

# **Contract for the Delivery and Installation of a Hot Isostatic Press System**

between

**Ludwig-Maximilians-Universität Munich**

and

**[Contractor]**

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**Ludwig-Maximilian-Universität Munich**, Am Coulombwall 1 in 85748 Garching (hereinafter the „Contracting Authority”)

[Name of the Contractor], with its registered office in [●], entered in the Register [●] under No [●], with business address at [●] (hereinafter the “Contractor”).

## Preamble

The Contracting Authority has conducted a procurement procedure for the purchase of a hot isostatic press (“HIP”) system, in which the Contractor has been awarded the contract.

The Contractor shall supply, deliver, install, commission, test and hand over a complete HIP-system, fully operational and ready for use. The scope of work includes all necessary equipment, auxiliary systems, control systems, software, utilities interfaces, documentation and services required for safe and reliable operation.

Due to this background, the parties enter into this contract (the “Contract”).

## 1. Scope and Nature of the Contract

- 1.1 The subject matter of the Contract is the delivery and installation of a HIP-system, including any standard software embedded therein (the “**Equipment**”), at the Contracting Authority’s premises, ready for operation, as well as its maintenance by the Contractor. The contractual services are set out in detail in the description of services (**Annex 1**).
- 1.2 The Parties acknowledge and agree that this Contract primarily constitutes a contract within the meaning of the statutory provisions on the sale of goods (Sections 433 et seq. of the German Civil Code; in German: “Bürgerliches Gesetzbuch” – “**BGB**”). The statutory provisions on the sale of goods (in German: “Kaufrecht”) shall predominantly govern the rights and obligations of the Parties, unless expressly agreed otherwise in this Contract.
- 1.3 In addition to the sale and delivery of the Equipment, the Contractor shall perform the installation, assembly and commissioning services specified in this Contract and in the description of services (the “**Installation Services**”) at the Contracting Authority’s premises. The Installation Services are accessory and ancillary to the sale and delivery of the Equipment and do not change the overall legal qualification of this Contract as a sales contract with installation obligations.
- 1.4 Notwithstanding the predominance of Section 433 et seq. BGB, the Parties expressly agree that, upon completion of the Installation Services, the Parties shall conduct an acceptance procedure in accordance with the provisions of this Contract (see Sections 5 and 6). The Parties intend that the legal acceptance shall be conducted in a manner analogous to an acceptance under Section 640 BGB (see Section 6), without altering the qualification of this Contract as predominantly governed by the statutory provisions on the sale of goods. For the avoidance of doubt, the Parties expressly confirm that the introduction of an acceptance mechanism does not convert this Contract into a contract for work (in German: “Werkvertrag”) under Sections 631 et seq. BGB.

- 1.5 In addition to this contractual document, the following documents and regulations constitute integral parts of the Contract:
- 1.5.1 the description of services published by the Contracting Authority in the underlying procurement procedure (**Annex 1**);
  - 1.5.2 the documents submitted by the Contractor together with its tender in the underlying procurement procedure (**Annexes 2a et seq.**);
  - 1.5.3 the price sheet submitted by the Contractor together with its tender in the underlying procurement procedure (**Annex 3**);
  - 1.5.4 Delivery of the Equipment shall be made DDP, Am Coulombwall 1, 85748 Garching (near Munich), Federal Republic of Germany, Incoterms® 2020.
- 1.6 The provisions of this Contract and the appendices referred to in Clause 1.5, together with the regulations and rules referred to therein, shall apply exclusively. The Contractor's general terms and conditions do not form part of this Contract.

## **2. EU-Compliance**

- 2.1 The Contractor has to ensure that the Equipment meets the requirements of all applicable European laws, directives and regulations, inter alia EU Directive 2014/68/EU (Pressure Equipment Directive) and EU Directive 2006/42/EC (Machinery Directive) or EU 2023/1230 (Machinery Regulation), in their currently valid versions.
- 2.2 For this purpose, the Contractor has to provide an EU Declaration of Conformity for all Equipment confirming compliance with the relevant laws, directives and regulations. The Equipment must bear the "CE" marking.
- 2.3 The Contractor is obliged to provide a technical documentation, risk assessment and operating instructions, in English, for all Equipment.

