

30 September 2009

Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001
By Email: ports.submissions@qca.org.au

Dear Sirs

FCAI – Application for declaration of motor vehicle import services at Fisherman Islands

I refer to your letter of 17 September 2009.

Port of Brisbane Corporation Limited is appreciative of the opportunity to provide this submission to the Authority concerning whether the vehicle import services which the FCAI seeks to have declared are a "candidate service" for the purposes of the Queensland Competition Authority Act 1997 (the Act).

It is the Corporation's view that the "facility" which provides the "service" which the FCAI seeks to have declared is not a "public facility" nor a "private facility" declared by regulation. Accordingly, the services are not a "candidate service" for the purposes of the Act. The Corporation's reasoning is detailed below.

1. What comprises the "facility"?

The Corporation is the owner and lessor of land from which Australian Amalgamated Terminals Pty Ltd (AAT) conducts its business at Fisherman Islands. I enclose a copy of the lease and wharf licence for your review. The Corporation is prohibited from disclosing the terms of the Management Agreement between the Corporation and AAT pursuant to the terms of that Agreement.

In addition to the land, the Corporation also owns:

- (a) the wharf (i.e. where the ships berth);
- (b) the berth-pocket (i.e. the water which the berthed ship occupies); and
- (c) the below-surface improvements to the land (i.e. drainage and pavements).

However, AAT owns:

- (i) the buildings, gatehouses and sheds located on the land;
- (ii) the cranes, moving equipment and other plant and equipment operated on the land;

- (iii) the IT systems and other intellectual property required to operate the business on the land; and
- (iv) various other above-ground improvements required to operate the business.

It is the Corporation's view that the "facility" used in providing the "service" comprises both the land and below-ground improvements owned by the Corporation and the above-ground improvements, machinery and plant and equipment owned by AAT. The "service" cannot be provided by using the Corporation's assets alone.

2. Is the "facility" capable of being declared?

In the Corporation's view, having regard to the Act, the facility is not capable of being declared under the Act. The facility used by AAT to provide the "service" is owned by it. It is "private infrastructure" which has not been declared under a regulation to be a "candidate service". Accordingly, the FCAI cannot request that it be declared, and the Authority cannot recommend it be declared by the Ministers.

The FCAI states in its submission that the "FI Facility is similar to the Dalrymple Bay Coal Terminal" which has been declared under the Act. That is incorrect. The Dalrymple Bay Coal Terminal and all related assets were leased by DBCT Holdings Pty Ltd to Prime Infrastructure (DBCT) Management Pty Ltd and a related entity. This included buildings, plant and equipment (see the *Dalrymple Bay Coal Terminal (Long-Term Lease Act) 2001*). In contrast, the Corporation merely leased land to AAT. All other assets used by it to provide the services are owned by AAT.

If the FCAI's contentions are taken to their logical conclusion, a startling outcome is reached. It would provide that any privately-owned facilities, buildings, assets or plant and equipment located on land owned by the State are capable of being declared under the Act. This was clearly not the intention of Parliament when it enacted the Act.

It was Parliament's intention that the Act be used sparingly in seeking to have privately-owned assets declared. In the second reading speech for the Queensland Competition Authority Bill, the Hon. J.M. Sheldon, the then Deputy Premier and Treasurer, stated (at p. 1132 of Hansard):

The third component of the Bill comprises a State third-party access regime. This regime is to apply exclusively to public infrastructure, although subsequently it may also apply to selected private infrastructure after due consultation with affected owners...

To the knowledge of the Corporation, no such consultation has occurred. The private infrastructure has not been declared by regulation. Accordingly, in the Corporation's view, there is no proper basis to seek to have the facility declared.

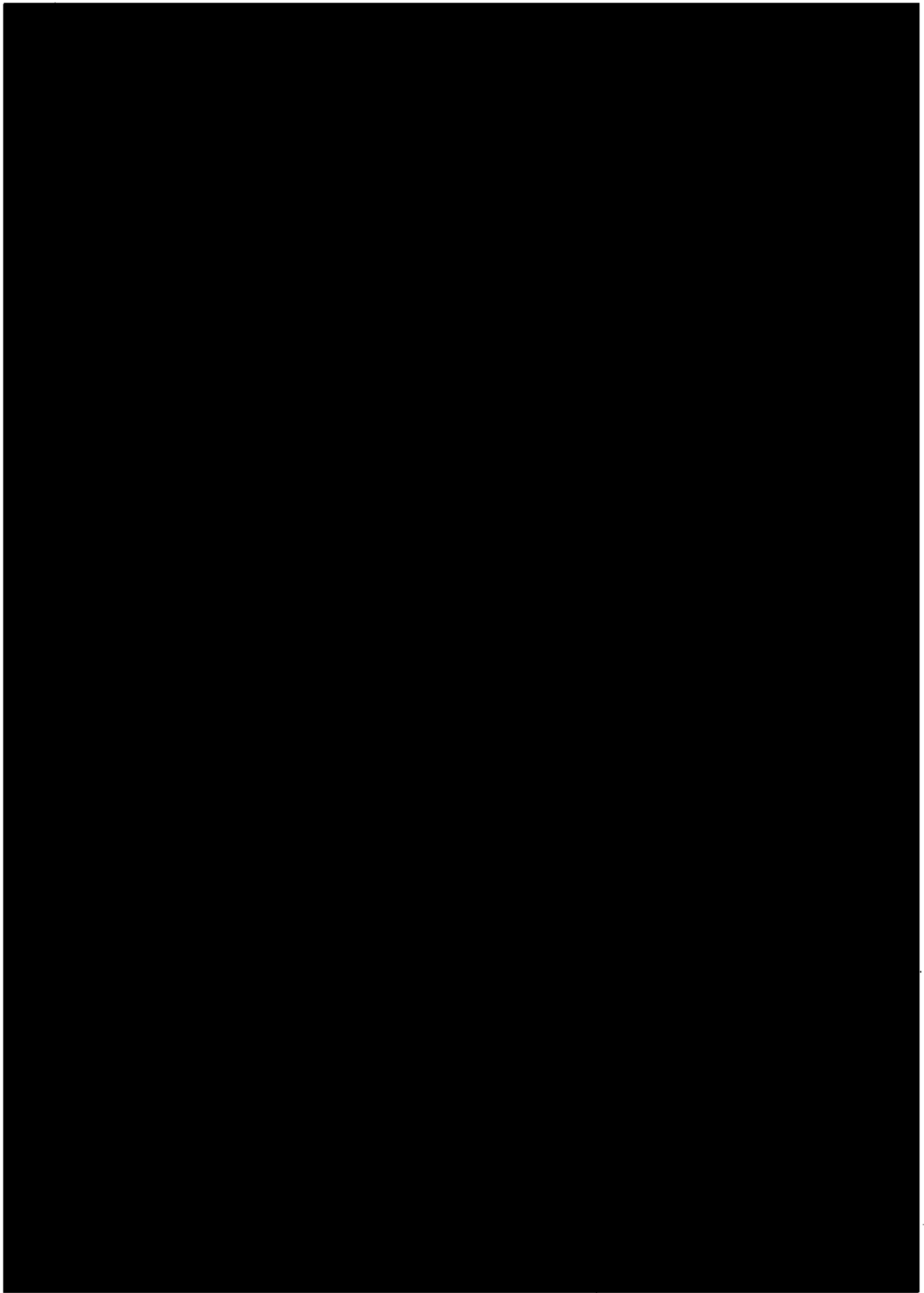
In the Corporation's view, the "service" which the FCAI seeks to have declared is not a "candidate service" for the purposes of the Act. However, should the Authority form the view that such service is a "candidate service", the Corporation will wish to make submissions to the Authority as to why that service ought not be declared.

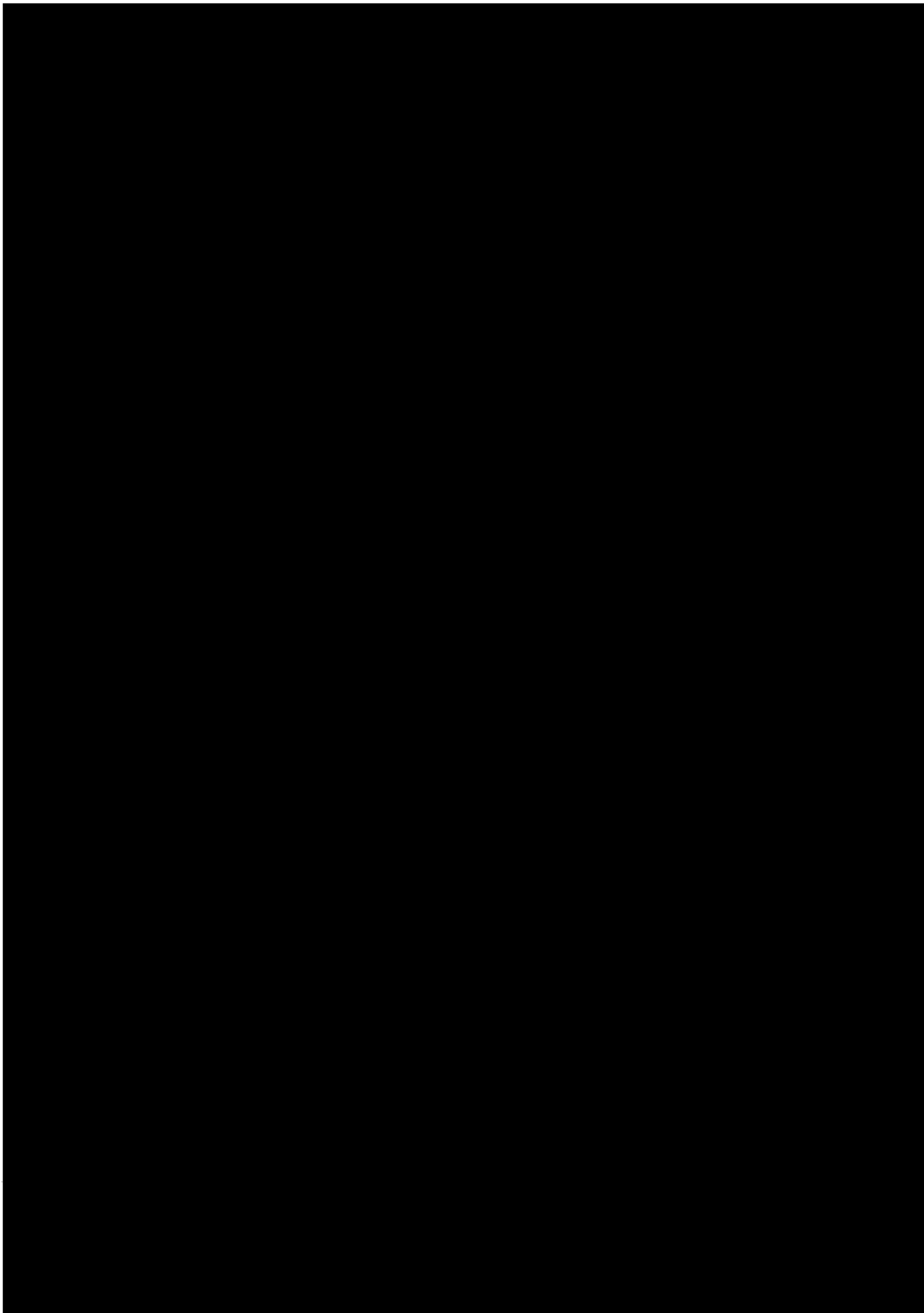
If you have any queries in relation to this submission, please do not hesitate to contact Mark Neander on 3258 4772.

