



Explanation of the Procurement Documents No. 1 of public contract „Delivery of ALD system with inductively coupled plasma“

Name of the Contracting Authority	VSB - Technical University of Ostrava
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Dear Sir or Madam,

on 18th December 2025, the Contracting Authority received requests for clarification of the Procurement Documents for the public contract "Delivery of ALD system with inductively coupled plasma" awarded in an open above-threshold procedure. In accordance with Sections 98 and 99 of Act No. 134/2016 Coll., on Public Procurement Act (hereinafter referred to as "the Act"), we are responding to these requests. We are providing explanations in the same manner in which the tender conditions were provided, i.e., by publishing them on the Profile of the Contracting Authority.

Question No. 1:

Terms of delivery, [delivery], transfer of risk and warranty

- I. It is common practice to agree on Incoterms clauses as delivery conditions. Would you agree to the following terms of delivery ?

CIP (Contracting Authority's loading ramp, address to be agreed between Contractor and Contracting Authority) Incoterms 2020

The risk is transferred from the Contractor to the Contracting Authority in accordance with the CIP Incoterms 2020 clause. The risk would then pass to the Contracting Authority from the first carrier, but this risk would be mitigated by insurance taken out by the Contractor.

Is that ok?

- II. [The Contracting Authority would have to arrange unloading and bringing the goods into the cleanroom himself.

The "hook up", i.e. the connection of all media, would have to be carried out by the Contracting Authority himself.

Is that ok?

Then the buyer has to move the system to the clean room and connect all media (Gases, electricity, N2, compressed air, cooling water). Our customers need 2 – 6 months for this "hook up period".

The buyer also need to supply the precursors, which Oxford will install at the start if the process visit. OK ?

After everything is installed and connected we send a service engineer to start the system up and then a process engineer to show two processes and do the training. That takes up to 3 months. Is that OK ?

This is meant by

IX. EXECUTION OF THE PERFORMANCE

of file "02 Obchodní podmínky - Terms and Conditions CZ-EN", right ?

Answer:

- I. The Procurement Documents does not specify delivery terms in accordance with Incoterms rules Accordingly, the Contracting Authority does not agree to introduce or substitute Incoterms clauses, including CIP Incoterms 2020, into the Procurement Documents.
- The sequence of delivery steps and the responsibilities of the Contracting Authority and the Contractor are already explicitly defined in the tender documentation, in particular in the sections describing the scope of delivery, installation, commissioning, and process support obligations.
- II. YES, in accordance with the Terms and Conditions (in particular Article IV EXECUTION OF THE PERFORMANCE, paragraph 6), the Performance will be carried out in the following stages:
- a) The Contractor shall submit to the Customer the requirements for construction readiness and connection of the system to utilities within 30 days of the effective date of this Contract,
 - b) The Contractor shall deliver the Goods (system) to the Place of Delivery,
 - c) The Customer shall arrange for the transfer of the Goods (system) from the Place of Delivery to the Place of Installation,
 - d) The Customer shall connect the system to all utilities (gases, electricity, exhaust), in accordance with the documentation provided by the Contractor under point a) of this paragraph, with a time limit for such connection of 7 days,
 - e) The Contractor shall commission the system and provide basic operator training.
- Subsequently, the Contractor shall provide operator application training, approx. 3 months after delivery.

Question No. 2:

Terms of payment, contract fulfilment guarantee [and currency]

- I. For this type of delivery, a payment plan is both customary and expected. Would you agree to the following payment plan?
- 50 % of the order value on order (if required, against a bank guarantee and guarantee text from the Contractor's bank);
 - 40 % of the order value upon delivery of the goods; and
 - 10% of the order value after acceptance, at the latest sixty (90) days after delivery, should acceptance be delayed for reasons for which the Contracting Authority is responsible;
- Each thirty (30) days from receipt of the invoice.
- If a bank guarantee is required for the 50% advance payment, the original would have to be returned to the Contractor after physical delivery of the goods. Is that ok?
- II. Contract fulfilment guarantee
- It is unusual to provide a performance bond for the warranty period. The Contracting Authority does not require a performance bond and we ask for confirmation.
- III. Currency
- The price in the offer should be stated in EUR (Euro) and all payments should be made in EUR (Euro). Is that ok?