## **3. Factory Acceptance Test**

- 3.1 Prior to delivery, the Contractor shall perform a factory acceptance test ("**FAT**") at its premises in order to verify that the Equipment complies with the requirements of all applicable European laws, directives and regulations, as well as the technical specifications agreed in this Contract and the description of services.
- 3.2 The Contractor shall notify the Contracting Authority in writing at least 14 working days in advance of the scheduled date for the FAT and shall afford the Contracting Authority the opportunity to attend the FAT on site or by remote means (e.g. video streaming), if reasonably practicable.
- 3.3 Upon completion of the FAT, the Contractor shall prepare a FAT report recording the test procedures carried out, the results obtained and any deviations from the agreed specifications. The FAT Report shall be signed by the Contractor and, if present, countersigned by the representative of the Contracting Authority.

- 3.4 Successful completion of the FAT shall not constitute legal acceptance (in German: “Abnahme”) within the meaning of German law, but serves as a precondition for shipment and as documentation that the Equipment has, at the time of FAT, met the FAT criteria agreed by the Parties. Any deviations or defects recorded in the FAT Report shall be rectified by the Contractor prior to shipment, unless the Parties expressly agree in writing that certain minor deviations may be remedied at the installation site.

#### **4. Delivery and installation**

- 4.1 The Contractor shall deliver the Equipment to the installation site specified by the Contracting Authority and shall install the Equipment in accordance with this Contract and the description of services (**Annex 1**).
- 4.2 The delivery and installation of the Equipment, ready for site acceptance test within the meaning of Section 5, must be completed no later than 12 (twelve) months after this Contract has been awarded in the underlying procurement procedure.
- 4.3 Delivery of the Equipment shall be made DDP, Am Coulombwall 1, 85748 Garching (near Munich), Federal Republic of Germany, Incoterms® 2020.

#### **5. Site Acceptance Test**

- 5.1 The Contractor shall notify the Contracting Authority in writing once installation and commissioning have been completed and the Equipment is ready for the site acceptance test (“**Readiness Notification**”).
- 5.2 After receipt of the Readiness notification, the Parties shall jointly conduct a site acceptance test (“**SAT**”) to verify that the installed Equipment complies with the contractual specifications and is operating properly under site conditions.
- 5.3 The SAT must commence within 14 working days after receipt of the Readiness Notification, provided that the Contractor has fulfilled all prerequisites for the SAT as specified in this Contract.
- 5.4 Upon completion of the SAT, the Parties shall prepare and sign a written SAT report describing the tests performed, the results obtained and any deviations or defects identified.
- 5.5 The SAT shall be deemed successful if the Equipment meets all technical criteria set out in the description of services, or if only minor defects (i.e. defects that do not materially impair the functionality or usability of the Equipment for its agreed purpose) remain, which the Contractor undertakes to remedy within a reasonable period agreed in the SAT Report.
- 5.6 If the SAT is not successful due to material defects, the Contracting Authority shall describe such defects in writing in the SAT Report or in a separate defect notice. The Contractor shall remedy the defects within a reasonable period at its own cost. After remedy of the defects, the Parties shall repeat the SAT, in whole or in part, as reasonably necessary to verify that the defects have been corrected.

- 5.7 Any additional costs of repeat SATs caused by the Contractor's failure to comply with the contractual specifications shall be borne by the Contractor. Costs caused by circumstances attributable to the Contracting Authority shall be borne by the Contracting Authority.

## **6. Legal Acceptance**

- 6.1 If the SAT is successful within the meaning of Section 5, the Contracting Authority shall declare Legal Acceptance (in German: "Abnahme") of the Equipment in writing without undue delay and in any event no later than 14 working days after successful completion of the SAT.
- 6.2 Acceptance shall be deemed to have occurred if (i) the SAT has been successfully completed and (ii) the Contracting Authority does not issue a written notice refusing Acceptance within 14 working days after receipt of the SAT Report, specifying the material defects which justify refusal of Acceptance.
- 6.3 The Contracting Authority may refuse Legal Acceptance only in the event of material defects, i.e. defects that materially impair the contractual functionality or usability of the Equipment. The presence of minor defects shall not entitle the Contracting Authority to refuse Legal Acceptance; such minor defects shall be recorded in the SAT Report and shall be remedied by the Contractor within a reasonable period to be agreed.
- 6.4 Upon the date of Legal Acceptance, the risk of accidental loss or deterioration of the Equipment shall be deemed to have passed to the Contracting Authority and the limitation period for warranty claims shall commence in accordance with the statutory provisions, unless otherwise agreed in this Contract.
- 6.5 The limitation period for statutory claims for defects shall commence on the date of Legal Acceptance.