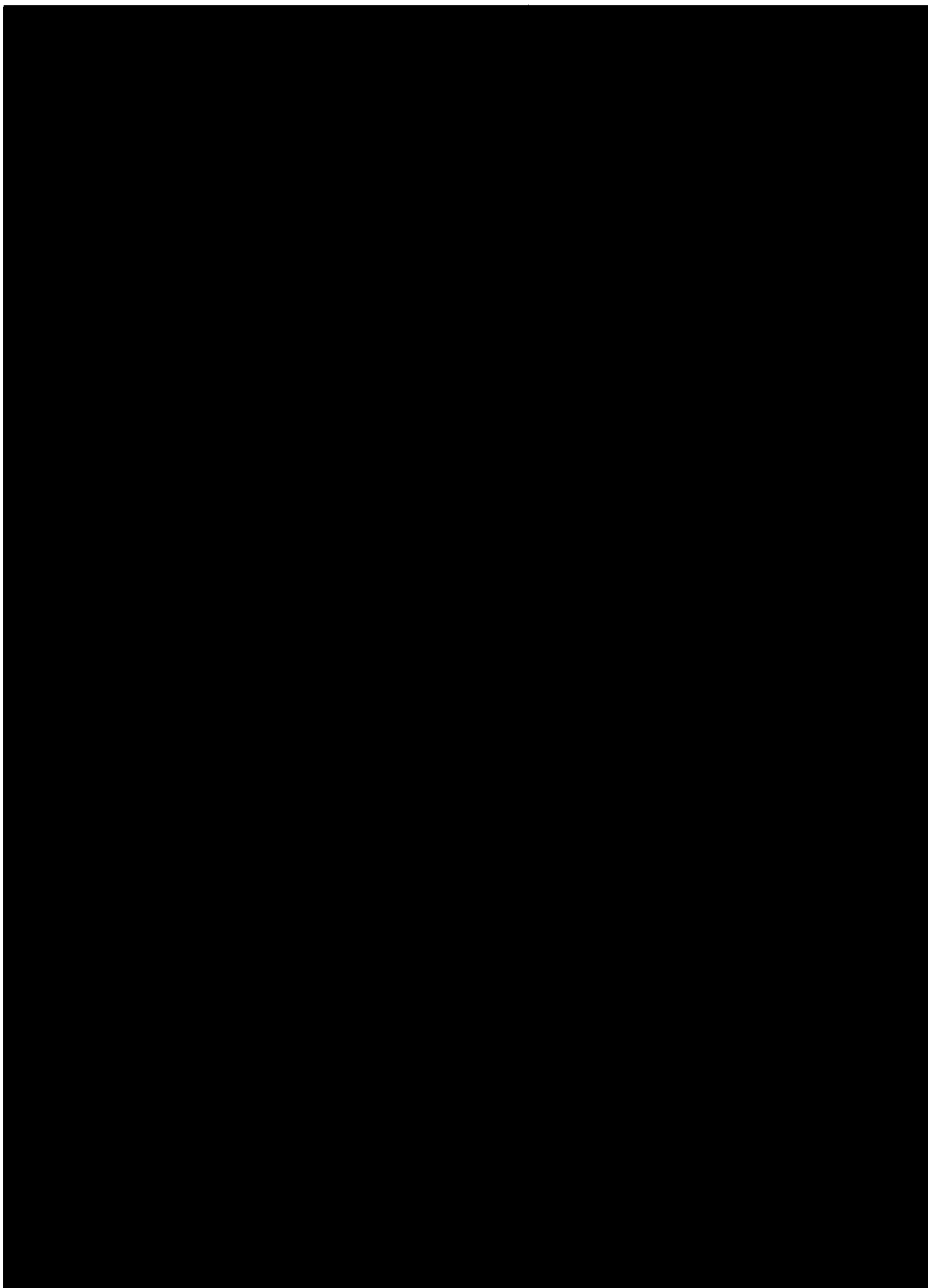
Yours sincerely

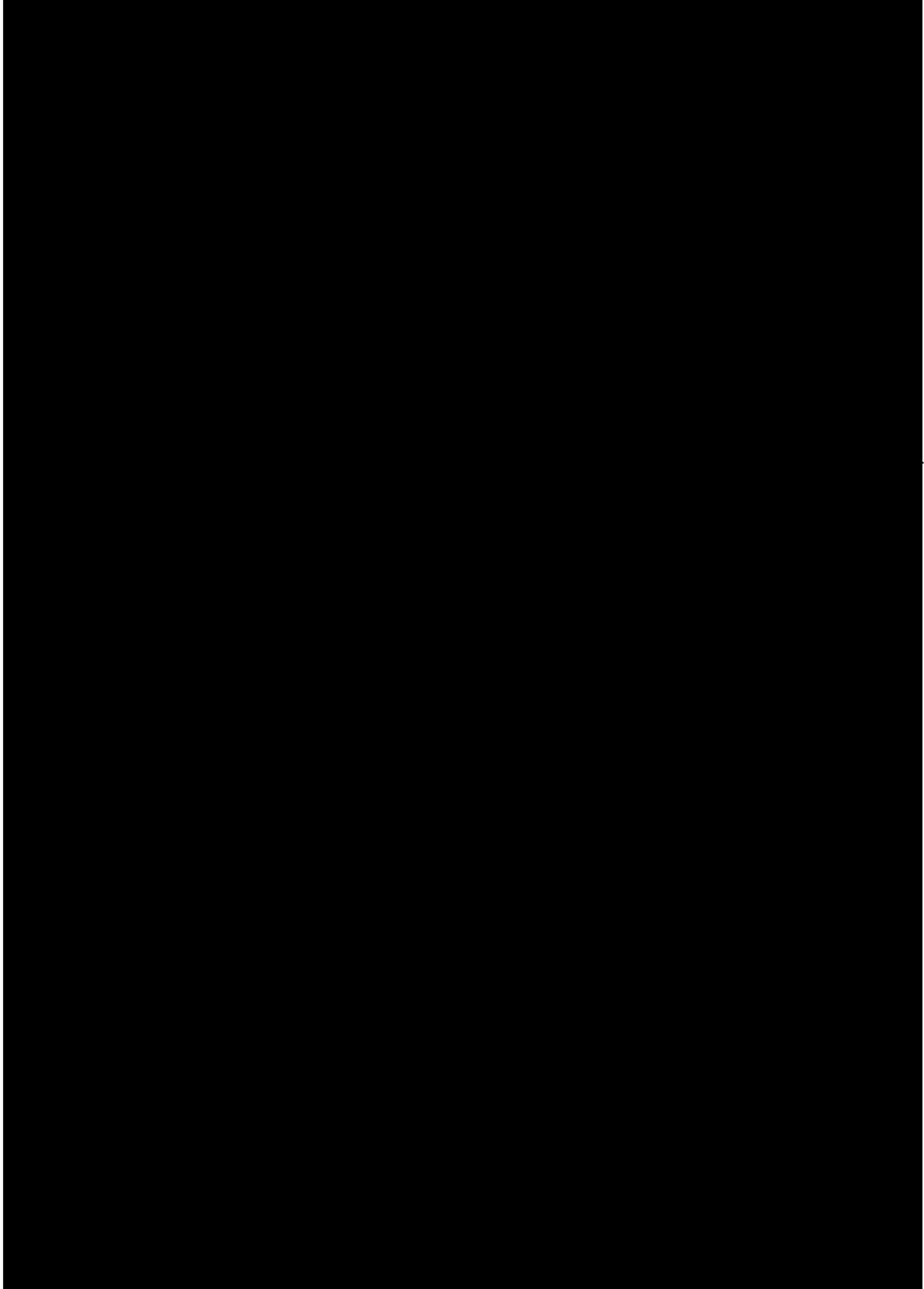


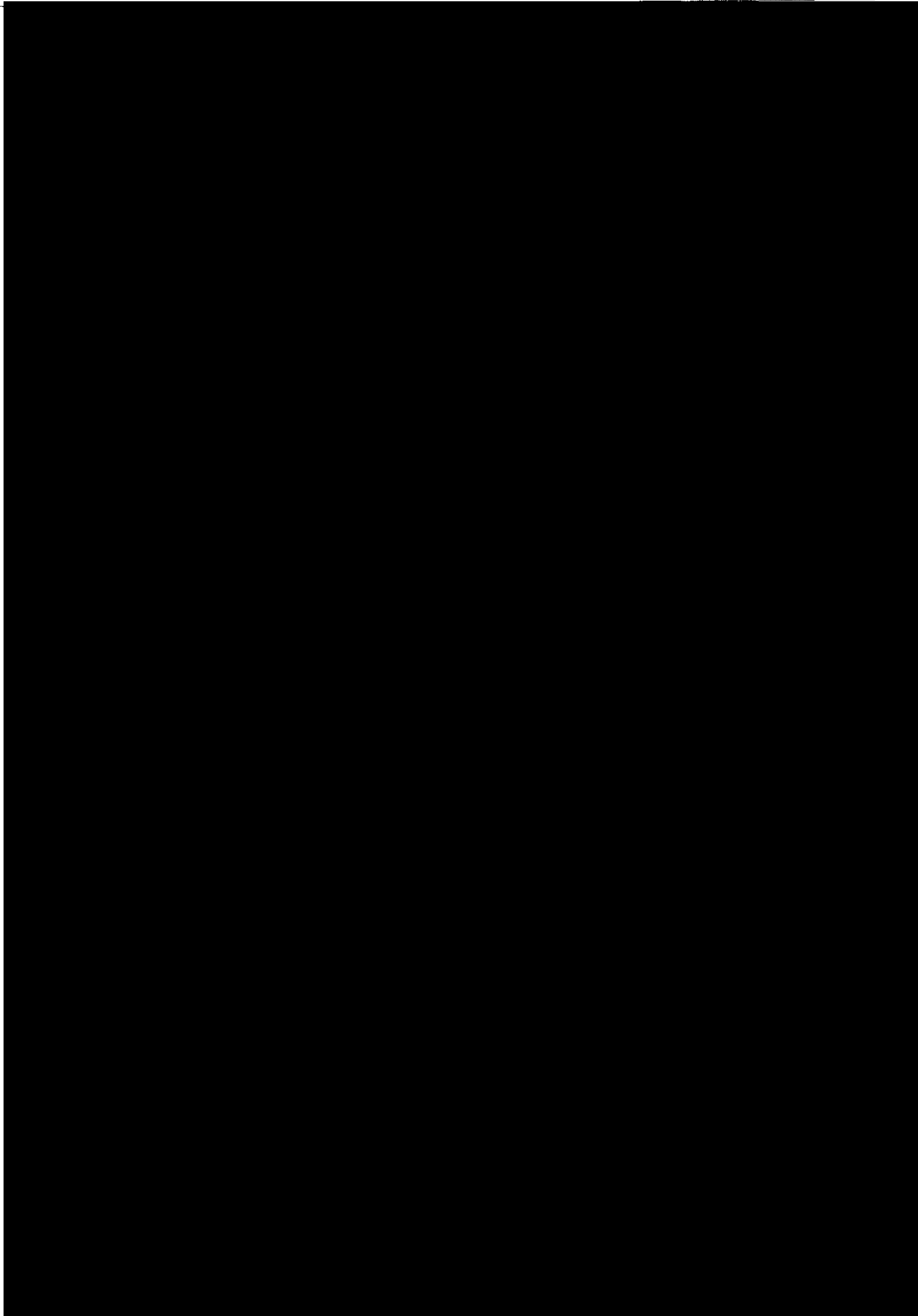
Jeff Coleman
Chief Executive Officer

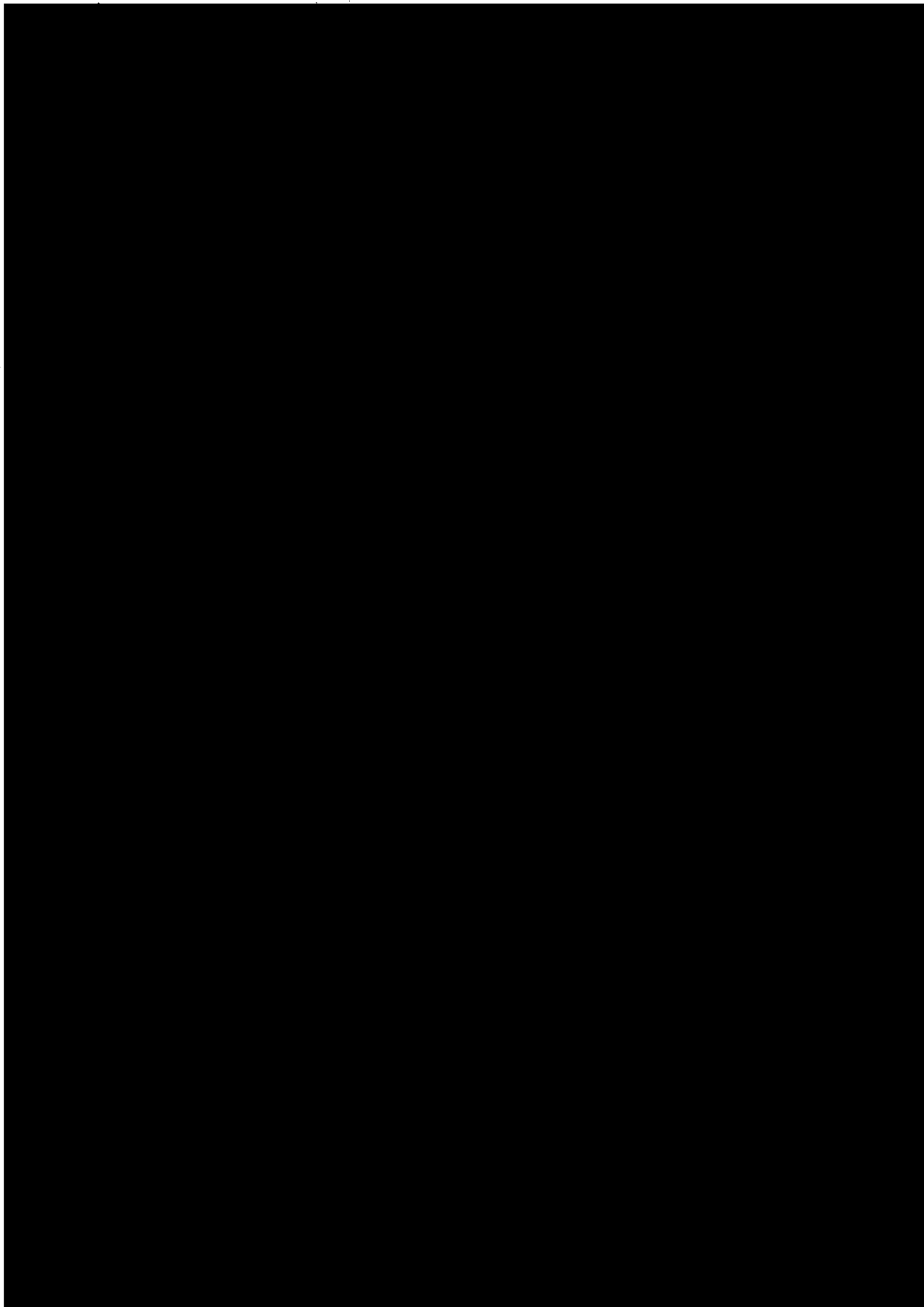


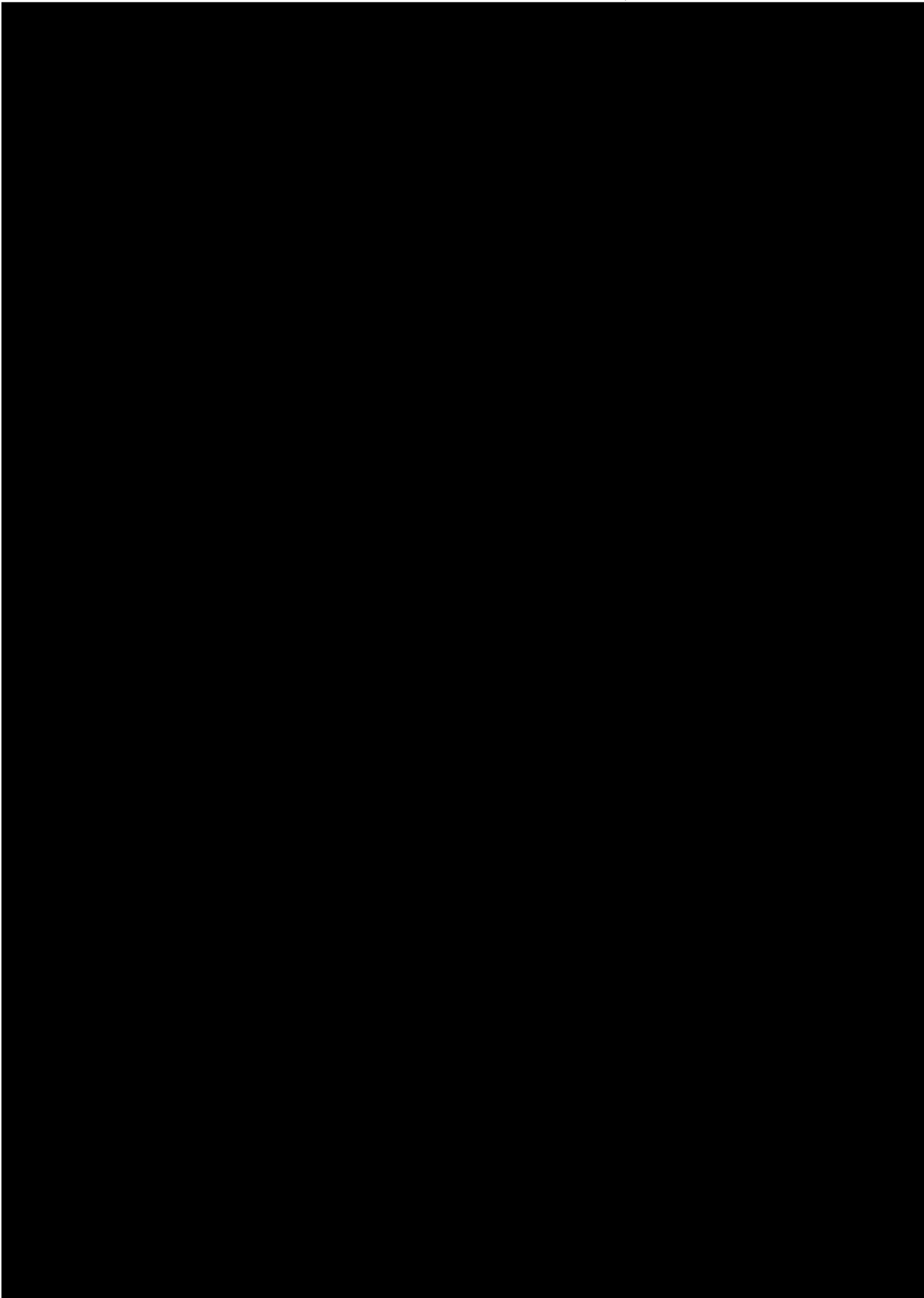


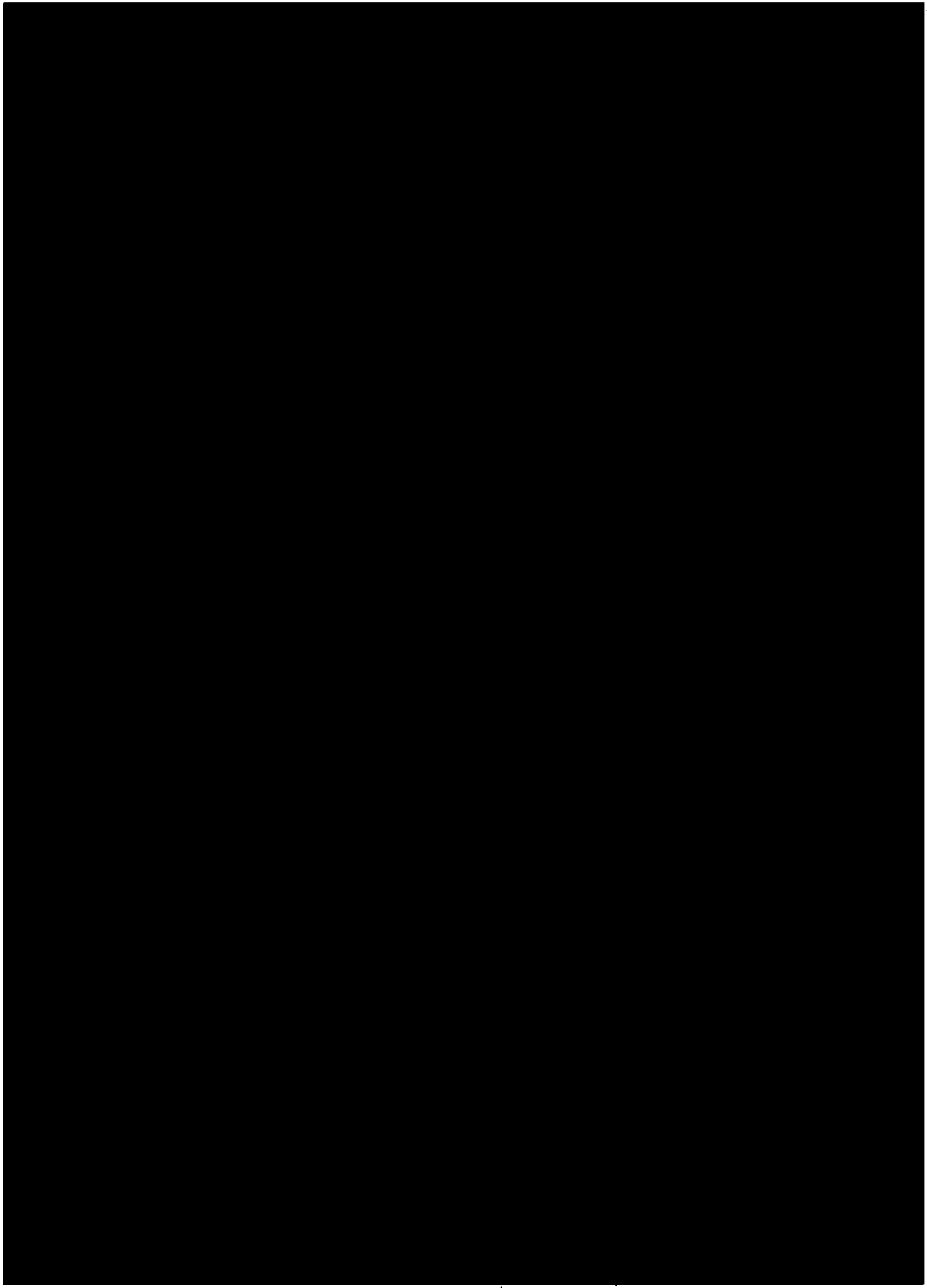


