

Post Office Board Agenda (CCRC meeting)

Date:	Thursday 08 July 2021	Time	15:00 – 16:30 hrs	Location	Microsoft Teams Meeting/ Finsbury Dials
--------------	------------------------------	-------------	--------------------------	-----------------	--

Present		Other Attendees	
• Tim Parker (Chairman)	• Ken McCall (SID)	• Ben Foat (General Counsel)	• Richard Taylor (Group Corporate Affairs, Brand and Communications Director)
• Tom Cooper (NED)	• Carla Stent (NED)	• Rodric Williams (Head of Legal - Historical Matters)	• Veronica Branton (Company Secretary)
• Zarin Patel (NED)	• Lisa Harrington (NED)	• Alan Watts (Herbert Smith Freehills)	• Declan Salter (Historical Matters Director)
• Elliot Jacobs (NED)	• Saf Ismail (NED)	• Nick Vamos (Peters & Peters Solicitors LLP)	• Kevin Hutchinson (Programme Manager, Horizon IT Inquiry) (Item 4.)
• Nick Read (CEO)	• Alisdair Cameron (CFO)		

Apologies: N/A

Join Microsoft Teams Meeting

GRO United Kingdom, London (Toll)
Conference ID: 320 102 417#

Agenda Item	Action Needed	Lead
1. Welcome and Conflicts of Interest	Noting	Chairman
2. Minutes and Matters arising Minutes from 24 th June and 01 st July 2021	Approval	Chairman
3. Historical Shortfall Scheme: Test case materials Tranche 5 1. Claim 40 2. Claim 74 3. Claim 268 4. Claim 278 5. Claim 419 6. Claim 435 7. Claim 517 8. Claim 662 9. Claim 1169 10. Claim 2141	Approval	Alan Watts
4. Post Office Horizon IT Inquiry	Approval	Ben Foat & Kevin Hutchinson
5. Any Other Business	Noting	All

STRICTLY CONFIDENTIAL



POST OFFICE LIMITED BOARD MEETING

Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1

MINUTES OF A CCRC MEETING OF THE BOARD OF DIRECTORS OF POST OFFICE LIMITED HELD ON THURSDAY 24 JUNE 2021 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ BY CONFERENCE CALL AT 15.00 HRS¹

Present:

Tim Parker	Chairman (TP)
Ken McCall	Senior Independent Director (KM)
Carla Stent	Non-Executive Director (CS)
Zarin Patel	Non-Executive Director (ZP)
Lisa Harrington	Non-Executive Director (LH)
Tom Cooper	Non-Executive Director (TC)
Elliot Jacobs	Non-Executive Director (EJ)
Alisdair Cameron	Group Chief Finance Officer (AC)

In attendance:

Veronica Branton	Company Secretary (VB)
Ben Foat	Group General Counsel (BF)
Rodric Williams	Head of Legal – Historical Matters Legal (RW)
Richard Taylor	Group Corporate Affairs, Brand and Communications Director (RT)
Declan Salter	Historical Matters Director (DS)
Lucie Lambert	General Counsel – UKGI (LL)
Alan Watts	Herbert Smith Freehills (AW)
Nick Vamos	Peters & Peters Solicitors LLP (NV)
Simon Baker QC	2 Bedford Row (SB)
Jac Carey	2 Bedford Row (JC)
Zoe Johnson QC	QEB Hollis Whiteman (ZJ)
Peter Staniland	Paralegal, Peters & Peters Solicitors LLP (PS)

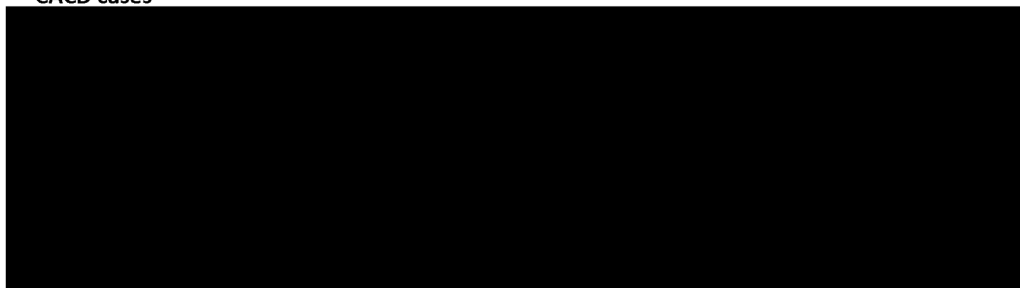
Apologies: Nick Read (CEO) and Saf Ismail (NED).**Agenda Item****Action****1. Welcome and Conflicts of Interest**

A quorum being present, the Chairman opened the meeting. The Directors declared that they had no conflicts of interest in the matters to be considered at the meeting in accordance with the requirements of section 177 of the Companies Act 2006 and the Company's Articles of Association.

2. Minutes and Matters Arising

The Board **APPROVED** the minutes of the Board meeting held on 17th June 2021.

The Board **NOTED** the action log.

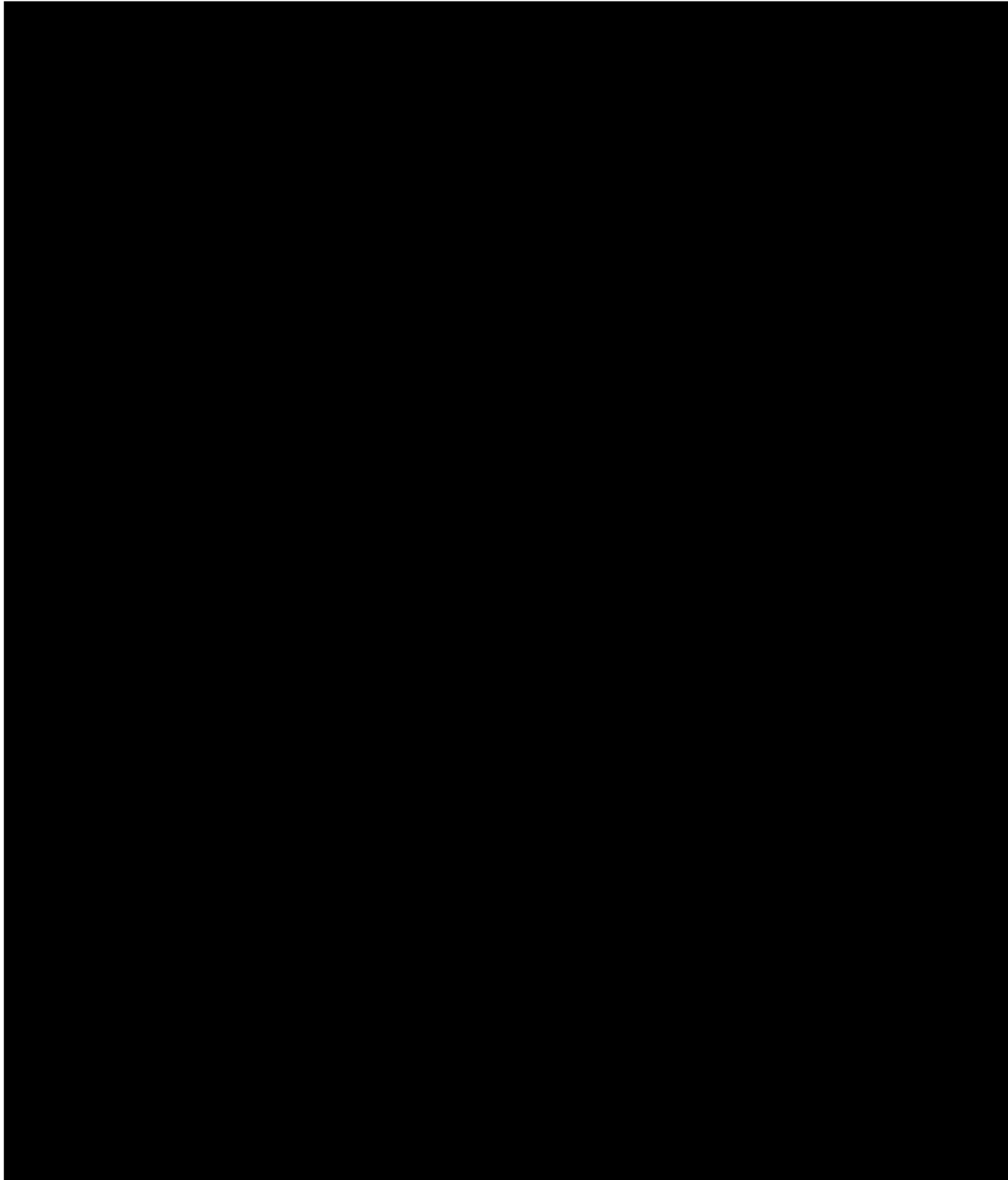
3. CACD cases

¹ Participation in the meeting was entirely via Microsoft Teams from participants' personal addresses. In such circumstances the Company's Articles of Association (Article 64) require that the location of the meeting be deemed as the chairman's location. However, it was not deemed appropriate to record personal addresses on the Company record. As such, the Registered Office is recorded as the meeting location.

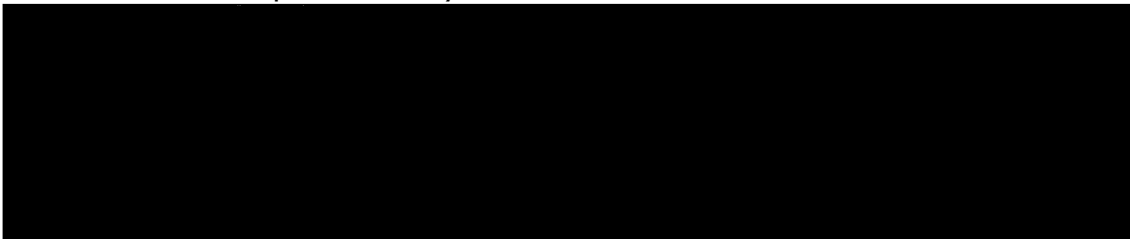


POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1



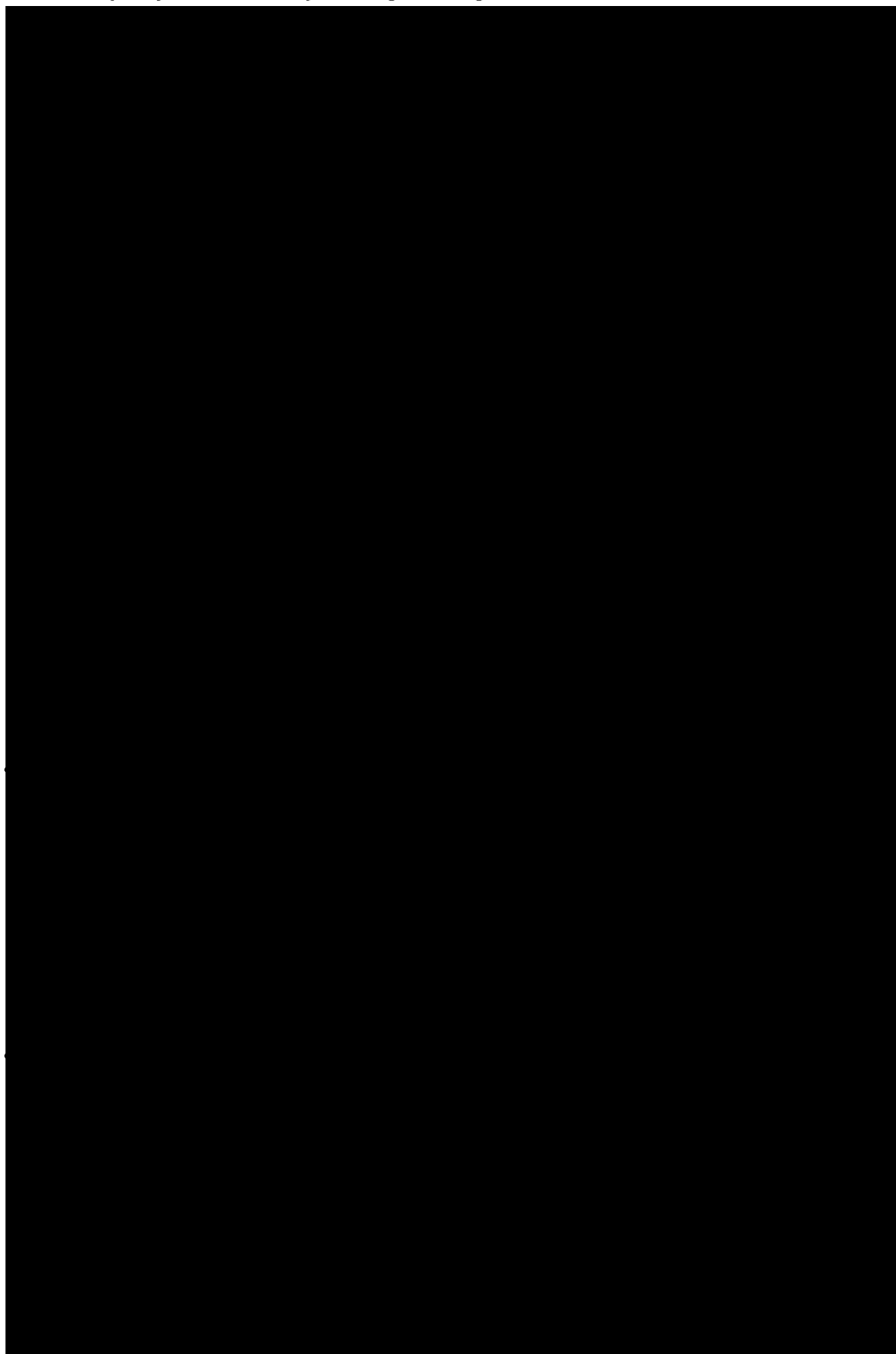
4. HSS cases for the Independent Advisory Panel





POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1



Page 3 of 7



POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

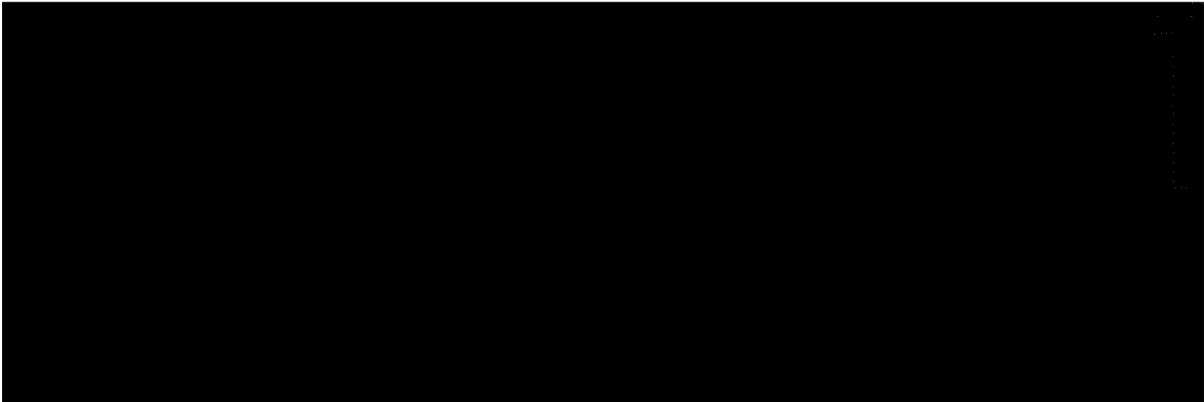
2.1



Lisa Harrington joined the meeting.

The Board **RESOLVED** that the additional 12 shortfall only test cases should be submitted to the Independent Advisory Panel for the Historical Shortfalls Scheme, subject to any comments from the BEIS Steerco.

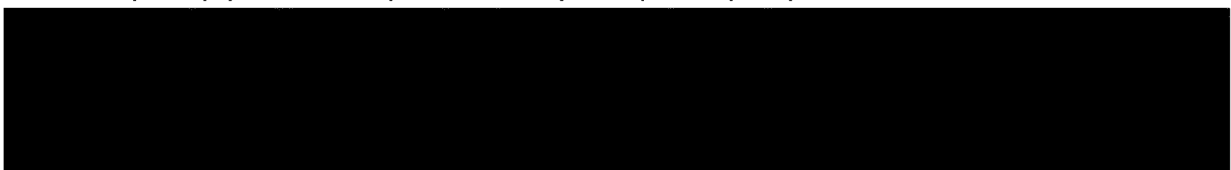
5. Settlement paper for the Independent Advisory Panel



The Board **RESOLVED**, subject to any comments from the BEIS Steerco, that:

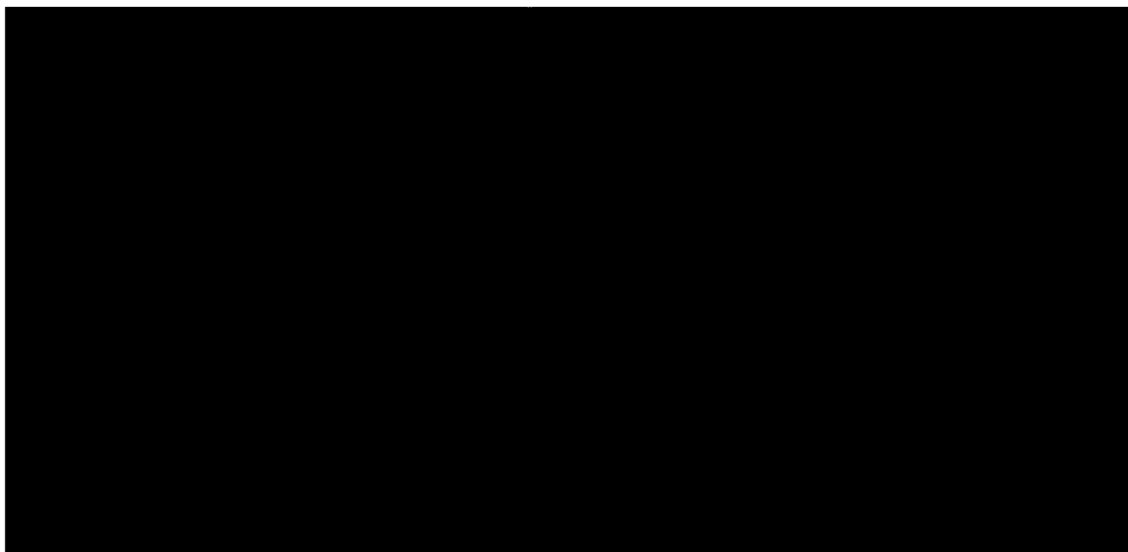
1. in relation to any Network Transformation Settlement Agreements (or similar) entered into prior to December 2019 the Independent Panel to the Historical Shortfalls Scheme be directed that POL would not be seeking to bar Applicants from the Scheme by enforcing the release in such settlements but account should still be taken of the economic benefit of such settlements where overlap can be shown in the amounts recovered under the previous settlement and the amounts being claimed in the Scheme.
2. in relation to any settlement agreements entered into under the previous mediation scheme the Independent Panel to the Historical Shortfalls Scheme be directed that POL would not be seeking to bar Applicants from the Scheme by enforcing the release in such settlements but account should still be taken of the economic benefit of such settlements where overlap can be shown in the amounts recovered under the previous settlement and the amounts being claimed in the Scheme.
3. the paper on document sources be provided to the Independent Panel to the Historical Shortfalls Scheme.

6. Surpluses paper for the Independent Advisory Panel (verbal update)





POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1

Carla Stent asked Declan Salter how many of the surpluses could be explained. DS reported that we had quite often been able to show the reason for the surplus and all of this information was being provided to the IAP for the test cases.

7. Any Other Business

7.1 Historical Shortfall Scheme Options Paper

Declan Salter introduced the paper which was asking the Board to consider the principle of whether we should investigate the shortfall as identified in the claim or for the entire tenure of the Postmaster's period in office. DS anticipated that the later approach would lead to claims taking at least twice as long to resolve. The challenge was how we could speed the process up for claimants and this paper was an attempt to address this. Al Cameron adding that aiming to make the majority of the offers by December 2022 seemed too slow. The proposals in the paper seemed a reasonable and proportionate answer but claims could be investigated further if requested.

A number of points were raised and addressed, including:

- Tim Parker noted that it was hard to criticise the approach if settling at around the level of the claim made but it was harder to know how deal with unquantified claims
- Tom Cooper supported the objective of speeding up the claims process but noted

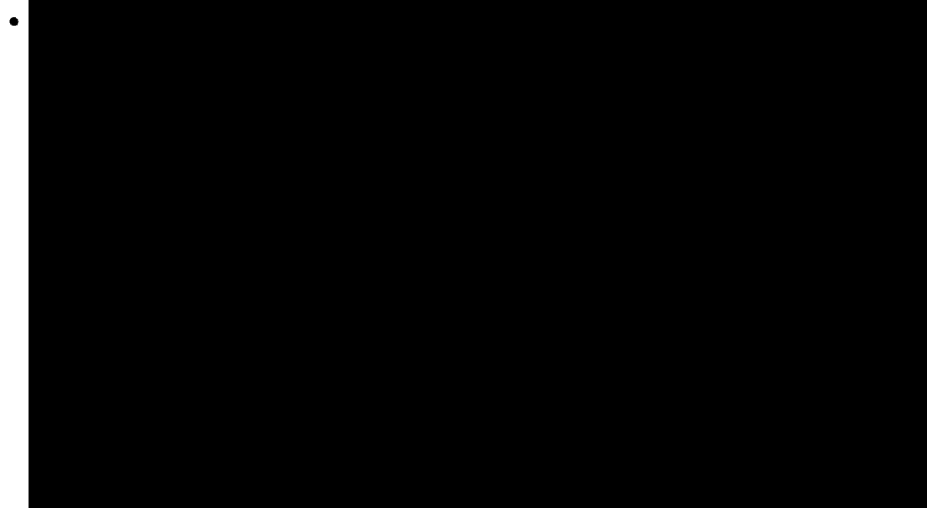


We needed to be comfortable that the approach we followed was not disadvantaging certain categories of claimants. We needed to see the timetable for settling claims set properly and with the assumptions that underpinned it so we could test the logic of the decisions we were being asked to take. We needed that evidence base, especially if additional costs might be incurred. DS explained that while there would be additional costs but would also be savings. Overall it would not more expensive to go quicker. TP said that while he was supportive in principle of having sensible levels of investigation and a sensible de minimis he seconded TC's view that the Board needed to see the figures underpinning the arguments. Ken McCall added that the timetable needed to provide assumptions on what would happen if we did "x, y or z" and its impact on the timetable

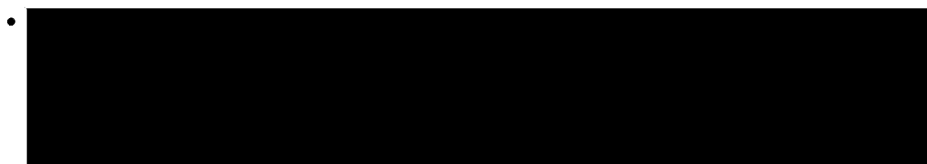
Action: DS



POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1

- TC noted that we also needed to know how many shortfalls had been found at L1, 2, and 3 of the investigation stages. TC would not be comfortable with an abridged approach if most shortfalls were found as part of L3 investigations. It was not possible for the Board to take the decisions it was being asked to today. While the Board supported the principle of getting things done quicker it needed to see the timetable and how it was proposed to expedite claims settlement. The desire was to pay up to the amount claimed but to be able to investigate other shortfalls if discovered but we needed feedback from the IAP on this approach and this brought us back to the ground rules for the investigation. DS reported that it might not be possible to provide a number of options for speeding up the timetable. TP requested that the Board be provided with the evidence that would support recommending to the IAP investigating up to L1 & 2 in the majority of cases
- TP requested that more specific calculations were provided to support the increased figure proposed for de minimis claims and added that this was a decision the Board needed to take once it knew what the principles around investigation levels would be and what approach the IAP was going to take. There needed to be an analytic approach to this matter including consideration of how the de minimis approach would affect the unquantified claims. It might prove to be right that we should increase the de minimis level but we did not yet have the data to support taking this decision

Action: DS**Action: DS**

7.2 POL's Stance on cooperating with the Solicitors Regulation Authority

The Board **RATIFIED** its decision confirming that POL's stance remained that it wished to cooperate with the Solicitors Regulation Authority's (SRA) investigation, including by providing information/documents (as previously stated); and noted that POL (through its external legal advisers) was liaising with Ben Foat's solicitors, and possibly the SRA, to consider the response to the notice.



POST OFFICE LIMITED BOARD MEETING

Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.1

7.3 Discussions with Government on interim payments

Al Cameron provided an update on the discussions with Government on making £100k interim payments for those appellants whose claims had been overturned by the Court of Appeal Criminal Division on grounds of limb 1 and limb 2 abuse of process. Government focus was on what would happen if the appellant would only have received, say, £80k, in compensation and we could not retrieve the additional sum already paid. We had explained how unlikely this scenario was but noted that we retained discretion to make different offers in individual cases. The subsidy rules created challenges for making the payments and the BEIS lawyers had sought a view on whether POL was an insolvent player. BEIS wanted to be able to provide the cover for the £90m of potential interim payments as soon as possible and were keen to get payments resolved before the Summer Recess but this timetable was not quick from our perspective because of the potential for further proceedings if we could not make good our expressed wish to provide compensation swiftly. Tom Cooper noted that we would either make payments under the existing rules or would legislate to be able to make the payments if that were required; we might need to announce that we were going to legislate to be able to make these payments so that people knew the money was coming. It was agreed that a letter to the Minister should be written.

Action: AC

TC would report this to

To do: TC

Carl Cresswell at BEIS.

Zarin Patel asked about the timeline for the IAP to respond to the various questions it was being asked.

7.4 Respondent's Notices

There being no further business the Chairman declared the meeting closed at 4.50 pm.

Chairman-----
Date



POST OFFICE LIMITED BOARD MEETING

Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.2

MINUTES OF A CCRC MEETING OF THE BOARD OF DIRECTORS OF POST OFFICE LIMITED HELD ON THURSDAY 01 JULY 2021 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ BY CONFERENCE CALL AT 14.00 HRS¹

Present:

Tim Parker	Chairman (TP)
Ken McCall	Senior Independent Director (KM)
Tom Cooper	Non-Executive Director (TC)
Carla Stent	Non-Executive Director (CS)
Zarin Patel	Non-Executive Director (ZP)
Lisa Harrington	Non-Executive Director (LH)
Elliot Jacobs	Non-Executive Director (EJ)
Saf Ismail	Non-Executive Director (SI)
Alisdair Cameron	Group Chief Finance Officer (AC)
Nick Read	Group Chief Executive (NR)

In attendance:

Veronica Branton	Company Secretary (VB)
Ben Foat	Group General Counsel (BF)
Rodric Williams	Head of Legal – Historical Matters Legal (RW)
Lucie Lambert	General Counsel – UKGI (LL)
Alan Watts	Herbert Smith Freehills (AW)
Nick Vamos	Peters & Peters Solicitors LLP (NV)

Apologies: N/A**Agenda Item****Action****1. Welcome and Conflicts of Interest²**

A quorum being present, the Chairman opened the meeting. The Directors declared that they had no conflicts of interest in the matters to be considered at the meeting in accordance with the requirements of section 177 of the Companies Act 2006 and the Company's Articles of Association.

2. Criminal Law Matters

Nick Vamos reported that the latest Respondent's Notices had been submitted to the Court of Appeal Criminal Division (CACD). A couple of directions had been issued by the CACD with which we needed to comply between now and 20th July 2021 but NV did not expect these to need to come to the Board.

A timetable had been agreed with the CACD on 11 further cases which would be brought for discussion by the Board on 5th August 2021.

3. Overturned Convictions**3.1 Admission of Liability**

¹ Participation in the meeting was entirely via Microsoft Teams from participants' personal addresses. In such circumstances the Company's Articles of Association (Article 64) require that the location of the meeting be deemed as the chairman's location. However, it was not deemed appropriate to record personal addresses on the Company record. As such, the Registered Office is recorded as the meeting location.

² The Minutes from the CCRC Meeting held on 24th June 2021 and action log will be carried over to the next scheduled CCRC Meeting.



POST OFFICE LIMITED BOARD MEETING

*Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD***2.2**

Action: AW

To do: AW

3.2 Interim Payments

There was a meeting with the BEIS SteerCo this week and there would be a further meeting next week and some information had been provided in response to requests from the SteerCo. Al Cameron added that daily communications were taking place with Government on interim payments and the business case had been submitted to BEIS. It was a long process because of the nature of the subsidy regime. We had to set out a broad category of claims/ potential claims as well as requesting the £90m for the interim payments because such a submission could only be made once every five years. Tom Cooper reported that we had dealt with the most complicated issues from a process perspective. We had also asked whether we could let the claimants' solicitors know that we were working on being able to make interim payments and should receive a definitive statement on this shortly.

4. Historical Shortfalls Scheme: Surplus Issue



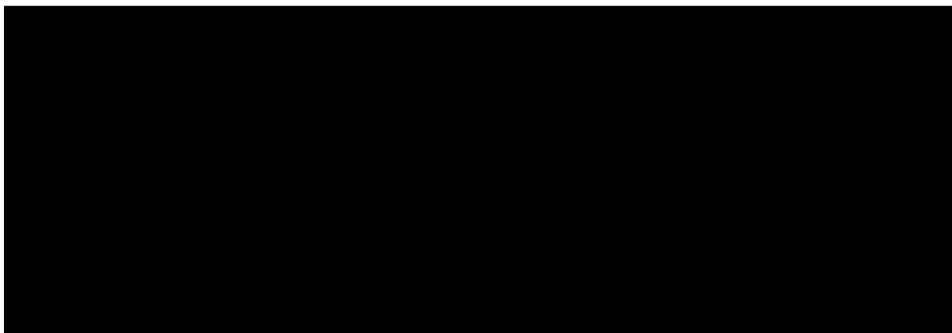
POST OFFICE LIMITED BOARD MEETING
Strictly Confidential and Subject to Legal Privilege – DO NOT FORWARD

2.2



To do: TC/
AW

Tom Cooper left the meeting.



To do: EJ/
AW

The Board **APPROVED** sending the paper to go to the IAP, subject to reflecting the comments raised.

To do: AW

5. Any Other Business

There being no further business the Chairman declared the meeting closed at 14.40 hrs.

