

Smlouva odběr./dodav. č. 1102/0005/18  
Č. zakázky 4901/110874  
Č. činnosti 4744  
Č. FÚ 0002  
Datum 1/3/18 Přebírá ...

## CONTRACT FOR SALE OF GOODS

**Name:** KUGEL medical GmbH & Co. KG  
**resident in:** Hermann-Köhl-Str. 2A, 93049 Regensburg,  
Registered by HRA No. 8893  
represented by: Robert Karl  
VAT no. DE 811 857 253  
TAX no. 244/166/12400  
Bank [REDACTED]  
Account number: [REDACTED]  
IBAN [REDACTED]  
contact person: [REDACTED]  
(hereinafter referred to as the „Seller“)

and

**Masarykova univerzita – Masaryk University**  
resident in Žerotínovo náměstí 617/9, 601 77 Brno, Czech Republic  
**Lékařská fakulta - Faculty of Medicine**  
address: Kamenice 753/5, 625 00 Brno-Bohunice, Czech Republic  
**represented by:** prof. MUDr. Martin Bareš, Ph.D., dean of Faculty of Medicine, Masaryk University  
ID no. 00216224,  
TAX no. CZ00216224,  
Bank : [REDACTED]  
Account number: [REDACTED]  
contact person: [REDACTED]: Public Procurement Manager, Faculty of Medicine, Masaryk University, tel.: + [REDACTED], e-mail: [REDACTED]@med.muni.cz.  
(hereinafter referred to as the „Buyer“)

(Seller and Buyer referred to also as the “Contracting Parties” or separately each the “Contracting Party”)

have entered on the day, month and year as bellow into the following

I.

### Subject-matter of the Contract

The Subject-matter of this Contract is particularly the obligation of the Seller to deliver goods specified in the Exhibit No. 1 of this contract (hereinafter “Annex No. 1”) to the Buyer and to transfer the property in goods to the Buyer under the terms and conditions herein and the obligation of the Buyer to accept the delivered goods from the Seller and to pay the agreed purchase price.

II.

### Sale and Delivery of Goods

(1) The Seller hereby agrees to deliver the Buyer goods (movable property) specified in Exhibit No. 1 (hereinafter referred to as the „Goods“) and in the time, quality and quantity specified in Exhibit No. 1 hereto. The Buyer shall collect the Goods and pay Seller the purchase price specified in the Article III. hereof.

- (2) The Seller fulfils his obligation to deliver the Goods when the Goods have been transported to the **place of performance** which is the Department of Anatomy, University campus Brno-Bohunice, 625 00 Brno Kamenice 3, [REDACTED] (hereinafter "**Place of performance**") and when the Goods have been unpacked, assembled, installed and made functional at the Place of performance. The Seller shall arrange the loading as well as unloading of Goods. The Goods shall be packed in manner adequate to protect the Goods.
- (3) The subject of performance under this contract is also:
  - a) the handing over of documents required by Czech legislation to use the subject of the Goods, especially a Declaration of Conformity (CE – Mark). Seller shall deliver to the Buyer documents related to the Goods at the time of delivery of Goods and at the Buyer's address set out in herein.
  - b) transport to the place of performance
  - c) assembly, installation, and commissioning of the Goods, instructing Buyers employees with the operation of the Goods

### III.

#### Prices – Terms of Payment

- (1) The Buyer and the Seller agreed that the purchase price of the goods amounting is EUR **30.272,-** excluding VAT (hereinafter referred to as the „Purchase Price“).The price includes except the Goods itself all other parts of Subject of performance as mentioned in Article II.3 of this contract.
- (2) The parties agreed that the Buyer shall provide the Seller a deposit to cover the total purchase price of the Goods as follows:
  - a. The Buyer shall pay the seller 50% of the total purchase price the goods (hereinafter "**advanced payment**"), providing that the Seller provides Buyer with an Advance payment guarantee issued by a licensed bank within European union, where the bank guarantees to reimburse the advance payment made to the Seller up to the amount of 50% of the total purchase price, if the Seller does not fulfil his obligation to deliver the Goods in accordance with in this contract.
  - b. The deposit will be paid by the buyer not later than 30 days after receiving the correctly non-tax document - proforma invoice by buyer. In the case of electronic invoice, must be electronic invoice delivered to the e-mail address: [REDACTED]@med.muni.cz
  - c. Correct non-tax document - the proforma invoice must be delivered not later than 14 days from the date of publication of this contract in the publication in the Register of Contracts pursuant to Czech Act No. 340/2015 Coll.. In the event of failure to comply with this deadline, the Seller is in default, which excludes the Buyer's delay in paying the deposit.
- (3) The Purchase Price shall be paid after correct delivery and acceptance of the delivery by buyer based on the invoice issued by the Seller.
- (4) The remaining Purchase Price (50% of the total purchase price the goods) shall be due upon the invoice issued and sent by the Seller not later than 14 days from delivery and collection of Goods by the Buyer. The invoice shall be payable not later than 30 days from the issue of the invoice by Seller.
- (5) If the Buyer fails to pay the remaining purchase price, the Seller shall have the right to default interest at the rate of 0,05 % of outstanding amount for each day of default without prejudice to any claims for damage.

- (6) As far as delivery does not take place within four months after conclusion of the contract, prices are subject to change on account of wage or material price increases.

#### IV.

##### **Obligations of the Contracting Parties**

- (1) Timely and proper fulfilment of the obligations of the Buyer shall be further prerequisite to the observance of the Seller's delivery obligation. The right to put in a plea of non-performance of contract is reserved.
- (2) If the Buyer should be in default of acceptance or culpable infringement of any other duties to cooperate, then the Seller shall be entitled to demand compensation for damage incurred by us in this respect, including any additional expenditures. Entitlement to more extensive claims is reserved.
- (3) Provided the conditions of subsection (1) are fulfilled, the risk of accidental loss or fortuitous deterioration of the goods shall pass to the Buyer at that point in time at which default of acceptance or default of the debtor has arisen for the Buyer.
- (4) Provided that a delay in delivery is not founded on an intentional breach of contract for which the Seller is responsible, The Seller's liability for compensation for damage shall be limited to expected, normally arising damage.
- (5) The Seller shall also be liable according to legal requirements, in as far as the delay in delivery for which the Seller is responsible is based on culpable violation of a fundamental contractual obligation; in such a case, the Seller's liability for compensation for damage shall however be limited to expected, normally arising damage.
- (6) Further legal claims and rights of the Buyer (as a customer) are reserved.

#### V.

##### **Time and Place of Performance, Shipment, Packaging, Passing of Risk**

- (1) Place of performance for all contractual obligations shall be the (Department of Anatomy, University campus Brno-Bohunice, Czech republic, 625 00 Brno, Kamenice 3, [REDACTED]). The Seller shall assemble and install the goods in the Place of performance. The exact location ie. the room within the Place of performance will be specified by the Head of the Department of Anatomy.
- (2) The Seller shall deliver the Goods to the Place of performance Buyer within **120** days after the Advanced payment in accordance with the Article III.2 of this contract is made by the Buyer.. Seller shall notify Buyer that the goods have been dispatched by phone call to phone No. [REDACTED] ([REDACTED] –public tender manager).
- (3) Passing of the risk onto the Buyer takes place with handover, after the Goods are assembled and installed at the place of performance. If handover is delayed for reasons the Buyer is accountable for, the passing of the risk onto the Buyer takes place on the day where the goods are prepared for handover and the Seller have notified the Buyer of that fact
- (4) Packaging for transportation and any other packaging, shall not be taken back, except for pallets. The Buyer shall be required to dispose of the packaging at his own expense.

#### VI.

##### **Liability for Defects**

- (1) Prerequisite to customer claims arising from a defect, shall be that the latter has properly fulfilled the requirement to inspect and give notice of defects.
- (2) In as far as the goods are defective, the Seller shall provide remedy either in the form of removal of the defect or – according to our choice which must be executed within reasonable time - by way of delivery of new faultless goods. In case of a notice of defect by the Buyer which proves

legitimate, the Seller shall be bound to bear all expenses incurred for the purpose of removing the defect, particularly transport, travel, labour and material costs, in as far as these are not increased on account of the goods having been transported to a location other than the place of designated use according to the contract.

- (3) If subsequent performance of the contract should be unsuccessful, then the Buyer is entitled to choose to demand either rescission from the contract or an appropriate reduction of the price.
- (4) The period of limitation for claims arising from a defect shall be 1 (one) year from the time of the passing of the risk or – inasfar as an acceptance is required – such acceptance.
- (5) The period of limitation for recourse in the case of delay in delivery according remains unaffected; it shall be five years from delivery of the defective goods.