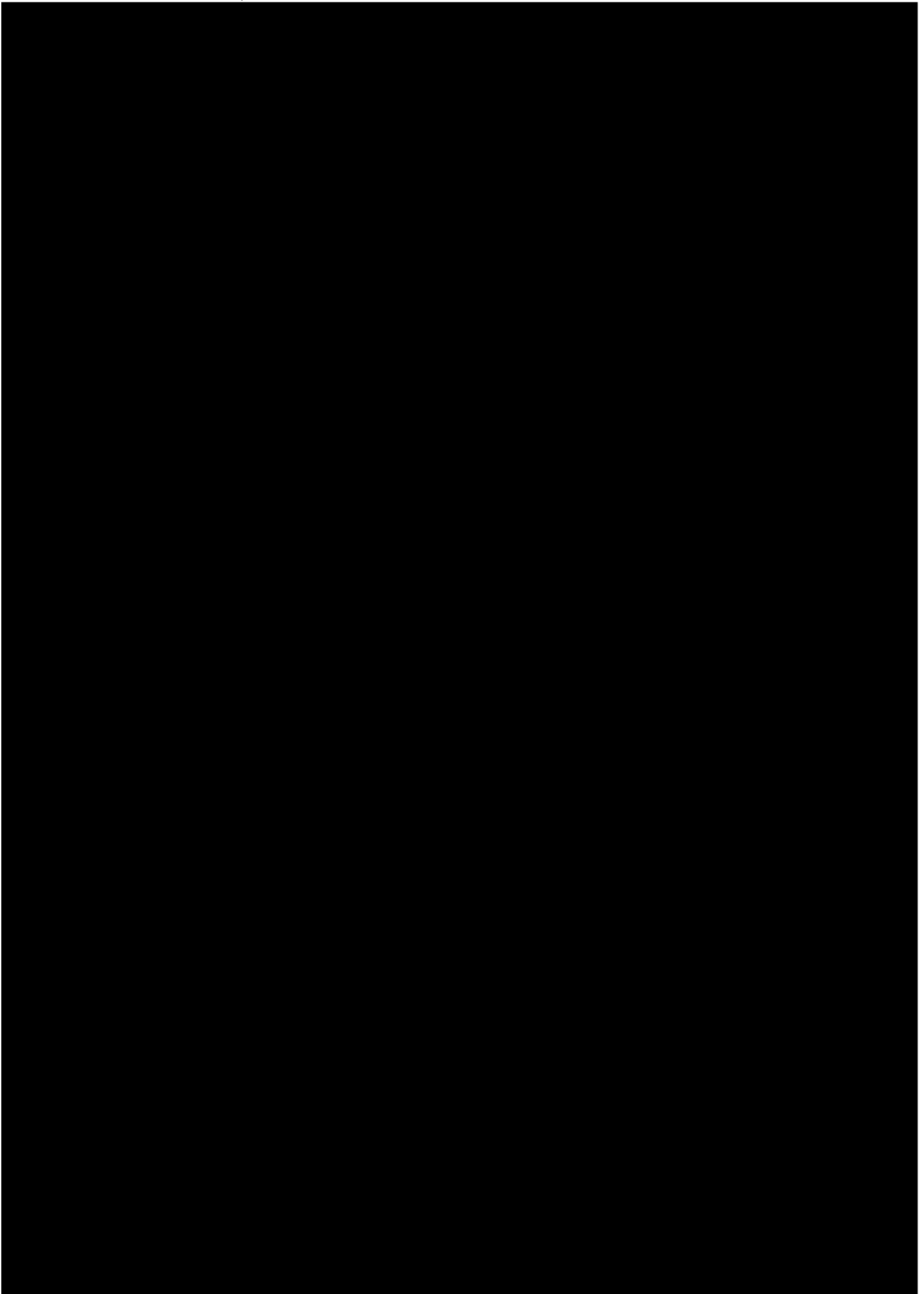


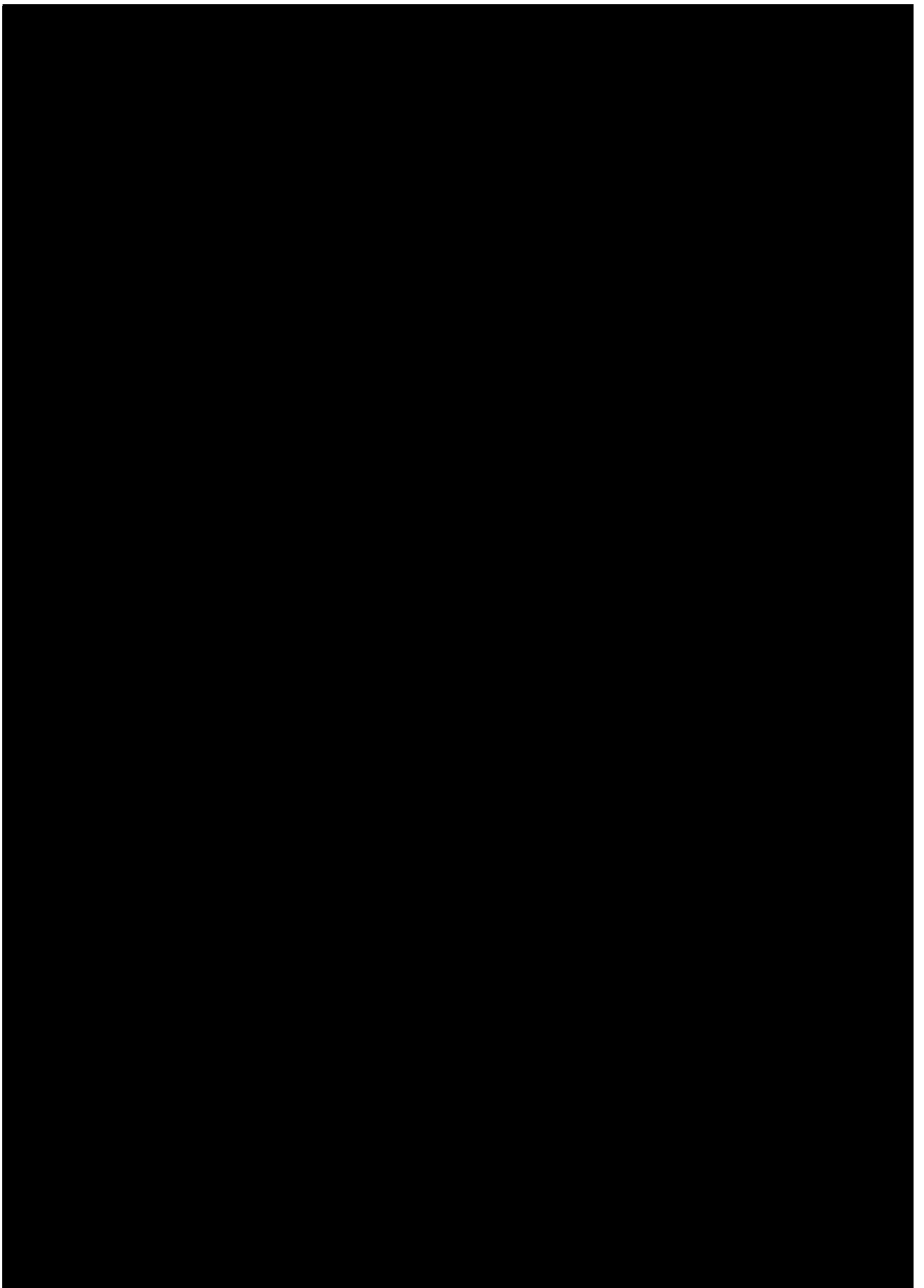


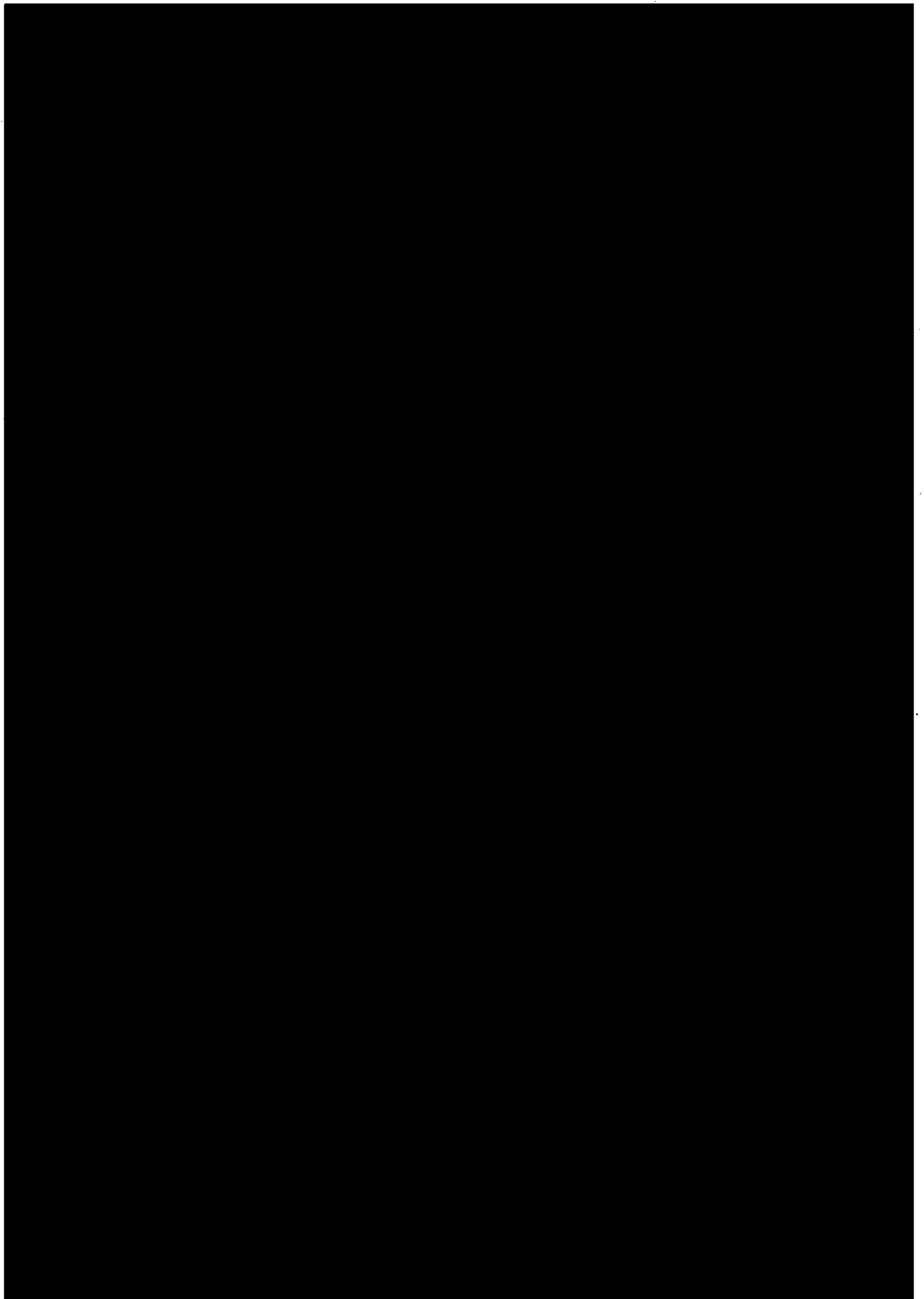


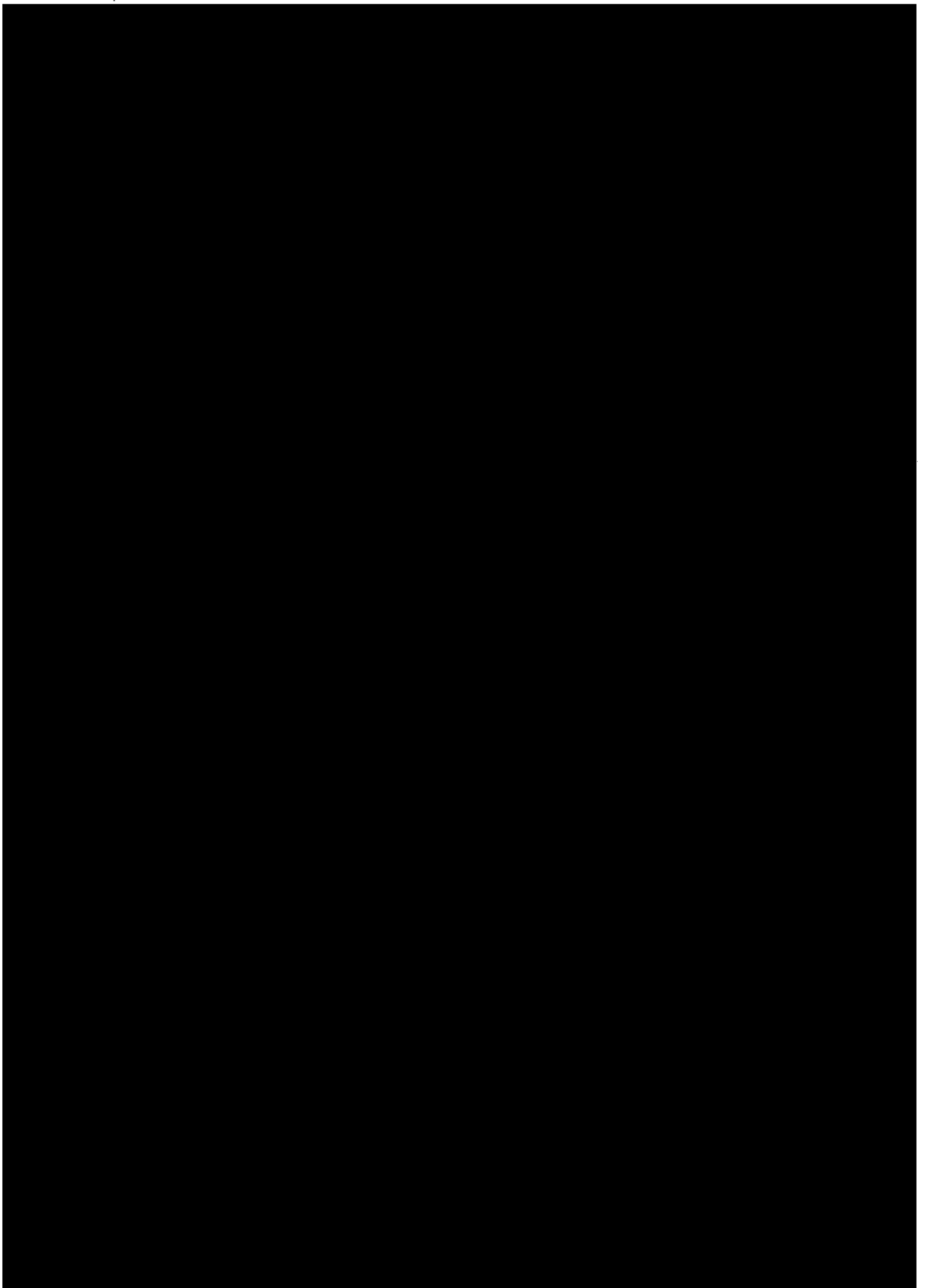


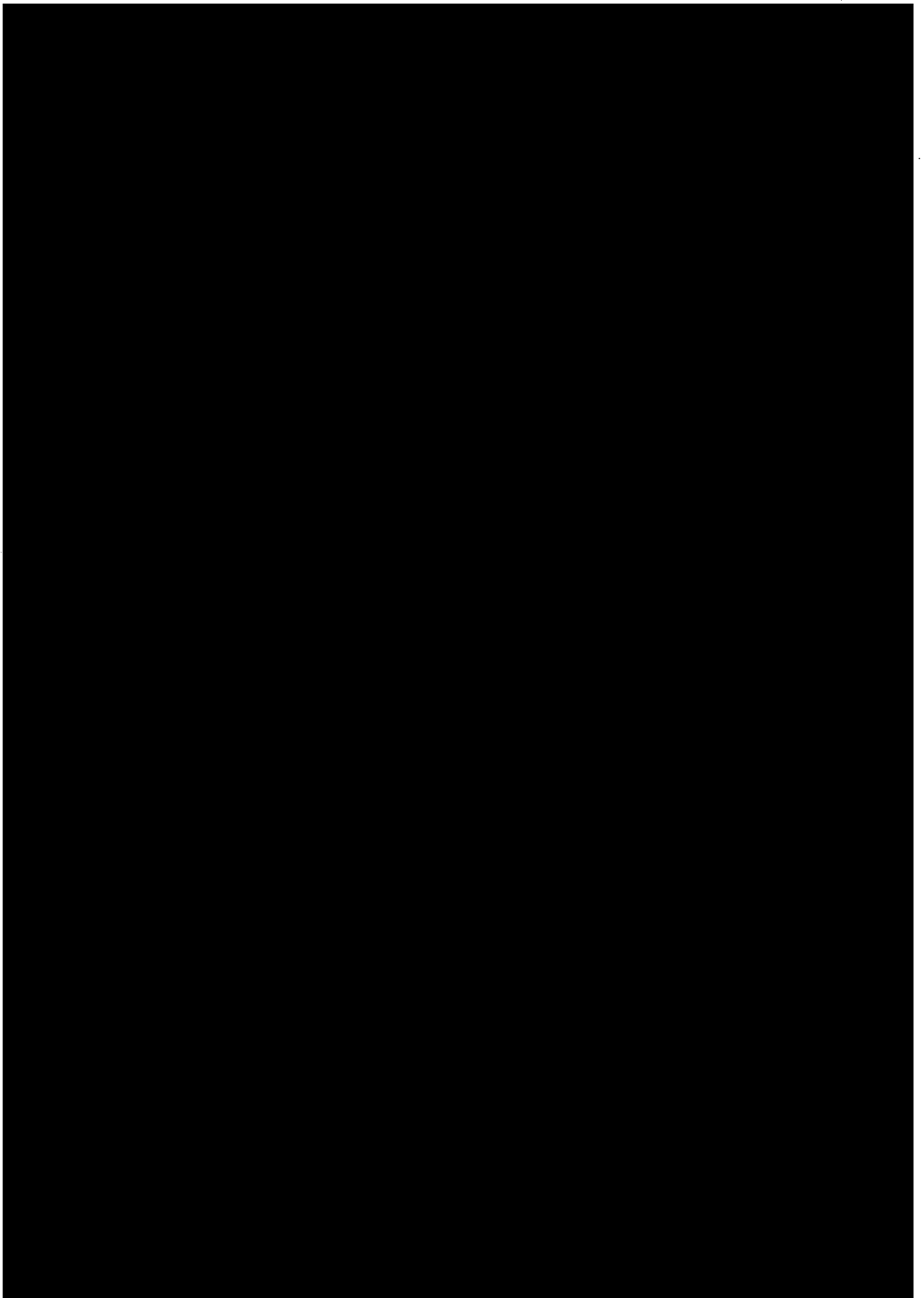


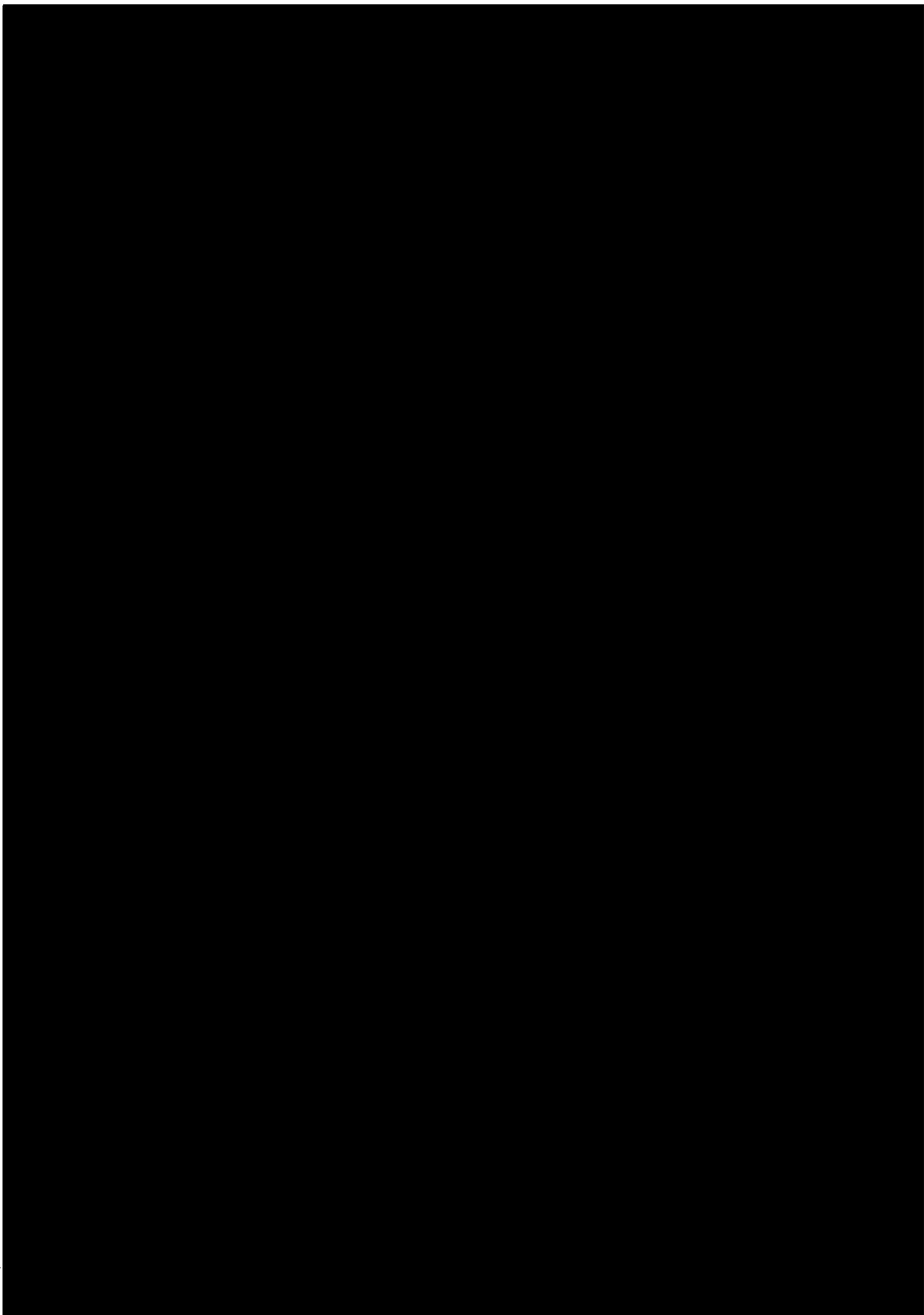


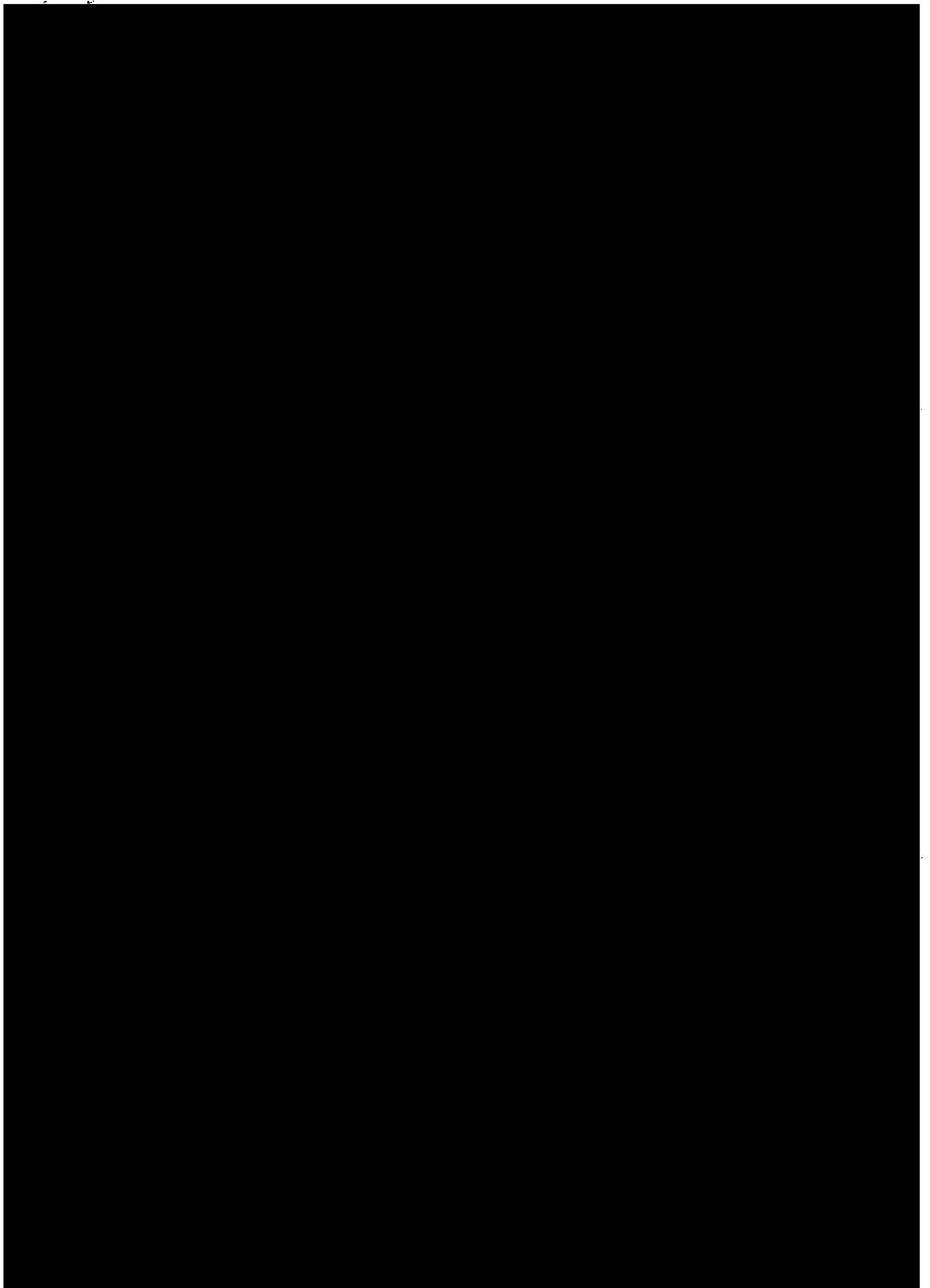


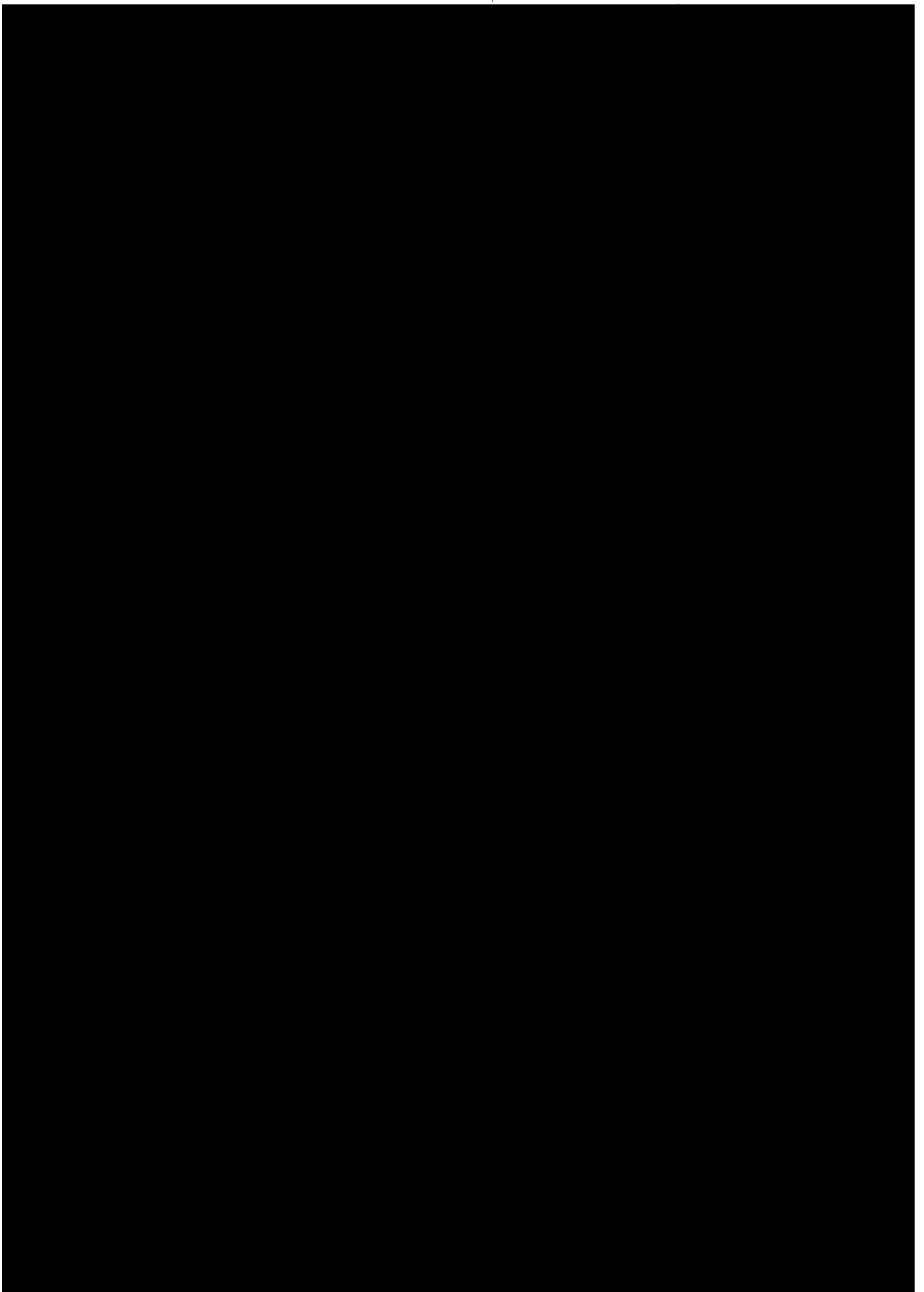


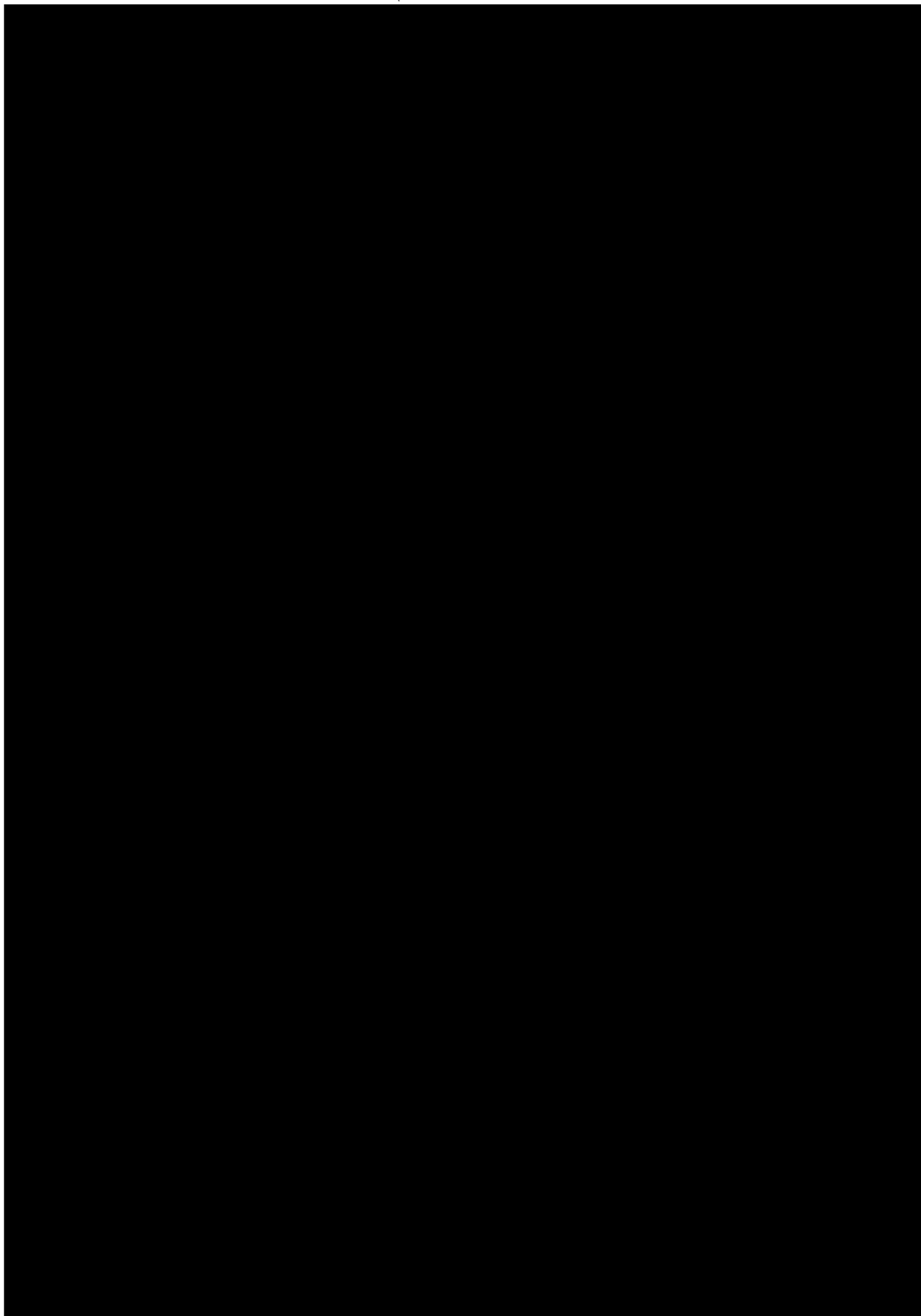


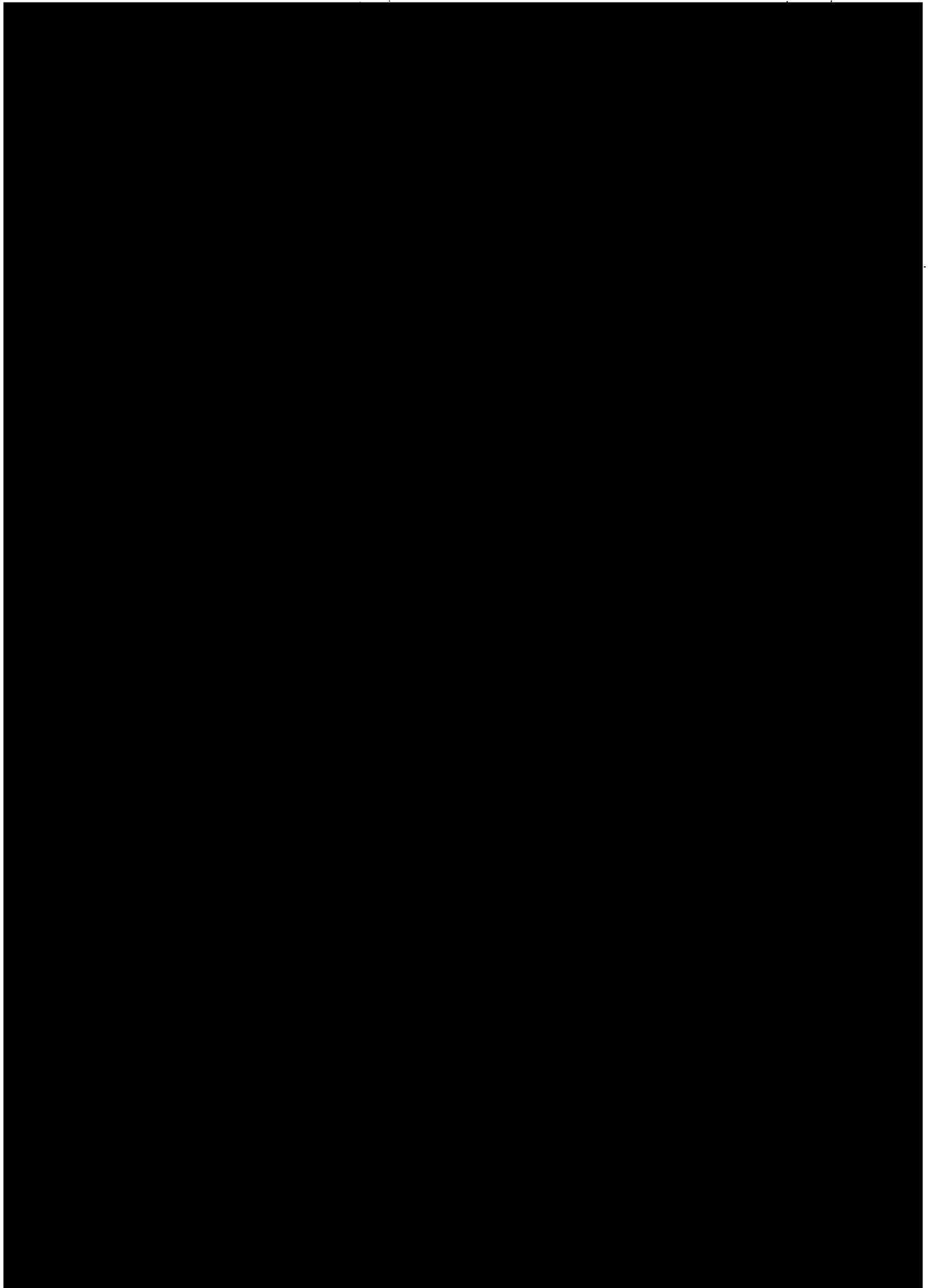


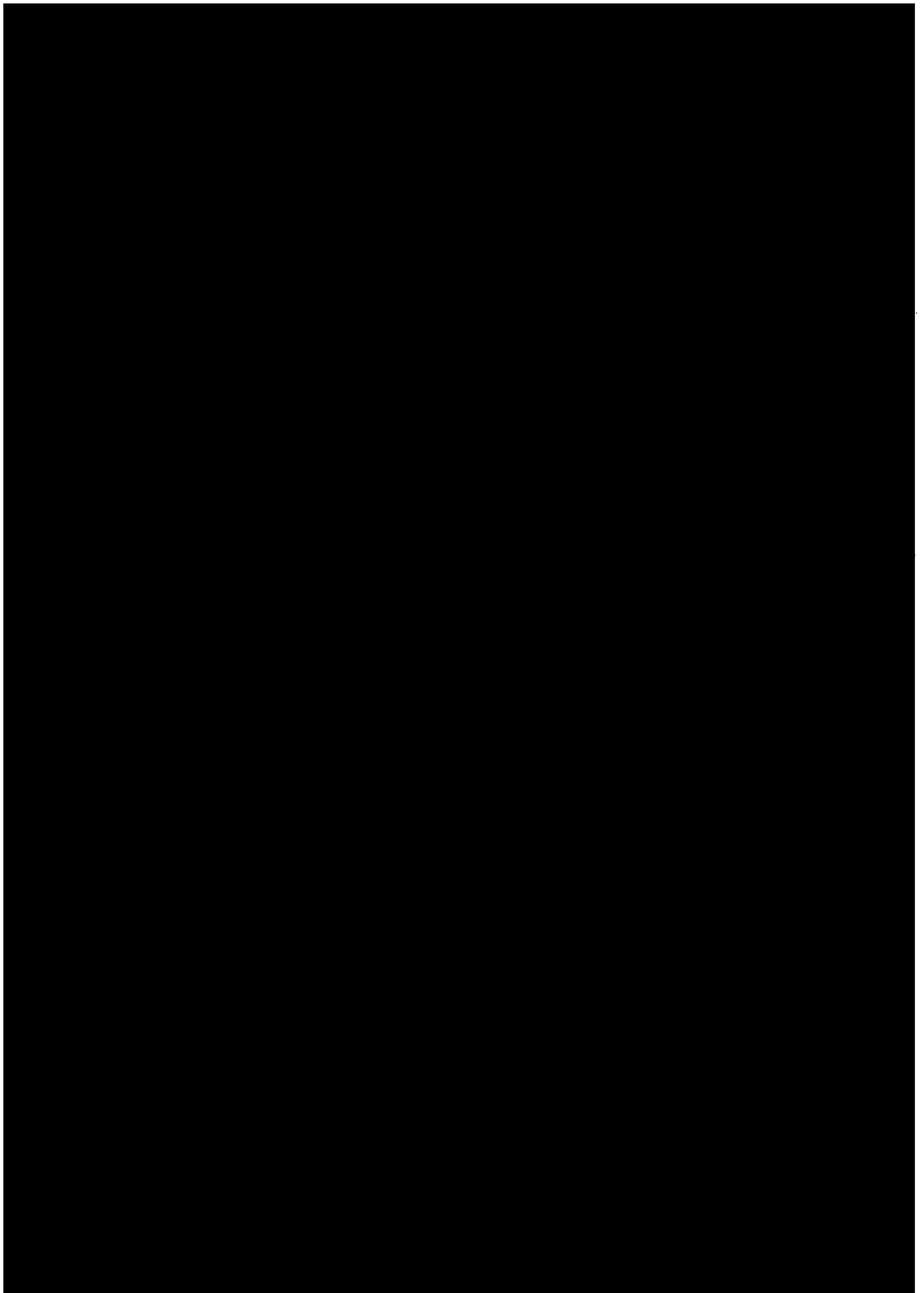


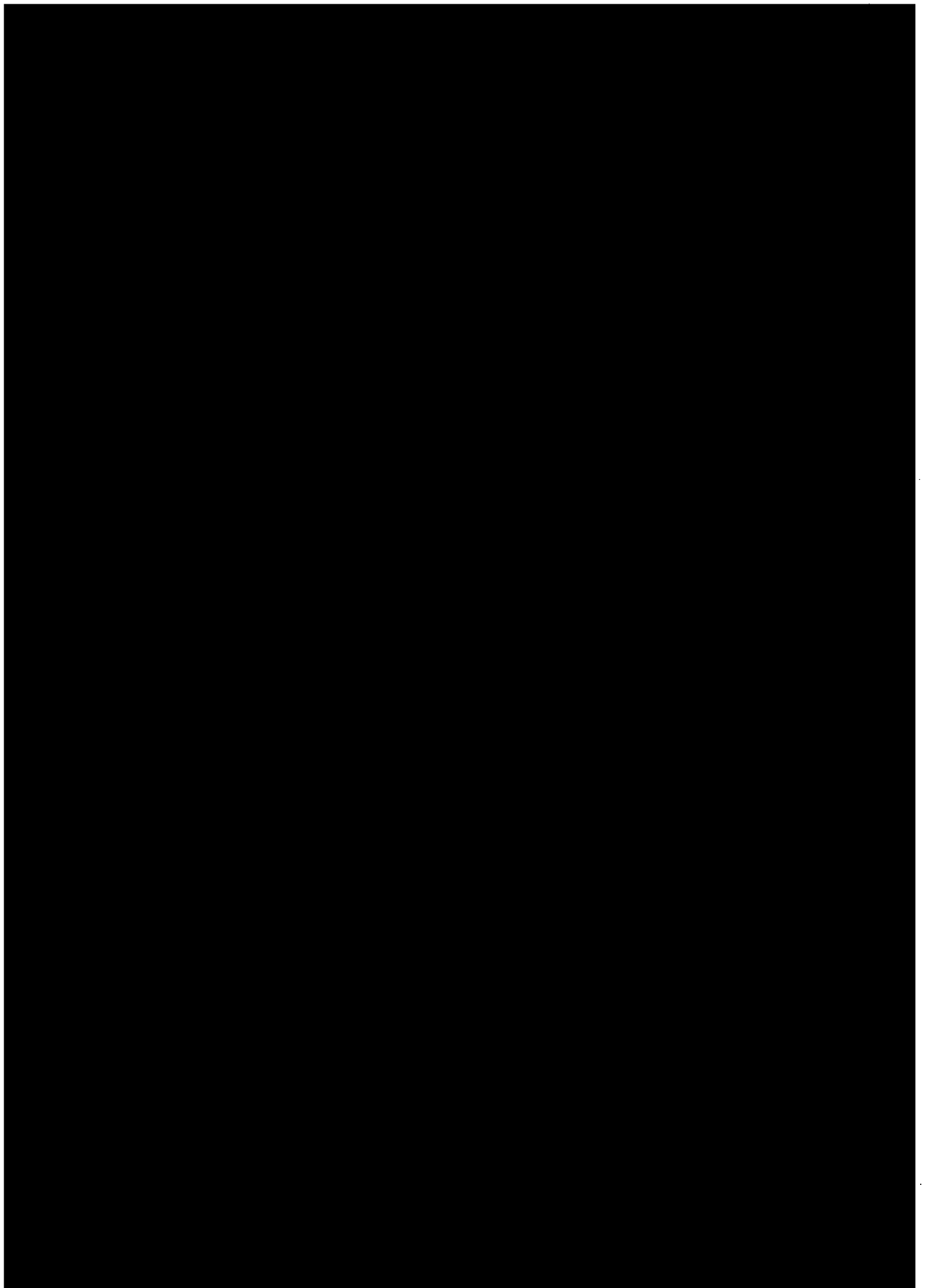


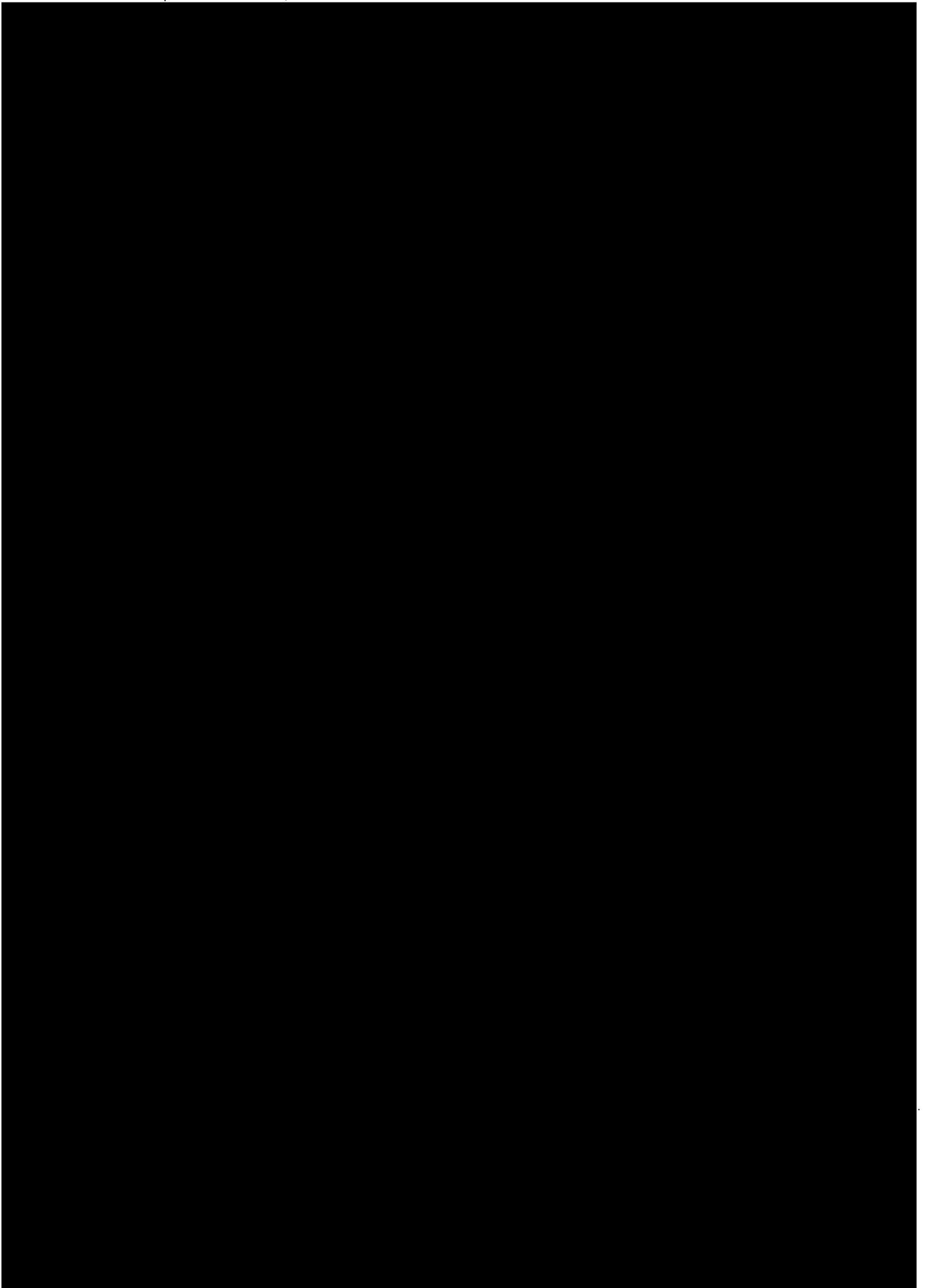


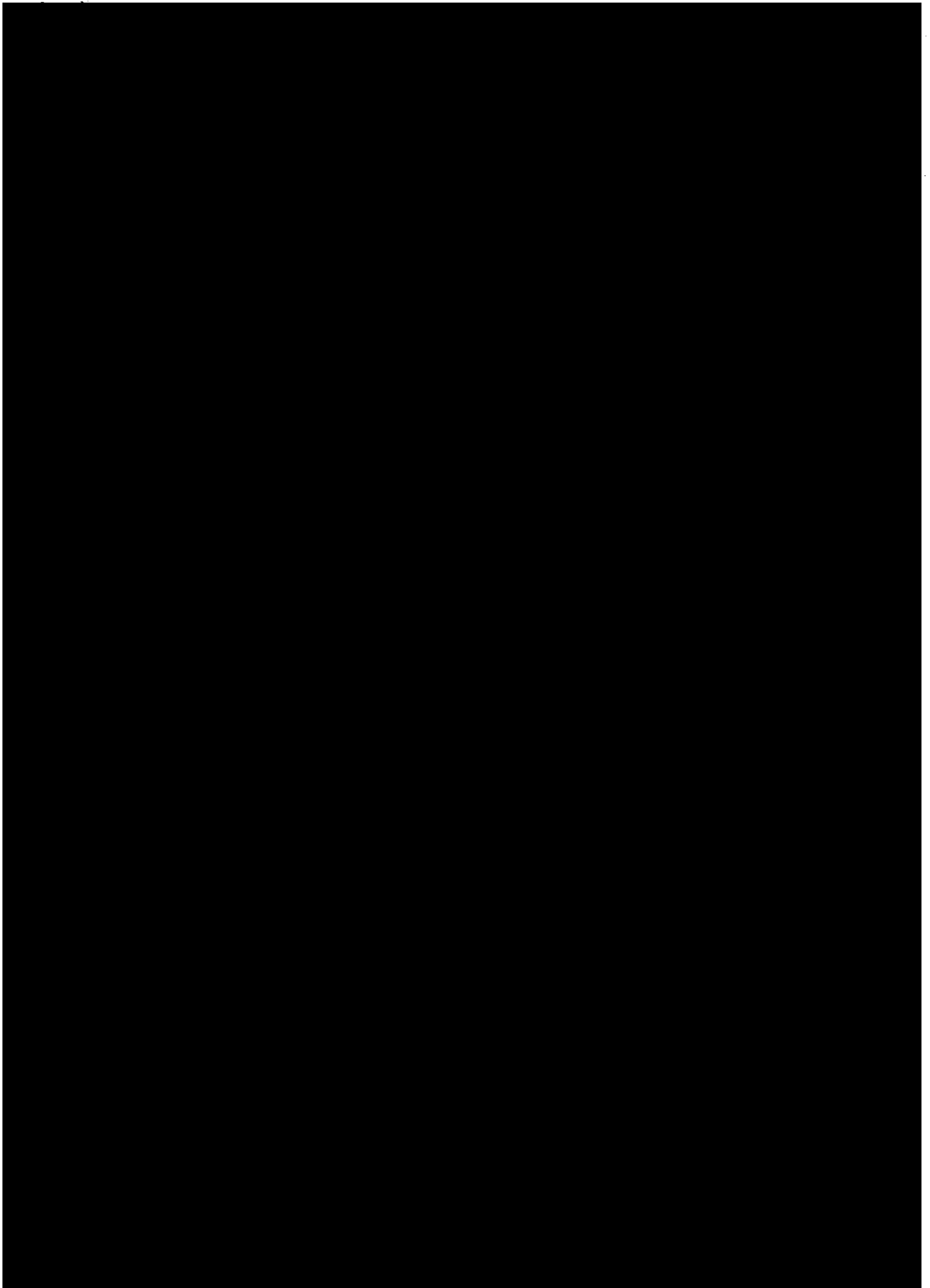


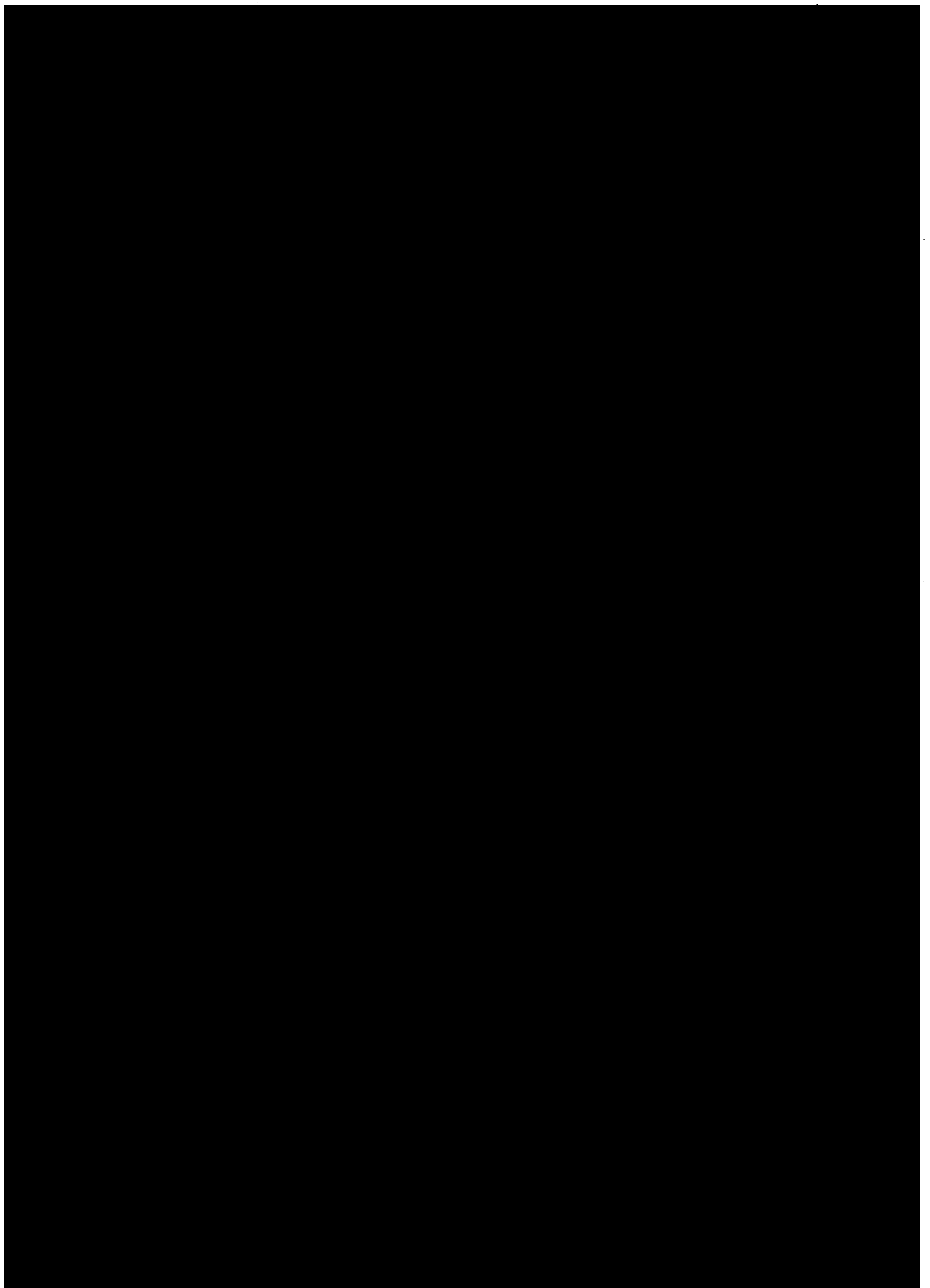


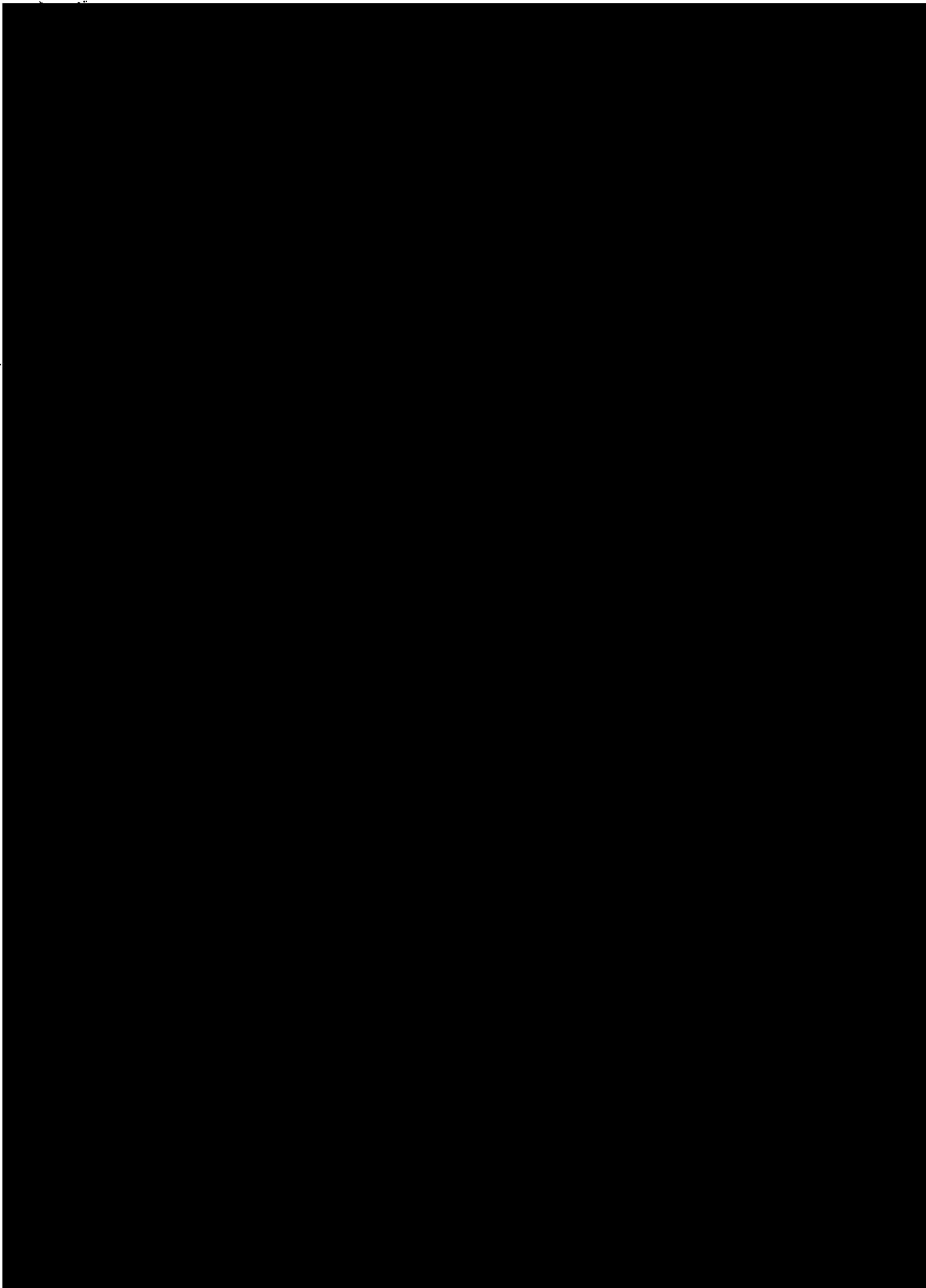


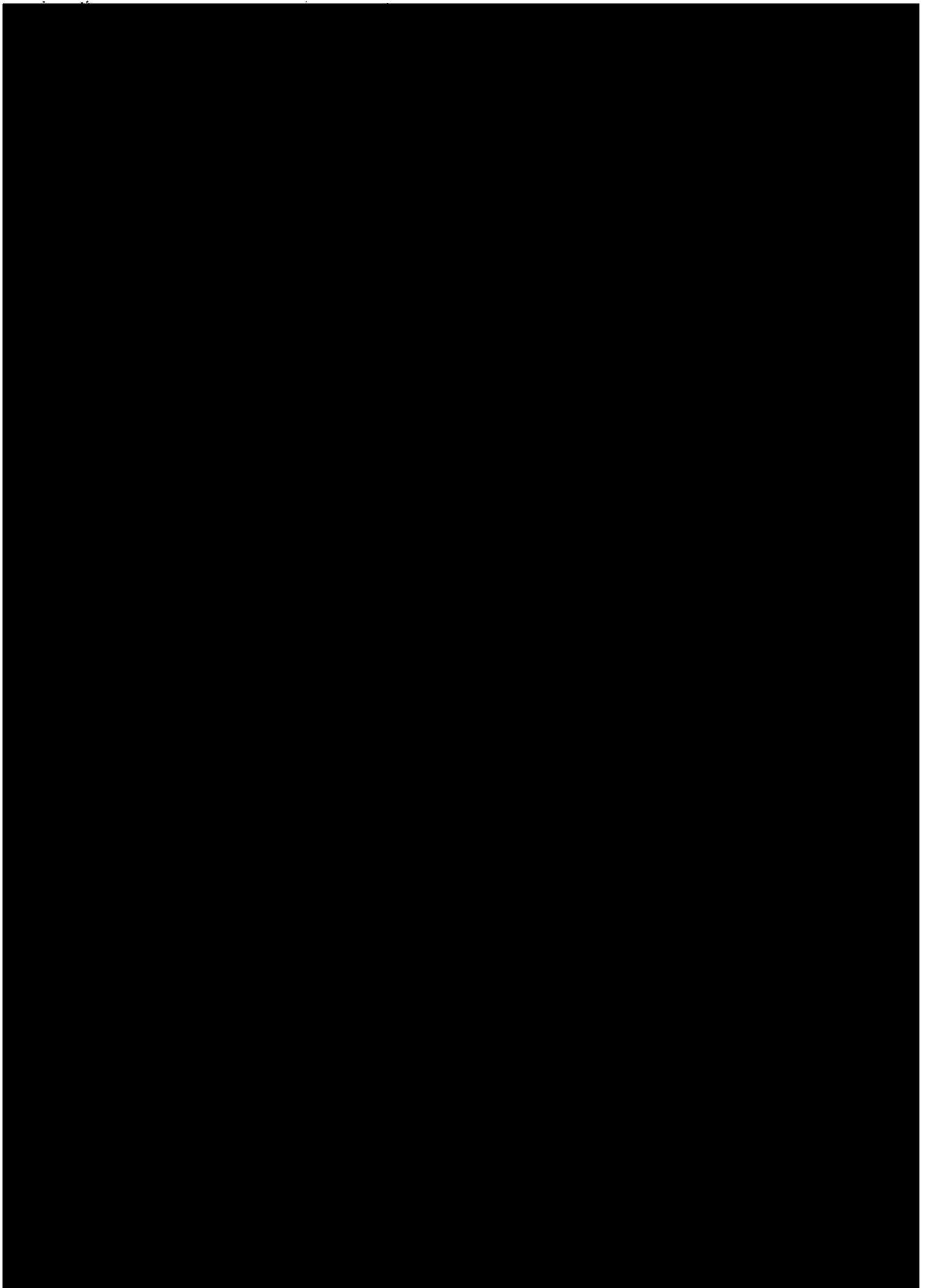


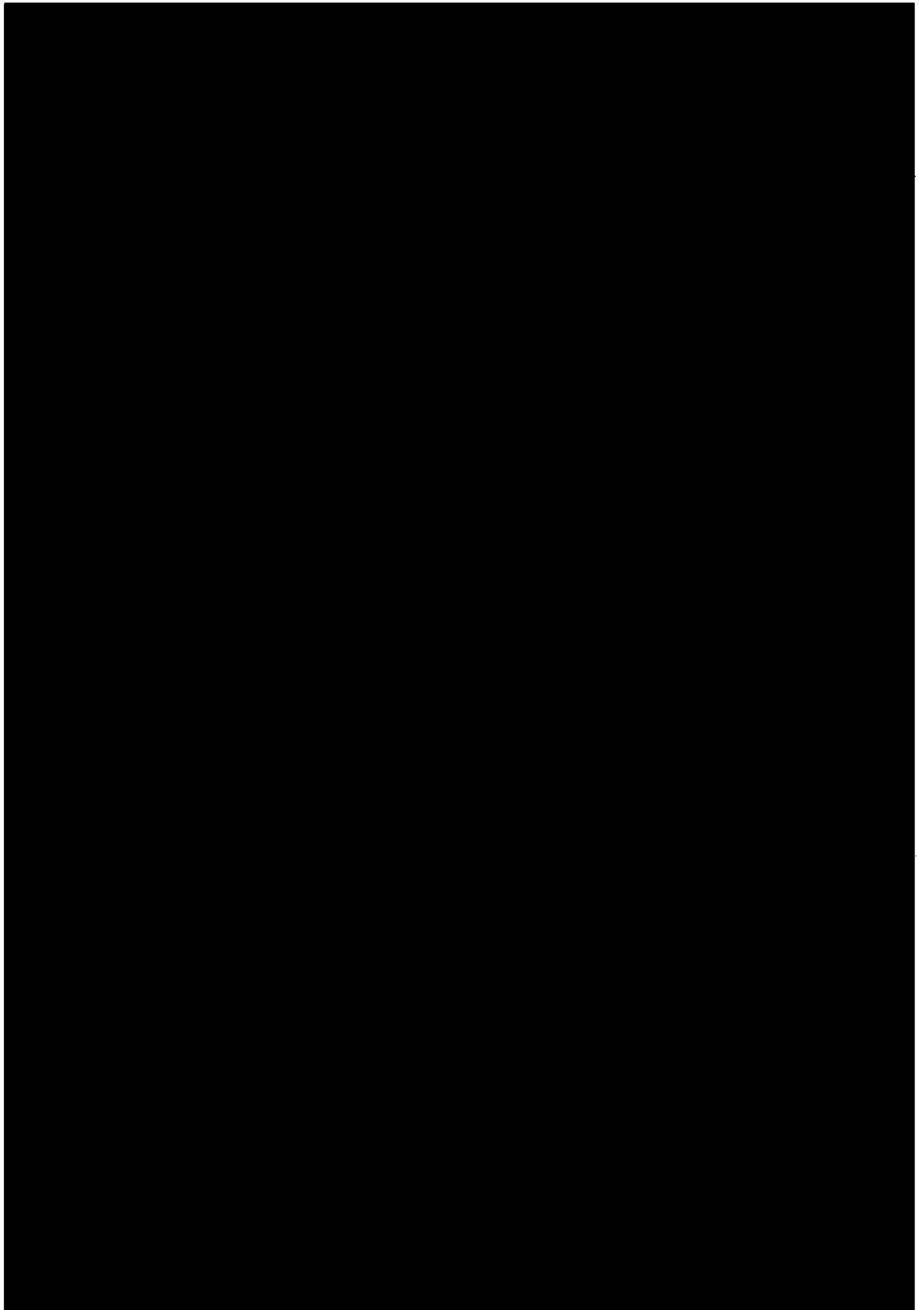


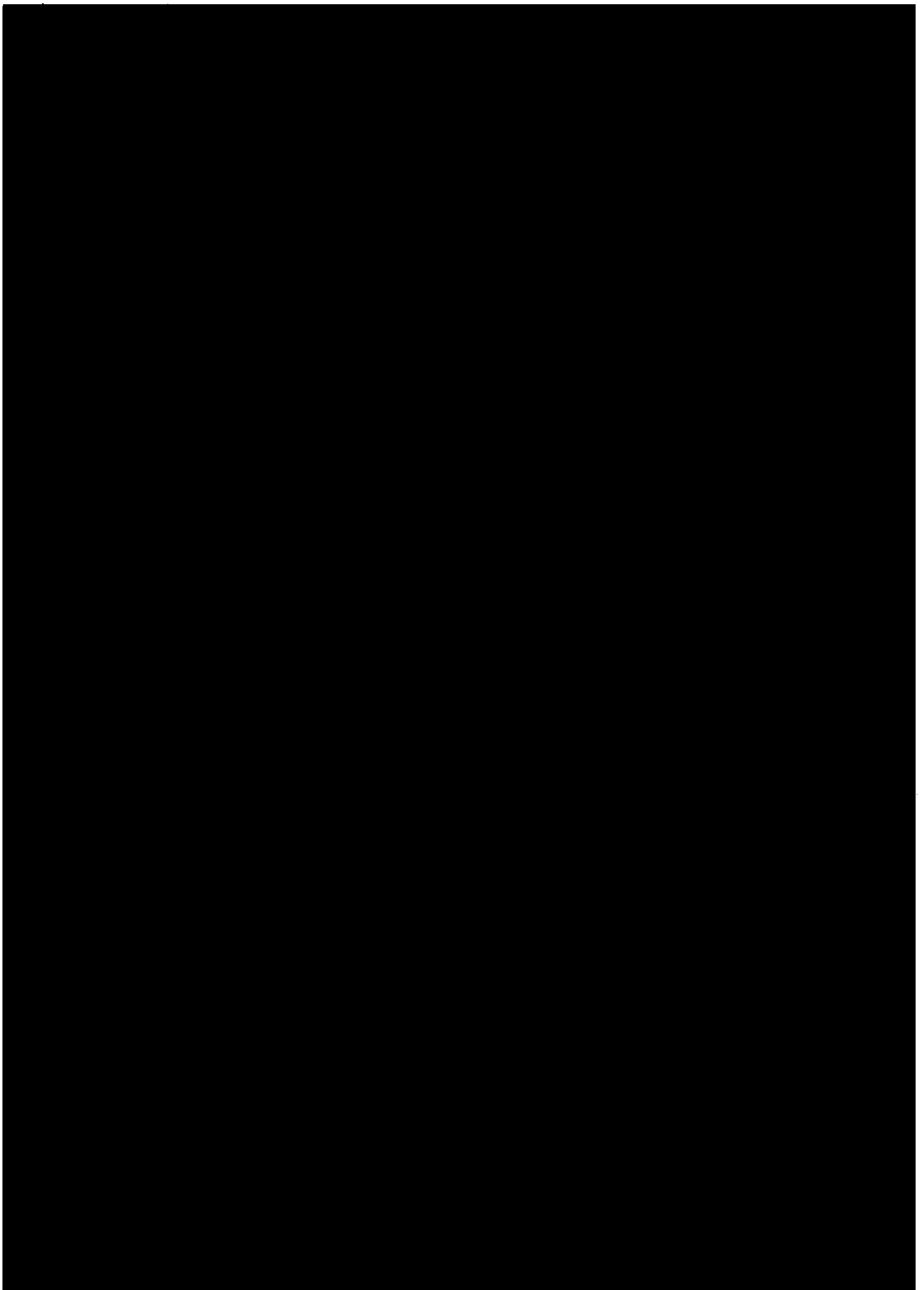


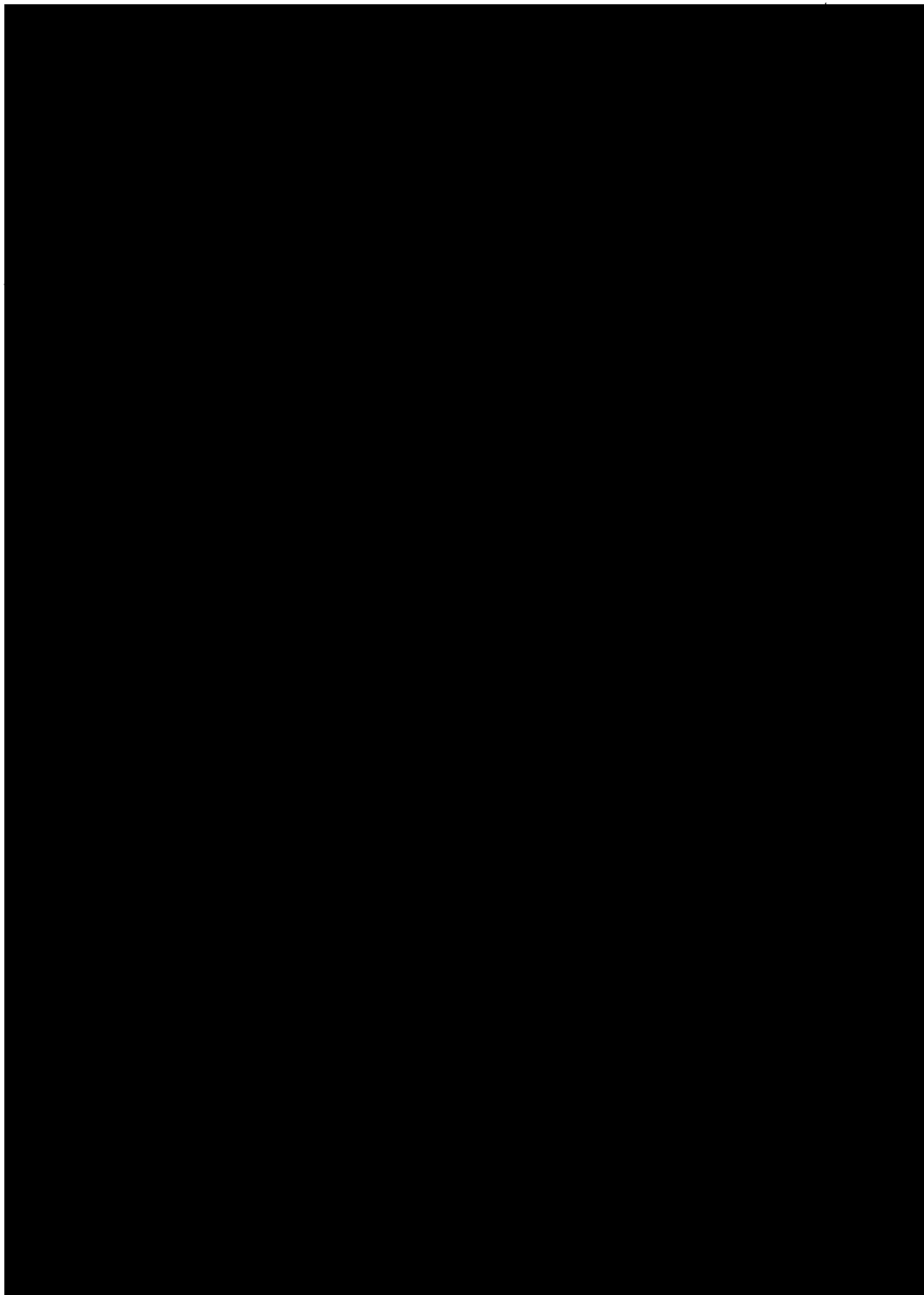


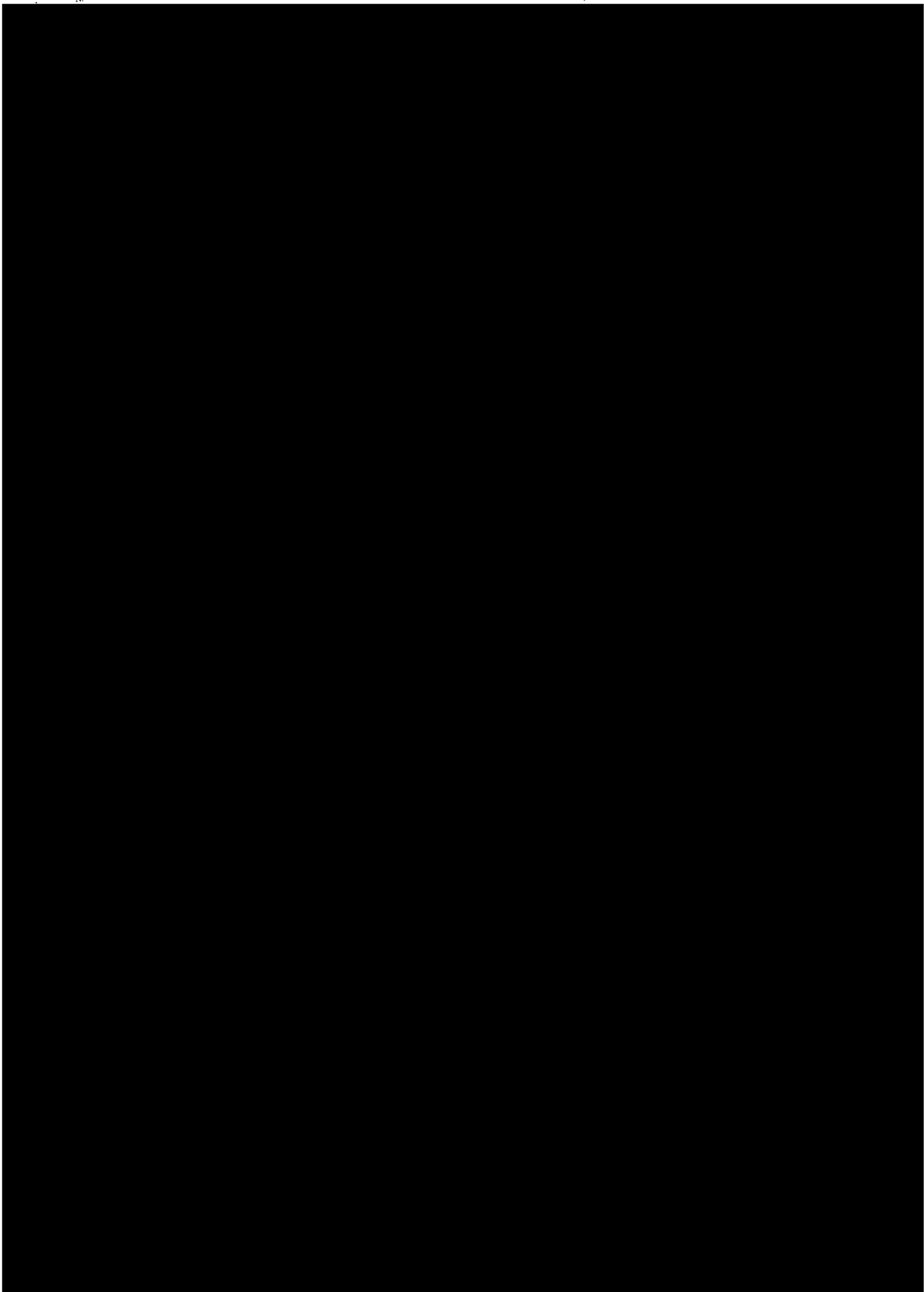


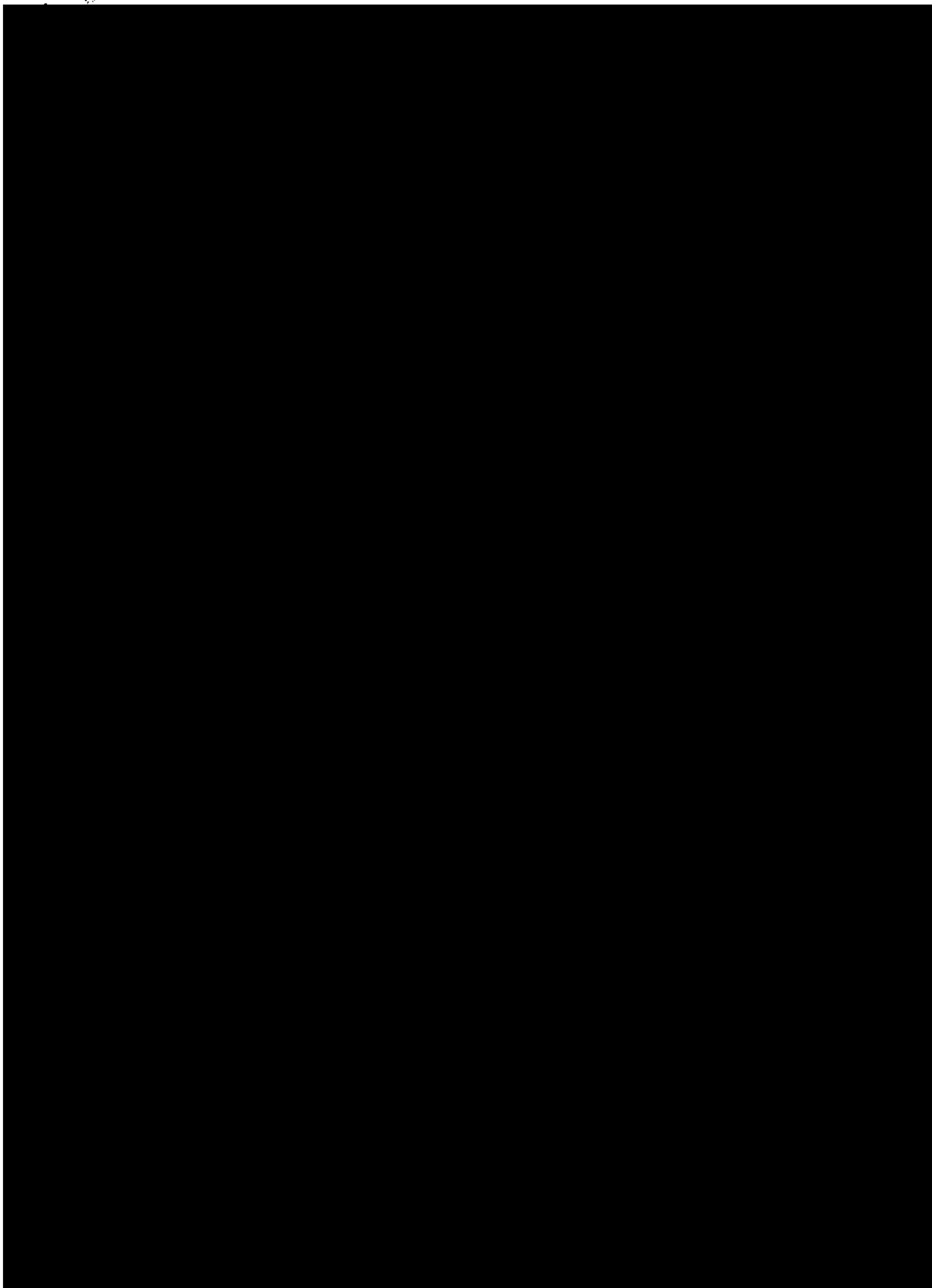


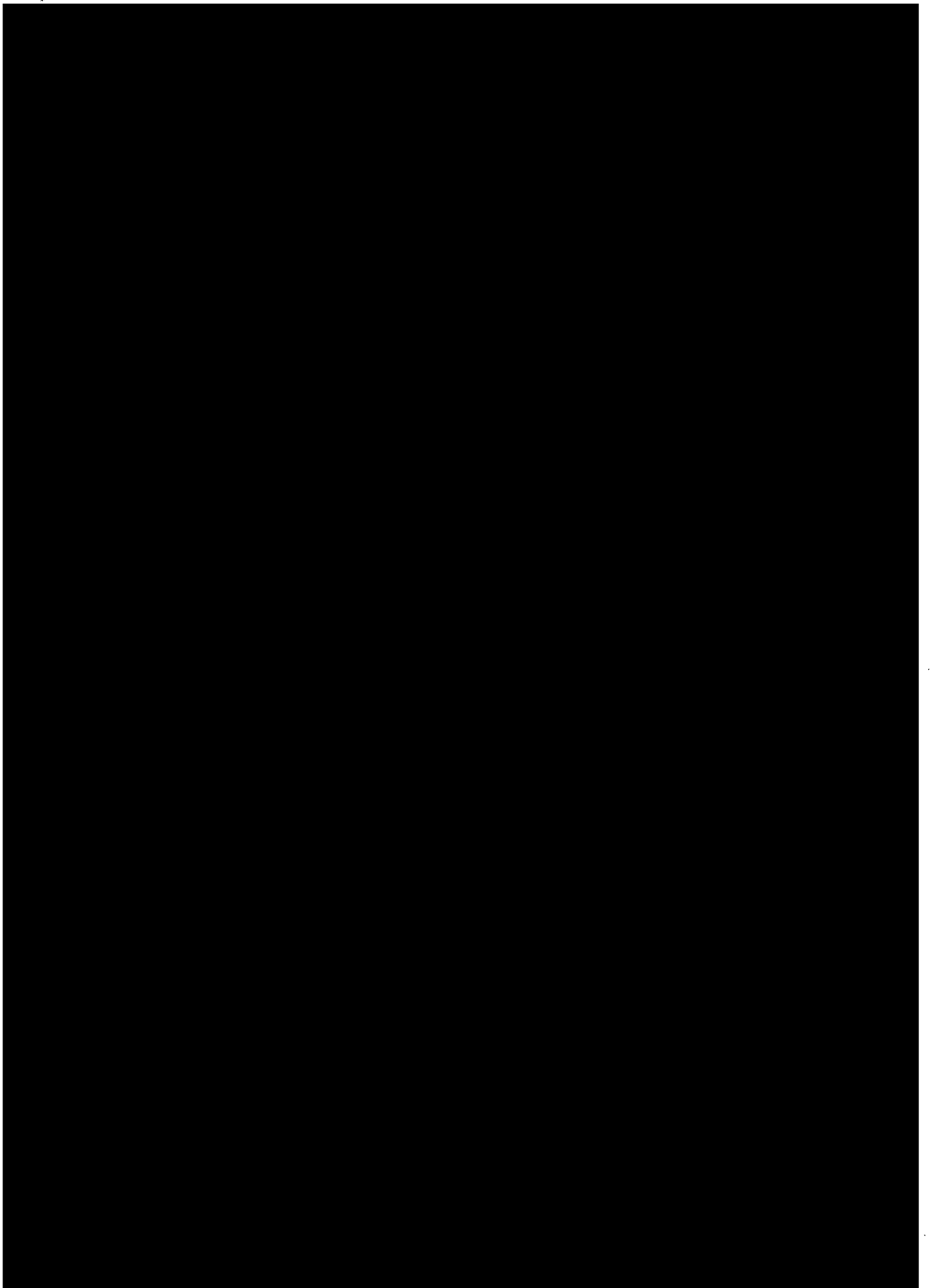


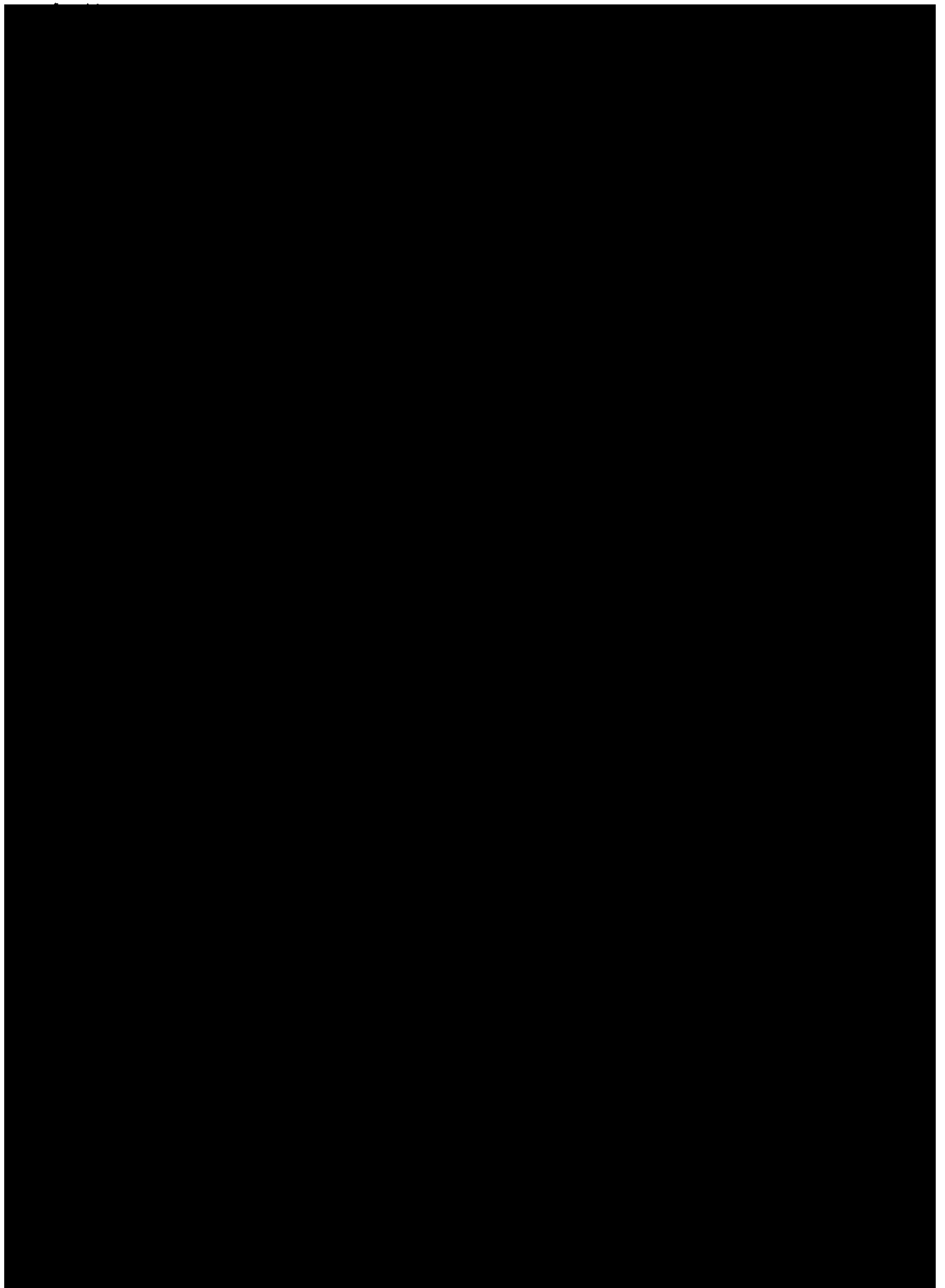


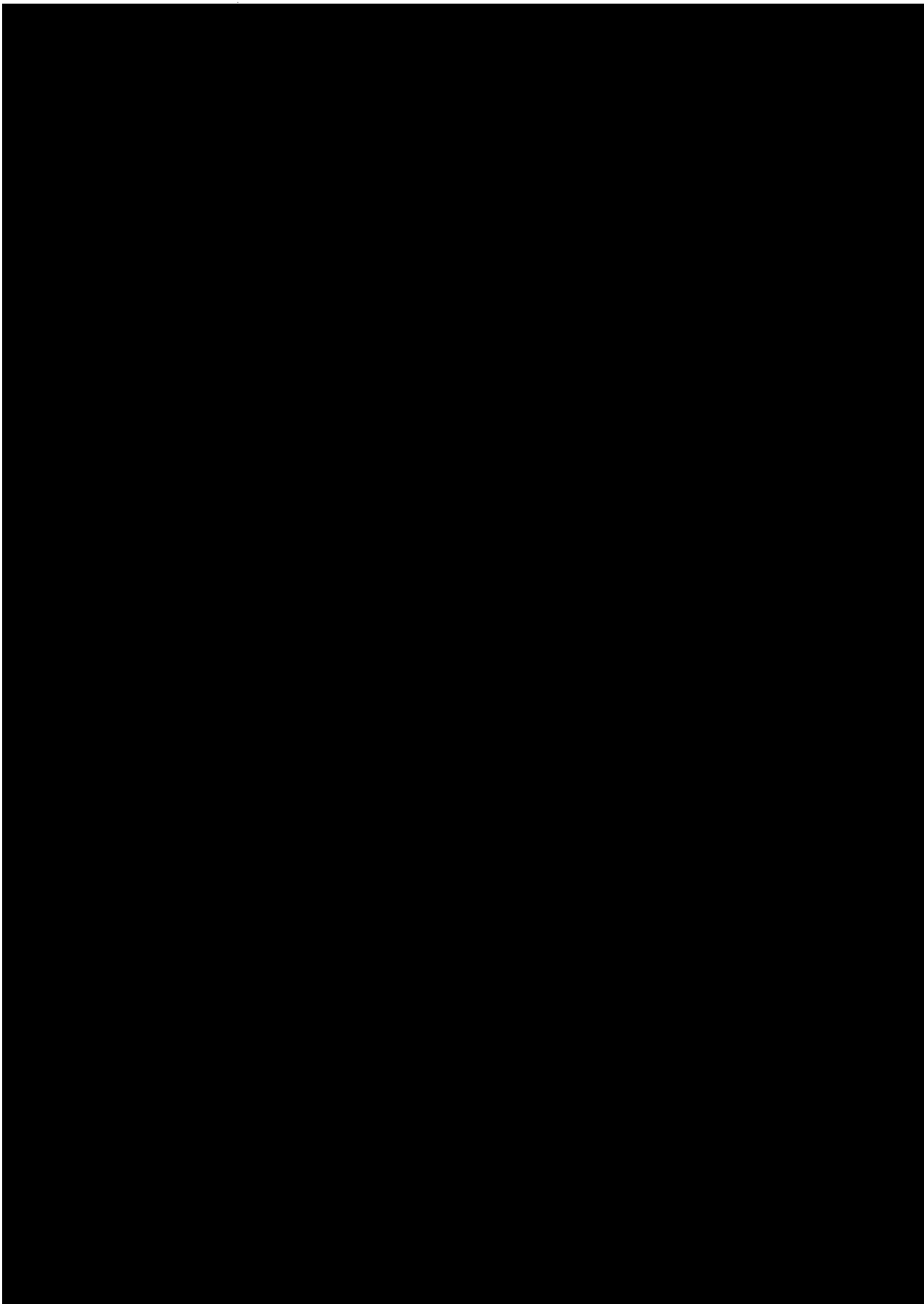


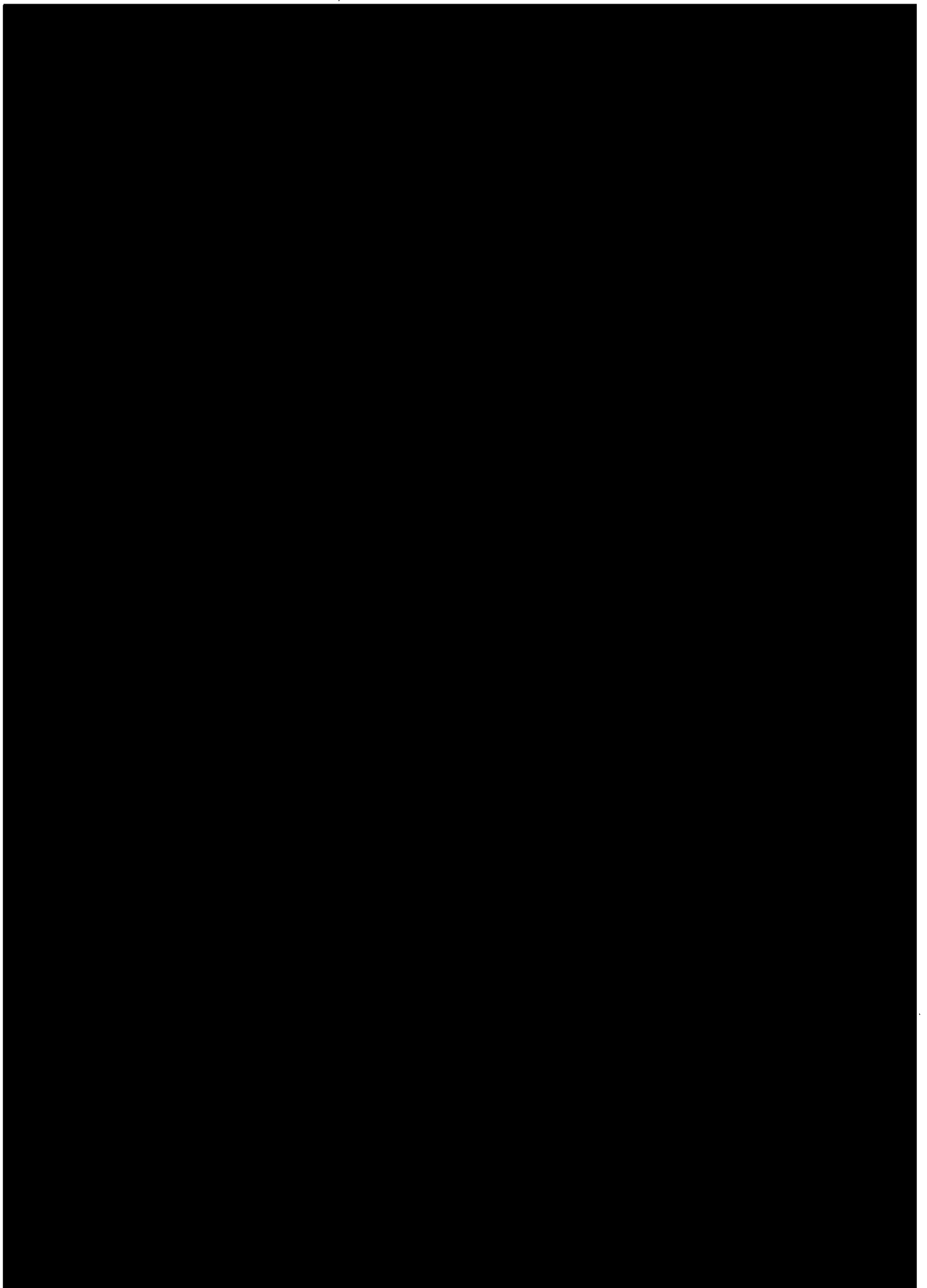


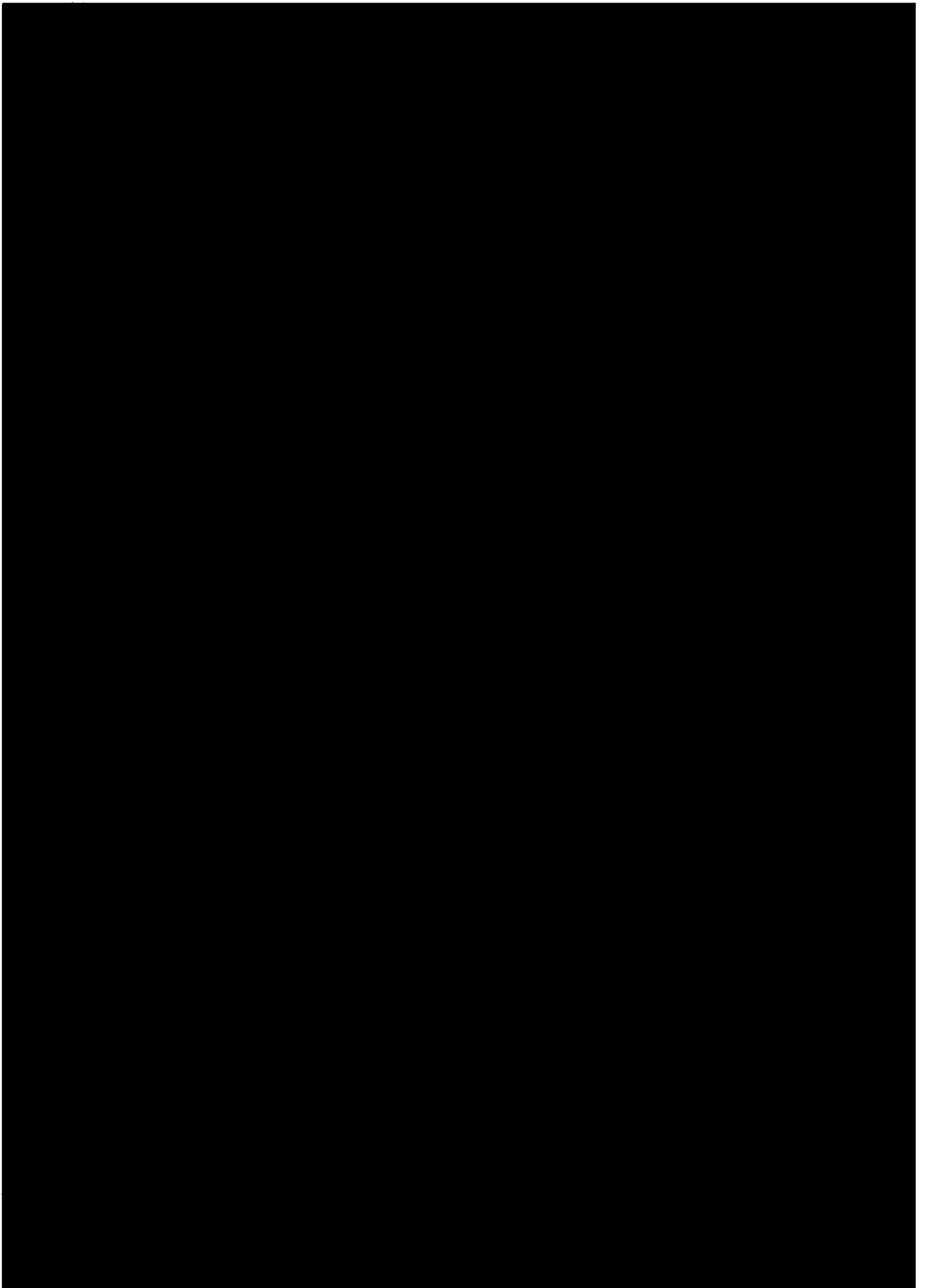


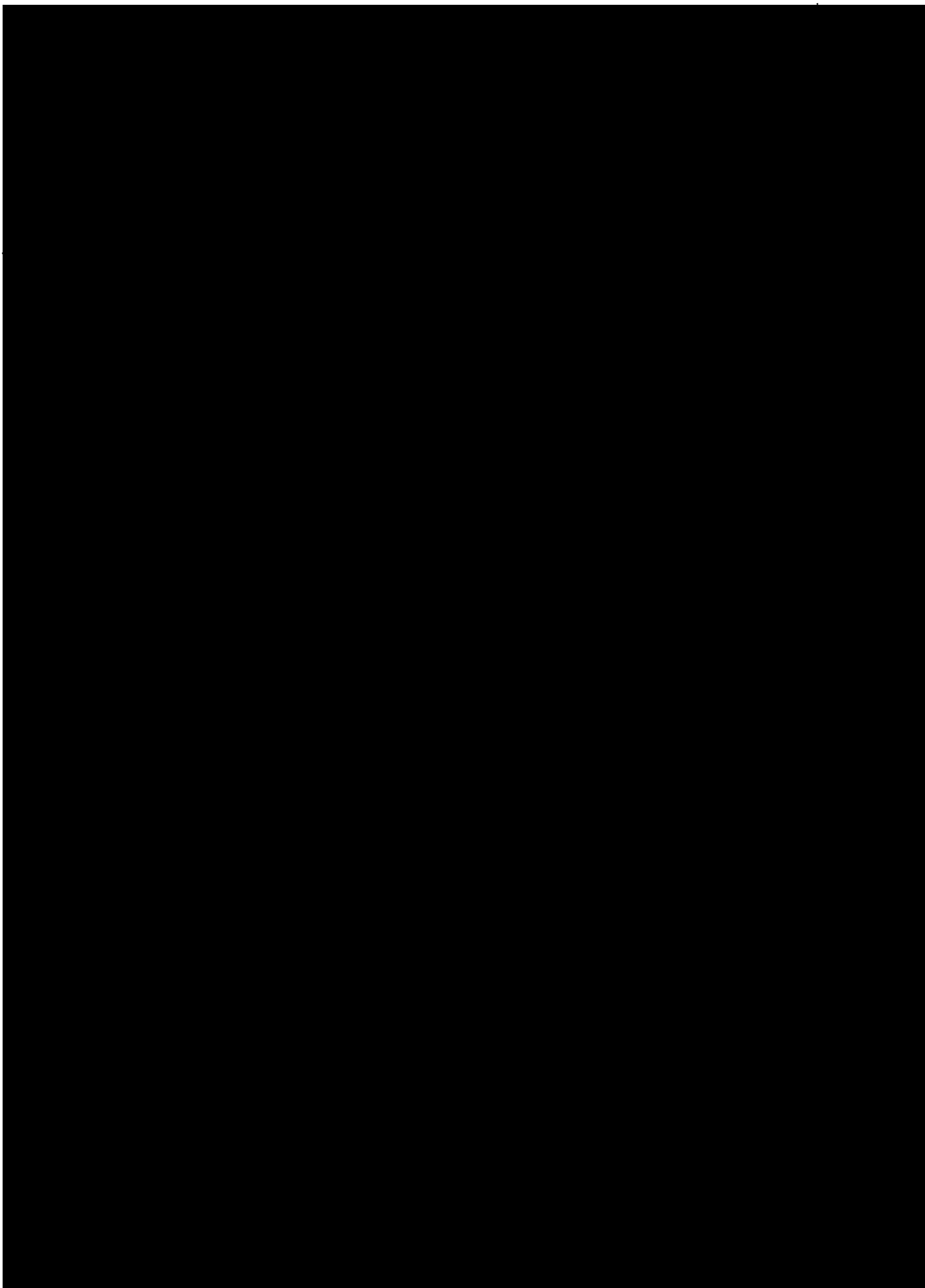


