**Annex 1**

Number of Buyer´s contract: \*\*\*

Number of Seller´s contract: \*\*\*

**BUSINESS TERMS AND CONDITIONS**

**Purchase Contract**

Executed pursuant to § 2079 and § 2085 et seq. of Act no. 89/2012 Coll., the Civil Code, as amended

**“Delivery of Complete Laser Technology Set I.“**

By and between:

**MGM, spol. s r.o.**

With registered seat at: Čekanice 342, 390 02 Tábor

Business ID: 13516949

V.A.T. ID: CZ135169449

Bankers: UniCredit Bank Czech Republic and Slovakia, a.s

Account number: 2111487973/2700

Company entered in the Commercial Register maintained by the Regional Court of České Budějovice, Section C, File no 58,

Acting through: Karel Mikulanda, Executive Director

(Hereinafter the “**Buyer**“) on the one side

and

**\*\*\***

With registered seat at: \*\*\*

Business ID: \*\*\*

V.A.T. ID: \*\*\*

Bankers: \*\*\*

Account number: \*\*\*

Company entered in the Commercial Register maintained by the \*\*\* Court of \*\*\*, Section \*\*\*, File no \*\*\*

Acting through: \*\*\*, \*\*\*

(Hereinafter the “**Seller**“) on the other side

**I.**

**SUBJECT OF CONTRACT AND PURCHASE**

* 1. The Seller hereby agrees to supply a complete laser technology set comprising a disc diode laser source, a cutting head, an optical fiber and a cooler, including accessories (hereinafter the “**Subject of Purchase**“) and to transfer ownership right to the Subject of Purchase onto the Buyer and the Buyer hereby agrees to take the Subject of Purchase over from the Seller and pay the agreed purchase price to the Seller.
  2. The Subject of Purchase is described in detail in a detailed specification of the required parameters attached as Annex 1 hereto and in the Supplier´s Bid submitted in the tender titled “**Supply of a Complete Laser Technology Set I“.**
  3. The subject of the contractual supply shall also include:

1. Provision of accompanying technical documentation, an electromagnetic compatibility statement, a warranty certificate, a CE declaration of conformity for every component of the supply.
2. The technical documentation for all components of the set shall be in the Czech, English or German language,
3. Simplified instructions for operation of the individual components in the Czech language,
4. Drawing documentation (dimensions, materials for electrical installations and commissioning),
   1. The Seller hereby agrees to provide to the buyer technical consultations in the course of commissioning of the Subject of Purchase within 120 calendar days from the Subject of Purchase takeover by the Buyer.

**II.**

**WARRANTIES AND REPRESENTATIONS OF THE SELLER**

**2.1** The Seller represents and warrants to the Buyer that mainly:

1. The Seller is not limited in their disposition rights to the Subject of Purchase and is thus eligible to execute this contract without further conditions and liabilities and able to duly and timely fulfill all commitments following to them from this contracts, and especially that their property is not subject to any distraint or bankruptcy proceeding;
2. The Subject of Purchase is without any legal defects, such as without limitation any pre-emption rights, pledges, lease or other rights of use and other rights or restrictions or burdens in favor of third parties, the Subject of Purchase is not subject to any litigation, administrative or other proceeding and the Seller has not caused and shall not cause, until transfer of ownership right onto the Buyer, any legal negotiation able to burden or restrict the Subject of Purchase in any of the above mentioned manners;
3. The Seller is not aware of any reason for questioning the Seller´s ownership right to the Subject of Purchase;
4. The Subject of Purchase did not originate from any criminal activity, does not result from criminal activity or any other conduct in contradiction to generally binding legislation.

If the Seller violates their liabilities or fails to keep their warranties as defined by Article II Paragraph 2.1 above herein and fails to remedy the violation in thirty (30) days from receipt of the Buyer´s request to that effect then the Seller shall be liable to pay to the Buyer a contractual penalty in the amount of 10 % of the purchase price, exclusive of V.A.T., pursuant to Article IV, Paragraph 4.1 hereof, and the Buyer shall further be entitled to either (i) withdraw from this contract, or (ii) remedy the defects and/or debts by themselves at the cost of the Seller. By execution hereof the Seller confirms that the amount of the above mentioned contractual penalty is adequate to the violation of a liability pursuant hereto and is not contrary to good manners. The contractual penalty charge is without prejudice to the right of the Buyer for compensation of the full scope of the suffered damage.

