# Appendix No. 4 to the Request for Quotation

# *Procedure No.: FESL 05-2024*

# DELIVERY AGREEMENT

entered into on .......................................... in Mikołów by and between:

**SPYRA PRIME SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**, ul. PRZELOTOWA, nr 33,   
43-190 MIKOŁÓW, Statistical Number REGON: 271779996, Tax Identification Number NIP: 6350009571, represented by:

- Czesław Spyra – PRESIDENT OF THE MANAGEMENT BOARD – DIRECTOR;

hereinafter referred to as the **Ordering Party**

and

…………………………………………………………….

hereinafter referred to as the **Contractor**

selected in a Competitiveness Database procedure No. .......................... for the delivery of ............................................ under the “Transforming a company by increasing capacity and investing in the construction of a hall and the purchase of machinery and equipment” project to be implemented **under the European Funds for Silesia 2021-2027 programme, PRIORITY FESL.10 European funds for transformation, MEASURE FESL.10.03 Supporting SMEs in transformation**, Call number: FESL.10.03-IP.01-026/23, Project number: FESL.10.03-IP.01-01GF/23-00

The Parties to this Agreement agree to enter into the following Agreement, of which the Contractor’s quotation is an integral part.

**§ 1**

Following the procedure, the Contractor undertakes to deliver a brand-new .................... A detailed description of the ordered item is included in the Contractor’s quotation – Appendix No. 1, which forms an integral part of this Agreement.

**§ 2**

1. **The value of the Agreement shall be:**

PLN ................... gross (in words: ................................................),

i.e. PLN .................. net (in words: ....................................),

including VAT: PLN .... (in words: ..........................................);

1. The Parties agree that remuneration for the performance of the Agreement shall be paid in partial payments as the order progresses, in accordance with the following schedule of partial payments:

**1st instalment – an advance payment for the commencement of the Agreement** amounting to 20% of the value of the Agreement. It shall be paid to the Contractor within 7 working days from the date on which the Agreement is signed and the Contractor issues an invoice.

**2nd installment – ​​after the Contractor reports readiness to ship the subject of the order** in the amount of 55% of the value of the contract**.** It shall be paid to the Contractor within 14 working days from the date of the Contractor reporting readiness to ship the subject of the order and presentation of an invoice correctly issued by the Contractor and a complete set of documents.

**3rd instalment – payable after the assembly and initial start-up of the processing line**, amounting to 15% of the value of the Agreement. It shall be paid to the Contractor within 14 working days from the date on which the Ordering Party and the Contractor sign a processing line initial start-up report (Appendix No. 1 to the Agreement) and an invoice duly issued by the Contractor is delivered.

**4th instalmen**t **– payable after the signing of a final acceptance report**, amounting to 10% of the value of the Agreement. It shall be paid to the Contractor within 14 working days from the date on which the Ordering Party signs the final acceptance report (Appendix No. 2 to the Agreement) and an invoice duly issued by the Contractor is delivered.

**§ 3**

1. The Contractor undertakes to:

Deliver the subject of the Agreement to the following address: ................................................................, at the expense and risk of the Contractor ............................

1. Delivery time: .....................................

**§ 4**

1. Acceptance of the subject of the Agreement must be confirmed with the final acceptance report attached as Appendix No. 2 to the Agreement.

1. The confirmation referred to in paragraph 1 shall be in the form of a processing line delivery and acceptance report signed by persons authorised by the Ordering Party and the Contractor.   
   The Parties agree that the report may be exchanged in electronic form (a scan).
2. The warranty period shall begin to run on the date of the final acceptance report for the subject of the Agreement.
3. The subject of the Agreement shall be identified on the invoice in accordance with § 1.
4. The person responsible for the performance of the Agreement on the part of the Ordering Party is ..............., phone ..................
5. The person responsible for the performance of the Agreement on the part of the Contractor is ……………………………………

**§ 5**

1. The gross prices shall include all costs associated with the delivery of the goods to the Ordering Party’s premises.
2. The date of payment shall be the date on which the remuneration is credited to the Contractor’s bank account.

