**Contracting Authority:**

Polskie Wydawnictwo Muzyczne

al. Krasińskiego 11a

31-111 Kraków

Procurement Team

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**Procedure ref. no.: ZZP.261.10.2023**

**TERMS OF REFERENCE**

 (TOR)

**BASIC MODE WITHOUT NEGOTIATION**

**conducted in accordance with the provisions of the Law of September 11, 2019. Public Procurement Law (i.e. Journal of Laws 2022, item 1710, as amended)**

**for deliveries entitled:**

**"Successive purchase of sheet music publications from foreign publishers"**

|  |  |
| --- | --- |
| **Part Designation** | **Part Name** |
| **Part II** | **Draft contract provisions (DCP)**  |

**TEMPLATE CONTRACT**

*[draft contract provisions* ***]***

concluded on..................................in Cracow by and between:

**Polskie Wydawnictwo Muzyczne** with its registered office in Cracow at al. Krasińskiego 11a, 31-111 Cracow, a state cultural institution entered in the register of cultural institutions kept by the Minister of Culture and National Heritage under the number RIK 92/2016, NIP: 676-250-22-46, REGON 363717113, represented by:

Daniel Cichy, Ph. D., Director - Editor-in-Chief

Agata Gołębiowska, Deputy Director for Economic Affairs - Chief Accountant

hereinafter referred to as the "Contracting Authority"

The Contracting Authority and the Contractor are also referred to as the "**Party**" or "**Parties**"

and

**.........................................................................** with its registered office / place of business .................. ................................................ in accordance with the entry in the Register of Entrepreneurs of the National Court Register kept by the Court ................................., ... Division of the National Court Register, under the number NCR (KRS) ................................./ CEIDG kept by the Minister responsible for the economy, NIP: .............................., REGON ................................., represented by:

............................................................,

............................................................,

hereinafter referred to as the "**Contractor**".

*In connection with the selection of the Contractor's bid for Part(s) of the procurement:* ***Task No. 1 / Task No. 2[[1]](#footnote-1)*** *in the proceedings conducted in the basic mode without negotiations conducted in accordance with the provisions of the Law of September 11, 2019. Public Procurement Law ( unified text Journal of Laws of 2022, item 1710, as amended) for the deliveries entitled:* **"Successive purchase of sheet music publications from foreign publishers” *case no.: ZZP.261.10.2023*** *the following Contract has been concluded:*

# § 1

# Subject Matter of the Contract

1. The subject matter of this contract is successive purchase of book and sheet music publications on musical subjects including:
2. **Part 1 of the Order - Task 1 entitled: *"Music-themed sheet music publications"***
3. **Part 2 of the Order - Task 2 entitled: *"Sheet music publications of Baerenreiter Publishing House"***

hereinafter referred to as **the "subject matter of the contract**" .

1. The subject matter of the contract will be carried out under the terms and conditions set forth in this contract and in the appendices constituting an integral part of it, which are:
2. Description of the Subject Matter of the Order - Appendix no. 1 to the contract;
3. Contractor's bid form - Appendix no. 2 to the contract;
4. List of publications attached as appendix 1A to the Contractor's bid - appendix no. 3 to the contract;
5. The quantities or values indicated in the appendices to the contract define the Contracting Authority's estimated needs during the term of the contract, and do not constitute an obligation for the Contracting Authority to fulfill it in full, nor do they constitute grounds for the Contractor to claim compensation for failure to fulfill the entire subject matter of the contract.
6. The Contractor will carry out the subject matter of the contract in the form of successive deliveries on the basis of orders for the supply of publications, hereinafter referred to as **publication orders**.
7. The place of delivery of the ordered publications is the headquarters of the Contracting Authority, al. Krasińskiego 11a, 31-111 Kraków.
8. Acceptance of the subject matter of the contract will take place at the headquarters of the Contracting Authority on the basis of confirmation of the purchase of goods. The Parties agreed that in the case of sending the ordered publications to the Contracting Authority's premises, the confirmation of purchase of goods will be signed unilaterally by the Contracting Authority's representative. Confirmation of the purchase of goods representing due delivery will be the basis for acceptance of the invoice by the Contracting Authority.

# § 2

# Principles of granting publication orders

1. Orders of publications under the contract will be made successively during the term of the contract indicated in § 5 and will concern the subject matter of the contract described in appendix no. 1 to the contract.
2. The authorized person indicated in paragraph 5 will communicate to the Contractor electronically at the e-mail address: ............................... or through the Contractor's dedicated system, a publication order containing, in particular, the names of the ordered publications and their number. The Contractor shall be obliged to either confirm acceptance of the publication order or inform the Contracting Authority of the impossibility of its execution in whole or in part, in accordance with the rules indicated in paragraph 4.
3. If the Contractor has a dedicated system, the Contractor shall provide the authorized person indicated in paragraph 5 with all the information and data necessary to use the system within 7 days from the date of the contract .
4. The Contractor is obliged to inform the Contracting Authority immediately, but no later than within 3 working days after the publication order is placed, about the impossibility of carrying out the publication order. In case of temporary unavailability of a given publishing item (publication), the Contractor shall register the placed order as a back order. If the publication in question is still unavailable after 60 days from the date of the publication order, the Contractor shall immediately inform the Contracting Authority, remove the order from the list of pending orders, and the order shall be deemed not to have been placed.
5. The person authorized to place publication orders and contact from the Contracting Authority in connection with the execution of the contract is ........, tel. no. ........, email address: ...........
6. The authorized contact person on the part of the Contractor in connection with the execution of the contract is ........, tel. no. ........, email address: ...........
7. The Parties to the contract undertake to promptly notify in writing under pain of nullity any change of address or telephone number or data of authorized contact persons indicated in paragraphs 5 and 6 above. In the absence of information about the change of data, correspondence sent to the addressee and not received is considered delivered.

# §3

# Terms and conditions of publication orders fulfillment

1. The Contractor shall deliver the ordered publications in accordance with this contract and the submitted publication order to the headquarters of the Contracting Authority (Krakow, al. Krasińskiego 11a) by the following deadline:
2. for **Procurement Part No. 1 - Task 1** ... days from the date of the order;\* (according to the bid of the selected contractor)
3. for **Procurement Part No. 2 - Task 2** ... days from the date of the order;\* (according to the bid of the selected contractor)
4. The Contractor shall notify by e-mail or telephone the person indicated in § § 2 paragraph 5 about the planned delivery date at least 2 days in advance. Deliveries can be made on weekdays between 7:00 am and 3:00 pm.
5. Publications should be packaged in a manner that protects them from damage.
6. The Contracting Authority will, within 5 days from the date of receipt of a delivery, assess the correctness of the publications received and, in the event of quantitative or qualitative deficiencies, report comments to the Contractor by e-mail. The Contractor shall immediately, no later than 7 days from the date of receipt of the Contracting Authority 's notification, rectify the deficiencies at its own expense and risk, or reduce the price for the execution of the order accordingly and deliver a corrective invoice to the Contracting Authority .
7. In the event that the Contractor does not agree with the Contracting Authority's comments on the correctness of the delivery of the ordered publications, the Contractor shall be obliged to present its position in writing within 5 days from the date of the Contracting Authority's comments referred to in paragraph 5. After the expiration of this period to no avail, the Contractor shall be deemed to agree with the evaluation made by the Contracting Authority.
8. Confirmation of the correctness of the order shall be a confirmation of the purchase of the Contracting Authority's goods, including (if applicable) also the Contracting Authority's comments in accordance with paragraph 5.

