

Supply agreement form

concluded on2020 in Ożarów Mazowiecki, Poland, by and between:

- (1) VIGO System S.A. with its registered seat in Ożarów Mazowiecki, Poland, a company incorporated under the laws of Poland, 129/133 Poznańska Street, 05-850 Ożarów Mazowiecki, Poland, entered into the Register of Entrepreneurs of the National Court Register maintained by the District Court for the Capital City of Warsaw in Warsaw, XIV Commercial Division of the National Court Register, under KRS no. 0000113394, having NIP no. 5270207340, REGON no. 010265179, with share capital of PLN 729,000.00 (fully paid) (hereinafter referred to as: **“VIGO or Contractor Party/ Purchaser”**), represented by:

- Łukasz Piekarski – Member of the Management Board;

and

- (2) _____

_____ (hereinafter referred to as: **„Supplier or Contractor”**), represented by:

- _____.

VIGO and Supplier shall be individually referred to as **“Party”** and jointly as **“Parties”**.

Considering that:

- (A) As a part of its business activity and in order to further develop, VIGO implements an investment project involving the construction and equipping of a new production plant for infrared detectors of higher quality parameters (increasing technological purity, increasing production efficiency, standardization of production, achieving mass production scale) with a target capacity of approx. 100,000 detectors per year;
- (B) The investment is realized within the framework of the project "Implementation of detection technology developed as part of the "Exposure" project ", (call for applications No. POIR.03.02.02-IP.04-00-N51/18, co-financing agreement of 30 July 2019 no POIR.03.02.02-00-1638/18-00) within the framework of Sub-measure 3.2.2 Loan for Technological Innovations of the Intelligent Development Operational Program 2014 - 2020 co-financed by the European Regional Development Fund;

- (C) The Contractor has won the bid tender procedure conducted by VIGO on a competitive basis, i.e. submitted the best offer in response to the request for proposals ZOZ-10_20 of 8 October 2020 (hereinafter referred to as: "**Offer**" and "**Request for Proposals**"), and the offer was chosen by VIGO.

Parties concluded the following agreement:

1 Subject of the agreement

- 1.1. Under this agreement Supplier shall, manufacture within the scope of its business activity, deliver Products to VIGO's seat, i.e. 129/133 Poznańska Street, 05-850 Ożarów Mazowiecki, Poland, , within a period referred to in point 2.1 , dedicated ICP RIE system for etching of III-V semiconductors to the Purchaser's headquarters (hereinafter referred to as "**Product**"), as specified in specification included in Request for Proposals and its attachments (the Request for Proposals and its attachments as well as the Offer and its attachments constitute attachment no. 1 to this agreement), and VIGO shall collect Products and pay remuneration to Supplier. As part of the supplying of products, the Supplier will install, unpack, work and launch at the VIGO seat the Products and then conduct training for VIGO's Employees as specified in specification included in Request for Proposals and its attachments and the Offer.
- 1.2. Delivery subject of the contract by the Supplier, referred to in point 1.1, does not require VIGO to place any additional order. The Supplier's obligation to deliver the Products shall be effective as of conclusion of this agreement.
- 1.3. Supplier shall be obliged to provide all permits, attestations or certificates required by law to use the Products. Supplier declares that Products fulfil all the technical requirements imposed by law and they have been examined and tested as to their functionality specified in the Request for Proposals.
- 1.4. Supplier shall be obliged to deliver the subject of the agreement together with the full operating documentation in Polish and English, including technical documentation and operating instructions, as well as warranty cards, approved by the Ordering Party. **As part of the warranty and post-warranty period, the Contractor undertakes warranty repairs and service Product in accordance with the specifications resulting from the Inquiry for Proposal and attachments to the Inquiry and the offer.**
- 1.5. The delivered goods must be brand new (category I - not used), meet the technical and quality requirements specified by the manufacturer of the product and be placed on the market in accordance with the regulations applicable at the territory of the Republic of Poland.

1.6. Supplier declares and warrants that possess all necessary rights to the subject of the contract, including the right to sell the subject of the contract, and that by concluding this contract does not infringe any intellectual and industrial property rights of third parties.

2 Delivery of Products

2.1. Supplier shall deliver subject of the contract referred to in point 1.1 **within 25 weeks of the date of the contract.**

2.2. Performance of the subject of the contract will be divided into 2 stages:

I Stage. Goods should be manufactured and ready to be presented to Employers by the Contractor in order to conduct a product test at the Contractor - FAT - Factory Acceptance Test

(in accordance with item 5.6 of the description of the subject of the contract).

II Stage. The second stage of delivery to the Employer, which consists of physical delivery of goods together with their assembly, commissioning and training of the Employer's employees in operating the device and carrying out the SAT - Site Acceptance Test

(in accordance with item 5.6 of the description of the subject of the contract).

