



Attachment No. 3 to the Inquiry No. DZ/17/08/2024 - modification of August 20, 2024

**PURCHASE AND DELIVERY AGREEMENT No. KOPZ .../.../2024
(No.)**

concluded on 2024 in Wrocław, hereinafter referred to as the Agreement,
by and between:

KGHM Cuprum Sp. z o.o. - Centrum Badawczo-Rozwojowe (Research and Development Centre) with its registered office at gen. W. Sikorskiego street 2-8, 53-659 Wrocław, Poland entered in the District Court in Wrocław, 6th Commercial Department of the National Court Register under the number KRS 0000100797, REGON 930093846, share capital PLN 17,329,000, including PLN 14,864,747 in cash, 2,464,253 in kind, represented by:
Mr. Sławomir Fabich - President of the Management Board,
Mrs. Magdalena Król - Vice-President of the Management Board,

hereinafter referred to as the **Cotracting Party**,
and

.....
represented by

.....

hereinafter referred to as the **Supplier**,
hereinafter referred to collectively as the **Parties**, or individually as the **Party**,

**§ 1
SUBJECT MATTER OF THE AGREEMENT**

1. The subject matter of the agreement is the **Purchase and delivery of a complete 2-channel system for measuring acoustic emission signals, including comprehensive analysis software and training, for the PERSEPHONE project.**
2. The system will be used for testing rock samples for the Kaiser effect. This includes:
 - a) Base unit, minimum 2-channel (equipped with USB 3.0 communication interface, 2 slots for ASIP-2 modules, connector for synchronization with another base module) – 1 unit
 - b) ASIP-2 input module for AE measurements (two BNC measurement sockets, preamp power supply, sampling frequency > 30 MHz, low and high pass frequency filters) – 1 unit
 - c) Memory module for transient waveforms (min 512 MB, sampling frequency in the range of at least 300 kHz – 10 MHz, internal trigger) – 1 unit
 - d) Preamplifiers for AE sensors (gain >30 dB, BNC connectors) – 2 units, if required
 - e) Acoustic emission sensors (frequency range of at least 20 – 400 kHz) – 2 units

THIS PROJECT HAS RECEIVED FUNDING FROM THE EUROPEAN UNION'S HORIZON EUROPE RESEARCH AND INNOVATION PROGRAMM UNDER GRANT AGREEMENT NUMBER 101138451



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- f) Acoustic emission sensors (frequency range of at least 100 – 800 kHz) – 2 units
- g) Necessary accessories (including cables and mounts for sensor installation, lubricants, calibrator, transport case)
- h) **Software compatible with data from the measuring system – perpetual license (base software, planar location software, time signal analysis software).**
- i) Training on the installation and operation of the measurement system and included software, including:
 - Training on equipment and software operation.
 - Explanation of acoustic emission phenomenon.
 - Basics of conducting measurements.
 - Pilot testing on models: steel plate, concrete slab, steel beam. Group of up to 4 persons.
 - On-site training at the customer's location

§ 2

TERMS AND CONDITIONS OF IMPLEMENTATION

1. Delivery of the subject matter of the agreement shall take place within **6 weeks from the date of signing the agreement.**
2. The date of execution of the subject matter of the agreement shall be the date on which the Parties sign the *Acceptance Protocol* of the execution of the subject matter of the agreement without reservations, which is attached as *Appendix No. 1* to the agreement.
3. The Supplier is obliged to notify the Contracting Party in writing of any event that may affect the non-performance of the subject matter of the agreement within the required time limit.
4. All circumstances, except those having the appearance of Force Majeure, accompanying or related to the performance of the Subject Matter of the Agreement, the Supplier has included in the deadlines for the performance of the Subject Matter of the Agreement.

