

The draft terms of the contract

AGREEMENT No.ZZ/129/009/D/2022 part 1

concluded on ..... 2022, between<sup>1</sup>:

Gdańsk University of Technology, Faculty of Electronics, Telecommunications and Informatics with headquarters in 80-233 Gdańsk,

ul. Narutowicza 11/12, NIP 584-020-35-93, REGON 000001620

represented by:...., acting on the basis of the authorization of the Rector of Gdańsk University of Technology, hereinafter referred to as the "ordering party"

and,

....., with headquarters in ... .., NIP ..... .., REGON ....., CEIDG / KRS ..... represented by..... hereinafter referred to as the "contractor",

which is awarded a contract without applying the provisions of the Act of September 11, 2019 Public Procurement Law (i.e. Journal of Laws of 2021, item 1129, as amended, hereinafter referred to as the PPL Act), in accordance with Art. 11 sec. 5, point 1 presented on the occasion of its conclusion.

§ 1

SUBJECT OF THE CONTRACT

1. The subject of the contract is the supply of HPHT nanodiamond powders with nitrogen color centers for the Faculty of Electronics, Telecommunications and Informatics of the Gdańsk University of Technology, under the conditions specified in the contract notice no. offer of ..... r. submitted by the contractor, constituting attachments to this contract and constituting its integral part.
2. The Contractor declares that the subject of the contract is brand new, comes from current production, free from all defects and damage, without prior use and is not subject to third party rights.

§ 2

CONTRACT PRICE AND PAYMENT CONDITIONS

1. For the performance of the subject of the contract in accordance with the offer of ..... the price is set at the gross amount of PLN ..... PLN (..... zlotys).  
The above price includes all pricing elements resulting from the scope and method of contract performance and satisfies all the Contractor's claims against the Ordering Party for the performance of this contract.

2. The subject of the contract shall be deemed completed if it is received with the delivery and acceptance protocol, signed by both parties without comments, within the time limit specified in § 3 sec. 8 of this contract. This protocol will be the basis for issuing an invoice.
3. The invoice should be issued for the following data:  
Gdańsk University of Technology, Faculty of Electronics, Telecommunications and Informatics  
ul. G. Narutowicza 11/12, 80-233 Gdańsk  
NIP 584-020-35-93
4. In addition to indicating the number of this contract, the invoice must also contain the PKWiU number.
5. The Contractor is entitled to send structured electronic invoices to the Ordering Party via the platform in accordance with the provisions of the Act of November 9, 2018. on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership (consolidated text: Journal of Laws of 2020, item 1666).
6. The contracting authority is required to receive electronic invoices issued by the contractor through the electronic invoicing platform, if the contractor has sent a structured invoice through that platform.
7. The Contractor declares that the invoice issued in paper form will not be issued in electronic form, and vice versa.
8. The recommended format for an electronic invoice is PDF (Portable Document Format).
9. The e-mail will be sent by the Contractor by e-mail to the Ordering Party's address: [efaktury@pg.edu.pl](mailto:efaktury@pg.edu.pl).
10. The Contractor declares that the invoices sent by e-mail will be sent from the e-mail address: ..... \* (if applicable).
11. Sending an invoice to an e-mail address other than the one indicated in sec. 10 of this section does not in any case constitute delivery of an invoice in electronic form.
12. In the event of a change of the e-mail address referred to in sec. 10 of this paragraph, the contracting authority undertakes to notify the contractor of the new e-mail address in writing or by e-mail. The change does not require an annex to the contract.
13. The Contractor declares that he ensures the authenticity of origin, integrity of the content and legibility of invoices sent by electronic means.
14. Payment for the invoice will be made by bank transfer within 21 days from the date of receipt by the contracting authority of a correctly issued invoice from the contracting authority's account to the contractor's account indicated in the list of entities kept by the Head of the National Revenue Administration, referred to in Art. 96b of the Value Added Tax Act (Journal of Laws of 2021, item 685, as amended).
15. The day of debiting the Ordering Party's account will be considered the day of payment.
16. If the contractor delivers an incorrect invoice, in particular, if the invoice does not contain the information required by the contract, the invoice is returned to the contractor without posting and payment obligation.

### § 3

#### DATE, PLACE AND CONDITIONS OF FULFILLING THE CONTRACT

1. The delivery of the Subject of the Agreement will take place to:

Gdańsk University of Technology, Gdańsk 80-233, ul. Narutowicza 11/12, building A of the Faculty of Electronics, Telecommunications and Informatics, room 116.

