On the day, month and year first above written, they have entered into

**University Hospital Olomouc**

state contributory organization established by the Ministry of Health of the Czech Republic by decision of the Minister of Health dated 25.11.1990, No. OP-054-25.11.90

with registered office: Zdravotníků 248/7, 779 00 Olomouc

ID: 00098892

DIC: CZ00098892

represented by: prof. MUDr. Roman Havlík, Ph.D., Director

Bank account: 36334811/0710

on the one hand as *"buyer"*

a

*Your company information (name, adress, …)*

**........................................................**

with registered office: ........................................

ID: ....................................................

TIN: ..................................................

Represented by: .....................................

registered in the Commercial Register maintained by ........court in ....................., section....., insert.....

bank connection:..........................................

on the other hand as *"seller"*

(The named representatives of both parties declare that they are authorised to sign this agreement under the Articles of Association or other similar organisational regulation and that no other person's signature is required for the agreement to be valid.)

this

**PURCHASE AGREEMENT**

concluded pursuant to § 2079 et seq. of Act No. 89/2012 Coll. of the Civil Code as amended

**I.**

**Introductory provisions**

1.

The parties hereto represent to each other that they are authorized to enter into this Agreement and to duly perform the obligations contained herein, and that they have complied with all the terms and requirements set forth in the Act and this Agreement.

2. This contract is concluded on the basis of the results of small-scale public procurement entitled **"Software pro plánování osteotomie v oblasti kolene",** internal registration number **VZ-2023-xxxxxx.** Where reference is made in this contract to the tender documentation, the tender documentation relating to that procurement is meant. The parties undertake to comply with the terms and conditions contained in this contract, and the tender documentation and the tender submitted by the seller in the tendering procedure shall also be considered binding on both parties.

*We will fill in the tender number (not only here, but everywhere where this number is in the document)*

*You will fill in the name of the SW, aka the subject ywe are buying from you*

II.

Subject of the contract

1. The subject of the contract is the Seller's obligation to deliver to the Buyer: .................................................................................................................................................................................., meeting the technical conditions set by the Buyer, which are listed in Annex 1 to this contract (hereinafter referred to as the "subject of performance"), the Seller's obligation to transfer to the Buyer the ownership right to this subject of performance and the Buyer's obligation to pay the Seller the purchase price. The Subject Matter shall be undamaged, fully functional, of the highest quality provided by the manufacturer of the Subject Matter and together with all rights necessary for its proper and undisturbed disposal and use by the Buyer.

2. The subject of performance includes:

i. commissioning, including all necessary tests required for proper use of the subject of performance (e.g. initial electrical inspection, acceptance test, validation, etc.)

ii. free training (instruction in the case of the ZP) of the operator in accordance with the instructions for use and a record of this training (instruction in the case of the ZP),

iii. delivery of operating manuals in Czech language in printed and data form (in 2 copies),

iv. supply of relevant attestations and certificates (in 2 copies),

v. a declaration of conformity, possibly indicating the risk class of the medical device (in 2 copies),

vi. delivery note/transfer report (in 2 copies),

vii. a certificate of the person carrying out the training (instruction in the case of the ZP) and service technician (in 2 copies) if required by the manufacturer or by applicable legislation,

viii. a completed Buyer's internal form (device identification card), where the Seller will be emailed the internal form after notifying the Buyer of the delivery date.

III.

Time and place of performance

1.The Seller is obliged to deliver the subject of performance, put into operation, hand over all documents for the subject of performance, including a delivery note / handover protocol, which must bear the internal registration number **VZ-2023-xxxxxx** and to provide training or instruction on the subject of performance, ***until ......... days*** from the date of signing of the Purchase Agreement. The date of performance may only be postponed by the Buyer for operational reasons. Postponement of the deadline must be agreed by the statutory representatives in the form of a written chronologically numbered addendum to the contract.

*You will fill in the number of days in which you are able to deliver the SW into out hospital (it is better to add some extra days just in case)*

2. The place of delivery of the subject of performance is *Orthopedic Clinic of the University Hospital Olomouc*. The contact email for *taking over the subject of performance is dodavkaZT@fnol.cz, tel. 588 44 2269*. The Seller is obliged to notify the Buyer of the specific date of delivery to the above email ***10 days*** prior to delivery of the object of performance.

3.The cost of delivery of the object of performance to the place of performance is included in the agreed purchase price. The Seller acknowledges that, in accordance with the Seller's internal regulations, it bears the costs related to the entry of motor vehicles to the place of performance.