# § 4

# Remuneration and payment terms

1. The maximum amount that the Contracting Authority intends to allocate to the contract is:
2. for Procurement Part no. 1 - Task 1 ....................... PLN (in words: ...................) including VAT[[2]](#footnote-2);
3. for Procurement Part no. 2 - Task 2 ....................... PLN (in words: ...................) including VAT[[3]](#footnote-3);
4. The Contracting Authority shall not be obliged to perform the contract in the maximum amount indicated in paragraph 1 and failure to use the maximum amount of the contract shall not be the basis for any claim by the Contractor.
5. The Contractor declares that for the purchase of all publications, the Contractor agrees to provide the Contracting Authority with a discount no smaller than the discount guaranteed in the Contractor's bid, in the amount of:
6. for publications delivered in the performance of Procurement Part No. 1 - Task 1 ...%[[4]](#footnote-4);
7. for publications delivered in the performance of Procurement Part No. 2 - Task 2 ...%[[5]](#footnote-5);

The discount is a guaranteed discount valid for the entire period of contract performance and will be calculated on the gross retail list prices of the publisher of the publication in question as of the date of the order. The Contractor may grant the Contracting Authority more favorable discounts in the performance of individual publication orders.

1. The remuneration shall be payable upon proper execution of each order to the Contractor's bank account number indicated on the invoice, within 30 days from the date of receipt by the Contracting Authority of a correct and contractually compliant invoice, issued on the basis of the confirmation of purchase of goods referred to in § 3 paragraph 7 of the contract.
2. The date of payment shall be the date on which the Contracting Authority submits an instruction to debit the Contracting Authority 's account with the amount of remuneration due to the Contractor.
3. The Contracting Authority shall have the right to withhold payment for delivery if the delivery or the delivered publications are not in accordance with the contract or the submitted publication order, in particular, they have defects or are damaged, until they are replaced with publications free of damage or other defects.
4. The Contractor declares that the gross price includes all costs associated with the delivery, including in particular the costs of all activities related to the preparation of the delivery, in particular: packaging, marking the product with a barcode, insurance of the delivery, loading, transportation, unloading, necessary public benefits, including taxes and fees (e.g. customs duties).
5. Assignment of the Contractor's claims against the Contracting Authority may be made only with the consent of the Contracting Authority , expressed in writing under pain of nullity.

# §5

# Term of the contract

1. The contract is concluded for a period of **30 months/36 months[[6]](#footnote-6)** from the date of its conclusion or until the maximum amount indicated in § 4.1( *a)(b)(c)[[7]](#footnote-7)* of the contract is exhausted.
2. Publication orders will be carried out within the time limits specified in §3(1) of the PPL.

# §6

# Subcontractors

1. The Contractor declares that as of the date of conclusion of the contract ...[he does not entrust/ entrusts]...\* the parts of the subject matter of the contract indicated below .......................................... to be performed by the following subcontractors: ..........................................\*.
2. The Contractor shall notify the Contracting Authority of any changes in the performance of the contract by subcontractors, including, in particular, providing information on new subcontractors.
3. Changing subcontractors, including the introduction of new subcontractors, requires the written consent of the Contracting Authority.
4. Entrusting parts of the contract to subcontractors does not relieve the Contractor of responsibility for the proper performance of the contract. The Contractor shall be liable to the Contracting Authority and third parties for the acts, omissions, failures and negligence of subcontractors to the same extent as for its own acts, failures or negligence.