Chairman

Date

Post Office Limited Board CCRC Actions as at 06.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
Board (CCRC) Meeting 24 September 2020					
8. Potential claims against Fujitsu		Alan Watts			Open
Board (CCRC) Meeting 18 March 2021					
5. Civil liability update		Alan Watts		Will come back to Board in 2-3 weeks' time.	Open and Ongoing
Board (CCRC) Meeting 29 April 2021					
5. Potential Future Appellants (PFAs): update on 40 new appeals and decision on extension for service of Respondent's Notices		Ben Foat			Open
Board (CCRC) Meeting 06 May 2021					
3. Improvement Delivery Group (IDG) Update and preparation for the Inquiry f)		Jeff Smyth	July Board meeting		Open
Board (CCRC) Meeting 13 May 2021					
3.1 Historical Shortfall Scheme: Decision-making		Declan Salter/ Alan Watts			Open

Post Office Limited Board CCRC Actions as at 06.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
a)					
3.1 Historical Shortfall Scheme: Decision-making b)	TC asked how we demonstrated the financial difference in settlement offers depending on which level of investigation was carried out. DS would provide more information and analysis for the Board on the "L123" proposals and noted that this was not a one-off decision for the Board.	Declan Salter		A paper is being drafted for the Board to review the approach to investigation procedures.	Open
3.1 Historical Shortfall Scheme: Decision-making d)		Alan Watts			Open
Board (CCRC) Meeting 25 May 2021					
3.2 William Michael Penney		Alan Watts			Open
3.6 Asif Latif a)		Alan Watts			Open
3.6 Asif Latif b)		Alan Watts			Open
Board (CCRC) Meeting 10 June 2021					
3.3 Standstill agreement	Tom Cooper asked for Alan Watts to provide the Board with the pros and cons of admitting	Alan Watts			Open

Strictly Confidential Page 2 of 4

Post Office Limited Board CCRC Actions as at 06.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
4. Tranche 2 and Tranche 3 Test cases		Alan Watts	July 2021	Draft paper being discussed internally and should be shared with the Board for the meeting on 1 st July 2021.	Open
Board (CCRC) Meeting 24 June 2021					
7.1 Historical Shortfall Scheme Options Paper a)	We needed to be comfortable that the approach we followed was not disadvantaging certain categories of claimants. We needed to see the timetable for settling claims set properly and with the assumptions that underpinned it so we could test the logic of the decisions we were being asked to take.	Declan Salter			Open
7.1 Historical Shortfall Scheme Options Paper b)	TP requested that the Board be provided with the evidence that would support recommending to the IAP investigating up to L1 & 2 in the majority of cases	Declan Salter			Open
7.1 Historical Shortfall Scheme Options Paper c)	TP requested that more specific calculations were provided to support the increased figure proposed for de minimis claims and added that this was a decision the Board needed to take once it knew what the principles around investigation levels would be and what approach the IAP was going to take. There needed to be an analytic approach to this matter including consideration of how the de minimis approach would affect the unquantified claims.	Declan Salter			Open
7.3 Discussions with Government on interim payments	Tom Cooper noted that we would either make payments under the existing rules or would legislate to be able to make the payments if that were required; we might need to announce that we were going to legislate to be able to make	Al Cameron			Open

Post Office Limited Board CCRC Actions as at 06.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
	these payments so that people knew the money was coming. It was agreed that a letter to the Minister should be written.				
Board (CCRC) Meeting 01 July 2021					
3.1 Admission of Liability		Alan Watts			

Tab 3.1 HSF Cover Note on test cases (Tranche 5)

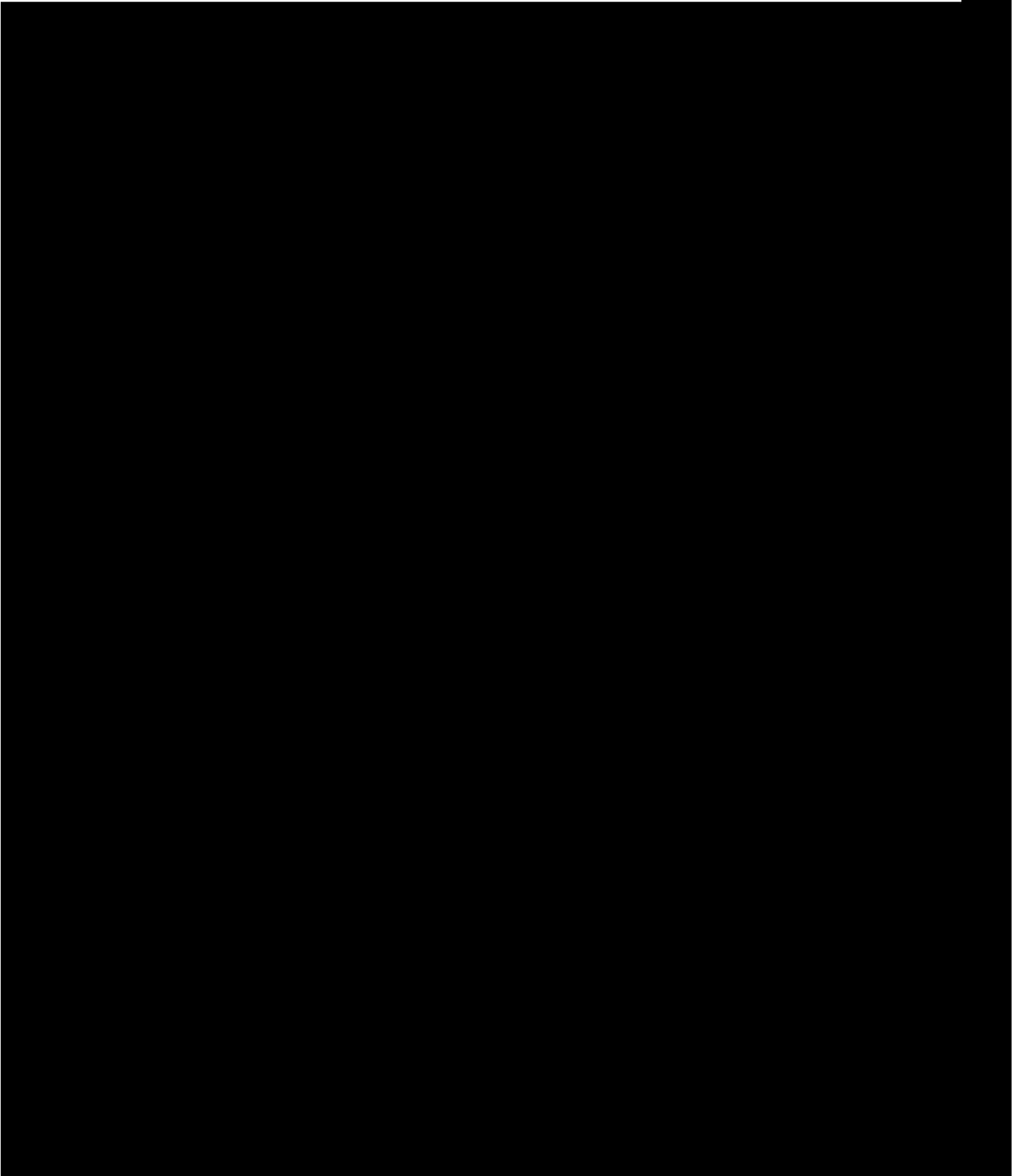


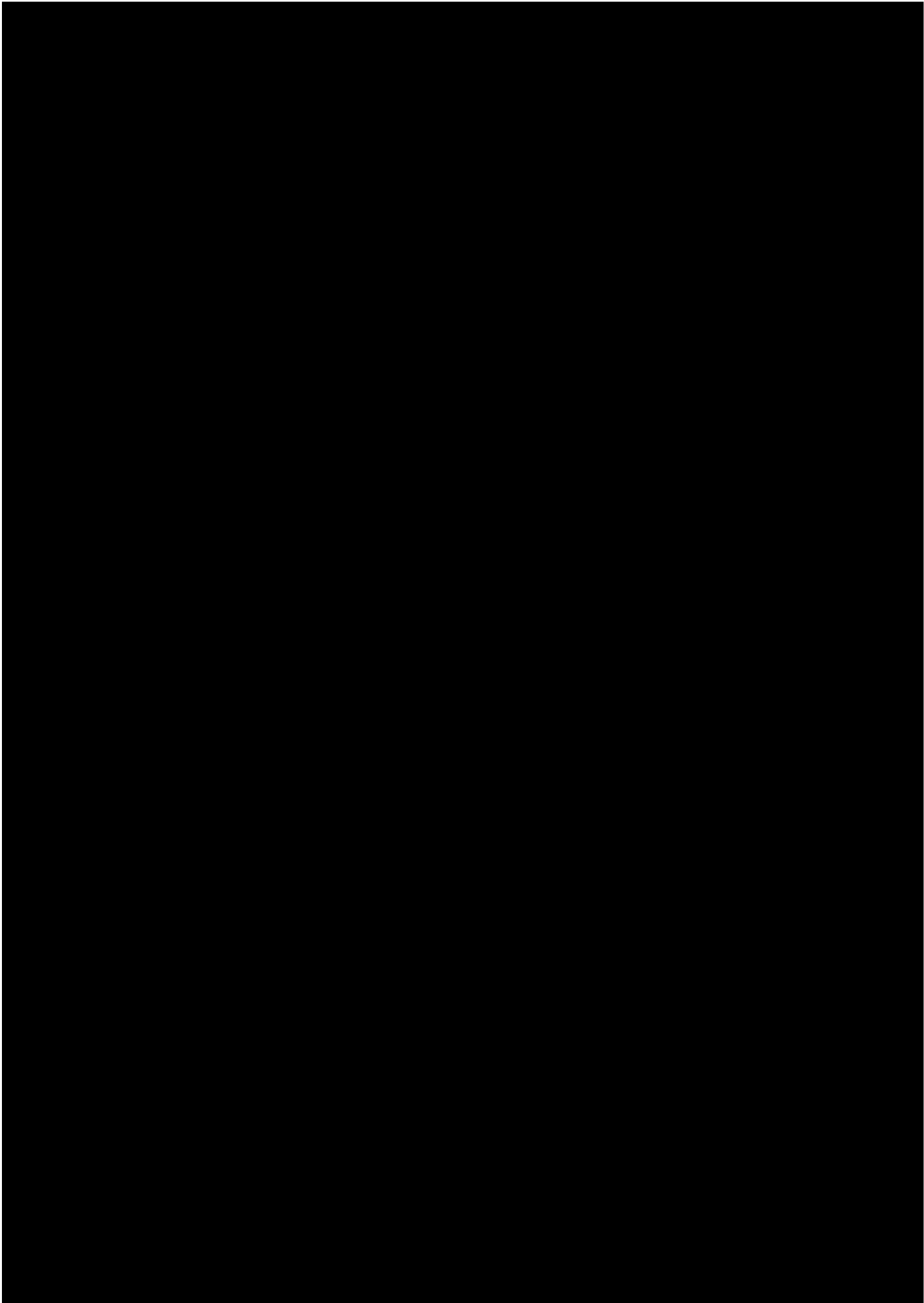
HERBERT
SMITH
FREEHILLS

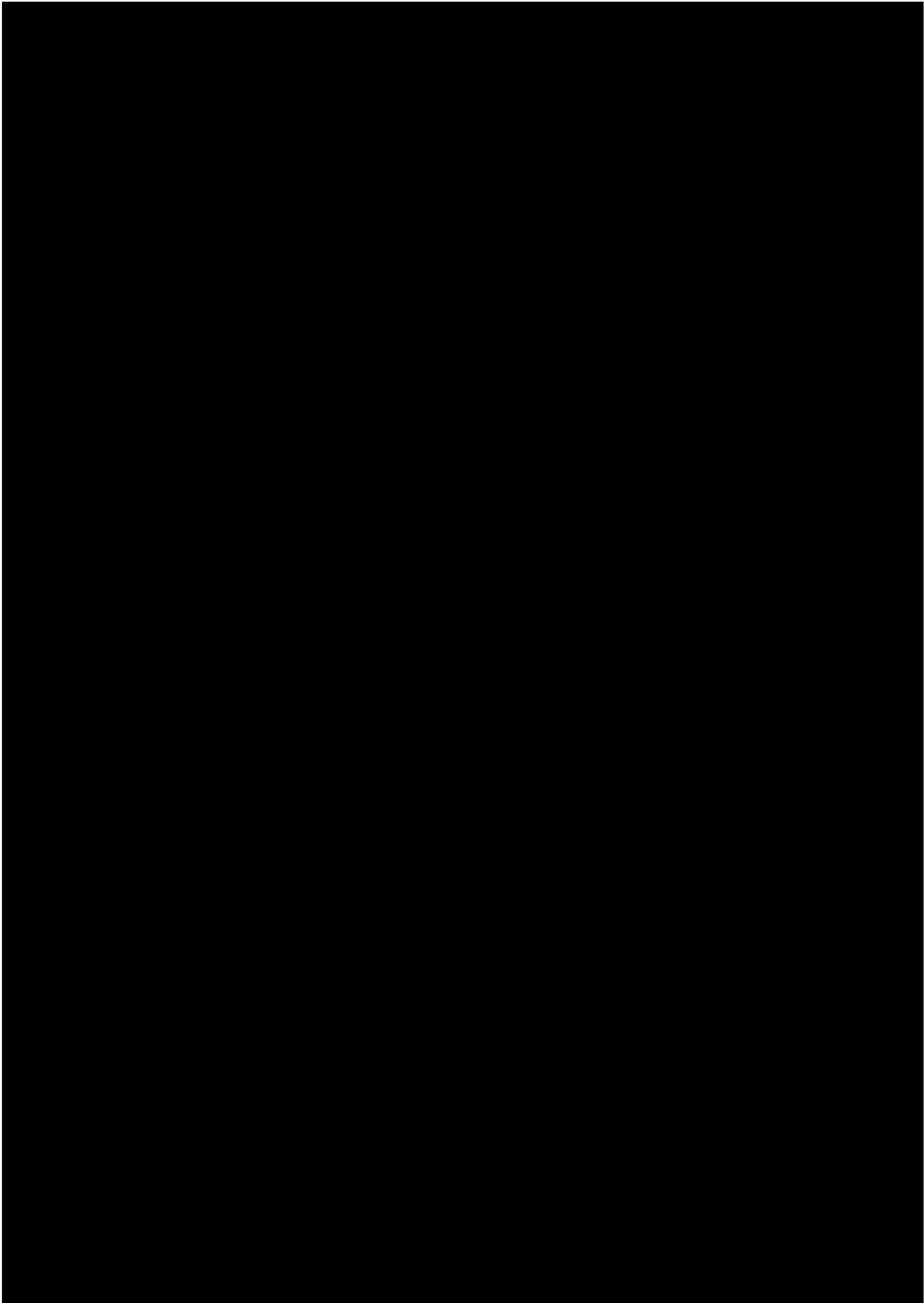
Confidential and Privileged
HSF draft: 6 July 2021

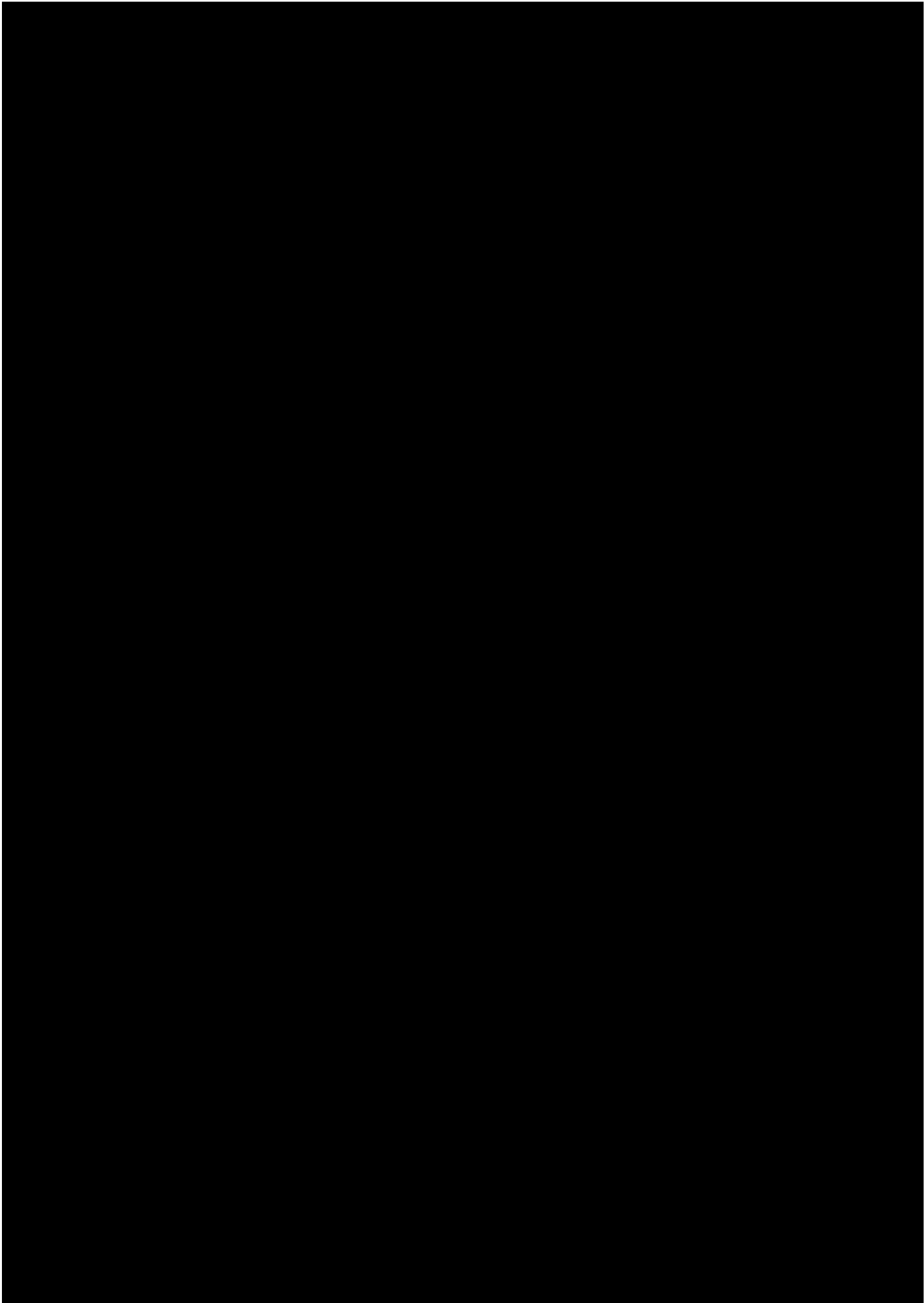
POST OFFICE
HISTORICAL SHORTFALL SCHEME
TEST CASES – TRANCHE 5

