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| **PUBLIC PROCUREMENT DEPARTMENT**  **of the JAGIELLONIAN UNIVERSITY**  ul. Straszewskiego 25/3 and 4, 31-113 Kraków  **tel.** +4812-663-39-03  **e-mail:** [**bzp@uj.edu.pl**](mailto:bzp@uj.edu.pl)  [**https://www.uj.edu.pl**](https://www.uj.edu.pl)  [**https://www.przetargi.uj.edu.pl**](https://www.przetargi.uj.edu.pl) |  |

Kraków, 29.06.2022

**TERMS OF REFERENCE**

**(hereafter referred to as ToR)**

**Chapter I - Name (company name) and address of the Contracting Authority.**

* 1. Jagiellonian University, ul. Gołębia 24, 31-007 Kraków.
  2. Unit conducting the case:

1) Public Procurement Department, ul. Straszewskiego 25/3 and 4, 31-113 Kraków;

tel.: +4812 663-39-03;

2) office hours: Monday to Friday; 07:30 to 15:30, excluding Saturdays and public holidays;

3) website (url): [https://www.uj.edu.pl/](https://www.uj.edu.pl/l)

4) commercial tool for conducting the proceedings: <https://platformazakupowa.pl>

5) address of the website of the proceedings where changes to and clarifications of the content of the ToR and other procurement documents directly related to the proceedings will be provided (address of the buyer’s profile): <https://platformazakupowa.pl/pn/uj_edu>

**Chapter II – Type of the procurement procedure.**

* + - 1. The proceedings are conducted under basic procedure without the possibility of negotiations pursuant to Article 275(1) of the Act of 11 September 2019 – Public Procurement Law (consolidated text Journal of Laws of 2021, item 1129, as amended), hereinafter referred to as the PPL, and in accordance with the requirements set out in these Terms of Reference, hereinafter referred to as the "ToR".
      2. The activities undertaken by the Contracting Authority and Economic Operators during the procurement procedure shall be governed by the provisions of the aforementioned PPL and executive acts issued on its basis, and in cases not regulated thereby – by the Act of 23 April 1964 – the Civil Code consolidated text Journal of Laws 2020, item 1740 as amended).

**Chapter III – Description of the subject-matter of the contract.**

1. The subject-matter of the procedure and of the contract is the **selection of an Economic Operator for the** **delivery and installation of a spectrometer to the the chemistry department of the Jagiellonian University,** located at ul. Gronostajowa 2, in Kraków (code: 30-387).
2. A detailed description of the subject-matter of the contract with an indication of the minimum technical and functional parameters is provided in **Appendix A to the ToR**.
3. **General requirements for the entire contract:**
4. The tender must comply with the provisions of these Terms of Reference.
5. The Economic Operator must offer the subject-matter of the contract compliant with the Contracting Authority's requirements, as defined in the ToR, and attach to the tender the evidence specified in Chapter VI of the ToR.
6. The Economic Operator must quote a price for the entire contract in **Appendix 2 to the Tender Form** "Tender price calculation".
7. The Contracting Authority requires from the Economic Operator a minimum 12-month warranty for the offered subject-matter of the contract, starting from the date of acceptance of the subject-matter of the public Contract, confirmed by an unqualified acceptance report.
8. If the Economic Operator announces the engagement of subcontractors, their list with the scope of tasks entrusted thereto (scope of the contract) must be attached to the tender.
9. The description of the subject-matter of the contract is compliant with the Common Procurement Vocabulary

CPV: 38433000-9 - spectrometers

**Chapter IV – Qualitative evidence**

1. The Contracting Authority requires the following qualitative evidence to be submitted:
2. **manufacturer's documents** confirming technical and functional parameters for the offered subject-matter of the contract, such as:

- technical descriptions drawn up or confirmed by the manufacturer,

or

- print-outs from the manufacturer's websites,

or

- manufacturer's leaflets/catalogues/brochures,

The Contracting Authority accepts the aforementioned qualitative evidence to be submitted in English.

1. The Contracting Authority accepts equivalent qualitative evidence if it proves that the offered items meet the requirements of the Contracting Authority.
2. If the Economic Operator has failed to submit such qualitative evidence or if the submitted evidence is incomplete, the Contracting Authority shall call upon the Economic Operator to submit or supplement it within the fixed time limit.
3. The provision of section 3 shall not apply if the qualitative evidence in question is aimed to confirm compliance with the features or criteria specified in the description of the tender evaluation criteria or if, despite submitting such evidence, the tender is rejected or there are grounds for cancellation of the procedure.
4. The Contracting Authority may request the Economic Operators to provide explanations regarding the content of the qualitative evidence.

**Chapter V – Time limit for the performance of the contract**

1. The contract (i.e. delivery, installation, training) must be performed within **56 days** from the day of awarding the contract, i.e. the day of concluding the public Contract.

**Chapter VI – Description of the conditions for participation in the procedure.**

1. Trading capacity - the Contracting Authority does not impose any condition in this respect.
2. Authorisation to pursue specific commercial or professional activities, if it results from separate regulations – the Contracting Authority does not impose any condition in this respect.
3. Economic or financial standing – the Contracting Authority does not impose any condition in this respect.
4. Technical or professional capacity – the Contracting Authority does not impose any condition in this respect.

**Chapter VII – Grounds for exclusion of Economic Operators.**

The Contracting Authority shall exclude from the procedure an Economic Operator in the event of any of the circumstances referred to in:

1. Article 108(1) of the PPL.
2. b) art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835).

Pursuant to Article 109(1) of the PPL, the Contracting Authority shall exclude from the procedure an Economic Operator:

1. which has breached the obligations relating to the payment of taxes, levies or social or health insurance contributions, except in the case referred to in Article 108(1)(3) of the PPL, unless the Economic Operator has paid taxes, levies or social or health contributions due, including interest or fines, or has entered into a binding arrangement with a view to paying the claims, as appropriate, before the expiry of the time limit for submission of tenders;
2. which is the subject of winding-up or insolvency proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the legislation of the place where this procedure is initiated;
3. being guilty of grave professional misconduct, which renders its integrity questionable; in particular where the Economic Operator, as a result of intentional action or gross negligence failed to perform or unduly performed the contract, what the Contracting Authority can demonstrate by means of relevant evidence;
4. which, for reasons attributable thereto, to a large degree or extent, has failed to perform or has persistently unduly performed a material requirement under a prior public contract or concession contract, what led to early termination or withdrawal from the prior contract, compensation, substitute performance or exercise of rights under the implied warranty for defects;
5. which, as a result of deliberate action or gross negligence, has been guilty of serious misrepresentation in providing the Contracting Authority with information on absence of grounds for exclusion or on the fulfilment of the participation conditions or selection criteria, what might have a material influence on the decisions made by the Contracting Authority in the procurement procedure, or has withheld such information or is not able to submit the required qualitative evidence;
6. which has unlawfully influenced or has attempted to influence the activities of the Contracting Authority, has attempted to obtain or has obtained confidential information that may confer upon it advantages in the procurement procedure;
7. which, as a result of recklessness or negligence, has provided misleading information, what might have a material influence on the decisions taken by the Contracting Authority in the procurement procedure.

In the cases, referred to section 2 (1)-(4), the Contracting Authority is not required to exclude an Economic Operator if such exclusion would be clearly disproportionate, in particular if the amounts of overdue taxes or social insurance contributions are minor or the economic or financial standing of the Economic Operator, referred to in section 2(2) is sufficient to perform the contract.

**Chapter VIII – List of statements and documents to be provided by Economic Operators to confirm the fulfilment of the conditions for participation in the procedure and absence of grounds for exclusion.**

Statements to be submitted obligatorily with a tender:

1. In order to confirm an absence of grounds for excluding the Economic Operator from the public procurement procedure in the circumstances referred to in Chapter VII of the ToR, the Economic Operator has to attach to its tender an Economic Operator's statement on non-exclusion according to the model attached as **Appendix 1 to the Tender Form.**
2. The Economic Operator which intends to entrust a part of the contract to subcontractors, in order to prove absence of grounds for exclusion against them, is obliged to submit the statement referred to in item (1) in the part concerning subcontractors.
3. In the case of Economic Operators competing jointly for the contract, a statement n non-exclusion referred to in item (1) shall be submitted by each of the Economic Operators competing jointly for the contract.

Documents and statements submitted by the Economic Operator upon request of the Contracting Authority – refers to the Economic Operator whose tender has been rated the highest – *not applicable*.

