



UNIVERSITÀ DI PAVIA
Dipartimento di
Ingegneria Industriale
e dell'Informazione

Il Direttore
Prof. Riccardo Bellazzi

Titolo X Classe 4
Fascicolo n. 4046 Anno 2020
Allegato 1

OGGETTO DECRETO: Determina a contrarre tramite affidamento diretto extra MEPA (con preventivo già acquisito) – Acquisto di licenze software PLECS Combo Academic Concurrent License 02/2021 - 01/2022 – Plexim GmbH

IL DIRETTORE DEL DIPARTIMENTO

- **PREMESSO** che il Dipartimento di Ingegneria Industriale e dell'Informazione ha necessità di procedere all'acquisto di licenze software PLECS Combo Academic Concurrent License, per esigenze di svolgimento dell'attività didattica;
- **RICHIAMATO** l'art.32 (*Fasi delle procedure di affidamento*), comma 2, del D.Lgs. n.50/2016 e s.m.i. (*Codice dei contratti pubblici*) ai sensi del quale le stazioni appaltanti, in conformità ai propri ordinamenti, decretano o determinano a contrarre, individuando gli elementi essenziali del contratto e i criteri di selezione degli operatori economici e delle offerte;
- **VISTO** l'art.1, comma 449 della Legge n.296/2006 e s.m.i. ai sensi del quale le istituzioni universitarie sono tenute ad approvvigionarsi utilizzando le convenzioni quadro di Consip s.p.a.;
- **ACCERTATA** l'insussistenza di una convenzione Consip attiva per i beni richiesti;
- **VISTO** l'art. 1, comma 450 della Legge n.296/2006 e s.m.i. ai sensi del quale le Università per acquisti di beni e servizi di importo pari o superiore a € 5.000,00 e inferiori alla soglia di rilievo comunitario sono tenute a fare ricorso al Mercato Elettronico della Pubblica amministrazione;
- **ACCERTATO** che i beni richiesti non sono presenti nel catalogo MEPA;
- **ACQUISITO** il preventivo dell'operatore Plexim GmbH, individuato dal Prof. Pericle Zanchetta, mediante indagine di mercato informale, che ha offerto per i beni in oggetto l'importo di Euro 960,00 (IVA esclusa) (*Allegato 1: preventivo*);
- **ACCERTATA** la congruità del preventivo proposto con gli attuali costi di mercato e la compatibilità dell'importo con i vincoli imposti dalla vigente normativa per poter procedere ad affidamento diretto;
- **RICHIAMATO** l'art. 1, comma 1, lett. a) della Legge n. 120/2020 che consente di procedere per acquisti di beni e servizi di importo inferiore a € 75.000,00=, mediante affidamento diretto anche senza previa consultazione di due o più operatori economici;
- **RICHIAMATO** il Regolamento di Ateneo per l'Amministrazione, la Finanza e la contabilità, con particolare riguardo all'art.37 (*Poteri di spesa*);
- **ACQUISITO** il CIG n. Z5B2F65F9D;
- **ACCERTATA** la sussistenza della copertura finanziaria;



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DISPONE

- di autorizzare, ai sensi dell'art. 1, comma 1, lett. a) della Legge n. 120/2020, l'affidamento diretto all'operatore Plexim GmbH della fornitura di licenze software PLECS Combo Academic Concurrent License;
- di nominare la dott.ssa Nicoletta Galli responsabile del procedimento, con il supporto del Prof. Pericle Zanchetta, richiedente l'acquisto;
- di far gravare la relativa spesa quantificata in Euro 1.171,20 (già comprensivi di IVA) sul conto "Licenze software", del bilancio di previsione dell'Ateneo relativo all'esercizio finanziario 2020.