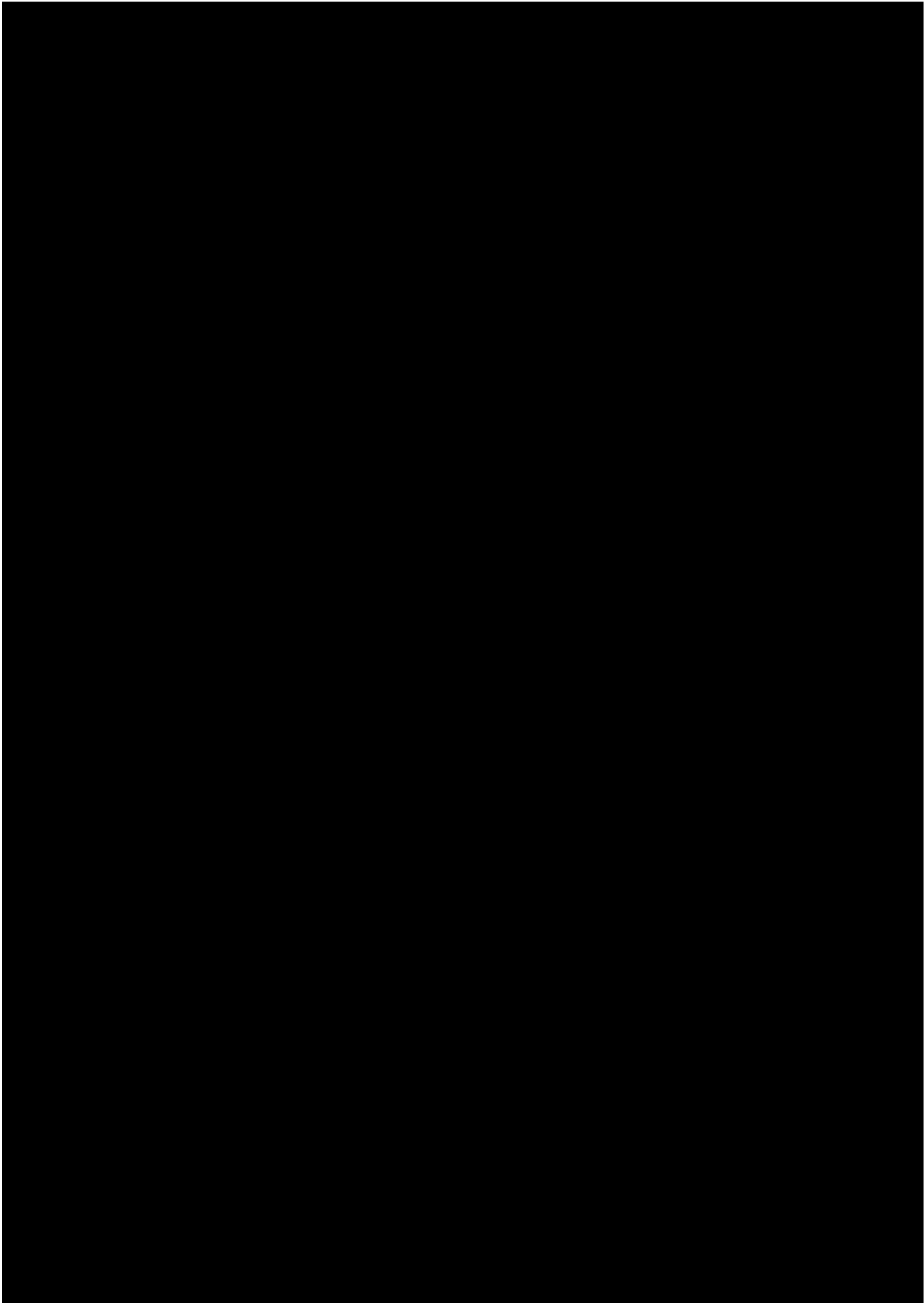
3.1

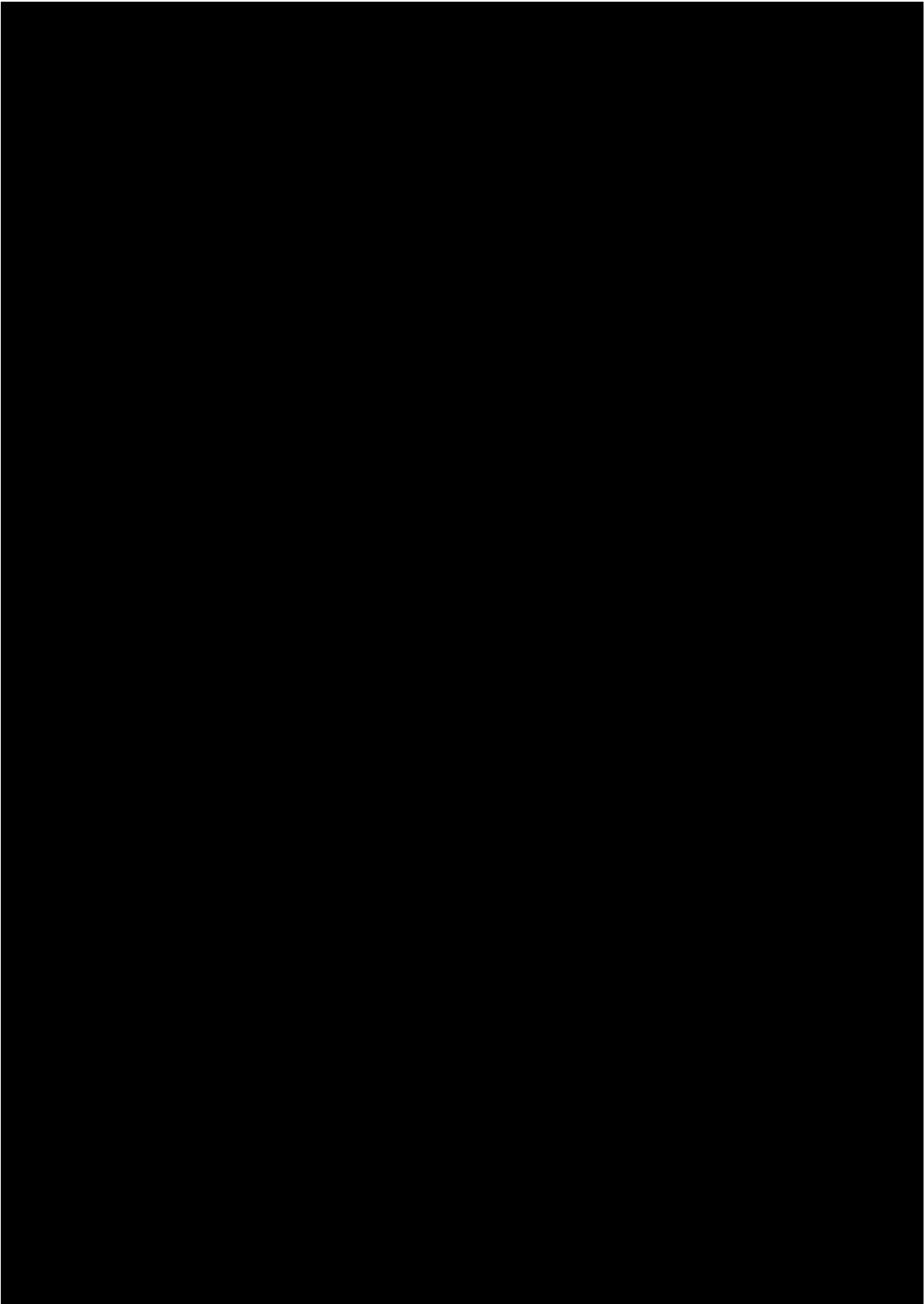


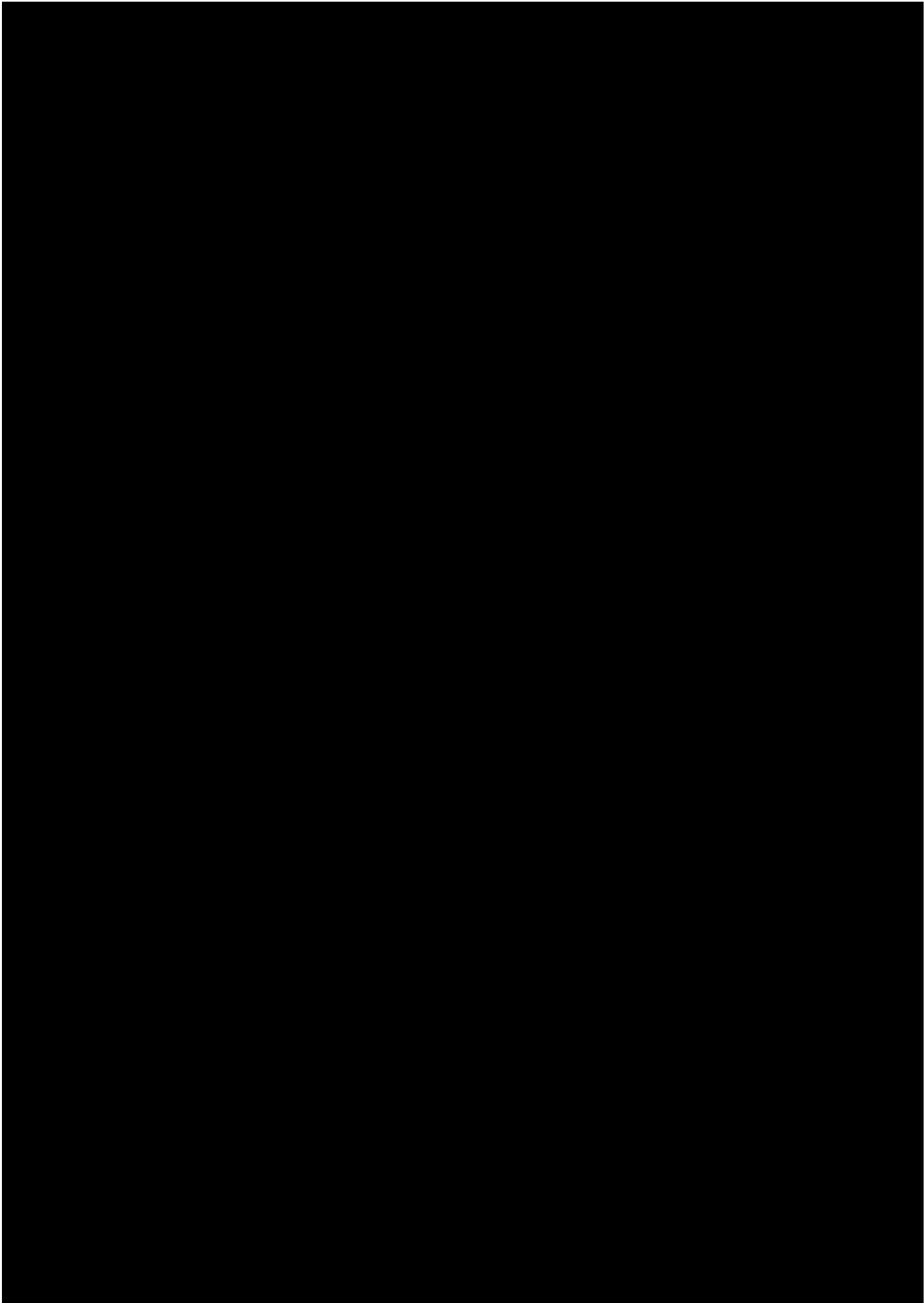


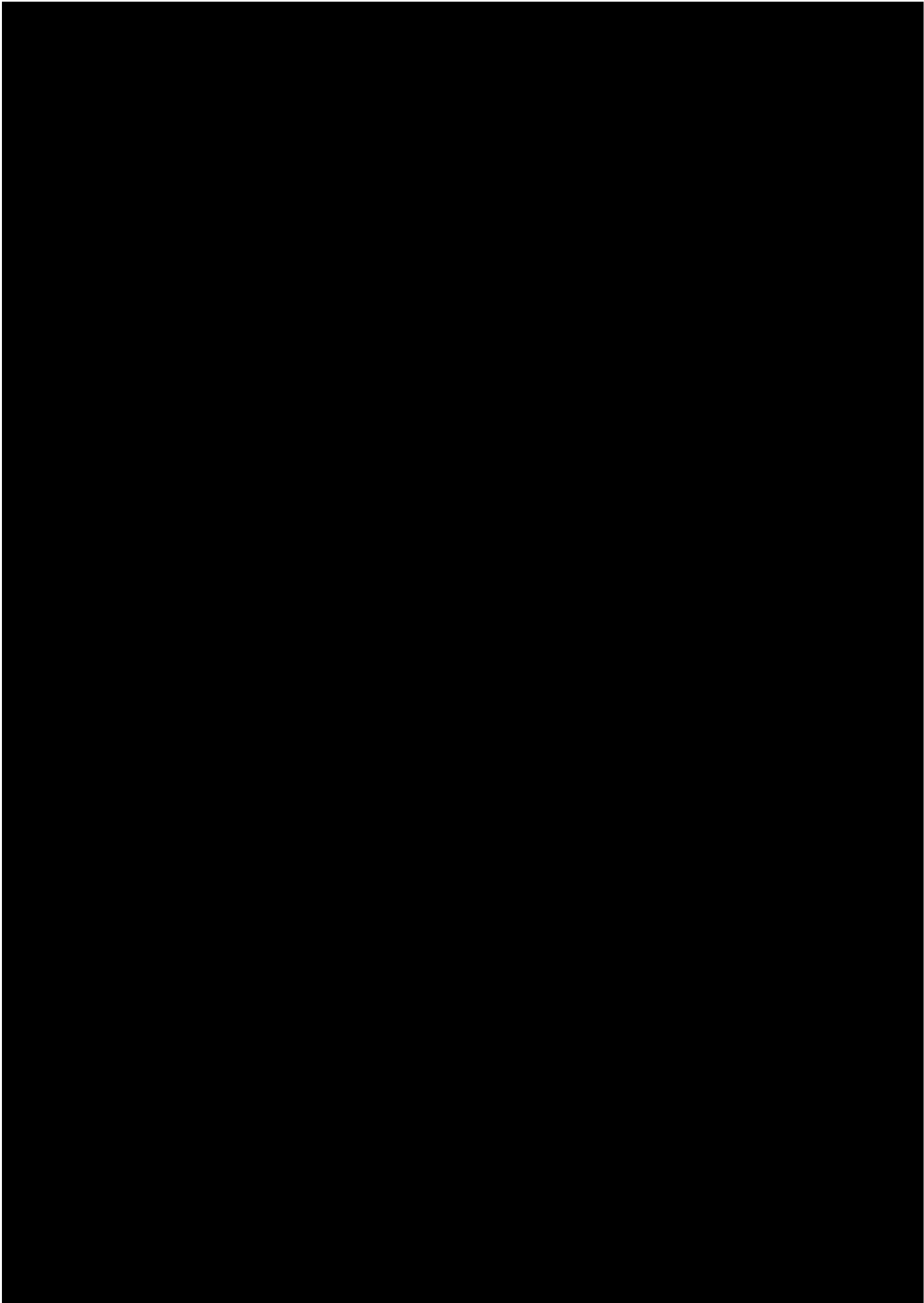


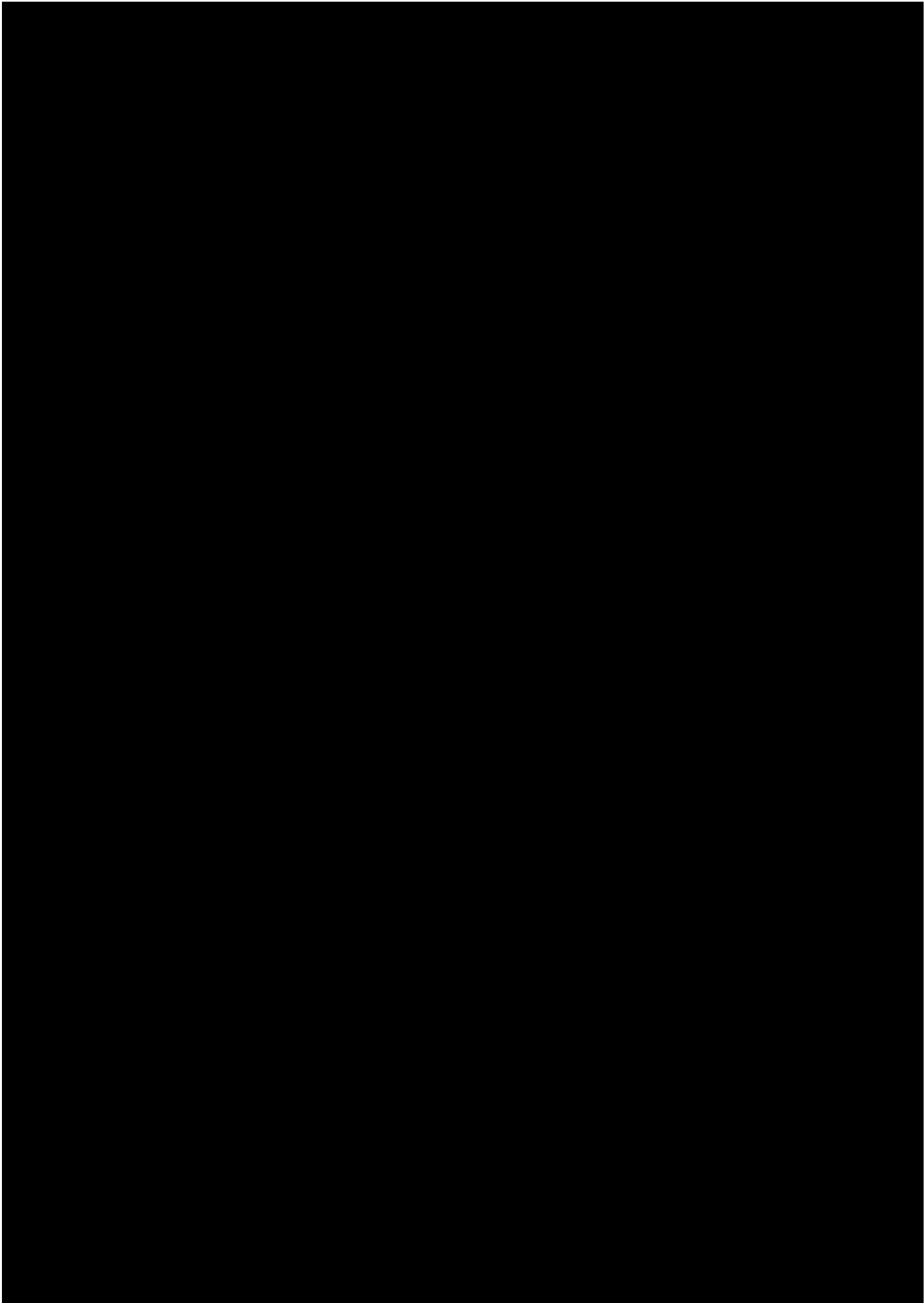


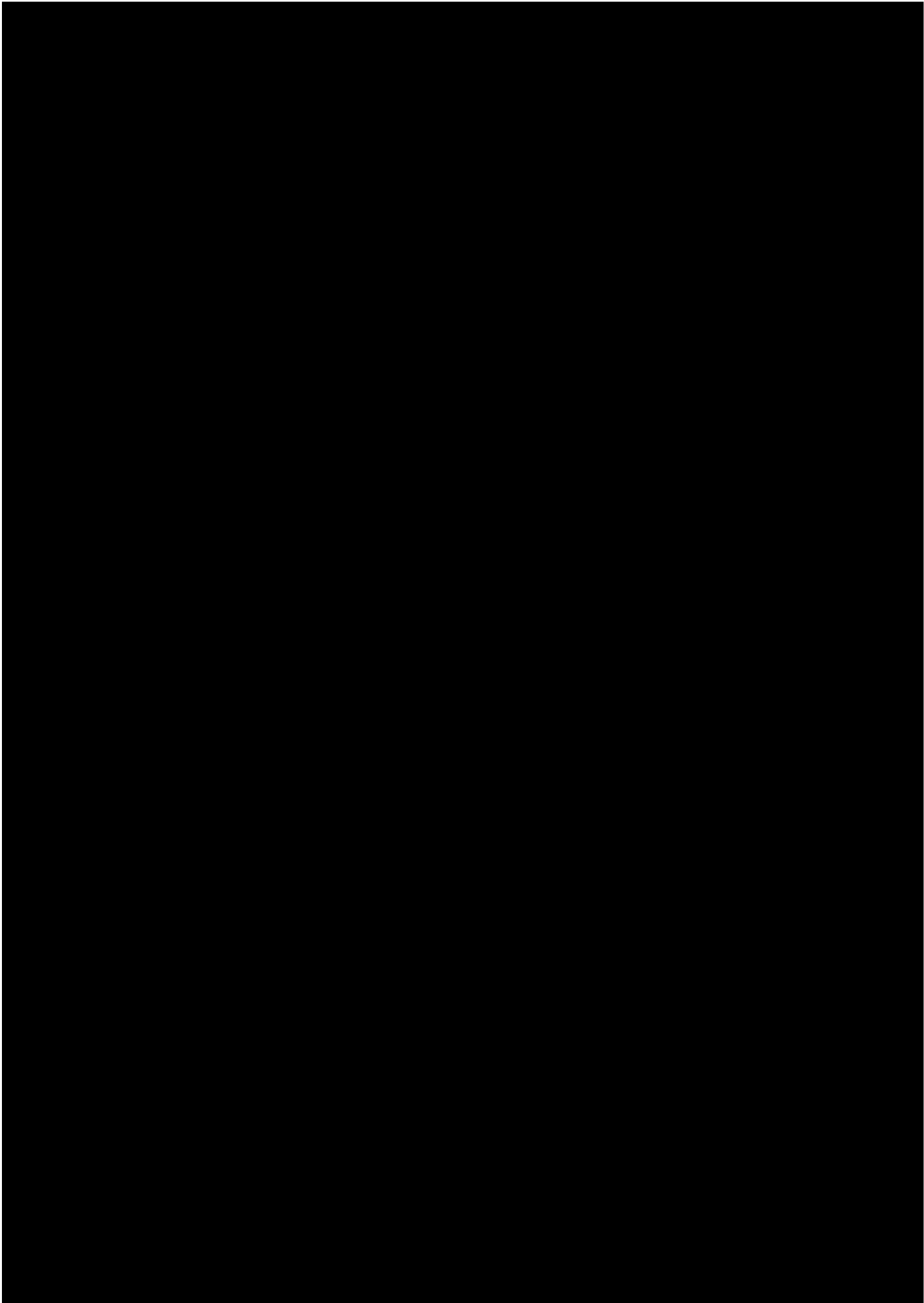


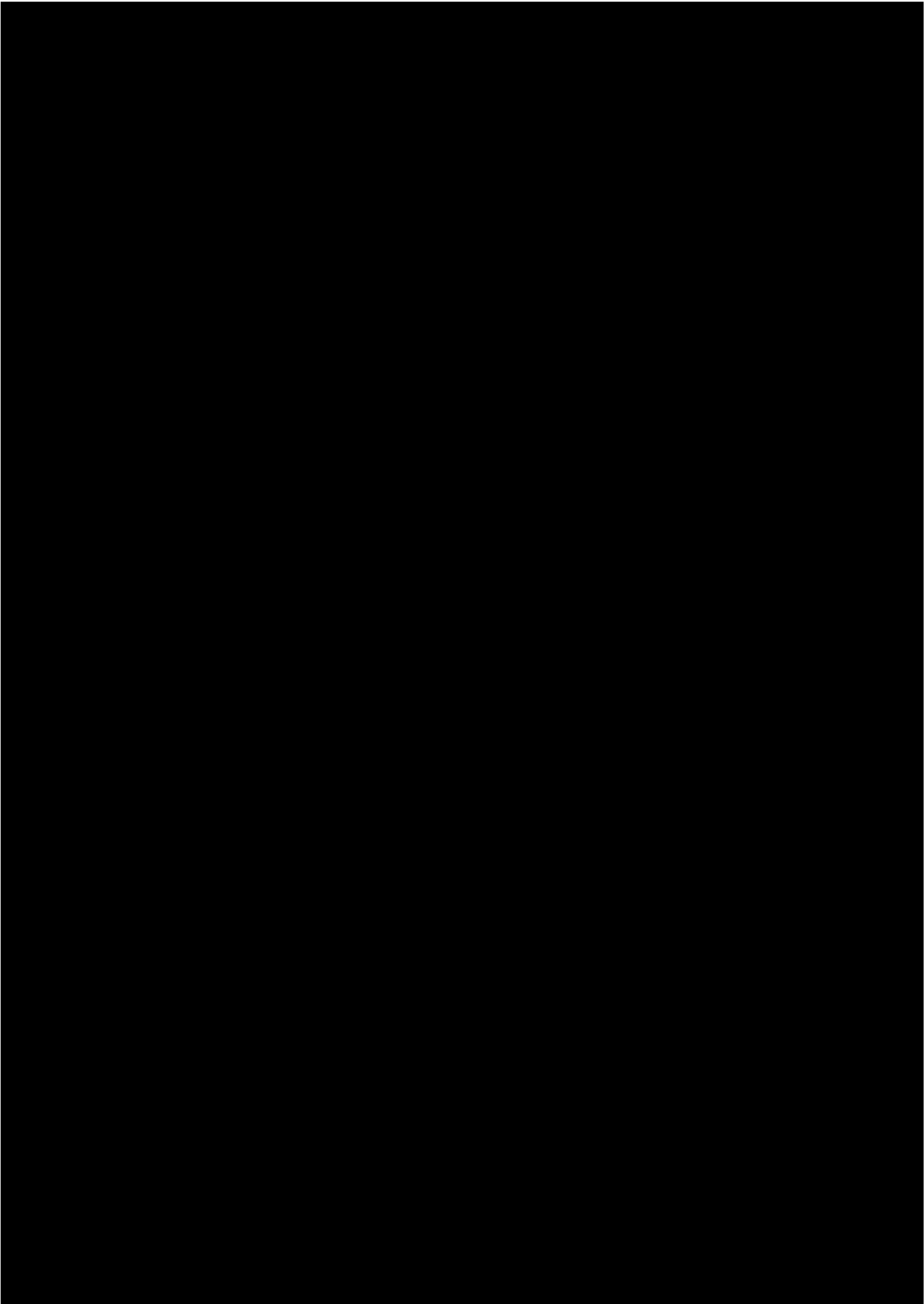


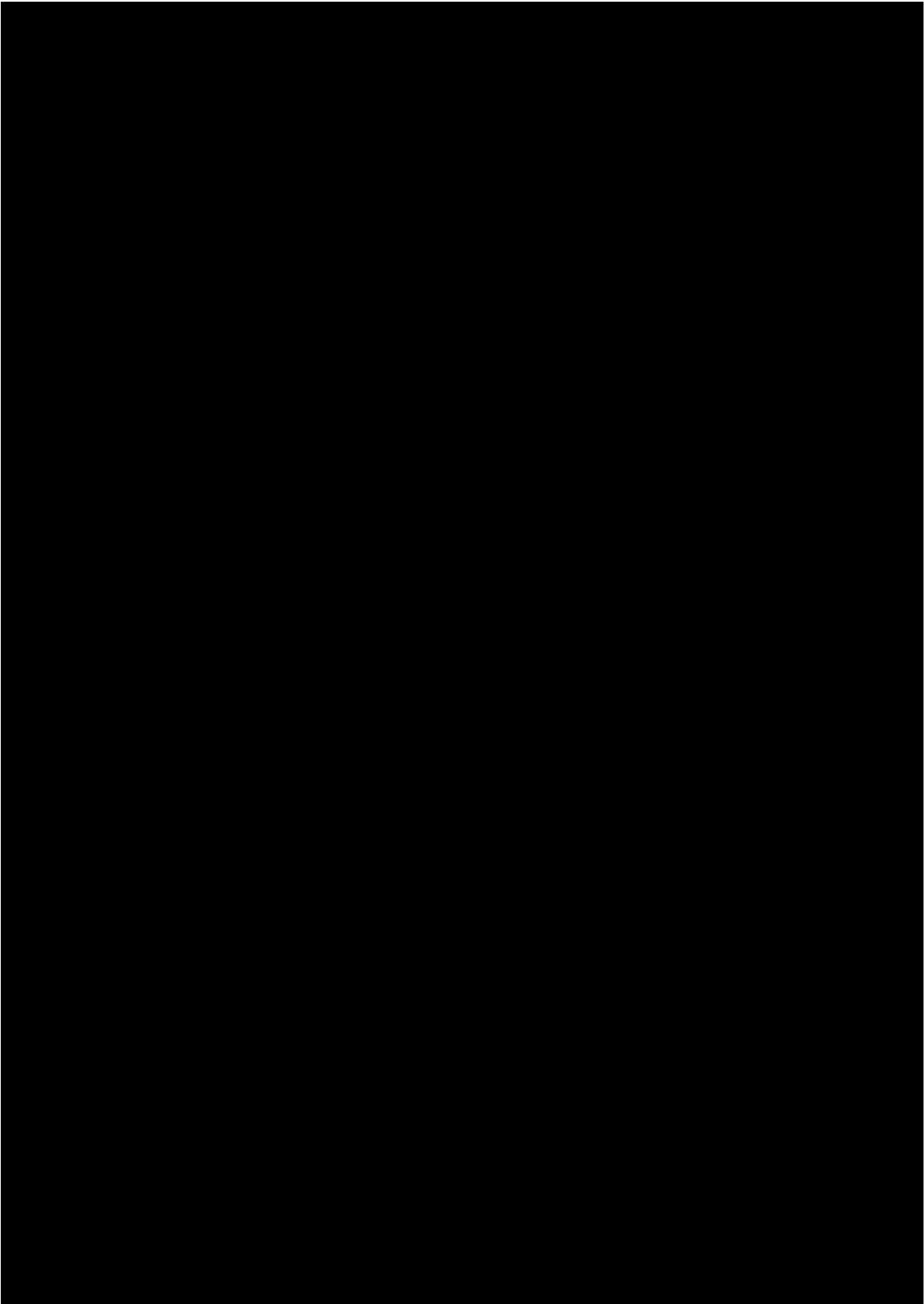


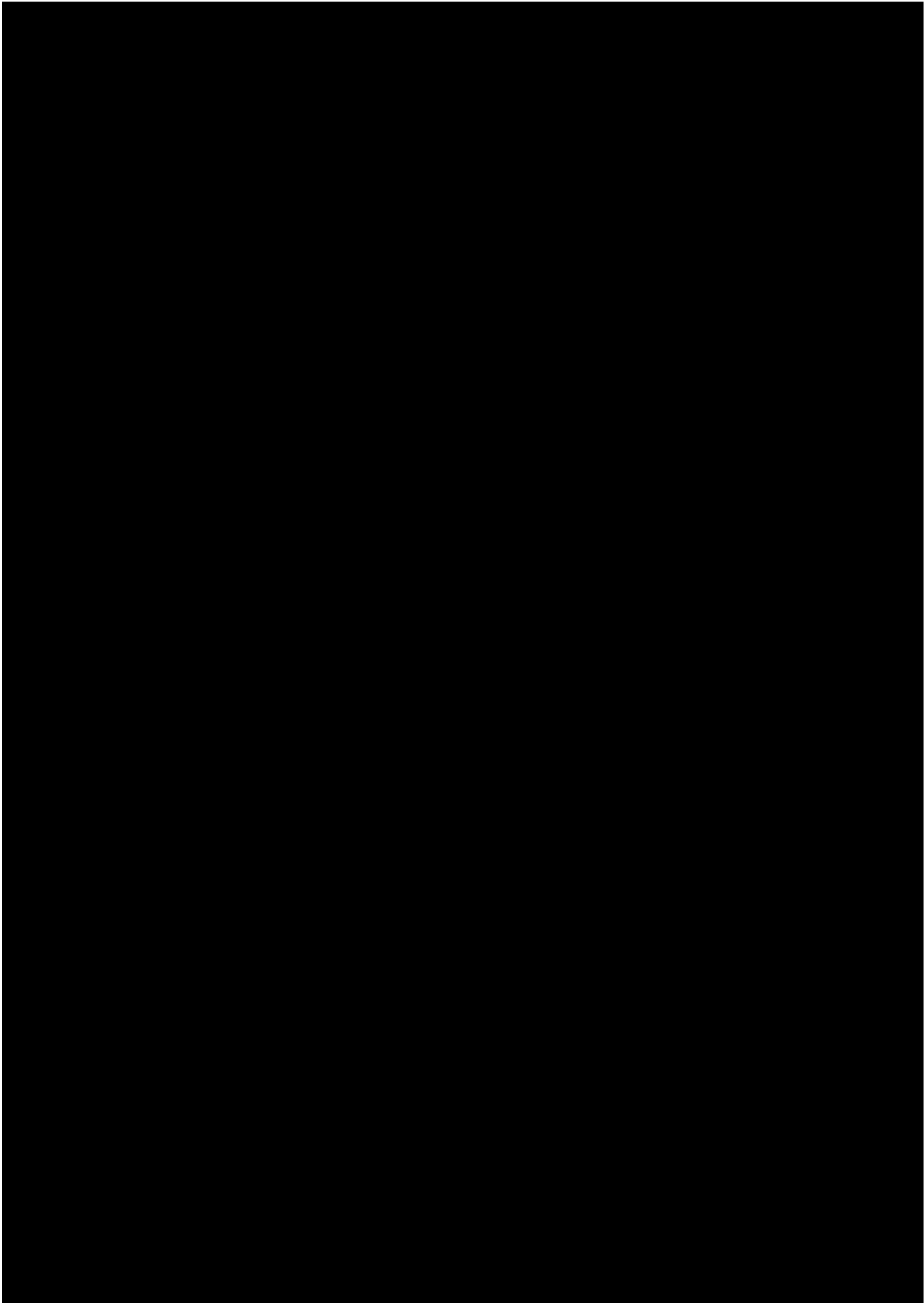