**§ 6**

1. The Ordering Party undertakes to accept the subject of the Agreement on condition that it is consistent with the quotation  
   and material provisions of the Agreement, and to pay the price specified in § 2 of this Agreement.
2. The price specified in § 2 shall exhaust all the financial obligations of the Ordering Party to the Contractor under this Agreement.

**§ 7**

1. The Contractor shall ensure that the subject of the Agreement is fully consistent with the quotation submitted.
2. If, prior to the documented handover of the subject of the Agreement referred to in § 4, the delivered subject of the Agreement is found to have defects, the Contractor undertakes to replace the subject of the Agreement with a defect-free one at its expense and risk within a time limit agreed with the representative of the Ordering Party. In such a case, the warranty period shall begin to run upon acceptance of the defect-free equipment by means of a defect-free acceptance report.

**§ 8**

1. The Contractor guarantees that the delivered subject of the Agreement is brand new and unused.
2. The Contractor guarantees the Ordering Party proper quality and efficient operation of the subject of the Agreement on condition that it is used as intended and in accordance with the operating manual.
3. The Contractor provides a warranty of 24 months for the delivered subject of the Agreement.
4. During the warranty period, the Contractor guarantees that, in the event of a malfunction/fault/defect in the subject of the Agreement, the Contractor shall proceed to repair or replace it (service response time) within no more than 48 hours on working days. Working days are weekdays, excluding Sundays, Saturdays, and public holidays. Service hours on working days: 8 a.m. to 4 p.m. Requests sent after 4 p.m. on a given day shall be deemed to have been received on the following day after 8 a.m.
5. Any costs of transporting the subject of the Agreement to and from the service centre during the warranty period shall be borne by the Ordering Party.
6. The above provisions do not exclude rights under the statutory warranty for defects, or other rights provided for in this Agreement or arising from the applicable laws.

**§ 9**

1. In the event of non-performance or improper performance of the Agreement, the Ordering Party may charge the following contractual penalties in the following cases:
   1. in the event of a delay in the completion of individual stages of delivery, installation, or start-up of the processing line, the Ordering Party may charge a contractual penalty of 0.5% of the value of the Agreement for each day of delay, but not more than 10% of the total value of the Agreement;
   2. for each commenced day of delay in replacing the subject of the Agreement with a defect-free one in the case referred to in § 7(2) of this Agreement, or replacing or repairing the subject of the Agreement in the case referred to in § 8(4) of this Agreement, the Contractor shall pay the Ordering Party a contractual penalty of 1% of the value of the defective part of the delivery;
   3. if either Party terminates the Agreement with immediate effect or withdraws from the Agreement for reasons attributable to the Contractor, the Contractor shall pay a contractual penalty of 20% of the value of the non-performed part of the Agreement.
2. If the amount of the contractual penalties does not cover the damage suffered, the Ordering Party reserves the right to seek compensation for actual damage on general terms in a court of law.
3. The Ordering Party may deduct the contractual penalties from the remuneration due to the Contractor for the delivery, to which the Contractor hereby agrees.

3. The limit of contractual penalties that the Ordering Party may claim from the Contractor on all grounds provided for in this Agreement shall be 30% of the total gross remuneration specified in § 2.

4. The contractual penalties provided for in this Agreement may be aggregated.

**§ 10**

1. Material changes to the Agreement concluded may be made only if:
   1. the circumstances described in Section 3.2.4(4) of the Guidelines on the eligibility of expenditure for the period 2021-2027 occur
   2. the order fulfilment date needs to be postponed in the following cases:
2. circumstances attributable to the Ordering Party or the Contractor occur which could not have been foreseen despite the exercise of due diligence;
3. a force majeure event occurs which prevents the performance of the Agreement in accordance with its provisions;
   1. if any of the above circumstances occur, the date of performance of the Agreement may be extended accordingly by the time necessary to duly perform the Agreement, but by no longer than the duration of these circumstances, i.e. by the period in which the fulfilment of the order is delayed or prevented, confirmed by the supervision inspector and the Ordering Party;
   2. changes affecting the performance of the Agreement are introduced to generally applicable laws;
   3. the Contractor’s identification details (registered office address, Statistical Number REGON, Tax Identification Number NIP, bank account number) are changed;
   4. a draft decision or recommendations on changes to the implemented project that will be binding on the Ordering Party and may affect the validity and type of expenditures incurred as part of the order concerned are received from the authority financing the project.
4. Any amendments and additions to the Agreement concluded with the selected Contractor must be made in the form of written annexes to the Agreement signed by the Parties, otherwise being null and void.