**2.2** The Seller hereby confirms to have fully acquaint themselves with the scope and the nature of the Subject of Purchase, and with all technical, qualitative and other conditions required for the order implementation, and that they dispose with sufficient resources and expertise needed for supply of the Subject of Purchase.

**2.3** The Seller hereby agrees that pursuant to Act no 320/2001 Coll., on Financial Controls in Public Administration, amending certain other acts (Financial Control Act), as amended, the Seller as the selected supplier is liable to provide assistance for the purpose of the financial control execution.

The Seller therefore hereby agrees to:

1. Provide the necessary information concerning supply activities to the Program, or project, auditing and controlling authorities;
2. Keep project-related documentation and accounting and tax records for the period of 10 years from the Program, or project, completion.

**2.4** The Seller hereby agrees to supply the Subject of Purchase in compliance with the applicable legislation, herewith and with their bid of \*\*\*.

**III.**

**TIME AND PLACE OF SUPPLY**

**3.1** The Seller shall supply the Subject of Purchase within *\*\*\** calendar days from execution hereof. Execution of the takeover protocol pursuant to Article VI, Paragraph 6.2 hereof shall be deemed the date of supply.

*Note: The fields marked with three asterisks shall be filled out by the bidder with the number of calendar days needed for supply of the Subject of Purchase, which shall not exceed 120 calendar days.*

**3.2** **The place of supply** shall be the registered seat of the Buyer on the following address: Čekanice 342, 390 02 Tábor

**IV.**

**PURCHASE PRICE**

**4.1** The purchase price for the Subject of Purchase has been specified by agreement between the Contracting Parties on the basis of the Seller´s bid and amounts to:

Purchase price, exclusive of V.A.T: \*\*\*.00 CZK/EUR

V.A.T.: \*\*\*.00 CZK/EUR

**Purchase price V.A.T. inclusive:**  **\*\*\*.00 CZK/EUR**

**4.2** The purchase price is agreed as fixed, final and maximum permissible throughout the period of force and effect hereof and includes all supplies needed for achievement of the purpose hereof, without the necessity to explicitly mention all these auxiliary supplies herein. The purchase price has been agreed inclusive of all costs, risks and mark-up of the Seller needed for due and complete supply of the Subject of Purchase, with consideration of potential price effects in the period of the contractual supply implementation. The purchase price may only be exceeded for legislative reasons, such as increase of V.A.T. rates. In such case the purchase price of the Subject of Purchase shall be adapted to the V.A.T. Rates applicable as at the date of taxable supply.

**4.3** The Seller shall be responsible for specification of value added tax (V.A.T.) rate in compliance with the currently effective applicable tax legislation.

**V.**

**PAYMENT TERMS**

* 1. The Buyer shall pay the purchase price in the amount of \*\*\*.- CZK/EUR V.A.T. inclusive within the following deadlines:

1. 1. Advance payment in the amount of 50 % of the purchase price on execution hereof. After execution hereof the seller shall issue and deliver to the buyer an advance invoice amounting to 50 % of the purchase price with a maturity of 15 days. This amount shall be increased by the applicable V.A.T.
2. 2. Final payment in the amount of the other 50 % of the purchase price shall be paid after delivery of the Subject of Purchase to the Buyer, i.e. After fulfillment of all conditions defined in Article 3.1 hereof. The invoice shall be issued for the full amount of 100 % of the purchase price with deduction of the paid advance with a maturity of 30 days. This amount shall be increased by the applicable V.A.T.

*Note: The field marked with three asterisks shall be filled out by the bidder with the amount in CZK or EUR. V.A.T. data shall be selected pursuant to the currently valid tax legislation.*

**5.2** The invoice shall include all appurtenances of a tax document pursuant to the currently valid and effective tax legislation and pursuant hereto, including but not limited to:

1. Signature and seal of the authorized representative of the Seller,
2. The agreed enclosures,
3. The information that the project is co-financed from the Operation Program Business and Innovation for Competitiveness and its purpose is “*Streamlining of the Technology of High-Speed 3D Laser cutting Using Fiber Laser Sources, Registration No. CZ.01.1.02/0.0/0.0/19\_262/0019187“*

**5.3** The Buyer shall be liable to pay the amounts charged pursuant hereto within their maturity dates. The day of payment shall be the date of debit of the invoiced amount from the bank account of the Buyer. In the case of the Buyer´s delay n payment of any amount charged pursuant hereto the Buyer hereby agrees to pay to the Seller the contractual delay interest in the amount of 0.05 % of the amount due for each day of the delay.