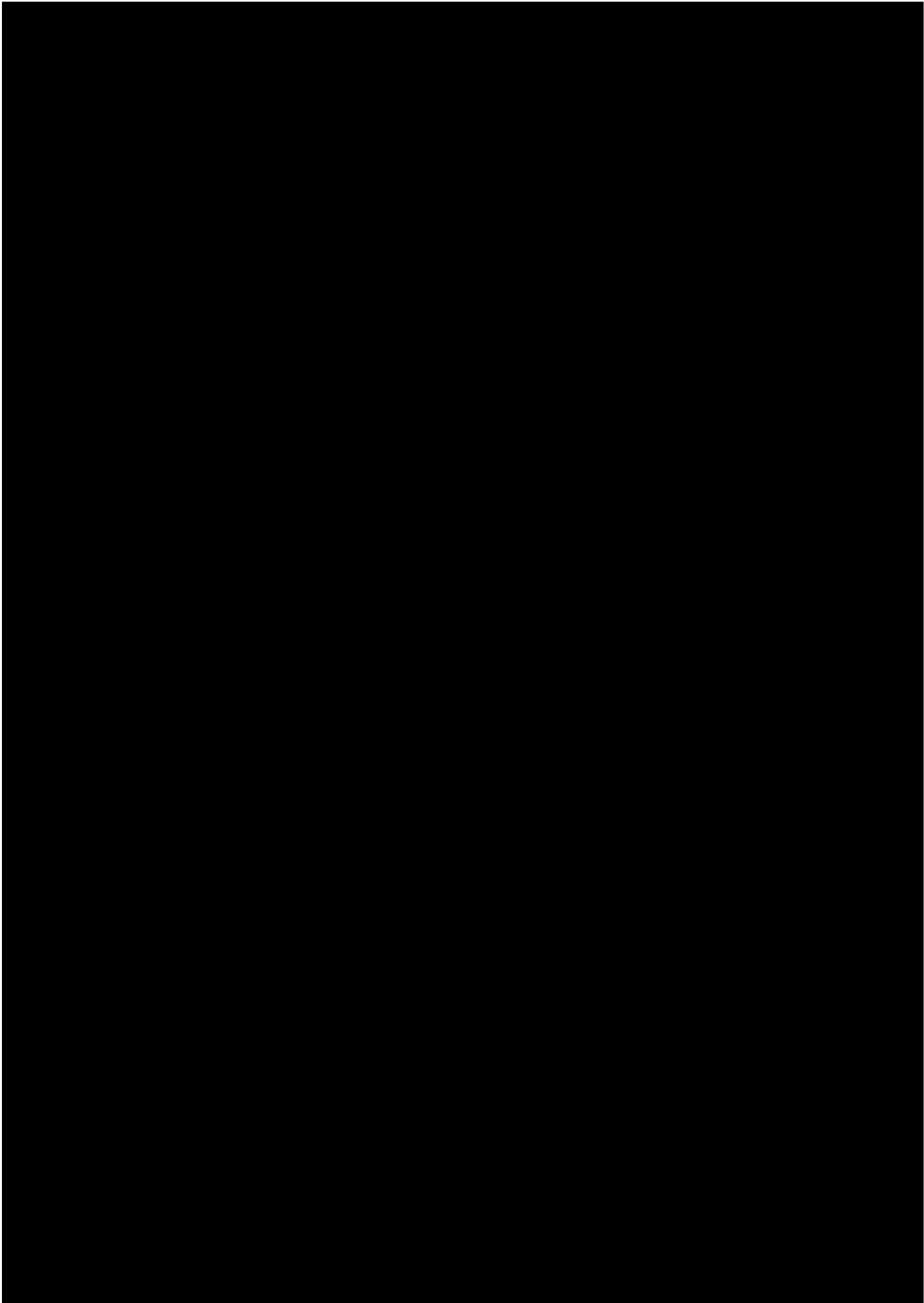


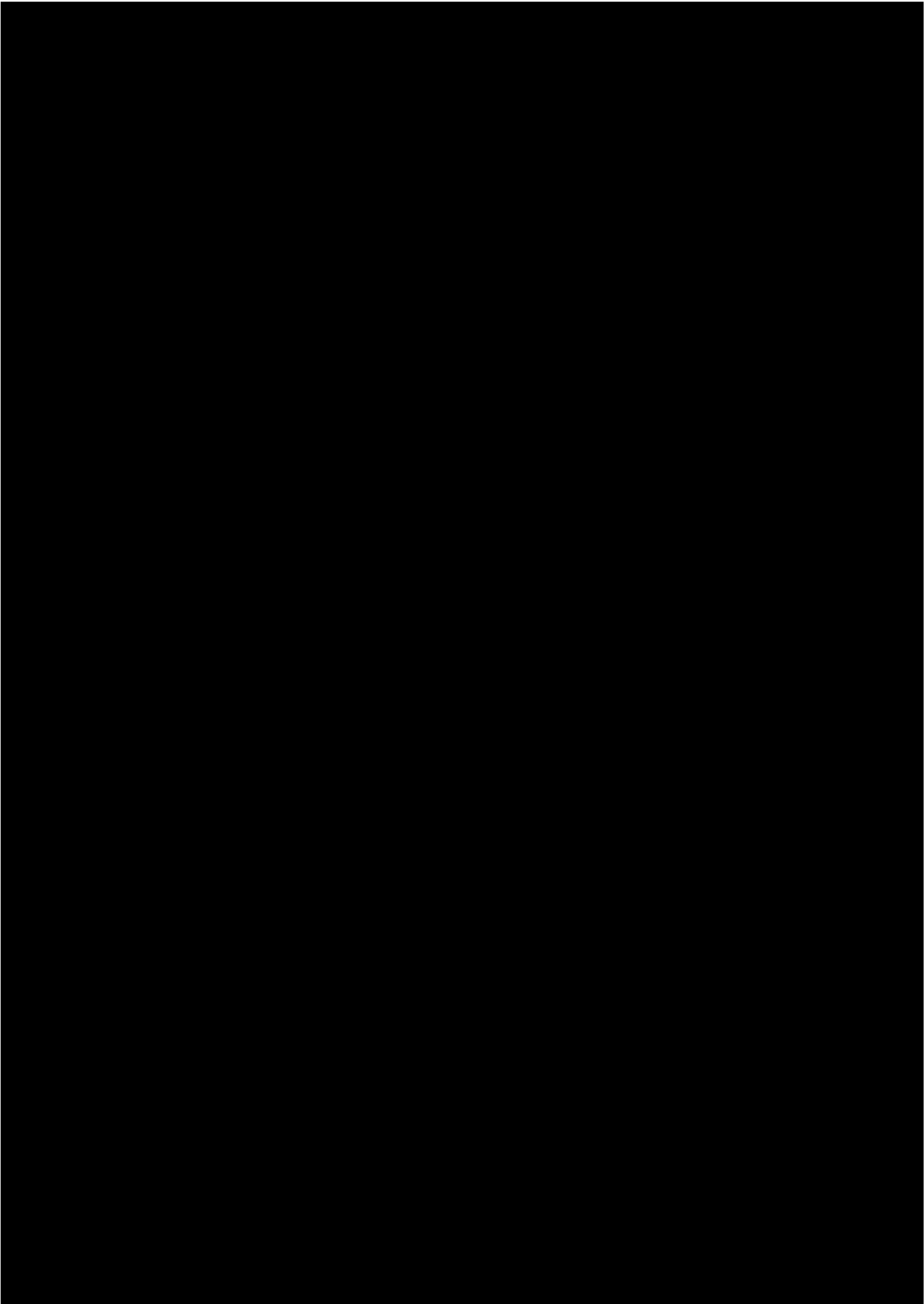


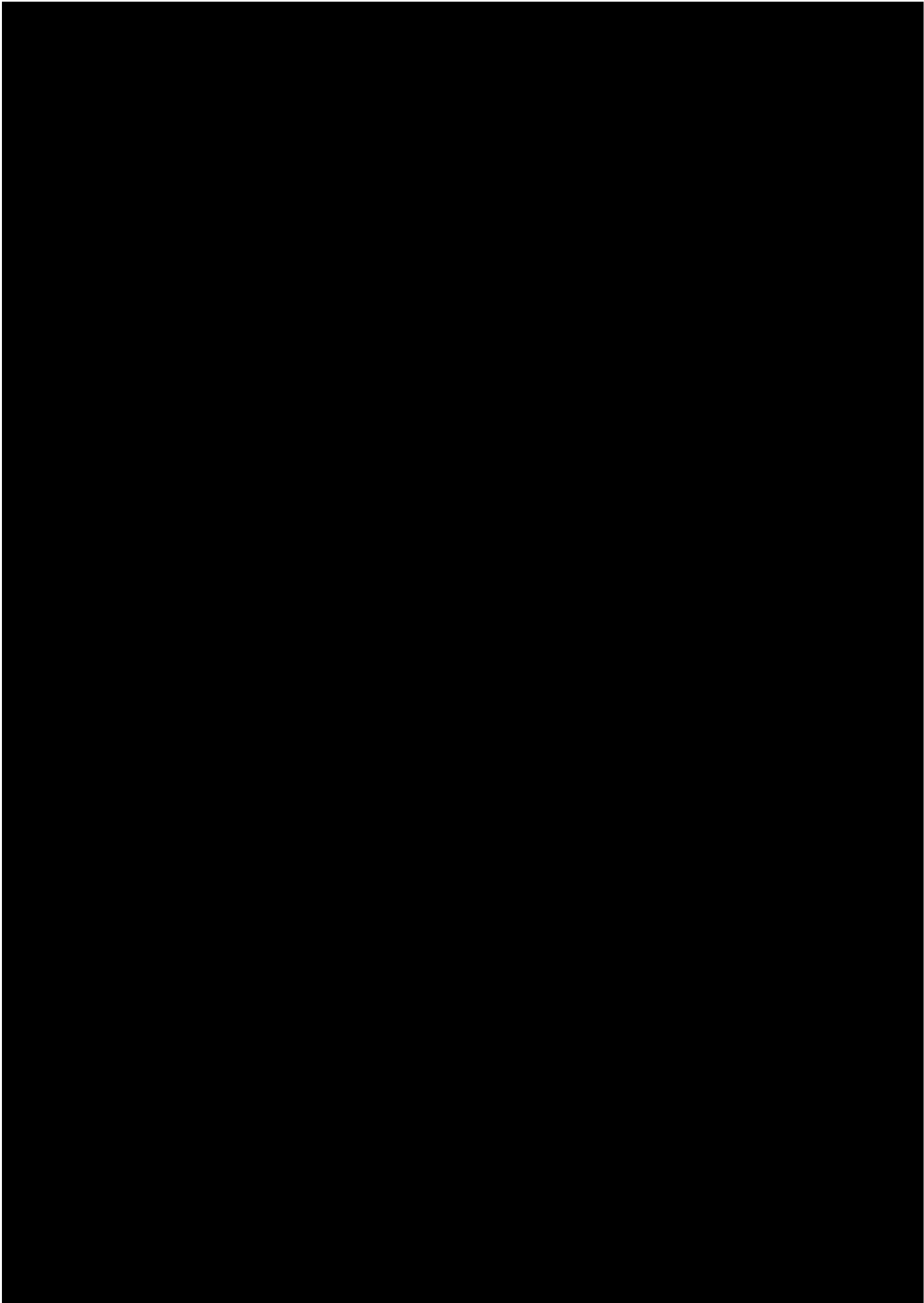


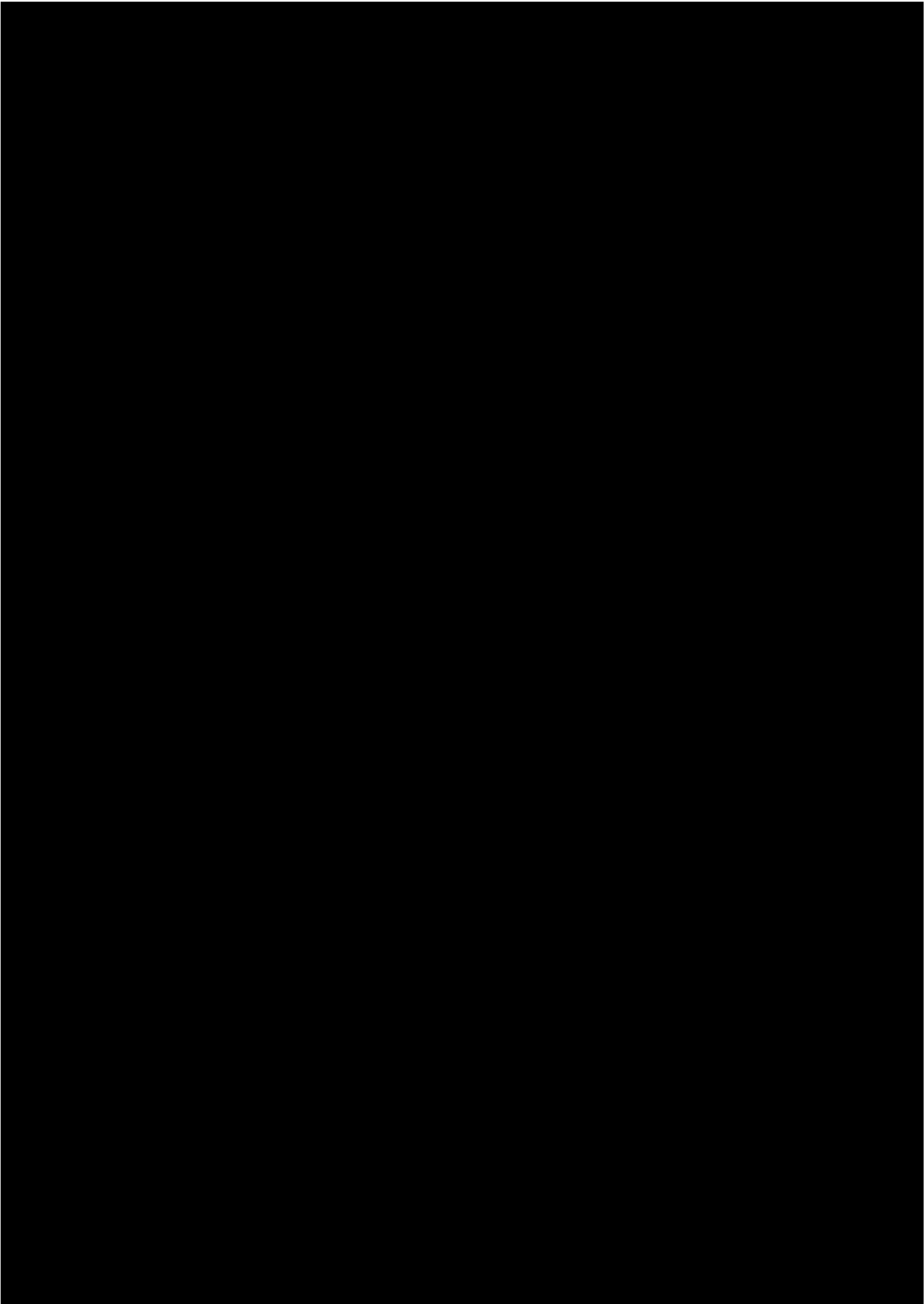


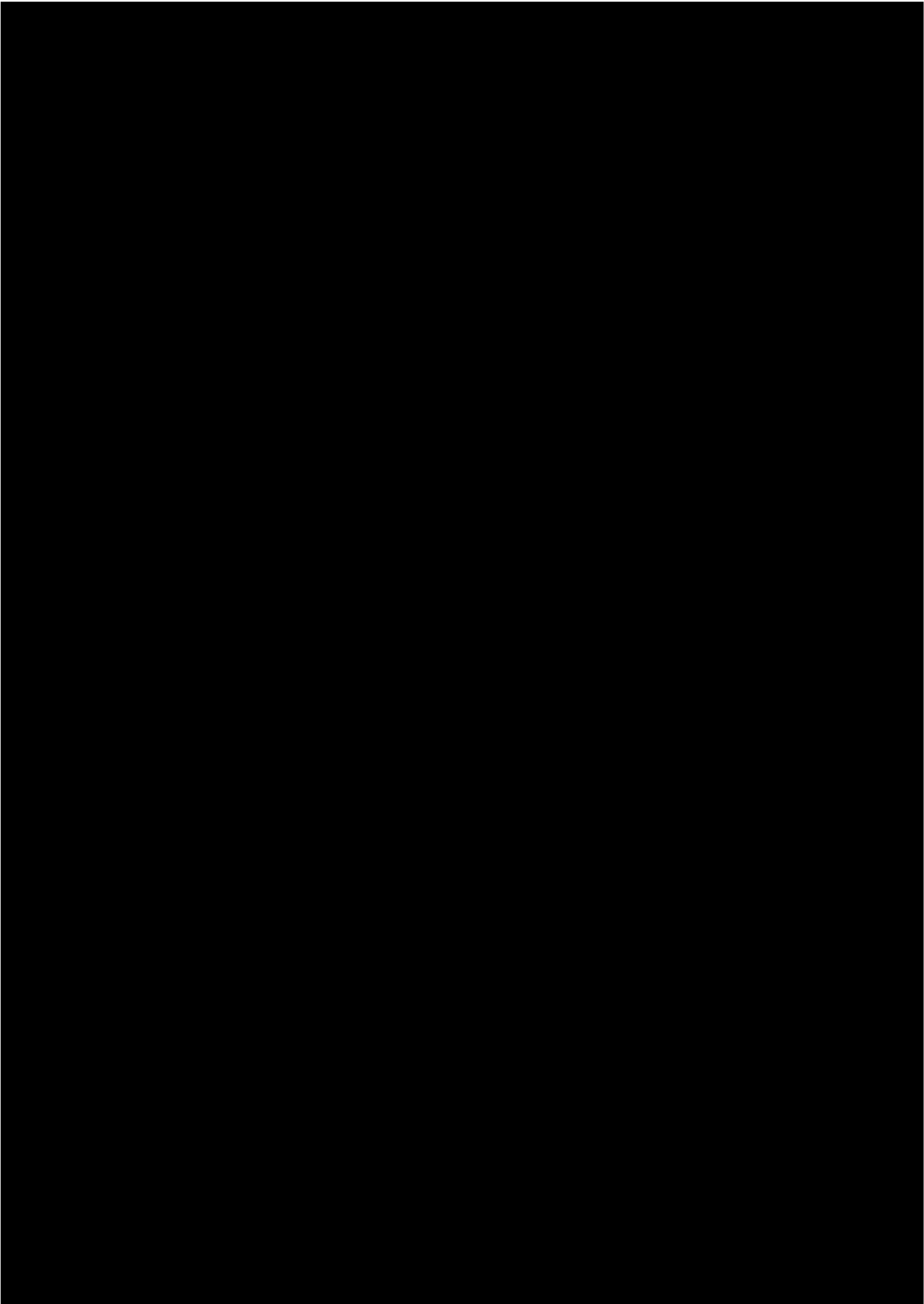


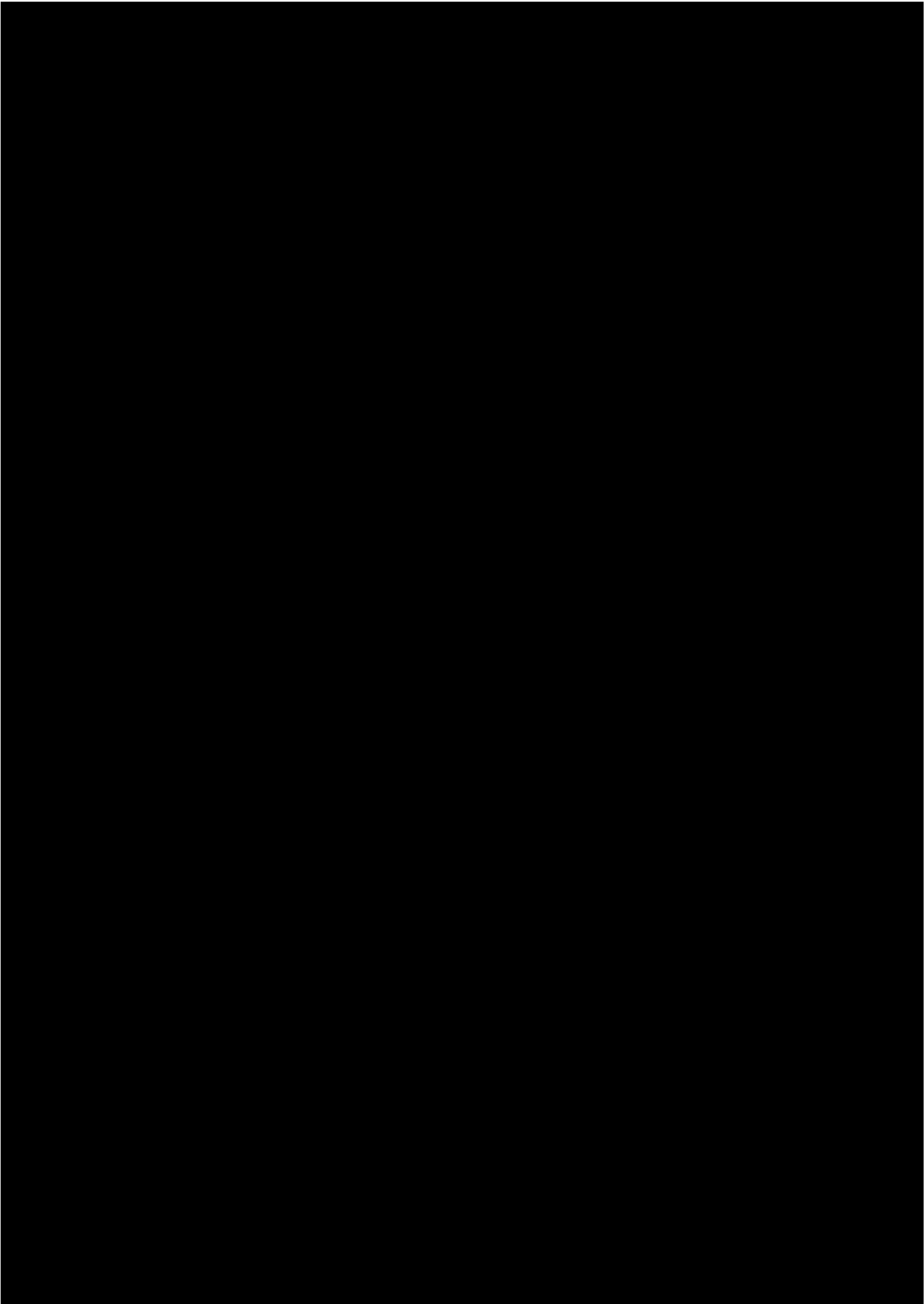


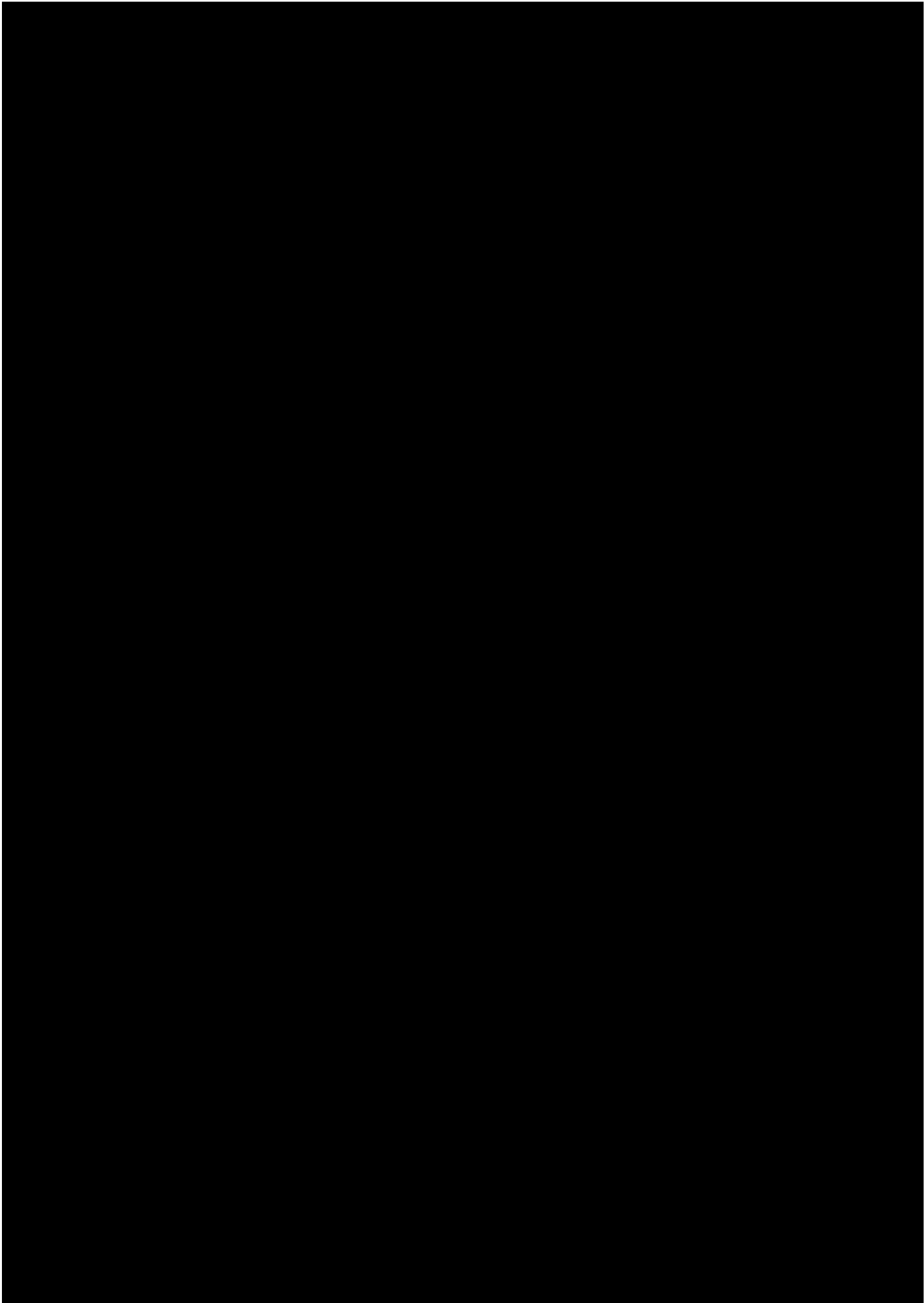


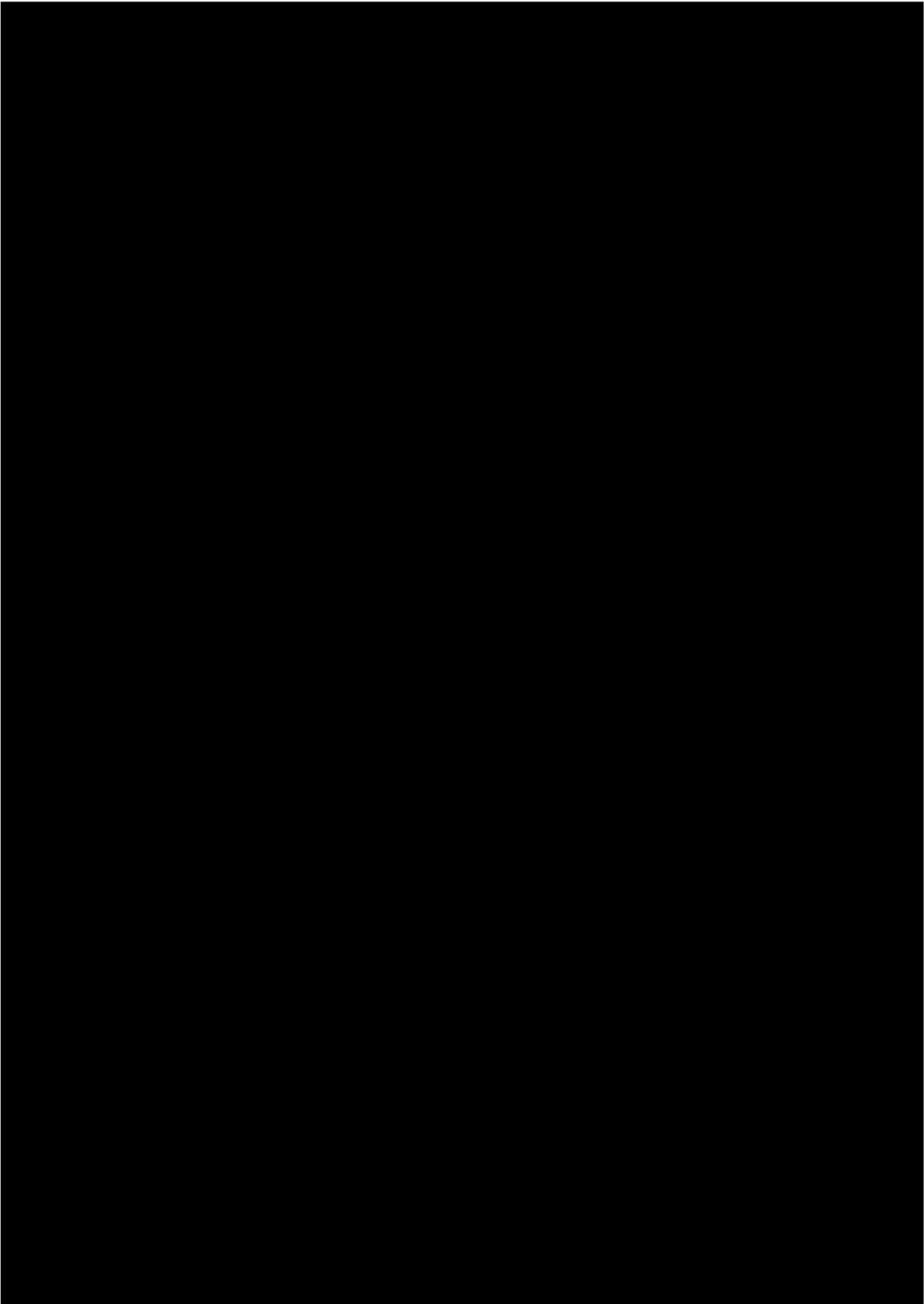


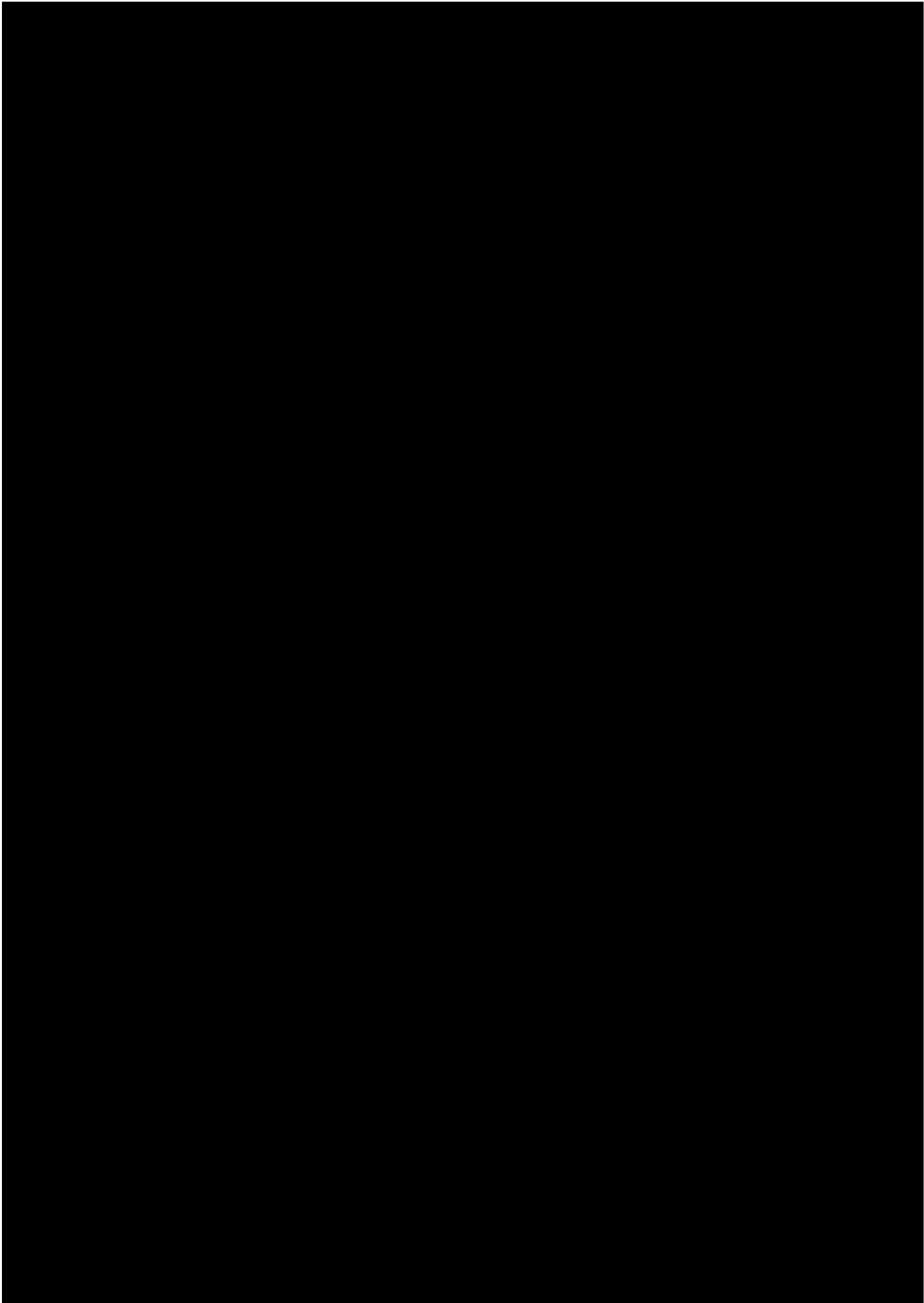