2. The Contractor declares that the subject of the contract will be delivered in original packaging, in accordance with applicable regulations, protecting against its damage, contamination and enabling its safe storage.

3. All damages and costs caused by improper packaging shall be borne by the Contractor.

4. The Contractor declares that the size of unit packages will not be greater than that indicated in the Contractor's offer.

5. The name, technical parameters and the price of the subject of the contract, delivered to the contracting authority, must be consistent with the contractor's offer. In the event of delivery of defective goods or goods that do not meet the conditions of the order, the ordering party will not accept them.

6. The date of proper performance of the Subject of the Agreement shall be understood as the date of signing the Acceptance Protocol without reservations by both Parties.

7. The contact persons for the performance of the Agreement are:

☐ on the part of the Ordering Party: ..... tel ..... , e-mail: ..... ;

☐ on the part of the Contractor ..... tel. .... , e-mail: .....

The above personal data are shared by the parties with each other in order to implement this contract, pursuant to art. 6 sec. 1 lit. b), c) and f) of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 / EC. The parties become the administrator of personal data shared with each other.

8. Full performance of the Subject of the Agreement shall take place within the deadline of ... (calendar) days from the date of conclusion of the Agreement.

#### § 4

#### CONTRACTUAL PENALTIES

1. The contracting authority will charge the contractor a contractual penalty:

1) for the delay in the delivery of the subject of the contract in the amount of 0.2% of the contract price referred to in § 2 section 1, for each day of delay, starting from the first day after the expiry of the deadline for the performance of the subject of the contract specified in § 3 sec. 8 of this contract up to and including the date of implementation.

2. For the withdrawal from the contract by any of the parties, the party with the reasons for the withdrawal shall pay the other party a contractual penalty in the amount of 10% of the price specified in § 2 sec. 1 of this contract, with the exception of the circumstances set out in Art. 456 of the Public Procurement Law.

3. The Parties reserve the right to claim supplementary compensation, exceeding the amount of the reserved contractual penalties - up to the amount of the damage suffered - on the general principles of the Civil Code.

4. Contractual penalties will be payable within 14 days from the date of the debit note.

5. The contractor agrees for the contracting authority to deduct the charged contractual penalty from the price due to him.

6. The total amount of contractual penalties may not exceed 20% of the price specified in § 2 sec. 1.

7. In the event of a delay in the performance of the contract due to the SARS-CoV-2 virus pandemic, no contractual penalties will be charged. The contractor will be obliged to substantiate this circumstance.

## § 5

### FORCE MAJEURE

1. Neither of the Parties shall be liable for the occurrence and effects of force majeure, by which the Parties understand an event of an extraordinary nature, with extraordinary consequences, objectively unforeseeable, for which, due to the power of influence, it was impossible to take effective measures of defense.

2. A party who is unable to perform the contract due to force majeure or is unable to perform it properly for this reason is obliged to immediately notify the other party of the occurrence of force majeure, under pain of losing the right to rely on this circumstance. In the notification, the Party informs about the type of force majeure and its expected consequences for the contract. At the same time, the party affected by force majeure is obliged to take all possible acts of diligence that may be required of each professional participant of business transactions in order to minimize the effects of force majeure, including in particular the effects on the further performance of this contract.

3. The parties provide that the occurrence of force majeure may be the basis for changing the contract in the scope of the contract performance date, including the extension of the contract performance date by the duration of force majeure and its effects.

4. The parties provide that the occurrence of force majeure may be the basis for a change in the manner of performance of the contract or a change in the price in accordance with the scope, type and effects of force majeure for these elements of the contract.

## § 6

### CHANGES TO THE CONTRACT

1. Any changes and additions to the content of the contract shall be made in writing under pain of nullity.

2. This contract may be changed on the terms set out in Art. 455 of the Public Procurement Law and this contract.

3. The awarding entity, pursuant to Article 455 para. 1 point 1) of the Public Procurement Law, provides for the possibility of making changes to the contract, under the conditions set out below:

1) in the event of a change in the provisions in force in the Republic of Poland regarding the amount of tax on goods and services (VAT) in the scope covering the subject of the contract, the contracting authority allows for the possibility of an appropriate change in this regard.

The price of the contract may change in the event of a reduction or increase in the VAT rate as a result of a change in applicable regulations.

a) Each party is entitled to submit a written request to the other party to amend the contract in terms of payments resulting from invoices issued after the entry into force of the provisions amending the VAT rate. The application should contain factual justification and an indication of the legal basis for the change of tax on goods and services and the exact calculation of the amount due to the contractor after the change of the contract.