# §7

# Liquidated damages

1. The Contracting Authority will charge the Contractor liquidated damages in the following cases and amounts:
2. the Contractor's delay in delivery within the period specified in § 3 paragraph 1 of the contract - in the amount of 5% of the value of the given publication order for each day of delay;
3. a delay in the delivery of publications free of defects in accordance with § 3 paragraph 5 of the contract - in the amount of 5% of the value of the incorrect part of the publication order in question, for each day of delay. The liquidated damages shall not be charged if the Contractor reduces the price for the execution of a given publication order accordingly;
4. failure to provide data and information necessary for the use of the Contractor's dedicated system within the period specified in § 2 paragraph 3 of the agreement - in the amount of PLN 100.00 (in words: one hundred zlotys 00/100) for each day of delay;
5. calculation of the delivery price of the ordered publications without taking into account the guaranteed discount, or taking into account the less favorable discount(s) - in the amount of the difference between the price of the ordered publications with the price of the ordered publications including the guaranteed discount;
6. Liquidated damages may be cumulative.
7. The Contracting Authority shall be entitled to deduct liquidated damages from the remuneration due to the Contractor, to which the Contractor agrees.
8. If the liquidated damages stipulated in the contract do not cover the damage resulting from non-performance or improper performance of the contract, the Parties shall be entitled to claim additional compensation up to the amount of the damage suffered.
9. The total amount of liquidated damages charged for the execution of the subject matter of the contract may not exceed 50% of the maximum remuneration referred to in § 4 paragraph 1 of the contract

# § 8

# Termination of contract

1. The Contracting Authority has the right to withdraw from the contract in accordance with the provisions of the Civil Code as well as in accordance with the provisions as follows.
2. The Contracting Authority shall have the right to withdraw from the contract within 30 days of the occurrence of one or more of the circumstances indicated below, but no later than the last day of the contract, in the event of:
3. repeated complaints about the poor quality of the Publications, the Parties consider repeated complaints to be at least three complaints submitted in the form of comments referred to in § 3 section 5 of the contract, during the period of two consecutive months of contract execution;
4. when the Contractor, for reasons attributable to him, notoriously fails to meet the deadline for the execution of orders indicated in §3(1) of the contract, notorious failure to meet the deadline for the execution of orders is considered by the Parties to be at least triple failure to meet the deadline for the execution of orders during two consecutive months of contract execution;
5. when the Contractor indicates an inability to perform the contract that is not due to objective reasons. Objective reasons are considered to be, in particular, the inability to carry out the order due to the temporary unavailability of Publications not attributable to the Contractor;
6. *(applies only to part of the procurement No. 1 - Task 1)* the inability to order the publication of publications indicated in the Contractor's offer, in the section on obligatory publications (publications indicated in Part I of the List of publications);
7. *(applies only to part of* the procurement *No. 1 - Task 1)* three times, during the period of execution of the contract, the inability to order the publication of publications indicated in the Contractor's offer in the part concerning additional publications (publications indicated in part II of the List of publications - appendix no. 3 to the Contract);
8. The reasons indicated in paragraph 2 are treated as causes attributable to the Contractor through his fault.
9. The Contracting Authority shall also have the right, at its option, based on the grounds contained in paragraph 2 above, to terminate the contract immediately without the Contractor's right to claim damages or lost profits, to which the Contractor agrees.

# § 9

# Force majeure

1. Neither Party may be held liable for damages, costs or expenses arising out of or in connection with the delay, improper performance or non-performance of the contract if this occurred due to force majeure circumstances. In such a case, liquidated damages cannot be charged either.
2. Force majeure, as defined herein, shall mean any unforeseeable situation or event of an exceptional nature beyond the control of the parties, preventing either of them from fulfilling any of their obligations under this Contract, not resulting from the fault or negligence of the parties, and remaining insurmountable despite the exercise of all due diligence, in particular: events of the nature of natural disasters of the type of flood, hurricane, windstorms of extraordinary force, tornadoes, unusually intense and prolonged downpours, or extraordinary and external events that could not have been prevented (war, martial law restrictions, insurrection, revolution, riots, etc.). For the purposes of this contract, force majeure shall not include, among others, deficits in equipment, personnel, materials, labor disputes, strikes, financial difficulties, or the accumulation of such factors.
3. A party to the contract facing force majeure must immediately inform the other party to the contract of the situation, the nature of the problem, the expected duration and the anticipated consequences, as well as take measures to minimize possible damage.
4. The party to the contract claiming the circumstance of force majeure should document its occurrence.

# § 10

# Amendments to the contract

1. Any and all amendments to the contract shall be in writing under pain of nullity.
2. Amendments to the contract may be made in the event of:
3. changes in the rate of tax on goods and services. At that time, the VAT rate and the gross remuneration due to the contractor from the date of the rate change will change. The net salary remains unchanged.
4. changes in the amount of the minimum wage or the amount of the minimum hourly rate, established on the basis of the provisions of the Act [of the law](https://sip.lex.pl/#/document/16992095?cm=DOCUMENT) of October 10, 2002 on the minimum wage. Then the Contractor's remuneration will be amended to the extent necessary and appropriate related to the change in question.
5. changes in the rules of social insurance or health insurance or the rate of social insurance or health insurance premiums. Then the Contractor's remuneration will be amended to the extent necessary and appropriate related to the change in question.

if these changes affect the cost of performance of the framework contract by the Contractor. Accordingly, the introduction of the indicated changes shall be made at the written request of the Contractor containing the factual and legal justification for the necessity of the changes and, in the case of changes indicated in paragraph 2 items 2 and 3, the submission of evidence, including documents, confirming the connection of the planned change with the implementation of this contract.

3. It is permissible to change the date of execution of the contract :

1. when meeting the deadline is impossible due to the occurrence of force majeure as defined in § 9, which directly affects the timely performance of the contract;
2. in the event of circumstances beyond the control of the Parties or which the Parties, exercising due diligence, were unable to avoid or foresee;
3. when it becomes necessary to extend the delivery date, for organizational reasons attributable to the Contracting Authority ;
4. by extending the term of the contract by a maximum of 3 months if the maximum amount indicated in §4(1) of the contract is not used within the period indicated in §5(1) of the contract. The exact period of extension of the contract will be determined by the Parties in the course of negotiations, with reference to the amount remaining at the disposal of the Contracting Authority and the capabilities of the Contractor.
5. It is permissible to amend the Contract:
6. in the event of changes in applicable laws that make it necessary to amend the Contract;
7. in other cases beyond the control of the Contracting Authority or the Contractor and not allowing the execution of the Contract in accordance with the provisions of Appendix No. 1 and the provisions of the Contract;
8. in the event of a petition for bankruptcy or liquidation of the Contractor;
9. in the event of a reasonable necessity to change the scope of the subject matter of the contract entrusted to subcontractors;
10. in the event that the need for changes will be a consequence of changes made in contracts between the Contracting Authority and parties other than the Contractor, including the Contracting Authority's supervisory institutions that have a direct impact on the execution of the Contract;

in the above-mentioned cases, the material scope of the subject matter of the contract, the net/gross price of the contract, the date of delivery of the subject matter of the contract, the method of execution of the subject matter of the contract may be changed (including limitation), respectively.

# § 11

# Personal data protection

1. The Parties jointly declare that each of the Parties will be the controller, within the meaning of art. 4 point 7 of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (General Regulation on data protection) (hereinafter "GDPR"), personal data in relation to personal data of natural persons that will be provided by the other Party in connection with the performance of this Contract. The Parties undertake to process personal data in accordance with the applicable regulations and, in particular, to fulfill, in accordance with Article 13(1)-(2) and Article 14(1)-(2) of the GDPR, the obligation to provide information to data subjects.

2. The Contractor undertakes that none of its employees, contractors and none of the persons with the help of whom it conducts its business, shall disclose or use, directly or indirectly, any confidential information of the Contracting Authority that it has acquired directly or indirectly as a result of the performance of the provisions of this contract.

The Contractor, in connection with the performance of this contract, shall process personal data and sensitive personal data provided by the Contracting Authority in accordance with the Personal Data Protection Law and in accordance with the provisions of a separate contract.