Pavia, data della sottoscrizione digitale

IL DIRETTORE
Prof. Riccardo Bellazzi

(documento firmato digitalmente)

VAT No. CHE-109.625.589 MWST

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Italy

Bank Account

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Mingerstrasse 20
3030 Berne / Switzerland
SWIFT POFICHBEXXX
Account No. 91-542620-6
IBAN CH32 0900 0000 9154 2620 6

Date November 19, 2020

QUOTE No. 20111906

Article/Description	Quantity	Price	Amount EUR
Software Maintenance Service 02/2021 – 01/2022 for PLECS Combo Academic Concurrent License 5472	50	19.20	960.00
Total value excluding VAT			960.00
VAT 0.0 %			0.00
Total EUR			960.00

Commercial Conditions

Payment: 14 days net

General: The attached General Terms and Conditions of Sale and the PLECS License Agreement are an integral part of this quotation.

Validity: January 15, 2021

General Terms and Conditions of Sale of Plexim GmbH

1 Formation of Contract

- 1.1 Any order sent to Plexim GmbH (the "Seller") by the Purchaser shall be accepted entirely at the discretion of the Seller, and, if so accepted, will only be accepted upon these General Terms and Conditions of Sale ("General Conditions").
- 1.2 Each order which is so accepted shall constitute an individual legally binding contract between the Seller and the Purchaser and such contract is hereafter referred to in these General Conditions as a "Contract".
- 1.3 These General Conditions shall override any contrary, different or additional terms or conditions (if any) contained on or referred to in an order form or other documents or correspondence from the Purchaser, and no addition alteration or substitution of these terms will bind the Seller or form part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Seller's behalf.

2 Specifications

- 2.1 All goods supplied by the Seller shall be in accordance with the specifications or descriptions (if any) expressly listed or set out on the face of the Contract. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature shall form part of or be incorporated by reference into the Contract.

3 Products and Prices

- 3.1 Product images used for advertising, brochures, the online store, etc. are for illustration purposes only and are not binding.
- 3.2 Prices as specified in product price sheets and as posted on the website, or otherwise presented, are subject to change without notice. Prices are exclusive of taxes, duties, and fees.

4 Delivery / Delay

- 4.1 Delivery shall be made in accordance with the International Commercial Terms (Incoterms) in force at the formation of the Contract.
- 4.2 The agreed delivery term shall begin provided that (i) the Contract has been concluded, (ii) the Seller is in possession of all the details required for the execution of the order, and (iii) the Purchaser has fulfilled any other contractual obligations incumbent on it.
- 4.3 The Seller is committed to provide up-to-date and precise information on availability and delivery times. However, production and delivery shortages in particular may cause delivery delays. Therefore, all information on availability and delivery times is subject to change.
- 4.4 Time is not of the essence in the sale contemplated by the Contract and the Seller shall be entitled to a reasonable period of grace in the event of any delay in delivery beyond the scheduled shipping date.
- 4.5 The happening of any contingency beyond Seller's control shall not constitute cause for cancellation of the order but shall extend Seller's time of delivery for a period equal to the duration of such contingency.
- 4.6 Seller shall in no way be liable (i) for any loss of profit, business, contracts, revenues, or anticipated savings, arising from any delay in delivery, or (ii) for any special indirect or consequential damage of any nature whatsoever, arising from any delay in delivery.
- 4.7 All purchases are final upon issue of the license file or upon confirmation of the Purchaser's order whichever occurs first.

5 Passing of Risk

- 5.1 Benefit and risk shall be passed on to the Purchaser upon conclusion of the Contract. The fore-

going shall also apply in the event that the delivery is carried out free of charge or that transport is organised by Seller.