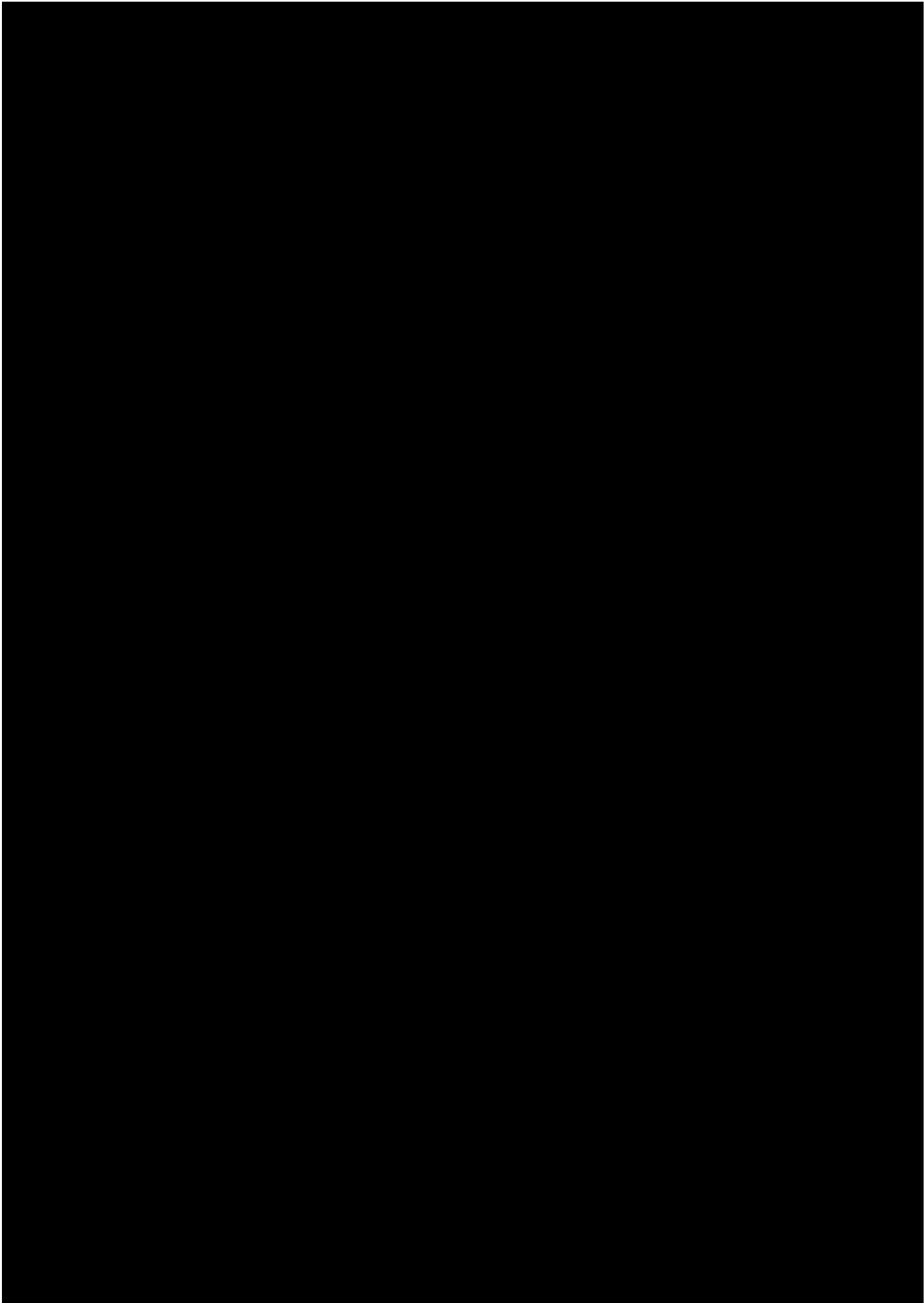


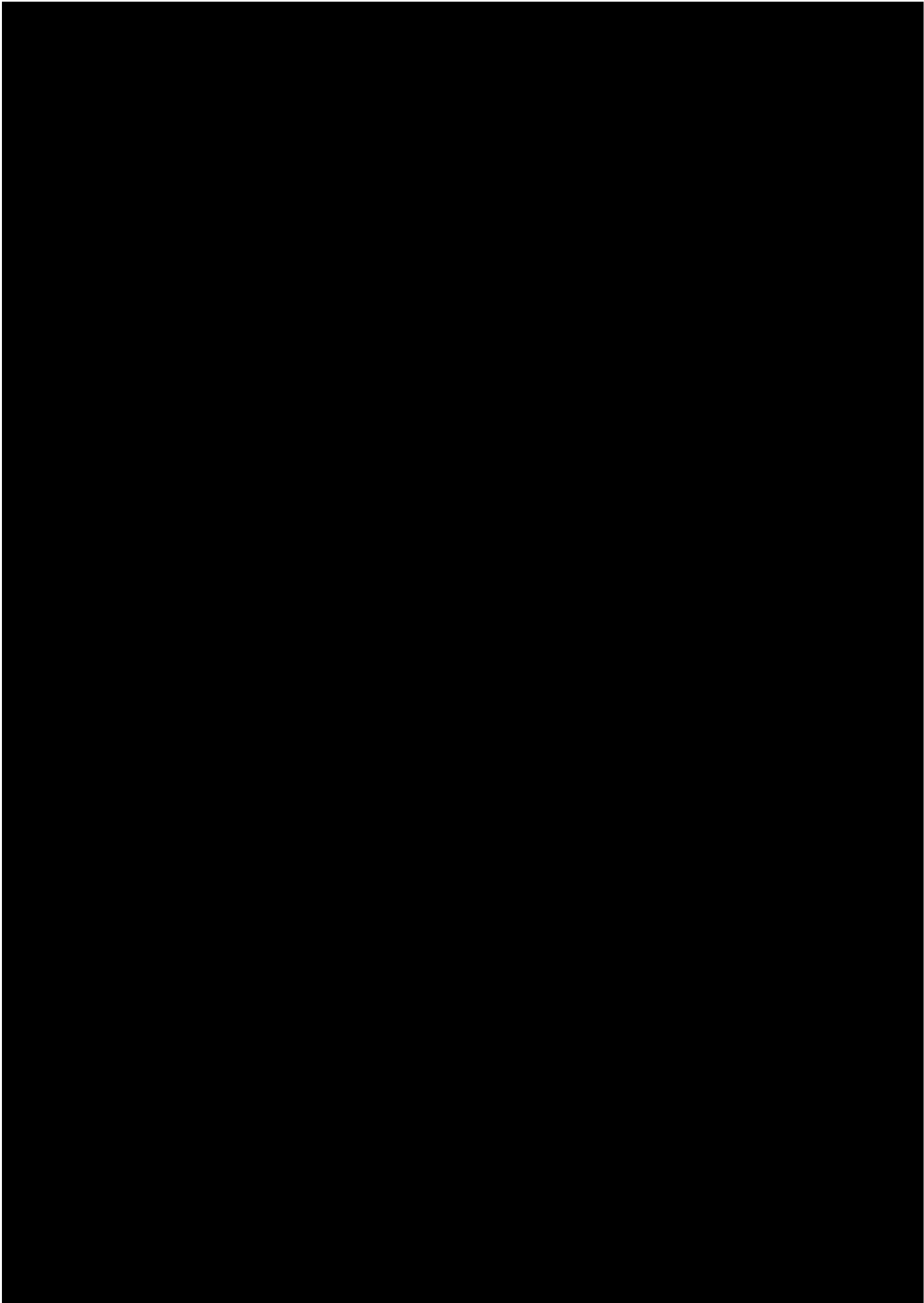


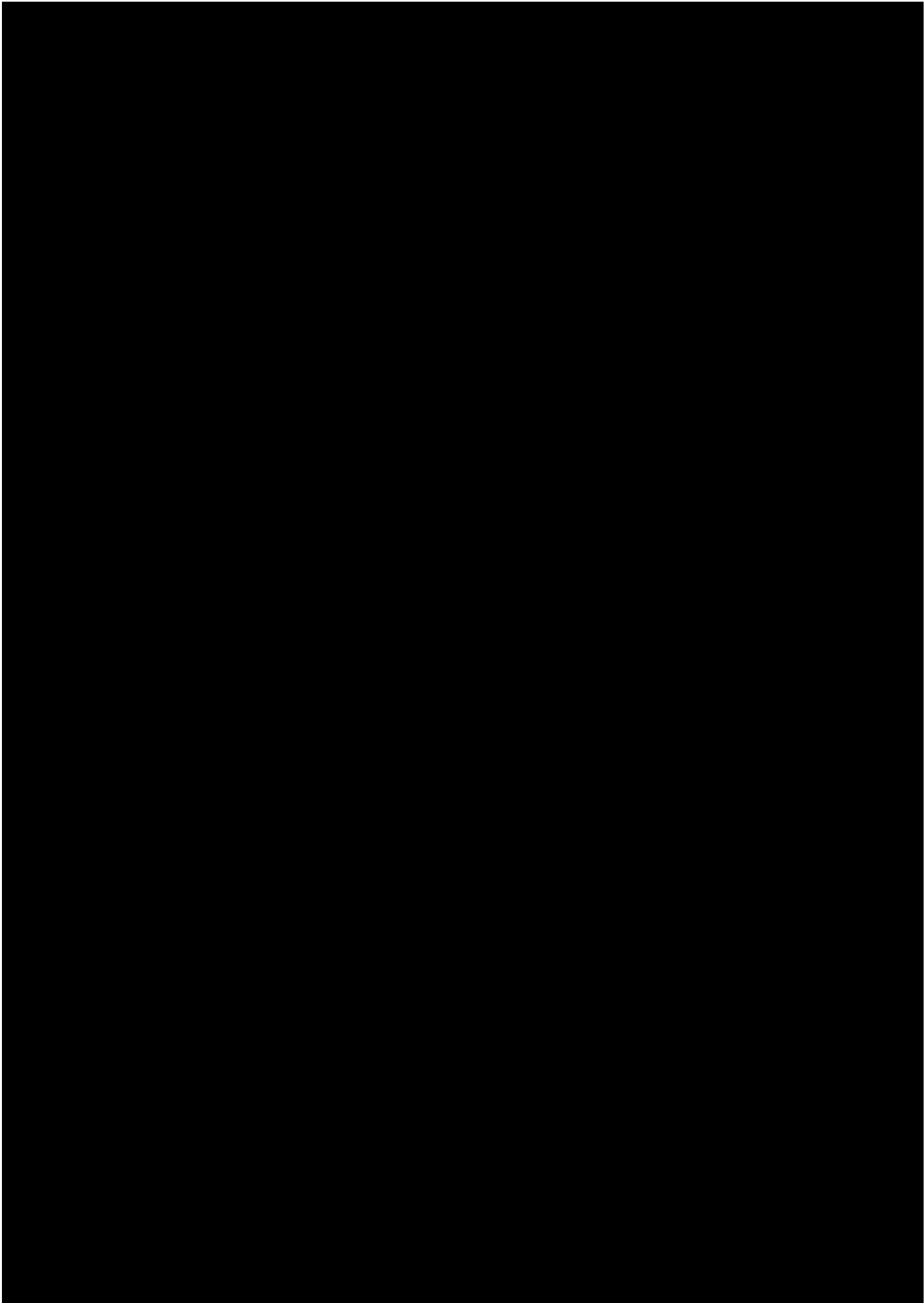


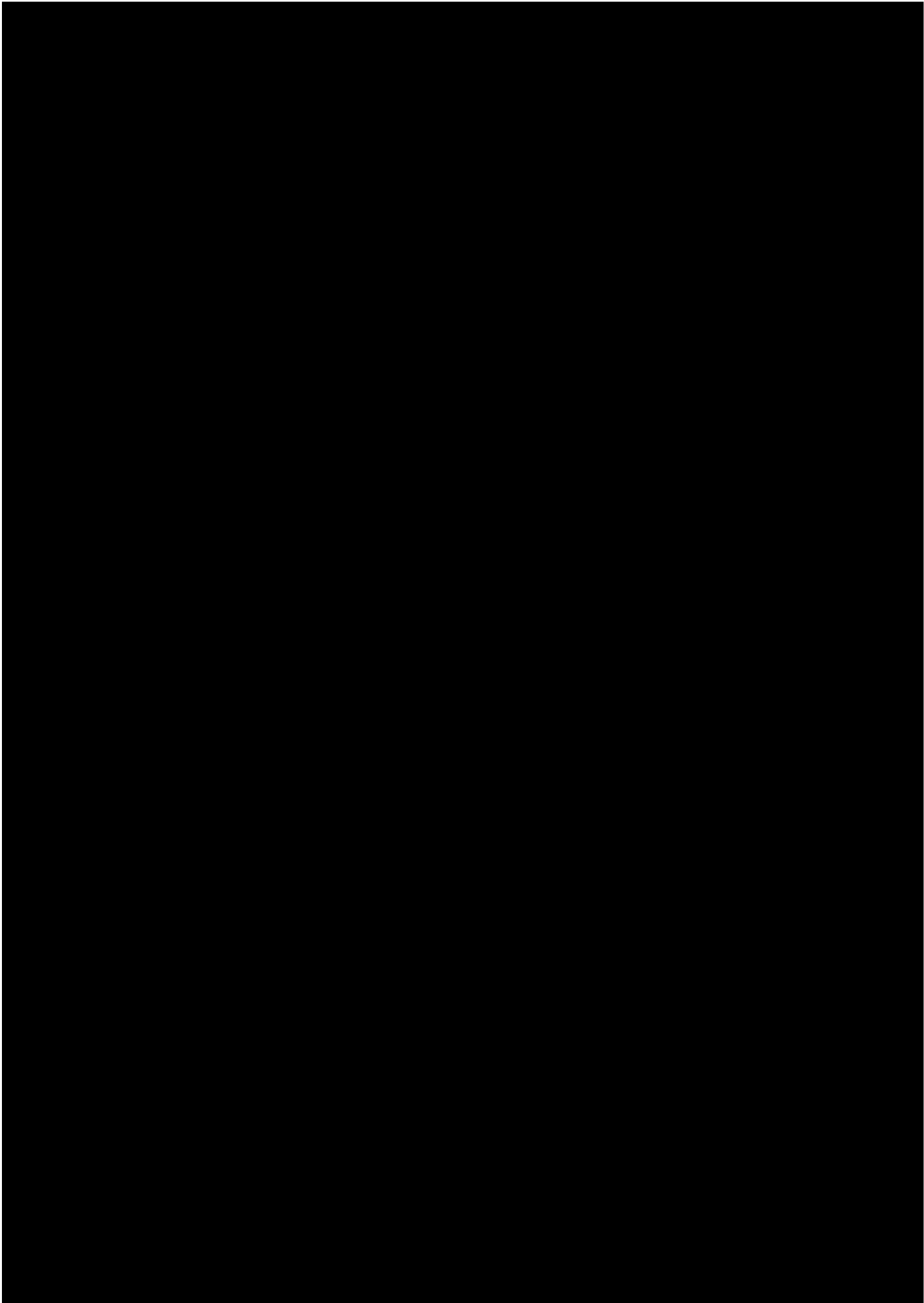


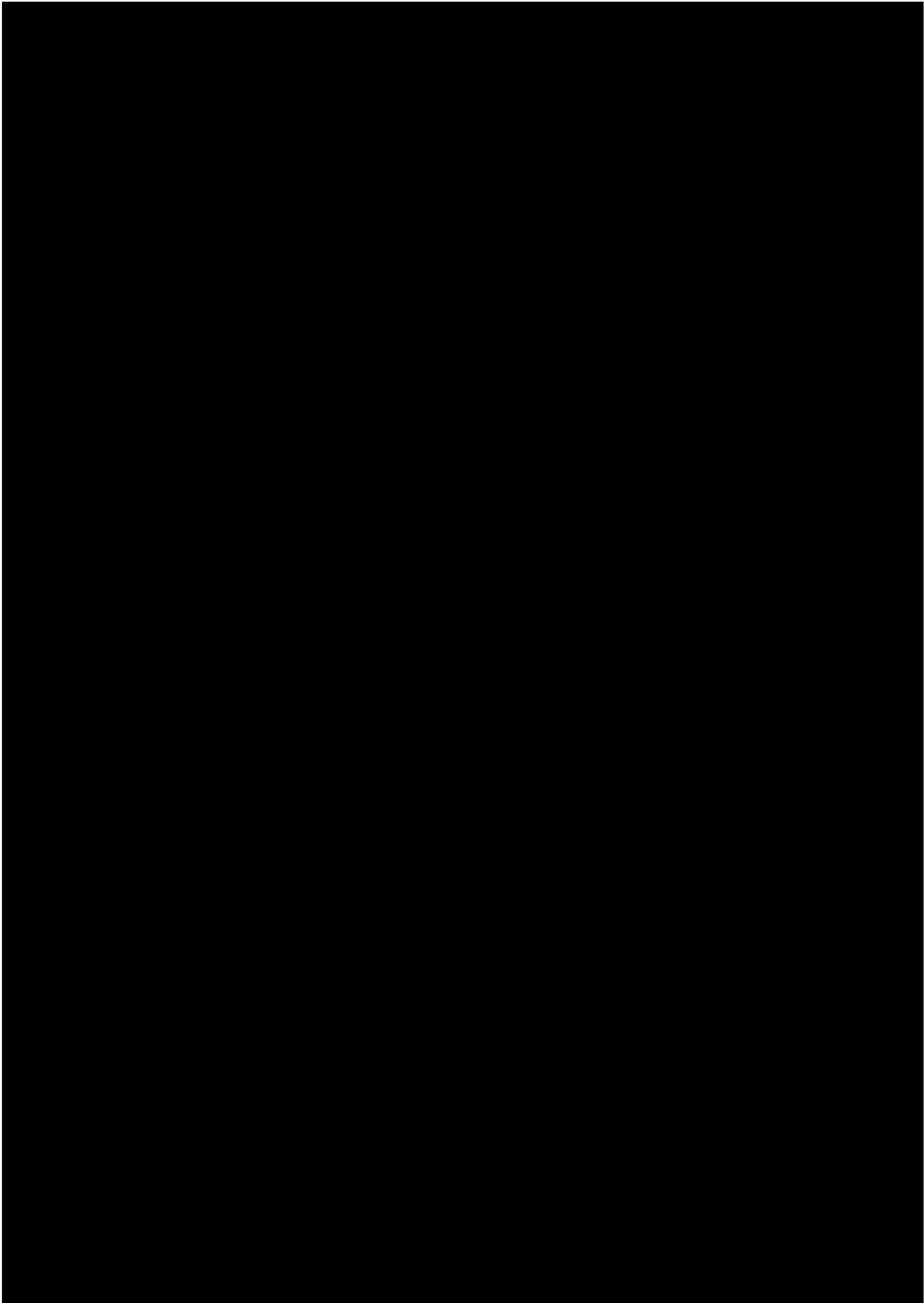


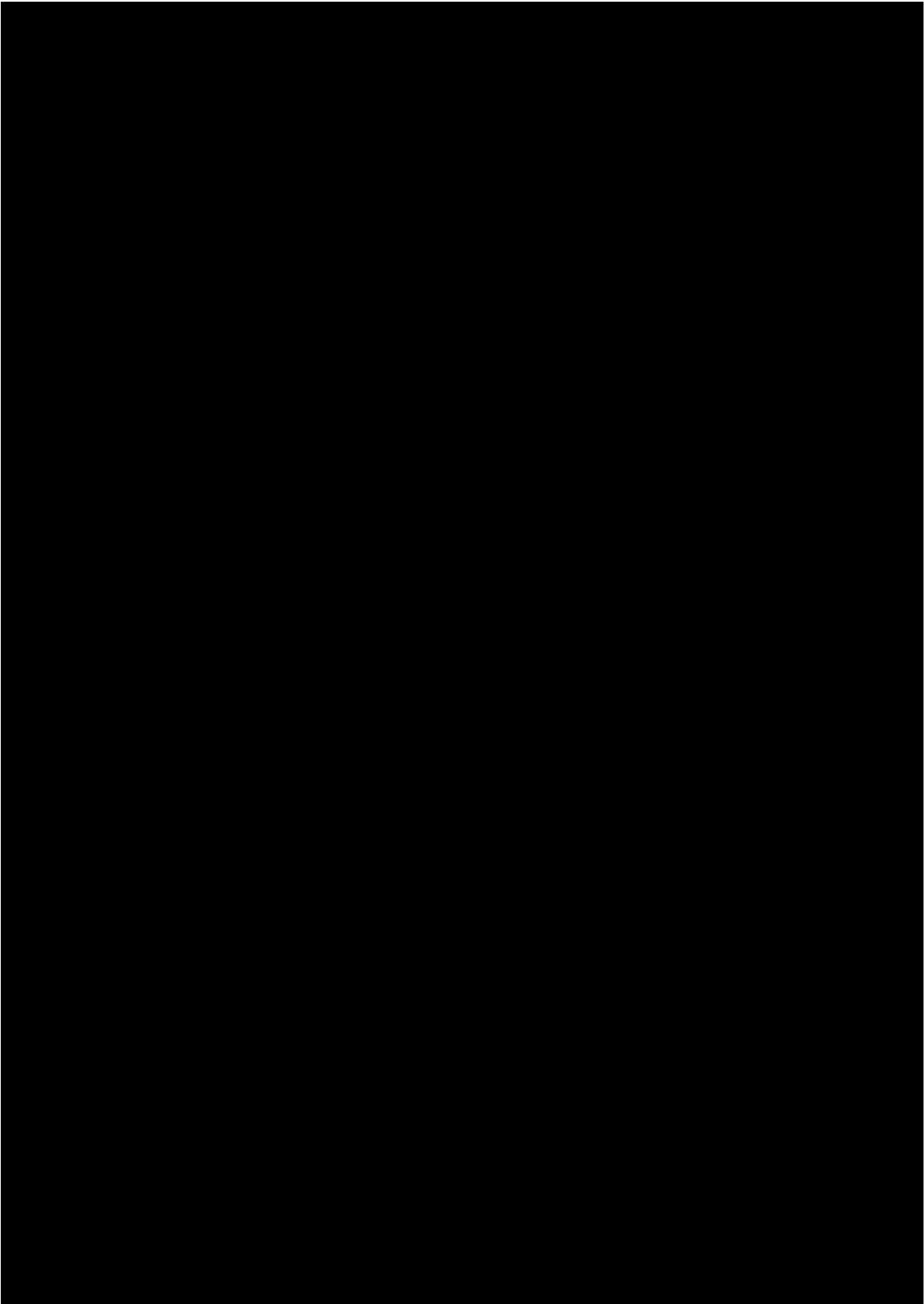


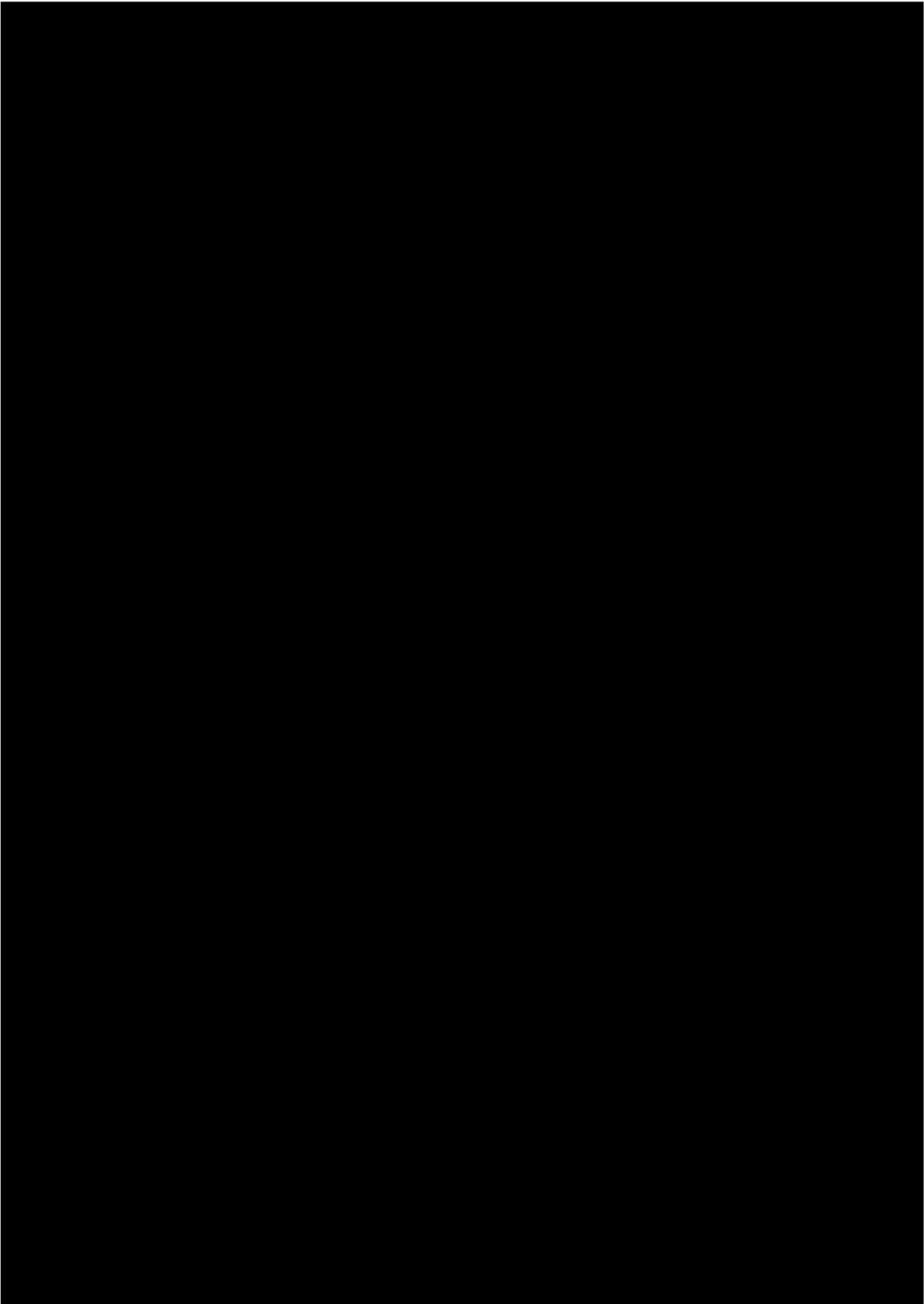


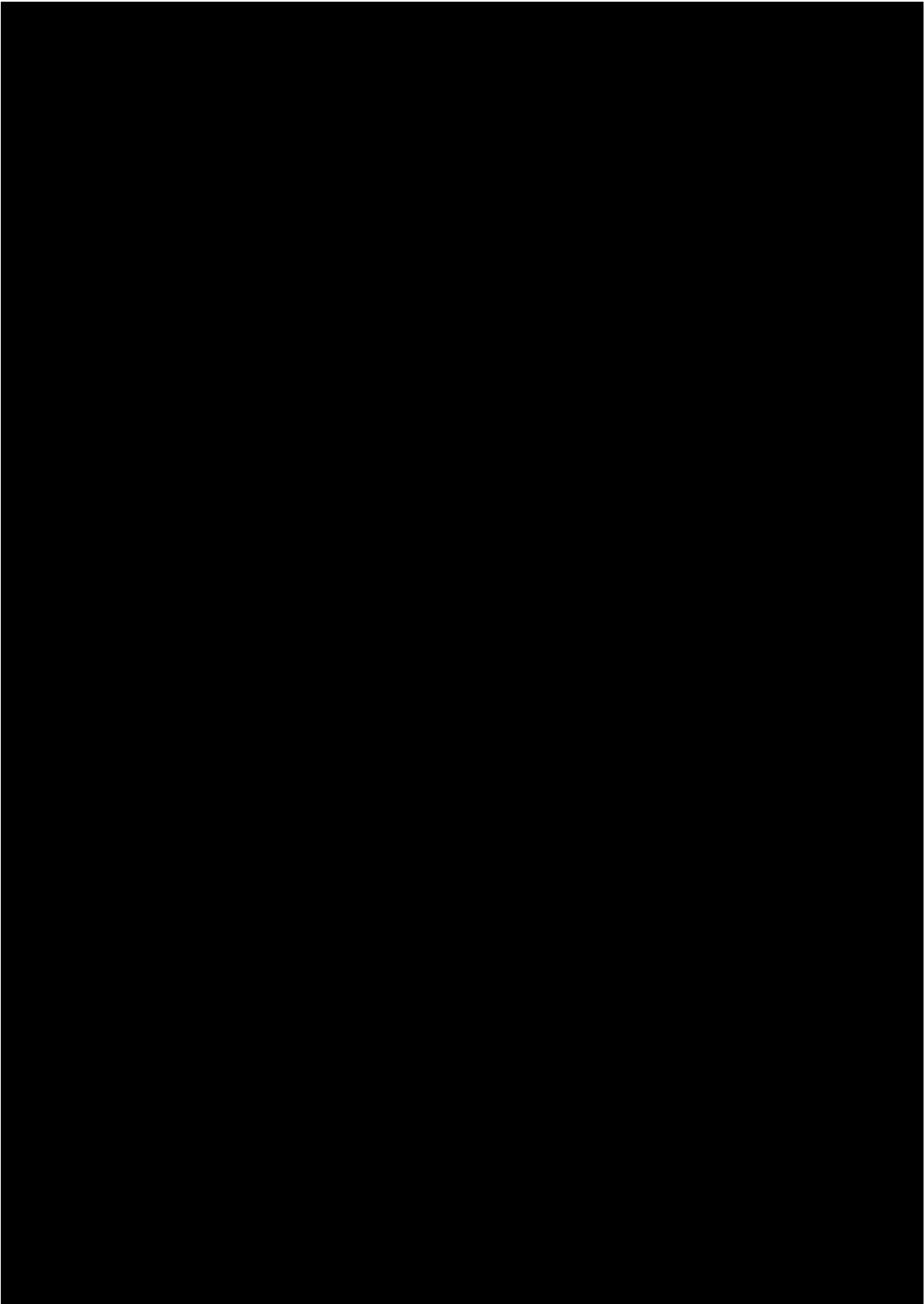


