

**CONTRACT**

No of Proceedings: ZZ/249/019/D/23

concluded on ..... 2023<sup>1</sup>

between:

Gdańsk University of Technology, Faculty of Applied Physics and Mathematics, registered in Gdansk,  
ul. Narutowicza 11/12

represented by:

.....

acting on the basis of the power of attorney for the Rector of Gdańsk University of Technology

**hereinafter referred to as the 'Ordering Party'**

and .....

NIP: .....

Represented by:.....

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

The parties declare that the agreement was concluded on the basis of art. 11 sec. 5 point 1) of the Public Procurement Law of September 11, 2019 (i.e. Journal of Laws of 2022, item 1710, as amended), hereinafter referred to as the 'PPL'.

**§ 1**

**OBJECT OF THE CONTRACT**

1. The object of the contract is the delivery of a *universal system for testing planar fuel cells*, in accordance with the conditions specified in the Notice of Planned Procurement No. ZZ/249/019/D/23 of ..... and in the offer dated ....., submitted by the Contractor, constituting attachments to this Contract and being an integral part thereof.
2. The Contractor declares that the object of the Contract is brand new, comes from current production, is free from all defects and damages, without previous use and is not subject to the rights of third parties.

**§ 2**

**PRICE AND TERMS OF PAYMENT**

1. For the performance of the object of the Contract in accordance with the Contractor's offer of ....., the price is determined in the amount: ..... currency.....  
in words ..... currency.....  
with which the Ordering Party will pay the Contractor for the subject of the contract after its delivery and signing the delivery and acceptance report without reservations, but not later than within the time limit set out in §3 section 1 of this agreement.
2. In the case of submitting an offer in a currency other than PLN, the offer price shall be converted into PLN according to the exchange rate of the National Bank of Poland, Table A, valid on the day set as the deadline for submission of tenders.
3. If the Contractor is established outside the territory of the Republic of Poland, they will issue an invoice in the net price. The Ordering Party shall pay VAT to the Tax Office in accordance with the provisions on intra-Community acquisition of goods in the amount corresponding to the territory of the Republic of Poland.
4. Payment for the invoice for each of the above-mentioned cases shall be made by the Ordering Party, to the Contractor's account:.....

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<sup>1</sup> The date of signing the Contract by a person authorized by the Rector of the Gdańsk University of Technology is the date of conclusion of the Contract.

5. The above price includes all price-generating elements resulting from the scope and manner of implementation of the object of the Contract, including transport costs to the headquarters of the Ordering Party.
6. The date of debiting the Ordering Party's account shall be deemed to be the day of payment.
7. Invoices should be issued to the Gdańsk University of Technology with the following indication:

Gdańsk University of Technology  
 Faculty of Applied Physics and Mathematics  
 ul. G. Narutowicza 11/12, 80-233 Gdańsk  
 No of Proceedings: ZZ/249/019/D/23

8. The invoice referred to in section 3 of this paragraph must contain the number of this Agreement.
9. The Contractor declares that invoices issued in paper form will not be issued in electronic form, and vice versa.
10. In the case of paper invoices or in electronic format, e.g. PDF (Portable Document Format), they can be sent by the contractor by e-mail to the address of the ordering party: [efakury@pg.edu.pl](mailto:efakury@pg.edu.pl).
11. The Contractor declares that invoices sent by e-mail will be sent from the following e-mail address: .....
12. The Ordering Party will not be liable in the event of non-payment or delay in payment of the amount due from the invoice, which will be sent from a different e-mail address than the one indicated in this contract. Changing the above e-mail address requires an amendment to the agreement in the form of an annex.
13. The Contractor declares that he ensures the authenticity of origin, integrity of content and legibility of invoices sent electronically.
14. The contractor is not obliged to send structured electronic invoices to the contracting authority via the platform in accordance with the provisions of the Act of 9 November 2018 on electronic invoicing in public procurement, concessions for construction works or services and public-private partnership (i.e. Journal of Laws of 2020, item 1666, as amended).
15. Sending an invoice to an e-mail address other than the one indicated in section 6 of this paragraph, does not constitute in no case of delivery of an invoice in electronic form.
16. In the event of a change of the e-mail address referred to in par. 6 of this paragraph, the ordering party undertakes to notify the contractor in writing or by e-mail about the new e-mail address. The change does not require the preparation of an annex to the agreement.
17. The day of debiting the Ordering Party's account shall be considered as the day of payment.
18. The payment for the performance of the subject of the contract will be made by bank transfer to the Contractor's account:....., indicated in the list of entities kept by the Head of the National Administration Treasury, referred to in Art. 96b of the Act on tax on goods and services, within 21 days from the date of receipt by the Ordering Party of a correctly issued invoice.