6 Payment

- 6.1 Unless otherwise agreed, the Purchaser shall pay to the Seller the full invoice price of the goods not later than fourteen (14) days after the date of each invoice.
- 6.2 Payments made after the agreed upon payment terms may, at the Seller's option, be subject to interest at the rate of 0.5 % per month on the invoiced amount.
- 6.3 Preferred means of payment is wire transfer in the currency of the invoice. Any cost for currency conversion has to be covered by the Purchaser. Upon request and for small amounts credit card payment can be arranged, subject to Seller's discretion. Payment with checks is not accepted.
- 6.4 Whatever the means of payment used, payment shall not be deemed to have been effected before the Seller's account has been fully and irrevocably credited.
- 6.5 In case of late payment the Seller may, after having notified the Purchaser in writing, suspend his performance of the contract until he receives payment.
- 6.6 If the Purchaser has not paid the amount due within three (3) months the Seller shall be entitled to claim compensation for the loss he has incurred. Such compensation shall not exceed the agreed purchase price.

7 Title of Goods

- 7.1 Title to the goods comprised in each consignment shall not pass to the Purchaser until the Purchaser has paid their price to the Seller, but, even though title has not passed, the Seller shall be entitled to sue for their price once its payment has become due.

8 Guarantee / Warranty

- 8.1 The guarantee/warranty for software products is set forth in the respective Software License Agreement.
- 8.2 For hardware products, Plexim warrants for two-years from delivery date that the ordered product will be free from manufacturing defects and fully functional. In the event that the hardware does not operate as warranted, the Purchaser's exclusive remedy and Plexim's sole liability under this warranty shall either be:
 - repairing the product free of charge
 - providing a partial or full replacement with an equivalent product
 - refunding at current value or, at maximum, at the original sales price at the time of order
 - providing cost reduction

These warranties shall not apply to any defect, failure or damage caused by improper use or improper or inadequate maintenance and care. All defective equipment (or parts thereof) replaced by Plexim becomes the property of Plexim.

- 8.3 Shipping fees for products returned to Plexim (inside or outside of the warranty) have to be paid by the Purchaser.

9 Repairs Outside of the Warranty

- 9.1 All repair costs incurred outside of the warranty described above shall be borne by the Purchaser. Plexim reserves the right to invoice the Purchaser for the examination of the defect claimed, as well as for shipping fees for all devices showing no detectable defects or defects that are not covered by the warranty.

10 Division of Liability for Damage Caused by the Goods

- 10.1 The Seller shall not be liable for any damage to property caused by the goods after having been delivered and whilst they are in the possession of the Purchaser.

11 Product Discontinuance

- 11.1 Plexim may modify the specifications of products and substitute products manufactured to such modified specifications at any time without prior notice to the Purchaser, provided such products substantially conform to the form, fit, and function of the original products. Plexim may discontinue products without prior notice.

12 Economic Loss

- 12.1 Notwithstanding anything contained in these General Conditions or the Contract, the Seller shall in no circumstances be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit business, contracts, revenues, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.

13 Applicable Law

- 13.1 Any dispute arising under or in connection with the Contract shall be governed by and construed in accordance with the laws of Switzerland, to the exclusion of the UN Convention on the International Sale of Goods.

14 Jurisdiction

- 14.1 Any dispute arising under or in connection with the Contract shall be subject to the exclusive jurisdiction of the courts of the Canton of Zurich, Switzerland. The Seller reserves however the right to initiate court proceedings against the Purchaser in any other court of competent jurisdiction.

Plexim Software License Agreement

Licensing Options

Individual License With an Individual License, the licensee can choose between either user-based or computer-based licensing:

- User-based licensing allows a designated named user to use the software. The software may be installed and operated on up to three computers (for example, at work, home, in a laboratory, or on a laptop), provided that the software is only accessible to, and operated by, that single named user. On each of these computers the named user must have a personal login, which may not be shared with other users.
- Computer-based licensing allows the software to be installed and used on a single computer. Under this licensing option, multiple people can use the software, but not simultaneously. Computer-based licensing does not permit the software to be installed on a terminal server. The software may only be operated from the computer's console, i.e., not remotely.

Dongle License A Dongle License allows the software to be installed on one or more computers. Any person may use the software on the computer that is connected to a specific hardware dongle, provided that the software is operated from the computer's console. Damaged dongles can be returned for replacement. Purchaser is liable for the cost of replacement dongle, unless the dongle fails due to a manufacturing defect during the warranty period. Lost dongles will not be replaced.

