

Procurement Contract no 4.2-3/1896

Health Board, registry code 70008799, registered office Paldiski mnt 81 Tallinn Harjumaa 10614 (hereinafter 'buyer'), represented by Birgit Lao,
and

Illumina Netherlands BV, registry code 17188953, located at Steenoven 19, 5626 DK Eindhoven, Netherlands (hereinafter 'seller'), represented by a member of the management board Norbert Keller, Senior Director EMEA,

hereinafter referred to collectively as 'parties' or individually as 'party', enter into this contract of sale (hereinafter 'contract') as follows:

1. General provisions

- 1.1. This contract is concluded as a result of the public procurement "Purchase of a Illumina sequencer for the Health Board communicable diseases lab", reference number 280397 (hereinafter 'procurement').
- 1.2. The public procurement documents (hereinafter 'procurement documents'), the seller's tender, written communications between the parties, and any amendments and annexes to the contract constitute integral parts of the contract. In case of discrepancies between the procurement documents and the seller's tender, the provisions of the procurement documents shall prevail.
- 1.3. The Contract has the following annexes at the time of its conclusion:
 - 1.3.1. Annex 1 - Terms and conditions of the seller.

2. Object of the contract

- 2.1. In compliance with the terms and conditions of procurement and the winning tender, the seller shall sell and the buyer shall purchase for the Health Board the following laboratory equipment (hereinafter object/product): Illumina sequencer.
- 2.2. A more detailed description of the object and the requirements for the object are provided in the procurement documents and the seller's tender.
- 2.3. Purchase of the objects is funded from the project funds 101113427 – TA (European Commission).

3. Price of the contract and payment terms

- 3.1. The buyer shall pay the seller for the object according to the price specified in the tender **340 059,00** euros (hereinafter price of the contract).
- 3.2. The price of the contract shall include the delivery of the object to the buyer's location and other activities by the seller as specified in the procurement documents.
- 3.3. The seller shall not have the right to increase the price of the object during the term of the contract. A reduction in price shall be allowed.
- 3.4. The completion of unloading of the Goods at the Delivery Location and include the unloading, stacking, installation of Hardware, with such installation to occur in line with Contractor's standard installation procedures and being deemed complete once an authorised officer of the Institution confirms the same by signing Contractor's Letter of Acceptance. The buyer shall pay for the object in a single payment.
- 3.5. The seller shall submit an invoice to the buyer in the form of an e-invoice. The invoice must include the reference number of the procurement: 280397.
- 3.6. Pursuant to § 7¹ of the Accounting Act, the operator of an e-invoice is the provider of a handling service for machine-processable source documents, a note to that effect having been entered in the data of the buyer in the commercial register.
- 3.7. E-invoicing options shall include the following:

- 3.7.1. If the seller is a client of the e-invoicing operator, an e-invoice must be forwarded to the e-invoicing operator, through whom it shall reach the buyer.
- 3.7.2. The e-invoice can also be sent free of charge via the arved.ee information system (<https://www.arved.ee>). For this, it is necessary to create a user account in the arved.ee system and enter a specific sales invoice made out to the buyer, to be transmitted to the buyer's e-invoicing operator.
- 3.8. A seller not registered in Estonia can submit an e-invoice through the pan-European electronic documents and e-billing network PEPPOL or send the invoice in PDF format to the e-mail address of the authorised representative of the buyer.
- 3.9. The payment term of the invoice must be at least 14 (fourteen) business days from the date of submission of the invoice.

4. Transfer

- 4.1. The seller shall transfer to the buyer an object the quality, quantity and properties of which comply with the requirements set out in the procurement documents and the tender. Regarding properties not defined in the procurement documents, the object must be of at least average quality and in compliance with the requirements normally set for similar objects.
- 4.2. The object must comply with the technical requirements set out in the procurement documents and the seller must have all intellectual property rights necessary to perform the contract.
- 4.3. The seller shall deliver the object to the buyer's location by the delivery date specified in the tender within **6 months** of concluding the contract. The buyer undertakes to accept the object.
- 4.4. The seller must ensure that the object's quality is preserved during delivery, including any special transportation conditions normally applicable to the objects of the contract.
- 4.5. The transfer of the object will be recorded in an instrument of delivery and receipt.
 - 4.5.1. Along with the instrument of delivery and receipt, the documentation related to the object (including operator's manuals, service manuals, procedures and other necessary documentation) shall be transferred to the buyer.
- 4.6. Following installation of the product, the seller must conduct testing of the product and issue a certificate confirming that the product is operational and set up correctly.
 - 4.6.1. The seller must provide (both during the warranty period and thereafter) a service entity providing maintenance and repairs, available both on the phone and via e-mail and prepared, if necessary, to inspect the object within 3 working days.
 - 4.6.2. The ownership of the object and the risk of accidental loss and damage shall transfer from the seller to the buyer with the signing of the instrument of delivery and receipt.

5. Warranty

- 5.1. The seller must provide the object with a warranty, the period of which shall be 12 months as set in the procurement documents, starting from the transfer of ownership and control of the object to the buyer, unless the warranty start date provided in a letter of warranty or another valid document is more beneficial for the buyer.
- 5.2. The warranty shall cover all non-compliances which become evident during the warranty period.
- 5.3. In order to be eligible for repair or replacement under warranty buyer must (i) promptly contact seller's support department to report the non-conformance, (ii) cooperate with seller in confirming or diagnosing the non-conformance, and (iii) return the product, transportation charges prepaid to seller following seller's instructions or, if agreed by seller and buyer, grant seller's authorized repair personnel access to the product in order to confirm the non-conformance and make repairs

- 5.4. The foregoing warranties do not apply to the extent a non-conformance is due to (i) abuse, misuse, neglect, negligence, accident, improper storage, or use contrary to the documentation or specifications, (ii) use that is an excluded use, (iii) improper handling, installation, maintenance, or repair (other than if performed by seller's personnel), (iv) unauthorized alterations, (v) force majeure events, or (vi) use with a third party's good (unless the product's documentation or specifications expressly state such third party's good is for use with the Product).
- 5.5. Seller warrants that hardware, other than upgraded components, will conform to its specifications for a period of 12 months after its shipment date from seller unless the hardware includes seller provided installation in which case the warranty period begins on the date of installation or 30 days after the date the hardware was delivered, whichever occurs first ("Base Hardware Warranty"). "Upgraded Components" means seller provided components, modifications, or enhancements to hardware provided pursuant to the Base Hardware Warranty. Seller warrants that Upgraded Components will conform to their specifications for a period of 90 days from the date the Upgraded Components are provided by seller. Upgraded Components do not extend the Base Hardware Warranty unless the upgrade was conducted by seller at seller's facilities in which case the upgraded hardware shipped to buyer comes with a new Base Hardware Warranty.
- 5.6. The buyer shall submit a warranty claim to the seller's authorised representative specified in the contract within reasonable time from discovering the defect. The seller is obligated to reply to the buyer's claim as soon as possible, but no later than three days after receiving the claim.
- 5.7. If the object requires warranty service, the seller is responsible for monitoring, verifying and conducting the warranty service.
- 5.8. If the object is replaced during its warranty period, a new warranty is issued with the same duration as the original warranty.
- 5.9. The warranty does not exclude or limit the buyer's right to exercise other legal or contractual remedies.

6. Liability of the parties and force majeure

- 6.1. Each party shall assume complete responsibility for any direct material damage to the other party arising from their failure to comply with their contractual obligations or inadequate performance of such obligations.
- 6.2. The Parties should be liable for direct losses capped at the value of the contract. All contractual penalties are capped at 10% of the price of the contract.
- 6.3. The seller shall be responsible for any breach of the contract, particularly if the seller fails to comply with the contract, or if the object does not meet the contractual requirements or is not handed over on time, or if the seller fails to provide the proper documentation etc. at the time of transfer of the object. The seller shall not be responsible for defects of the object resulting from incorrect use or incorrect maintenance of the object by the buyer.
- 6.4. If it is possible to claim a contractual penalty for the same breach under several provisions or if it is possible to apply different legal remedies for the same breach, the choice of legal remedy shall be up to the buyer. The claiming of contractual penalties does not affect the right to additionally demand performance of obligations and compensation for direct damage.
- 6.5. In exercising legal remedies, the parties shall consider the nature, extent and gravity of breach as well as other factors affecting the contractual relationship. In exercising legal remedies and/or claiming a contractual penalty, the buyer shall follow the principles and regulations provided in the Law of Obligations Act.