### §3

#### **DATE, PLACE AND CONDITIONS OF IMPLEMENTATION OF THE AGREEMENT**

1. The deadline for delivery of the object of the Contract: 10 weeks from the date of the payment.
2. The Contractor shall provide the object of the Contract to Gdańsk University of Technology, Faculty of Applied Physics and Mathematics with headquarters in Gdańsk, ul. Narutowicza 11/12, Building of the Nanotechnology Centre A.
3. The name, technical parameters and price of the object of the Contract, delivered to the Ordering Party must comply with the offer of the Contractor. In the case of delivery of a defective product or not meeting the order conditions, the Ordering Party shall not sign the final acceptance protocol.
4. The object of the Contract shall be delivered by the Contractor in a packaging protecting against damage.
5. The delivery must take place on business days of the Ordering Party, from 8.00 a.m. to 3.00 p.m. after a prior telephone call, made at least 24 hours in advance.
6. The costs of packaging, insurance, loading, unloading, transport, bringing to the place indicated by the Ordering Party shall be borne by the Contractor and they have been included in the offer price.
7. The contractor declares that the equipment delivered under the contract meets the technical parameters and requirements specified in the contract award notice.
8. Along with the delivery of the subject of the contract, the contractor shall deliver a warranty card in Polish or English in paper version (1 copy).
9. In the case of entrusting the performance of the contract to subcontractors, the contractor shall be fully liable to the contracting authority for their actions or omissions to the extent indicated in the

offer. The contractor's liability also extends to the subcontractor's personnel and persons he employs or entrusts with the performance of the work.

10. The acceptance of the subject of the contract in terms of compliance with the offer will be carried out by an employee authorized by the Ordering Party ..... by writing down the delivery and acceptance protocol with the Contractor. In the case of comments regarding the performance of the subject of the contract or defects found in the delivered equipment, the parties will agree on the method and date of removing the irregularities. This period will not be longer than 21 calendar days. The occurrence of the above circumstances does not waive the rights of the contracting authority and the consequences of the contractor related to failure to meet the deadline for the performance of the contract specified in § 2 section 1 of the contract and liability for non-performance or improper performance of contractual obligations.
11. The Ordering Party and the Contractor shall immediately notify each other of any change in the designated persons. Damage resulting from failure to comply with this obligation shall be borne by the obligated party.
12. The Contractor declares that:
  - a) has the necessary knowledge, experience and has the appropriate organizational, economic and personnel potential to ensure the performance of the contract in accordance with all the requirements of the Ordering Party,
  - b) the subject of the contract has been admitted to trading in the territory of the Republic of Poland, has all the certificates, certificates, attestations, declarations of conformity, etc. required by law, and meets all the requirements of the law regarding safety standards, and that it will present these documents to the Ordering Party on each request.

