

「高精度 3D プリンタ 一式の購入」の契約につきまして、日本語版契約書を正本とします。英語版と日本語版の記述に相違がある場合、日本語版の記述を優先します。

# Sales and Purchase Agreement for FY2015

(Draft)

Okinawa Institute of Science and Technology School Corporation (hereinafter referred to as “OIST”) and \*\*\*\*\* (hereinafter referred to as “Seller”) shall conclude a sales and purchase agreement, as follows.

1. Description: Purchase of \*\*\*\*\*, details of which may be described in Exhibit A attached hereto (hereinafter referred to as the “Subject Matter”)
2. Contract amount: \*\*\*\*\* yen (Breakdown: as per set forth in the quotation as attached as Exhibit B hereto (hereinafter referred to as the “Quotation”) attached hereto)
3. Delivery terms: DDP Okinawa
4. Packing: Export standard packing
5. Transshipment: Not allowed
6. Partial shipment: Not allowed
7. Delivery site: 1919-1, Tancha, Onna-son, Kunigami-gun, Okinawa, Japan  
Site designated by the relevant personnel within the premises of Okinawa Institute of Science and Technology School Corporation
8. Delivery date: \*\*\*\*\* \*\*, 2015
9. Inspection: Done by OIST
10. Payment: T/T remittance by the end of the month following the month of the acceptance
11. Other Terms and Conditions: None

In witness whereof, two copies of this Agreement shall be executed by both parties setting their hands and seals, each retaining a copy thereof.

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MM, DD, 2015

OIST: 1919-1, Tancha, Onna-son, Kunigami-gun, Okinawa  
Okinawa Institute of Science and Technology School  
Corporation

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Kenta Ogawa, Manager of Procurement & Supplies section

Seller: \*\*\*\*\*

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(Purpose of Agreement)

**Article 1:** Seller agrees to sell, and OIST agrees to purchase the Subject Matter of this Agreement, as described in the cover page hereof and the Quotation.

2. Seller shall deliver the Subject Matter for the contract amount specified above by the designated delivery date, as stipulated in the provisions of this Agreement, OIST's specifications, and other relevant documents (hereinafter referred to as "Specifications, etc."), as attached as Exhibit A hereto and/or provided by OIST.

(Documents to be submitted)

**Article 2:** Seller shall compile necessary documents (if any) pursuant to OIST's Specifications, etc., and submit such documents to OIST by the date designated by OIST for OIST's approval.

(Procedures required by public offices)

**Article 3:** Seller shall perform procedures required by public offices, etc. (if any), for performance of this Agreement at its own cost.

(Use of patents, etc.)

**Article 4:** Seller shall take full responsibility for clearing rights (such as acquisition of license) of any patent rights, copyrights (including rights under Sections 27 and 28 of the Copy Right Act of Japan), utility model rights, design rights, and any other intangible/intellectual property rights held by a third party in the course of execution and performance of this Agreement and for the purpose of OIST's exploitation of the Subject Matter, and shall defend, indemnify, and hold OIST harmless in this regard. Seller shall immediately notify OIST in writing if any claim is made in connection with this Agreement by a third party.

(Confidentiality)

**Article 5:** OIST and Seller shall (i) not leak any secrets of the other party obtained in the course of execution and/or performance of this Agreement to any third party, and (ii) take all reasonable measures to maintain the confidentiality of all secrets in its possession or control, which will in no event be less than the measures it uses to maintain the confidentiality of its own information of similar importance. OIST and Seller shall not use such secrets of the other party for purposes other than performing this Agreement.

(Supervision)

**Article 6:** Only within the scope of this Agreement and with regard to Seller's performance of obligation under this Agreement, OIST may supervise, or give direction to Seller, as situation required.

(Changes in Specifications, etc.)

**Article 7:** OIST may change the Specifications, etc., suspend or cancel this Agreement until the completion of delivery of the Subject Matter pursuant to Article 11 and Article 12.

2. Upon changing the Specifications, etc., OIST shall discuss the contract amount, the delivery date, and other conditions stipulated herein with Seller.

3. If Seller finds it difficult to deliver the Subject Matter under conditions stipulated in the Specifications, etc., or if required for any other technical reasons, or if Seller has any question about the contents of the Specifications, etc., Seller shall promptly make proposals for

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changing the Specifications and discuss the matter with OIST.