- 6.6. The buyer shall submit any claims within reasonable time after becoming aware of the non-conformity of the object.
- 6.6.1. The claim shall describe the defects of the object and set a deadline for eliminating such defects. The buyer may request the defective object to be repaired or replaced with a non-defective object, unless this would be unreasonably costly or inconvenient for the seller.
- 6.6.2. The buyer shall have the right to lower the price of the contract instead of demanding the elimination of defects.
- 6.7. In addition to or instead of demanding performance of contract the buyer may demand a contractual penalty if the seller has not handed over the object or if the object handed over by the seller is not compliant with the terms of the contract.
- 6.8. Failure to comply with the contractual deadline for the delivery of the object or failure to comply with another deadline specified in the contract entitles the buyer to demand from the seller a contractual penalty of up to 10% of the price of the contract.
- 6.9. If, contrary to their contractual obligations, the seller does not repair or replace a defective object and if such delay by the seller is deemed a significant breach of the contract, the buyer shall have the right to purchase the non-delivered or non-compliant object from third parties and demand from the seller, in addition to the contractual penalty, reimbursement of the difference between the amount spent to purchase the object from third parties and the price of the contract, or to terminate the contract extraordinarily and unilaterally.
- 6.10. If the buyer delays in fulfilling their financial obligations specified in the contract, the seller shall have the right to demand from the buyer a late fee of up to a maximum sum of 10% of the price of the contract.
- 6.11. If the seller or persons specified in section 8.4 of this contract violate the obligation of confidentiality set out in section 8 of this contract, the buyer shall have the right to demand from the seller a contractual penalty of up to 10% of the price of the contract and/or to terminate the contract extraordinarily and unilaterally.
- 6.12. In the event of non-compliance or inadequate performance of the obligations provided for in the contract, if this is deemed a significant breach of the contract, the buyer shall have the right to terminate the contract extraordinarily and unilaterally by written notice to the seller. A breach of contract shall be deemed significant primarily in the circumstances described in § 116 (2) of the Law of Obligations Act.
- 6.13. Any contractual penalties and late fees must be paid within 14 (fourteen) days of the receipt of the corresponding claim. When paying for the object, the buyer shall have the right to reduce the price of the contract by the amount of any contractual penalty. The claiming of contractual penalties does not affect a party's right to demand the performance of obligations and compensation for damage from the other party.
- 6.14. Non-performance of contractual obligations or non-compliant performance shall not be considered a breach of contract if caused by force majeure. The parties shall deem force majeure to be the unforeseeable circumstances and events described in § 103 (2) of the Law of Obligations Act, which are beyond the parties' control, or other events which are recognised as force majeure in Estonian case-law.
- 6.14.1. If performance of contract is hindered due to force majeure, the deadlines provided in the contract shall be postponed for the duration of the force majeure.
- 6.14.2. Any restrictions imposed by law as of the closing date for submission of tenders are not considered force majeure. One of the prerequisites for the application of force majeure is the unforeseen nature of the circumstance. The parties to the agreement were aware of the restrictions in force as of the closing date for the submission of tenders and all activities were planned according to the current situation as of the closing date for the submission of tenders. If additional restrictions which prevent the performance of the agreement are imposed, a party has the right to claim force majeure.