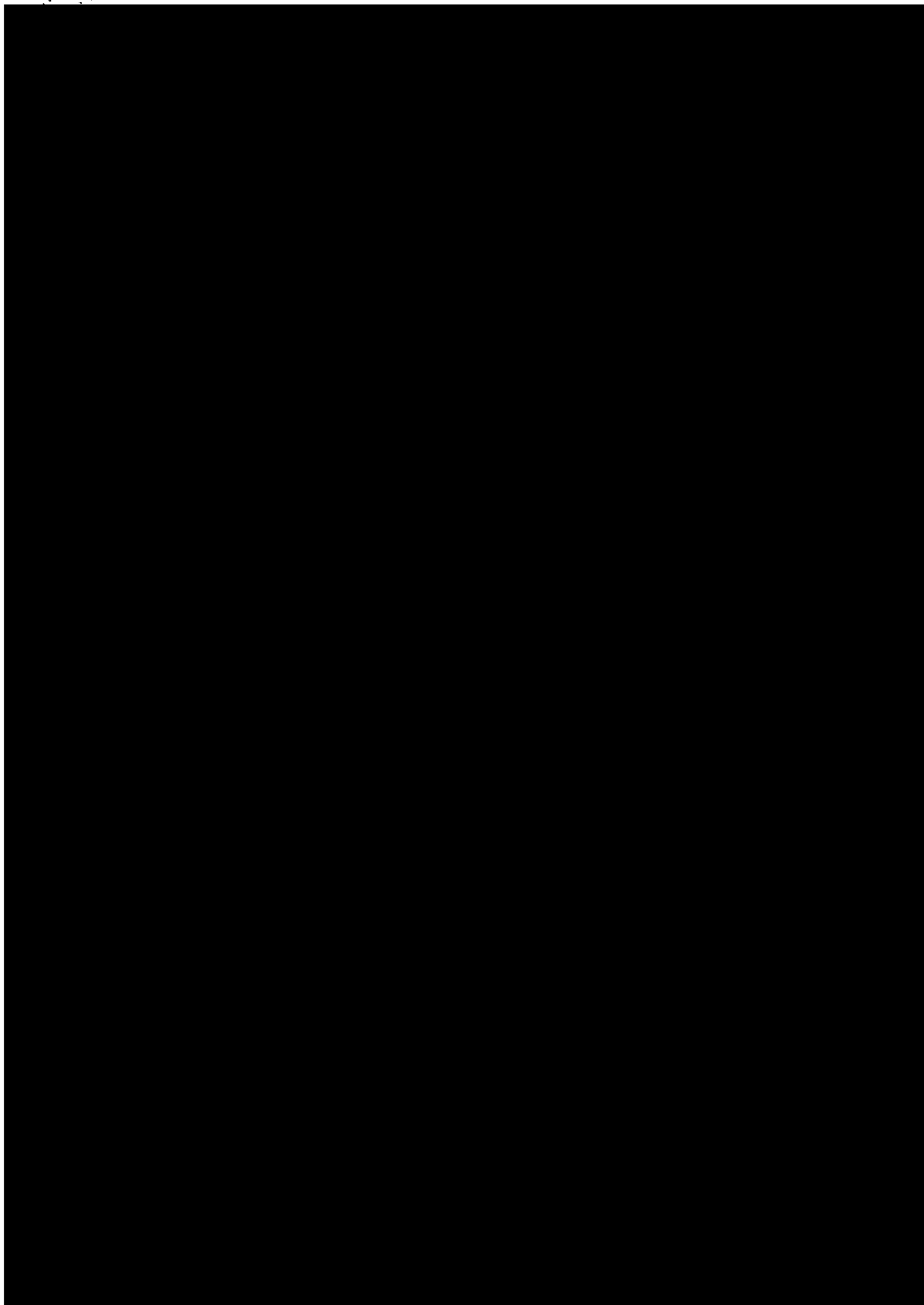


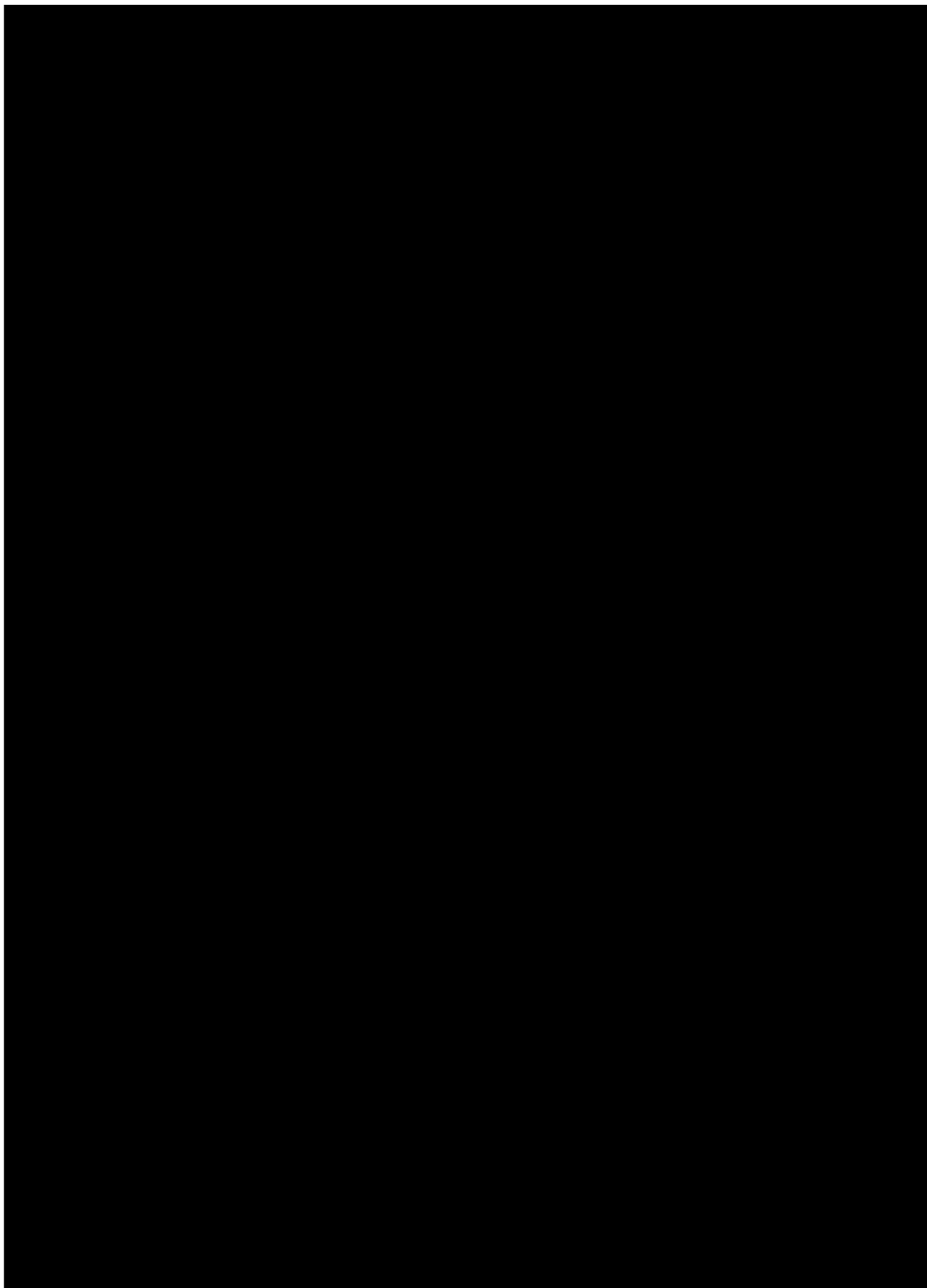


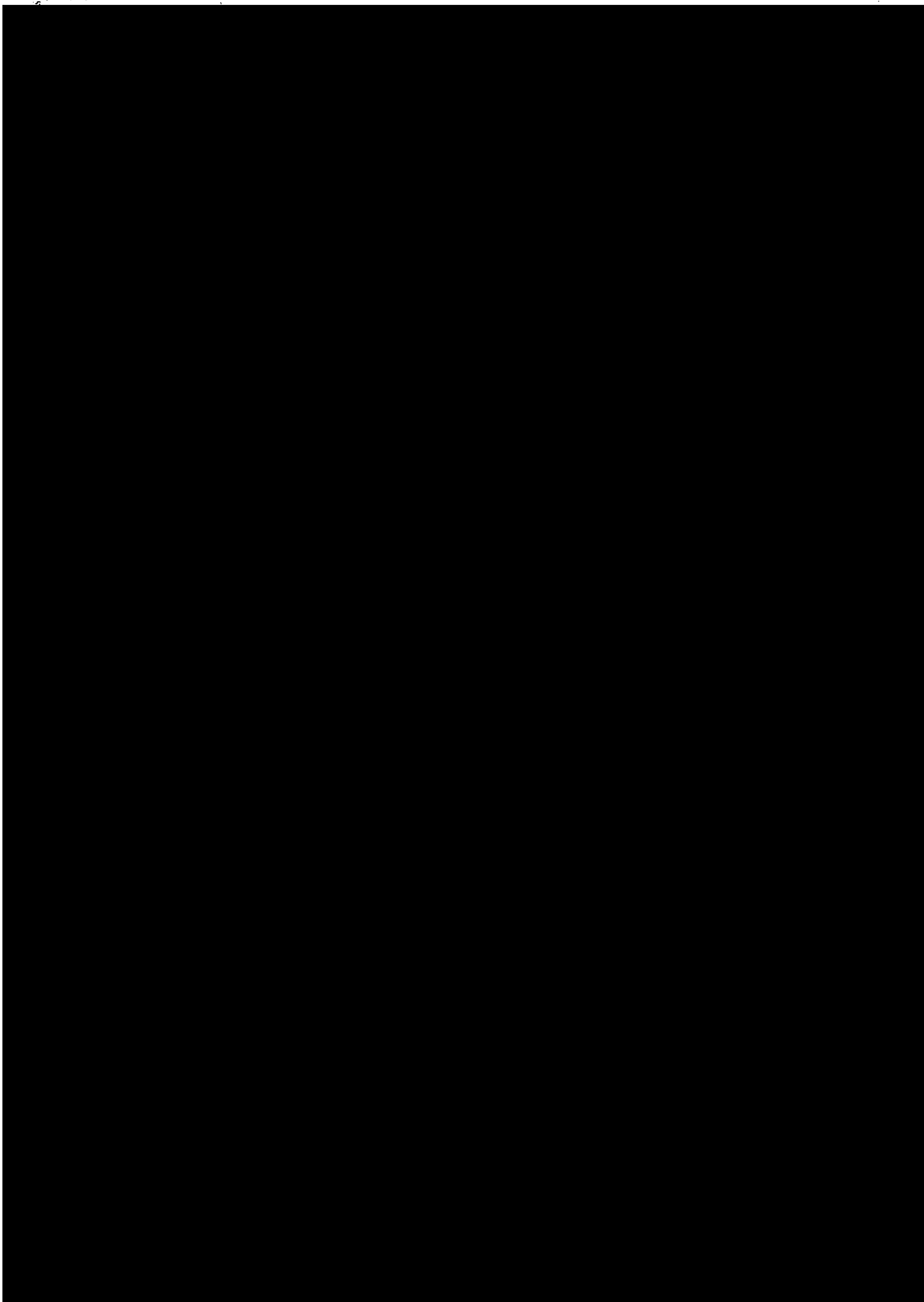


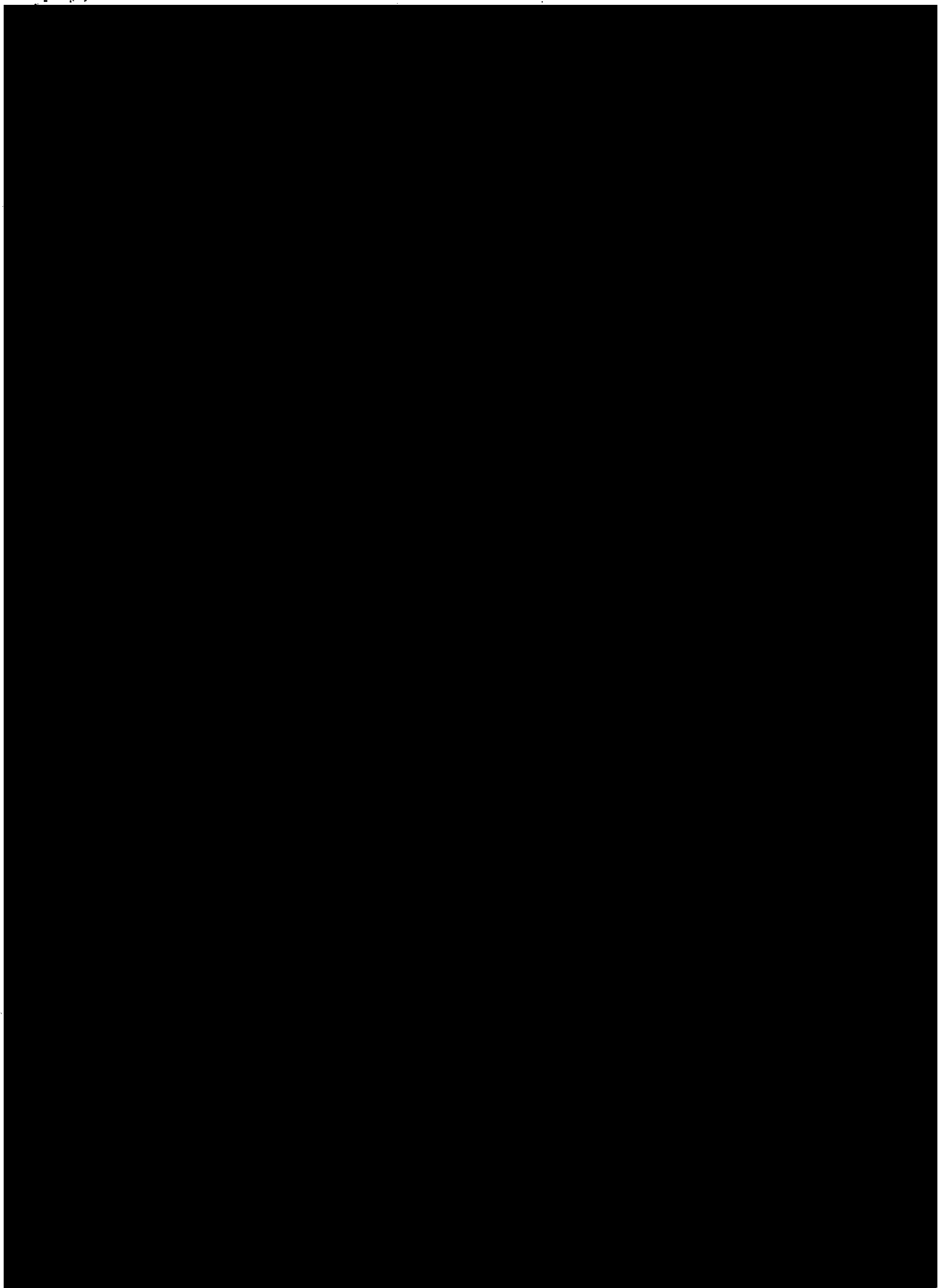


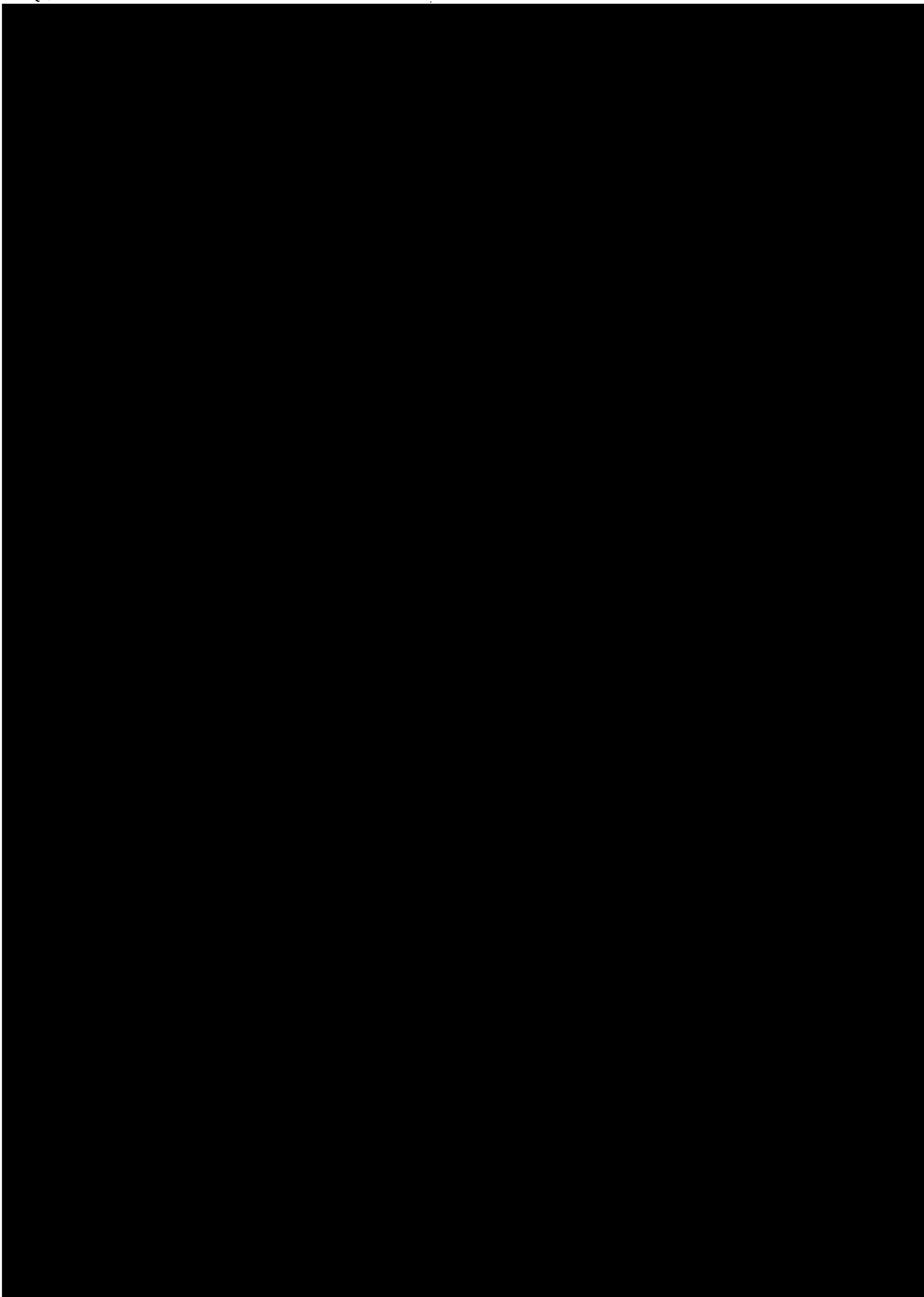


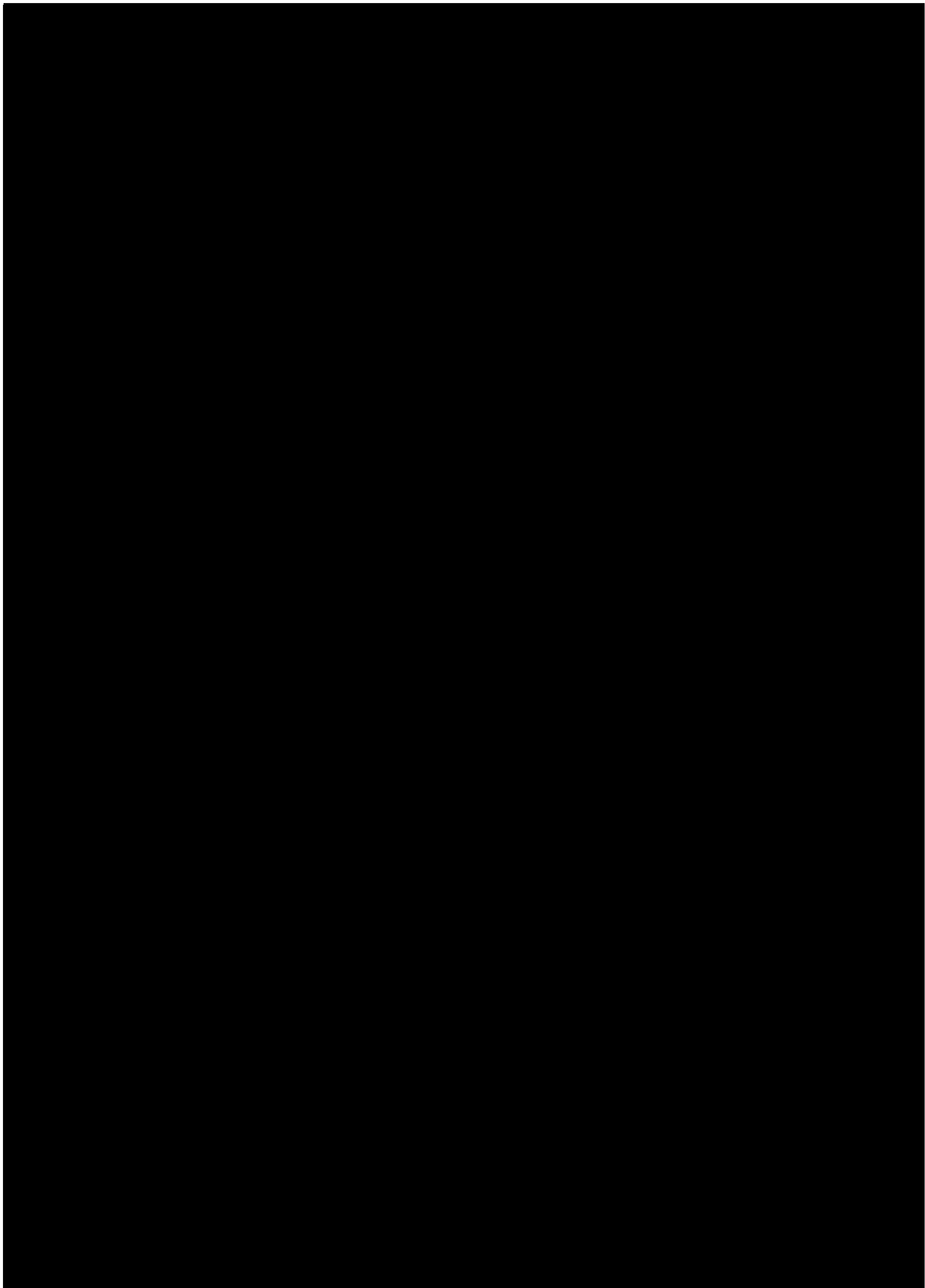


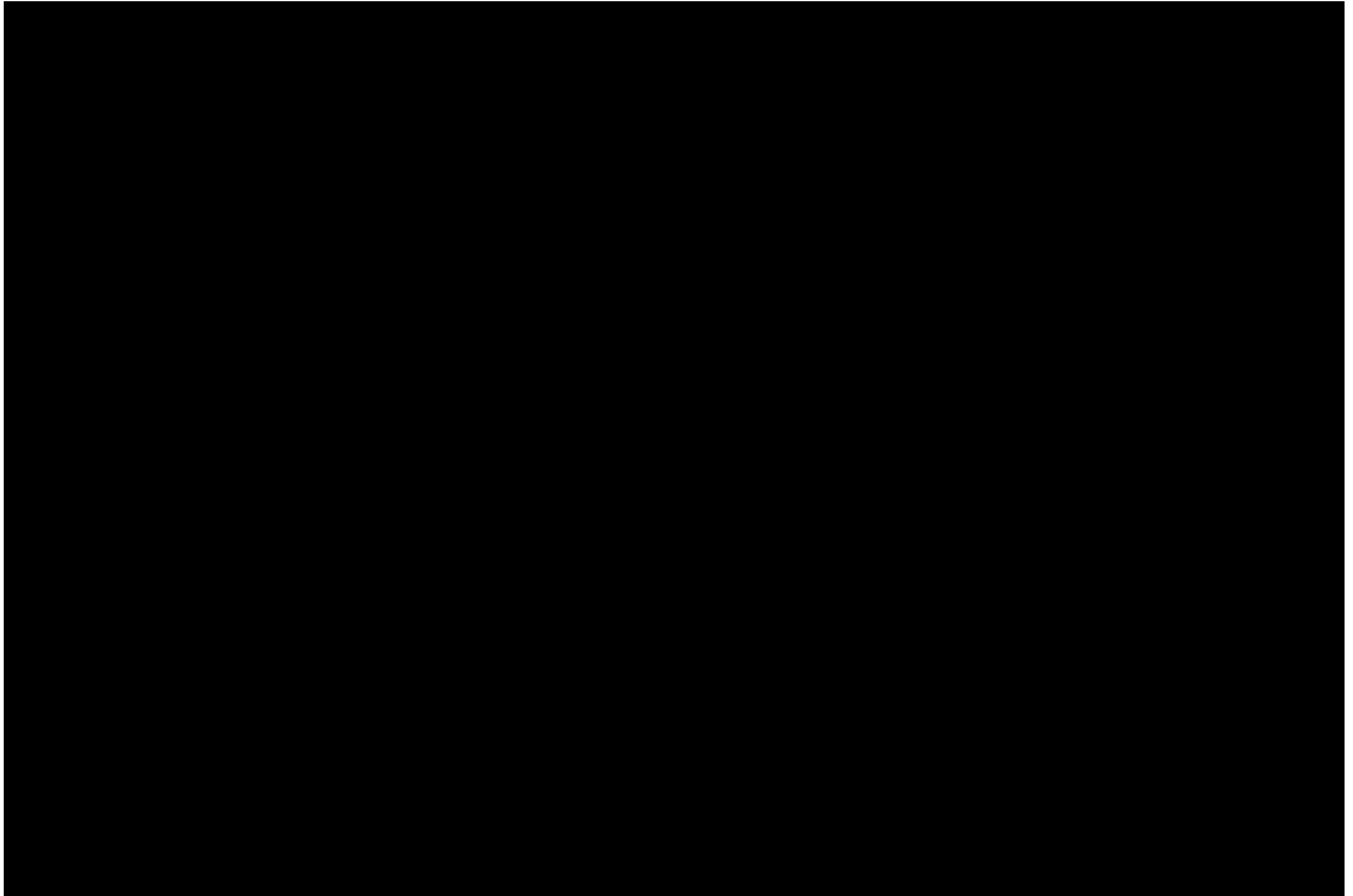