(Changes in contract amount)

**Article 8:** If any conditions for determining the contract amount are changed due to any of the following reasons after conclusion of this Agreement, OIST and Seller may agree to change the contract amount and other ancillary conditions:

- (1) Establishment, revision, or abolishment of tax laws and other legislations and regulations;
  - (2) The contract amount has turned out significantly unreasonable in the light of socially accepted norms due to price changes, caused by major economic fluctuations and other reasons that cannot be attributable to Seller; or
  - (3) Changes in the Specifications, etc., according to Article 7 Paragraph 1 or Paragraph 3 thereof.
  - (4) Implementation of a proposal based on the request of OIST has an impact on prices.
2. The parties agree that the changes of the contract amount stipulated in the preceding paragraph shall preferably be conducted collectively in writing, rather than individually, without changing contract amount each time through consensus between both parties.
3. In the event in which the necessity to raise the contract amount arises pursuant to Paragraph 1 above, it may be raised to the extent permitted under OIST's budgetary measures.

(Submission of delivery slip, etc.)

**Article 9:** Seller shall submit a delivery slip, etc. to OIST without delay upon delivery of the Subject Matter.

(Inspection)

**Article 10:** OIST shall conduct acceptance inspections of the Subject Matter within ten (10) business days after receiving the delivery slip stipulated in the preceding article, pursuant to this Agreement, the Specifications, etc. and regulations pertaining to inspections prescribed by OIST.

2. The acceptance inspection stipulated in the preceding paragraph shall be attended by Seller. However, when Seller is not present at the inspection, OIST shall still conduct the acceptance inspections alone and notify Seller of the results.

(Acceptance)

**Article 11:** The Subject Matter shall be deemed to have been accepted when Seller is informed that the Subject Matter has passed the acceptance inspection stipulated in the preceding article through attendance to the acceptance inspection or notification from OIST. Any damage, defects, etc. detected in the Subject Matter prior to the acceptance shall be Seller's responsibility, unless the damage is attributable to OIST's intentional or grossly negligent acts.

(Repairs)

**Article 12:** If any defect is detected in all or part of the Subject Matter, as a result of the inspection stipulated in Article 10, Seller shall, at its own cost and responsibility, immediately repair or modify the Subject Matter, or deliver a replacement to OIST by the date designated by OIST (hereinafter referred to as "Repairs, etc.").

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2. In the case of the Repairs, etc. stipulated in the preceding paragraph, the Article 10 through Article 12 and Article 15 shall apply mutatis mutandis to the acceptance of the Subject Matter and collection of delay penalty, etc.

(Payment of price and penalty interest)

**Article 13:** After accepting the delivery of the Subject Matter pursuant to the preceding two articles, OIST shall pay its price during the period from the date on which OIST receives Seller's duly executed invoice to the end (inclusive) of the following month.

2. If OIST fails to pay the price by the end of the period stipulated in the preceding paragraph, Seller may claim penalty interest at the annual rate of 2.9% for the amount in arrear for the number of days from the date following the end of the payment period until the date on which the payment is completed. However, if the failure of payment is due to Act of God or other unavoidable circumstances, the period in which such circumstances exist shall not be included in the period of payment delay.

(Setoff)

**Article 14:** In the event OIST is entitled to any damage compensations from Seller or has any other credits to Seller, even if they are not payable yet, OIST may set off its payment amount pursuant to this Agreement or other agreements and any other monetary debts to Seller against those credits.

(Extension of delivery period and delay penalty)

**Article 15:** If Seller is unable to deliver the Subject Matter by the end of the delivery date stipulated herein due to Act of God or other causes not attributable to Seller, Seller may request OIST to extend the delivery period by presenting the reasons in detail. In this case, OIST may approve the request if it is deemed appropriate by OIST.

2. In addition to the provision stipulated in the preceding paragraph, when Seller requests an extension of the delivery period, and when the delivery of the Subject Matter is expected to be available by a date deemed satisfactory by OIST, OIST may approve such a request for extension at its own discretion.
3. In the event the Subject Matter is not delivered by the delivery date stipulated herein, Seller shall pay to OIST a delay penalty equivalent to one thousandth (1/1000) of the contract amount per day from the day following the delivery date until the completion of the delivery, unless approved pursuant to the provisions of the preceding two paragraphs.