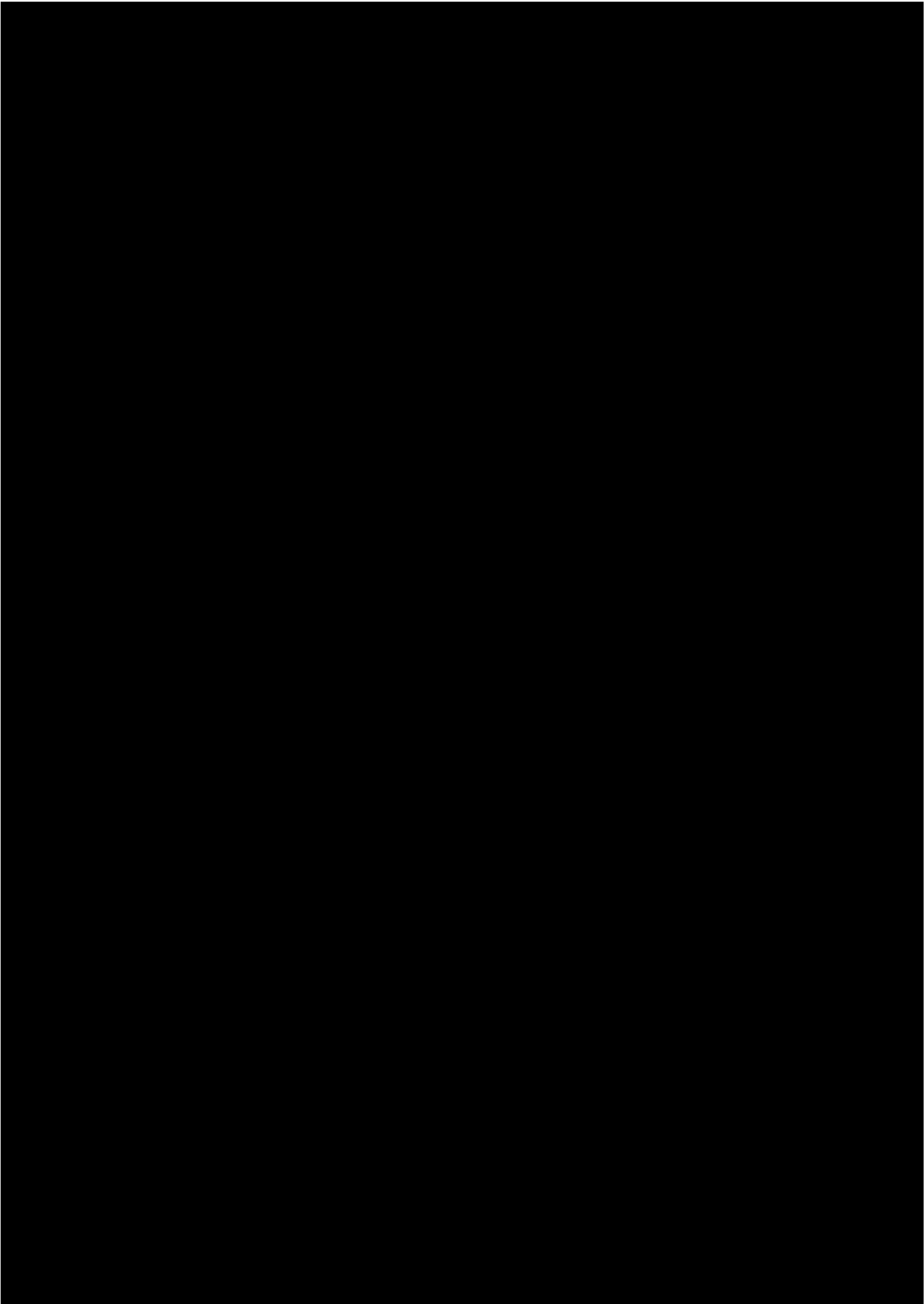


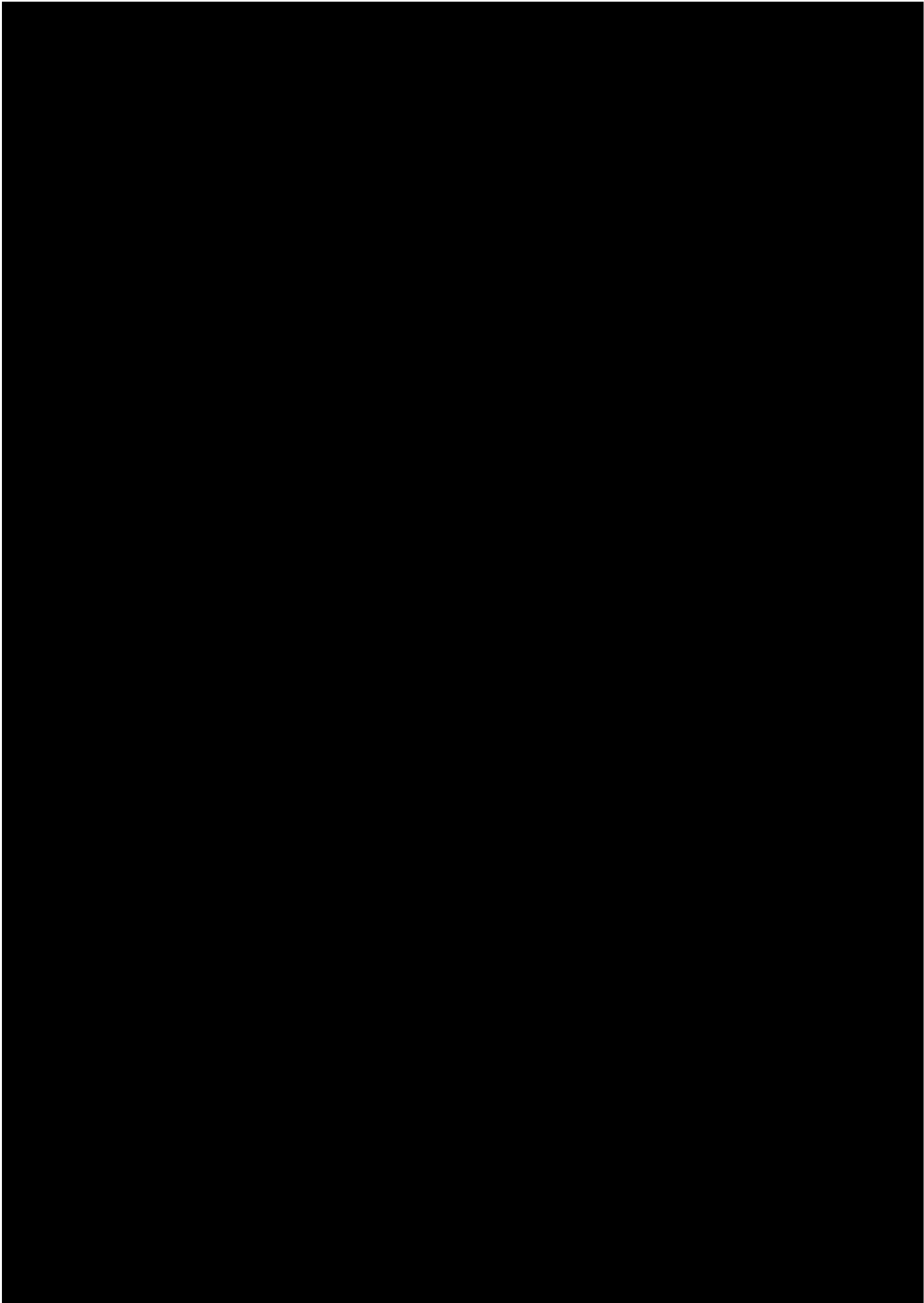


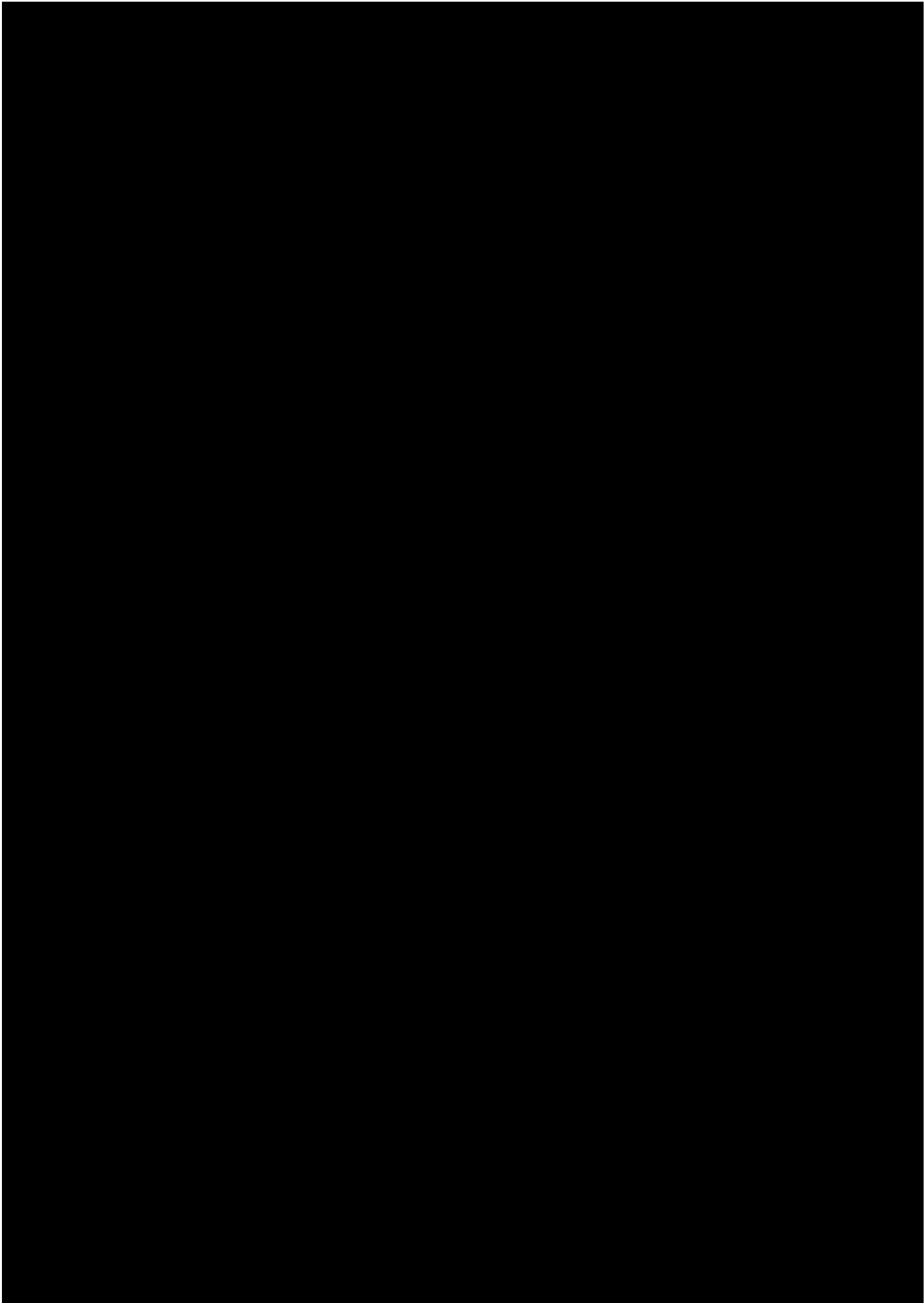


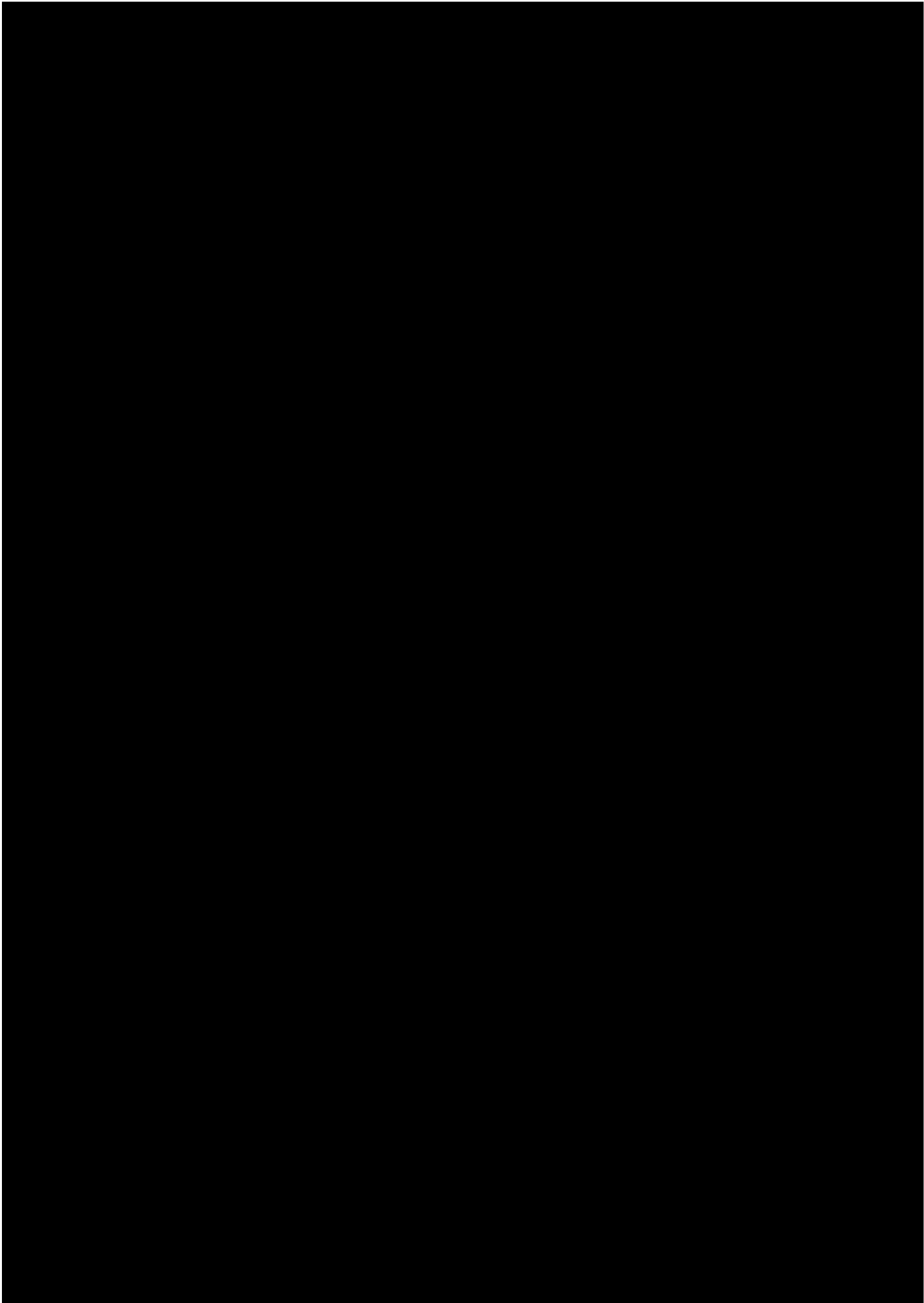


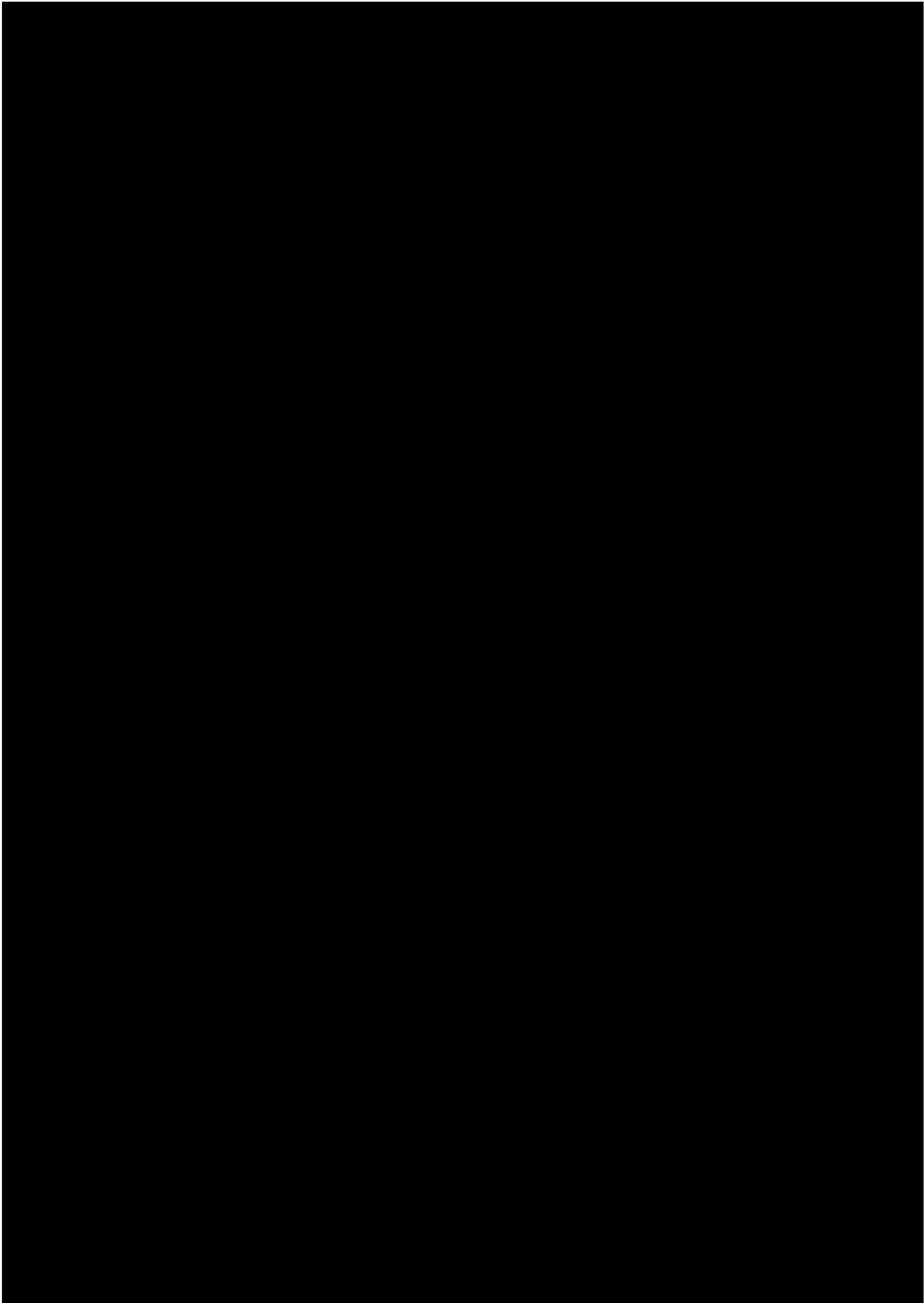


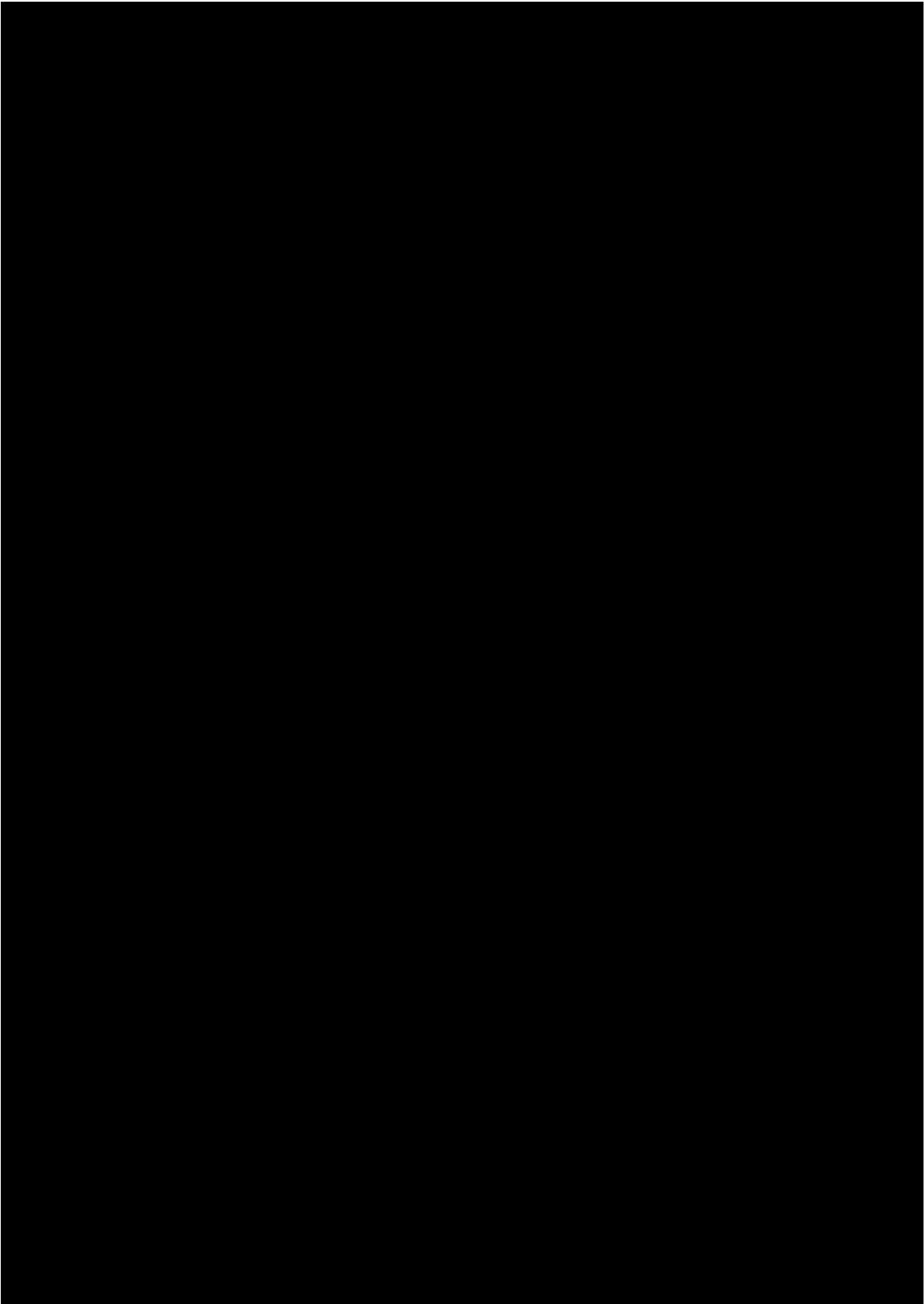


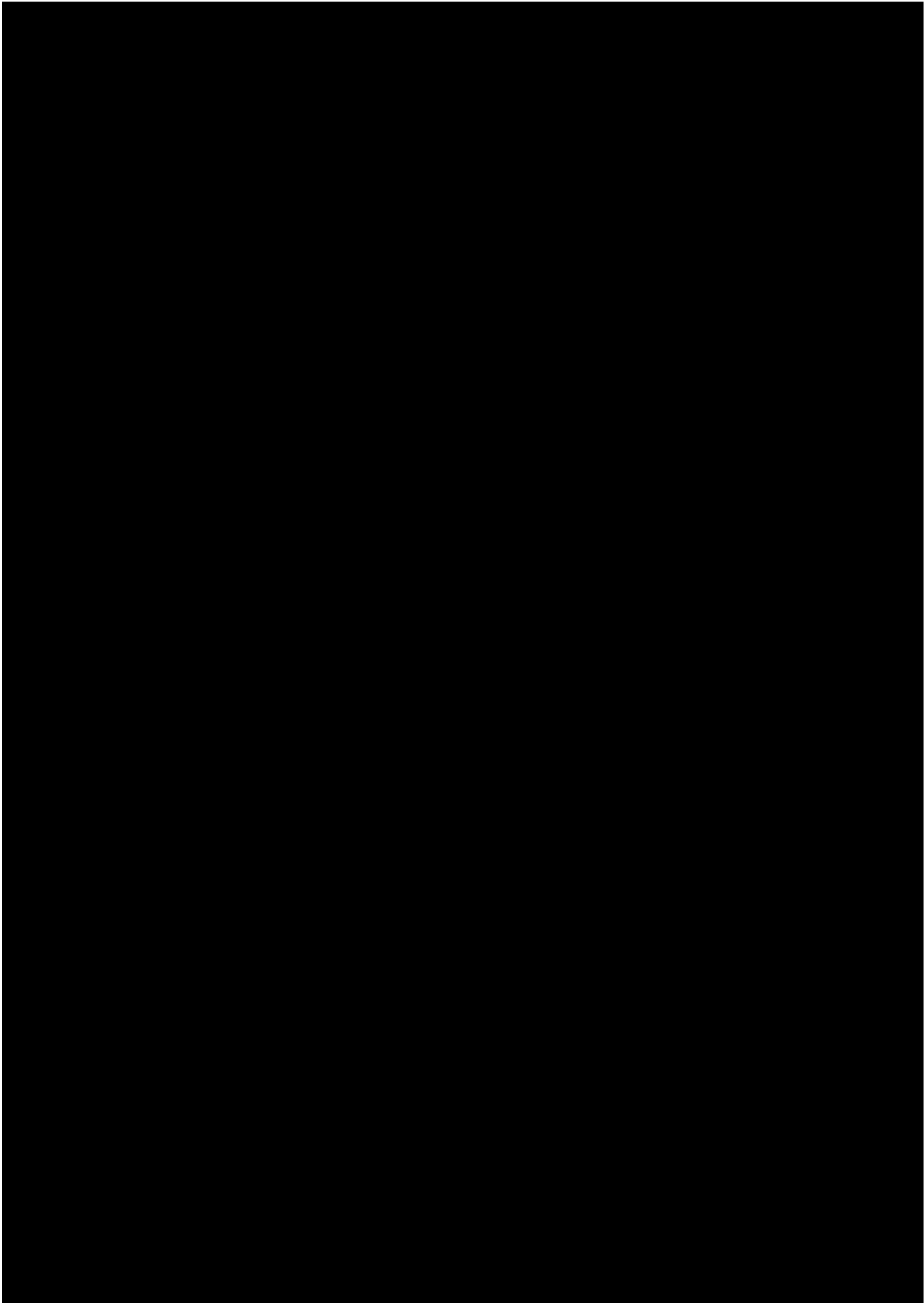


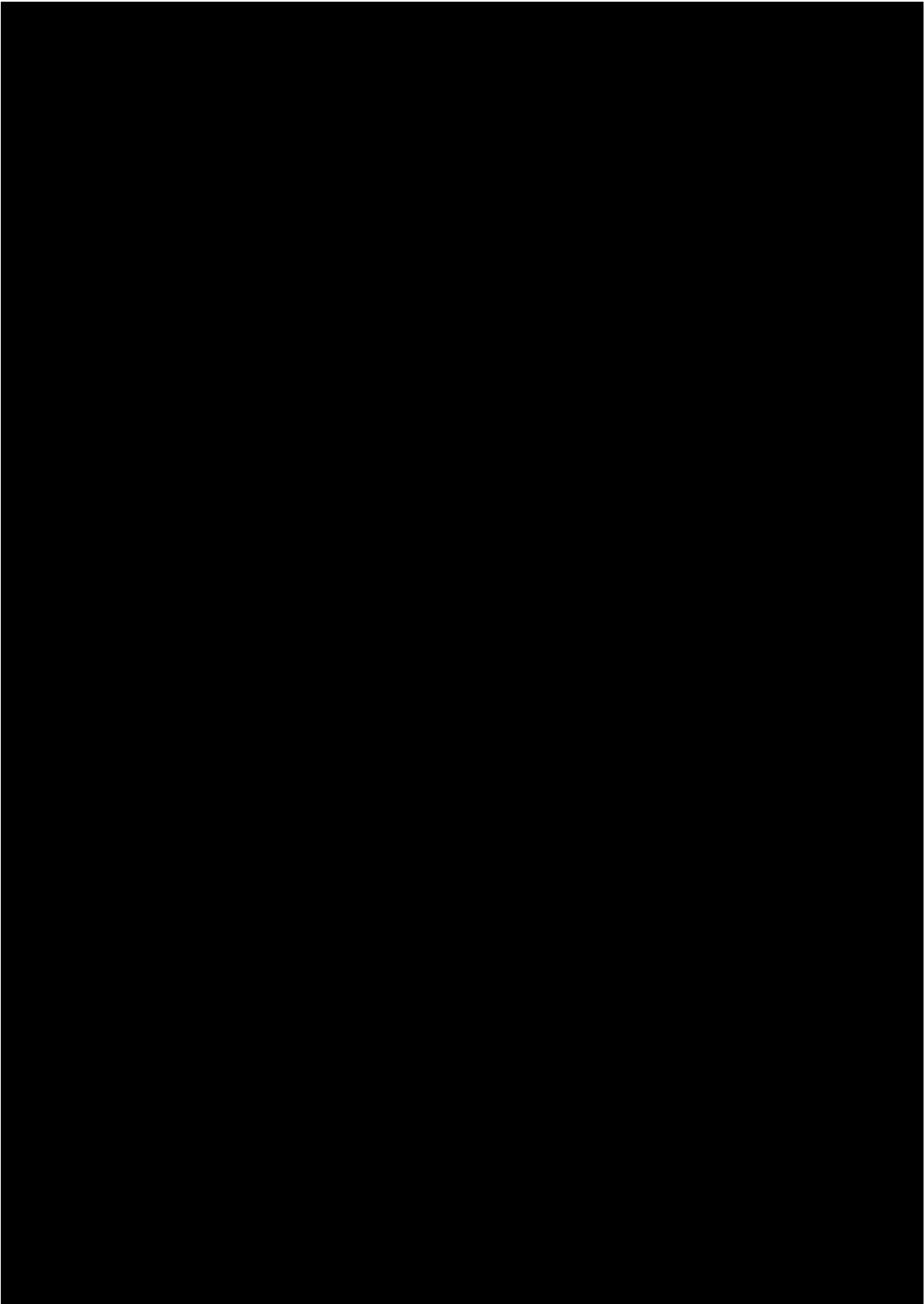


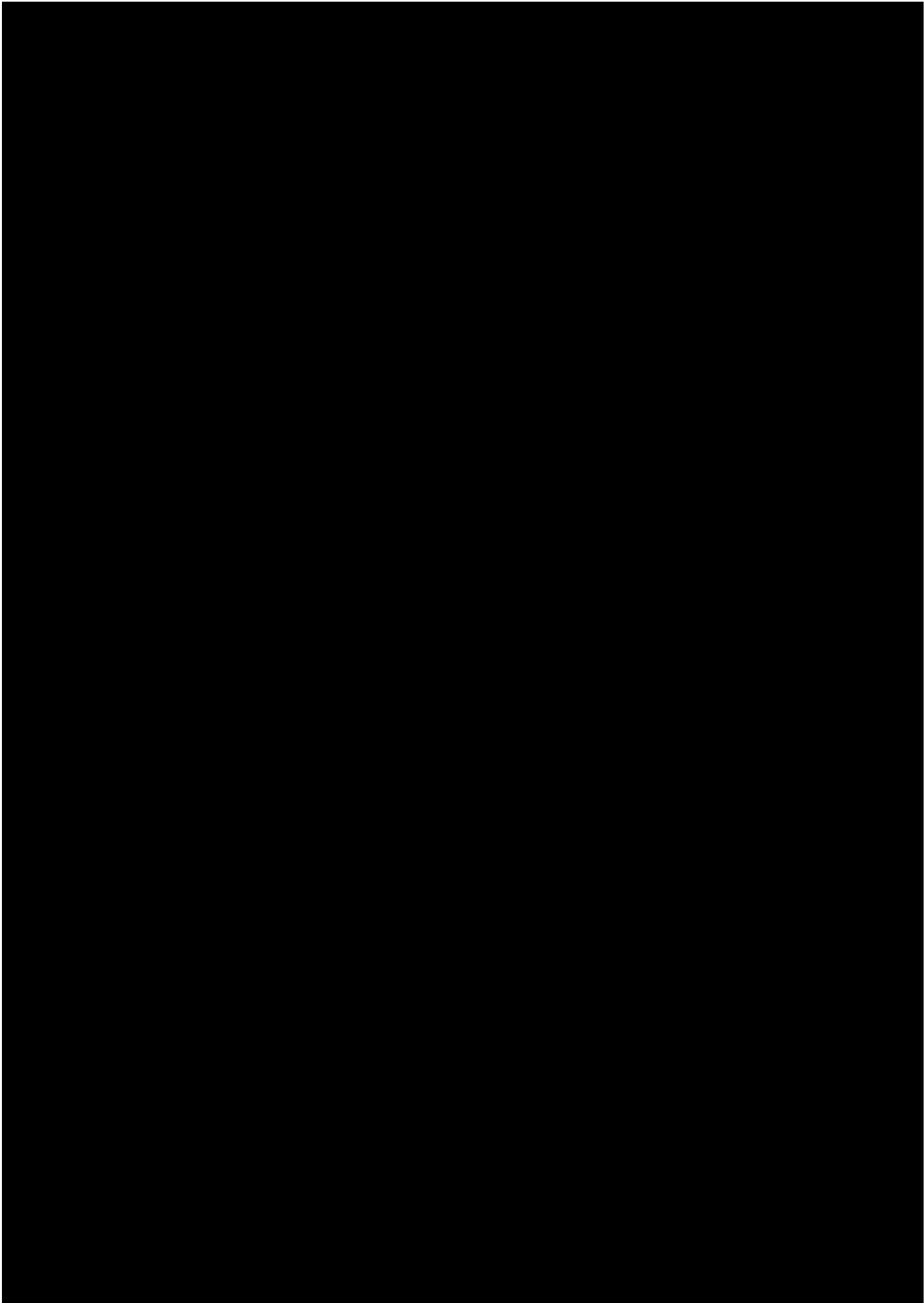


