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| Contract | | October 2014 |
| Concerning the purchase of a 4K CMOS Camera for Tecnai Spirit electron microscope' | | |
| between  Aarhus University  Nordre Ringgade 1  DK-8000 Aarhus C  Denmark    (the "Purchaser”)  and  XXX  (the "Supplier”)  (Individually referred to as a "Party” and collectively as the "Parties”). | | |

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1. Definitions

In this Contract, the following terms have the meanings assigned to them herein:

* 1. *Contract:* This written agreement between the Parties, including amendments, appendices and addenda to this agreement agreed upon. In the event of any discrepancies between the written agreement and any appendix or any other document other than addenda and amendments subsequently agreed upon, cf. below in Clause 2, the written agreement will, however, prevail.
  2. *Contract Period:* The period of time in which the Contract concluded between the Purchaser and the Supplier is binding on the Parties.

* 1. *Products:* The products, documentation and installation to be delivered under this Contract as specified in Appendix 1 and 2.
  2. *Product Price:* The total sum to be paid by the Purchaser for the Products under the Contract, including installation of the Products at the place of the Purchaser.
  3. *Working Day:* Monday to Friday, except for national holidays, 24 December, 31 December and 5 June.

1. General conditions
   1. The conditions stated in the present Contract govern the Contract between the Supplier and the Purchaser.
   2. In case of any discrepancy between the Contract and appendices or any other documents, the terms of this Contract, however, takes precedence.
   3. The Purchaser is not bound by any amendment or modification in the absence of a written agreement signed by one of the representatives of the Purchaser. The Supplier’s general terms of sale quoted as part of the Supplier’s sales documents should be regarded as non-existent for the purposes of this Contract.
2. Appendices

Any Appendices to this Contract form an integral part of the Contract.

Appendix 1 - Bid schedule

Appendix 2 - Specification of requirements

1. Supply and quality of the Products
   1. The Supplier must deliver the Products and perform installation of the Products as specified in Appendix 2 and assumes any other obligations as specified in this Contract.
   2. The Products must be of a quality as specified in Appendix 2. If the Products do not fulfil the requirements of Appendix 2 the warranty given by the Supplier as provided for in Clause 20 below, the Products will be considered defective.
   3. Furthermore, the Products will be deemed to be defective if the Products do not possess such properties or do not work in such a manner as the Purchaser may reasonably expect on the basis of the contents of the present Contract.
2. Documentation
   1. The Supplier undertakes not later than by delivery of the Products, free of charge to deliver all relevant documentation, including but not limited to instructions for use, brochures, data sheets, spare parts lists, maintenance and security instructions in the English language if the Purchaser so requests. Documentation in other languages, if any, is subject to separate agreement.
3. Prices
   1. The Product Price which the Purchaser must pay to the Supplier for the Products, including delivery and installation of the Products is ([*agreed amount*]) in the currency offered by the Tenderer (DKK, EUR or USD).
   2. The Product Price is fixed during the Contract Period.
   3. The Product Price is inclusive of customs, duties and all expenses on the part of the Supplier, but exclusive of VAT – if any.
4. Terms of payment
   1. The Purchaser must pay the Supplier in accordance with this Clause 7 provided that, at the time of invoicing, the Supplier has performed all activities which the Supplier is required to have performed by the time in question.
   2. A payment conditional upon the fulfilment of an obligation by the Supplier will not be due until any such obligation has been fulfilled according to the stipulation set out in the Contract.
   3. The terms of payment are:

* 40% of total Product Price (DKK, EUR or USD xxxx) upon order of the Products
* 60% of total Product Price (DKK, EUR or USD xxxx) upon delivery (see Clause 9.1).
  1. Invoices must be issued by the Supplier in DKK, USD or EUR. The following information must be stated on the invoice.

Requisition number: XXXXXX

Note: 4K CMOS Camera for Tecnai Spirit electron microscope'

Aarhus University CVR-nr: 31119103

* 1. Terms of payment are 30 (thirty) days.
  2. The Purchaser must have received the invoice no later than on the second Working Day of the relevant calendar month.
  3. The Supplier’s right to payment must not be subject to pledging or assignment without the Purchaser's written acceptance.

1. Terms of delivery

* 1. Delivery address
     1. The Supplier must deliver and install the Products

to:

Aarhus University,

XXXXX

DK-8000 Aarhus C

Denmark

Additional supplies and services are delivered and performed at the same address.

* 1. Packing and protection
     1. The Supplier is responsible for all Products being packed suitably and appropriately for domestic and/or overseas transport with due consideration to the properties, nature and composition of the goods supplied. All packing costs are included in the prices.
  2. Inspection
     1. Quantities delivered as well as the quality of the Products must be inspected by the Purchaser. The Purchaser must without undue delay inform the Supplier of any deviation from the specifications stated in the order or elsewhere.

