

AGREEMENT ASP-DAT- /2018

concluded in Katowice on 2018 by and between:

The Academy of Fine Arts in Katowice with its registered seat at 37 Raciborska Street, 40-074 Katowice (NIP: 634-24-39-334; REGON: 277620860) on behalf of which acts:

.....

the Ordering Party shall act:

and company/ in case of natural person name and surname and PESEL number/with its registered seat / in case of natural person place of residence / at..... (NIP:..... ; REGON:.....) entered into the register.....maintained by..... on behalf of which acts:

hereinafter referred to as Contractor.

As a result of conduct by the Ordering Party of the selection of the offer submitted by the Contractor in the course of tender procedure for public orders, carried out in the mode of unlimited tender for: "Provision of graphic press machines for the Academy of Fine Arts in Katowice" realized under investment task: "Purchase of equipment necessary for the conduct of the process of art education in majors Graphics and Painting at ASP in Katowice" financed from the resources of the Ministry of Culture and National Heritage under Agreement no. 09651/18/FPK/DEK from 03.07.2018, the Parties conclude Agreement of the following content:

§1

1. The Subject of the hereby Agreement shall be the delivery of.....press machine realized under the task no.....
2. Subject of Agreement has been specified in detail in the Terms of Reference and the offer of Contractor from.....which, along with the Terms of Reference, constitutes an Annex to the hereby Agreement.
3. The Contractor declares that the provided machine is **available on the market, as brand new (from current production), allowed for the use and fulfilling all standards permitted by the law as well as safety standards, hold appropriate certificates for the purpose of machine use,** including Compliance Certificate with EU regulations.

§2

1. The Contractor undertakes **to deliver and install at his own cost and risk** the press within **the term until 20 December 2018.**

2. **Launching, testing of device and personnel training of the Ordering Party** ought to occur within the term agreed with the Ordering Party. Actions specified in the preceding sentence should be confirmed with a document which will contain, at least: date of activity, result of tests and which shall document the training of the Ordering Party's personnel.
3. The Contractor shall be obliged, in particular, to ensure delivery, unloading, transport to the premises indicated by the Ordering Party into the building at 19 Koszarowa Street in Katowice and assembly/installation of the press, as well as levelling/ anchoring/ connecting the press to the installation of the Ordering Party (provided that the machine specification requires same), launch and testing of the device (exploitation materials for tests will be ensured by the Contractor).
4. The building in which the delivery/installation of the machine is to occur is in use, thus the delivery and realization of installation works/ where these are required/ ought to be carried out within the term and in a manner agreed with the Ordering Party.
5. The Contractor shall be obliged to inform the Ordering Party at least 2 days in advance of the planned delivery term.
6. Within the framework of the order, the Contractor ought to, in particular:
 - a) Provide, install, launch the press in line with the binding provisions of law, standards;
 - b) maintain the delivery area/ installation area in proper order;
 - c) in case of damaging or destroying property, parts or devices in the course of realization at the fault of the Contractor, to repair of such damage and restore it to the initial state;
 - d) obtain a written consent of the Ordering Party for conclusion of agreement with the subcontractor; provided that he is required to carry out at his own cost and scope, tests and measurements and hand over the documentation related to these actions to the Ordering Party upon handover;
 - e) properly secure and mark the area of conduct of installation works, including securing the area against access made by unauthorized persons;
 - g) tidy up the area of delivery/ installation works, utilize the materials in accordance with the environment protection law;
 - h) transfer Operation and Maintenance Manual of the machine, service manual, declaration, certificates etc.
 - i) train personnel of the Ordering Party on how to use the machine.
7. The delivery and installation of the press shall be confirmed by the Parties by means of a handover protocol, whilst the protocol ought to contain at least the name/ type/ volume, serial numbers of the press.
8. In case of any reservations as to the delivery, the Ordering Party shall assign an additional term until their removal.
9. The basis of the issuance of invoice/final bill by the Contractor shall be the handover of the press/ without reservations/ or post removal of the submitted malfunctions.

§3

1. The Contractor hereby grants..... warranty and guarantee, starting from the date of handover of the press, in a manner specified in art. 82 (7).
2. Guarantee conditions are specified within the hereby Agreement, as well as the offer of the Contractor, Civil Code and Guarantee Card. In case of any discrepancies stemming from the above stated documents, the provisions which are more favourable towards the Ordering Party shall apply.

3. Regardless of the entitlements on account of the guarantee, the Ordering Party shall be entitled to the warranty for any malfunctions of the subject of agreement. All different terms, stemming from guarantee cards for the equipment shall be deemed as ineffective.

4. All guarantee repairs or repairs carried out under the warranty occur at the cost and responsibility of the Contractor, who is responsible also for ensuring the materials, substitute elements and transport/travel of the service crew. The Contractor shall be obliged to carry out repairs no later than within 5 days from the date of a failure or malfunction having been reported.

5. Post completion of repair, the Contractor shall be obliged to indicate in writing to the Ordering Party the completed repair actions and, in particular, to specify the substitute parts/elements.

6. Complaints and submissions of failures or defects in the guarantee period shall be carried out in electronic manner via an email sent to the address..... and the Contractor shall be obliged to immediately confirm acceptance of submission and indicate the term of the planned repair. In case of lack of reaction and/or non-confirmation of submission acceptance within 24 hours from sending of the submission to the above indicated email address, the submission shall be assumed as effectively carried out.

§4

1. Total remuneration of the Contractor for the completion of the subject of agreement, in accordance with the offer shall constitute PLN.....net amount, which including the VAT tax in the amount of PLNshall constitute a gross amount of PLN..... (in words:.....00/100).

2. Remuneration shall not be subject to valorisation.

3. The Ordering Party anticipates the possibility of granting prepayments towards completion of the order in the amount of 20% of the gross offered price - specified in art. and of the total remuneration for the Contractor.

4. Prepayment shall be paid on the basis of the obtained, correct invoice/ advance bill within 30 days from the issuance of the invoice/bill by the Contractor.

5. In case of granting a prepayment for the Contractor towards the completion of the order, remuneration of the Contractor shall be decreased by the amount of paid prepayment. The Ordering Party may grant subsequent prepayments up to the level specified in art. 3 of the Agreement, provided that the Contractor provides proof of having made an order in the scope of the value equivalent to the previously granted prepayments.

6. In case of withdrawal by the Ordering Party from the Agreement or non-completion by the Contractor, due to any cause, the Ordering Party may demand a return of prepayments, regardless of whether he is entitled to compensation or contractual penalties. In such a case, the Contractor shall be obliged to return the prepayment at the call of the Ordering Party within the term specified in the call.

7. The Ordering Party shall pay the Contractor all amounts due via bank transfer to the bank account of the following

number:.....carried out
by.....within the term of 7 days from the date of obtaining
the invoice/ bill issued by the Contractor.

8. The basis for the issuance of an invoice/ final bill shall be the handover protocol, as specified in §2 art. 7.

9. Parties hereby agree that the payment date shall constitute the date of an amount being recognized on the bank account of the Contractor.

10. In the event of untimely payments of amounts due, the Contractor shall be entitled to calculate statutory interest for each day of delay.

§5

1. Parties establish responsibility for non-performance or improper performance of the agreement in the form of contractual penalties.

2. The Ordering Party shall be entitled to calculate the following contractual penalties to the Contractor:

- a) For delay in delivery and installation of the press in the amount of 0.5% of gross remuneration, specified in art. §4 (1) per each day of delay.
- b) For each day of delay of the Contractor in performance of actions specified in art. §2 (2) of the Agreement at the level of 0.2% of gross remuneration specified in §4 (1) for each day of delay.
- c) For each day of delay in undertaking repair or removing failure in the amount of 0.2% of gross remuneration specified in §4 (1) on account of the execution of guarantee or warranty rights realized by the Ordering Party.

3. The Contractor grants consent for deduction of contractual penalties calculated by the Ordering Party from his remuneration without prior call.

4. The Contractor is entitled to calculate towards the Ordering Party contractual penalty in case of his withdrawal from the agreement due to causes outside of the Contractor's control, in the amount of 10% of remuneration specified in §4 (1).

§6

1. The Ordering Party may withdraw from the agreement in case of:

- a) Occurrence of a significant change of circumstances causing that the performance of agreement shall cease to lie in the public interest, which could not have been predicted at the time of its conclusion, or further performance of the agreement may constitute a threat to significant interest of public safety or state safety, within the term of 1 month from acknowledging the information regarding the above circumstances,
- b) Delays in delivery exceeding 6 days.

2. In case specified in the above clause, the provisions on contractual penalty towards the Ordering Party shall not apply.

§7

The Ordering Party shall create the necessary organizational conditions, enabling access to the premises for the personnel of the Contractor - in the scope necessary for the performance of the hereby Agreement.

§8

1. The Contractor cannot execute his obligation by means of such third parties, which pursuant to art. 24 of the Act of 29 January 2004 on Public Procurement Law are excluded from participating in public tender procedures.
2. Breaching of the above stated provisions constitutes the basis for withdrawal from the agreement by the Ordering Party.
3. The Contractor shall be obliged to inform the Ordering Party of any change of data, including the place of business conduct/ address of residence, under the pain of directing letters addressed according to the data specified in the agreement as delivered.

§9

Any changes to the provisions of the hereby Agreement may be made by agreement of both Parties, expressed in writing under the pain of nullity of such changes in cases specified within ToR and the Act on Public Procurement Law.

§10

The court with jurisdiction over the seat of the Ordering Party shall be the competent court for resolving any disputes which might arise in the course of realization of the hereby agreement.

§11

1. For all matters unresolved in the hereby Agreement the provisions of the Civil Code and the Act on Public Procurement Law shall be applicable.
2. The Contractor cannot, under the pain of nullity, carry out a cession of rights and obligations stemming from the hereby Agreement without obtaining prior consent for it from the Ordering Party.

§13

The Agreement has been drawn up in two counterparts, one for each of the parties.

Ordering Party

Contractor