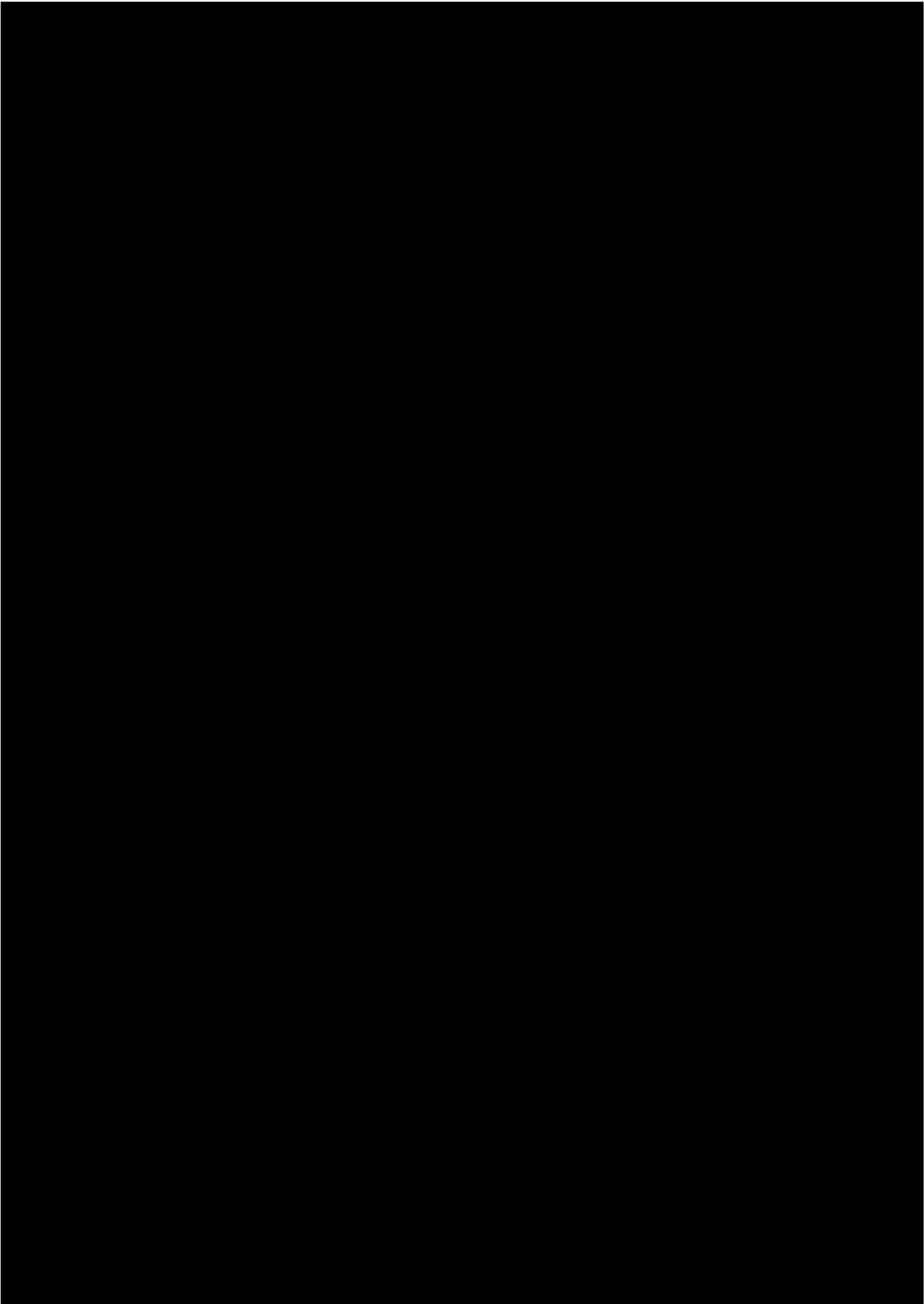


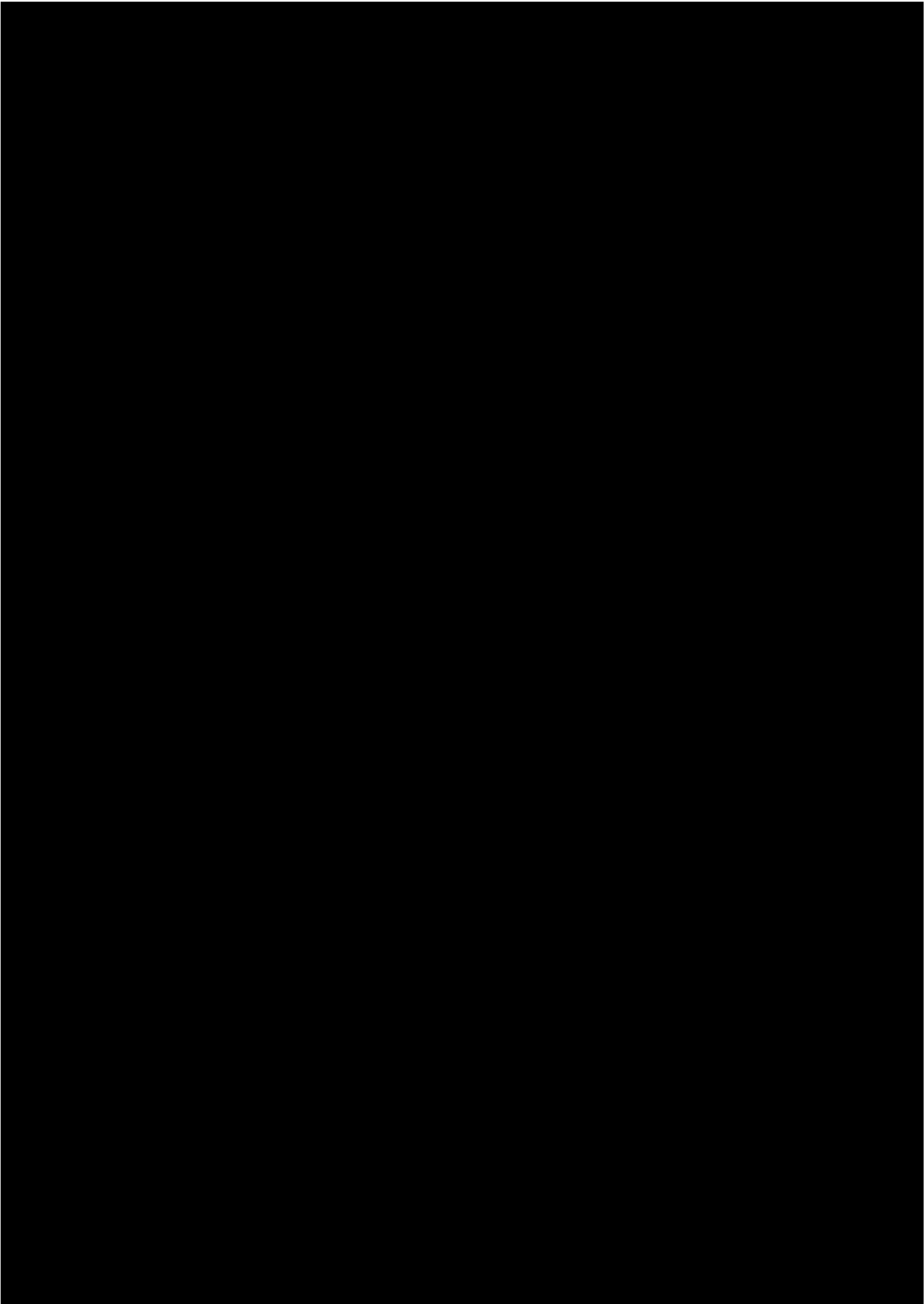


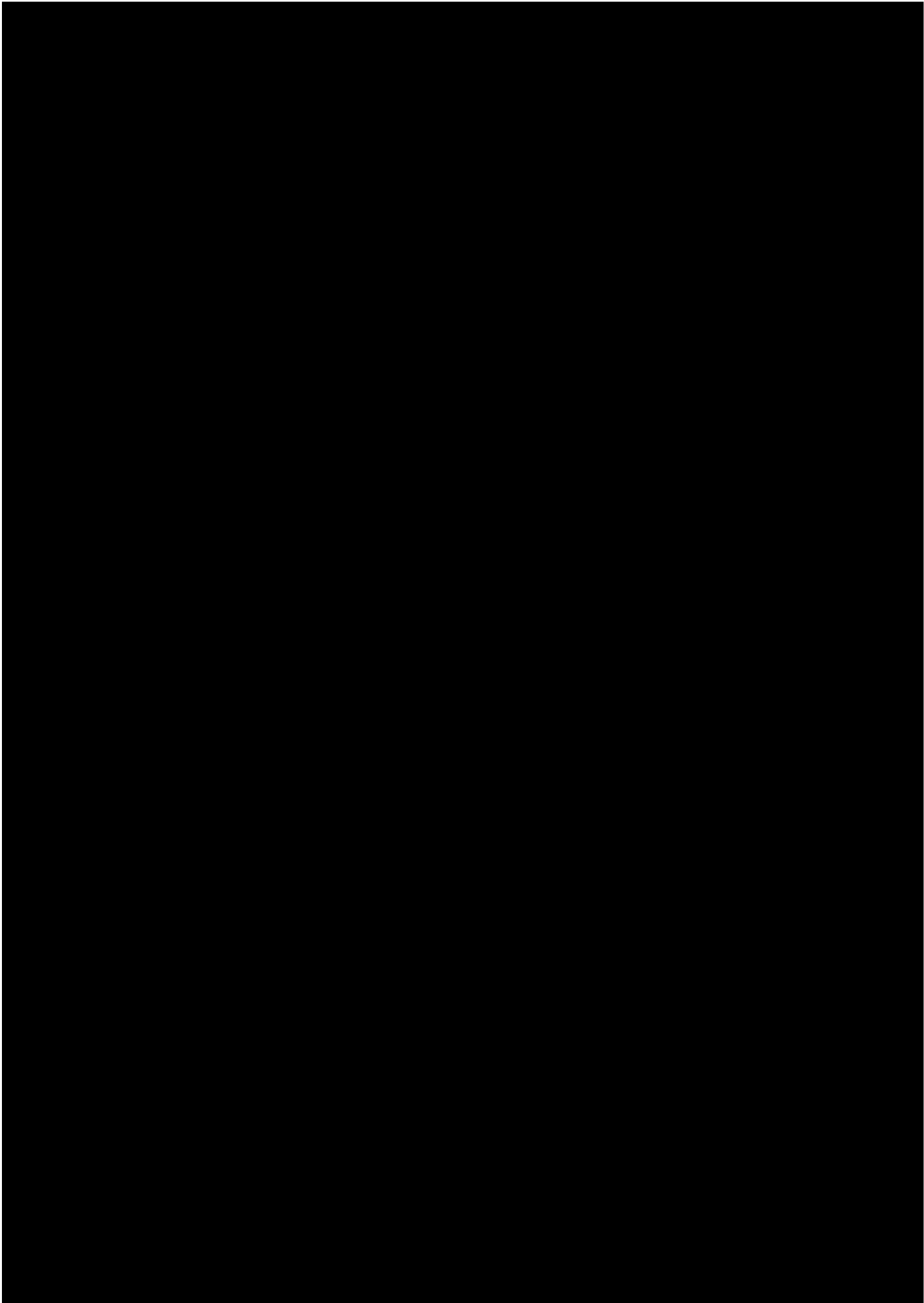


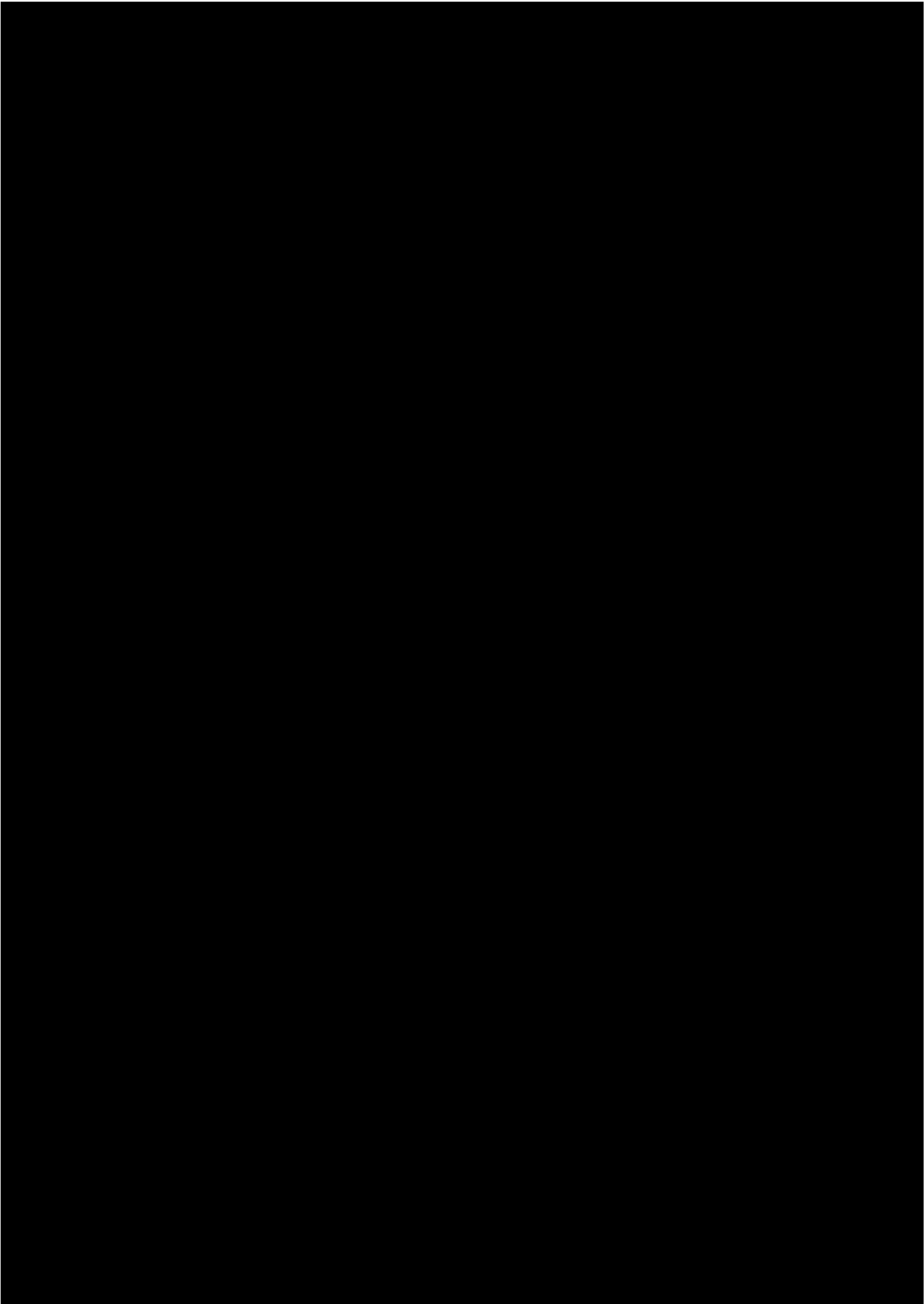


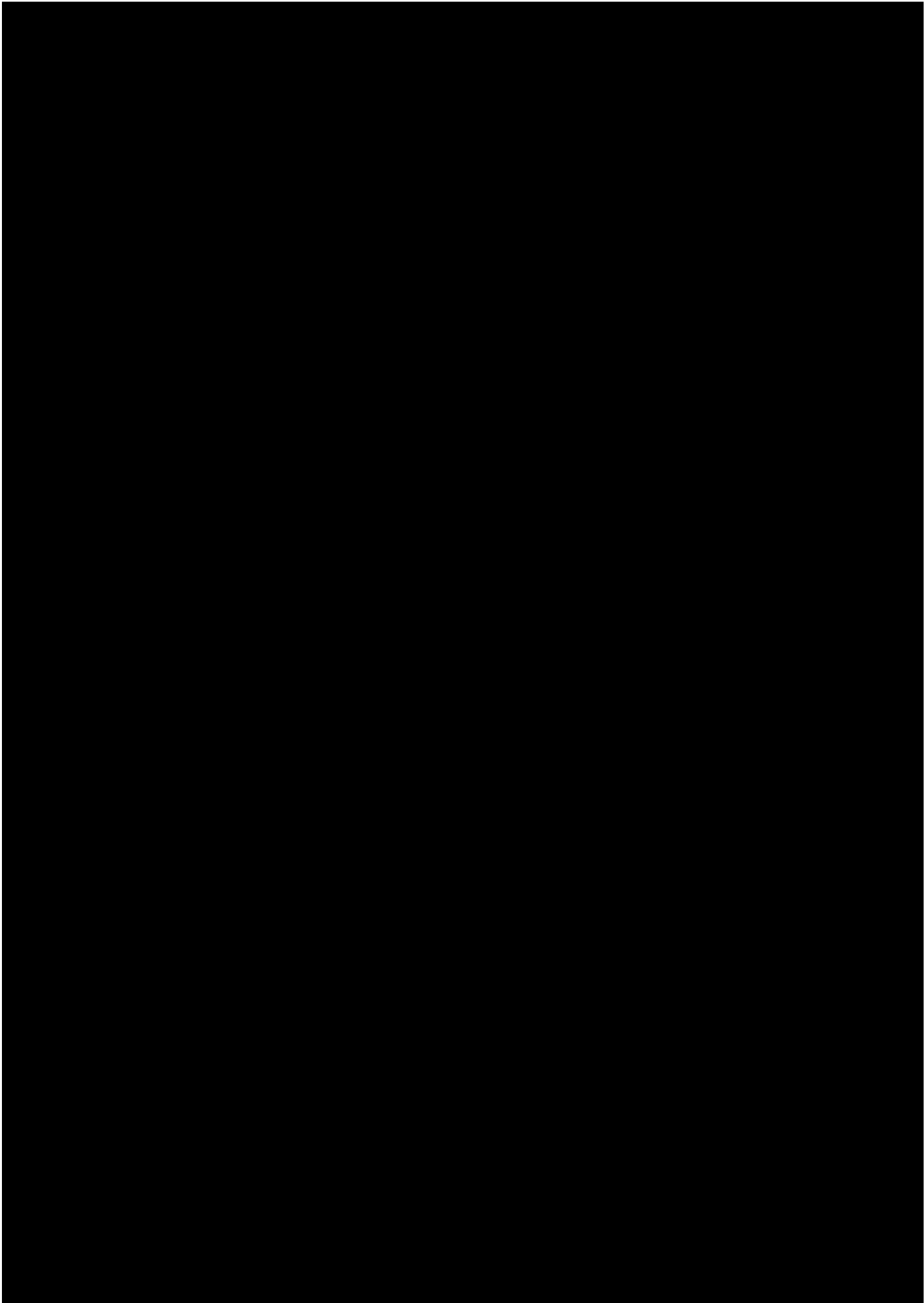


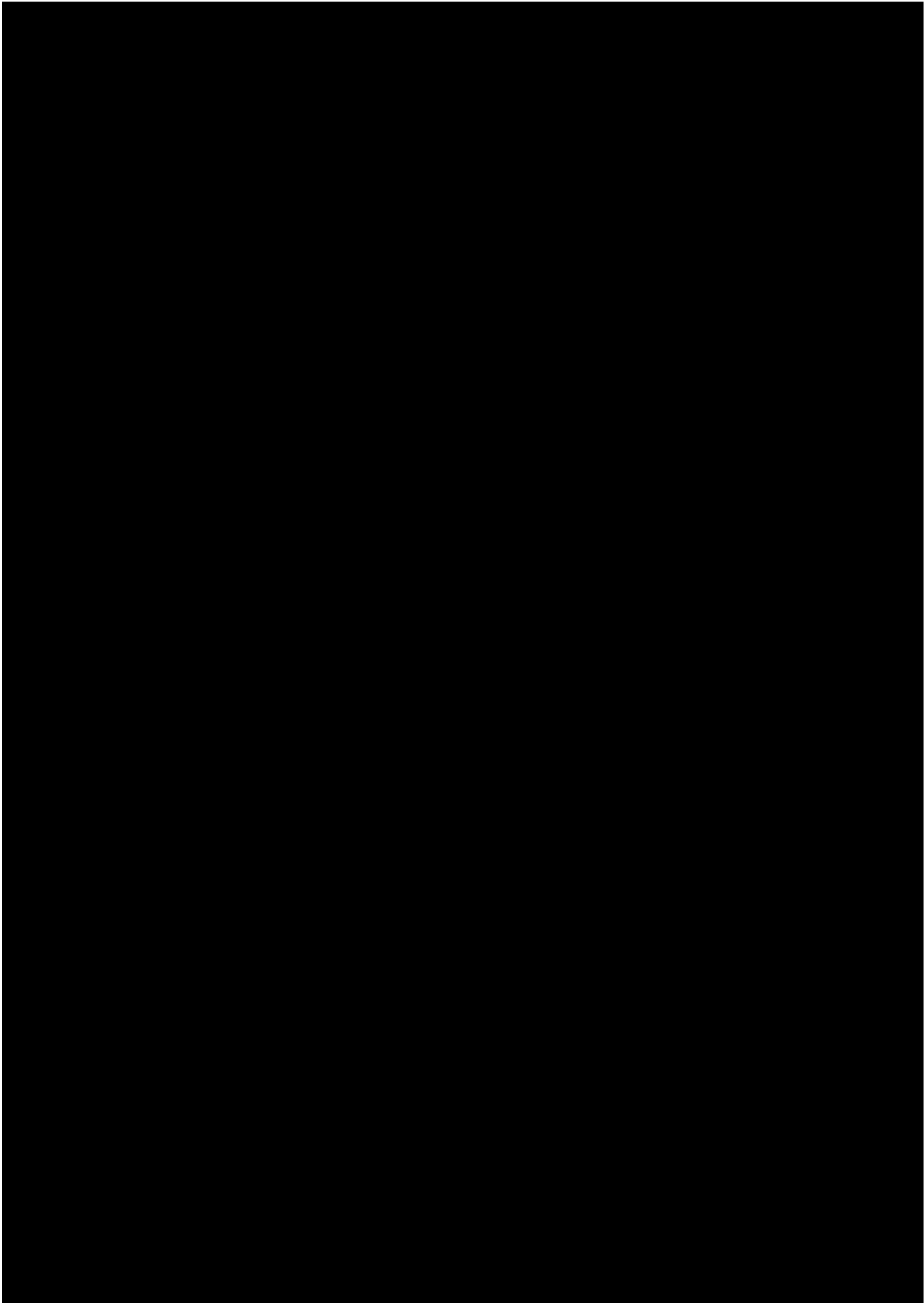


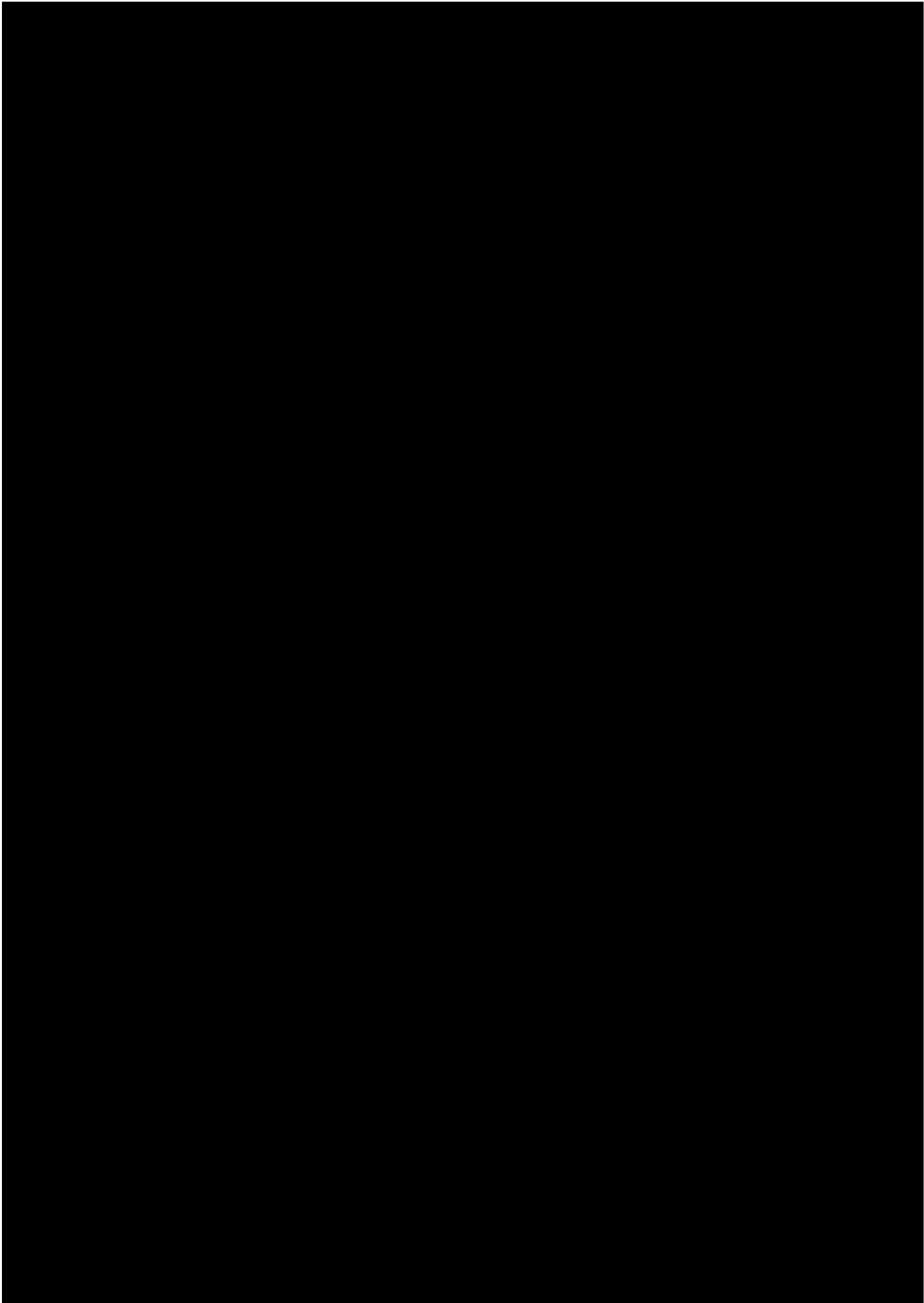


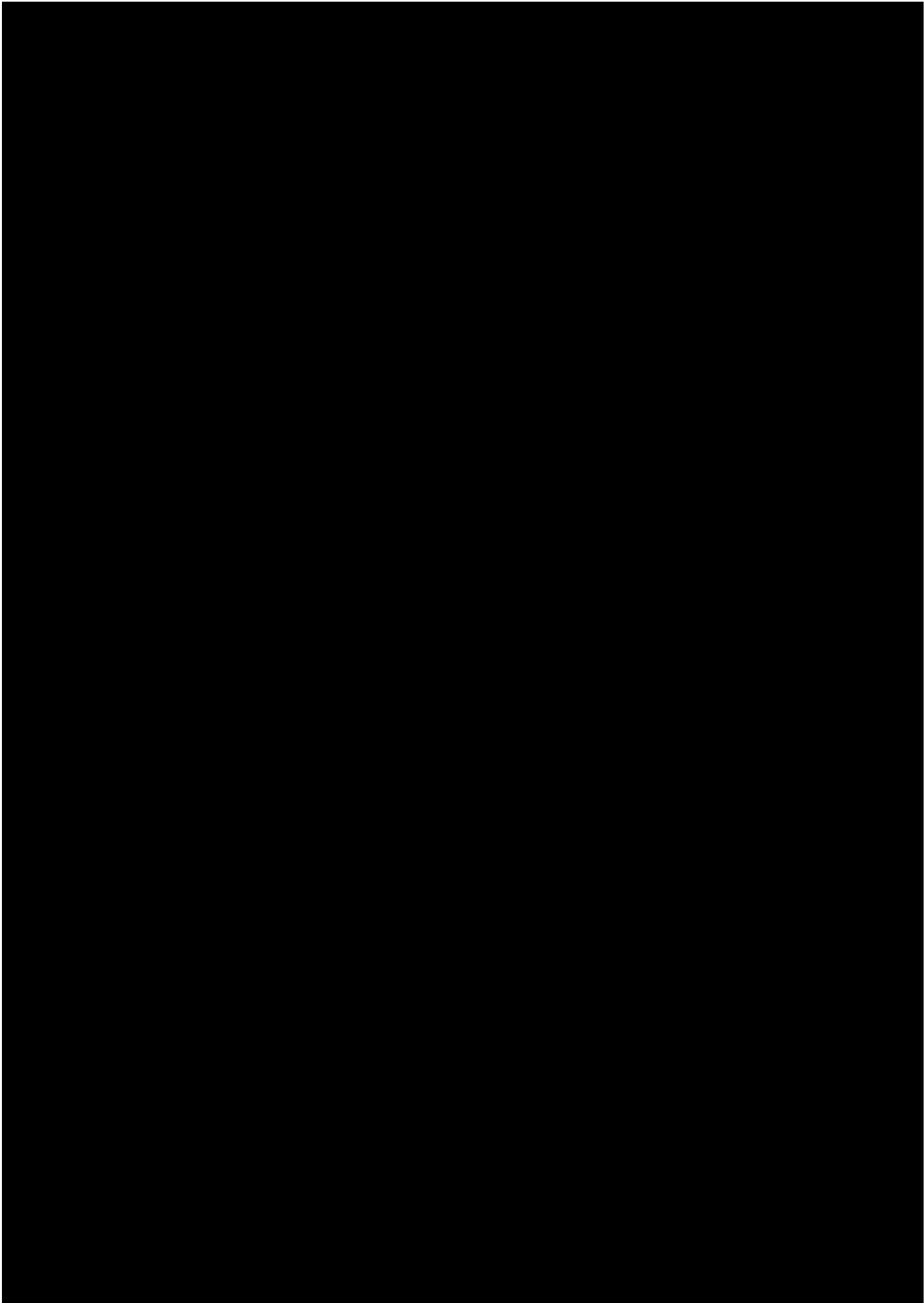


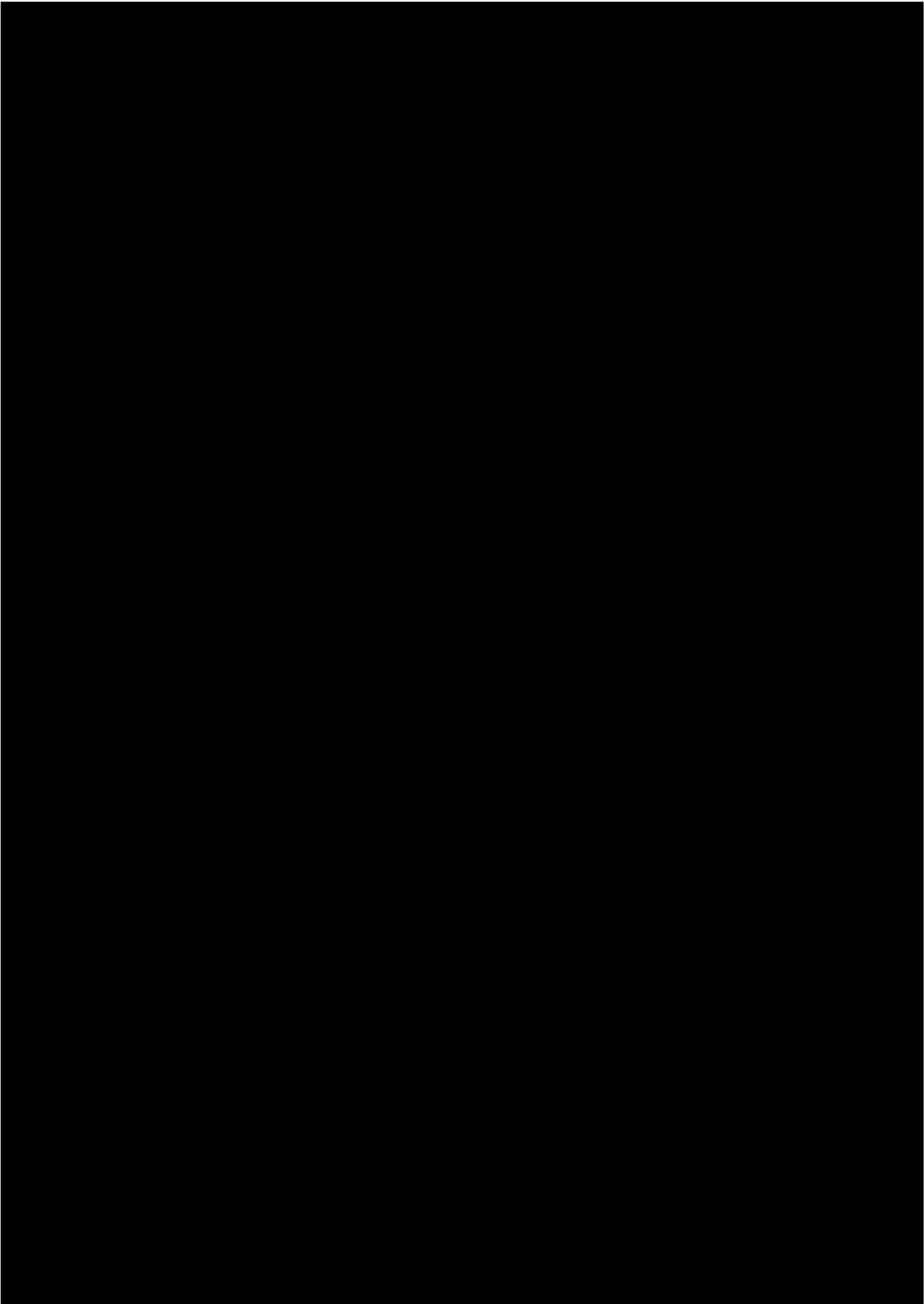