If during the procedure the Economic Operator fails to submit statement(s) or documents necessary to carry out the procedure, the submitted statement(s) or documents are incomplete, contain errors or give rise to doubts indicated by the Contracting Authority, the Contracting Authority shall call for their submission, supplementation or correction within the time limit indicated by the Contracting Authority, unless, despite their submission, the Economic Operator's tender would be rejected or it would be necessary to cancel the procedure.

**Chapter IX - Information on the manner of communicating between the Contracting Authority and Economic Operators and on the manner of providing statements and documents, as well as identification of persons authorised to communicate with Economic Operators.**

1. General information.
   1. The public procurement procedure is carried out with the use of a commercial tool <https://platformazakupowa.pl> – address of the buyer’s profile: <https://platformazakupowa.pl/pn/uj_edu>
   2. By entering into this public procurement procedure, the Economic Operator:
      1. accepts the terms and conditions of using <https://platformazakupowa.pl> as defined in the regulations posted under the "Regulations" tab and acknowledges them as binding;
      2. will get acquainted with the instructions for using <https://platformazakupowa.pl>, in particular with the rules of logging in, submitting requests for clarification of the content of the ToR, submitting tenders and carrying other activities in these proceedings using <https://platformazakupowa.pl> available at <https://platformazakupowa.pl> – link below:

<https://drive.google.com/file/d/1Kd1DttbBeiNWt4q4slS4t76lZVKPbkyD/view> or in the bookmark: <https://platformazakupowa.pl/strona/45-instrukcje> and will apply it.

* 1. The technical and organisational requirements for submitting tenders, sending and receiving electronic documents, digital images with a document in paper form, statements and information transmitted using them are described on<https://platformazakupowa.pl>, in the regulations posted under the "Regulations" tab and in the instructions for submitting tenders (links in section 1.2.2 above).
  2. Size of files:
     1. for tender – the maximum number of files is 10 at 150 MB each;
     2. for communication – message to the Contracting Authority max. 500 MB;
  3. Communication between the Contracting Authority and Economic Operators shall take place using a commercial tool <https://platformazakupowa.pl> - address of the buyer’s profile: <https://platformazakupowa.pl/pn/uj_edu>
     1. To shorten the time needed to answer questions, communication between the Contracting Authority and Economic Operators regarding:
  4. questions to the Contracting Authority on the content of the ToR;
  5. answers sent to Contracting Authority’s request for qualitative evidence;
  6. answers sent to Contracting Authority’s request to submit/revise/complete the statement referred to in Article 125(1), qualitative evidence, other documents or statements submitted in the procedure;
  7. answers sent to Contracting Authority’s request for explanations regarding the content of the statement referred to in Article 125(1) or submitted qualitative evidence or other documents or statements submitted in the procedure;
  8. answers sent to Contracting Authority’s request for explanations regarding the content of qualitative evidence;
  9. answers sent to other Contracting Authority’s requests resulting from the Act – Public Procurement Law;
  10. requests, information and statements sent by the Economic Operator;
  11. appeals/other

takes place via <https://platformazakupowa.pl> and the form: "Send a message to the Contracting Authority".

The date of transmission (receipt) of statements, applications, notifications and information is the date of their sending via <https://platformazakupowa.pl> by clicking the button: "Send a message to the Contracting Authority", after which a message will appear indicating that the message has been sent to the Contracting Authority.

* + 1. The Contracting Authority shall send messages to Economic Operators via <https://platformazakupowa.pl> . Messages concerning answers to questions, changes to the specification, changes to the time limit for submission and opening of tenders shall be posted by the Contracting Authority on the platform in the section: "Communications". Correspondence, which according to the applicable regulations is addressed to a particular Economic Operator, shall be sent via <https://platformazakupowa.pl> to a particular Economic Operator.
    2. The Economic Operator, as a professional entity, is obliged to check messages and communications sent by the Contracting Authority directly on <https://platformazakupowa.pl>, because the notification system may fail or the notification may end up in the SPAM folder.
    3. The Contracting Authority, in accordance with the Regulation of the Prime Minister of 30 December 2020 on the method of preparing and submitting information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (Journal of Laws of 2020, item 2452), specifies the necessary hardware and application requirements to work on <https://platformazakupowa.pl>, i.e:
  1. permanent access to the Internet with a guaranteed bandwidth of not less than 512 kb/s;
  2. PC or MAC computer with the following configuration: min. 2 GB Ram, processor Intel IV 2 GHZ or its newer version, one of the operating systems - MS Windows 7, Mac Os x 10 4, Linux, or their newer versions;
  3. Any web browser other than Internet Explorer installed;
  4. JavaScript enabled,
  5. Adobe Acrobat Reader or other software supporting .pdf file format installed.
     1. Encryption at <https://platformazakupowa.pl> is using TLS 1.3 protocol.
     2. Indication of data reception time by the purchasing platform is the date and the exact time (hh:mm:ss) generated according to the local time of the server synchronised with the clock of the Central Office of Measures.
  6. The method of preparation and transmission of electronic documents and digital images with the document in paper form must meet the requirements laid down in the Regulation of the Prime Minister of 30 December 2020 on the method of preparation and transmission of information and technical requirements for electronic documents and means of electronic communication in a public procurement procedure or competition (consolidated text: Journal of Laws of 2020, item 2452 as amended) and the Regulation of the Minister of Development, Labour and Technology of 23 December 2020 on qualitative evidence and other documents or declarations that the Contracting Authority may require from the Economic Operator (consolidated text: Journal of Laws of 2020, item 2415 as amended), i.e:
  7. documents or statements, including the tender, shall be submitted in the original in an electronic format using a qualified electronic signature or in an electronic form bearing a trusted signature or a personal signature. In the case of putting a qualified signature and using the XAdES external signature format, the Contracting Authority requires that an appropriate number of files be included, i.e. data files to be signed and signature files in the XAdES format. ***A tender submitted without an appropriate electronic signature shall be rejected pursuant to Article 226(1)(3) of the PPL due to non-compliance with Article 63 of that Act;***
  8. documents issued in electronic form shall be transmitted as electronic documents, providing the Contracting Authority with an opportunity to verify the signatures;
  9. if the original document, statements or other documents submitted during the procurement procedure have not been prepared in the form of an electronic document, the Economic Operator may prepare and submit a digital image with the document or statement in paper form, putting a qualified electronic signature, trusted signature or personal signature thereon, which is equivalent to certifying the transmitted documents or statements as true copies of the original;
  10. in case of transferring by the Economic Operator of a digital copy with a document in a paper form – putting a qualified electronic signature, a trusted signature or a personal signature by the Economic Operator or respectively by the entity on whose capacity or situation the Economic Operator relies pursuant to Article 118 of the PPL, or by a subcontractor, shall be equivalent to certifying the transmitted documents or statements as true copies of the original.
  11. Documents or statements shall be certified as true copies of the original by the Economic Operator, the entity on whose capacity or situation the Economic Operator relies, Economic Operators jointly competing for a contract, or a subcontractor, respectively, with regard to the documents that concern each of them (as regards powers of attorney – according to the principle specified in Chapter XII section 7 of these ToR).

1. Methods of communication between the Contracting Authority and Economic Operators for effective submission of a tender.
   1. The tender must be prepared in electronic form in a data format compliant with the Notice of the Prime Minister of 9 November 2017 on the announcement of the consolidated text of the Regulation of the Council of Ministers on the National Interoperability Frameworks, minimum requirements for public registers and exchange of information in electronic form and minimum requirements for ICT systems, and must be signed with a qualified electronic signature, trusted signature or personal signature. The following formats are recommended: .***pdf, .doc., .xls, .jpg (.jpeg) with particular emphasis on .pdf.*** The following formats are recommended for possible data compression: ***.zip, 7Z.*** Common formats not covered by the aforementioned Regulation include: .rar, .gif, .bmp, .numbers, .pages. Documents submitted in such files shall be considered as filed ineffectively.
   2. The Economic Operator shall submit a tender via <https://platformazakupowa.pl> [https://platformazakupowa.pl/](https://platformazakupowa.pl) – address of the buyer’s profile: <https://platformazakupowa.pl/pn/uj_edu>, in accordance with the regulations referred to in section 1 of this chapter. The Contracting Authority shall not be liable for submission of a tender in a manner contrary to the instructions for use of <https://platformazakupowa.pl>, in particular for a situation where the Contracting Authority reads the content of the tender before the time limit for submission of tenders (e.g. submission of a tender in the "Send a message to the Contracting Authority" tab). Such a tender shall be considered by the Contracting Authority as a commercial offer and shall not be taken into account in the proceedings, because an obligation imposed in Article 221 of the Public Procurement Law has not been met.
   3. The method of encrypting the tender is described in the instructions for submitting tenders (links in section 1.2.2 above).
   4. After the tender submission time limit, the Economic Operator may not effectively change or withdraw a previously submitted tender.
2. Artur Wyrwa, tel. +4812-663-39-52, is authorised to communicate with Economic Operators in formal and substantial matters +4812-663-39-42.