## **7. The Contracting Authority's Cooperation Obligation**

- 7.1 The Contracting Authority shall provide all reasonably necessary cooperation for performance of the SAT and Legal Acceptance as well as for the provision of the contractual services. For this purpose, the Contracting Authority shall grant access during normal business hours to the installation site, required utilities (such as power, gas, water, ventilation) and to the IT infrastructure, where necessary.
- 7.2 The Contracting Authority undertakes to provide the Contractor in good time with all necessary information and documents falling within its area of responsibility which the Contractor may reasonably expect to receive in order to perform the SAT and the contractual services.
- 7.3 The Contracting Authority is furthermore obliged to cooperate even in the absence of an express contractual provision, insofar as this arises from the obligations set out in this Contract and the description of services according to objective commercial practice.

## **8. Purchase price and terms of payment**

- 8.1 The purchase price is based on the Contractor's quotation in the price sheet (**Annex 3**).
- 8.2 The Prices agreed under this Contract are total fixed prices and are based on Delivered Duty Paid (DDP), Am Coulombwall 1, 85748 Garching (near Munich), Federal Republic of Germany, Incoterms® 2020. The Prices include all costs, charges and expenses incurred by the Contractor in connection with the supply, delivery and installation of the Equipment at the Site, including in particular freight and transport costs, packaging and insurance, all customs duties, fees and charges, and all import taxes, including any import value added tax (in German: "Einfuhrumsatzsteuer"), if applicable.
- 8.3 No additional amounts shall be payable by the Contracting Authority in respect of any taxes, duties, charges or costs related to the export, import, customs clearance, transport or delivery of the Equipment to the Site.
- 8.4 If any value added tax ("**VAT**") becomes chargeable on the supply to the Contracting Authority in Germany, such VAT shall be deemed to be included in the Prices, unless the Parties expressly agree in writing that it shall be shown separately on the invoice.
- 8.5 The purchase price is due for payment in full within 14 working days of Legal Acceptance within the meaning of Section 6.
- 8.6 Notwithstanding Clause 8.5 above, the parties may – without the Contracting Authority acknowledging any legal obligation – agree on an advance payment subject to the provision of an advance payment guarantee; in this case, the advance payment shall be released in instalments upon the achievement of the following milestones:
- 8.6.1 Delivery of the Equipment: 25% of the remuneration as set out in Clause 8.1.
- 8.6.2 Installation of the Equipment ready for SAT: 25% of the remuneration as set out in Clause 8.1
- 8.6.3 Upon the date of Legal acceptance: the remaining 50% of the remuneration as set out in Clause 8.1

## **9. Retention of Title**

- 9.1 In accordance with Section 449 BGB, the Contractor retains legal title (in German: "Eigentumsvorbehalt") to the Equipment until full payment of all amounts due under this Contract has been received.
- 9.2 Until title passes, the Contracting Authority shall not pledge or assign the Equipment by way of security and shall inform the Contractor without undue delay of any seizure or other third-party interventions.

## 10. Commercial Guarantee

- 10.1 In addition to the Contracting Authority's statutory rights in case of defects, the Contractor hereby grants a commercial guarantee (in German: "Garantie") within the meaning of Section 443 BGB for the Equipment supplied and installed under this Contract (the "**Guarantee**").
- 10.2 The Guarantee is valid for a period of 12 (twelve) months from the date of Legal Acceptance by the Contracting Authority (the "**Guarantee Period**").
- 10.3 The Contractor guarantees that, during the Guarantee Period, the delivered and installed Equipment will remain functional and fit for the contractually agreed purpose, and will materially perform in accordance with the technical specifications set out in the Description of Services when used under the agreed operating conditions.
- 10.4 If, during the Guarantee Period, the Equipment or any part thereof becomes non functional or materially deviates from the agreed performance, the Contractor shall, at its own cost and at the Contracting Authority's choice: repair the defective Equipment on site or by remote intervention, or replace the defective Equipment (or the defective part) with Equipment of the same type and quality and reinstall it.
- 10.5 The Contracting Authority's statutory rights in case of defects (under Sections 437 et seq. BGB) remain unaffected and are neither excluded nor limited by this Guarantee. The Contracting Authority may assert rights under this Guarantee in addition to its statutory rights, irrespective of whether statutory rights are exercised.
- 10.6 The statutory limitation periods for claims for defects under Sections 437 et seq. BGB (including but not limited to Section 438 BGB) shall apply; such limitation periods are not shortened by this Contract, unless expressly agreed otherwise herein. The Guarantee Period shall not affect the statutory limitation periods for defect claims. In particular, the expiry of the Guarantee Period shall not limit or exclude any statutory rights of the Contracting Authority.
- 10.7 This Guarantee does not apply to malfunctions or defects caused by:
  - 10.7.1 use, operation or handling of the Equipment contrary to the technical documentation or written instructions of the Contractor;
  - 10.7.2 modifications, repairs or interventions by the Contracting Authority or third parties not authorised by the Contractor;
  - 10.7.3 normal wear and tear of consumable parts;
  - 10.7.4 external factors beyond the Contractor's reasonable control, including but not limited to power supply issues, environmental conditions, failures of infrastructure not supplied by the Contractor, or force majeure events.



