the provisions of the law, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC and the Act of 10 May 2018 on the protection of personal data.
5. Each Party undertakes to process the personal data provided to it in accordance with data protection legislation.
6. The parties undertake to:
7. mutually apply the principles of confidentiality of all documents and information obtained from the other Party in connection with the performance of the Service, both during its duration and indefinitely after the expiry of the Agreement;
8. safeguard against theft, damage and loss of any documents received (including on mobile media) relating to the Service;
9. not to use the Confidential Information collected for purposes other than those arising from the execution of the Agreement;
10. promptly notify the other Party of any breach of confidentiality of the Confidential Information or any misuse thereof.
11. The Contracting Authority fulfils the information obligation pursuant to Article 13 and Article 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons in relation to the processing of personal data and on the free movement of all data and the repeal of Directive 95/46/EC (General Data Protection Regulation) - hereinafter referred to as "RODO" on the website https://git.lukasiewicz.gov.pl/dane-osobowe/ and obliges the other Party to communicate the information contained therein to the natural persons who act on its behalf and participate in the performance of the contract. By signing this contract, the Contractor declares that it has become aware of the information obligation found on the aforementioned website and undertakes to comply with the obligation set out in the first sentence.

**FINAL PROVISIONS**

**§ 14**

1. The Contractor may not assign the receivables arising from the Contract to third parties or dispose of them in any legally prescribed form without the written consent of the Principal. In particular, the Principal does not consent to the receivables arising from the Contract being the subject of security for the Contractor's obligations towards third parties (e.g. under a credit agreement, loan). The Contractor shall also not be allowed to conclude a contract with a third party on entering into the rights of a creditor (art. 518 of the Civil Code) without the Principal's written consent, nor to perform any other legal act producing such effects. All such actions - in order to be valid - require the written consent of the Contracting Authority, as an entity disposing of public funds.
2. In matters not regulated by this Agreement, provisions of the PPL Act, the Act of 23 April 1964. - Civil Code (i.e. Journal of Laws 2024, item 1061) other provisions of commonly applicable laws and regulations and the documentation of the proceedings along with the Contractor's bid for the award of the public procurement contract relating to this Contract.
3. The contracting parties undertake to notify each other immediately of any change of address or telephone and fax number.
4. If the obligation indicated in paragraph 3 is not fulfilled, letters delivered to the address indicated in this Agreement shall be deemed to have been delivered.
5. The Parties undertake to inform their employees and collaborators assigned to the execution of the Agreement of their obligation to comply with the provisions of the acts referred to in paragraph 5.

**§ 16**

1. The contract shall be governed by Polish law.
2. Any disputes between the Parties which may arise from the performance of this Agreement shall be settled by the common court having jurisdiction over the Purchaser's registered office*.*

**§ 17**

1. The Agreement has been drawn up in electronic form and shall enter into force when all the required qualified electronic signatures have been affixed to it by both Parties. The date of the Agreement shall be the date on which the last of the electronic signatures is affixed in accordance with the indication of the time stamp disclosed in the details of the electronic document.
2. This agreement is concluded in three counterparts, two copies for the Purchaser, one copy for the Contractor.
3. The following Annexes form an integral part of the Agreement:
   * 1. Offer form
     2. Device specifications

**ORDERER: CONTRACTOR**

**Appendices:**

**Annex No. 1** - Bid Form,

**Annex No. 2** - Equipment Specification.