



## ESSENTIAL TERMS OF THE AGREEMENT (PUBLIC CONTRACT)

### 1. OBJECT OF THE AGREEMENT (PUBLIC CONTRACT)

1. The object of the public contract is a high power brake dynamometer.
2. A detailed description of the Object of the Agreement is contained in the Specification, which, together with the Economic Operator's tender, shall constitute an integral part of the Agreement [the agreement on the award of the contract].
3. The Economic Operator shall **perform the Object of the Agreement within 26 weeks of signing the Agreement.**
4. The Economic Operator shall supply, together with the equipment, a complete set of documentation in Polish or English (electronic documents, except for certifications, which must be hard copy documents), containing as a minimum:
  - a. technical drawings of the entire system (a setup/configuration diagram),
  - b. diagrams of all the items of gas, pneumatic and hydraulic equipment,
  - c. diagrams of all electrical/wiring parts and their connections, including usage codes,
  - d. manuals containing operation, repair and maintenance instructions, together with a complete description of measurement and calibration procedures, to the extent required by the provisions of Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery (They must be accompanied by their translations into Polish),
  - e. a description of the operation of the system equipment and the software for the equipment,
  - f. a list of spare parts,
  - g. a list of the spare parts that BOSMAL must have in stock in order to reduce equipment shutdown times to a minimum in the event of system failure,
  - h. verification procedure reports (calibration reports) for the equipment after it is started up (to be carried out on the Economic Operator's premises),
  - i. information and warning pictograms displayed on the equipment and, if any such information is displayed as descriptions, this must be in Polish,
  - j. descriptions in Polish for all control parts/components. This requirement does not apply to electronic control panels, if they are an integral part of English-language software,
  - k. CE marking,
  - l. declarations of conformity in accordance with the following safety standards:
    - Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery,
    - Directive 2014/35/EU ( Low Voltage Directive),
    - Directive 2014/30/EU (Electromagnetic Compatibility Directive).
5. The Economic Operator shall, **within 8 (eight) weeks** of signing the Agreement, provide a document in Polish specifying detailed installation conditions.
6. Permitted amendments to the Agreement are described in clause 2.

## 2. AMENDMENTS TO THE AGREEMENT

1. In accordance with s.455(1)(1) of the Act, the Contracting Entity agrees that the Agreement may be amended against the provisions of the tender. Any such amendment may be made only upon the occurrence of at least one of the circumstances described in this clause.
2. The time limit for completing the supply under the Agreement may be changed in the event that
  - a. a force majeure event has occurred, where a force majeure event means an extraordinary, external, unforeseeable and unavoidable event which could not have been avoided despite exercising the utmost care and which prevents the Economic Operator from performing its obligations fully or partially (the occurrence of a force majeure event must be documented, and the impact of the event on the time limit for completing the supply under the Agreement must be demonstrated, and this is subject to the Contracting Entity's approval). If a force majeure event occurs, the Parties shall make every effort to mitigate the delay in performing their contractual obligations that is the result of the event;
  - b. documented changes resulting from the actions of public administration authorities and/or changes in the law directly affecting the time limit for completing the supply under the Agreement;
  - c. the conditions at the site of installation of the Object of the Agreement are different from the conditions specified in the relevant documentation. In the event of any such difference (the difference must be documented, and the impact of the difference on the time limit for completing the supply under the Agreement must be demonstrated), the time limit for the supply will be extended;
  - d. the obtaining of any permits, authorisation or opinion required for completing the supply under the Agreement is delayed (the delay must be documented, and the impact of the delay on the time limit for completing the supply under the Agreement must be demonstrated) for reasons on the part of the Economic Operator. The time limit for completing the supply will be extended by the time actually necessary to obtain such documents;
  - e. the work under Agreement is suspended by a competent authority/the Contracting Entity (the suspension must be documented, and the impact of the suspension on the time limit for completing the supply under the Agreement must be demonstrated) for reasons that are not the fault of the Parties;
  - f. the actions of third parties prevent completing the supply under the Agreement if such actions are not the fault of either Party (such actions must be documented, and their impact on the time limit for completing the supply under the Agreement must be demonstrated);
  - g. the time limit [for completing the supply] is changed as a result of a change in the terms of financing the project under any agreement(s) signed or to be signed (or amended) by the Contracting Entity with external institutions (this must be documented, and its impact on the time limit for completing the supply under the Agreement must be demonstrated);
  - h. the time limit for a payment is changed, provided that the change could not have been foreseen at the time of entering into the Agreement, particularly if the change will enable the Contracting Entity to obtain external funding for the project efficiently and according to its agreements and/or to account in a timely manner, to external institutions, for the funds expended on the project, or if the change is the result of the supply under the Agreement having completed significantly ahead of the

