**Draft Purchase Contract**

**PURCHASE CONTRACT**

concluded according to § 409 et seq. Act No. 513/1991 Coll. Commercial Code

(hereinafter also referred to as the "**Commercial Code**")

(hereinafter referred to as the "**Contract**")

**Art. I**

**PARTIES**

**1.1 Buyer:**

Business name: De Heus s.r.o.

Registered office: 146, 082 01 Kendice

Corporate form: private limited liability company

Registration: Commercial Register of the District court Prešov, Section: Sro, File no. 37890/P

Represented by: Ing. Pavel Musil

Ing. Marek Kumprecht

Ing. Michal Janský

Business ID: 51 350 831

Tax ID: 2120679858

VAT ID: SK2120679858

Bank detail: 125370793/7500

IBAN: SK92 7500 0000 0001 2537 0793

e-mail:

Tel:

Responsible person for technicalities:

(hereinafter referred to as "**Buyer**")

and

**1.2 Seller:**

Business name:

Registered office:

Registration:

Represented by:

Business ID:

VAT ID:

Tax ID:

Bank details:

IBAN:

Tel.:

Email:

Responsible person for technicalities:

(hereinafter referred to as "**Seller**")

(Buyer and Seller hereinafter also referred to as "**Parties**")

**Art. II**

**PREAMBLE**

**2.1** This Contract has been concluded based on the Seller's bid dated ..................... (*tenderer, please fill in the date*), submitted within a public procurement procedure for purchase of "**Electrical installation and Measurement and Regulation**"

**Art. III**

**SUBJECT OF THE CONTRACT**

**3.1** This Contract sets a legal framework for delivery of goods and installation – specified in the bid - resulting from a market survey whose aim was to select a supplier of a "**Electrical installation and Measurement and Regulation**" (hereinafter referred to as the "**Subject of the Contract**") – and for transfer of ownership of said equipment or technology to Buyer.

**3.2** A detailed specification of Subject of the Contract is provided in Annex no. 1. to this Contract.

**3.3** The delivery of the Subject of the Contract shall include:

3.3.1 its transport and relocation to its destination;

3.3.2 training of the operating personnel (Buyer's employees) at the Buyer's site, specifically maximum 1 (one) hour of training of a maximum 2 personnel;

3.3.3 its installation and commissioning;

3.3.4 delivery of its passports, warranty certificates, and user manuals in Slovak or Czech and, if the delivered Subject requires so, also certificates of tests performed, certificates and attestations, reports of expert tests and professional inspections and tests, operating procedures and documents confirming putting the Subject of the Contract into operation. Furthermore, Subject of the Contract must include documents confirming the training of the Buyer's personnel and any other documents pertaining to the Subject of the Contract.

**3.4** The entire Subject of the Contract must meet all certifications required by the applicable EU and Slovak legislation and must be hygienically sound.

**3.5** Ownership right to the Subject of the Contract or to any part of it shall be transferred to Buyer on the day of signing the takeover declaration once the trial run has been successfully completed.

**3.6** The Seller declares that he is the owner of the Subject of the Contract which is subject of the delivery, or is fully authorized to sell it based on and according to this Contract as well as to transfer its ownership to the Buyer. Furthermore, Seller declares that the Subject of the Contract is not subject to any lien, any easements or other material encumbrances, nor to any other rights of third parties.

**3.7** The Seller undertakes to take back, recycle or reuse all packaging that is part of the Subject delivery.

**Art. IV**

**DATE AND PLACE OF DELIVERY**

**4.1** The Parties hereto have agreed that Seller should deliver the Subject of the Contract, once the Contract has entered into force, following the Buyer's call. The Buyer undertakes to call upon the Seller, requesting the delivery, in writing no later than 3 working days from the date when the Contract entered into force. This written call may also be made electronically, by sending it to the Seller's email address specified in this Contract.

**4.2** The Seller undertakes to supply the Subject of the Contract to the extent specified in Art. III of this Contract, including all its components, on the basis of the Buyer's call no later than within ....... **(verbatim .............) months** (*tenderer, please add here the number of months in accordance with the Bid criterion – the Deadline for the goods delivery according to your bid*).

**4.3** The place of delivery/destination of the Subject of the Contract is at the Buyer's registered office specified in Article I of this Contract.

**4.4** The Seller undertakes to notify Buyer of the exact date and time of delivery of the Subject of this Contract no later than eight (8) working days before its scheduled full or partial delivery. The Seller shall notify Buyer of the delivery date and time in writing in a manner so that the deadline according to the previous sentence is upheld. Unless the Parties agree otherwise, the Subject of the Contract must be delivered in a single shipment containing all its accessories (parts).

**4.5** With regard to the course of delivery of the Subject of the Contract, the Parties shall draw up an installation report, which shall contain identification details of the delivered Subject or its part, the designation of its individual parts including their identification numbers or other signs enabling their unambiguous identification, including quantities, and a brief description of the course of delivery and identification of persons who are responsible for the supply.

**Art. V**

**PURCHASE PRICE**

**5.1** The total price of the Subject of the Contract, including all its components, according to Art. III of this Contract has been agreed by the Parties in the amount of:

5.1.1 Price without VAT ................................... Euro

5.1.2 20% VAT ................................... Euro

5.1.2 Total price including VAT ................................... Euro

**5.2** Detailed price specification of the individual parts of the Subject of the Contract is provided in Annex no. 2 to this Contract.

**5.3** The purchase price is determined in accordance with Act no. 18/1996 Coll. on prices and the Decree no. 87/1996 Coll., implementing that Act.

**5.4** The purchase price includes all costs of the Seller necessary to deliver the Subject of the Contract to its destination to the extent specified in Art. III of this Contract.

**5.5** The purchase price shall not change during the entire period of validity and effectiveness of this Contract.

**Art. VI**

**PAYMENT TERMS, SETTING OFF, ASSIGNMENT**

**6.1** The Parties have agreed that the Buyer shall pay Seller the purchase price for the Subject of the Contract on the basis of invoices issued by Seller.

**6.2** The Buyer is not required to provide the Seller with an advance payment for the Subject of the Contract.

**6.5** After the Subject of the Contract has been delivered in accordance with clause 4.2 of this Contract, the Seller shall be entitled to issue an invoice for the delivered Subject of the Contract in the amount of 95% of the purchase price VAT inclusive as specified in point 5.1 hereof. Issuing an invoice is subject to the fulfilment of all the following conditions:

- Signed delivery note of the delivered subject of the contract

**6.6.** Once the trial run of the duly delivered and installed subject of the contract has been successfully completed, the Seller shall be entitled to issue an invoice for the outstanding 5% of the purchase price VAT inclusive. Issuing the invoice is subject to the fulfilment of all the following conditions:

- signed takeover declaration confirming acceptance of the Subject of the Contract without defects according to point 7.3.

**6.7** The Seller undertakes to issue invoices in accordance with cl. 6.5 and 6.6 no later than fifteen (15) days from the date of fulfilment of all conditions for their issuance and deliver them to the Buyer without delay.

**6.8** The maturity of invoices issued in accordance with points 6.5 and 6.6 is sixty (60) days from their verifiable delivery to the Buyer.

**6.9** VAT will be charged according to the relevant regulations applicable at the time of invoicing.

**6.10** Invoices submitted by the Seller must meet the requirements of a tax document and must be drawn up in accordance with Act no. 222/2004 Coll. on value added tax.

**6.11** If the invoice does not contain details required by Act no. 222/2004 Coll., the value added tax law, or the details provided are stated incorrectly with respect to the applicable legislation or the invoice details or details of its annexes are failing to conform with the conditions stipulated in this Contract, Buyer shall be entitled to return such invoice to Seller without payment, in which case, maturity date shall be suspended. When returning the invoice for revision, Buyer must state the reason therefor. The new maturity period shall start running only on the day of delivery of the corrected (new) invoice provided that such invoice meets the requirements of generally binding legal regulations and the Contract.

**6.12** Seller is not entitled to assign or otherwise dispose of receivables arising from this Contract without prior written consent of Buyer.

**6.13** Seller is not entitled to unilaterally offset any of his claims against Buyer.

**Art. VII**

**DELIVERY AND HANDOVER OF THE SUBJECT OF THE CONTRACT, TRIAL RUN**

**7.1** The Subject of the Contract or any of its parts must be delivered as a new and unused product. An unused product is understood to be a product that never been used in the production process or used in another way before, or has not been refurbished.

**7.2** After the delivery of the entire Subject of the Contract, a test run shall be carried out at least in the scope as stipulated in Art. III of this Contract.

**7.3** If the trial run is successful, i.e. the trial operation lasted at least fifteen (15) consecutive days without any defect, the Parties shall draw up a written record of its completion. In the event, however, that any defects pop up on the Subject of the Contract during the trial, these must be eliminated, and a new trial run lasting at least another fifteen (15) days shall commence.

**7.4** After the successful completion of the trial run, Seller shall draw up a declaration of handover/takeover of the Subject of the Contract, which shall contain, in particular, the designation of the individual parts of the Subject of the Contract, their identification numbers or other signs enabling their unambiguous determination, including their quantities, the fact whether or not other defects were detected, the date and place of handover/takeover, names and surnames of authorized persons and their signatures. In the event that the Buyer points out other defects, he shall include them in the takeover declaration, in which case Seller shall have to remove these without hesitation, whereafter the Parties shall sign a new handover/takeover declaration according to this clause. Handover/takeover declaration must include also all relevant documents for the Subject of the Contract as stipulated in Art. III hereof, or else, any missing document shall be recorded in the declaration as a defect that will have to be eliminated.

**7.5** The risk of damage to the Subject of the Contract, as well as to the things and materials necessary for the delivery of the Subject of the Contract, shall be borne by the Seller until the time of written acceptance of the Subject of the Contract by the Buyer based on the takeover declaration of the Subject of the Contract without defects.

**7.6** In his performance, the Seller undertakes to apply due care and diligence, and to observe working safety and health protection rules as required by the applicable legal regulations.

**Art. VIII**

**WARRANTY PERIOD AND LIABILITY FOR DEFECTS**

**8.1** The Seller is responsible that the Subject of the Contract is in accordance with the terms of this Contract and has the properties agreed in this Contract for the entire warranty period and is fit for use for the designed purpose.

**8.2** The warranty applies to the Subject of the Contract provided that the Subject of the Contract is properly cared for and maintained by the Buyer in accordance with the provided documents (warranty certificates, passports, instructions for use,...). The warrant excludes damage to the Subject of the Contract caused by violence, or damage caused by natural disaster.

**8.3** The warranty period is 24 months and starts running on the day of signing the declaration of takeover of the Subject of the Contract without defects.

**8.4** The Parties have agreed that during the warranty period the Seller, besides its statutory obligations, shall:

8.4.1 remove any claimed defect free of charge at the site of installation of the Subject of the Contract, and

8.4.2 respond to the claims no later than 12 hours after the reporting by the Buyer; and

8.4.3 commence works to eliminate the claimed defect no later than 48 hours after the defect is reported by the Buyer and

8.4.4 remove the claimed defects and supply spare parts no later than 72 hours after reporting by the Buyer.

**8.5** The Buyer shall allow the Seller access to the premises where defects are to be removed under warranty.

**8.6** The Buyer shall have the right to have the defects removed by a third party at the Seller's expense only when agreed so with the Seller, or in case the Seller failed to remove the defects within the deadline specified above in this Article..

**Art. IX**

**CONTRACTUAL PENALTIES AND INTEREST ON DELAYS**

**9.1** In the event of the Seller's failure to deliver the Subject of the Contract in the agreed term, Buyer may apply a contractual penalty in the amount of 0.05% of the purchase price VAT incl. for each started day of the delay.

**9.2** In the event of the Seller's delay in removing defects and incompleteness discovered during the takeover of the Subject of the Contract or defects discovered later on, during the warranty period, the Buyer may claim a contractual penalty in the amount of 0.1% of the purchase price VAT incl. for each started day of the defective state of the Subject of the Contract.

**9.3** In the event of the Buyer's delay in paying the invoice within the agreed period, Seller may claim default interest of 0.05% of the amount owed for each started day of the delay.