**5.4** The Buyer is entitled to refuse any payment pursuant hereto if the Subject of Purchase or any part of it displays defects preventing proper use of the Subject of Purchase, excluding minor defects and drawbacks not affecting functionality of the Subject of Purchase, or if the invoice lacks legislatively or contractually required appurtenances. In the case of a justified complaint the Seller shall be liable to issue a new, correct invoice. Justified return of an invoice shall suspend the invoice maturity deadline. A new maturity period shall start from the date of receipt of a new, correct invoice by the Buyer.

**5.5** The Buyer shall pay all charged amounts solely to the bank account of the Seller published by the competent tax authority in a manner permitting remote access and maintained by an inland payment service provider. The bank account number of the Seller specified in the invoices shall meet the above criteria and shall be registered in the Czech Republic.

**5.6** If the Seller becomes unreliable taxpayer in the sense of Act no 235/2004 Coll., on Value Added Tax, as amended, the Seller hereby agrees that the Buyer shall pay the corresponding amount of V.A.T. directly to the bank account of the tax authority using the procedure pursuant to the relevant provisions of § 109a thereof (Special Method of Tax Payment Assurance) and only the tax base shall be paid to the bank account of the Seller.

**VI.**

**ACCEPTANCE OF SUBJECT OF PURCHASE**

**6.1** Due delivery of the Subject of Purchase shall mean acceptance of the Subject of Purchase by the Buyer in the place of taxable supply, including fulfillment of all commitments of the Seller defined by Article I Paragraphs 1.1 and 1.3 above herein.

**6.2** A takeover protocol on the acceptance of the Subject of Purchase pursuant to Article 1.1 above herein, “Subject of Purchase Supply Protocol”, shall be executed by both contracting parties. The Subject of Purchase acceptance proceeding shall be duly completed by execution of the takeover protocol by both contracting parties.

**VII.**

**WARRANTY TERMS**

**7.1** The Seller shall provide quality guarantee for the Subject of Purchase in the length of **\*\*\* months**, starting from the day of commissioning of the Subject of Purchase.

*Note: The field marked with three asterisks shall be filled out by the bidder with the number of months of the provided quality guarantee. The Buyer requires minimum warranty period in the length of 24 months from the date of the subject of Purchase commissioning.*

**7.2** The Seller shall be responsible towards the buyer for any and all defects of the Subject of Purchase in compliance with the warranty and service terms applicable to the Subject of Purchase.

**7.3** The Seller shall not be responsible for defects caused by incorrect operation of the Subject of Purchase, by usual wear and tear, unprofessional use and handling or use for purposes other than the intended purpose of the Subject of purchase, and for defects caused by a natural disaster or a third party.

**7.4.** The Seller shall be liable to commence warranty-covered defect remedy within 48 hours /2 work days/ from receipt of a written notice of the defect from the Buyer (e-mail: xxx) or following defect notification by phone (phone number: xxxx) with subsequent written confirmation. The Buyer shall be liable to allow the defect remedy by the Seller.

* 1. If a defect cannot be remedied immediately for the reason of unavailability of parts needed for the repair, then a protocol shall be compiled with specification of the date of the defect remedy. If the Seller fails to remedy the defect within the specified deadline the Buyer shall be entitled to remedy the defect by themselves or via a third party at the cost of the Seller.

**VIII.**

**TRANSFER OF THE RISK OF DAMAGE, OWNERSHIP RIGHT, INSURANCE**

**8.1** The risk of damage to the Subject of Purchase shall be transferred from the Seller onto the Buyer at the moment of the Subject of Purchase acceptance by the Buyer.

**8.2** Ownership right to the Subject of Purchase shall be acquired by the Buyer after payment of the full purchase price of the Subject of Purchase.

**8.3** The Seller shall have the Subject of Purchase insured until its delivery to the Buyer.

**IX.**

**CONTRACTUAL PENALTIES**

**9.1** In the case of a delay of the Seller with delivery of the Subject of Purchase to the Buyer pursuant to Article III, Paragraph 3.1 above herein the Seller shall be liable to pay to the Buyer a contractual penalty in the amount of 0.05 % of the purchase price of the Subject of Purchase, exclusive of V.A.T., pursuant to Article IV, Paragraph 4.1 above herein, for each commenced day of the delay.

**9.2** In the case of a delay of the Seller with a service intervention within the declared number of hours pursuant to Article VII, Paragraph 7.4 hereof the Seller shall be liable to pay to the Buyer a contractual penalty in the amount of CZK 500 for each hour of the delay. The Buyer shall not apply the contractual penalty n the case of the Seller´s delay with a service intervention commencement for a reason not on the side of the Seller (such as without limitation for the reason of a traffic accident, non-negotiable road, unfavorable climatic conditions etc.).