§ 3

ACCEPTANCE

1. Place of the agreement execution (delivery):

**KGHM Cuprum Sp. z o.o. Centrum Badawczo – Rozwojowe
(Research and Development Centre)
Sikorskiego 2-8 street, 53-659 Wrocław, Poland**
2. Acceptance of the subject matter of the agreement will be made by drawing up an acceptance protocol of the execution of the subject matter of the agreement, which is attached as *Appendix No. 1* to the agreement. The basis for signing the protocol is considered to be the fulfilment by the Supplier of all obligations under the agreement, including the issuance of documents provided for in the agreement and conducting training. After receiving the subject of the contract, the Ordering Party reserves the need to perform tests and check the system before signing the acceptance protocol.



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3. Along with the subject matter of the Agreement, the Supplier shall provide complete technical documentation of the order and other documents, including warranty documents, if required.
4. Along with the subject matter of the Agreement, the Supplier shall provide the Ordering Party with all license documents necessary for the use of the software constituting the subject matter of this Agreement and confirming the right to legally use the software in question
5. If defects are found during acceptance, the Contracting Party shall have the following rights:
 - 1) if the defects are removable, the Contracting Party may:
 - a) demand that the defects be removed within the time limit set by it,
 - b) refuse acceptance until the defects are removed, and in this case the date of "completion of the subject matter of the agreement" will be the date of signing the protocol of quantitative and qualitative acceptance of the subject matter of the agreement without reservations,
 - 2) if they are not removable - demand delivery of the subject matter of the agreement without defects, setting an additional period for this purpose to the Supplier, or withdraw from the agreement for reasons attributable to the Supplier. The setting of an additional deadline does not stop the calculation of contractual penalties for improper performance of the agreement on time.
5. Liability for the realized delivery, from the moment of delivery until the end of acceptance of the subject matter of the agreement by the Contracting Party (i.e. writing a protocol of quantitative and qualitative acceptance without reservations) shall be borne by the Supplier.
6. The activities carried out during the acceptance, as well as the deadlines set for the removal of defects, will be included in the protocol of quantitative and qualitative acceptance of the execution of the subject matter of the agreement, signed by authorized representatives of the Parties, participating in the acceptance of the subject matter of the agreement.
7. The Supplier shall notify the Contracting Party of the fact that the defects have been removed in writing/by e-mail in order to accept the subject matter of the agreement to the extent previously disputed.
8. If the Supplier refuses to remove the defects or does not remove them within the period set by the Contracting Party, or the circumstances indicate that it will not be able to remove them within that period, the Contracting Party shall have the right to have the defects removed by a third party at the expense and risk of the Supplier. For this reason, the Contracting Party does not lose its rights under the guarantee provided by the Supplier.

§ 4
TERMS OF PAYMENT

1. The price on the basis of which the Contracting Party selected the offer is:
 - a) net value:
(in words , 00/100)
 - b) VAT amount :
(in words, 00/100):
 - c) **gross value:**



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(in words: , 00/100)

2. The remuneration referred to above shall include all costs for the performance of the Subject Matter of the Agreement or a part thereof, in accordance with the material scope, including any customs duty, excise tax and shall apply to the performance of the subject matter of the agreement under the terms of Incoterms DDP.
3. The remuneration for the subject matter of the agreement will be paid by transfer to the account indicated by the Supplier, within 60 days from the date of receipt of a properly issued invoice. The day of payment shall be understood as the day on which the Contracting Party's bank account is debited.
4. The Supplier shall include on the VAT invoice the full name and address of the Contracting Party in the wording indicated in the introduction to the Agreement.
5. The basis for issuing an invoice is the signing by both parties of the Acceptance Protocol which constitutes Appendix No. 1 to the agreement, with no comments.
6. The Contracting Party reserves the right to pay the remuneration due for the performance of the Agreement under the split payment mechanism (Split payment) provided for in the provisions of the Value Added Tax Act. In addition:
 - a. The Supplier declares that the bank account indicated in the Agreement:
 - i. is an account that allows payment under the split payment mechanism referred to in sec. 4 above, as well as
 - ii. is an account included in the electronic list of entities maintained from 01 September 2019 by the Head of the National Tax Administration, referred to in the Value Added Tax Act (hereinafter: List).
 - b. In the event that the Supplier's bank account does not meet the conditions set forth in subsection a) above, the delay in making payment within the deadline specified in the Agreement, resulting from the Contracting Party's inability to make payment of remuneration using the split payment mechanism or to make payment to an account included in the List, shall not constitute grounds for the Supplier to claim any interest from the Contracting Party, as well as any other compensation/contractual penalties/damages/claims for making untimely payment. Such delay shall also not constitute grounds for termination or withdrawal from the agreement.
7. The Contracting Party informs that it is a registered active VAT taxpayer with a tax identification number: 896-000-17-70.
8. The Supplier declares that it is a registered active VAT taxpayer with a tax identification number:

§ 5

ASSURANCES, RIGHTS, OBLIGATIONS AND LIABILITY OF THE SUPPLIER

1. The parties hereby confirm that the relevant provisions of the Civil Code will apply to issues related to the set-off of receivables.
2. In the event that the Supplier, as a result of improper performance of the Agreement, causes additional costs to the Contracting Party or in the event of damage to the



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Contracting Party, the Contracting Party shall be entitled to withhold payment to the Supplier until such costs or the extent of the damage are determined and paid for, without then being in delay.

§ 6

GUARANTEE AND WARRANTY

1. The Supplier shall be liable for physical and legal defects in the subject matter of the Agreement found during acceptance and for defects revealed after acceptance. The Supplier provides guarantee **with technical support i.e. equipment and software operations and troubleshooting support**. The supplier provides a warranty for a period of 12 months starting from the date the representatives of the parties sign a protocol of final acceptance of the completed work.
2. During the guarantee and warranty period, the Supplier undertakes to remove any defects found within 30 days from the date of their effective notification or any other date indicated by the Contracting Party and confirmed in writing by the Contractor.
3. The Supplier authorizes the Contracting Party to remove the defects at the Supplier's expense in case of failure to meet the deadline for removal of defects, without losing the right to guarantee and warranty.
4. The Supplier provides a **12-month** warranty starting from the date the representatives of the parties sign a protocol of final acceptance of the completed work.

§ 7

CONTRACTUAL PENALTIES

1. In the event of non-performance or improper performance of the Agreement by the Supplier, the Contracting Party shall be entitled to contractual penalties:
 - a) for withdrawal from the Agreement by the Contracting Party for reasons attributable to the Supplier, in the amount of 10% of the net contractual remuneration referred to in § 2 sec. 1,
 - b) for untimely execution of the delivery in the amount of 1% of the net contractual remuneration referred to in § 2 sec. 1, for each started day of exceeding the contractual deadline for its execution,
 - c) for violation of the obligation of confidentiality referred to in **§ 10** sec. 1 in the amount of 15% of the net contractual remuneration, for each violation.
2. If the damage exceeds the amount of the reserved contractual penalties, the Parties may claim supplementary damages. If the damage is caused by reasons other than those specified above, the Parties may seek compensation under the general rules of the Civil Code.
3. The contractual penalty shall be payable within 7 days from the date of receipt of the penalty payment request.
4. In the event of damage exceeding the amount of the reserved contractual penalties, the Contracting Party may claim supplementary damages. If the damage is caused by



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reasons other than those specified above, the Contracting Party may seek compensation under the general rules of the Civil Code.

5. The Supplier agrees to deduct the amounts of calculated contractual penalties from the remuneration to which it is entitled under this agreement.

§ 8

PERSONS LIABLE FOR THE EXECUTION OF THE AGREEMENT

1. The person authorized to supervise the execution of the subject matter of the agreement on the part of the Contracting Party, including participation in acceptance activities, is **Marcin Szumny**, email: marcin.szumny@kghmcuprum.com tel. number +48 717 812 227.
2. The person authorized to supervise the execution of the subject matter of the agreement on the part of the Supplier, including participation in acceptance activities, are - each individually (one person):
 - a), email:@....., tel. number +48
 - b), email:@....., tel. number +48
3. Change of persons and contact details indicated in sec. 1 and 2 above, shall be effective upon written notification of it to the other Party and does not require the form of an annex to the Agreement.