2.3. Acceptance a I Stage will take place by a submitting a statement of the VIGO after concluding a product test with the Contractor (FAT test). A detailed plan of the test process is included in the Description of the Subject Matter of the Order, constituting an appendix to the Agreement. The provisions of point 2.10 shall apply accordingly to the acceptance of the product at the FAT stage, setting the date for the improvement of non-compliance with the contract and the effects of non-compliance with the contract (point 2.10 of the Agreement).

2.4. Delivery pursuant to point 2.1 above is made in a moment the Products are placed at the disposal of VIGO at VIGO's registered office and the Parties sign the Acceptance Protocol referred to in clause 2.8 and 2.9 below. VIGO is not obliged to undertake any other actions relating to the delivery, in particular VIGO is not obliged to bear costs of **storage, transport and/or Products' insurance. Any and all actions relating to delivery of Products, including formalities and costs connected with transport, insurance and/or export, shall be undertaken solely by Supplier.**

2.5. Lead time specified in point 2.1 above shall be qualified in favour of Supplier. This means that the Contractor may - after prior consent of the Ordering Party - deliver the Products also before the expiry of this period. Delivery of Products shall take place during working days, i.e. days from Monday to Friday, without Saturdays, Sundays and public holidays in Poland, between 8:00 and 16:00.

2.6. **Supplier bears full risk connected with a damage and/or loss of Products during transport.**

- 2.7. Supplier shall deliver Products in unit and collective packaging securing them against disassembling and/or any damage. The Contractor shall attach to the Products their documentation, certificates and other documents required by law.
- 2.8. As part of the supply, the Supplier shall unpack and install the Products at the VIGO premises at the indicated place. The Supplier shall launch the Products at the place indicated by the VIGO, and then conduct training in the field of operation of the Products for at least 2 employees of the VIGO.
- 2.9. Before accepting the Products, after the Supplier has carried out the activities referred to in point 2.8, a person authorized by VIGO will check and verify them by Site Acceptance Test (SAT). If VIGO has no complaints regarding Products, delivery of Products shall be confirmed by signing by both Parties an acceptance protocol; the acceptance protocol shall constitute a basis for payment of remuneration, as specified in point 3.2 below (hereinafter referred to as “**Acceptance Protocol**”), whose template is attached as Annex 2 to this Agreement.
- 2.10. If VIGO has any complaints regarding Products, VIGO shall inform Supplier about them and Supplier shall immediately, within the time limit set by the Ordering Party,, eliminate any and all inconsistencies or defects. In such case Parties shall sign a preliminary protocol instead of Acceptance Protocol, in which Parties shall clarify all the VIGO’s complaints regarding Products (hereinafter referred to as “**Preliminary Protocol**”). Parties shall sign Acceptance Protocol only after Supplier eliminates all the Product’s inconsistencies or defects, as specified in VIGO’s complaint. This procedure shall be repeated once necessary.
- 2.11. Filing the complaint regarding Products, and in particular signing by VIGO only Preliminary Protocol, does not create any VIGO’s responsibility for Supplier’s failure to meet lead time specified in point 2.1 above – keeping lead time is Supplier’s sole responsibility. If Supplier does not meet the lead time, he shall be obliged to pay contractual penalty.
- 2.12. The contractor will provide a free service for the duration of the warranty, which will be months from the moment of signing the handover protocol.

3 Remuneration and payments

3.1. Under this agreement VIGO shall pay Supplier a remuneration in a total net amount of _____(in _____ words: _____00/100) (hereinafter referred to as “**Remuneration**”). Remuneration is a lump sum for a full execution of this agreement. Supplier is not allowed to claim for increase of Remuneration.

3.2. The Parties agree on the following payment method:

- 3.2.1. 50% of the Remuneration as an advance will be paid to the Supplier bank account within 14 days of the conclusion of this contract.
- 3.2.2. 40 % of the Remuneration as an advance will be paid to the Supplier bank account within 14 days of the FAT test confirmed by the VIGO as referred to in point 2.2.
- 3.2.3. 10% of the Remuneration will be paid after the Contractor's installation and commissioning of the device with accessories, and training of the VIGO's employees at the VIGO premises, confirmed by signing by both Parties an acceptance protocol.
- 3.3. Parts of the remuneration referred in to point 3.2.1 and 3.2.2. above will be payable on basis of pro – forma invoices issued by the Supplier and delivered to VIGO, by transfer to a bank account indicated by the Supplier on the invoice.
- 3.4. The remaining part of the remuneration shall be paid within 30 days from the day of invoice properly delivered to the VIGO's seat, in accordance with the point 2.9. The pro-forma invoice and last invoice can be also delivered on following address: **invoices@vigo.com.pl**.
- 3.5. Remuneration due to Supplier under this agreement, in cases when it results from an applicable provisions of law, shall be increased by VAT tax, in an amount applicable at the day of invoice's issuance.