**Chapter X – Requirements for tendering security.**

1. The Contracting Authority does not require any tendering security.

**Chapter XI– Tender validity period**

1. An Economic Operator shall be bound by its tender for 30 days from the tender submission time limit, i.e. until 06.08.2022 inclusive.
2. If the most advantageous tender is not selected before the expiry of tender validity period defined in the ToR, the Contracting Authority, before the expiry of the tender validity period, shall ask the Economic Operators once to agree to extend that period by a period specified by the Contracting Authority, not longer than 30 days.
3. The extension of the tender validity period referred to in section 2, requires the Economic Operator to submit a written statement of consent to extend the tender validity period.

**Chapter XII – Description of the method for tender preparation.**

1. Each Economic Operator may submit only one tender.
2. It is allowed for two or more entities to submit one tender, subject to provisions of Article 58 of the PPL.
3. Economic Operators may compete for a contract jointly pursuant to Article 58 of the PPL. The provisions concerning the Economic Operator shall apply respectively to Economic Operators jointly competing for a public procurement contract.
4. It is required that the tender and all appendices are signed by persons authorised to represent the Economic Operator. In order to confirm that the person acting on behalf of the Economic Operator is authorised to represent it, the Contracting Authority requires from the Economic Operator a copy or information from the National Court Register, Central Register and Information on Business Activity or other relevant register. The Economic Operator shall not be obliged to submit the documents referred to in sentence 2 if the Contracting Authority can obtain them using free and publicly available databases, provided that the Economic Operator has indicated the data enabling access to such documents in the text of the tender. If the Economic Operator is represented by a person whose power of representation does not result from the documents mentioned in sentence 2, the Economic Operator shall submit together with the tender a power of attorney or another document confirming the power to represent the Economic Operator.
5. If tenders are submitted by Economic Operators jointly competing for a contract or if the Economic Operator is represented by a proxy, the original power of attorney or its notarised copy has to be attached to the tender. The power of attorney shall be accompanied with a document confirming the possibility of granting the power of attorney. The power of attorney to submit the tender must be transmitted in the original in the same form as the submitted tender (i.e. in electronic form or electronic format bearing a trusted signature or personal signature). It is also acceptable to submit an electronic copy (scan) of the power of attorney previously drawn up in writing, in the form of an electronic attestation made in accordance with Article 97(2) of the Act of 14 February 1991 - Notary Public Law (Journal of Laws of 2020, item 1192, as amended), which is certified by a notary public with a qualified electronic signature, or by attaching a qualified signature, a trusted signature or the principal's personal signature to a scan of a power of attorney previously drawn up in writing. An electronic copy of the power of attorney may not be certified by an authorised person. The Contracting Authority points out that the above-mentioned provisions should be applied respectively to other document confirming the power to represent the Economic Operator.
6. A tender, together with appendices forming an integral part thereof, should be prepared by the Economic Operator in accordance with the provisions of the ToR and the appendices, in particular a tender shall include a completed and signed tender form (**Appendix 1 to the ToR**) with at least the following appendices (completed and supplemented or prepared in accordance with their contents):
   * + 1. Economic Operator’s statement on non-exclusion from the procedure (**Appendix 1 to the Tender Form**) - in the case of Economic Operators competing jointly for the contract, a statement on non-exclusion from the procedure shall be submitted by each of the Economic Operators,
       2. tender price calculation based on **Appendix 2 to the Tender Form**,
       3. description of the offered subject-matter of the contract pursuant to **Appendix 3 to the Tender Form**,
       4. qualitative evidence, in accordance with Chapter IV of the ToR,
       5. power of attorney (according to sections 4 and 5 above) or other document confirming the power to represent the Economic Operator.
       6. list of subcontractors (if any).
7. A tender must be written in Polish. The Contracting Authority admits submission of a tender in English in case of Economic Operators having their registered office outside the territory of the Republic of Poland.
8. The Economic Operator which, when submitting a tender, reserves the right not to disclose to other participants in the proceedings information which constitutes a trade secret in the meaning of the unfair competition regulations, must clearly indicate this in the tender by submitting an appropriate statement containing a list of the reserved documents and proving that the reserved information constitutes a trade secret. Documents marked as "Restricted document" shall be attached together with the statement and shall constitute separate files encrypted with other files constituting the tender. The Economic Operator may not stipulate that the information referred to in Article 222(5) of the PPL should not be disclosed.
9. All costs related to the preparation and submission of the tender shall be borne by the Economic Operator.

**Chapter XIII - Time for tenders submission and opening.**

1. Tenders should be submitted **by 08.07.2022, until 10:00 a.m.,** according to the rules described in Chapter IX sections (1)-(2) of the ToR.
2. Before the deadline for submission of tenders, the Economic Operator may withdraw a tender in accordance with the rules at <https://platformazakupowa.pl> . The method of withdrawing a tender is described in the instructions available at: <https://platformazakupowa.pl/strona/45-instrukcje> . A tender may not be withdrawn after the tender submission deadline.
3. The Contracting Authority shall reject a tender submitted after the time limit for submission of tenders.
4. Tenders shall be opened on **08.07.2022, at 11:00 a.m.** via <https://platformazakupowa.pl>
5. In the case of changing the time limit for submission of tenders, the Contracting Authority shall post information about its extension on <https://platformazakupowa.pl> – address of the buyer’s profile – <https://platformazakupowa.pl/pn/uj_edu>, in the tab appropriate for the conducted proceedings, in the "Communications" section.
6. In the event of a failure of the IT system resulting in the inability to open tenders within the time limit set by the Contracting Authority, tenders shall be opened immediately after the failure has been removed.
7. Before opening of tenders, the Contracting Authority shall provide on <https://platformazakupowa.pl> – address of the buyer’s profile – <https://platformazakupowa.pl/pn/uj_edu>, in the tab appropriate for the procedure, in the "Communications" section, information on the amount it intends to allocate to finance the contract.
8. Immediately after opening the tenders, the Contracting Authority shall provide on the website of the conducted procedure the information about
   1. company names or names and surnames, registered offices or places of business activity or places of residence of Economic Operators whose tenders have been opened;
   2. prices or costs contained in the tenders.
9. The Contracting Authority does not foresee a public tender opening session with the participation of Economic Operators, nor broadcasting the opening session via electronic tools for on-line video transmission.

**Chapter XIV – Description of the method for price calculation.**

1. The tender price shall be quoted in PLN, taking into account taxes, discounts, packing and transport (delivery) costs of apparatus, as well as costs of express and implied warranty, installation costs, etc. which the Economic Operator intends to provide, and all costs related to the performance of the Contract. In the case of Economic Operators having their registered office outside the territory of the Republic of Poland, the Contracting Authority allows the price to be quoted in foreign currencies: USD, EUR.
2. The Economic Operator must calculate in its tender the price for the performance of the entire subject-matter of the contract.
3. The total price given in the calculation of the tender price (**Appendix 2 to the Tender Form**) shall correspond to the price given by the Economic Operator in the Tender Form (**Appendix 1 to the ToR**).
4. Prices must be given and calculated with rounding to two decimal places (rounding rule - decimal numbers below 5 should be dropped, decimal numbers above and equal to 5 should be rounded up).
5. Should the selection of the submitted tender result in a tax liability on the Contracting Authority under the regulations on the tax on goods and services, the Contracting Authority shall add, in order to evaluate such a tender, the tax on goods and services (VAT) that it would have to settle under these regulations.
6. When submitting the tender, the Economic Operator shall inform the Contracting Authority whether the selection of the tender will result in a tax obligation for the Contracting Authority.
7. In the case of submitting the tender, whose selection would result in the tax obligation for the Contracting Authority, the Economic Operator shall:

a) inform the Contracting Authority that the selection of its tender will result in the tax obligation for the Contracting Authority;

b) indicate the name (type) of the goods or services whose delivery or provision shall result in the tax obligation;

c) indicate the value of the goods or services subject to the Contracting Authority's tax obligation, without the amount of the tax;

d) indicate the VAT rate which, to the Economic Operator's knowledge, will apply.