§ 9

The Supplier declares that, in accordance with Article 13 of the Regulation of the European Parliament and of the Council (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, has been informed that:

1. The Controller of its personal data, including the data indicated in § 1 sec. 5, is the Contracting Party, registered address: Gen. Władysława Sikorskiego 2-8 street, postcode: 53-659, Wrocław, tel. number (071) 781 22 01;
2. The Contracting Party will process the following categories of personal data: name and surname, address, telephone number, e-mail address,
3. the Data Protection Officer can be contacted via email: iod@cuprum.wroc.pl,
4. personal data is processed for purposes arising from the legitimate interests exercised by the Contracting Party (the basis for processing), which are: ensuring proper performance of the Agreement, protection of confidential information,
5. the provision of personal data is voluntary, except that the provision of personal data is a condition for allowing the performance of the tasks specified in the Agreement;
6. personal data will be processed during the period of performance of the agreement, taking into account the provisions on limitation period, and will be stored for a period of 3 years, unless for other reasons storage is necessary, including tax regulations;
7. data will be disclosed to members of the bodies, employees of the Contracting Party, the company KGHM Polska Miedź S.A. and entities and their employees providing legal, financial, accounting and IT services,



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- 8. its rights in relation to the Contracting Party are: the right to request access to its personal data, their rectification, erasure or restriction of processing, and to object to the processing of personal data on the basis of and in connection with the exercise of the indicated legitimate interest for reasons related to your particular situation, as well as the right to data portability - the Data Protection Officer at the Contracting Party may be contacted regarding the exercise of rights;
- 9. has the right to lodge a complaint with the President of the Personal Data Protection Office in the event that the controller is found to have violated data protection regulations;
- 10. no automated decisions will be made as a result of the processing, including in the form of profiling

**§ 10
FINAL PROVISIONS**

- 1. The Supplier undertakes to keep confidential all information relating to the performance of the Agreement, in particular data, documents and information received from the Contracting Party. The obligation included in this section shall be effective from the date of conclusion of the Agreement for a period of **2 years** after its execution, expiration, dissolution or withdrawal.
- 2. Any disputes arising out of the interpretation or performance of the subject matter of the Agreement shall be attempted to be resolved amicably by the Parties, and in matters that cannot be resolved by negotiation, the competent authority shall be the Court with jurisdiction over the Contracting Party's registered office.
- 3. Unless otherwise provided in the Agreement, any changes or additions to the Agreement shall be made in writing in the form of an annex acceptable by both Parties, otherwise being null and void.
- 4. Dissolution of the agreement, its termination or withdrawal from the agreement shall be made in writing otherwise being null and void.
- 5. In matters not regulated by the Agreement, the relevant provisions of Polish law, in particular the Civil Code, shall apply.
- 6. The Contracting Party declares that it has the status of a large entrepreneur within the meaning of the provision of Article 4(6) of the Act of 08 March 2013 on Prevention of Excessive Delays in Commercial Transactions (Journal of Laws of 2019, item 118, as amended).
- 7. The Appendices constitute an integral part of the Agreement.
- 8. The Agreement was drawn up in two counterparts, with one copy for the Contracting Party and one copy for the Supplier.

Appendices:

- 1. Template of the acceptance protocol

SUPPLIER:

CONTRACTING PARTY:

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Appendix No. 1 - Template of the acceptance protocol

DELIVERY RECEIPT

- 1. Date and place of collection:**2024** r.
- 2. Contract title: **Purchase and delivery of a complete 2-channel system for measuring acoustic emission signals, including comprehensive analysis software and training, for the PERSEPHONE project.**
- 3. Supplier:
on the basis of a contract **KOPZ/2024/00.../...** (.....)
- 4. Delivery date: 2024 r.
- 5. Object of receipt:
 - a) Object of the contract:
 - b) Serial number:
 - c) Quantity:
 - d) Training:
- 6. Gross value:
- 7. The delivered goods are in new, non-returnable, undamaged original manufacturer's packaging, with no signs of external damage.
- 8. The goods specified on the packaging comply with the requirements contained in the Agreement no. **KOPZ/2024/00.../...** (.....)
- 9. Members of the committee:

First name and last name

Recipient's representatives:
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