#### **§4**

#### **GUARANTEE AND CONDITIONS FOR IMPLEMENTING WARRANTY RIGHTS**

1. The Contractor provides a ... months guarantee for the delivered object of this Contract, counted from the date of signing the acceptance protocol without any remarks.
2. The Contractor's obligations under the guarantee shall consist in exchanging the object of the Contract for a new one free from defects, or in repairing it or refunding the price paid.
3. Needs for repairs or replacements during the warranty period will be reported to the Contractor by a person authorized by the Ordering Party, indicated in §6 section 1, by electronic means, to the e-mail address indicated in the Contractor's offer: .....
4. The Contractor is obliged to immediately confirm by e-mail the receipt of the notification of the need for warranty repair or replacement from the Ordering Party (reporting a complaint). If the Contractor does not confirm receipt of such notification, the Ordering Party shall presume that it has been received by the Contractor, unless the Contractor proves that it was impossible for technical reasons. In their complaint notification the Ordering Party is obliged to indicate the expected way of bringing the defective object of the Contract to compliance with the Contract (replacement or repair).
5. In the complaint notification, the Ordering Party is obliged to indicate the expected method of bringing the defective subject of the contract into conformity with the contract (replacement or repair).
6. If the Ordering Party requests repair, the Contractor (or a service point indicated in the offer) shall be entitled to assess the possibility of on-site repair or the need to make repairs at the service point or replacement of a defective object of the Contract for a new one, free from defects.
7. Under the guarantee, the Contractor undertakes to:
  - a) commencement of the warranty obligations within no more than 48 hours, counting the Ordering Party's working days from the date of notification of the need to remove defects during the warranty period by the Ordering Party,
  - b) replace the defective subject of the contract with a defect-free one or remove the defect within no more than 14 days from the date and time of the complaint by the Ordering Party.
8. Warranty repairs will be made at the registered office of the Ordering Party or the Contractor or at the service point fulfilling the Contractor's warranty obligations towards the Ordering Party, indicated by the Contractor.
9. The costs of transport and insurance and the risk of loss or destruction of the object of the Contract in connection with making a guarantee repair or replacement shall be borne by the Contractor.
10. Destruction or loss of the guarantee certificate shall not void the guarantee rights if the Ordering Party shall document otherwise the existence of the obligations of the Contractor under guarantee (purchase invoice, commissioning report).

11. The Ordering Party shall be entitled to cancel the Contract due to a defect of the object of the Contract, if, despite repairing it twice or replacement, the Contractor does not provide its compatibility with the Contract and it will continue to work incorrectly. In this case, the Contractor shall be obliged to refund the price paid within 14 days of the receipt of the notice of cancelling the Contract, and to pay the penalty, referred to in § 5 section 2 of the Contract.
12. The Ordering Party is entitled to rights under the warranty irrespective of the guarantee.
13. Liability of the Contractor under the warranty is not subject to any limitations or exclusions.

## § 5

### CONTRACTUAL PENALTIES AND WITHDRAWAL FROM THE CONTRACT

1. The Contractor will pay to the Ordering Party a contractual penalty:
  - a) in the event of a delay in the performance of the subject of the contract in accordance with § 3 section 1 of the Contract, in the amount of 0.5% of the gross price specified in § 2 section 1 for each day of delay,
  - b) for delay in removing defects or deficiencies found upon acceptance, in the amount of 0.1% of the gross price specified in § 2 section 1 for each day of delay,
  - c) in the event of a delay in the performance of warranty obligations, in the amount of 0.05% of the gross price specified in § 2 section 1 for each day of delay, for each event,
  - d) in the event of a delay in the performance of warranty obligations, in the amount of 0.1% of the gross price specified in § 2 section 1 of the contract for each day of delay, for each event.
2. For withdrawal from the entire contract by either party, the party responsible for the withdrawal shall pay the other party a contractual penalty in the amount of 5% of the gross contract price specified in § 2 section 1 of this Contract, excluding the circumstances specified in art. 456 of the Public Procurement Law.
3. The total amount of contractual penalties may not exceed 20% of the gross price specified in § 2 section 1 of the Contract.
4. In the event of damage exceeding the amount of contractual penalties, the Ordering Party has the right to claim supplementary compensation under the general rules of the Civil Code.
5. Contractual penalties will be paid within 14 days from the date of issuing the debit note.
6. The Contractor agrees to deduct the accrued contractual penalty from the price due to him.
7. In the event of a delay in the implementation of the subject of the contract due to the SARS-CoV-2 virus pandemic, contractual penalties will not be charged. The Contractor will be obliged to substantiate this circumstance.