The contractor declares that it is aware that in the course of performing this contract it will have access to personal data provided by the Contracting Authority and that it is obliged to take appropriate precautions to ensure their confidentiality, in particular it is obliged to accept appropriate declarations from persons with the assistance of whom it will perform the Order, who will have access to the personal data provided by the Contracting Authority . The Contractor and its employees, contractors and other persons with the help of whom it executes the Contract are obliged to comply with all regulations of data protection, as well as other legal acts governing the protection of confidential data, including company secrets.

According to art. 13 sec. 1-2 of Regulation (EU) 2016/679 of the European Parliament and of the Council 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 (General Regulation on data protection, hereinafter „GDPR") the Contracting Authority informs that:

1. the controller of the Contractor's personal data is the Contracting Authority , i.e. Polskie Wydawnictwo Muzyczne with its registered office in Kraków, al. Krasińskiego 11A, 31-111 Kraków. Regarding the protection of its personal data, the Contractor may contact the data controller directly, using the e-mail address: iod@pwm.com.pl or in writing to the Contracting Authority's registered office address.

2) The Contracting Authority will process the Contractor's personal data for the purposes and on the legal grounds indicated below:

a) for the purpose of entering into and performing a contract, based on Article 6(1)(b) of the GDPR,

b) in order to carry out obligations under tax, accounting, and other generally applicable laws, based on Article 6(1)(c) of the GDPR

c) for the purpose of asserting or defending against claims that may arise under the contract, based on Article 6(1)(f) of the GDPR.

3) The Contractor's personal data will be stored:

(a) for the purpose of entering into and performing a contract, for the time necessary to perform the contract,

b) for the purpose of fulfilling an obligation under the law, for the time specified in the law,

c) for the purpose of asserting claims, for the period of the statute of limitations for claims, calculated from the date of maturity (date of performance).

4) The Contractor's personal data may be transferred to other entities in cases provided for by law, as well as when the Contracting Authority uses subcontractors, so-called processors (e.g., IT support), who may process the data only at the Contracting Authority's order and may not use it for their own purposes.

5) In accordance with the GDPR, the Contractor has the right to: access to his personal data and to receive a copy of it, to rectify (amend) his data, to delete, limit or object to its processing, to data transfer, to lodge a complaint with a supervisory authority.

6) The Contractor's provision of his personal data is a condition for the conclusion and performance of the contract.

7) The Contracting Authority does not make decisions based on automated processing of personal data.[[8]](#footnote-8)\*

# § 12

# Final provisions

1. Working days mean Monday through Friday, excluding public holidays.
2. Disputes arising out of the execution of this contract shall be settled by the court having jurisdiction over the registered office of the Contracting Authority.
3. In matters not regulated by this contract, the provisions of: the Act of April 23, 1964 Civil Code and the Act of September 11, 2019 Public Procurement Law shall apply.
4. The contract is drawn up in 3 (three) counterparts - including 1 (one) for the Contractor and 2 (two) for the Employer.

|  |  |
| --- | --- |
|  CONTRACTOR | CONTRACTING AUTHORITY  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Agata Golębiowska *deputy director for economic affairs*  *chief accountant* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Daniel Cichy, Ph. D. *director-editor-in-chief*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. Delete as appropriate in accordance with the Contractor's offer [↑](#footnote-ref-1)
2. Delete as necessary in accordance with the Contractor's offer. [↑](#footnote-ref-2)
3. Delete as necessary in accordance with the Contractor's offer. [↑](#footnote-ref-3)
4. Complete according to the Contractor's bid. [↑](#footnote-ref-4)
5. Complete according to the Contractor's bid. [↑](#footnote-ref-5)
6. Complete in accordance with the Contractor's bid [↑](#footnote-ref-6)
7. Delete as necessary in accordance with the scope of the contract indicated in § 1 [↑](#footnote-ref-7)
8.  applies to Contractors who are natural persons, including those engaged in business activities [↑](#footnote-ref-8)