(OIST's right of cancellation)

**Article 16:** If any of the following occurs, OIST may cancel all or part of this Agreement by providing Seller a written notice:

- (1) Seller fails to perform all or part of this Agreement without due cause;
- (2) Seller fails to follow OIST's instructions hereunder, interferes with OIST's business operations, or commits any fraudulent act;
- (3) Application to commence bankruptcy, or any other similar proceedings has been filed with regard to Seller, Seller's asset or credit standing has significantly deteriorated, or other causes

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have occurred to make OIST believe it to be difficult for Seller to accomplish the purpose of this Agreement, at OIST's sole discretion;

(4) Due to Act of God or other causes that cannot be attributed to Seller, the delivery of the Subject Matter is deemed impossible by OIST, at OIST's sole discretion;

(5) Seller has requested cancellation of this Agreement for causes deemed reasonable by OIST; or

(6) Due to internal affairs of OIST, such as change of policy of Government etc. (However, OIST shall compensate, through consultation with Seller, for damages (other than the loss of profit which should have been gained) caused by such cancellation.

(Seller's right of cancellation)

**Article 17:** When OIST has violated any contractual obligations provided herein due to causes attributable to OIST, Seller may request in writing OIST to perform the obligations by setting a reasonable period to cure. In the event OIST fails to perform such obligations within such period, Seller may cancel all or part of this Agreement.

(Penalty)

**Article 18:** In the event this Agreement is cancelled pursuant to the provisions of Item (1), Item (2), or Item (3) of Article 16, OIST may charge Seller an amount equivalent to ten one hundredths (1/10) of the contract amount as a penalty, in addition to actual damages to be compensated.

(Change of representative)

**Article 19:** In the event Seller has changed its representative, effected a transfer of business, a merger or other significant operational matters, Seller shall promptly notify OIST of such changes.

(No commissioning to third party)

**Article 20:** Seller shall not commission all or part of the performance of this Agreement to any third party, without OIST's prior written approval. Any commission in violation thereof shall be null and void.

(No assignment of receivables)

**Article 21:** Without OIST's prior written approval, Seller shall not assign any receivables and payables arising out of this Agreement to any third party, or have any third party succeed to them, or pledge or mortgage any properties manufactured or procured pursuant to this Agreement. Any assignment, succession, pledge or mortgage in violation thereof shall be null and void.

(Warranty against defects)

**Article 22:** Seller shall take responsibility for any defect in the Subject Matter delivered to OIST for one (1) year from the delivery, regardless of Seller's own negligence.

2. Notwithstanding the preceding paragraph, in the event the defect in the Subject Matter has not been easily found by OIST's inspection pursuant to Article 10 and is attributable to Seller, Seller shall take responsibility for it for one (1) year from the date on which OIST has detected the defect.

3. In the event any defect is discovered during the periods specified in the preceding two paragraphs, OIST may request Seller to perform proper repairs, etc., or instead of or in parallel

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with the repairs, etc., charge Seller compensations for damages caused by the defect and the delay penalty stipulated in Paragraph 3 of Article 15 by setting proper deadlines.

(Damage compensation)

**Article 23:** Seller shall compensate for any damage suffered by OIST or any third party due to performance of this Agreement, unless the damage has been caused by reasons attributable to OIST.

2. Seller shall compensate for any damage caused by defects in the Subject Matter, and suffered by OIST or any third party.
3. If any conflict with a third party arises out of or in connection with performance of this Agreement, OIST and Seller shall cooperate with each other to solve the problem.

(Penalty for corruption such as bid-rigging)

**Article 24:** If any of the following applies with respect to this Agreement, Seller shall pay to OIST a penalty equivalent to one tenth (1/10) of the contract amount, no later than the date specified by OIST.

(1) The Fair Trade Commission gives a cease and desist order set forth in Paragraph 1 of Article 49 of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Act No.54 of 1947) (hereinafter referred to as the “Anti-Monopoly Act”) or a payment order set forth in Paragraph 1 of Article 50 of the Anti-Monopoly Act, to Seller or any trade association Seller belongs to and such order or a trial decision as set forth in Paragraph 4 of Article 66 of the said act becomes final and binding, due to or arising out of the violation by Seller of Article 3 or Article 19 of the Anti-Monopoly Act, or the violation by such trade association Seller belongs to of Item 1 of Article 8 of the said act. However, this provision shall not apply to any act that does not cause monetary damages to OIST as a result of the violation by Seller of any of the provisions of Article 19 of the Anti-Monopoly Act, such as the Unfair Price Cutting set forth in Paragraph 6 of the Designation of Unfair Trade Practices (Fair Trade Commission Public Notice No. 15 of 1982) based upon the provision of Paragraph 9 of Article 2 of the Anti-Monopoly Act, as evidenced by Seller and approved by OIST.