## § 6

### OTHER DELIVERY CONDITIONS

1. For contacts in matters relating to the performance of this Contract the Ordering Party appoints: ..... , tel. .... , e-mail: .....  
and the Contractor appoints: .....
2. The parties shall immediately notify each other of any change of the designated persons. Any damage resulting from failure to do so shall be charged to the obliged party.

## § 7

### FINAL PROVISIONS

1. Any changes and additions to this agreement must be made in writing or will be considered invalid
2. The parties allow changes to the provisions of the contract in the following situations:
  - a) changes in the VAT rate - the price may change in the event of a reduction or increase in the VAT rate as a result of changes in applicable regulations. Payment will be made taking into account the VAT rate applicable on the date of issuing the invoice,
  - b) changes in the deadline - the deadlines for the performance of the subject of the contract set out in the contract may be changed in the event of force majeure. The parties agree on a new contractual date, but the amount of the change must be related to the reason that caused it.
3. Neither party 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 impossible to predict, for which, due to the impact, effective defense measures could not be taken.
4. A party that is unable to perform the contract as a result of force majeure or for this reason cannot perform it properly is obliged to immediately notify the other party of the occurrence of force majeure. In the notification, the parties inform 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 any professional economic participant in order to minimize the effects of force majeure, including in particular the effects on the further performance of this contract.

5. The parties provide that the occurrence of force majeure may be the basis for amending the Contract in terms of the deadline for the performance of the contract, including the extension of the deadline for its performance by the time of occurrence of force majeure and its effects.
6. The parties provide that the occurrence of force majeure may be the basis for changing the manner of performance of the contract or changing the price in accordance with the scope, type and effects of force majeure for these elements of the Contract.
7. In matters not covered by this Contract, 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. 15 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 (i.e. Journal of Laws of 2020, item 1842, as amended).
8. Personal data of persons indicated in this contract are made available by the parties to each other, in order to implement this contract, pursuant to art. 6 sec. 1 letter 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 administrators of their personal data shared with each other.
9. The Contractor shall be liable for any claims that third parties may raise against the Ordering Party in connection with its use of rights belonging to third parties, in particular copyrights, patents, utility models, ornamental designs, industrial designs or trademarks, if the normal use of the subject of the contract requires the use of these rights. In the event of disclosure of claims by third parties, the Contractor shall take all necessary actions and actions to protect the Ordering Party against claims, losses, costs or other liability towards third parties. In the event of the Ordering Party's losses, costs, expenses or the need to satisfy claims of third parties for which the Ordering Party is not responsible, the Contractor is obliged to cover them or return them in full.
10. The Ordering Party does not allow the assignment of receivables or the transfer of rights and obligations under this Contract to third parties or entities without its prior written consent.
11. By the Employer's working days, the parties understand the days from Monday to Friday, excluding Saturdays and public holidays.
12. The appendices to the Contract constitute its integral part.
13. The Contract has been drawn in two identical copies, one for each of the parties/The Contract was concluded in the electronic form of a legal transaction<sup>2</sup> and provided with a qualified electronic signature.<sup>2</sup>

Attachments to the contract:

1. Delivery and acceptance protocol,
2. Contractor's offer of .....

.....  
ORDERING PARTY

.....  
CONTRACTOR

The content of the Contract is accepted by submitting a statement on the offer form.

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<sup>2</sup> Delete as appropriate