- 10.8 To make a claim under this Guarantee, the Contracting Authority shall notify the Contractor in writing without undue delay after becoming aware of the lack of functionality or performance, describing the issue in reasonable detail. The Contracting Authority shall allow the Contractor reasonable access (on site or remote) to examine the Equipment and to carry out repair or replacement in accordance with this clause.

## 11. Service Level Agreement, Know-how Transfer

- 11.1 The Parties agree to a Service Level Agreement (“**SLA**”) during the guarantee period within the meaning of Clause 10.2.

- 11.2 As regards the SLA, the following definitions shall apply:

11.2.1 “**Incident**” means any failure, malfunction or material degradation of the Equipment that materially affects its agreed functionality.

11.2.2 “**Business Hours**” means 08:00–18:00 on Business Days at the Contracting Authority’s location.

11.2.3 “**Business Day**” means any day other than a Saturday, Sunday or public holiday at the Contracting Authority’s location.

- 11.3 Incidents shall be classified by the Contracting Authority, acting reasonably, as follows:

11.3.1 **Priority 1 (Critical Incident):** Complete outage or failure of the Equipment or essential parts thereof, causing a material interruption of the Contracting Authority’s operations with no reasonable workaround available.

11.3.2 **Priority 2 (Major Incident):** Significant impairment of the Equipment’s functionality, affecting operations but with a temporary workaround available.

11.3.3 **Priority 3 (Minor Incident):** Non-critical malfunction or defect, with only minor impact on operations or cosmetic issues.

- 11.4 The Contracting Authority shall comply with the following maximum response times (measured from the time the Incident is duly reported by the Contracting Authority via the agreed support channel):

11.4.1 Priority 1: initial response within 8 Business Hours.

11.4.2 Priority 2: initial response within 16 Business Hours.

11.4.3 Priority 3: initial response within 24 Business Hours.

- 11.5 The Contractor shall remedy Incidents within the following binding restoration times, unless prevented by circumstances not attributable to the Contractor:

11.5.1 Priority 1: restoration of full operation or provision of a functionally equivalent workaround within 3 Business Days from the initial response;

- 11.5.2 Priority 2: restoration of full operation or provision of a suitable workaround within 5 Business Days from the initial response;
- 11.5.3 Priority 3: restoration within 10 Business Days from the initial response.
- 11.6 The Contractor shall, if necessary, provide on-site support by dispatching a qualified technician without delay and in any event in time to meet the above-mentioned restoration times.
- 11.7 If a permanent remedy is not technically possible within the above-mentioned restoration times, the Contractor shall, at its own cost, implement a temporary workaround that enables the Contracting Authority to continue the affected operations in a manner that is reasonable and acceptable for the Contracting Authority. In such case, the Contractor shall complete the permanent remedy as soon as technically feasible.
- 11.8 Incidents may be reported during Business Hours via [phone / email / ticket system].
- 11.9 The service levels set out in this Section shall not apply to incidents caused by:
- 11.9.1 use of the Equipment contrary to the technical documentation or written instructions of the Contractor;
  - 11.9.2 modifications, repairs or interventions by the Contracting Authority or third parties not authorised by the Contractor;
  - 11.9.3 failures of infrastructure not supplied by the Contractor.
- 11.10 After the expiry of the Guarantee Period pursuant to Clause 10.2, the Contracting Authority shall be responsible for the maintenance and servicing of the Equipment. To this end, during the Guarantee Period pursuant to Clause 10.2, the Contractor shall enable selected employees of the Contracting Authority, through appropriate measures (such as documentation, guidelines, theoretical and practical training), to carry out the maintenance and servicing of the Equipment themselves.

## **12. Contractual penalties**

- 12.1 If the Contractor fails to complete delivery and installation of the Equipment within the period defined in Clause 4.2, and such delay is not attributable to the Contracting Authority, the Contractor shall pay liquidated damages of 0,5% of the net contract price for the delayed Equipment per commenced week of delay, up to a maximum of 5% of the net contract price for the delayed Equipment.
- 12.2 If the Contractor fails to meet the agreed restoration times for a Priority 1 or Priority 2 Incident pursuant to Clause 11.5, and such failure is not attributable to the Contracting Authority, the Contractor shall pay to the Contracting Authority liquidated damages of 0,1% of the net contract price for the Equipment per commenced 24-hour period of non-compliance for each Priority 1 or 2 Incident, up to a maximum of 1% of the net contract price for the Equipment per Incident.