Concurrent License Concurrent Licenses allow multiple users to access the software from computers that are connected to a central license server. The number of simultaneous users is limited by the number of installed Concurrent Licenses. The software may only be operated by the person who has checked out the Concurrent License. Each Concurrent License may be installed on one license server only.

License Term

Perpetual License Unless otherwise agreed, the software is licensed on a perpetual basis, providing the right to use the software indefinitely. The initial purchase price for a Perpetual License of the software includes Software Maintenance Service for the first 12 months. After the initial 12 month period, an annual fee is required to renew the Software Maintenance Service. Software Maintenance Service comprises product upgrades, maintenance releases and technical support.

Annual License Instead of a Perpetual License, the licensee may purchase an Annual License. The Annual License permits the licensee to use the software for one year. For operating the software beyond that term, the license needs to be renewed for another year. The price for an Annual License is calculated as 50 % of the equivalent Perpetual License and includes Software Maintenance Service.

Software Maintenance Service

Product Upgrades and Maintenance Releases You are entitled to free product upgrades and maintenance releases if you are currently under Software Maintenance Service. The latest version of the software can be downloaded from the Plexim homepage.

Technical Support Telephone and e-mail access to technical support engineers is provided as part of the Software Maintenance Service.

License Transfers For licenses currently under the annual Software Maintenance Service, license transfers are free of charge as follows:

- User-based licenses may be re-designated to other users no more than four times in any 12 month period.
- Computer-based licenses, Concurrent Licenses, or Classroom Licenses may be transferred to other computers no more than four times in any 12 month period.

Renewal Fees The annual Software Maintenance Service renewal fee is based on the number of licenses installed in your configuration and the licensing option. It is calculated as 20 % of the then-current purchase price for Perpetual Licenses of the software. If the Software Maintenance Service lapses for more than 3 months, it may be reinstated within four years of the expiration date by paying the lapsed maintenance term plus a reinstatement charge of 10 % of the then-current license price.

Educational Use Restrictions

If licensed to a degree-granting institution at an academic discount rate the software is restricted to use in connection with on-campus computing facilities that are used solely in support of classroom instruction and research activities of students, teaching faculty and staff, and research staff. Using the software for any other purposes, including commercial, is expressly prohibited.

Limitation of Liability

The software should not be relied on as the sole basis to solve a problem whose incorrect solution could result in injury to person or property. If the software is employed in such a manner, it is at the licensee's own risk and Plexim disclaims all liability for such misuse to the extent allowed by law.

Limited Warranty/Limitation of Remedies

Plexim warrants that Plexim has the right to grant the license rights hereunder. Plexim warrants that the physical media provided shall be free from defects in material and workmanship for a period of 90 days from delivery, or it will be replaced by Plexim at no cost to the licensee. Plexim further warrants, for a period of one year from delivery, that each copy of the software will conform to the description of its operation in the documentation. In the event that the software does not operate as warranted, the licensee's exclusive remedy and Plexim's sole liability under this warranty shall be:

- the correction or workaround by Plexim of major defects within a reasonable time, or
- should such correction or workaround prove neither satisfactory nor practical, termination of the relevant license and refund of the initial license fee paid to Plexim for the software.

General

To the extent any governing law, treaty, or regulation is in conflict with this agreement, the conflicting terms of this agreement shall be superseded only to the extent necessary by such law, treaty, or regulation. If any provision of this agreement shall be otherwise unlawful, void, or otherwise unenforceable, that provision shall be enforced to the maximum extent permissible. In either case, the remainder of this agreement shall not be affected.

Governing Law/Jurisdiction

This agreement shall be interpreted, enforced and construed and the rights of the parties hereunder governed in all respects by the laws of Switzerland. Place of jurisdiction shall be Zurich, Switzerland.