4 Confidentiality

- 4.1. Parties are obliged to treat all the information resulting from this agreement, as well as resulting from their cooperation under this agreement, as confidential (hereinafter referred to as: "**Confidential Information**").
- 4.2. Parties shall not directly and/or indirectly transfer Confidential Information to any third party. Within Parties' corporate structures, access to Confidential Information shall be limited to each Party's employees, subcontractors and/or authorised persons whose access is legitimate due to their position and/or participation in executing this agreement.
- 4.3. Disclosure of Confidential Information by any Party to any other person than specified in point 4.2 above requires other Party's prior written consent, unless Confidential Information is known to the public and its disclosure did not take place in breach of this agreement, and/or obligation to disclose Confidential Information results from this agreement or applicable provisions of law.

5 Supplier's responsibility and VIGO's withdrawal right

- 5.1. Polish Civil Code, and in particular provisions regarding statutory warranty for Products, applies to Supplier's responsibility for Products.

- 5.2. In the case of delivery of Products after the date specified in point 2.1. the Contractor may charge a contractual penalty of 0.5% of the net Remuneration for each week of delay started - no more than 5 %.
- 5.3. In the event of improper or untimely performance of the contract by the Contractor, the Employer may, instead of the activities provided for in point 5.2, withdraw from the contract. Withdrawal will only occur for reasons attributable to the Contractor, with the exception of reasons for which he is not responsible, force majeure and fortuitous events. The right of withdrawal is exercised by a statement made to the Contractor in writing or in a document (to the e-mail address indicated in point 7.1.2 below),
- within 30 days from the date of expiry of the deadline for the proper performance of the contract not met by the Contractor, with the proviso that the activities referred to in item 2.9 of the Agreement shall apply accordingly. Before submitting a statement of withdrawal from the contract, the Contractor shall request in writing or a scan of the letter sent to the e-mail address indicated in point 7.1.2. for the proper performance of the contract by setting an appropriate deadline referred to in point 2.10. As a result of submitting a declaration of withdrawal, this contract is treated as not concluded and the Contractor will pay the Employer a contractual penalty of 5% of the net Remuneration
- 5.4. The payment of the contractual penalties referred to in items 5.2 - 5.3 above does not exclude the claim by VIGO on general principles of compensation exceeding the amount of the contractual penalty. In addition, the payment of a contractual penalty in the event of one of the events indicated in points 5.2 - 5.3 above does not exclude the obligation to pay a contractual penalty in the event of another event.
- 5.5. The contractor agrees to deduct the contractual penalty from the remuneration due.
- 5.6. In the event that VIGO withdraws from the contract, VIGO will be obliged to pay the Contractor 100% of the net remuneration for withdrawal from 15 days to the date specified in point 2.1; 80% of the value of the net remuneration for withdrawal within 16 to 30 days before the date specified in point 2.1; 50% of the value of the net remuneration for withdrawing from 31 to 60 days before the date indicated in point 2.1; 40% of the net remuneration for resignation up to 61 days before the date specified in point 2.1.
- 5.7. For the avoidance of doubt, in the event of withdrawal from the contract by either party, the contract is considered void and the parties are obliged to return what they have provided so far. The provision in question does not exclude the provisions on contractual penalties.

6 Permissible reasons for changing the contract

6.1 The Employer provides for the possibility of changing the concluded contract in relation to the content of the offer, on the basis of which the Contractor was selected, in the following cases:

6.1.1. The changes are not significant within the meaning of the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020;

6.1.2. There will be a change in generally applicable laws to the extent that affects the performance of the Order, unless such change was known at the time the offer was made;

6.1.3. It is necessary to change the way of fulfilling the obligation, if such a change is necessary for the proper performance of the contract; in particular, the Ordering Party reserves the right to change the deadline for the performance of the contract no later than 1 march, 2022 in the situation where it is impossible to place the subject of the contract into a room with a higher cleanliness class (cleanroom) guaranteeing the proper operation of the device - due to the construction phase of this room. The construction of the room is carried out under the project "Implementation of the technology for the production of detection chips developed under the" Exposure "project." In the event of circumstances causing the inability to test the product for the reasons referred to above, the Purchaser reserves the right to change the location of delivery for final acceptance and signing the acceptance report.