**9.5** Payment of the contractual fine is without prejudice to the Buyer's right to claim damages in full.

**9.6** Should the Seller fail to meet the delivery deadline specified in Art. IV Cl 4.2 hereof, the Buyer shall have the right to apply a contractual penalty in the amount of 15% of the purchase price in EUR VAT excl.

**Art. X**

**SPECIAL PROVISIONS, WITHDRAWAL FROM CONTRACT**

**10.1** The Parties undertake to notify each other without hesitation in writing of any significant facts that occurred after signing the Contract and relate to the Subject of the Contract.

**10.2** The Parties have agreed that if, after completion of the trial run, Subject of the Contract does not meet even a single one of the technical parameters listed in Annex 1 hereto, Buyer shall have the right to refuse to accept the Subject of the Contract as a whole, and the Seller shall be obliged to eliminate all deficiencies without hesitation.

**10.3** The Seller acknowledges that part of funds for payment of purchase price under this Contract are provided from public sources (especially from the budgets of the European Union and the Slovak Republic), wherefore a special legal regimen applies to their handling. In view of the above, the Parties agree that the authorized employees of the Agricultural Payment Agency, the Ministry of Agriculture and Rural Development of the Slovak Republic, European Union authorities and other authorized persons may carry out at the Parties inspection/audit in accord with the legal regulations of the Slovak Republic and the regulations of the European Union of the documents and facts related to the public procurement at issue, or related to the performance of the subject-matter according to this Contract, or concerning the provision of a non-repayable financial contribution based on a contract for the provision of a non-repayable financial contribution concluded with the Agricultural Payment Agency. The Parties undertake to tolerate such inspection and provide necessary cooperation to these persons.

**10.4** The Seller has the right to withdraw from this Contract if during the trial run defects appear on the Subject of the Contract to such an extent that the trial run will last more than thirty (30) days. In case of withdrawal from the Contract according to this clause, Seller shall be obliged to remove the Subject of the Contract at his own expense.

**10.5** In addition to statutory reasons for withdrawal from this Contract, Buyer shall also be entitled to withdraw from this Contract in case of a material breach of this Contract by the Seller. In this regard, the Parties consider it a material breach of the Contract, especially if the Seller

10.5.1 is belated with the delivery of the Subject of purchase, or any obligation under this Contract by more than ten (10) calendar days,

10.5.2 transferred all or any of the rights and obligations arising from this Contract to third parties without the prior consent of the Buyer,

10.5.3 violates any obligation resulting from the provisions of this Contract,

10.5.4 fails to provide the Buyer with any of the documents listed in Art. III of this Contract

**10.6** The Seller has the right to withdraw from this Contract if Buyer is belated with the payment of the invoice under this Contract by more than 60 days.

**10.7** Withdrawal from the Contract is without prejudice to the right to compensation for damage caused by the breach of the Contract and to other contractual provisions which, according to the expressed will of the Parties or due to their nature, should survive termination of this Contract.

**Art. XI**

**SETTLEMENT OF FINANCIAL AFFAIRS UNDER SPECIAL CONDITIONS**

**11.1** With regard to the fact that the purchase price will be co-financed from a non-repayable financial contribution provided by the European Union and the Slovak Republic budgets, the Seller acknowledges that a situation may arise when the Buyer will be obliged to return this contribution based on the request of its provider (e.g. Managing authority) or based on the decision of public authorities with power to exercise control over the use of non-returnable financial contributions.

**11.2** Should the Buyer become obliged to return the non-repayable financial contribution due to the Seller's misconduct, the Seller shall, pursuant to § 534 of Act no. 40/1964 Coll. of the Civil Code, fulfil such an obligation on behalf of the Buyer, or if the Buyer already fulfilled the obligation himself, to refund the Buyer the amount he spent in that respect within thirty (30) days from the day of receipt of the Buyer's written demand for such pecunial performance.

**11.3** The obligation to pay on behalf of the Buyer or to compensate the Buyer according to this Article survives this Contract and is without time limit.