4. The delivery of the subject of performance occurs at the moment of confirmation of the delivery note / handover protocol by an authorized employee of the buyer. The Seller is further obliged to indicate the internal registration number **VZ-2023-xxxxxx** on each individual delivery note/delivery report issued within the contractual relationship established by this contract**.** Failure to do so shall result in such delivery note not being accepted by the Buyer and therefore not being an eligible basis for invoicing.

5. At the moment of protocol acceptance of the subject of performance, the ownership right to the goods and the risk of damage to the goods passes to the buyer. The Buyer is not obliged to accept goods or part thereof that are damaged or otherwise do not meet the terms of this contract, in particular the quality of the goods.

6. In case of delay of the Seller with delivery of the goods, commissioning, handing over all documents and carrying out training or instruction, the Seller is obliged to pay the Buyer a contractual penalty of 0.5% of the agreed purchase price (including VAT) for each day of delay.

IV.

*You will choose the currency and fill in the price*

Purchase price

1. The purchase price for the subject of performance is:

 **.......................... CZK / EUR without VAT,**

2. The purchase price without VAT is agreed as a fixed and maximum allowable price and includes all costs necessary for the proper and timely performance of the subject of the contract, in particular the costs of transport, assembly, commissioning, handover and all related costs (costs of administrative fees, taxes, duties, approval procedures, carrying out the prescribed tests, securing declarations of conformity, certificates and attestations, transfer of rights, insurance, transport costs, etc.).

3. The purchase price without VAT is the maximum. VAT will be added to the purchase price in the amount determined by valid and effective legal regulations at the time of the taxable performance.

**V.**

Payment terms

1. The Buyer shall not provide and the Seller shall not be entitled to require any advance payment. The purchase price shall be paid by the Buyer on the basis of an invoice issued by the Seller and delivered to the Buyer. The Seller is obliged to issue the invoice within three days after the Buyer has handed over and accepted the subject of performance.

2. The Seller is obliged to issue an invoice with the details of a tax document pursuant to Act No. 235/2004 Coll., on Value Added Tax, as amended, and due 60 calendar days from the date of proven delivery of the invoice to the Buyer via electronic mail to fin@fnol.cz, and each invoice by a separate email in PDF format including the ISDOC standard (Information System Document - standard for electronic invoicing in the Czech Republic), unless otherwise agreed by the parties. The invoice in the ISDOC standard may also be attached separately outside the PDF. The ISDOC version used must be version 6.0.1. and higher. A copy of the delivery note/transfer report certified by the Buyer in accordance with the relevant provision of this contract shall be an essential attachment to the invoice.

3. The Seller is further obliged to indicate the internal registration number **VZ-2023-xxxxxx** on each individual invoice issued within the framework of the purchase relationship established by this contract**.**

4. In the event that the invoice does not meet all the requirements, the Buyer is entitled to return the invoice to the Seller within the due date, with the due date of the purchase price starting again from the date of delivery of the duly issued invoice to the Buyer.

5.The purchase price will be paid by the buyer to the seller by transfer to the account specified in the header of this contract. The date of payment shall be the date on which the full invoiced amount is sent from the Buyer's account to the Seller's account.

6. The Seller undertakes to fulfil all its financial obligations to the subcontractors with whom it cooperates in the performance of the subject of the Contract without delay. The Buyer reserves the right to require the Seller to prove that it has fulfilled this obligation. If the Seller breaches its obligation under the first sentence of this paragraph, i.e. if the Seller defaults on any of its financial obligations to any of its subcontractors, the Buyer shall have the right to satisfy the claim of the Seller's specific subcontractor directly, and the price under this contract shall be reduced by the amount so paid.

7. If the offer and this contract contain a purchase price in EUR, the Seller shall convert the price of the product in EUR to the Czech crown on the date of the Buyer's partial order according to the monthly accounting exchange rate set by the European Commission and published on the website https://ec.europa.eu/info/funding-tenders/procedures-guidelines-tenders/information-contractors-and-beneficiaries/exchange-rate-inforeuro\_cs with effect on the 1st day of the month of invoice. VAT will be added to the purchase price in CZK at the rate set by the applicable legislation.

VI.

*You will fill in the number of months during with you guarantee unproblematic performance (we usually require the minimum of 24 months)*

 Quality guarantee

1. The Seller is obliged to deliver the goods in the quantity, quality and performance according to this contract, without legal or factual defects. The Seller guarantees the quality of the subject of performance for a period of **...... months** from the date of commissioning. During this period, the Seller shall be liable for the fact that the object of performance retains the characteristics agreed in this contract and, if not stated, the usual characteristics.