7. Communications and authorised representatives

- 7.1. All communications must generally be in a format which can be reproduced in writing. Any communications with significant legal consequences must be submitted to the other party in writing, including, for example, notices of termination of contract between the parties, as well as one party's claim of contract breach to the other party, etc. A digitally signed notice shall be deemed equivalent to written notice.
- 7.2. Notices relating to the contract shall be forwarded to the other party using the contact details indicated in the contract. Parties must immediately inform the other party about any changes in their contact details. Until notification of a change in contact details, all notices shall be deemed duly transmitted if they are sent to the other party using the contact details indicated in the contract.
- 7.3. A written notice shall be deemed to be received by the party if it has been handed over against a signature, or if the notice has been sent by registered mail to the address specified by the party and 5 (five) calendar days have passed since mailing it. When sending notices, including digitally signed documents, via e-mail, the notice shall be deemed received at the time indicated in the e-mail.
- 7.4. The authorised representatives of the parties:
 - 7.4.1. The authorised representative of the buyer is Janne Pullat, telephone +372 5919 9693, e-mail janne.pullat@terviseamet.ee. The authorised representative of the buyer shall have the right to represent the buyer in all matters related to the performance of the contract, *except for amendment of the contract, unilateral termination of the contract without notice, and claiming contractual penalty, late fees and damages*.
 - 7.4.2. The authorised representative of the seller is Romas Tamosevicius, telephone +31 800 022 2493, e-mail customercare@illumina.com.
- 7.5. With reasoned need, parties may change the contact details of their authorised representatives during the contract by notifying the other party by e-mail. Until notification of a change in contact details, all notices shall be deemed duly transmitted if they are sent to the other party using the contact details indicated in the contract.

8. Confidentiality

- 8.1. During the term of the contract and after termination thereof, the seller shall keep confidential all information which has become known to them in the course of performing the contract, if the buyer may reasonably have a legitimate interest in keeping such information confidential.
- 8.2. Disclosing confidential information to third parties shall be allowed only with the buyer's prior consent in a format which can be reproduced in writing. The confidentiality obligation provided in this contract shall not extend to the disclosure of information to the parties' auditors, lawyers, banks, insurers or other legal entities or partners in the mandatary's global network, subcontractors or service providers bound by a confidentiality obligation, and in cases where the party is obliged to disclose information in accordance with the law.
- 8.3. The seller undertakes not to use confidential information for personal gain or for the benefit of third parties.
- 8.4. The seller undertakes to ensure that its representative(s), employees, contractors and other persons who assist the seller in the performance of its obligations are aware of the confidentiality obligation set out in this contract, and shall require such persons to comply with this obligation unconditionally and indefinitely.
- 8.5. The seller undertakes to ensure that any processing of personal data during the performance of the contract is lawful and in compliance with the requirements of the General Data Protection Regulation (EU 2016/679) and other data protection legislation, which includes taking organisational, physical and infotechnological security measures to protect confidential data

from accidental or intentional unauthorised modification, accidental loss and intentional destruction, disclosure, etc.

9. Term, amendment and termination of the contract

- 9.1. The contract enters into force upon signing by the parties and remains in force until the fulfilment of all obligations arising from the contract. Termination or expiration of the contract shall not affect the performance of obligations which, by their nature, remain valid even after the contract has expired.
- 9.2. Neither party may assign or otherwise transfer to third parties the rights and obligations arising from the contract without the written consent of the other party.
- 9.3. The parties shall have the right to amend the contract in compliance with the provisions set out in § 123 (1) of the Public Procurement Act.
- 9.4. The buyer shall have the right to terminate the contract extraordinarily on reasonable grounds, particularly if the buyer lacks financial resources to perform the contract or if the buyer no longer has the corresponding need. The buyer shall notify the seller of such intention in writing at least 30 calendar days in advance.

10. Final provisions

- 10.1. In performing the contract, the parties shall be guided by the legislation in force in the Republic of Estonia; in particular, in any matters not covered in this contract, the provisions of the Law of Obligations Act applicable to the respective type of contract shall apply.
- 10.2. If any of the provisions of this contract prove to be in conflict with legislation in force in Estonia, this shall not impact the validity of the rest of the provisions of the contract.
- 10.3. The seller is aware that the contract is publicly available to the extent provided in the Public Information Act.
- 10.4. Any disputes related to this contract which the parties are not able to resolve via negotiations shall be referred to the Harju County Court for resolution.
- 10.5. The contract is signed digitally.

Buyer

LAO,BIRGIT,477112
30277

Digitally signed by
LAO,BIRGIT,47711230277
Date: 2024.07.11 09:25:22 +03'00'

Seller

Norbert Keller
Norbert Keller (Jul 11, 2024 17:33 GMT+2)