

Proceedings no. CRZP/479/004/D/10

Annex no. 5 to Terms of Reference

SUPPLY AGREEMENT

(MODEL 1)

No.

made as of

between:

Politechnika Gdańska (Gdansk University of Technology), ul. Narutowicza 11/12, 80-233 Gdańsk

REGON 000001620 VAT registration number PL 5840203593

represented by:

1.
2.

henceforth referred to as the "EMPLOYER"

and

.....
.....

registered identification number:

registered at.....

represented by:

1.
2.

henceforth referred to as the "CONTRACTOR".



§ 1

SUBJECT OF THE AGREEMENT

1. In consequence of the proceedings of an unlimited tender the Contractor undertakes to supply:
a Microwave Plasma Enhanced Chemical Vapour Deposition (MW PECVD) system System for the Laboratory of Innovative Materials and Elements as part of Project „The Centre of Advanced Technologies POMERANIA” project, in accordance with the Terms of Reference and Contractor’s Tender Offer attached to this Agreement.
2. Purchase of the Subject of the Agreement is co-financed by the European Union through the European Regional Development Fund.
3. The Subject of the Agreement is to be applied in research and development.
4. The Subject of the Agreement shall not be used for commercial purposes (to acquire financial profits) during the lifetime of eligibility to European Regional Development Fund regulations.

§ 2

TIME LIMIT FOR REALISATION

The Contractor shall deliver the Subject of the Agreement by no later than 6 months after the signing of this Supply Agreement.

The Contractor shall install and activate the Subject of the Agreement by no later than 3 months after its delivery.

The Contractor shall provide training in operating the Subject of the Agreement within a period of no later than one month after its installation.

§ 3

REMUNERATION

1. The Employer is obliged to pay the Contractor for the realisation of the Subject of the Agreement the total of:

.....(.....



2. The remuneration defined in paragraph 1 concerns all elements associated with the proper and punctual realisation of the Subject of the Agreement.
3. Financial transactions between the Contractor and the Employer shall be made in:
.....

§ 4

TERMS AND CONDITIONS OF PAYMENT

1. The Employer shall pay the Contractor after he receives the Subject of the Agreement, the system is installed and activated and after the Contractor has provided a training course for its operation.
2. The payment shall be made within 30 days from the receipt of invoice date to the Contractor's bank account at.....
3. The invoice should be addressed to:
Gdansk University of Technology, Faculty of Electronics, Telecommunications and Informatics
(Politechnika Gdańska, Wydział Elektroniki, Telekomunikacji i Informatyki), ul. Narutowicza 11/12,
80-233 Gdańsk.

§ 5

TERMS AND CONDITIONS OF REALISATION

1. The supply of the Subject of the Agreement shall be considered realised if it is received in accordance with the delivery and acceptance protocol, the system is installed and activated, and training regarding its operation has been conducted.
2. The realisation, activation and provision of operation training shall be confirmed in writing by both Parties to the Agreement.
3. The Contractor guarantees to carry out at his own expense the installation and activation of the MW PECVD system at a time mutually agreed by the Parties and no later than 3 months after the delivery of this system.
4. The Contractor is obliged to provide the Employer with a full and detailed list of specifications required for the installation of the system which is the Subject of the Agreement no later than 7 days after the signing of this Agreement.
5. Pursuant to paragraph 4 of Section 5 the Employer shall from his own funds acquire and install at the place designated to house the Subject of the Agreement all the necessary equipment and



systems to ensure the supply of electricity, cooling water and working gases essential for the proper assembly of the Subject of the Agreement.

6. Pursuant to paragraph 5 of Section 5 the Employer is obliged to prepare and provide for the Contractor access to the place where the Subject of the Agreement is to be delivered.
7. The Contractor shall, at his own expense, conduct training in operating the system which is the Subject of the Agreement for persons (no more than 3 persons) nominated by the Employer at the Employer's headquarters at a time determined by mutual agreement of the Parties but no later than within 2 weeks after the installation of the system.

The Parties to this Agreement shall draw up guidelines for the training course and confirm them in writing. The training course shall be conducted either in Polish or in English.

8. For contacts with the Employer the Contractor nominates his representative:

.....

Tel.....Fax..... e-mail.....

9. For contacts with the Contractor the Employer nominates his representative:

.....

Tel.....Fax..... e-mail.....