6.1.4. In the course of performance of the contract, there will be an objective need to prepare the product or perform the service, the performance of which will be agreed between the Parties, necessary (necessary) for the proper performance of the Order, which the Parties did not provide in the Description of the subject of the Order;

6.1.5. It is necessary to change the deadline for the performance of the contract in the event of circumstances or events preventing the performance of the contract within the prescribed period, which both parties had no influence on;

6.1.6 it is possible to use newer and more favorable technological or technical solutions for the Employer than those existing at the time of signing the contract. Solutions that meet the Employer's requirements to a greater extent from the point of view of maintenance costs, functionality, quality or utility should be regarded as more favorable for the Employer;

6.1.7. the change does not change the nature of the contract and the following conditions have been met cumulatively:

- the need to amend the contract is caused by circumstances that the Employer, acting with due diligence, could not foresee,

- the value of the change does not exceed 50% of the value of the Order originally specified in the contract,

6.1.8. The contractor to whom the contracting authority awarded the contract is to be replaced by a new contractor:

- based on the contractual provisions referred to in items 6.1.1-6.1.7;

- As a result of a merger, division, transformation, bankruptcy, restructuring or acquisition of the current Contractor or his enterprise, provided that the new contractor meets the conditions for participation in the procedure, there are no grounds for exclusion and this does not entail other significant changes to the contract,

- As a result of the Purchaser's assumption of the Contractor's obligations towards its subcontractors,

6.1.9. The change does not change the nature of the contract, and the total value of the changes is less than the amounts specified in the provisions issued under Article 11 paragraph 8 of the Act of 29 January 2004, Public Procurement Law (Journal of Laws, item 1843, as amended) in the case of contracts for supplies and services, and at the same time is less than 10% of the value of the Order originally specified in the contract.

6.1.10. In other cases permitted by the Guidelines on the eligibility of expenditure under the European Regional Development Fund, the European Social Fund and the Cohesion Fund for 2014-2020.

7 Communication

7.1. Parties hereby declare that communication between them connected with the execution of this agreement shall be made in written and/or electronic form, to the following addresses:

7.1.1 for VIGO:

Dominik Nowak, e-mail dnowak@vigo.com.pl.

Ernest Turkowski, e-mail eturkowski@vigo.com.pl.

written form: 123/133 Poznańska Street, 05-850 Ożarów Mazowiecki, Poland;

7.1.2 for Supplier:

_____ email: _____

written form: _____.

7.2. Amendments of addresses specified in point 7.1 above does not constitute an amendment of this agreement and it does not require to be made in writing. However, in case of



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change of any address, Party which address has changed shall without any delay inform the other Party about this fact. In case of lack of such information, communication to the previous address shall be effective.

8 Final provisions

- 8.1. With reservation to point 7.2 and 5.3 above, unless the amendments to this agreement are made in writing, they shall be null and void.
- 8.2. Transferring Supplier's rights and/or duties resulting from this agreement to any other person or entity requires for its effectiveness prior written VIGO's consent. Unless the consent in question is made in writing, the transfer shall be null and void.
- 8.3. Attachment number 1 – Request for Proposals and its attachments as well as the Offer and its attachments, constitutes an integral part of this agreement.
- 8.4. If any provision of this agreement is declared to be invalid, ineffective and/or un-executable, other provisions shall remain in force. In such case Parties shall replace this invalid, ineffective and/or un-executable provision with a new one, adequate to their intentions and economical and legal goals that Parties intended to realise by adopting this invalid, ineffective and/or un-executable provision.
- 8.5. This agreement has been construed in accordance with the laws of Poland and the laws of Poland apply to this agreement, without principles on conflict of laws. Parties hereby exclude application of UN Convention on Contracts for the International Sale of Goods, prepared in Vienna on 11th April 1980. Any disputes resulting from a conclusion or execution of this agreement shall be exclusively resolved by Polish courts.
- 8.6. Any disputes resulting from a conclusion or execution of this agreement shall be resolved amicably. If the dispute in question cannot be resolved amicably, it shall be submitted to the court applicable for VIGO.
- 8.7. If this agreement has been concluded in Polish and English language version, and if there is any discrepancy between these language versions, Parties hereby declare that the Polish version shall prevail. The contract shall enter into force on the day of signing by both Parties.
- 8.8. This agreement has been prepared in two identical copies, one for each Party.

For VIGO:

For Supplier:



Łukasz Piekarski, Member of the
Management Board

Attachment nr 2 to form of the Agreement

Delivery and Acceptance Protocol

To the Supply agreement of 2020,

drawn up on with the participation of representatives of:

CONTRACTOR:

.....

Name of representative:

1.
2.
3.

PURCHASER:

.....

Name of representative:

1.
2.
3.



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This Protocol states that the Contractor has delivered to the registered office of the Purchaser in Ożarów Mazowiecki:

.....

The Delivered Subject of the Agreement is complete/ not complete in accordance with the provisions of the Agreement.

Comments:

.....

This Protocol states that the Contractor has fulfilled the obligations set out in the Supply agreement.

CONTRACTOR:

PURCHASER: