

(Draft Contract)

Contract No. ....

Signed on ..... in ..... by and between:

**dr Jan Biziel University Hospital No. 2 in Bydgoszcz**

*with its Head Office at 75 Kornela Ujejskiego Str., 85-168 Bydgoszcz,  
entered in the National Court Register under the no. 0000316960, holding the  
taxpayer identification no. NIP: 9532582266*

represented by:

Director - dr n. med. (M.D., PhD) Wanda Korzycka-Wilińska,

hereinafter referred to as the **Ordering Party**,  
and:

.....  
entered in the .....

taxpayer identification no. **NIP**: ....., national business  
registry no. **REGON** .....

represented by – ....., hereinafter  
referred to as the **Contractor**,

on the basis of the choice of the most advantageous bid in open tender proceedings - art. 39  
- 46 of the act of January 29, 2004 on Public Procurement Act (consolidated text of the Journal  
of Laws from 2010, No. 113, item 759 as amended)

**concerning the delivery of:** .....

reading as follows:

## § 1

### **Subject and Price of the Contract**

1. The subject of the Contract covers sale, delivery, set-up and test run of ....., hereinafter referred to as the Commodity, by the Contractor at the head office of the Ordering Party at 75 Ujejskiego Str. in Bydgoszcz, including training of the staff indicated by the Ordering Party, in the scope of operation of the Commodity. The specification of the object of the order sets out the scope of the subject of the Contract.
2. The total value of the Contract subject, in accordance with the contract request form, are deemed by the Parties to amount to gross ..... euro  
(in words: ..... euro ../100).
3. The contract request form and the object of the Contract shall comprise the integral part thereof.
4. The Contractor states that the Commodity holds all the required documents (permits, certificates, attestations, etc.) necessary to be marketed and exploited on the territory of

the Republic of Poland and European Union.

**§ 2  
Price**

1. The Commodity shall be delivered to the Ordering Party at the gross price specified in the contract request form, that is ..... Euro.
2. The price specified in section 1 includes the Contractor's all amounts due to the Ordering Party under this Contract, including the costs of delivery, insurance for the duration of transport and unloading, taxes, customs charges and others.

**§ 3  
Delivery Terms and Lead Time**

1. The Contractor declares that it is entitled to unlimited disposal of the Commodity.
2. The delivery of the Commodity shall take place at the Contractor's own cost and risk to the place indicated by the Ordering Party. The place of delivery: ..... in the Ordering Party's head office. Set-up and test run of the Contract subject shall take place in the place indicated by the Ordering Party.
3. Delivery, set-up and test run of the contract subject as well as staff training shall take place in the period from .. .. . to .. .. . .
4. Should there occur any legitimate claims reported during delivery or test run of the Commodity, the Commodity free of defects shall be delivered to the Ordering Party within 7 days at latest from the moment of raising a claim at the Contractor's cost and risk.
5. In case of failure to deliver the Commodity at a fixed time or delivery of the Commodity which does not meet the requirements specified in the bid or in § 1 section 4 thereof or in case of the Commodity with other defects and failure to deliver, instead of the commodity which does not meet requirements or/and is defective, the Commodity free of any defects within the deadline determined in the previous section, the Ordering Party shall be entitled at its own discretion to:
  - a. upon a written call on the Contractor to perform the Contract decently within 7 days from the receipt of the call by the Contractor, to terminate the Contract and purchase in a different contractor, and in case of a higher price of purchase, to charge the Contractor with this difference in price, with the Contractor being obliged to cover this amount due within 14 days from the date of receiving the invoice as well as to charge the Contractor with the liquidated damages amounting to 5% of the value specified in the contract request form,
  - b. demand to perform the Contract and require from the Contractor to the payment of the liquidated damages amounting to 1% of the value determined in the Contract request form for every day of delay in delivery starting from the day following the date specified in §3 section 3 to the day of delivery of the Commodities free of any defects.
6. In case of delivery of the Commodity but failure to perform set-up and/or test run of the Commodity by the Contractor during the period specified in section 3 of this clause, upon the call on the Contractor to perform the Contract, the Ordering Party may commission these activities to be performed by other entity at the Contractor's cost, at the same time retaining other guarantee and warranty rights, wherein the Contractor shall pay the amount due within 14 days from issuing the invoice by the Ordering Party and require from the Contractor to cover the liquidated damages amounting to 2% of the value specified in the contract request form or the Ordering Party may demand to perform the Contract in this range and require to pay the liquidated damages on terms provided for in section 5 b., applied as appropriate.
7. The Contractor commits itself to deliver the Commodity of the parameters conforming to

the binding regulations.

8. The Contractor shall issue to the Ordering Party true copies of necessary documents concerning the purchase of the Commodity under this Contract.
9. The Contractor shall perform delivery under the Contract and in line with the bid.
10. The Contractor shall eliminate a disclosed Commodity defect free of charge or deliver the Commodity free of defects instead of the defective Commodity, in case of disclosure of defects during the period of ..... months starting from the day of performing a decent set-up and test run of the Commodity. The Contractor shall perform the above mentioned duty during the following periods:
  - a.) Up to 7 working days for a repair involving the replacement of a part or sub-assemblies,
  - b.) Up to 3 working days for a repair not involving the replacement of a part or sub-assemblies,
  - c.) Up to 21 working days if it is necessary to carry out the replacement of the Commodity,from the date of reporting a defect.
11. During the term of the guarantee the Contractor shall promptly provide replacement equipment (within 5 days from the moment of reporting a defect). Should the Contractor fail to fulfil this duty, the Ordering Party may provide itself with a replacement equipment from a third party at the Contractor's cost or commission a third party to perform a health service at the Contractor's cost.
12. In case of failing to meet the deadline of defect elimination or to deliver the Commodity free from defects in the place of the defected one, the Ordering Party is entitled to:
  - a. upon a prior call on the Contractor to perform the Contract in this respect, to order a different entity to eliminate such a defect at the Contractor's cost and risk, at the same time retaining guarantee and warranty rights as well as the right to charge the Contractor with the liquidated damages amounting to 3 % of the price determined in the contract request offer,or
  - b. to demand to eliminate a defect or to provide the Commodity free from defects in the place of the defected one and to require to cover liquidated damages at the amount of 1% of the price determined in the contract request offer for every day after the deadline specified in section 10 a- c to eliminate a defect or provide the Commodity free from defects,
13. The Ordering Party shall acknowledge to the Contractor the acceptance of the Commodity, delivered under this Contract, on the day of delivery. In case of delivery incompatible with this Contract, disclosed on arrival, the Ordering Party has the right to refuse to accept the Commodity. Such a refusal shall be made in writing. The provisions of section 4 and 5 shall apply respectively in this case.
14. The Ordering Party shall acknowledge to the Contractor the decent installation set-up and test run of the Commodity. In case of inadequate installation set-up and/or test run failure of the Commodity, the Ordering Party has the right to refuse to acknowledge. The provisions of section 6 shall apply respectively in this case.
15. The Ordering Party shall acknowledge the completion of staff training.
16. Should the Contract be terminated due to reasons attributable to the Contractor, the Ordering Party has the right to charge the Contractor with liquidated damages amounting to 5% of the total price of the subject of this Contract, provided for in §1 section 2, unless other fine is provided under the Contract in a given case.
17. Should liquidated damages provided for in this clause not cover the whole damage cost, the Ordering Party has the right to demand supplementary damages on general terms.

#### **§ 4**

##### **Guarantee, warranty**

1. The Contractor provides the Ordering Party with the guarantee of the delivered subject of

the Contract for the period of ... months.

2. If within the execution of its duties the Contractor delivers the Ordering Party an item free of defects instead of a defected item or conducts significant repairs of the subject of the Contract, the warranty period commences anew from the moment of providing an item free of defects or returning a repaired item. If the Contractor replaces some part of items, the above provision shall apply to the replaced part respectively. In other cases the warranty period shall be extended twice as long as the period from reporting a defect to its elimination.
3. To all matters not settled in the Contract guarantee provisions, relevant provisions of the Civil Code shall apply.
4. The Ordering Party may use statutory warranty claims regardless of contractual warranty claims. The provisions of the law – civil code shall apply to liability on statutory warranty respectively.

## **§ 5**

### **Mode of payment**

1. The Ordering Party shall pay the amount due for the provided subject of the Contract in the following instalments:
  - a) Instalments I at the amount of 50% of the price specified in §2 section 1, i.e. gross ... euro (in words: ...) shall be paid by the Ordering Party to the Contractor within 30 days from the date of issuing VAT invoice, what shall take place upon a decent delivery, set-up and test run of the Commodity and staff training, acknowledged in the mode provided for herein.
  - b) at the amount of 50% of the price specified in §2 section 1, i.e. gross ... euro (in words: ...) shall be paid by the Ordering Party within 60 days from the date of issuing a VAT invoice,
2. The date of debiting the Ordering Party's account shall be considered the payment date.

## **§ 6**

### **Term of the Contract**

The Contract shall be signed for the period from ... .. to ... .. subject to rights and duties of the parties resulting from failure to perform or improper performance of the Contract including given warranties and guarantees.

## **§ 7**

### **Additional Provisions**

1. The Contractor has the right to charge statutory interest if the Ordering Party fails to meet the payment deadline.
2. In case of the above mentioned delay caused by the Ordering Party and interest being charged by the Contractor, the Parties agree that the recognition of payments made by the Ordering Party shall take place in the first place on the account of the principal (the most delinquent fee in the first place) and following its payment on the account of incidental dues, unless the Ordering Party indicates otherwise.
3. Without the Ordering Party's consent expressed in writing the Contractor shall not:
  - a) assign receivables arising from or related to performance of this Contract;
  - b) authorize to claim receivables arising from or related to performance of this Contract legally or in a non-legal mode, except for authorisation given to a legal adviser or a lawyer;
  - c) sign a contract of surety concerning liabilities arising from or related to performance of this Contract,otherwise null and void.
4. The breach of the provision of section 3 entitles the Ordering Party to charge liquidated damages amounting to 5% of the total price of the subject hereof provided for in §1

section 2, and also to terminate the Contract with immediate effect.

5. The Contractor shall not change the price provided in the bid, subject to the provisions of §8.

## **§ 8**

### **Final Provisions**

1. The Parties expect amendments to be made within the Contract concerning:
  - 1) the catalogue number or/and the code of equipment being the object of delivery in case of a change of the catalogue number or/and the code,
  - 2) the VAT rate in case of a statutory change of the VAT,
  - 3) a bank account number, the name and other data of the Parties to the Contract, in case of a change in this data,
  - 4) a reduction in the price if there occur circumstances affecting (justifying) a reduction in the price,
  - 5) extension of the guarantee period if there occur circumstances affecting (justifying) the extension of the guarantee period,
  - 6) extension of the period of performance (term) of the Contract if there occur circumstances attributable to the Ordering Party, affecting the extension of the time needed to conduct the actions being the object thereof.
2. The Parties resolve to amend the Contract by means of shifting the period of performance (extension of its duration) of the Contract in case of prolongation of the procedure concerning the choice of the most advantageous bid.
3. The changes specified in the preceding sections shall not be disadvantageous to the Ordering Party, in particular they shall not result in an amendment to the contents of the Contract, disadvantageous to this party.
4. Any amendments to this Contract require a written form otherwise null and void.
5. The Ordering Party reserves the right to withdraw from the Contract during 30 days from getting a message about a significant change in the circumstances making the performance of the Contract not be a public interest, what could not be predicted at the moment of signing the Contract.
6. In the case specified in section 5 of this clause, the Contractor has not a right except for the payment of the price for a part of the subject of the Contract carried out under provisions hereof.
7. Any disputes arising out of this Contract shall be solved amicably by the parties in the first place.
8. Should the Parties fail to reach an amicable solution to a dispute, such a solution is subject to the common court having jurisdiction over the Ordering Party's head office, which shall adjudicate with the application of Polish procedural provisions.
9. To all matters not settled herein there apply the regulations of Polish law, in particular, of the Public Procurement Act and Civil Code Act.
10. The Contract has been drawn up in two language versions, in Polish and English, 4 copies in each version, 1 copy of each version for the Contractor, 3 copies of each version for the Ordering Party. Should there occur any discrepancies between the versions, the Polish version shall prevail.

THE CONTRACTOR

THE ORDERING PARTY