**Note:** For the purpose of comparing prices of submitted tenders given in USD or EUR, the Contracting Authority shall adopt the average NBP exchange rate from the day preceding the submission and opening of tenders (according to Table A of average foreign exchange rates available at: <https://www.nbp.pl/home.aspx?f=/statystyka/kursy.html> ).

**Chapter XV - Description of criteria which the Contracting Authority will apply in selecting a tender, specifying also the importance of particular criteria and method of tenders evaluation;**

1. Tender evaluation criterion:

**Gross price for the entire subject-matter of the contract – 100%**

1. Points awarded for the criterion "price for the entire subject-matter of the contract" shall be calculated according to the following formula:

**C = (Cnaj : Co) x 100**

where:

C – number of points awarded to a given tender,

Cnaj – the lowest price among valid tenders,

Co – the price given by the Economic Operator for whom the result is calculated,

The maximum number of points to be awarded to the Economic Operator is100.

1. All calculations will be made to two decimal places (without rounding)
2. The tender of the Economic Operator which receives the highest number of points will be considered the most advantageous.
3. Where tenders for the same price have been submitted, the Contracting Authority shall invite the Economic Operators who have submitted those tenders to submit additional tenders within a time limit set by the Contracting Authority.

**Chapter XVI - Information on formalities which should be met following the selection of the tender in order to conclude a Public Procurement Contract;**

* + - 1. Before signing the Contract, the Economic Operator should submit:

1. a copy of the agreement(s) laying down the grounds and rules for competing jointly for the contract - in case of tenders submitted by entities acting jointly (i.e. consortium).
2. list of subcontractors with the scope of tasks entrusted thereto, if their participation in the contract performance is foreseen.
   * + 1. The selected Economic Operator is obliged to conclude the Contract at a date and place specified by the Contracting Authority.

**Chapter XVII - Requirements concerning security on due performance of the Contract (performance bond);**

The Contracting Authority does not provide for the security on due performance of the Contract..

**Chapter XVIII -** **Proposed** **provisions of the** **Public Procurement Contract** **(Model Contract) – Appendix 2 to the ToR.**

**Chapter XIX - Instructions on the legal remedies available to the Economic Operator during the procurement procedure.**

1. The Economic Operator shall be entitled to legal remedies if it has or has had an interest in being awarded the contract and has suffered or may suffer damage as a result of breach of the provisions of the PPL by the Contracting Authority.
2. An appeal can be filed against:
3. action taken by the Contracting Authority, in breach of the provisions of the Act, in the course of the procurement procedure,́ including the draft contractual provisions;
4. failure to act in the procurement procedure, to which the Contracting Authority was obliged under the PPL.
5. The appeal shall be lodged with the President of the National Appeal Chamber in writing or in an electronic form provided with a trusted signature.
6. The parties and participants of the appeal proceedings shall have the right to lodge a complaint with the court against the ruling of the National Appeal Chamber and the decision of the President of the National Appeal Chamber referred to in Article 519(1) of the PPL. The complaint shall be filed with to the Regional Court in Warsaw - Court of Public Procurement through the President of the National Appeal Chamber.
7. Detailed information on legal remedies is set forth in Title IX "Legal Remedies" of the PPL.

**Chapter XX - General provisions.**

1. The Contracting Authority does not permit the submission of tenders for lots.
2. Division of the contract into parts would be unjustified, since the subject-matter of this procedure involves the delivery of one device. The lack of division of the contract into parts (lots) in this procedure does not constitute grounds for narrowing the circle of potential Economic Operators.
3. The Contracting Authority does not envisage to conclude a framework contract;
4. The Contracting Authority does not envisage the possibility to award a contract based on repetition of similar deliveries pursuant to Article 214(1)(8) of the PPL.
5. The Contracting Authority does not permit the submission of variant offers.
6. All settlements between the Economic Operator and the Contracting Authority shall be carried out in Polish zloty (PLN) or in foreign currencies (USD, EUR).
7. The Contracting Authority does not envisage an electronic auction.
8. The Contracting Authority does not provide for reimbursement of costs of participation in the proceedings.
9. The Contracting Authority demands that the Economic Operator specifies in the tender the part of the contract, pursuant to the provisions of the ToR, the performance of which it intends to entrust to subcontractors.

**Chapter XXI - Information on personal data processing**

In accordance with Article 13 and 14 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 (OJ EU.L.2016.119.1) (hereinafter the “GDPR”), the Jagiellonian University informs that:

* + - 1. The **Controller** of your personal data is the Jagiellonian University, ul. Gołębia 24, 31-033 Kraków, [www.uj.edu.pl](http://www.uj.edu.pl)
      2. UJ has appointed a Data Protection Officer whom you may contact if you have any questions or comments regarding the processing of your personal data and your rights under data protection legislation. Contact data: e-mail address: iod@uj.edu.pl tel. 12 663 12 25
      3. UJ may process your data for the following purposes:

1. concluding and performing the Contract - in accordance with Article 6(1)(b) of the GDPR in the case of a Economic Operator who is a natural person, persons authorised to represent or acting on the basis of the Economic Operator's power of attorney;
2. resulting from legitimate legal interests involving the performance of a Contract with the Economic Operator in accordance with Article 6(1)(f) of the GDPR - in the case of a person indicated by the Economic Operator in connection with the performance of the Contract;
3. fulfilment of legal obligations regarding bookkeeping and tax documentation - pursuant to Article 6(1)(c) of the GDPR in connection with Article 74(2) of the Accounting Act of 29 September 1994;
4. resulting from legitimate legal interests involving the establishment, exercise or defence of possible claims arising from the performance of the Contract, pursuant to Article 6(1)(f) of the GDPR;
5. fulfilment of legal obligations regarding the retention of records - pursuant to Article 6(1)(c) of the GDPR, in connection with the Act of 14 July 1983 on the national archival resource and archives
   * + 1. UJ has obtained your personal data:
6. in the case of the Economic Operator who is a natural person, persons authorised to represent or act on the basis of a power of attorney of the Economic Operator - directly from you. Providing your personal data is necessary for the purposes related to the conclusion and performance of the Contract.
7. In the case of a person indicated by the Economic Operator in connection with the Contract performance - from the Economic Operator with whom the Contract is concluded. The scope of your personal data may include: name and surname, position, place of work, contact details and other data necessary in connection with the performance of the Contract.
   * + 1. Your personal data may be made available to entities authorised to receive them pursuant to generally applicable provisions of law.
       2. Your personal data shall not be transferred outside the European Economic Area and to international organisations.
       3. Your personal data shall be kept for the duration of the Contract concluded with the Economic Operator, and then for the period required by the relevant provisions of law for the retention of records or for the period of limitation of claims specified in the provisions of law.
       4. You have the right to obtain information about the processing of personal data and your rights under the GDPR, the right of access to the content of your data and their rectification, as well as the right to erasure of your personal data from the controller's files (unless further processing is necessary for the performance of a legal obligation or in order to establish, exercise or defend claims), and the right to restrict processing, the right to data portability, the right to object to processing - in the cases and under the conditions specified in the GDPR.
       5. You have the right to lodge a complaint with the President of the Data Protection Authority.
       6. You will not be subject to automated decisions (without human involvement). Your personal data will also not be used for profiling.

**Chapter XXII - Appendices to the ToR**

**Appendix A –** Description of the subject-matter of the contract,

**Appendix 1** – Tender Form,

**Appendix 2** – Proposed provisions of the Public Procurement Contract (Model Contract).

**Appendix A to the ToR -** Description of the subject-matter of the contract

Handheld Raman spectrometer

Spectral range: 100 cm-1 - 4000 cm-1

Spectral resolution: 4 - 6 cm-1

Laser: 532nm Diode Laser (1 auxiliary part)

Time per measurement: < 3 s

Operating mode start: max 2 min

Battery: removable battery, minimum 6 hours of continuous operation

Software: device manufacturer's software, integrated with the device

Computer: Tablet with Windows software or equivalent

Accessories: 200 clear glass vials

Warranty: min 1 year

Additional accessories/ services:

-charger, battery,

- free manufacturer's service support for a minimum of 5 years, including at least: technical and substantive support in the field of device operation, service visits (if necessary), and access to databases in the field of at least: spectroscopic proteins, low-molecular compounds, also for analysis samples in trace amounts.

………………

**Appendix 1 to the ToR**

**TENDER FORM**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*CONTRACTING AUTHORITY* – ***Jagiellonian University***

***ul. Gołębia 24, 31 – 007 Kraków*;**

*Unit conducting the case* – ***Public Procurement Department of the Jagiellonian University***

***ul. Straszewskiego 25/ 3 and 4, 31-113 Kraków***

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*Name (Company) of the Economic Operator:*

................................................................................