2. During the warranty period, the Seller shall carry out free of charge warranty repairs of the subject of performance, including the supply of spare parts.

3. Warranty service for the goods is performed by the seller and is included in the purchase price including all related costs.

4. The buyer is obliged to claim the identified defects of the goods to the seller without undue delay after discovering them. The Buyer shall apply the defects found in writing to the Seller's address stated in the header of this contract, by e-mail at .......................@..........., by fax to the fax number ........................ or by telephone at the following telephone number ....................... The date of reporting the defect is the date on which the Seller received notification of the defects found or the date on which the defects found were notified by the Buyer by telephone. The Buyer is entitled to choose the method of claiming defects or to claim the identified defects in more than one way, in which case the date of reporting the defect is the date which, according to the above determination of the date of reporting the defect, occurs first.

5. The buyer is entitled to choose between claims for defects in the delivered performance, and is entitled after the seller:

*You will fill in the email, fax number (option – not necessary) and phone number, where we can reach you in case of defect*

i. claim delivery of the missing performance;

ii. claim the elimination of defects by repairing the performance;

iii. claim delivery of replacement goods for the defective performance;

iv. claim a discount on the purchase price to the extent of the price of the defective or undelivered performance; or

v. withdraw from this contract if there is a material defect in performance.

6. The Seller is obliged to remove the reported defect without undue delay, but no later than **2 working days** from the date of reporting the defect, unless the parties agree otherwise in writing. This agreement may be made in the form of a written record or email confirmation by the responsible employees of both parties.

7. The Seller is obliged to remove the reported defects without undue delay, but no later than **5 days** from the date of reporting the defect, unless the parties agree otherwise in writing. This agreement may be made in the form of a written record or an email confirmation by the responsible employees of both parties. In the event of repairs lasting longer than **5 days,** the Seller shall be obliged to lend a replacement instrument with the same technical parameters as the defective instrument free of charge for the duration of the repair, unless the Parties agree on a different technical solution.

8. In the event that the Seller does not proceed to remove the reported defect within the time limit pursuant to paragraph 6 of this Article, the Seller is obliged to pay the Buyer a contractual penalty of 0.5% of the purchase price (including VAT) of the defective object of performance for each day of delay. The Buyer's right to compensation for damages shall not be affected.

9. In the event that the Seller fails to remove the defect reported within the time limit pursuant to paragraph 7 of this Article or, in the case of repairs lasting longer than 5 days, fails to lend a replacement device with the corresponding technical parameters, the Seller is obliged to pay the Buyer a contractual penalty of 0.5% of the purchase price (including VAT) of the defective object of performance for each day of delay. The Buyer's right to compensation for damages is not affected.

10. If the Seller fails to remedy the defects of the object of performance in accordance with this contract properly and on time, even within an additional reasonable period of time provided by the Buyer, the Buyer is entitled to have the defects of the object remedied by a third party. The Seller shall then be obliged to reimburse the Buyer for all costs reasonably incurred and proven for the removal of the defects of the object of performance by a third party. This is without prejudice to the Buyer's claim for compensation for damages as well as the claim for payment of a contractual penalty pursuant to paragraphs 8 and 9 of this Article.

11. The seller is responsible for the fact that the goods are not legally defective. If a third party asserts any claims against the buyer on the basis of its industrial or other intellectual property, including copyright in the goods, the seller is obliged to settle these claims on its own behalf at its own expense, including any litigation. This obligation of the Seller shall survive the termination of the warranty.

VII.

Maintenance and servicing of goods

1. During the period of the quality guarantee, the Seller undertakes to provide the Buyer with complete maintenance and servicing of the Goods in the sense of providing all periodic inspections, treatments, adjustments, repairs, validations and tests of the Goods that are required by the manufacturer or applicable law.

2. The Seller is obliged to keep track of the time, dates and deadlines of all the above mentioned inspections, treatments, adjustments, repairs and tests and to notify the Buyer in writing at least 5 working days in advance of their taking place, while respecting the operational needs of the Buyer and accommodating the Buyer in case he is asked to reschedule them. If the rescheduling of the activities referred to in the first sentence should result in non-compliance with the deadlines and time limits laid down by law or if the Buyer's rights could be lost as a result, the Seller must notify the Buyer in writing. If the Seller fails to do so, the Seller shall be liable for any adverse consequences arising therefrom for the Buyer.

3. The Buyer undertakes to provide the Seller with the necessary cooperation to carry out the above-mentioned inspections, treatment, adjustments, repairs and tests of the goods, in particular to allow the Seller access to the goods if its operation allows it.