1. Time of delivery
   1. The Supplier must deliver the Products under the conditions as set out in Appendix 2 section 2 and no later than described in Appendix 2 section 2.
   2. As stated in Appendix 2 the Supplier must in order to fulfil his obligation concerning delivery perform an acceptance test of the Products as set out in Appendix 2, section 2.1.
   3. The delivery test will take place at the place of the Purchaser on the date and time agreed between the Parties. The Purchaser is entitled to attend the delivery test.
   4. The Supplier must conclude a record of the acceptance test which must be approved by the Purchaser.  
      If the Purchaser cannot approve the delivery test, the Supplier must at the request of the Purchaser perform a new delivery test until the Purchaser accepts and approves that the Product is in accordance with the Purchaser's product specifications, cf. also Clause 4 of this Contract.
2. Passing of risk
   1. The Supplier must bear the risk of the Products until successful delivery has taken place on the agreed time and at the agreed delivery address.
   2. All rights to the Products, including but not limited to property rights, intellectual property rights, and all other rights pass to the Purchaser on date of delivery, unless payment has taken place prior to delivery in which case the said rights shall pass to the Purchaser at the time of such payment.
3. Delayed delivery
   1. If the Supplier fails to observe an agreed date of delivery or anticipates that an agreed date of delivery cannot be observed, the Supplier must immediately inform the Purchaser of the earliest possible, alternative date of deli­very.
   2. If the Supplier fails to deliver on the date of delivery initially agreed upon, the Purchaser is entitled to liquidated damages in the amount of 0.5% of the Product Price per commenced week of delay, however, limited to a maximum of 10% of the Product Price. Payment of the said liquidated damages does not prevent the Purchaser from claiming damages in accordance with the general rules of Danish law for any loss suffered as a consequence of any such delay of delivery.
   3. If delivery is delayed for more than 2 months, the Purchaser has the right to terminate the Contract provided that the Purchaser submits an advance written notice of its intent to terminate the Contract at least ten (10) Working Days before such termination will take effect. During the said ten (10) Working Days’ grace period, the Supplier will have the opportunity to effect delivery of the Products and thereby avoid the Purchaser's termination of the Contract. Such termination entails full refund of any payment to the Purchaser.
4. Rejection of deliveries
   1. The return of wrong and/or defective deliveries is at the Supplier’s expense.
5. Spare parts
   1. The Supplier undertakes and warrants that it will be able to repair, renovate and deliver standard spare parts for the Products for a period of five (5) years after the Purchaser has officially been given notice of the Products being taken out of production provided that the spare parts in question are still available with the subcontractor(s), if any.
   2. As to the Supplier's own production, the Supplier undertakes and warrants that it will be able to deliver spare parts for a minimum of 5 years after the Products have been taken out of production.
   3. If the Supplier fails to deliver spare parts as provided for in Clauses 13.1 and 13.2 above, the Supplier must indemnify the Purchaser for any and all losses and damages suffered as a consequence of any such non-delivery of spare parts. Alternatively, the Supplier is entitled to procure replacement delivery provided that such replacements are of the same quality and function as the non-delivered spare parts.
6. Damages and product liability
   1. The Parties are liable to pay damages for any loss suffered as a consequence of breach of this Contract in accordance with the general rules of Danish law.
   2. The Purchaser is entitled to choose whether claims for damages will be made against the Supplier or the subcontractor, if any.
   3. The Supplier undertakes full product liability in accordance with the general rules of Danish law.
   4. To ensure observance of product liability, the Supplier undertakes to take out the necessary and adequate insurance and provide the Purchaser with the necessary documentation thereof.
7. Force majeure
   1. Under the present Contract, it is only possible for the Supplier to invoke force majeure covered by the ordinary definition of force majeure according to Danish law and as provided for in the Danish Sales of Goods Act.
   2. In any event, the following circumstances constitute grounds for relief if they impede the performance of the Contract: war, import restrictions etc.
   3. The circumstances described above constitute grounds for relief only if they affect the performance of the Contract and could not have been foreseen at the time of conclusion of the Contract.
   4. The Party wishing to claim relief under this Clause must without undue delay give the other Party written notice of the circumstance constituting force majeure and of the cessation of such circumstance.
   5. In case of relief, each Party must as soon as possible return what such Party has received from the other Party.
   6. Circumstances experienced by a subcontractor will only be regarded as force majeure in case the subcontractor is faced with the circumstances described above as constituting force majeure provided that such circumstances could not have been foreseen by the subcontractor and which circumstances the Supplier could not have avoided or overcome.
8. Third party claims
   1. The Supplier warrants that the Purchaser's use of the Products does not infringe any third party rights.
   2. In the event that any third party raises objections and/or claims that the Products infringe any third party rights, the Party receiving the claim must immediately notify the other Party thereof.
   3. The Supplier is obliged to indemnify the Purchaser for any and all claims raised by any third party for the alleged violation of patents, licences, trademarks and/or designs, copyright, know-how, *etc*., in respect of the Products and for any and all costs and expenses incurred by the Purchaser in relation therewith.
9. Subcontractors
   1. In the event that the Supplier makes use of subcontractors, the Supplier is liable to the Purchaser for all acts and omissions by such subcontractors and otherwise in exactly the same manner and under the same circumstances as the Supplier is liable for its own acts and omissions towards the Purchaser.
10. Warranty
    1. The Supplier warrants that the Products delivered are of a quality as set out in this Contract in compliance with applicable mandatory rules.
    2. The Supplier undertakes a full and complete warranty as specified in Appendix 2 section 2 taking effect from the date of successful delivery. The same applies to spare parts, documentation and any other supply under this Contract.
    3. Payment of the warranty is part of the Product Price and the Supplier is not entitled to any additional payment for issuing the warranty.
    4. If the Supplier proves that a defect is caused by the Purchaser, the Supplier is entitled to payment of all costs incurred in connection with remedying any such defect.
    5. The Purchaser must give the Supplier written notice of any defect in the Products without undue delay after the defect has been observed. The said notice must contain a description of the defect.
    6. After receiving such written notice, the Supplier must within three (3) Working Days confirm receipt of the written notice and at his own costs remedy the defect without undue delay.
    7. The Supplier is liable for the Products of its subcontractors, if any, in exactly the same manners as for its own Products.
11. Bank guarantee
    1. The Supplier must issue a bank guarantee of 40% of the total Product Price (DKK, EUR or USD xxxx), as security for any claim which the Purchaser may have against the Supplier under the Contract.
    2. The bank guarantee must be issued as an irrevocable, irredeemable demand guarantee valid for a period of six (6) months after approved installation and delivery test has been taken place.
    3. If the Purchaser wishes to claim payment under the bank guarantee, the Purchaser must notify the Supplier and the guarantor of the claim including a specification of the type and scope of the alleged breach and the exact size of the amount claimed under the bank guarantee. The guarantor must without demur provide for payment within ten (10) Working Days of receipt of the notification from the Purchaser.
12. Assignment
    1. The Supplier is not entitled to assign its rights or obligations under this Contract to any third party without the prior written consent of the Purchaser. The Purchaser is bound by the rules on public procurement, and permission to any such assignment may therefore only be granted in exceptional circumstances.
    2. The Purchaser is entitled to assign its rights under this Contract to any other legal entity without the prior consent of the Supplier.
13. Professional secrecy
    1. The Supplier, its directors, employees, advisers or representatives, *etc*., undertake to unconditionally maintain and keep confidential any information concerning the Purchaser’s relations of which the Supplier may obtain knowledge in connection with the deliveries under the present Contract, safe where mandatory legislation or binding order of a competent court or governmental authority, otherwise so dictates. The Supplier is not allowed to inform or disclose to any third party of any drawings and/or other documentation or material received from the Purchaser.
    2. The name of the Purchaser must not be subject to any kind of advertising, used or referred to in any other way without the prior written consent of the Purchaser.