- 12.3 The Contracting Authority reserves the right to assert further claims for damages. Any contractual penalty paid shall be set off against any claim for damages.

### **13. Liability**

- 13.1 The Parties shall be liable without limitation for
- 13.1.1 damages resulting from injury to life, body or health,
  - 13.1.2 damages caused by intentional misconduct or gross negligence,
  - 13.1.3 claims under the German Product Liability Act (in German: "Produkthaftungsgesetz") and
  - 13.1.4 to the extent of the commercial guarantee expressly assumed by the Contractor within the meaning of Section 10.
- 13.2 In cases of slight negligence, the Parties shall only be liable for a breach of essential contractual obligations. Essential contractual obligations are those obligations whose fulfilment is a prerequisite for the proper performance of this Contract and on the fulfilment of which the other party may regularly rely. In cases of slightly negligent breach of essential contractual obligations, the liability of each Party shall be limited to the typical, foreseeable damage at the time of conclusion of this Contract.
- 13.3 The above limitations of liability shall apply accordingly in favour of the legal representatives, employees and vicarious agents of the Parties.

### **14. Indemnity, Hold Harmless**

- 14.1 The Contractor shall indemnify, defend and hold harmless the Contracting Authority, its respective directors, employees and agents ("**Indemnified Parties**") from and against any and all claims, actions, proceedings, liabilities, losses, damages, fines, penalties, costs and expenses (including reasonable legal fees and expenses) ("**Losses**") arising out of or in connection with:
- 14.1.1 any breach by the Contractor of this Contract, including any breach of the commercial guarantee given herein;
  - 14.1.2 any negligent or wilful act or omission of the Contractor, its employees, subcontractors or agents in connection with the performance of this Contract;
  - 14.1.3 any infringement or alleged infringement of intellectual property rights of third parties caused by the Equipment or its use in accordance with this Contract; and
  - 14.1.4 any bodily injury, death or damage to property caused by the Equipment or by the Contractor's installation or other services, to the extent such injury, death or damage is attributable to the Contractor, its employees, subcontractors or agents.

14.2 The Contracting Authority shall:

- 14.2.1 notify the Contractor without undue delay of any third-party claim in respect of which it seeks indemnification;
- 14.2.2 grant the Contractor sole control over the defence and settlement of such claim, provided that any settlement which imposes any obligation on a Indemnified Party or does not fully and finally settle the claim requires the prior written consent of the Contracting Authority, not to be unreasonably withheld or delayed; and
- 14.2.3 reasonably cooperate with the Contractor, at the Contractor's cost, in the defence of such claim.

**15. Confidentiality**

- 15.1 The parties commit themselves to keep all information and documents received from the other party in connection with the performance of this Contract as confidential and to use them only for contractually agreed purposes. Information and documents of the other party may only be brought to the attention of or made accessible to those employees who require the information and documents for the performance of the Contract and who themselves have been contractually obligated to maintain confidentiality. Any disclosure of information and documents of the other party to third parties shall require the prior written consent of the other party.
- 15.2 The rights and obligations under Clause 15.1 above shall not be affected by the termination of this Contract.
- 15.3 The obligation to maintain confidentiality pursuant to Clauses 15.1 and 15.2 shall not extend to information or documents which are generally known.

**16. Final provisions**

- 16.1 This Contract shall be governed solely by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods ("CISG").
- 16.2 This Contract reflects the entire agreement between the parties as to its subject matter. There are no side agreements, neither verbal nor written.
- 16.3 Amendments or additions to this Contract must be made in writing to be valid. This also applies to any amendment or waiver of this written form requirement.
- 16.4 The place of performance for all obligations arising out of this Contract is the Contracting Authority's office in 85748 Garching near Munich.
- 16.5 The exclusive place of jurisdiction for all disputes arising out of and in connection with this Contract is Munich.

- 16.6 Should any provision of this Contract be or become wholly or partially invalid, this shall not affect the validity of the remaining terms. The parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in the Contract.

## Signatures

### Contracting Authority

Date: ..... Date: .....

.....

Name: [●]

Name: [●]

Position: [●]

Position: [●]

### Contractor

Date: ..... Date: .....

.....

Name: [●]

Name: [●]

Position: [●]

Position: [●]