The change of the contract price will only include payments for deliveries that have not yet been made on the date of the VAT rate change.

b) The obligation to prove the impact of changes in the VAT rate on the change of the contract price rests with the applicant under pain of refusing to amend the contract.

2) The deadline for the performance of the subject of the contract, set out in the contract, may be changed:

a) in the event of force majeure, referred to in § 6 of this Agreement, in particular due to the SARS-CoV-2 virus pandemic;

b) in the absence of substitutes not available on the market, offered accessories for the dispenser referred to in paragraph 3 points 3 of this section;

In the above-mentioned circumstances, the Parties will agree on a new contractual date, however the scope of the change of the date must be proportional to the reason which caused it.

3) Within the scope of the subject of the contract

a) The Parties allow the possibility of changing the provisions of the concluded contract in relation to the content of the offer, on the basis of which the Contractor was selected, in the event that, due to circumstances not attributable to the Contractor, the offered nanodiamond powders will not be available on the market at the time of performance of the subject of the contract. It is then allowed, with the prior written consent of the Ordering Party, to provide their substitutes at the price specified in the Contractor's offer.

b) The obligation to inform the Ordering Party in writing about the necessity to replace the offered subject of the contract with another one due to the lack of its availability on the market and obtaining the Ordering Party's written consent for the proposed change rests with the Contractor.

c) Such a change may not change the price of the subject of the contract resulting from the Contractor's offer.

d) In the event of a periodic lack of the offered nanodiamond powders or the lack of their substitutes referred to above, the Parties allow the possibility of extending the delivery date of these powders or not fulfilling a given item of the subject of the contract, provided that the contract price is reduced by the amount of the unrealized part of the subject of the contract, resulting from the Contractor's offer, constituting an appendix to this agreement and constituting an integral part thereof.

## §7

### FINAL PROVISIONS

1. In matters not covered by this agreement, the provisions of the Civil Code shall apply, unless the provisions of the Public Procurement Law provide otherwise, and other generally applicable provisions of law, in particular Art. 15r - 15r1 of the Act of March 2, 2020. on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (Journal of Laws of 2021, item 2095), and any disputes between the parties will be resolved according to Polish law by the court competent for the seat The ordering party.

2. The Ordering Party does not allow the assignment of claims or the transfer of rights and obligations under this contract to third parties without its prior written consent.

3. The appendices to the Agreement, including the contractor's offer and the Specification of Technical Specifications, are an integral part of the contract.

4. The parties understand business days from Monday to Friday from 7:00 to 15:00, excluding Saturdays and public holidays.

5. The Contractor assumes responsibility for any claims that third parties may bring against the Ordering Party in connection with the use of rights belonging to third parties, in particular copyrights, patents, utility models, ornamental patterns, industrial designs or trademarks, if the normal use of the subject of the contract requires the exercise of these rights. In the event of disclosure of third party claims, the Contractor shall take all necessary steps and actions to secure the Ordering Party against claims, losses, costs or other liability towards third parties. In the event of losses, costs, expenses or the need to satisfy third party claims for which the Ordering Party is not responsible, the Contractor is obliged to cover or refund them in full.

6. The contract was drawn up in two identical counterparts, one for each of the Parties.

\* delete as appropriate

List of attachments:

- 1) Specimen of the acceptance protocol
- 2) Contractor's offer

Contractor:

Ordering Party:



Appendix 1  
to the contract ZZ/129/009/D/2022  
....., on ..... 2022

## PROTOCOL FOR PROVISION AND ACCEPTANCE

CONTRACTOR:

.....

ORDERING PARTY:

Gdańsk University of Technology

The Faculty of Electronics, Telecommunications and Informatics, ul. G. Narutowicza  
11/12, 80-233 Gdańsk

Subject of the contract: supply of HPHT nanodiamond powders with nitrogen color centers  
for the Faculty of Electronics, Telecommunications and Informatics of the Gdańsk  
University of Technology.

Subject of the contract delivered on ..... \*

Reservations and comments regarding the implementation of the subject of the contract \*:

.....  
.....  
.....

Irregularities indicated in this protocol were removed on: ..... \* (please indicate the  
date)

The contracting authority collects the subject of the contract without reservations. \*

This protocol is the basis for issuing an invoice.

Contractor's representative: .....  
(name and surname) (signature)

Representative of the Ordering Party: .....