**§ 11**

1. All declarations made by the Parties in connection with the Agreement shall be made:
2. in writing and delivered by the Party making a declaration to the Party to which it is addressed: in person with acknowledgement of receipt, by registered mail, or by courier service. A letter shall be deemed to have been delivered in spite of being returned after an advice note has been served or the addressee has refused to receive the letter; in such a case, the date of delivery shall be the date of expiry of the period for collecting the letter or the date on which the addressee refuses to receive the letter;
3. electronically to the following addresses:
4. for the Ordering Party: e-mail: [...](mailto:dziennikpodawczy@krakowairport.pl),
5. for the Contractor: e-mail: .... .
6. The Parties designate the following contact persons for matters relating to the performance of the Agreement:
   1. for the Ordering Party:
7. - full name: ……………………; position: …………..; phone: ……...........................; ……………………….
   1. for the Contractor:

- full name: ……………………; position: …………..; phone: ……...........................; ……………………….

1. Any letter sent to the address of the Ordering Party or the Contractor indicated in the Agreement that is not collected by the Parties on time or that either Party refuses to receive shall be deemed to have been effectively served. In the event of a change of address, the Parties shall notify the other Party of the new address within 14 days. If the other Party is not notified, correspondence delivered to the previous address shall be deemed to have been effectively served.
2. Each Party shall promptly notify the other Party in writing of any changes to the list of persons referred to in paragraph 2 above. Until such notification, the list of these persons shall be deemed to have remained unchanged and shall remain in force to the extent specified in the Agreement and (if applicable) prior notifications.

**§ 12**

1. The Ordering Party requires that, before fulfilling the order, the Contractor provide the names and contact details of subcontractors involved in fulfilling the order (if already known) and indicate their representatives. The Contractor shall notify the Ordering Party of any changes to the information referred to in the first sentence during the fulfilment of the order, and shall provide the required information on any new subcontractors which it intends to engage to fulfil the order at a later date.
2. Subcontracting a part of the order shall not relieve the Contractor of liability for the proper fulfilment of that order.
3. A subcontracting agreement may not contain provisions setting out the rights and obligations of the subcontractor, in respect of contractual penalties and the terms of payment of remuneration, less favourable than the rights and obligations of the Contractor under the Agreement.

**§ 13**

1. All information obtained by the Contractor in connection with the performance of the Agreement shall be kept confidential, both during the term of the Agreement and after its expiry or termination.
2. In particular, the Contractor undertakes to establish and apply when processing personal data appropriate technical, IT and organisational procedures and safeguards required by the above provisions.
3. The Contractor undertakes to ensure the security of the data provided and entrusted by the Ordering Party.
4. In the event of disclosure or loss of personal data, the Contractor undertakes to promptly inform the Ordering Party accordingly in writing, indicating the circumstances of the incident and the extent of the data disclosed or lost.
5. The Contractor shall allow only persons with appropriate personal authorisations to process personal data.
6. The Contractor shall be liable for damage suffered by the Ordering Party or third parties as a result of the processing of personal data contrary to the applicable laws and this Agreement, or the disclosure or loss of personal data.
7. The Contractor shall be liable for damage suffered by the Ordering Party or third parties as a result of the processing of personal data contrary to the applicable laws and this Agreement, or the disclosure or loss of personal data.
8. In compliance with the Parties’ obligations as data controllers under Article 6(1)(f) of the GDPR in connection with the performance of the Agreement, the Contractor shall provide the Ordering Party with the following personal data: the full name, phone number, and e-mail address of the designated contact person(s) for matters relating to the performance of the Agreement or the person(s) performing the Agreement, while the Ordering Party shall provide the Contractor with the following data: the full names, phone numbers, and e-mail addresses of the employees designated as contact persons for matters relating to the performance of the Agreement.
9. The Parties shall comply with the information obligation referred to in Articles 13 and 14 of the GDPR respectively in respect of the persons who are their representatives.

