

DRAFT CONTRACT

Concluded on in Kraków as a result of the selection of the offer by way of an open tender no. PN-01-2014 between:

**Aleksander Krupkowski Institute of Metallurgy and Materials Science
Polish Academy of Sciences,**

Located in: Reymonta Street 25, 30-059 Kraków

Tax Identification Number 6750001857, National Business Register 000326374,

Represented by:

General manager Prof. Paweł Zięba Phd. Eng.

Further referred to as „Purchaser”

and

.....,
located in:

Tax Identification Number..... National Business Register

..... National Court Register

Represented by:

PESEL No.,

further referred to as „Vendor”,

further referred to as „Parties”

§ 1

1. The subject of this Contract is production of coatings.
2. The detailed specification of the Contract subject is described in the Vendor’s tender dated, which constitutes an integral part of this Contract.

§ 2

1. The Vendor is obliged to perform and deliver the subject of the Contract to Institute of Metallurgy and Materials Science in Kraków, **located in Reymonta Street 25, 30-059 Kraków**, within the following **deadlines**:
 - a) I stage: 2 months from the date of the signing of the Contract’s, that is by2014,
 - b) II stage: by 17 June 2014
2. The delivery of the Contract subject to the Purchaser should take place at the location described in Sec. 1 at the time agreed by the Purchaser.
3. The deadline for the performance and delivery of the Contract subject is understood as kept if, before its expiry, the Vendor delivers the complete and unaltered Contract subject at the pointed location, according to the terms described in the Vendor’s tender.

§ 3

1. The parties establish the gross/net price of the subject of the Contract described in detail in § 1 in the amount of

(in words:)

2. The net price is , the Value Added Tax rate is..... %, the Value Added Tax value is
3. The price includes the full due amount which the Purchaser is obliged to pay for the Contract subject and its delivery to the location described by the Purchaser. The price especially includes the costs and fees related to the delivery of the Contract subject; the transport fees, insurance, duty, loading, unloading, as well as the documentation necessary for the normal use, maintenance and repair of the Contract subject.
4. The risk of loss of the Contract subject during transport lies on the side of the Vendor.

§ 4

1. The due amount described in § 3 Sec. 1 is to be paid by the Purchaser within the period of 21 days from the date of his/her receipt of the invoice **after the acceptance of the Contract subject**.
2. The Parties agree to the following manner of payment:
 - 1) The Vendor will produce a separate VAT invoice for the delivery of the Contract subject after the completion and a positive receipt of STAGE I
 - 2) The Vendor will produce a separate VAT invoice for the delivery of the Contract subject after the completion and a positive receipt of STAGE II
 - 3) The total sum of the VAT invoices which are mentioned in §4 Sec 2 points from 1) to 2) cannot exceed the amount regulated in §3 Sec 1.
2. The parties have agreed that the payment of the due amount is to be made in the form of a money transfer to the Vendor's bank account no.
.....
3. The parties consent that the payment takes place on the date of the charge of the Purchaser's bank account.
4. In the event of an overdue in the payment, the Vendor has the right to calculate statutory interest for the Purchaser for each overdue day.

§ 5

1. The parties establish the Vendor's responsibility for the non-performance or improper performance of the Contract in the form of contractual penalties.
2. The Vendor will pay contractual penalties to the Purchaser:
 - 1) for a delay in the delivery of the Contract subject, the value of the Contract is reduced by 0,05% of the price described in § 3 Sec.1 for every commenced day of delay, but not more than 5 % of the gross value of the Contract;
 - 2) for a delay in the removing of the faults stated on the acceptance of the Contract subject or within the period of surety or warranty, in the amount of 0,05 % of the price described in § 3 Sec.1 for every day of delay calculated from the day established for the removal of the faults, but not more than 5 % of the gross value of the Contract;
 - 3) on termination of the Contract for the Vendor's default in the amount of 10% of the price described in § 3 Sec.1
3. The payment of the contractual penalties does not exclude judicial redress for the damage exceeding the value of the contractual penalties.
4. Neither Party will be held responsible to the other Party for the non-performance or improper performance of their obligations within the Contract, if the non-performance or improper performance of those obligations is a result of force majeure. The Parties understand force majeure as any kind of external extraordinary events which are impossible to foresee, such as: disasters, fires, floods, explosions, social disorders, warfare, state or administration acts, which,

in part or in whole, prevent the performance of the obligations of the Parties implemented within the frames of the Contract.

§ 6

1. The Purchaser can withdraw from the Contract in the event of the occurrence of a crucial change of circumstances which causes the performance of the Contract to be against the public interest; which could not have been foreseen at the time of its conclusion, by notifying the Vendor within the date of 30 days from the receipt of the message concerning the above circumstances. In such a case, the regulations referring to the contractual penalties do not apply.
2. In the event of an overdue in the delivery by at least 30 – days from the date described in § 2 Sec. 1 – the Purchaser has the right to withdraw from the Contract and calculate the penalties described in § 5 Sec. 2 point 3)

§ 7

1. The Vendor grants warranty for the purchased equipment being the subject of this Contract for the period of under the terms described in detail in the warranty documentation, which constitutes the attachments to the Contract.
2. In the event when the repair lasts longer than 14 days, the warranty period will be prolonged by the repair's duration time (calculated from the date of the report of the failure until the moment of its elimination).
3. The detailed service conditions are described in an attachment to the Contract.

§ 8

The Purchaser will create the necessary conditions which will grant the Vendor's personnel the access to equipment and personnel of the Purchaser – within the scope necessary for the implementation of this Contract.

§ 9

1. Any changes of the Contract require consent by both Parties and are to be made in writing under pain of nullity.
2. The changes mentioned in Sec. 1 must be made with the preservation of Art. 140 Sec. 3 of Public Procurement Law, which states that a contract becomes invalidated in the part exceeding the description of the contract subject included in the Specification of the Essential Terms of the Tender.
3. It is acceptable to make a change in the regulations of this Contract as referred to the content of the Contractor's offer within the following scope:
 - a. **the quality or other parameters of the subject of the Contract offered in the tender**, whereas such a change can be caused by:
 - 1) market unavailability of the subject of the Contract described in the tender resulting from a cease in the production or a removal of these appliances from the market;
 - 2) market appearance of newer generation appliances which allow to save the costs of the implementation or operation of the Contract subject,
 - 3) market appearance of subject of the Contract with better parameters than those given in the tender,**on condition that the changes mentioned above does not rise the offer price.**
 - b. **the deadline of the tender subject's implementation**, when it is caused by circumstances on the side of the Purchaser, such as:
 - 1) difficulties in the adaptation of the room for the purpose of the Contract subject's installation,

2) justified work absence of the Purchaser's personnel responsible for the technical receipt of the Contract subject

The condition for the changes described in Sec. 3 is the submission of a motion by the side initiating the change, which includes: a description of the change proposal, a justification of the changes, a calculation of the change costs, if the change in question has an effect on the Contractor's payment.

§10

Any disputes resulting from the implementation of this Contract will fall under the competence of the jurisdiction over the Purchaser.

§11

In cases not regulated by this Contract, the civil code and the Public Procurement Law are to be applied.

§12

All attachments constitute an integral part of this Contract.

§13

The Contract has been produced in 3 identical copies; 2 for the Purchaser and 1 for the Vendor.

.....
Purchaser

.....
Vendor