1. Term and termination
   1. The Contract comes into force on the date of signing and expires when the contract conditions are fulfilled.
   2. This Contract is entered into in accordance with applicable law, including public procurement legislation. In the event that an administrative authority, including but not limited to the Complaints Board for Public Procurement (Klagenævnet for Udbud), the Competition Authority (Konkurrencestyrelsen), the European Commission or a Danish or European court of law, decides or rules that the public procurement rules or other legislation have been infringed in relation to the purchase under this Contract, the Purchaser is entitled to terminate the Contract at one (1) month's prior written notice, and the Supplier is not entitled to any compensation, damages or indemnification. The Purchaser’s right to termination under this Clause also applies in the event that an appeal is lodged against the decision, ruling or judgment.
   3. In the event of termination under Clause 21.2, the Supplier is obliged to take back the Products and refund the Purchaser the full amount of the Product Price. In such case, the Purchaser must pay to the Supplier the direct and documentable costs incurred by the Supplier prior to the point of termination as well as costs which the Supplier cannot with reasonable endeavours avoid.
   4. Furthermore, the Parties have the right to terminate this Contract in the event of the other Party being in material breach of this Contract.
2. Choice of law and venue
   1. Any dispute arising out of or in connection with this Contract, including any disputes regarding the existence, validity or termination of the Contract, is governed by the laws of Denmark to the exclusion of any choice of law rules if such rules would lead to the application of laws other than the laws of Denmark and must be settled by arbitration arranged by Danish Arbitration in accordance with the rules of arbitration procedure adopted by Danish Arbitration and in force at the time when such proceedings are commenced.
   2. The arbitration tribunal must consist of three members if the amount in dispute is above DKK one (1) million. If the amount is below DKK one (1) million, the court of arbitration must consist of one member elected by the Parties in accordance with the procedures of Danish Arbitration.
   3. The Parties accept and agree that, in addition to the aforesaid, the Parties are entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Contract.
3. Copies of the Contract
   1. This Contract is executed in two (2) identical copies of which each Party receives one copy**.**
4. Notices
   1. Notices under the Contract must be sent by email or mail and delivered to:
   2. If to the Purchaser:

XXX

Email:

* 1. If to the Supplier:

XXX

1. Signing of the Contract

This Contract has been drawn up in two identical copies, of which each Party will retain one copy.

|  |  |  |
| --- | --- | --- |
| Place: Date: |  | Date: |
| For the Supplier: |  | For Aarhus University: |
|  |  |  |
| [Name]  [Title] |  | [Name]  [Title] |