................................................................................

*HQ address:*

................................................................................

................................................................................

*Address for correspondence:*

................................................................................

................................................................................

*Contact:*

*tel.:* ...................................................................

*fax:* ...................................................................

*e-mail:* .................................................................

*Other data:*

*NIP*: .........................................................................

*REGON*: .............................................................

*KRS (if applicable)* ..............................................

***Data enabling access to documents confirming the authorisation of persons acting on behalf of the Economic Operator can be found in free and publicly available databases at the following address: https://....................................***

***Re:*** *announced proceedings under basic procedure without the possibility of negotiations for delivery spectrometer of the chemistry department Jagiellonian University:*

1. we offer a total price for the entire subject-matter of the contract (in accordance with the offer evaluation for the performance of the contract) for the net amount of .....................\*, plus due VAT in the amount of ..% which gives the gross amount of .......................... *\** (in words………………………………….... *\**),
2. We offer the time limit for performance of the subject-matter of the Contract in accordance with the stipulations of the ToR, taking into account the stipulations of Chapter V of the ToR and the Model Contract and we offer period and conditions of warranty for the entire subject-matter of the contract in accordance with the requirements of the Contracting Authority.
3. We declare that the selection of our tender:

* will not lead to the creation of a tax obligation for the Contracting Authority in accordance with the regulations on tax on goods and services\*.
* will lead to the creation of a tax obligation for the Contracting Authority in accordance with the regulations on tax on goods and services. The above tax obligation will apply to ............................................. *(Insert the name / type of goods or services which will lead to the creation of the tax obligation of the Contracting Authority in accordance with the regulations on tax on goods and services)* covered by the subject-matter of the contract.\*

1. We hereby declare that we offer the subject-matter of the contract compliant with the requirements and conditions specified by the Contracting Authority in the ToR and we confirm our acceptance of the contractual and payment conditions specified in the ToR and in the Model Contract attached to the ToR,
2. We declare that we consider ourselves bound by this tender for the time period indicated in the ToR.
3. We declare that we have fulfilled the information obligations provided for in Article 13 or Article 14 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*, with regard to natural persons from whom we have directly or indirectly obtained personal data in order to compete for the award of a public contract in this procedure.
4. I declare that I am: (**please mark from the list below**)

- a micro-enterprise

- a small enterprise

- a medium-sized enterprise

- a sole trader,

- a natural person not running any business activity,

- other type,

1. if the contract is awarded - we undertake to conclude a public procurement Contract at the place and on the date specified by the Contracting Authority,
2. the person authorised to contact the Contracting Authority with regard to the submitted tender and in matters concerning the possible performance of the Contract is: ……….…………….., e-mail: …………………., tel.: ………………….. (may be completed on an optional basis)
3. the following are attached to the tender form:

**Appendix 1** – Economic Operator’s statement on non-exclusion from the procedure,

**Appendix 2** – Tender price calculation,

**Appendix 3** – List of subcontractors (if any),

***Note:*** *The Economic Operator is obliged to fill in places with dotted lines and/or delete accordingly places marked with "\*".*

**Appendix 1 to the Tender Form**

ECONOMIC OPERATOR’S STATEMENT

ON NON-EXCLUSION FROM THE PROCEDURE

*By submitting a tender in the procedure for the selection of an Economic Operator negotiations for delivery spectrometer of the chemistry department Jagiellonian University:*

* + - * 1. **STATEMENTS PERTAINING TO THE ECONOMIC OPERATOR**

I declare that I am not subject to exclusion from the procedure pursuant to Art. 108 sec. 1 of the Public Procurement Law.

2. I declare that I am not subject to exclusion from the procedure pursuant to Art. 109 paragraph. 1 points 1, 4.5, and 7 to 10 of the PPL.

3. We declare that we are not subject to exclusion pursuant to Art. 7 sec. 1 of the Act of April 13, 2022 on special solutions in the field of counteracting supporting aggression against Ukraine and serving the protection of national security (Journal of Laws of 2022, item 835), i.e .:

* we are not a contractor listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered into the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the quotation of the Act;
* we are not a contractor whose real beneficiary within the meaning of the Act of March 1, 2018 on counteracting money laundering and financing of terrorism (Journal of Laws of 2022, items 593 and 655) is a person listed in the lists specified in Regulation 765 / 2006 and Regulation 269/2014 or entered on the list or being such a real beneficiary from February 24, 2022, as long as it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in article 2. 1 point 3 of the quotation of the Act;
* we are not a contractor whose parent entity within the meaning of Art. 3 sec. 1 point 37 of the Accounting Act of 29 September 1994 (Journal of Laws of 2021, items 217, 2105 and 2106), is an entity listed in the lists specified in Regulation 765/2006 and Regulation 269/2014 or entered on the list or being such a parent entity from February 24, 2022, provided that it was entered on the list on the basis of a decision on entry in the list determining the application of the measure referred to in Art. 1 point 3 of the quotation of the Act;

I declare that there are grounds for excluding me from the procedure under Article .............. of the PPL Act (*provide the applicable grounds for exclusion from the procedure from those listed above).* At the same time, I declare that in connection with the above mentioned circumstance, pursuant to Article 110(2) of the PPL, I have taken the following corrective measures:

…………………………………………………………………………………………..…………………...........…………………………………………………………………………………………………..…………………...........…………………………………………………………………………………………………..………………

* + - * 1. **STATEMENT REGARDING A SUBCONTRACTOR NOT BEING AN ENTITY WHOSE RESOURCES THE ECONOMIC OPERATOR RELIES ON\***

I declare that in relation to the following entity(ies) being the subcontractor(s): *(provide full name/company name, address, and depending on the entity: NIP/PESEL, KRS/CEiDG)*,

……………………………………………………………………..….……

there are no grounds for exclusion from the procurement procedure.

**STATEMENT**

I declare that in relation to the entity .................. *(provide full name/company name, address, and depending on the entity: NIP/PESEL, KRS/CEiDG)* there are grounds for exclusion from the procedure under Article ............. of the PPL *(state applicable exclusion grounds from among those indicated above)*. At the same time, I declare that in connection with the above mentioned circumstance, pursuant to Article 110(2) of the PPL, the following corrective measures have been taken:

…………………………………………………………………………………………..…………………...........…………………………………………………………………………………………………..………………….......

I declare that all information provided in the above statements is up-to-date and consistent with the truth, and has been presented with full awareness of the consequences of misleading the Contracting Authority when presenting the information.

***Note:*** *The Economic Operator is obliged to fill in places with dotted lines and/or delete accordingly places marked with "\*".*

**Appendix 2 to the Tender Form**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Subject-matter of the contract** | **Manufacturer** | **Name/**  **Catalogue number/**  **Model** | **Net price**  **(excluding VAT)** | **VAT**  **Rate (if applicable)** | **Gross price**  **(including VAT, if applicable)** | **Currency**  **name** |
| 1. | Spectrometer |  |  |  |  |  |  |

**Note:**

The Contactor must attach **the** evidence indicated in Chapter IV of the ToR to its tender.

**Appendix 4 to the ToR**

**STATEMENT**

(list of subcontractors)

We declare that:

- we entrust\* the following subcontractors with the performance of the following parts (scope) of the contract

* + 1. Subcontractor *(provide full name/company name, address, and depending on the entity: NIP/PESEL, KRS/CEiDG)* - ......................................................................................................

scope of the contract:

………………………………………………..........................

1. Subcontractor *(provide full name/company, address, and depending on the entity: NIP/PESEL, KRS/CEiDG)* -

…………………………………………………………………………………………

scope of the contract:

………………………………………………..........................