Answer:

- I. Yes, the advance payment (a total of 90%) will be provided to the Contractor in accordance with Article V, paragraph 5 of the Terms and Conditions.
- The remaining 10% of the price will be paid after the acceptance of the Performance without defects and imperfections.
- The return of the bank guarantee is stipulated in Article IX of the Terms and Conditions, i.e., within 14 days from the expiry of its validity.
- II. No bank guarantee is required for the warranty period. The contracting authority requires a bank guarantee for the proper performance of the work – see Article IX of the Terms and Conditions
- III. Yes, the currency is EURO.

Question No. 3:

Acceptance/fictitious acceptance

I. We would have to add the following:

If the start of installation or commissioning of the goods is delayed for more than sixty (90) days beyond the date provided for or agreed in the contract (or, if no such date is provided for or agreed, after the goods have been dispatched or made ready for dispatch by the Contractor) through the fault of the Contracting Authority and/or for reasons for which the Contracting Authority is responsible, the goods shall be deemed to have been accepted by the Contracting Authority.

Is that ok?

II. An installation and/or acceptance certificate must be definitive proof of the contractual conformity of the goods and final acceptance by the Contracting Authority.

Is that ok?

Answer:

I. According to Article III. TIME AND PLACE OF PERFORMANCE, Paragraph 1 of the Terms and Conditions - If the Customer fails to meet the Contractor's requirements for proper connection of the system to utilities, the deadline for the Performance under this paragraph of the Contract shall be extended by the number of days of delay in proper connection of the system to utilities.

The Contractor shall therefore not be subject to penalties in the event of a delay on the part of the Customer. However, the goods shall be handed over and accepted after actual delivery and acceptance.

II. Yes, confirmation of acceptance of the Performance without defects and imperfections is confirmation of final acceptance of the goods. However, this does not affect the assertion of defects during the warranty period.

Question No. 4:

Responsibility on site

If the Contractor's employees are on the Contracting Authority's premises, they shall endeavour to comply with the Contracting Authority's internal procedures and regulations, which shall be communicated to the Contractor's employees by the Contracting Authority prior to the commencement of work on site. The Contracting Authority shall only be liable for damage to property caused by its employees in the event of wilful intent or gross negligence.

Is that ok?

Answer:

Yes.

Question No. 5:

Warranty The goods will be adjusted, repaired or replaced at the discretion of the Contractor within the applicable warranty period, provided that the following conditions are met:

- a) the Contracting Authority gives written notice of the defect (with reasonable relevant information) to the Contractor as soon as reasonably practicable and within the applicable warranty period;
- b) the goods are used solely for their proper purpose and in accordance with the operating instructions;
- c) the defect is not been caused by fire, accident, misuse, neglect, incorrect installation by the Contracting Authority or its customers, agents or servants, unauthorised alteration, repair or maintenance or the use of sub-standard consumables and has not arisen from fair wear and tear;
- d) the defect has not arisen from any design, specification, component or material supplied by or on behalf of the Contracting Authority;
- e) no part of the goods is replaced with a part not supplied or approved by the Contractor;
- f) the Contracting Authority shall accord the Contractor sufficient access to the goods to enable its staff to inspect and adjust, repair, remove or replace the goods; and

the costs of all consumables shall be paid by the Contracting Authority.

Is that ok?

Answer:

Yes. The warranty terms and conditions are set out in detail in Art. VIII WARRANTY AND SERVICE of the Terms and Conditions. These terms and conditions do not conflict with those stated by the questioner.

Question No. 6:

Force majeure

We ask for the following addition. Is that ok?