(2) The Fair Trade Commission provides Seller with notice of its decision not to give a surcharge payment order as set forth in Paragraph 18 or Paragraph 21 of Article 7-2 of the Anti-Monopoly Act.

(3) A punishment for Seller (or any of its officers or employees if Seller is a corporation) is confirmed in accordance with Article 96-6 of the Penal Code (Act No.45 of 1907), or Paragraph 1 of Article 89 or Paragraph 1-1 of Article 95 of the Anti-Monopoly Act.

2. Nothing in the preceding paragraph shall preclude OIST from filing a claim for the excess amount of damage if the damage amount actually incurred by OIST exceeds the amount of the penalty.
3. If any of the provisions of Paragraph 1 applies with respect to this Agreement, Seller shall promptly submit to OIST any and all related documents regarding such disposition.
4. If Seller fails to pay the penalty set forth in Paragraph 1 by the date specified by OIST, Seller



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shall pay to OIST penalty interest at the annual rate of 5.0% for the amount in arrear for the number of days from the date following the due date until the date on which the payment is completed.

5. OIST may immediately cancel this Agreement without any notice if OIST files a claim against Seller for the penalty pursuant to any of the provisions of Paragraph 1.

(Elimination of Antisocial Forces)

**Article 25:** Seller represents and warrants the following to OIST:

- (1) Seller and any of its officers and employees do not belong to, are not, and are not affiliated with, an organized crime group, a members of an organized crime group, a companies or a group related to an organized crime group, corporate extortionist and any other anti-social forces (hereinafter referred to as the “Antisocial Forces”), or they have never belonged to or affiliated with the Antisocial Forces;
  - (2) Seller and any of its officers and employees do not provide the Antisocial Forces with any investment, loans, funds or services, and they do not do any business of any kind with the Antisocial Forces;
  - (3) Seller and any of its officers and employees do not have a socially criticized relationship with the Antisocial Forces; and
  - (4) Seller and any of its officers and employees do not make abusive or unreasonable demands beyond legal liability against OIST, and do not slander the reputation or damage the credibility of OIST and interfere with the operations of OIST, whether on behalf of itself or via a third party.
2. Seller shall promptly notify OIST of the fact of violation by Seller of any of the provisions of the preceding paragraph, if any.
  3. OIST may immediately cancel this Agreement without any notice if the violation by Seller of any of the provisions of the preceding paragraph is found to be true. Seller shall not be entitled to claim to OIST any damages, if any, caused by such cancellation hereunder.

(Protection of personal information)

**Article 26:** In performance of this Agreement, Seller shall observe laws and codes for protection of personal information, recognize the importance of protecting personal information, and take all reasonable measures not to infringe on any personal rights or benefits upon handling any personal information.

(Trade terms)

**Article 27:** The trade terms under this Agreement shall be governed and interpreted by the provision of the latest International Commercial Terms (INCOTERMS).

(Governing Law and Resolution of conflict arising out of Agreement)

**Article 28:** This Agreement shall be governed by and construed in accordance with the laws of Japan. In the case of any conflict between OIST and Seller concerning this Agreement, Naha District Court shall be designated as the court for the first instance having exclusive jurisdiction for such conflict.



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(Entire Agreement)

**Article 29:** This Agreement constitutes the sole and entire agreement and understanding among the parties with respect to the subject matter hereof, and supersedes and replaces all prior discussions, agreements and understandings, oral or written, of any nature between them related to its subject matter.

2. Notwithstanding the preceding paragraph for performance of this Agreement, special provisions, other than the provisions stipulated herein, may be established in writing by mutual agreement (hereinafter referred to as the “Special Provisions”).
3. In case of any discrepancy between any Special Provisions and those stipulated herein, such Special Provisions shall prevail.

(Severability)

**Article 30:** If at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby.

(Matters not specified herein)

**Article 31:** Matters not specified in this Agreement shall be determined separately, as required, through good faith discussion among the parties.