deadline (more than 10% of the time) (any such change must be documented, and its impact on the time limit for completing the supply under the Agreement must be demonstrated);

- i. it has become necessary to carry out any substitute work or additional work that could not have been foreseen at the time of entering into the Agreement (this must be documented, and its impact on the time limit for completing the supply under the Agreement must be demonstrated).
3. In the event of the occurrence of any of the circumstances described in clause 2(2) of these Essential Terms of the Agreement, the time limit for completing the supply under the Agreement may be extended accordingly by the time necessary to finish the work correctly, provided that this extension is never longer than the duration of such circumstances. An extension of the time limit for completing the supply under the Agreement shall be conditional upon the affected Party submitting documents and statements in support of the occurrence of the circumstances invoked as the basis for the requested extension. The affected Party must demonstrate both the impact of the circumstances on the time limit for completing the supply under the Agreement and that no part of the extension of the time limit is attributable to the fault of the Economic Operator and/or the Economic Operator's subcontractors engaged in the performance of the Agreement.
  4. In the event of the occurrence of the circumstances described in subclause 2(2)(b) of these Essential Terms of the Agreement, the Contracting Entity may suspend the work under the Agreement for **up to 3 months**, in which case the Economic Operator shall not claim a refund of any costs incurred during the suspension period. If the work suspension period is longer than **3 months**, the Contracting Entity may compensate the Economic Operator for documented costs incurred by it. Such compensation shall be based on a reasonable written agreement between the Parties.
  5. Other changes caused by the following circumstances:
    - a. a force majeure event has occurred and prevents completing the supply under this Agreement in accordance with the Specification. A force majeure event means a an external event the consequences of which are unforeseeable and unavoidable. Force majeure events include (but are not limited to) acts of nature such as hurricane, earthquake, flood or other events such as war, riots or radioactive contamination;
    - b. any other legal, economic and/or technical circumstances occurred preventing the performance or proper performance of this Agreement in accordance with the Specification;
    - c. the method of performance [of the Agreement] is changed as a result of changes in technology caused by, in particular, the following: (a) commercial unavailability of materials and/or equipment because they are no longer produced or have been withdrawn from the market or (b) the emergence, on the market, of newer-generation materials and/or equipment that can reduce the cost of the Object of the Agreement and/or the operating costs of the Object of the Agreement and/or improve the quality of the work [under the Agreement];
    - d. A subcontractor whose potential the Economic Operator relied on when tendering for the contract may be replaced or may resign only if the Economic Operator proves to the Contracting Entity that a replacement subcontractor or the Economic Operator itself meets the same requirements that it had to meet in the course of the contract award procedure;
    - e. In the event of the occurrence of unforeseen circumstances related to changes in law (whether Polish or European Union law: changes in standards, regulations or other provisions, or if a change in law is published in Dziennik Ustaw [Journal of Laws] and this change affects the performance of the Agreement to such an extent that it is necessary to amend this Agreement), or if it becomes necessary to revise any design solution [under this Agreement] due to advances in technology, the

Economic Operator will be required to ensure that the Object of the Agreement meets the changed law. Under such circumstances, where a change affects the critical path of the Agreement (i.e. the occurrence of a series of events resulting in completion of the project being delayed), the Agreement may be amended by, in particular, extending the time limit for completing the supply under the Agreement by the time actually needed for completion. In the event of the Economic Operator's culpable delay in the performance of the Agreement, the time needed to make a change will be reduced by the duration of such delay on the date when both Parties agree to make the change (by signing an amendment to this Agreement to that effect).