**9.3** In the case of a delay of the Seller with a defect remedy in the Subject of Purchase pursuant to Article VII, Paragraph 7.5 hereof the Seller shall be liable to pay to the Buyer a contractual penalty in the amount of CZK 10,000 for each commenced day of the delay and for each defect.

* 1. By execution hereof the Seller confirms that the amounts of the contractual penalties as specified in Article IX, Paragraphs 9.1, 9.2 and 9.3 above herein are adequate to the respective liability violation pursuant to the relevant provisions hereof and are not contrary to good manners. The contractual penalty charge is without prejudice to the right of the Buyer for compensation of the full scope of the suffered damage.
  2. If the Buyer is in delay with payment of a legitimately and correctly issued invoice - tax document - the Seller shall be entitled to charge a delay interest in the amount of 0.05 % of the amount due for each calendar day of the delay.

**X.**

**CONTRACT WITHDRAWAL**

* 1. The Buyer and the Seller are both entitled to withdraw from the contract in the case of substantial breach hereof by the other party. Either party is entitled to withdraw from the contract in the case of a commenced bankruptcy proceeding addressing existing or pending bankruptcy of the other party pursuant to Act no 182/2006 Coll., Act on Bankruptcy, as amended.
  2. A substantial breach hereof for the purpose of this article constituting the right of the Buyer to withdraw from the contract means:

1. Breach of the supply terms pursuant to Article 3.1 above herein,
   1. A substantial breach hereof for the purpose of this article constituting the right of the Seller to withdraw from the contract means:
2. Non-payment of a duly issued invoice by the Buyer if the delay is longer than 30 days.

**XI.**

**LICENSING AGREEMENT**

**11.1** For the purpose of operation, maintenance and use of the Subject of Purchase the Seller hereby agrees to grant to the Buyer a non-exclusive, transferable license territorially limited to the territory of the Czech Republic, within copyright or patent rights or other industrial property rights owned by the Seller or a third party with the Seller´s right to grant sub-licenses, including a non-exclusive, transferable, time unlimited right territorially limited to the territory of the Czech Republic to use the know-how and other technical information provided to the Buyer in the context of implementation hereof.

**11.2** The licensing fee for the granted license and rights pursuant to the previous paragraph 1 is included in the contractual price specified in Article IV above herein.

**11.3** The Seller hereby agrees to ensure protection of the Buyer against any and all claims and requirements resulting from violation of rights to patents, utility designs, trademarks or protected names or other rights of third parties concerning works, services, things or rights of use used by the Buyer in connection with the Subject of Purchase or any part of it and the Seller shall compensate the Buyer for all eligible costs incurred and damage suffered by the Buyer in connection with any and all claims and requirements resulting from violation of rights to patents, utility designs, trademarks or protected names or other rights of third parties concerning works, services, things or rights of use used by the Buyer in connection with the Subject of Purchase or any part of it, including all related claims, requirements, damage, costs, fees and expenses.

**XII.**

**FINAL PROVISIONS**

**12.1** All written documents exchanged between the parties shall be delivered to the addresses specified in the header hereof, or to another address communicated to the other party in writing.

**12.2** This contract may only be amended or canceled by joint expression of the will of both parties in the form of written and numbered addenda agreed between and signed by both contracting parties. For this purpose the contracting parties explicitly exclude application of § 562 (1) of Act no 89/2012 Coll., the Civil Code, as amended.

**12.3** If any one or more provisions hereof appear to be invalid, ineffective or unenforceable the validity, effectiveness and enforceability of the contract as a whole shall remain unaffected, and only the part of the contract to which the invalidity or ineffectiveness directly applies shall be deemed invalid, ineffective or unenforceable. The contracting parties hereby agree to replace or amend the invalid provision(s) in a way preserving the original meaning and purpose hereof and respecting the will of the contracting parties.

**12.4** The Seller hereby takes into consideration that the Buyer is interested in implementation hereof in compliance with the principles of socially responsible public procurement pursuant to the Public Procurement Act.