If, for reasons for which the Contractor is not responsible, the Contractor does not receive a delivery or service from its suppliers or subcontractors, or does not receive it correctly or on time despite proper and sufficient coverage, or if force majeure events occur, the Contractor shall notify the Contracting Authority in writing in good time.

In this case, the Contractor shall be entitled to postpone the delivery or service for the duration of the hindrance or to withdraw from the contract in whole or in part due to the part not yet fulfilled if the Contractor has fulfilled the above information obligation and has not assumed any procurement risk.

Events of force majeure are strikes or industrial action (regardless of whether they occur at the Contractor, the Contracting Authority or a third party), natural disasters, terrorist attacks, civil war, riots or unrest, war, sanctions or embargoes, any labour or trade disputes, epidemics or pandemics, refusal or delay in the granting or revocation, suspension or withdrawal of necessary licences, permits, approvals or authorisations, lockouts, official intervention, energy and raw material shortages, transport bottlenecks through no fault of our own, operational hindrances through no fault of our own, e.g. fire, water and damage to property. fire, water and damage to the plant and machinery and other hindrances which, from an objective point of view, were not caused by the Contractor's fault.

If a delivery or performance date or a delivery or performance period has been bindingly agreed and if the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four (4) weeks due to the above events, the parties shall be entitled to withdraw from the part of the contract that has not yet been fulfilled. In this case, the Contracting Authority shall not be entitled to any further rights, in particular claims for damages.

Answer:

The Force majeure conditions are extensively described in Art. XII. FORCE MAJEURE PROVISIONS of the Terms and Conditions. The Contracting Authority insists on the force majeure conditions specified in the terms and conditions.

Question No. 7:

Cancellation at own discretion

The Contracting Authority may not terminate the contract at its own discretion, but only in the event of material breaches that cannot be remedied. A late delivery does not constitute a material breach.

Is that ok?

Answer:

The rights of both parties to terminate the contract are clearly specified in Art. XIII – VALIDITY AND EFFECTIVENESS OF THE CONTRACT, WITHDRAWAL from the Terms and Conditions, and further in the Civil Code.

Question No. 8:

Liability

The Contractor needs some limitations of liability in the contract. Is the following therefore ok?

The Contractor's total liability is limited to 1.5 times the total net order value.

The Contractor shall not be liable for loss of profit, revenue, benefit, anticipated savings, business interruption and/or business interruption, loss of data, or for special, indirect or consequential damages.

This limitation or exclusion of liability does not apply in cases of mandatory statutory liability, in particular:

- a) in the event of intent and gross negligence;

- b) in the event of a breach of material contractual obligations (material contractual obligations are those whose fulfilment is essential for the proper performance of the contract and on whose compliance the customer may regularly rely and whose breach jeopardises the achievement of the purpose of the contract);
- c) in the event of non-fulfilment of a guarantee of quality;
- d) in the event of injury to life, limb or health; or
- e) in the event of liability under the Product Liability Act.

Any further liability is excluded.

Answer:

Pursuant to Art. X, paragraph 1 of the Terms and Conditions, the total amount of the aggregate amount of the contractual penalty pursuant to this paragraph is limited to a maximum of 5% of the price of the Performance excluding VAT specified in Art. V of Contract.

No other limitations of liability or indemnity are stipulated in the Terms and Conditions or by the contracting authority, and the Civil Code applies.

Question No. 9:

Indemnities

The only indemnity that the Contractor must provide to the Contracting Authority is to indemnify and hold the Contracting Authority harmless for any infringement of third party intellectual property rights.

Is that ok?

Answer:

See the answer to question no. 8.

Question No. 10:

Transfer of ownership

The transfer of ownership from the Contractor to the Contracting Authority takes place upon receipt of payment of the entire purchase price in the Contractor's account. Is that ok?

Answer:

Pursuant to Art. IV, paragraph 1 of the Terms and Conditions, the ownership right to the Performance and the risk of damage thereto shall pass from the Contractor to the Customer at the moment of delivery of the Performance, i.e. handover and acceptance of the Performance and provision of other activities listed in Article II(2) of the Contract (except for operator application training).