**Art. XII**

**SERVICE OF COMMUNICATION**

**12.1** Any expression of will by the Parties must be conveyed in writing, delivered to the other Party either by postal carrier, by registered mail, express courier service or e-mail. In case of e-mail communication, the receiving Party is obliged to confirm receipt of the e-mail communication within three (3) days at the latest.

**12.2** The receiving Party is obliged to confirm receipt of such written communication. If any of the Parties refuses to confirm receipt of the written communication, such communication shall be considered to have been delivered from the moment when the Party refused to confirm its receipt.

**12.3** If communication is sent via a postal carrier, the shipment is considered delivered on the day the shipment was returned back to the sender as a result of failure of the addressee to collect it within the collection period or because the addressee could not be found at the address of its registered office listed in the relevant register (e.g. commercial register), in both case irrespective of the fact that the addressee failed to learn about the contents of the shipment.

**12.4** When sending an invoice, it is necessary if the invoice was not delivered for any reason that it be resent at least once, and only then, if again unsuccessful, such invoice can be considered delivered according to the previous clause.

**Art. XIII**

**FINAL PROVISIONS**

**13.1** Unless otherwise agreed in this Contract, the legal relations resulting from this Contract are ruled by the relevant provisions of Act No. 513/1991 Coll. Commercial Code and related legal regulations valid in the Slovak Republic.

**13.2** The Contract becomes valid and effective on the day of its signing by both Parties.

**13.3** Each contractual provision must be construed in accordance with the purpose of this Contract so that it is effective and valid and in accordance with the applicable legal regulations. Should, however, any of the contractual provision herein be in view of the applicable legal regulations unenforceable, invalid or ineffective, this shall be without prejudice to the Criteria shaping the provision of this Contract. Anyhow, in case of unenforceability, invalidity or ineffectiveness of any of the present provisions, the Parties undertake to replace such a provision with a new one which shall be in line with the purpose of this Contract and in accordance with the applicable legal regulations, and which shall by its nature be as close to the original unenforceable, invalid or ineffective as possible.

**13.5** An integral part of the Contract are:

13.5.1 Annex 1 - Priced bill of quantities;

13.5.2 Annex 2 – List of subcontractors (annex relevant to the date of signing the Contract),

**13.6** This Contract is drawn up in four (4) counterparts, two (4) of which are intended for each Contracting Party.

**13.7** The Parties declare that they have read this Contract, understand its content, conclude it out of their free will, with full awareness and without any reservations, in witness whereof they attach their hands hereunto.

Place: Kendice, Date ............... Place:......................., Date ...............

………………………………… ..………………..…………………

 On behalf of Buyer On behalf of Seller

**Annex 1 to the Contract**

**Priced bill of quantities**

*The tenderer/Seller must submit priced bill of quantities.*

Place: Kendice, Date ............... Place:......................., Date ...............

………………………………… ..………………..…………………

 On behalf of Buyer On behalf of Seller

**Annex 2 to the Contract**

**LIST OF SUBCONTRACTORS**

I, the Seller:................................................ with registered office .........................................................,

Business ID: .............................. hereby declare that in course of the delivery of goods related to the Subject of the Contract: **"Electrical installation and Measurement and Regulation"**

1. **I am not going to use subcontractors and I will implement the entire contract in my own capacity (this is, however, without prejudice to the possibility of a later change which must be done in line with the rule governing a change of subcontractors during the performance of the contract)**
2. **I am going to use subcontractors[[1]](#footnote-1):**
* and in that regard I state that the share of the Contract I intend to assign to third parties will be as follows:

................................................ %, i.e. ......................................................€ VAT incl.

 Proposed subcontractors

|  |  |  |  |
| --- | --- | --- | --- |
| Name | Registered office | Business ID | Contact person |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

 Subject of subcontracting:

|  |  |
| --- | --- |
| Subcontractor´s name | Subject of subcontracting |
|  |  |
|  |  |
|  |  |

Place: ........................, Date............................

 ...................................................................................

name, surname and signature of the tenderer's authorized representative(s)[[2]](#footnote-2)

1. Strike out whichever does not apply [↑](#footnote-ref-1)
2. In case of a group, signed by all members of the group (i.e. the authorized representative/representatives of each member of the group). [↑](#footnote-ref-2)