4. Payment for the provision of all the above mentioned inspections, treatments, adjustments, repairs and tests according to this article is included in the purchase price.

5. In the event of default by the Seller in the performance of its obligations under this Article, the Buyer shall be entitled to ensure the performance of such obligations in a manner at its own discretion, at the Seller's expense. The Buyer's claim for damages shall not be affected. In this case, the Seller may not claim that the interference with the object of performance is unjustified, nor may it result in the loss of the Buyer's rights.

VIII.

Software

1. If the delivery of software products is part of the subject of performance, the buyer is granted an unlimited, non-exclusive and transferable right to use these software products on the goods with which they were delivered, in an unchanged form.

2.The fee for the use of the software products provided for the subject matter of the performance is included in the purchase price and the Seller declares that the use of the software by the Buyer is not prevented by any factual or legal obstacle, resulting in particular from copyright regulations. If this declaration proves to be false, the seller shall bear all liability and costs resulting therefrom, including the obligation to satisfy the claims of the beneficiaries.

IX.

Withdrawal from the contract

1. Either party shall be entitled to withdraw from this Agreement in the event of a material breach by the other party. In particular, the Seller shall be deemed to be in material breach of this Contract if the delay in delivery of the subject of performance exceeds 15 days, provided that such delay is caused by reasons on the Seller's side.

2. For the purposes of this contract, a material breach of contractual obligations is furthermore considered to be a breach where the breaching party should have or could have foreseen that, taking into account all the circumstances, the other party would not be interested in concluding the contract.

3. Withdrawal from the contract must be made by written notice of withdrawal, which must include the reason for withdrawal and must be delivered to the other party. The withdrawal shall take effect upon delivery of a written copy of the withdrawal to the other party.

4. Withdrawal from the contract does not affect claims for payment of contractual penalties or other sanctions arising from this contract, as well as claims for compensation for damages, injury, lost profits arising before the moment of withdrawal from the contract.

X.

Final provisions

1. Unless otherwise stipulated in this contract, the rights and obligations of both parties shall be governed by the relevant provisions of Act No. 89/2012 Coll., the Civil Code as amended, special legal regulations implementing the Civil Code and special related legal regulations.

2. This contract is not assignable, nor are the claims arising from it. Receipts for partial performance and the return of promissory notes with the effect of a receipt are excluded. The application of Section 577 of Act No. 89/2012 Coll., Civil Code, is excluded. The determination of the quantitative, temporal, territorial or other scope in the contract is fixed by the autonomous agreement of the parties and the court is not entitled to interfere with the contract in any way. The application of the provisions of Sections 557, 1726, 1728, 1729, 1740, 1744, 1757(2), (3), 1770, §1950 of Act No. 89/2012 Coll., Civil Code, is excluded. Pursuant to § 1765 of Act No. 89/2012 Coll., Civil Code, the seller has assumed the risk of a change of circumstances. Before concluding the contract, the parties have fully considered the economic, economic and factual situation and are fully aware of the circumstances of the contract as well as the circumstances that may arise after the conclusion of the contract.

3. Any letter, notice or other document shall be deemed to have been delivered to the other party to this Agreement if it is delivered to the address of that party set out at the head of this Agreement. In case of doubt, a document sent by registered post shall be deemed to have been delivered on the third day after the date of posting.

4. The parties declare that this contract has been made on the basis of true information and their free, true and serious will and that it can only be changed by agreement of both parties contained in a written, chronologically numbered amendment to this contract, signed by the statutory representatives of both parties. The amendment must be expressly marked 'Amendment to the Contract'. No other minutes, protocols, etc. shall be deemed to be an amendment to this Contract. Any agreements made prior to the signing of the Contract and not included in its contents shall cease to be valid on the date of signature of the Contract, irrespective of the functional status of the persons who made the pre-contractual arrangements. This Contract thus constitutes the entire agreement of the Parties on its subject matter and supersedes all previous arrangements and agreements reached with respect to its subject matter.

5. This Agreement shall enter into force on the date of its signing by both Parties.

6. The Parties declare that they have duly read the Contract, agree to its entire content and affix their signatures to prove that it is the expression of their free and serious will.

7. List of annexes:

- Annex 1 - Item list including prices and technical specifications

- Annex 2 - Table of minimum technical conditions

In Olomouc on In.........................on...................

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

University Hospital Olomouc ..............................................................

buyer Seller

**Annex 1 - Itemised list of supplies including prices and technical specifications**

**Annex 2 - Table of minimum technical conditions**