Question No. 11:

Contractual penalties

- I. Does the Contracting Authority agree that the only applicable contractual penalties apply to late deliveries?

We would have to agree on the following:

If a delivery date agreed by both parties is exceeded, the Contractor shall be in default by means of a written reminder. In the event of a delay for which the Contractor is responsible, the Contracting Authority shall be entitled to a contractual penalty of 0.5% of the total net order value for each full week of delay, but no more than 5% of the total net order value of the delayed goods, calculated from the time after expiry of the grace period.

With the exception of intent and gross negligence, further claims for damages are excluded.

The Contracting Authority may only claim the contractual penalty in writing up to the time of acceptance of the goods. Thereafter, the contractual penalty may not be claimed.

Is that ok?

- II. No contractual penalties are provided for delays that are not attributable to the fault of the Contractor.

Is that ok?

- III. Reaching a maximum limit for contractual penalties due to late delivery does not entitle the Contracting Authority to unilaterally cancel or terminate the contract.
Is that ok?

Answer:

- I. Provisions on contractual penalties are set out in Art. X. SANCTION PROVISIONS of the Terms and Conditions. In addition to contractual penalties for late delivery, they also include contractual penalties for delays in removing minor defects and imperfections within the period specified in paragraph 3 of Art. IV of the Terms and Conditions and contractual penalties for delays in remove or bypass the defect in the Performance within the period specified in Art. VIII, paragraph 3 of the Terms and Conditions.
The contracting authority insists on the specified contractual penalties.
- II. If the delay is demonstrably caused by the Contracting Authority or force majeure, the Contractor shall not be subject to penalties.
- III. The possibility (not the obligation) to withdraw from the contract is dealt with in Art. XIII. XIII. VALIDITY AND EFFECTIVENESS OF THE CONTRACT, WITHDRAWAL of the Terms and Conditions and is not related to reaching the maximum limit of the contractual penalty.

Question No. 12:

Intellectual property

All intellectual property rights relating to the Goods and specifications, designs, programmes, processes or materials issued by or on behalf of the Contractor shall remain the sole property of the Contractor.
Is that ok?

Answer:

Yes.

Question No. 13:

Specification

Does the Contracting Authority agree with the following?

The Contractor undertakes that the Goods will conform to the Specification but gives no further undertaking or warranty that the Goods will be fit for any particular purpose or that the Goods will be certified or conform in any way beyond that stated in the Product Specification.

Is that ok?

Answer:

Yes.

The specifications are set out in the Procurement Documents (including annexes) and the selected contractor's tender.

Question No. 14:

4.3a and 4.6 of file 00 Procurement Documents EN.pdf. We can supply references with system type, user name and email, and tell the date if the final acceptance is that enough ? We would confirm, that all systems have a value above the mentioned limit. (But we cannot disclose specific commercial details of other contracts.)

Answer:

The list of major contracts must contain all the information that the Contracting Authority needs to assess whether the significant deliveries meet the specified requirements. It is therefore necessary that it contains at least the price, duration of supply and identification of the client.

Question No. 15:

5.2 and 6.2 of file 00 Procurement Documents EN.pdf. We prefer to quote in Euro, is that OK ?

Answer:

Yes, the currency is EURO.

Question No. 16:

02 Obchodní podmínky - Terms and Conditions CZ-EN.docx

This file will be updated with the answers to our questions first ?

and it will be signed once mutually agreed with the winner, so we do not send the file filled out or signed at this stage, ok ?

Answer:

In view of the above, the Contracting Authority will not change the wording of the Terms and Conditions.

Contractors must duly complete and sign the Terms and Conditions in their tenders. A contract will be signed with the selected contractor in the wording of the tender. It cannot be changed (except for minor details, such as contact details).

The final contract will be signed after the contractor has been selected.

In Ostrava 23.12.2025

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