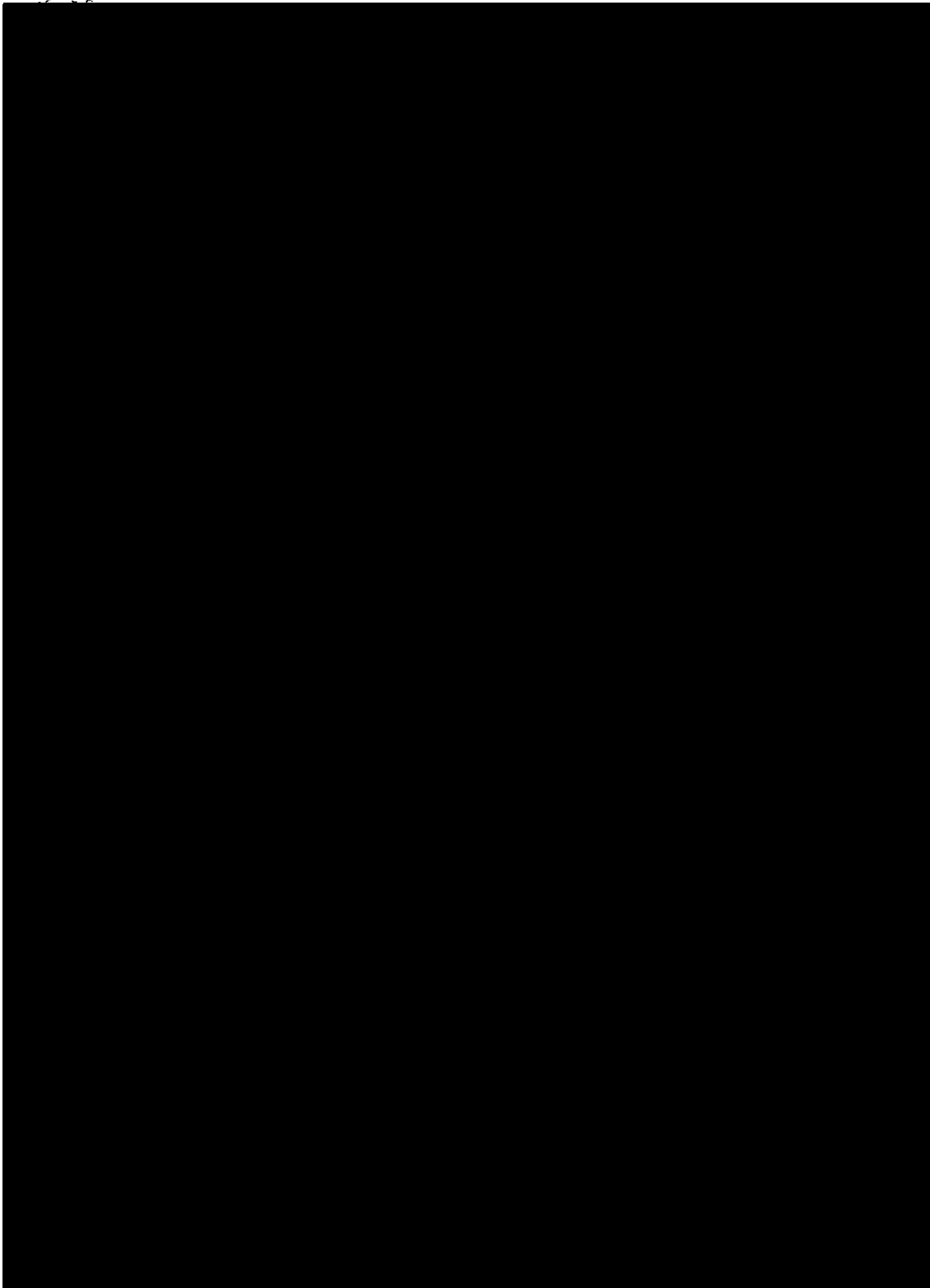


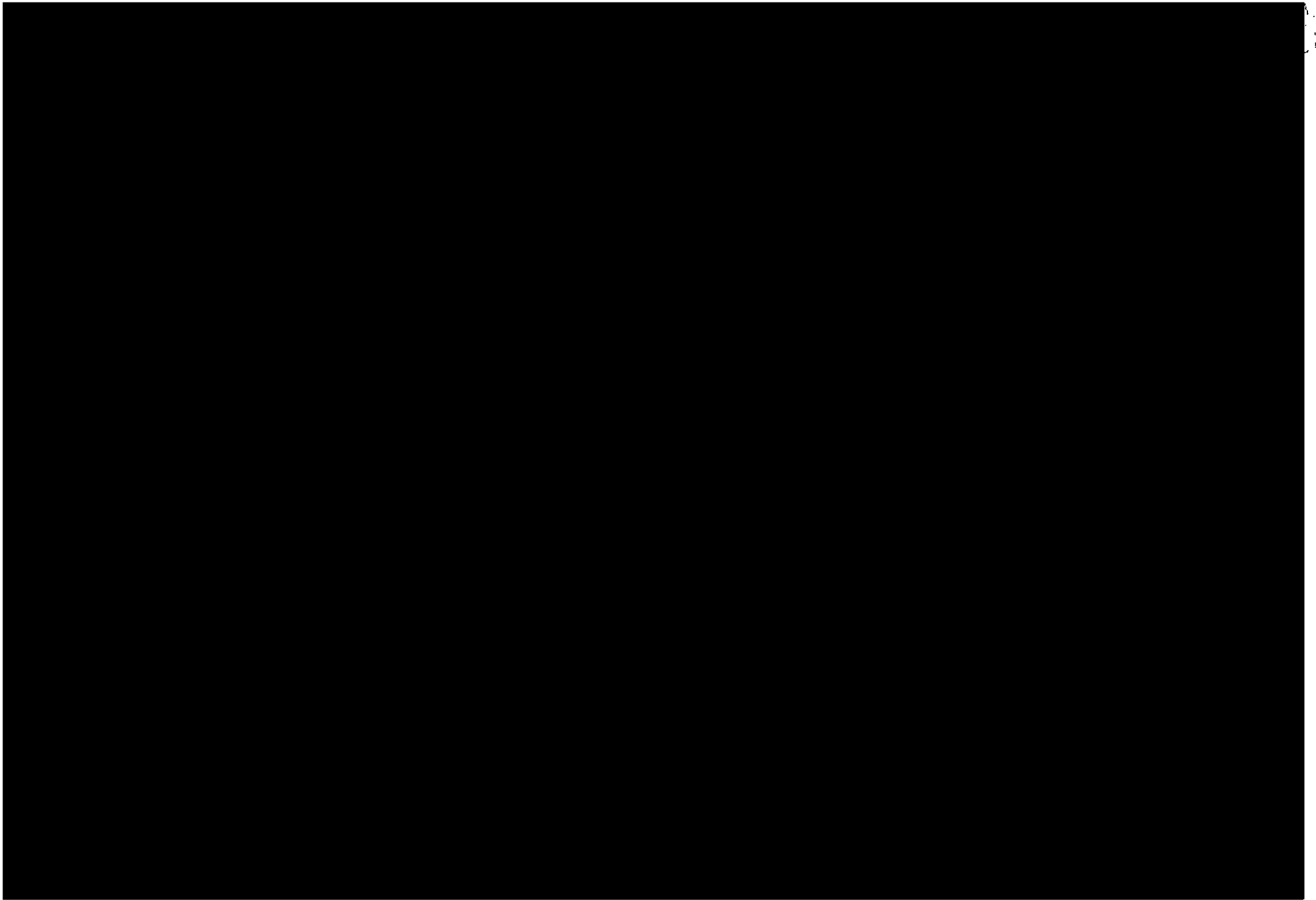


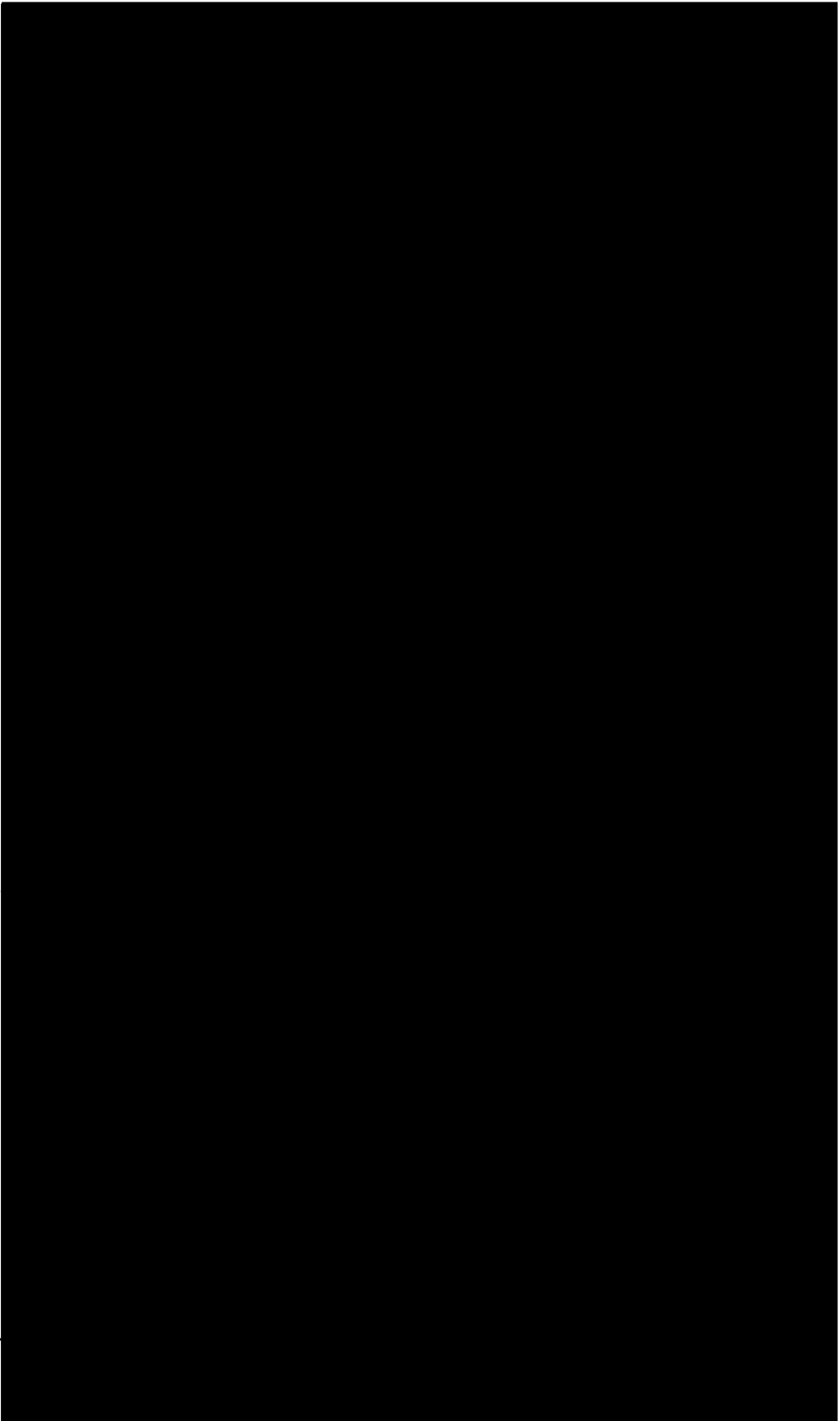


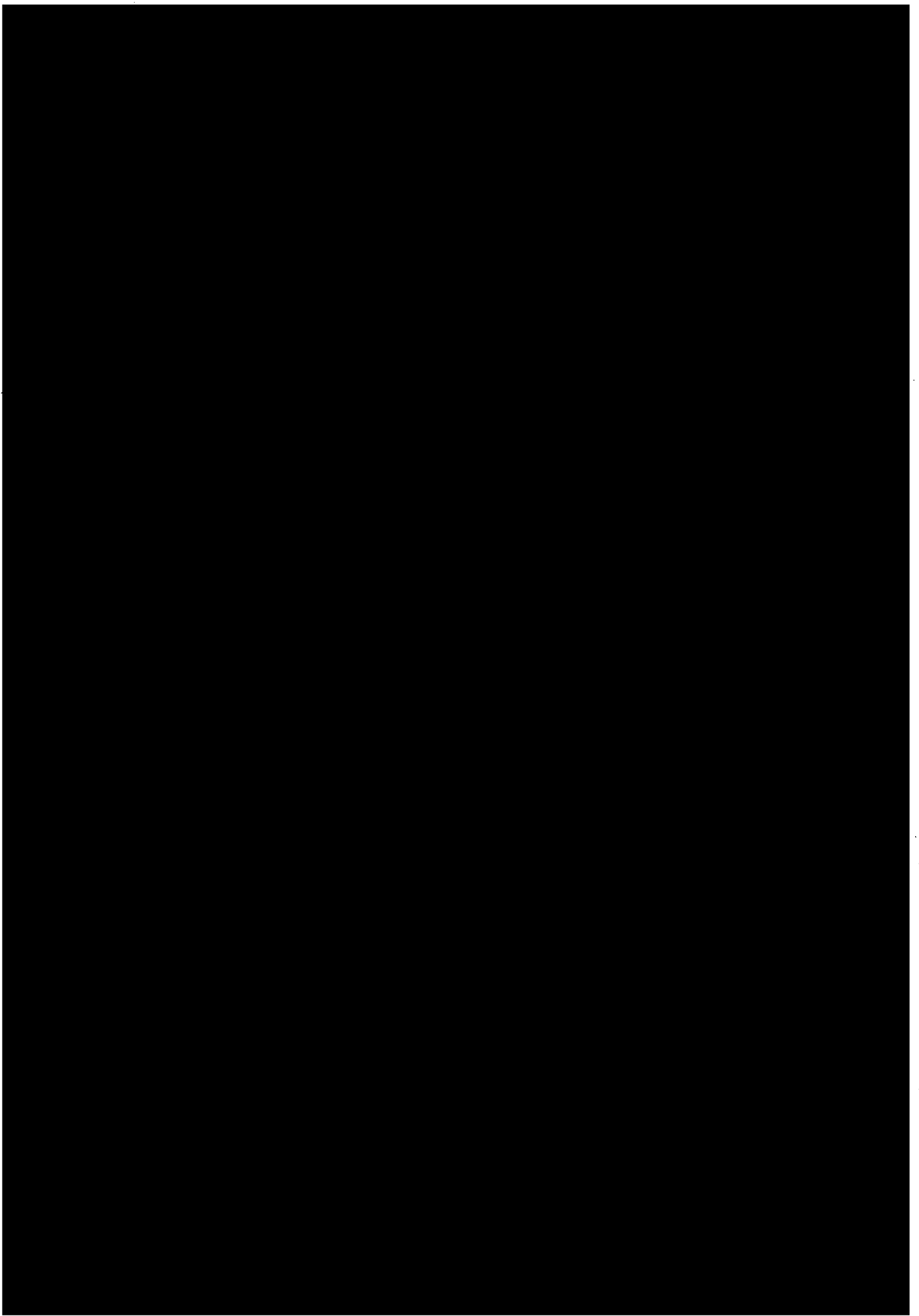


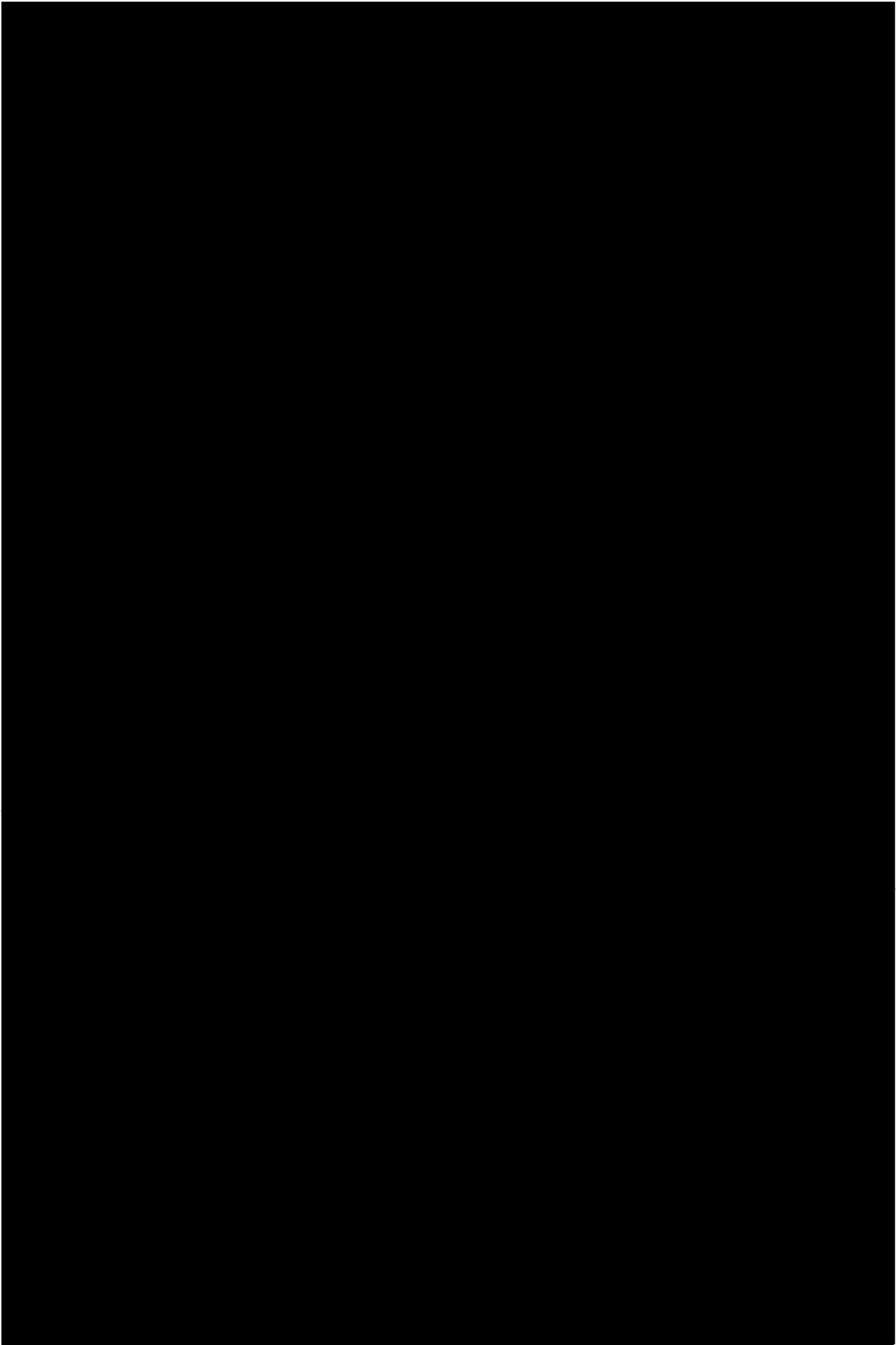












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