6. The amendments permitted under clause 2(5) of these Essential Terms of the Agreement may be made at either Party's written request. The requesting Party shall prove that the circumstances being the basis for the amendment have actually occurred and demonstrate the impact of the circumstances [on the performance] of the Agreement. The requesting Party shall provide evidence in support of the requested amendment. Such evidence must demonstrate that the requested amendment is the result of circumstances beyond the requesting Party's control. The requested amendment shall be conditional upon the requesting Party submitting documents and statements in support of the occurrence of such circumstances, demonstrating the impact of the circumstances and providing evidence that the requested amendment is not the fault of the Economic Operator and/or its subcontractor (or the result of the provisions of any subcontract).
7. Subject to the Contracting Entity's consent, the way that particular works are carried out may be changed by using substitute materials, different technologies and/or solutions, provided that the required parameters are maintained and only if the change is beneficial for the Contracting Entity, will not increase the costs of the project and will not delay the completion of the works.
8. The Contracting Entity agrees that the value and scope of the work may be reduced in the event of the occurrence of the circumstances described in clause 2(7) of these Essential Terms of the Agreement.
9. The Party requesting an amendment to the provisions of the Agreement shall provide documentary evidence that the circumstances described above and invoked as the basis for the requested amendment have actually occurred. Each request for such an amendment must be in writing.
10. In order to change the remuneration under the Agreement, either Party may request the other Party for a change of the remuneration payable to the Economic Operator, giving the reasons for the change and specifying, in particular, the amount by which the remuneration should be changed and the date when the costs of the performance of the Agreement changed or will change as the basis for the requested change of the remuneration.
11. All the above provisions indicate that amendments to the Agreement that the Contracting Entity may agree to (except for the cases described in the Act or the Civil Code), but none of the provisions shall be interpreted as the Contracting Entity's obligation to agree to any such amendment.
12. The Party requesting any of the above amendments to the Agreement shall provide the reasons for the requested amendment. Any amendment to the Agreement shall only be valid if it is made in writing.

### **3. REMUNERATION AND PAYMENT**

1. The Contracting Entity shall pay the remuneration specified in the Economic Operator's tender, in the currency specified therein, for Economic Operator's properly completed supply under the Agreement. The price for the Object of the Agreement shall include all the costs and expenses incurred by the Economic

Operator and shall not be increased, subject as otherwise provided for in the Specification, the Agreement and the Act.

2. The price stated in the tender must be given in the Polish currency (PLN). If the Contracting Entity selects the most advantageous tender, the Contracting Entity shall convert the price stated in the tender using the PLN/EUR currency rate published on the website of the National Bank of Poland and effective as at the closing date for tenders given in the Specification. The exchange rate shall be taken from the <https://nbp.pl/statystyka-i-sprawozdawczosc/kursy/tabela-a/> website.

The price in the Agreement shall be the price stated in the tender in the Polish currency (PLN) and its equivalent in EUR as converted using the PLN/EUR exchange rate in effect as at the closing date for tenders according to the Specification. After completing the supply under the Agreement, the Economic Operator may elect to issue an invoice for its remuneration in EUR or PLN. If the invoice is issued in EUR, the invoice amount shall be converted to PLN using the PLN/EUR exchange rate in effect on the date immediately preceding the date of the invoice [according to] a document confirming the exchange rate. The exchange rate shall be taken from the same exchange rate schedule that was the basis for converting the price stated in the tender.

*If the date immediately preceding the date of converting the price in tender into EUR or the invoice date is a date when exchange rate information is not published on the website of the National Bank of Poland, the last date when such information was published shall be used.*

3. Payments under the Agreement with the winning Economic Operator shall be based on the Economic Operator's invoice according to the following:
  - a. **20%** shall be paid after the Agreement is signed,
  - b. **50%** shall be paid after the supply under the contract is completed,
  - c. **30%** of the value of the contract shall be paid after the equipment is started up and the final acceptance certificate is signed.