- we do not entrust\* any part (scope) of the contract to subcontractors

(if the Economic Operator does not cross out any of the above options, the Contracting Authority shall assume that it does not entrust any works covered by this contract to subcontractors)

*\*delete as appropriate*

**Appendix 2 to the ToR**

**PROPOSED PROVISIONS OF THE CONTRACT**

(Model Contract)

**concluded in Kraków on ................ 2022 by and between:**

**Jagiellonian University with its registered office at ul. Gołębia 24, 31-007 Kraków.**

**NIP 675-000-22-36, hereinafter referred to as the "Contracting Authority", represented by:**

**............ -................, with the financial counter-signature of the Jagiellonian University's Treasurer**

**and ..........................., entered into the National Court Register, under No: ........, NIP: .........., REGON: ........., hereinafter referred to as the "Economic Operator", represented by:**

*As a result of conducting proceedings under basic procedure without the possibility of negotiations, pursuant to Article 275(1) of the Act of 11 September 2019 - Public Procurement Law (Journal of Laws 2021, item 1129 as amended), hereinafter referred to as the PPL, the following Contract has been concluded:*

**Article 1**

1. The Contracting Authority entrusts, and the Economic Operator accepts, **the delivery and installation of a spectrometer to the the chemistry department of the Jagiellonian University,** located at ul. Gronostajowa 2, in Kraków (code: 30-387).
2. The subject-matter of the Contract shall be delivered to the registered office of the organisational unit of UJ indicated in paragraph 1 of this Article of the Contract. A detailed description of the subject-matter of the contract is included in the ToR.
3. The person responsible for acceptance of the subject-matter of the contract and supervision of the performance of this Contract on behalf of the Contracting Authority is Mr./Ms. ..................., e-mail: ............ or another person from the aforementioned organisational unit of the Jagiellonian University indicated by the Contracting Authority, while on the part of the Economic Operator the person responsible is Mr/Ms. ........................., e-mail: ............ or another person indicated by the Economic Operator.
4. The Economic Operator shall complete the entire subject-matter of the Contract within **56 days** from awarding the contract, i.e. from the date of conclusion of the public Contract,
5. Providing service for a minimum of 5 years, which we provide: technical and technical support in the field of service, services (if necessary), and access to the database in starter services: spectroscopy, cost source of minor expenditures, we also carry out analyzes in trace amounts. This support will be provided through the manufacturer's dedicated website available at: http:///www.......... or hotline at the phone number ...............
6. The Economic Operator undertakes to carry out all necessary actions to perform the subject-matter of the Contract referred to in paragraph 1.
7. The documentation for the procedure, including in particular the ToR with appendices and the Economic Operator's tender, constitutes an integral part of this Contract.
8. The Economic Operator shall be fully liable in material and legal terms for any damage caused to the Contracting Authority, as well as to third parties, by acts or omissions of the Economic Operator or persons used in the performance of this Contract.
9. Commissioning a part of the Contract to subcontractors shall not change Economic Operator's liabilities towards the Contracting Authority for the performance of that part of the Contract. The Economic Operator shall be liable for the acts, omissions and negligence of subcontractors and their employees to the same extent as if they were their own.

**Article 2**

1. The Economic Operator declares that it has appropriate knowledge, experience and has a suitable potential to perform the subject-matter of the Contract.
2. The Economic Operator declares that it shall perform the subject-matter of the Contract with due diligence and shall meet the agreed time limits.
3. The Economic Operator declares that the delivered device constituting the subject-matter of this Contract, hereinafter referred to as the "Equipment", meets the requirements of the applicable regulations with regard to operational safety, and that its purchase and use for its intended purpose do not infringe the law, including third-party rights.

**Article 3**

The amount of the remuneration due to the Economic Operator for the performance of this Contract is set as the net amount of: PLN/USD/EUR ..................... , which, after adding the due VAT rate ........ gives the gross amount of: PLN/USD/EUR .................. (in words: ...........................).

The amount of net remuneration shall be increased by an appropriate amount of VAT\* or VAT tax due on the amount of remuneration will be covered by the Client on the account of the relevant Tax Office in case a tax obligation of the Client occurs in accordance with the VAT tax regulations. \*[[1]](#footnote-2)

The remuneration specified in paragraph 1 includes all costs that the Economic Operator should have anticipated in order to properly perform the Contract.

The Contracting Authority is a VAT payer and has NIP: 675-000-22-36.

The Economic Operator a is a VAT payer and has NIP ................................. or is not a VAT payer on the territory of the Republic of Poland.

The VAT due on the amount of the remuneration shall be paid by the Contracting Authority to the account of the competent Tax Office in the event that the Contracting Authority becomes liable for tax in accordance with VAT regulations.[[2]](#footnote-3)

**Article 4**

1. The remuneration referred to in Article 3 of the Contract shall be paid once after delivery and installation of the subject-matter of the Contract to the Contracting Authority (Department of Chemistry Jagiellonian University, Gronostajowa 2 street, 30-387 Kraków) and confirmation by an unqualified acceptance report signed by the Contracting Authority.
2. Payment shall be made within 30 days of the date of delivery of a correctly issued invoice to the Contracting Authority, provided that the delivery, installation and training is confirmed by an acceptance report, the model of which constitutes Appendix 3 to the Contract.
3. The place of payment shall be the Contracting Authority's bank, and the payment shall be made at the day of transfer order by the Contracting Authority.
4. The invoice must be issued as follows:

**Uniwersytet Jagielloński, ul Gołębia 24, 31-007 Kraków, Polska**

**NIP: 675-000-22-36, REGON: 0000001270**

1. If the Economic Operator issues structured electronic invoices within the meaning of Article 6(1) of the Act of 9 November 2018 on electronic invoicing in public contracts, concessions for construction works or services and in public-private partnerships (consolidated text Journal of Laws 2020, item 1666 as amended) via the Electronic Invoicing Platform available at the address: <https://efaktura.gov.pl/>, in the "reference" field, the Economic Operator shall enter the following e-mail address: ………………………………… .
2. The Economic Operator shall indicate on the invoice the number of the settlement account, which was disclosed in the list of entities registered as taxpayers of VAT, unregistered and deleted and reinstated in the VAT register kept by the Head of the National Revenue Administration (the so-called “White List” - Article 96b (1) of the Act of 11 March 2004 on the tax on goods and services – consolidated text: Journal of Laws of 2022, item 931, as amended), hereinafter referred to as “VAT Act”.
3. If the Economic Operator’s bank settlement account is not disclosed on the “White List”, the Contracting Authority will be entitled to pay the remuneration to the account indicated in the Economic Operator’s invoice using the split payment mechanism or to notify the competent head of the tax office when making the first payment of the remuneration by transfer to the account indicated in that invoice.
4. In case when the Economic Operator is registered as an active payer of tax on goods and services (VAT), the Contracting Authority may pay the remuneration using the split payment mechanism, i.e. in the manner specified in Article 108a(2) of the VAT Act. The provisions of the first sentence shall not apply if the subject-matter of the Contract is an activity exempt from VAT or is covered by the 0% VAT rate.
5. The Economic Operator confirms that the bank settlement account disclosed in the invoice serves exclusively for the purposes of settlements in respect of its business activity, for which a VAT account is kept[[3]](#footnote-4).
6. The Contracting Authority shall pay the remuneration by transfer from the Contracting Authority's account to the Economic Operator's bank account indicated in the invoice, subject to paragraphs 7 and 8.
7. The Contracting Authority shall commence the acceptance operations after being notified by the Economic Operator in writing, by phone or electronic mail of its readiness for acceptance. The Economic Operator shall deliver the notification of readiness for acceptance to the person indicated in Article 1(3) of the Contract at least 5 working days before the planned acceptance date.
8. The day of acceptance of the subject-matter of the Contract shall be the final day of signing the acceptance report by authorised representatives of the parties to the Contract, after checking compliance with the terms and conditions of the Contract, ToR and the Economic Operator's tender, as well as after conducting the training.
9. The Contracting Authority shall carry out acceptance of the entire subject-matter of the Contract within 14 days from the date of receipt of the Economic Operator's written notification indicated in paragraph 11 of this Article, provided that the subject-matter of the Contract is free from defects.
10. Delivery of individual elements (parts) of the equipment constituting the subject-matter of the Contract shall not be tantamount to handing it over for use. The report of acceptance of the subject-matter of the Contract may be signed only after proper performance of the entire Contract.
11. Signing the report does not exclude the Contracting Authority's rights to pursue claims for improper performance of the Contract, in particular in the event if the Contracting Authority reveals any defects in the subject-matter of the Contract after the acceptance.

**Article 5**

1. The Economic Operator undertakes to deliver the subject-matter of the Contract without any defects (faults), however, it is obliged to verify the conformity of the markings on the subject-matter of the Contract with the data contained in the warranty document (warrantor's statement) indicated in paragraph 2 of this Article of the Contract, as well as the condition of seals and other securities placed on it, if such securities have been applied.
2. Together with the delivery of the entire subject-matter of this Contract, the Economic Operator shall provide the Contracting Authority with a warranty document (warrantor's statement), the content of which shall include at least the following information:

- name and address of the warrantor,

- telephone and e-mail contact to the warrantor,

- duration of the express warranty,

- territorial coverage of the warranty,

- general conditions of the warranty.