10. The Contractor is liable for the loss or damage to the Subject of the Agreement during transportation.
11. The delivered Subject of the Agreement must be free of any faults or damages and may not be subject to third-party claims.
12. The Contractor is obliged to deliver a Polish or English language instruction manual (one copy) together with the equipment which is the Subject of this Agreement. The Contractor is also obliged to add to this equipment relevant technical documentation and warranty cards.
13. If the delivery is inconsistent with the Agreement, the Employer shall issue a written complaint, to which the Contractor may respond within 5 days, and if no response is made in that time, the complaint shall be processed in accordance with the Employer's claims. A complaint must be settled by no later than 30 calendar days after it has been processed.
14. The Subject of the Agreement shall be delivered at the Contractor's own expense to the Employer's headquarters (room 315 at the Faculty of Electronics, Telecommunications and Informatics, at Gdansk University of Technology).
15. The Contractor is obliged to prepare full technical documentation for the Subject of the Agreement and ensure the acquisition of all the necessary transport documents.

16. The Employer shall not provide any physical workers or any means of manual handling. The Employer is obliged to have the Subject of the Agreement carried at his own risk and own cost to a place designated by the Contractor.

§ 6

GUARANTEE TERMS AND CONDITIONS

1. The Contractor shall issue a 12-month warranty for the system which is the Subject of this Agreement, commencing from the day the system is installed. The magnetron, quartz sight glass and vacuum seals are consumables which the user is obliged to replace. The Contractor may, at his own discretion, repair or replace damaged parts at his own expense. This limited warranty does not cover calls for servicing after the system has been installed and accepted. The Employer shall service the system according to instructions and using parts delivered by the Contractor.
2. In the period covered by the warranty:
 - the Contractor shall respond to a failure within 72 hours from the day it is reported,
 - the system shall be repaired no later than 30 calendar days from the day of response to the reported failure.
3. The Contractor is obliged to replace faulty parts in the system with parts of the same parameters and technical specifications in the following cases:
 - after failure to repair the system within 30 days from the day of response to the reported fault;
 - when after three in-warranty repairs the same physical faults continue to appear in the system and prevent the system from operating according to specifications.
4. During the warranty period the Contractor shall bear the full cost of repairs to the system, including the cost of transport to the place defined in paragraph 14 of Section 5.

§ 7

CONTRACTUAL PENALTIES

1. The Contractor agrees to pay the Employer the following contractual penalties:
 - a) for delays in realising the Subject of the Agreement, a penalty of 0.01% being deducted from the payment defined in paragraph 1 of Section 3 for each day of delay, commencing from the day after the training course time limit defined in Section 2, provided that the delay is not entirely the fault of the Employer and as such is confirmed by the Employer in writing.



- b) for delays in correcting faults, a penalty of 100.00 PLN for each day of delay, counting from the day after the end of the period defined in paragraph 2 of Section 6 in this Agreement.
 - c) a penalty of 20% of the payment defined in paragraph 1 of Section 3 in this Agreement when either Party withdraws from the Agreement for reasons attributed to the Employer.
2. The Contractor is entitled to accrue and charge up to 20% of the payment defined in Section 3 of this Agreement when either party withdraws from the Agreement for reasons attributed to the Employer.
 3. The Contractor agrees that contractual penalties may be accrued and deducted from the payment defined in paragraph 1 of Section 3 in this Agreement.

§ 8

FINAL PROVISIONS

1. In matters not regulated by this Agreement, relevant provisions of the **Civil Code and the Public Procurement Law of 29.01.2004 as published in the Journal of Laws (2010 no. 113, item 759, with later amendments)** shall apply.
2. The Employer does not allow for the cession of debts resulting from this Agreement to third parties without the Contractor's consent.
3. The Contractor's Tender Offer and the Terms of Reference are an integral part of this Agreement.
4. The Contractor may not employ third parties to fulfil his obligations if those third parties are excluded from public procurement contracts on the basis of art. 24 of the 29.01.2010 Act of Public Procurement Law (Dziennik Ustaw/Journal of Laws 2010, no. 113, item 759, with later amendments). Violation of the above provisions constitutes legal grounds for the Employer to withdraw from the Agreement.
5. Both Parties permit the amendment of provisions to this Agreement in the following circumstances:
 - a) amendments concerning payment resulting from changes in existing tax rates,
 - b) the change of a Party's name, headquarters, bank account number or other identification data.
 - c) amendments concerning the time limits defined in Section 2 of the Agreement in the following circumstances:
 - Force majeure (such as, natural disaster, hurricane, flood, transport disaster, fire, explosion, war, strike and other extraordinary events beyond the control of the Parties)



6. Any disputes arising from the realisation of the Subject of the Agreement shall be settled by the general court competent for the registered headquarters of the Employer and under Polish law.
7. All amendments and additions to the Agreement must be in writing under pain of being declared null and void.
8. This Agreement has been drawn up in two identical copies, one copy for each Party.

ATTACHMENTS TO THE AGREEMENT:

1. Contractor's Tender Offer
2. Terms of Reference

EMPLOYER

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CONTRACTOR

.....

I accept the provisions of the Agreement