The final payment shall be made within **30 days** and be conditional upon the equipment being installed and started up, the training contracted for (at least **1 day**) being delivered, the Economic Operator delivering the documents required under the Agreement, and the final acceptance certificate for the equipment being signed by the Parties.

Invoices must be sent by electronic mail to [Invoice\\_Purchase@bosmal.com.pl](mailto:Invoice_Purchase@bosmal.com.pl) and shall be paid in the currency of the tender.

According to the Polish Act of 9 November 2018 on electronic invoicing in public procurement, construction works or service licensing, and public-private partnership projects (Dz.U. [Journal of Laws] item 2191), the Economic Operator may issue a *structured invoice* through the Electronic Invoicing Platform, which is available at <https://pefexpert.pl/>.

4. If any defect is discovered during the acceptance test of the Object of the Agreement, the Contracting Entity shall have the following rights:
  - a. If the defect can be repaired on the Contracting Entity's premises, the Contracting Entity will postpone the signing of the acceptance certificate until the defect is repaired, provided that the postponement is not longer than **30 days** after the previously planned date of signing the acceptance certificate;
  - b. If the defect cannot be repaired on the Contracting Entity's premises or the required repair time is longer, the Contracting Entity may refuse to accept the Object of the Agreement.

5. The Parties shall, within **14 days**, in writing, decide whether the Object of the Agreement can be repaired or should be replaced with a defect-free one and set a new acceptance test date.
6. In the Agreement, the Contracting Entity and the Economic Operator shall name the persons authorised to make technical arrangements and to sign the final acceptance certificate.

#### 4. SECURITY FOR THE PERFORMANCE OF THE AGREEMENT

1. The security for the performance of the Agreement to be provided by the Economic Operator before the Agreement is signed shall be in accordance with the requirements set out in the Specification.
2. A performance bond ("Security") **equal to 5% of the total price (inclusive of VAT) stated in the Economic Operator's tender** must be provided **in the tender amount** for the entire term of the Agreement and the period of the statutory implied warranty [Polish: *rękojmia*] **before the Agreement is signed**. The Security shall be provided in the form of .....
3. During the term of the Agreement and the period of the statutory implied warranty [Polish: *rękojmia*], the form of the Security may be changed at the Economic Operator's request and with the prior consent of the Contracting Entity (into one of the acceptable forms: money, a bank guarantee, an insurance guarantee, a bank surety, subject to the requirements of the Act), provided that the amount and validity of the Security is maintained. No change of the form of the Security shall constitute an amendment to the Agreement.
4. If the agreed time limit for completion is changed or not complied with, the Economic Operator shall extend the validity of the Security provided in a form other than money. In case that the required proof of extension is not submitted, the Economic Operator agrees that an appropriate amount of the Security may be deducted from the first amount payable to the Economic Operator, without the Economic Operator being requested to provide the Security.
5. The Security shall be returned to the Economic Operator according to the following:
  - a. 70% of the Security shall be returned within **30 days** of the final acceptance date;
  - b. 30% of the Security shall be returned not later than on the **15th day** after the expiry of the quality guarantee or the statutory implied warranty.
6. The purpose of the Security is to secure the Contracting Entity's claims in the event of the Economic Operator's failure to perform or defective performance of the Agreement. The amount of the Security may be used, in particular, to pay the penalties [liquidated damages] payable to the Contracting Entity.
7. If the Security is to be provided in the form of a bank guarantee, an insurance guarantee or a bank surety, the Economic Operator shall submit the guarantee or surety document to the Contracting Entity for approval in due course before the Agreement is signed.  
It must be stated in the guarantee or surety document that the guarantee or surety is irrevocable, unconditional and payable upon the Contracting Entity's first demand in each case, up to the amount of the Security. The Security document must be in Polish.
8. If, as a result of an extension of the time limit for completing the supply under the Agreement or an extension of the statutory implied warranty [Polish: *rękojmia*], regardless of the cause of the extension, the Security in the form of a bank guarantee, an insurance guarantee or a bank surety is set to expire prior to completed performance of the Agreement or prior to the expiry of the statutory implied warranty, the Economic Operator shall, **14 days** prior to the expiry of the Security, extend the validity of the Security and submit, to the Contracting Entity, a document amending the guarantee or surety document or a new guarantee or surety document covering the extended term of the Agreement or the extended period of the statutory implied warranty, or pay an appropriate amount of the Security in money. If the Economic



Operator fails to extend the validity of the Security, the Contracting Entity may deduct an amount equal to the value of the Security from the Economic Operator's remuneration, even if the remuneration is not yet due. The Economic Operator shall replenish the Security amount within **7 business days** of being requested in writing to do so.

9. Each Economic Operator that is a private limited company shall, if the value of the Agreement exceeds twice the amount of that company's share capital, provide [the Contracting Entity], not later than on the date signing the Agreement, with a resolution of that company's shareholders whereby the shareholders have consented for the company's management board [directors] to enter into a transaction the value of which exceeds twice the amount of that company's share capital, in accordance with s.230 of the Polish Commercial Companies and Partnerships Code [Polish: *Kodeks spółek handlowych*], unless the company's articles provide otherwise, in which case the Economic Operator must provide [the Contracting Entity] with a copy of that company's articles authorising such a transaction.
10. The Economic Operator agrees to transfer and hereby transfers, to the Contracting Entity, and to the maximum extent permitted by law, all its rights, including claims, under quality guarantees and statutory implied warranties [Polish: *rękojmia*] against the manufacturers, importers and vendors of the materials, equipment, machines etc. used in the project [under the Agreement]. The documents confirming such rights, including claims, shall be delivered by the Economic Operator to the Project Owner [sic!] at the time of the final acceptance procedure.
11. The beneficiary of the Security shall be the Contracting Entity.
12. The costs of the Security shall be borne by the Economic Operator.
13. During the term of the Agreement, the period of the statutory implied warranty and/or the quality guarantee, the Economic Operator shall notify the Contracting Entity, within **7 days**, of
  - a. the Economic Operator's registered address [legal seat] being changed,
  - b. the Economic Operator's representative(s) being changed,
  - c. the Economic Operator being declared bankrupt,
  - d. the Economic Operator being placed into liquidation (winding-up).
14. In the event of the Economic Operator's failure to notify the Contracting Entity, **within 7 days**, of the occurrence of any of the events specified in clause 4(13) of these Essential Terms of the Agreement, the unused part of any amount retained as security for the proper performance of the Agreement during the period of the statutory implied warranty shall not be returned.

## 5. ECONOMIC OPERATOR'S OBLIGATIONS

1. The Economic Operator shall participate in such consultations which are necessary to ensure proper performance of the Agreement.
2. The Economic Operator shall provide, on the Contracting Entity's premises, a basic training session of at least **1 day**, included in the price stated in the tender, covering the operation of the Object of the Agreement after its delivery.
3. The Economic Operator shall warrant that the equipment will function correctly throughout the period specified in the tender, starting from the final acceptance date. This quality guarantee shall include periodic inspections which the Economic Operator claims are necessary to maintain the guarantee.
4. The repairer's response time, i.e. the time from the receipt of a report of a defect to the time when the repair begins repairing the defects, must not be longer than **4 days**, except for bank (public) holidays. The

time for repairing the reported defect must not be longer than **15 days** of the defect being reported, except for bank (public) holidays.

5. In the event that a subcontractor whose potential the Economic Operator relied on when tendering for the contract is replaced or resigns, the Economic Operator shall prove to the Contracting Entity that a replacement subcontractor or the Economic Operator itself meets the same requirements that it had to meet in the course of the contract award procedure. In such a case, the requirements of the Specification concerning an amendment to the Agreement shall apply.
6. All the Economic Operators tendering for the contract jointly shall be jointly and severally liable for the performance of the Agreement.
7. The Economic Operator shall ensure the availability of spare parts and post-guarantee repairs for at least **7 years** of the date of signing the final acceptance certificate.
8. The response time for post-guarantee repairs must not exceed **15 days** of a defect being reported, except for bank (public) holidays.
9. The Economic Operator shall comply with the provisions of the Agreement regarding trade secrets and the confidentiality of information obtained during the performance of the Agreement.
10. The Economic Operator shall pay a contractual penalty [Polish: *kara umowna*, similar to liquidated damages] equal to **10%** of the remuneration stated in the Agreement in the event that the Contracting Entity withdraws [Polish: *odstąpienie*] from the Agreement for reasons for which the Economic Operator is responsible.
11. The Economic Operator shall pay a contractual penalty [Polish: *kara umowna*, similar to liquidated damages] equal to **0.2%** of the value of the Agreement for each week of the Economic Operator's culpable delay in completing the supply under the Agreement.
12. The amount of such penalties [liquidated damages] that either Party may claim from the other Party shall not exceed **25%** of the price stated in the Agreement.

## 6. CONTRACTING ENTITY'S OBLIGATIONS

1. The Contracting Entity shall pay a contractual penalty [Polish: *kara umowna*, similar to liquidated damages] equal to **10%** of the remuneration stated in the Agreement in the event that the Economic Operator withdraws [Polish: *odstąpienie*] from the Agreement for reasons for which the Contracting Entity is responsible.
2. In the event of delay in payment, the Economic Operator may charge interest equal to 0.2% of the late payment for each week of the delay.
3. The Contracting Entity may withdraw from the Agreement under the provision of s.145 of the Act.
4. In addition, the Contracting Entity may withdraw from the Agreement within **30 days** without any liability to the Economic Operator in the event that
  - a. the Economic Operator has not commenced the performance of its obligations under the Agreement at the agreed time or has terminated the performance of such obligations;
  - b. the Economic Operator is performing the Object of the Agreement improperly, against the provisions of the Agreement, and has not taken any action to correct its performance despite the Contracting Entity's written request for correction;



- c. the Economic Operator the subject of bankruptcy [insolvency] or liquidation [winding-up] proceedings.

## 7. FINAL PROVISIONS

1. The Agreement shall be entered into at the time of signing.
2. Any amendment to the Agreement shall be valid only if it is made in writing and signed by authorized representatives of both Parties.
3. Notice to withdraw [Polish: *odstąpienie*] from the Agreement shall be valid only if it is made in writing.
4. Irrespective of the contractual penalties [Polish: *kara umowna*, similar to liquidated damages], claims for compensation may be pursued in accordance with the general rules of liability under the Civil Code.
5. Neither Party shall be liable for failure to comply with their obligations under the Agreement, if such failure is the result of circumstances beyond their control and which could not have been foreseen when the Agreement was entered into and which could not have been avoided. Force majeure events include, for example, [natural] disasters, fires, explosions, strikes or wars. If a force majeure occurs, the Parties shall act in accordance with international rules and the principles of mutual goodwill. If a force majeure event continues longer than **30 days**, either Party may withdraw [Polish: *odstąpienie*] from the Agreement, with no liability for any costs.
6. Any dispute arising from the performance of the Agreement shall be resolved by a court of law with jurisdiction over the registered office [legal seat] of the Contracting Entity. In the event of any doubt as to the requirements in effect during the performance of the Agreement, the requirements set out in and the provisions of statements, documents and information in Polish shall be conclusive. If no such documents, statements or information is/are available, their translations in Polish issued by a sworn translator in accordance with the regulations and requirements effective in Poland shall be binding. The costs of such translations shall be the responsibility of the Economic Operator.
7. All matters not provided for in the Agreement shall be governed by appropriate provisions of the Civil Code and the Act, together with implementing provisions enacted thereunder, and the provisions of the Polish Act on Copyright and Related Rights.