1. The Economic Operator grants ............. months express warranty for the delivered subject-matter of the contract, in particular for all components, subassemblies and other elements included in the subject-matter of the Contract and for services purchased from third parties by the Economic Operator. Under the express warranty, the Economic Operator undertakes to provide free-of-charge (included in the price of the Contract) maintenance and service inspections resulting from the recommendations of the manufacturer of the equipment. Furthermore, during the warranty period, the Economic Operator undertakes to carry out all repairs resulting from material defects and faults causing the equipment’s malfunction, inter alia, by not fulfilling the utility functions declared in the Economic Operator's tender. The warranty period shall be counted from the date of the unqualified acceptance report signed by the Contracting Authority. All costs related to the fulfilment of the warranty shall be covered by the Economic Operator.
2. The express warranty services shall be provided by the equipment manufacturer's authorised service centre or by persons authorised to service the manufacturer's equipment at the Contracting Authority's premises.
3. In the event if defects or faults are revealed in the performed subject-matter of the Contract, the Economic Operator undertakes to replace or repair it free of charge at the place of use of the equipment (on-site) within a period not longer than 30 days from the date of notification by phone or e-mail, while all organisational activities and costs related to the provision of the warranty services outside the place of performance of the Contract shall be borne by the Economic Operator. Notification on a day other than a working day shall be treated as notification made on the first subsequent working day.
4. The express warranty period shall start on the day following the acceptance of the subject-matter of the Contract, however, in case of replacement of the defective subject-matter of the Contract or its element with a new one, or removal of a defect (fault), the warranty period shall start anew from the moment the repaired equipment (respectively the subject-matter of the Contract, its element or module) is delivered to the Contracting Authority again.
5. The express warranty period shall be automatically extended by the repair period counted from the notification of a defect or fault to the day of its repair.
6. The Contracting Authority may exercise the rights under the implied warranty for physical defects of the goods regardless of the rights resulting from the express warranty. The rights under the implied warranty for physical defects shall expire after 24 months from the moment of delivery to the Contracting Authority of the entire subject-matter of the Contract confirmed by a signed unqualified acceptance report, however, if the Contracting Authority exercises its rights under the express warranty, the period for exercising the rights under the implied warranty shall be suspended from the date of notifying Economic Operator of the defect (fault). The mentioned time limit shall continue to run from the day the Economic Operator refuses to perform the obligations under the express warranty or ineffective expiry of the time limit specified for the removal of the defect (fault) of the subject-matter of the Contract.
7. Within the framework of exercising rights under the implied warranty for physical defects of an item, in particular in the case of defective installation of the subject-matter of this Contract (Article 1(1)) by the Economic Operator, the Contracting Authority shall demand its disassembly and reassembly after its replacement with a defect-free one or removal of the defect.
8. The Contracting Authority undertakes to observe the basic principles and conditions of operation recommended by the manufacturer of the equipment, specified in the declaration of the warrantor contained in the warranty documents or in the operating (usage) manuals provided.

**Article 6**

* + - 1. The Parties reserve the right to claim contractual penalties for non-performance or improper performance of contractual obligations.
      2. The Economic Operator shall, except when the calculation of contractual penalties is based on its behaviour not directly or indirectly related to the subject-matter of the Contract or its proper performance, and subject to paragraph 4 of this Article, pay the Contracting Authority a contractual penalty in the following amount in the event of:

1. withdrawal from this Contract by the Contracting Authority for reasons attributable to the Economic Operator in the amount of 10% of the gross remuneration set in Article 3(1) of the Contract.
2. non-performance or improper performance of the Contract – in the amount of 10% of the gross remuneration set out in Article 3(1) of the Contract, where improper performance of the Contract means its performance in contradiction with the provisions of the Contract or Economic Operator's tender, or not meeting the requirements specified in the ToR and appendices, in particular the technical and functional parameters.
3. delay in performance of the subject-matter of the Contract – in the amount of 0,5% of the gross remuneration set in Article 3(1) of the Contract for each day of delay, counting from the day following the date of completion of the subject-matter of the Contract, defined in Article 1(4) of the Contract, but not more than 20% of the gross remuneration set out in Article 3(1) of the Contract,
4. delay in the removal of defects in the subject-matter of the Contract revealed on acceptance – in the amount of 0.5% of the gross remuneration set out in Article 3(1) of the Contract for each day of delay, counting from the day following the time limit set by the Contracting Authority to remove the defects, but not more than 20% of the gross remuneration set out in Article 3(1) of the Contract,
5. delay in the removal of defects found during the period of express or implied warranty – in the amount of 0.5% of the gross remuneration set out in Article 3(1) of the Contract for each day of delay counted from the day following the time limit established in accordance with Article 5(5) of the Contract or in the written statement of the Parties, but not more than 20% of the gross remuneration set out in Article 3(1) of the Contract, however the total maximum amount of contractual penalties from all titles indicated above may not exceed 50% of the gross remuneration determined in Article 3(1) of the Contract.
6. The Contracting Authority shall pay the Economic Operator a contractual penalty equal to 10% of the gross remuneration specified in Article 3(1) of the Contract in the event of withdrawal from this Contract by the Economic Operator for reasons attributable solely to the Contracting Authority, excluding the circumstance indicated in Article 456(1) of the PPL.
7. If the amount of accrued contractual penalties does not cover the actual damage incurred, the Parties may claim supplementary damages; however, the contractual penalties specified in paragraphs 2 and 3 shall be counted towards such supplementary damages.
8. The claim for payment of contractual penalties shall become due starting from the day following the day on which the actual circumstances specified in this Contract, constituting the basis for their calculation, took place.
9. The Contracting Authority shall be entitled to deduct potential contractual penalties from the amount of remuneration due and payable to the Economic Operator as specified in the invoice or from other potential claims of the Economic Operator against the Contracting Authority, to which the Economic Operator agrees.
10. Payment of contractual penalties does not release the Economic Operator from the obligation to perform the Contract.

**Article 7**

1. In addition to the cases set out in the Civil Code, the Parties have the right to withdraw from this Contract. in the circumstances set out in paragraph 2.
2. The Contracting Authority may withdraw from the Contract not earlier than within 7 days from the date of becoming aware of the occurrence of one of the following circumstances and not later than by the date of expiry of the express (implied) warranty period for the subject-matter of the Contract, that is when:
   * 1. the Economic Operator as a result of its insolvency does not perform its monetary obligations for at least 3 months,
     2. the Economic Operator has gone into liquidation or has been dissolved without being liquidated, or has ceased carrying out business activities, or has been removed from CEIDG (the Central Register and Information on Business Activity) as an entrepreneur, or the Economic Operator who is a natural person has died,
     3. an order has been issued to seize the assets of the Economic Operator,
     4. the Economic Operator has experienced serious financial problems, in particular, there have been seizures made by authorised bodies on the basis of generally applicable laws, with the total value exceeding PLN 200,000.00 (in words: two hundred thousand zlotys 00/100),
     5. the Economic Operator has delivered equipment that did not meet the terms of the Contract or exceeded the Contract completion time limit by 7 days, without the Contracting Authority having to indicate an additional time limit for delivery.
3. Notwithstanding the provisions of paragraph 2 above, the Contracting Authority may withdraw from the Contract in the event of the circumstances indicated below:
   * 1. within 30 days of the day of becoming aware of a material change in circumstances causing that the performance of the Contract is not in the public interest, which could not have been foreseen at the time of the conclusion of the Contract, or the continuation of the Contract may pose a threat to the essential interests of State security or public security (Article 456(1)(1) of the PPL),
     2. when the Contract has been amended in breach of Articles 454 and 455 of the PPL
     3. the Economic Operator at the moment of concluding the Contract was subject to exclusion pursuant to Article 108 of the PPL,
     4. The Court of Justice of the European Union found, under the procedure provided for in Article 258 of the Treaty on the Functioning of the European Union, that the Republic of Poland has failed to fulfil its obligations under the Treaties, Directive 2014/24/EU, Directive 2014/25/EU and Directive 2009/81/EC, due to the fact that the Contracting Authority awarded the contract in breach of European Union law.
4. In cases where the Contracting Authority withdraws from the Contract on the basis of paragraph 3 above, the Economic Operator may claim only the remuneration due for the performance of a part of the Contract, until the date of receipt of the notice of withdrawal.
5. The Economic Operator shall not be entitled to compensation for withdrawal from the Contract by the Contracting Authority due to circumstances attributable to the Economic Operator.
6. Withdrawal from the Contract shall be made in writing on pain of nullity of such statement, and it should contain a justification.
7. Withdrawal from the Contract shall not affect the existence and effectiveness of claims for payment of contractual penalties.