#### VII.

##### **Liability, Limitation of Liability**

- (1) The liability of the Seller for damages, regardless on which legal grounds such claims may be based, particularly but not limited to impossibility of performance, default, defective or wrong delivery, breach of contract, culpa in contrahendo or tort, shall be limited according to the stipulations of this clause VII.
- (2) The Seller shall not be liable for any damages or losses in cases of slight or regular negligence unless the negligence takes place in regard to essential contractual duties. Such essential duties inter alia are: timely delivery and setup of the purchased goods; the absence of such defects which significantly affect its usability; core information obligations to protect customer from damages.
- (3) Insofar as the Seller is liable according to clause VII. (2) above, the scope of such liability is limited to typical, foreseeable damages.
- (4) This limitation of liability shall also apply to the executives, legal representatives, employees and agents of the Seller.
- (5) The limitations of liability in this clause VII. do not apply in cases of willful intent, express guarantees, personal bodily harm or death or for claims based on the Product Liability.
- (6) Any claims for damages of the customer shall become time-barred according to the limitation period according to clause VI (4) herein.

#### VIII.

##### **Title Retention**

- (1) The Seller reserves the right of ownership of the goods until receipt of all payments as prescribed by the supply contract. The Seller is authorised to repossess the goods in case of a breach of contract by the Buyer, particularly in case of delay of payment. Our repossession of the goods does not represent withdrawal from the contract, unless The Seller declared this expressly in writing. The Seller's distraint of the goods shall always represents a withdrawal from the contract. After repossession of the goods, The Seller is authorised to make use of the goods, the proceeds derived from the utilisation shall be deducted from the liabilities outstanding from the Buyer – with deduction of appropriate costs of utilization.
- (2) Until full transfer of ownership to the Buyer the Buyer is obligated to treat the goods with due care; he shall be bound in particular to provide at his expense adequate insurance cover for the goods at original value against damage by fire, water and theft. If applicable, the customer shall be obliged to carry out any required maintenance and inspection work in good time and at his own expense.
- (3) In all cases of seizure or other interventions by third parties, the Buyer shall immediately inform such third parties about the retention of title by us and shall furthermore immediately inform us in writing about these measures to allow us to take legal action to

safeguard our property rights. In so far as the third party is unable to reimburse us with necessary costs resulting from legitimate legal actions to safeguard our rights the Buyer shall be liable for such legal costs.

IX.

**Applicable Law, Place of Jurisdiction**

- (1) If the Seller is based in different country than the Buyer; the United Nations Convention on Contracts for the International Sale of Goods (CISG, as of April 11, 1980) shall not apply.
- (2) Place of business of the Seller shall be venue of jurisdiction. The Seller is however also entitled to take proceedings against the customer at the court of jurisdiction at customer's legal seat or any place of business.

X.

**Final Provisions**

- (1) This Contract shall enter into force and shall take effect on the day of its publication in the Register of Contracts pursuant to Czech Act No. 340/2015 Coll..
- (2) The Contracting Parties hereby agree that entering into this Contract and performing duties under this Contract have been duly approved by the relevant company bodies of the Contracting Parties in a compliance with legal regulations, by-laws and other internal regulations of the Contracting Parties; and no other approval or consent shall be required.
- (3) The Contracting Parties agrees to respect the legitimate interests of the other Party, shall conduct in accordance with the purpose of this Contract and shall not counteract such purpose and they shall perform all legal and other actions that may prove necessary to reach the purpose of this Contract.
- (4) All documents in writing shall be mailed at the address of the Contracting Parties set forth in the heading of this Contract unless either of the Contracting Parties shall give a written notice to the other Party on changing its address. Whatever papers the delivery of which is required, assumed or is made available by this Contract and regardless of any other available way allowed by the legal regulations to prove such a delivery, shall be deemed to have been served if such had been delivered to the other Contracting Party at the address set forth in the heading of this Contract or at the address noticed in written form by either Contracting Party to the other Party.
- (5) Any changes and amendments to this Contract shall require a written form.
- (6) If any provision of this Contract is determined to be invalid or unenforceable, the validity or enforceability of the other provisions either of this Contract as neither a whole nor other provisions will be affected unless such an invalid or unenforceable provision is severable. Contracting Parties hereby agrees to supersede such an invalid or unenforceable provision by a new valid and forceable provision that most closely matches the intent and the purpose of the original provision.
- (7) This Contract had been made in two duplicates whereby each Contracting Party shall retain one copy each.

Done in

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Done in Brno on 1.3. 2018

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Name:

