

Kraków, 28.06.2023 r.

***To all interested – participants
in the proceedings for
the award of a public contract***

Subject: Proceedings - basic proceedings in non-negotiated mode titled: **Successive purchase of music publications from foreign publishers (proceeding mark ZZP.261.10.2023);**

Explanations from the Contracting Authority

The Contracting Authority, acting pursuant to Article 284 (6) of the Act of September 11, 2019. Public Procurement Law (i.e., Journal of Laws of 2022, item 1710, as amended - hereinafter the PPL Act), I would like to inform that the Contracting Authority has received a request (questions) for clarification of the content of the Terms of Reference (ToR). Below the Contracting Authority presents the content of the request (question) along with the clarifications provided:

Request 1 (Question 1) :

§3 Terms of delivery of publication orders: 2. the Contractor shall notify by email or telephone the person indicated in § 2(5) of the scheduled delivery time at least 2 days in advance. Deliveries can be made on working days from 7:00 a.m. to 3:00 p.m. Unfortunately, we are not able to determine the time of delivery with the accuracy of the hour, it depends on the current traffic situation, carrier workload, etc.

Ordering Party's clarification:

Delete the provision ~~Deliveries can be made on working days from 7:00 am to 3:00 pm.~~

Request 2 (Question 2):

7. the Contractor declares that the gross price includes all costs associated with the delivery. --> for clarification, does this mean the gross price of the invoice, since we have to add shipping costs to all orders placed?

Contractor declares that the gross price includes all costs associated with the delivery, including in particular the costs of all activities related to the preparation of the delivery, in particular: packaging, marking the product with a barcode, delivery insurance, loading, transportation, unloading, necessary public benefits, including taxes and fees (such as customs duties).

Our invoices are divided into individual items ordered, but we also invoice postage on a separate invoice line. It is not entirely clear from the draft contract whether separate invoicing of postage is envisaged. In any case, we would like to request that such a point be added to the draft contract or that the wording of § 4; 7 be clarified to allow postage to be invoiced on a separate line. Or does the gross price mean the total amount on the invoice - i.e. the sum of all lines?

Ordering Party's clarification:

The provision is clear and obvious, the Ordering Party will not make changes to this provision.

Request 3 (Question 3):

§7 Liquidated damages: we cannot agree to these fees for liquidated damages, but instead ensure that we replace damaged or missing products as soon as possible at no additional charge. Can this be adjusted?

Ordering Party's clarification:

The Ordering Party does not agree.

Request 4 (Question 4):

With a contractual penalty of 5%, a delay of just a few days would be very costly for us in terms of items delivered and invoiced. Cooperation would cease to make sense for us, as we would incur a loss. In our opinion, a 5% penalty is extremely high; a 1% penalty is more common, if it is included in the contract at all. We would like to ask you to review this point and consider reducing the amount of the penalty, suggesting a maximum of 1% in §7, 1, a) and §7, 1, b).

Ordering Party's clarification:

In §7, paragraph 1, the provisions are amended as follows:

- (a) delay by the Contractor in delivery within the time limit indicated in §3, paragraph 1 of the contract - in the amount of 1% of the value of the publication order in question for each day of delay;
- b) delay in delivering publications free of defects in accordance with § 3 section 5 of the agreement - in the amount of 1% of the value of the incorrect part of the given publication order, for each day of delay. The penalty shall not be charged if the Contractor reduces the price for the execution of a given publication order accordingly;

Along with this information, a revised PPU document (Part II of the SWZ) is posted on the website of the conducted proceedings.