**Article 8**

1. Force majeure shall be understood as an event beyond the control of the Economic Operator, not resulting from its and its subcontractors' organisational problems, the occurrence or consequences of which it could not foresee or prevent, or which it could not counteract, and which prevents the Economic Operator from performing in part or in whole its obligations under this Contract, or which has a direct impact on the timeliness and manner of performance of the Contract. The Parties consider the following circumstances as force majeure, in particular: announced states of natural disaster, including flood and earthquake, downfall of an aircraft, general or local strikes, acts of war or declaration of martial law, terrorist attack, announced states of emergency, announced states of epidemic threat, announced states of epidemics, including the announced state of the COVID-19 epidemic.
2. If, as a result of force majeure, a Party is prevented from performing its contractual obligations in whole or in part, it shall immediately inform the other Party thereof. In such a case, the Parties shall agree on the manner and rules of further performance of the Contract, shall temporarily suspend its execution or the Contract shall be terminated.
3. The time limits specified in this Contract shall be suspended for the duration of the obstacle caused by force majeure.

**Article 9**

1. In addition to the changes specified in Article 455 of the Act, the Parties allow for the possibility of amending the Contract without the obligation to conduct a new procedure in the following cases and scopes:

1) change in the contract performance time limit by extending it due to reasons on the side of the Contracting Authority concerning, e.g. lack of preparation/transfer of material for the implementation of the application and other reasons not attributable to the Parties caused by the so-called force majeure within the meaning of Article 8 of the Contract,

2) change in the contract performance time limit by shortening it in the event of the Parties' consent,

3) updating the design solutions due to technological progress or changes in the regulations in force.

4) change of a subcontractor, in particular due to fortuitous reasons or other reasons favourable to the Contracting Authority, in the event that the Economic Operator declares that it will perform the contract using the subcontractors, taking into account the provisions of Article 2(6) of the Contract,

5) amendment to the provisions of the Contract related to:

a) change in identification data (including address and contact details) of the Contracting Authority and persons representing the Parties (in particular due to unforeseen organisational changes, illness, fortuitous accidents),

b) change of the Economic Operator's bank account number indicated in this Contract,

c) occurrence of obvious clerical and accounting errors in the content of this Contract,

d) change in KRS, entry into CEiDG during performance of the contract concerning the Economic Operator,

e) change of the form of the security on due performance of the Contract (performance bond),

f) change of the security on due performance of the Contract in connection with the change of the conditions for the performance of the Contract,

6) change of date of contract performance, change of provisions of the Contract resulting from amendment of the European Union or national law,

7) change of a specified type, model, name, manufacturer of the subject-matter of the Contract or its elements, improvement of quality or other parameters characteristic for a given delivery item or change of technology for an equivalent or better one, in particular in the case of its production termination or discontinuation or withdrawal from production upon presentation of the relevant documents from the manufacturer or distributor, provided that the price indicated in Article 3 shall not be increased, and the technical parameters shall not be worse than indicated in the contents of the tender,

8) updating the solutions due to technological progress or changes in the regulations in force.

1. Moreover, it is allowed to replace the current Economic Operator under this Contract by another entity, meeting the conditions of participation in the procedure and not being subject to exclusion from the procedure under Article 108(1) of the PPL and Article 109(1) of the PPL in the scope indicated by the Contracting Authority in the procedure documents, in the event of merger, division, transformation, bankruptcy, restructuring, acquisition of the current Economic Operator or acquisition of its enterprise by the above-mentioned entity, and also as a result of the Contracting Authority's takeover of the Economic Operator's obligations towards its subcontractors in the case referred to in Article 465(1) of the PPL.
2. Notwithstanding the provisions of paragraphs 1 and 2, the Parties to the Contract may make non-material amendments to the Contract, not constituting a material amendment to the Contract within the meaning of Article 454(2) of the PPL, by concluding a written amendment under pain of invalidity.
3. Changes not related to the contractual provisions, e.g. when for organisational reasons it will be necessary to change the contact details specified in the Contract, in particular when the bank account number of one of the Parties will be changed, shall not require the conclusion of a written amendment to the Contract; therefore, they shall be effected by means of a written statement of the Party affected by such changes to the other Party.
4. The Party applying for a change to the provisions of this Contract shall be obliged to document the occurrence of the circumstances referred to in paragraph 1. A request for a change to the provisions of this Contract must be expressed in writing pursuant to the principles set forth in Article 78 or 781 of the Civil Code.

**Article 10**

1. Neither Party shall be entitled to assign its rights and obligations under this Contract without the written consent of the other Party, in particular the Economic Operator shall not be entitled to assign its receivables under this Contract without the prior written consent of the Contracting Authority.
2. The Parties undertake to notify each other by registered mail of each change in the address of their registered office, failing which the correspondence sent to the previously known address shall be deemed successfully delivered.
3. Any amendments or supplements to this Contract may be made with the consent of the Parties in the form of a written amendment under pain of invalidity.
4. Possible invalidity of one or more provisions of this Contract shall not affect the validity of the Contract as a whole, and in such a case the Parties shall replace the invalid provision with a provision consistent with the purpose and other provisions of the Contract.
5. In the event of a dispute between the Parties arising out of or in connection with the Contract, the Parties agree to attempt to resolve it through mediation conducted by Permanent Mediators of the Court of Arbitration at the General Prosecutor's Office of the Republic of Poland[[4]](#footnote-5), in accordance with the Rules of that Court, and only if no settlement is reached before a Permanent Mediator of the Court of Arbitration at the General Prosecutor's Office of the Republic of Poland, will the dispute be submitted for settlement to a common court with jurisdiction over the registered office of the Contracting Authority.
6. The provisions of the following acts shall apply in matters not regulated by this Contract: the Act of 11 September 2019 – Public Procurement Law (consolidated text Journal of Laws of 2021, item 1129, as amended), the Act of 02 March 2020 on special solutions related to the prevention, counteracting and combating COVID-19, other infectious diseases and crisis situations caused by them (consolidated text Journal of Laws 2021, item 2095 as amended) and the Act of 23 April 1964 – the Civil Code (consolidated text Journal of Laws 2020, item 1740 as amended).
7. This Contract has been drawn up in writing under the principles laid down in Articles 78 and 781 of the Civil Code, i.e. bearing qualified signatures or handwritten signatures of authorised representatives of both Parties, in two (2) counterparts, one (1) for each Party[[5]](#footnote-6).
8. This Contract has been drawn up in writing under the principles laid down in Articles 78 and 781 of the Civil Code, i.e. bearing qualified signatures or handwritten signatures of authorised representatives of both Parties, in four (4) copies, two (2) in English and two (2) in Polish, one (1) copy in each language version for each Party. In case of discrepancies between the language versions, the Polish version shall prevail[[6]](#footnote-7).
9. The Parties unanimously declare that in the case of concluding this Contract in electronic form by means of a qualified electronic signature, the electronic document created in this way shall constitute a confirmation that the Parties have unanimously submitted declarations of intent contained therein, and the date of conclusion shall be the date of submission of the last (later) declaration of intent regarding its conclusion by authorised representatives of each Party.

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***Contracting Authority Economic Operator***

***Appendix to the Contract:***

*Appendix 1 - Report of acceptance of the equipment and performance of the training service.*

**Appendix 1 to Contract no ………..**

stamp of the Jagiellonian University unit

Kraków, date ……………………………..

**GOODS/SERVICE ACCEPTANCE REPORT**

1. Goods accepted / service completed on ...................................
2. Refers to invoice no. ....................................... dated ........................
3. SAP document no. .......................................
4. Value of goods/service\*......................................................................
5. Supplier's data .....................................................................................

………………………..….…..

signature of the person accepting the goods/service

Mobile phone: ………………….……………………….

E-mail address: ………………………………………………………

\* - if the value of goods is determined in a currency other than PLN, the exchange rate from the day preceding the day of goods/service acceptance report should be used for conversion.

1. *If applicable.* [↑](#footnote-ref-2)
2. *If applicable.*  [↑](#footnote-ref-3)
3. *If applicable.* [↑](#footnote-ref-4)
4. *Court of Arbitration at the General Prosecutor's Office of the Republic of Poland – website address* [*https://sp.prokuratoria.gov.pl/*](https://sp.prokuratoria.gov.pl/) [↑](#footnote-ref-5)
5. *If the Contract is concluded with a Economic Operator having its registered office in the territory of the Republic of Poland* [↑](#footnote-ref-6)
6. *If the Contract is concluded with a Economic Operator having its registered office outside the territory of the Republic of Poland* [↑](#footnote-ref-7)