**§ 14**

1. Any disputes arising in connection with the performance of this Agreement shall be resolved by mutual negotiation.
2. If the Parties fail to reach a compromise within one month after a dispute arises, that dispute shall be then referred to a court having jurisdiction over the registered office of the Ordering Party. The Parties agree that any court disputes shall be settled by the courts of Poland.
3. Any amendments to this Agreement shall require a written annex, otherwise being null and void.
4. The Parties agree that the provisions of the Civil Code shall apply in matters not regulated by this Agreement. The Parties agree that this Agreement and its performance shall be governed by the laws of Poland.
5. The Agreement has been drawn up in two counterparts, each of them being equally authentic, one for the Contractor and one for the Ordering Party.

**Contractor:**

**Ordering Party:**

Appendix No. 2 to the Agreement

Date: ……………………………………………..

**FINAL ACCEPTANCE REPORT**

Subject:

(name)

ORDERING PARTY: **SPYRA PRIME SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**

on behalf of which acceptance is carried out by the following representative: ...............................................................................................

confirms that the CONTRACTOR: …………………………………….................................................

represented by .........................................................................................................................................

has fulfilled its obligations under the agreement entered into on ............................., Ref. No.: ...............................:

namely the delivery of:

1. .................................... with serial/manufacturer’s number: ....................., as per Appendix No. 1, has been delivered to the agreed location, i.e. ..............................................

2. As part of the performance of the Agreement, the Contractor:

- has trained staff on how to operate the equipment\*

- has installed and started up the equipment\*

3. The equipment is accompanied by operating manuals in English, warranty cards, and an equipment passport\*.

4. The warranty period for the above equipment is ............... months from the date of signing the delivery and acceptance report, i.e. until ........................... .

5. This Report has been drawn up in two counterparts, one for each Party.

6. The Ordering Party confirms that the order has been fulfilled with due diligence.

Notes: ………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………................................................................................................... .

**CONTRACTOR:**

**ORDERING PARTY:**

\*) delete as appropriate

Appendix No. 1 to the Agreement

Date: ……………………………………………..

**PROCESSING LINE INITIAL START-UP REPORT**

Subject:

(name)

ORDERING PARTY: **SPYRA PRIME SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ**

on behalf of which acceptance is carried out by the following representative: ...............................................................................................

confirms that the CONTRACTOR: …………………………………….................................................

represented by .........................................................................................................................................

has fulfilled its obligations under the agreement entered into on ............................., Ref. No.: ...............................:

namely the initial start-up of the processing line:

* + 1. ……………………………… with serial/manufacturer’s number: .…………………, as per Appendix No. 1, has been delivered to the agreed location, i.e. ……………………………………….
    2. **Start-up date:**  
       Initial start-up date: ..................................  
       Start-up site: ……………………………………………………………
    3. **Description of the equipment started up:**  
       Processing line started up: ..............................................................................[Description of the processing line, e.g. model name, type, technical specifications]  
       Description of tests carried out: …………………………………………………………………………………….. [Description of tests carried out, e.g. functional tests, equipment performance checks, compliance with specifications]
    4. **Initial start-up result:**  
       The initial start-up of the processing line has been completed [correctly/incorrectly].  
       [If problems have occurred, describe the details and corrective actions planned].

**…**…………………………………………………………………………………………………………………………………………………………………………………………..

5. This Report has been drawn up in two counterparts, one for each Party.

6. The Ordering Party confirms that the order has been fulfilled with due diligence.

Notes: ………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………................................................................................................... .

**CONTRACTOR:**

**ORDERING PARTY:**

\*) delete as appropriate