**12.5** The Seller hereby agrees to comply with all applicable legislation throughout the contract effectiveness period, including but not limited to labor law (remuneration for work, working hours, break times between shifts, paid overtime etc.), employment and OHS legislation, i.e. especially Act no 435/2004 Coll., on Employment, as amended, and Act no 262/2006 Coll., the Labor Code, as amended, towards all persons involved in implementation of the supply, regardless whether the supply shall be implemented pursuant hereto by the Seller or their subcontractor, including fulfillment of contractual liabilities of the Seller towards their subcontractors.

**12.6** The Seller further agrees to assure throughout the effectiveness period hereof their and their subcontractors´ compliance with Act no 198/2009 Coll., on equal treatment and legal means of protection against discrimination, amending certain other acts, as amended (the Anti-Discrimination Act).

**12.7** The Buyer shall be entitled to perform interim checks of the Seller´s compliance with the liabilities defined herein, including directly with the employees involved in implementation of the subject hereof, and the Seller shall be liable to permit these checks and provide the Buyer with the necessary assistance in performance of the checks.

**12.8** The Seller shall be liable to inform the Buyer about any potential commencement of a proceeding for violation of the legislation pursuant to Paragraphs 12.5 and 12.6 above in connection with implementation of the supply pursuant hereto against the Seller or any of their subcontractors involved in implementation hereof from the side of a public authority (including but not limited to the State Labor Inspection Authority, Regional Inspectorate, Regional Hygienic Station etc.) within 10 days from receipt of the notification of the proceeding commencement. The notification of the affected contracting party shall include information about the date when the notification of the proceeding commencement was received.

**12.9** The Seller shall be liable to submit to the Buyer a copy of the decision in legal force by which the proceeding pursuant to the previous paragraph has been closed, within 7 days from the legal force of the decision. Together with the copy of the decision in legal force the Seller shall provide the client with information about the date of legal force of the decision.

**12.10** This contract comes to force and effect on the date of its execution by both contracting parties.

**12.11** All negotiations with the Buyer shall be conducted in the Czech language. All documents related to the Subject of Purchase shall be in the Czech language.

**12.12** The Seller shall not be entitled to transfer any rights and liabilities following from this contract onto a third party without written consent of the Buyer.

**12.13** The relationships not addressed hereby shall be governed by the relevant provisions of Act no 89/2012 Coll., the Civil Code, as amended.

**12.14** The persons executing this contract confirm by their signatures validity of their authorizations to act on behalf of the respective contracting party.

**12.15** The contracting parties have agreed to settle potential disputes preferably by amicable agreement. If an amicable agreement cannot be reached then all disputes following from this contract or related to it shall be finally settled by the competent local court of the Czech Republic.

**12.16** The Seller hereby takes into consideration that the buyer as the final beneficiary of the subsidy for financing of the Subject of Purchase shall be liable to provide the required information and documentation, to permit access of authorized representatives of the subsidy provider, the Ministry of Finance of the Czech Republic, the European Commission, the European Court of Accountants, the Supreme Control Authority of the Czech Republic and other affected authorities, to the buildings and on the plots related to the project and its implementation for the purpose of verification of compliance with the contract terms for the period of ten years from the project financing termination, and at the same time for the period of at least three years from the program termination pursuant to Art. 90 et seq. of Council Regulation (EC) 1083/2006, laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund. The Seller hereby agrees to provide the Buyer with the necessary assistance in fulfillment of these liabilities of the Buyer as the final beneficiary of the EU subsidy.

**12.17** The interpretation hereof shall be governed in the binding manner by the tender conditions on the basis of which the supply pursuant hereto shall be implemented. In the case of any discrepancy between this contract and the tender conditions the tender conditions shall govern; if the tender conditions or this contract define a different scope of requirements applicable to the Seller then the Seller´s supply shall be governed by the sum of these liabilities (requirements), i.e. by both the requirements hereof and the requirements of the tender.

**12.18** The contracting parties hereby declare to have carefully read this contract, to agree with its content, and further that the contract is based on their genuine free will free of errors.

**12.19** The contracting parties agree with publication of the full wording hereof on the profile of the contracting authority of the Buyer. The contracting parties declare for this purpose that nothing herein is considered by them their business secret. The publication shall be arranged for by the Buyer in compliance with the Public Procurement Act.

**12.20** This contract is made and executed in the electronic format.

**12.21** The following enclosures form an integral part hereof:

* Technical Specification (not to be added by the bidder, shall be added as the filled out Annex 2 to the tender documentation) as Annex 1

**BUYER:** **SELLER:**

In Tábor, on ………………… In \*\*\*, on \*\*\*

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MGM, spol. s r.o. \*\*\*

Karel Mikulanda, Executive Director \*\*\*, \*\*\*