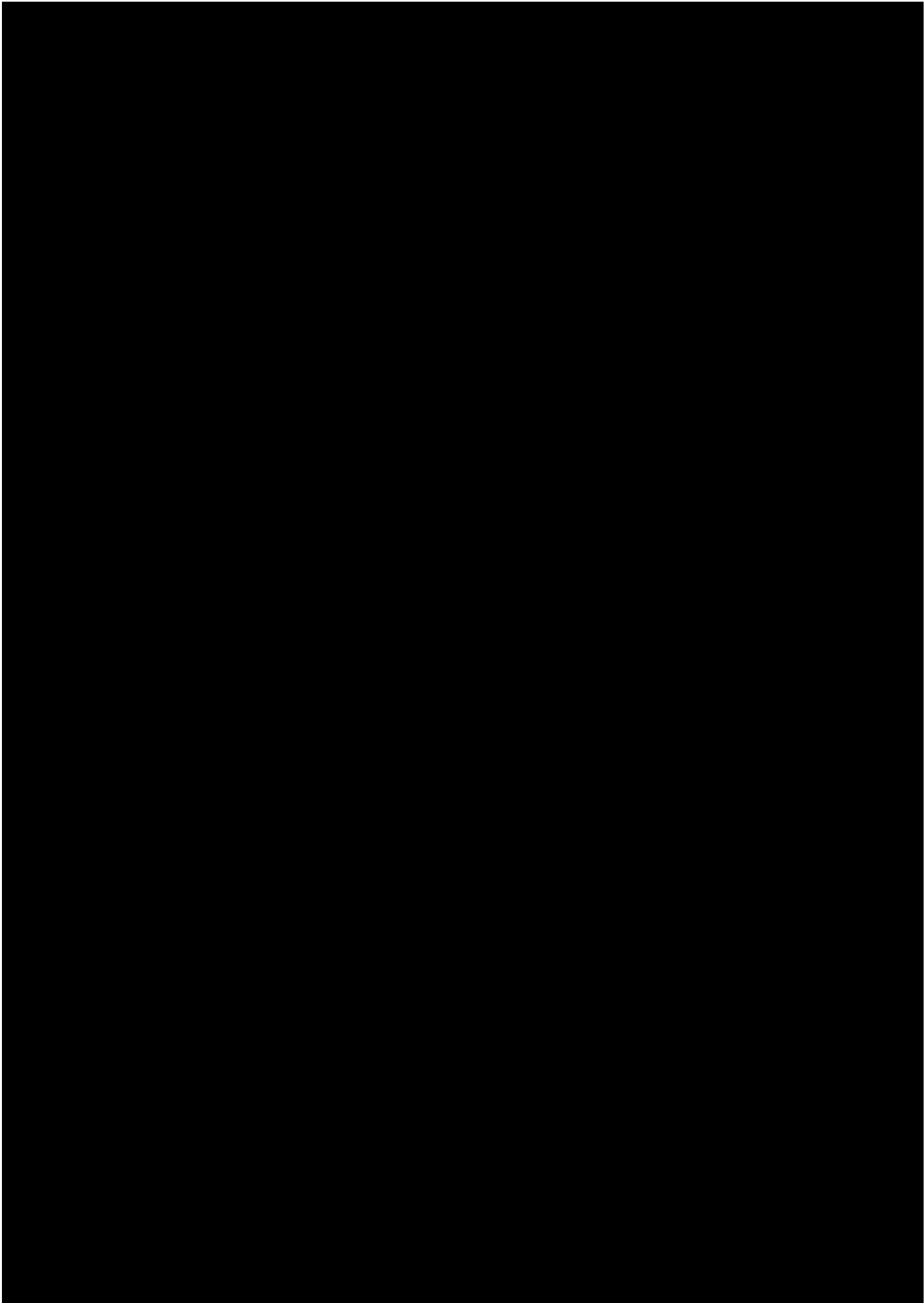


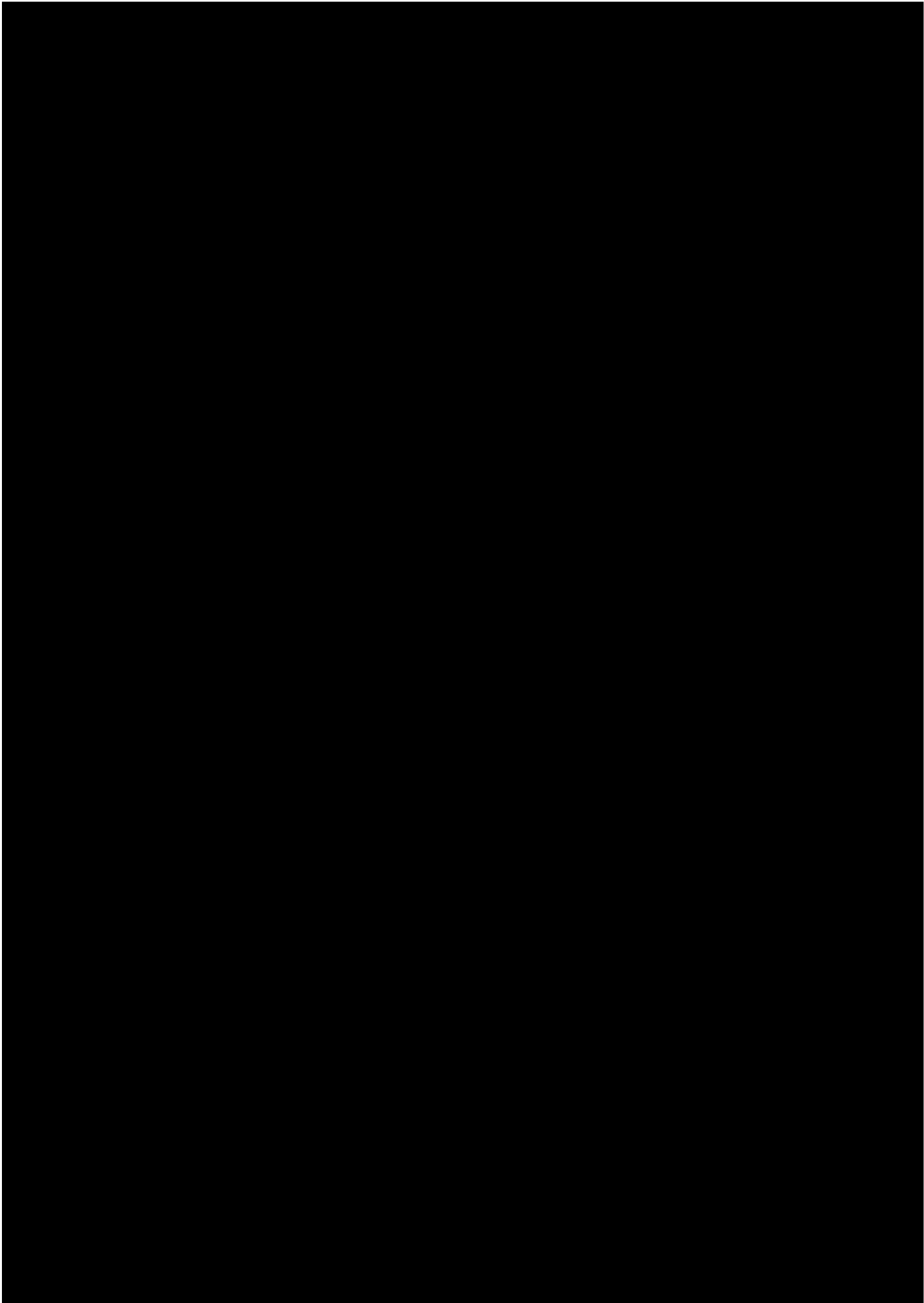


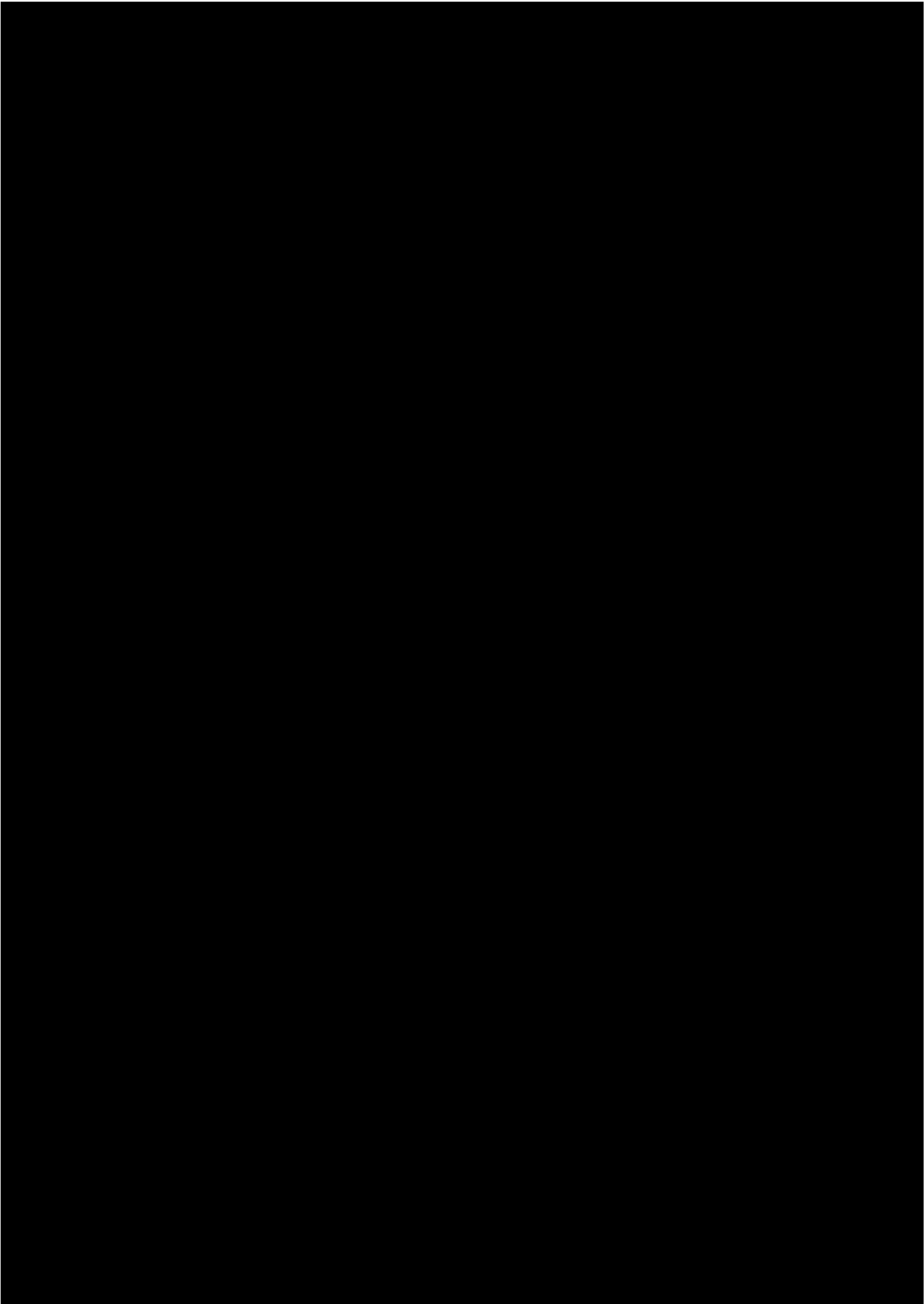


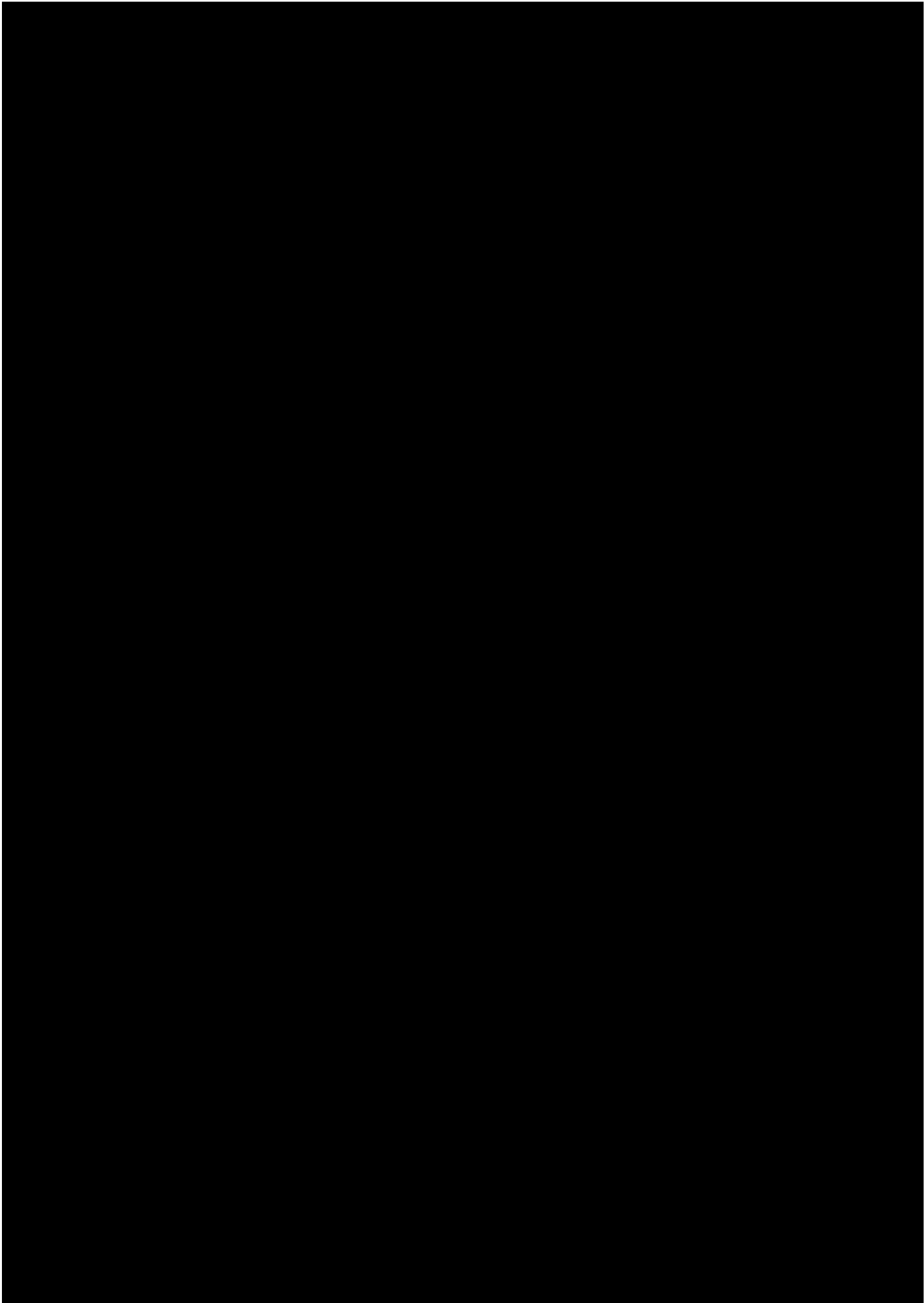


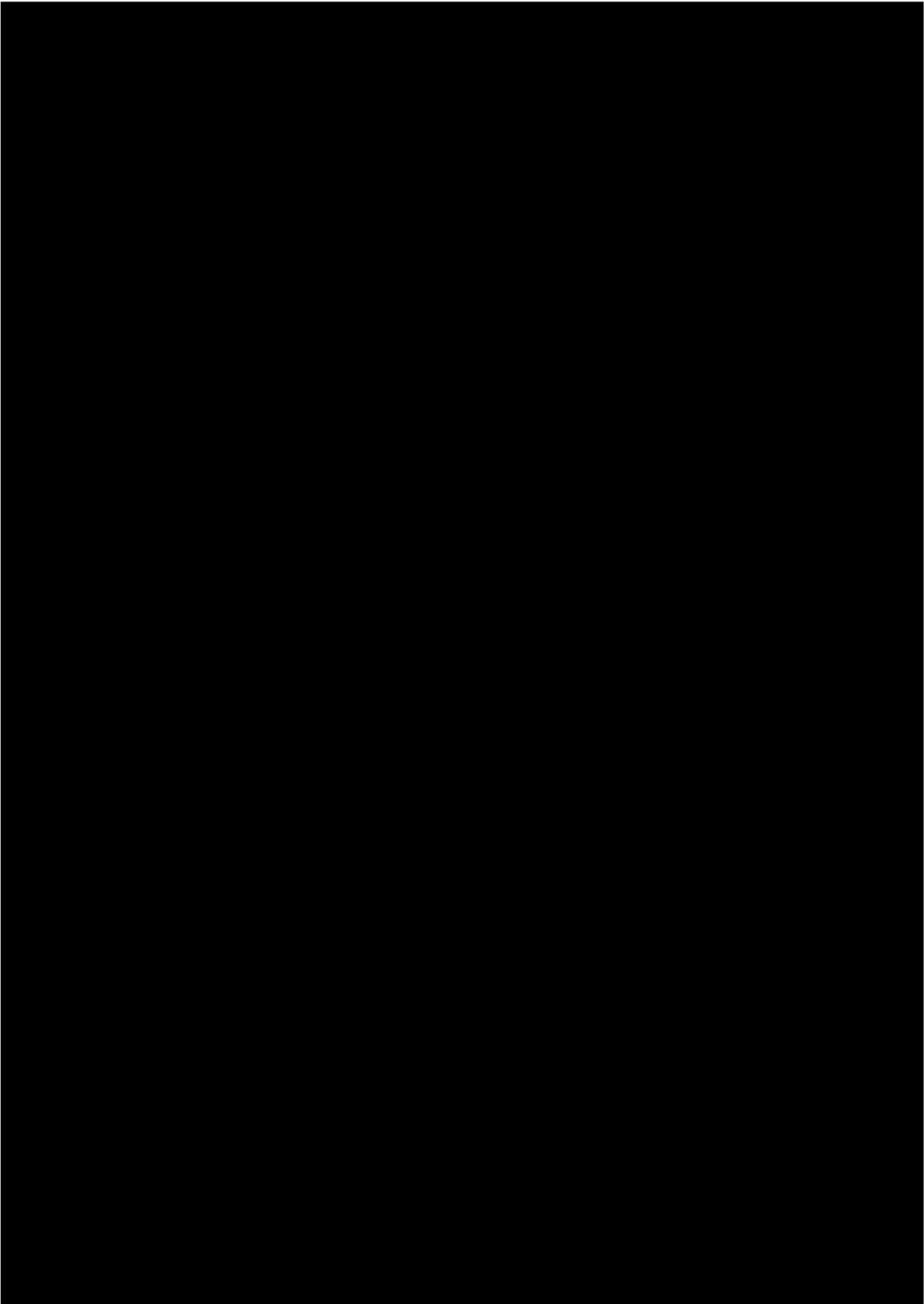


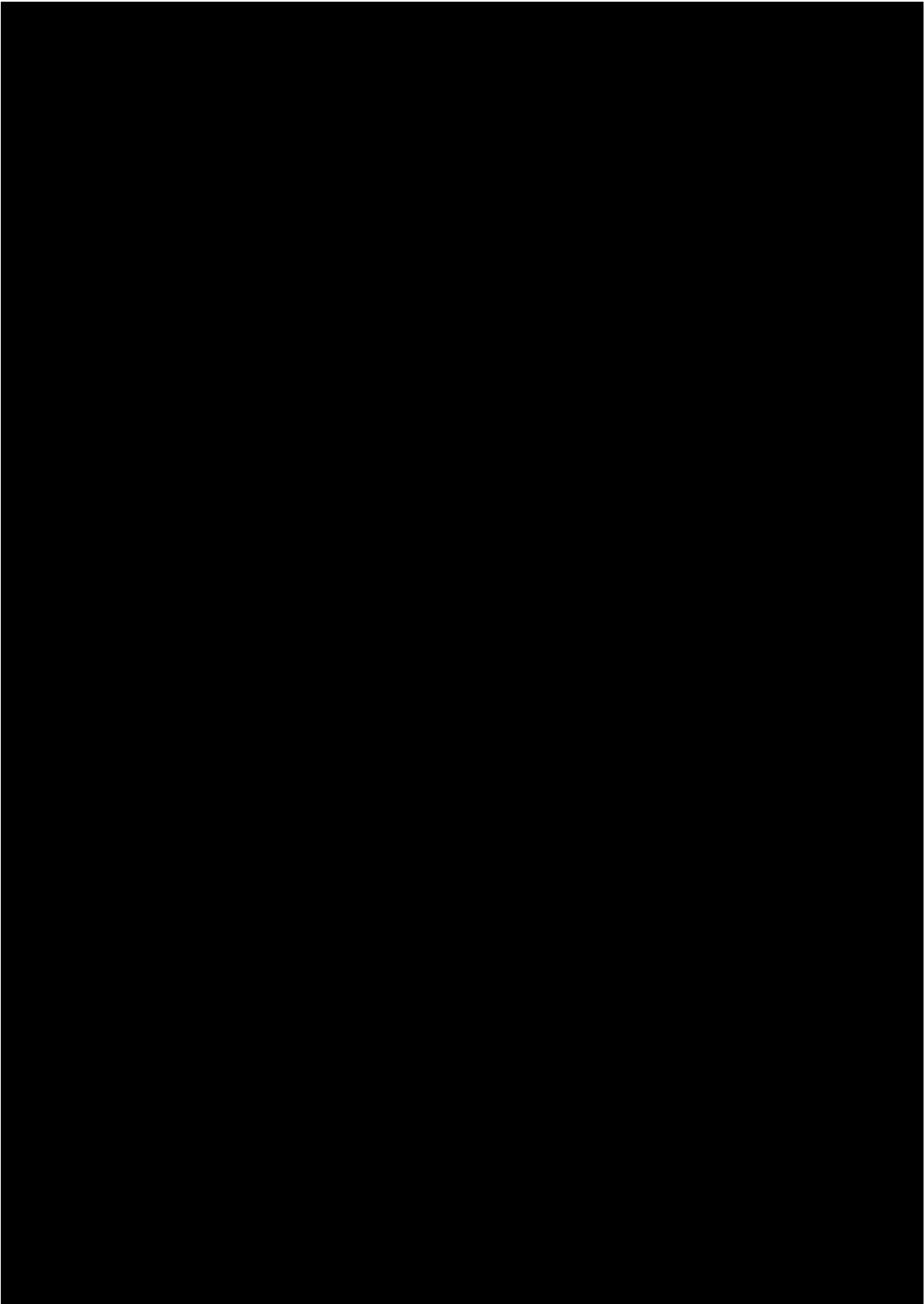


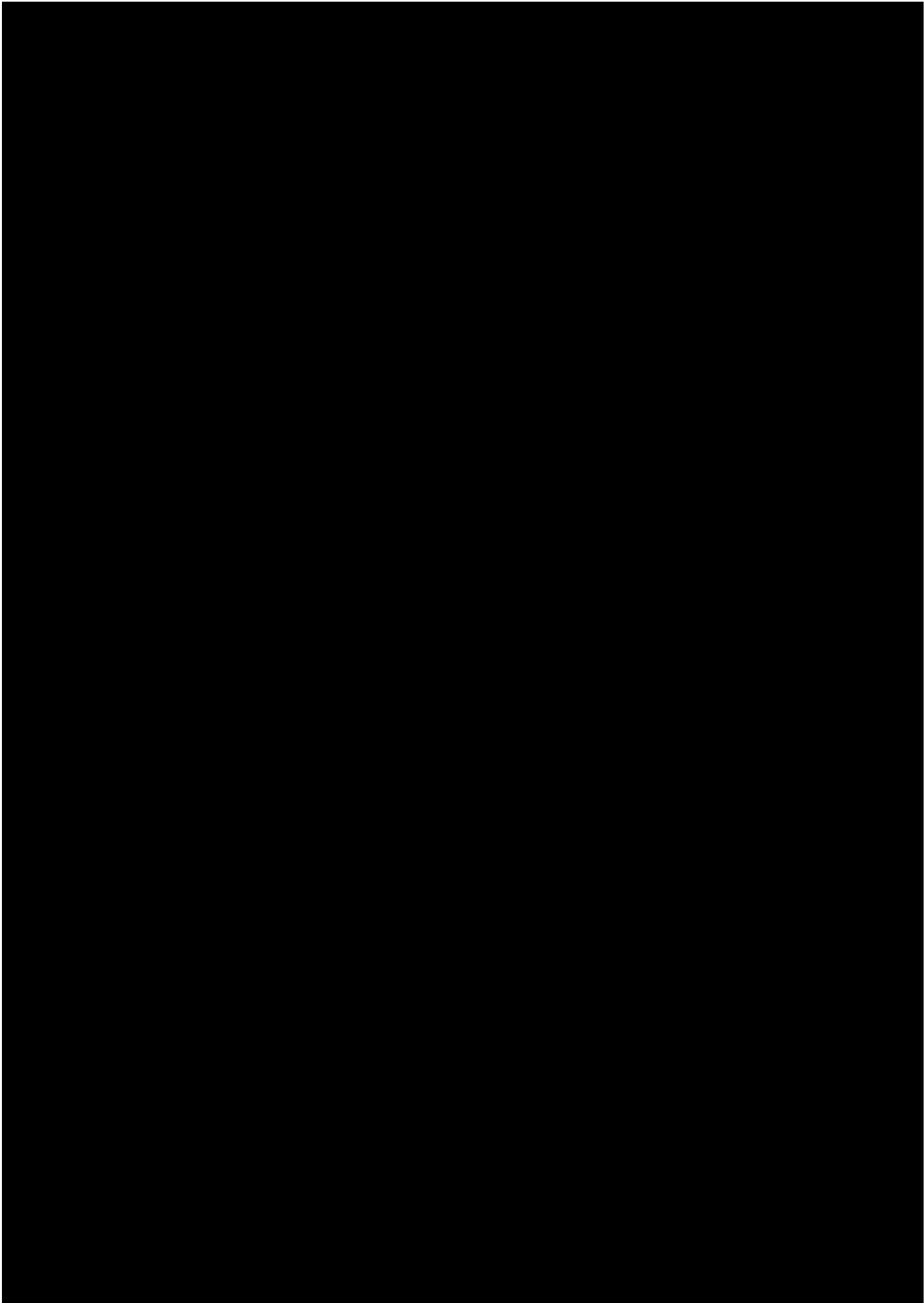


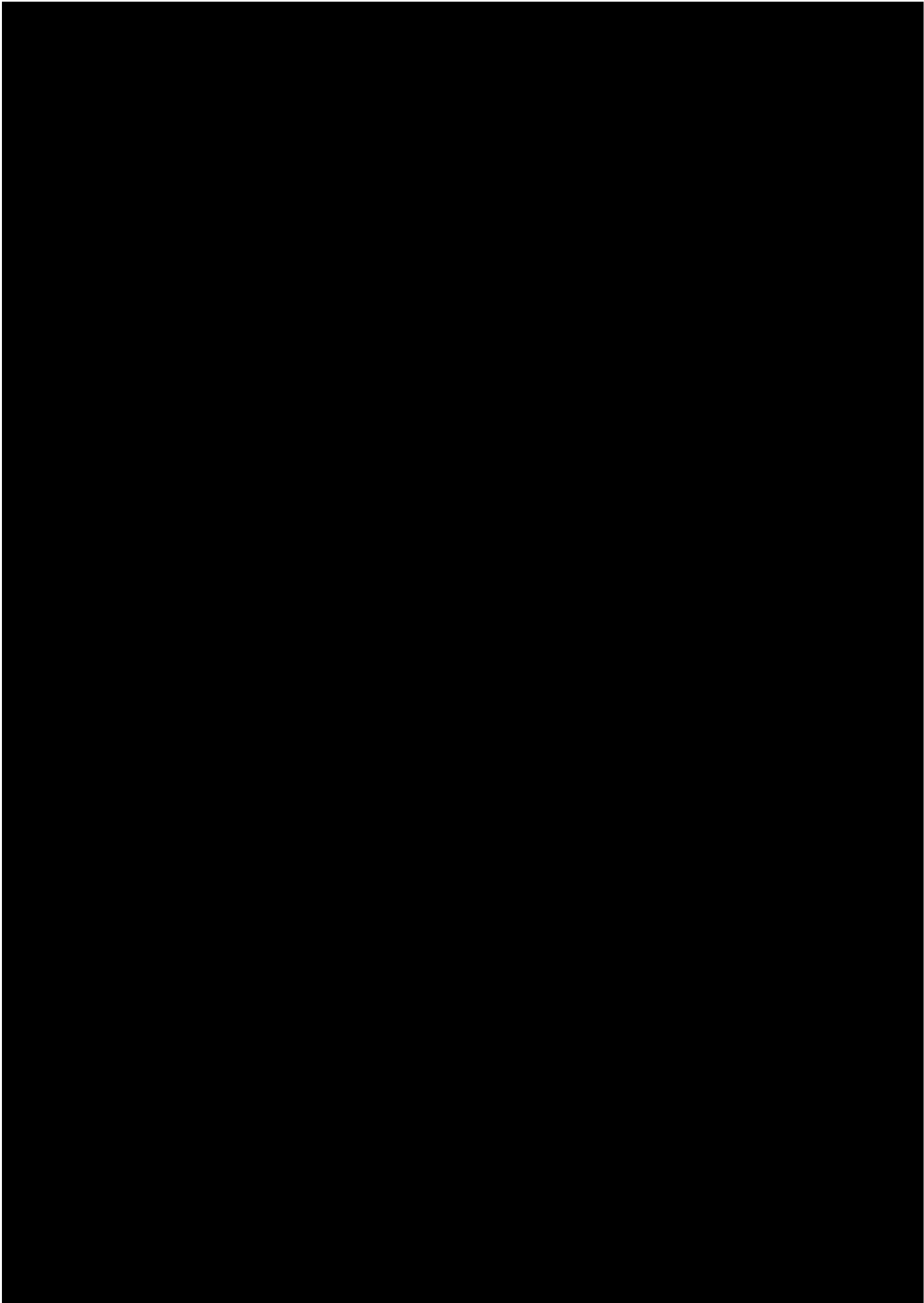


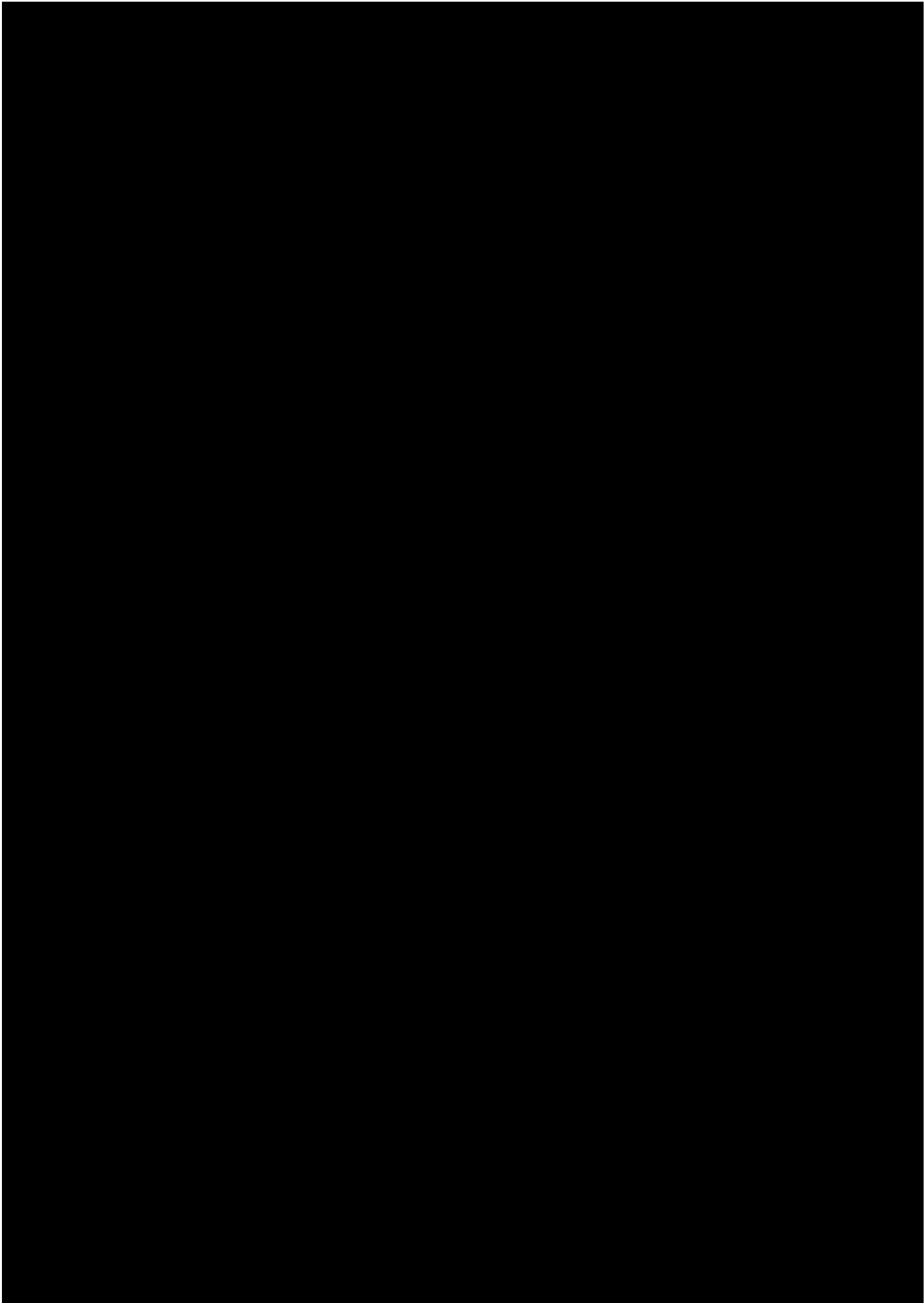


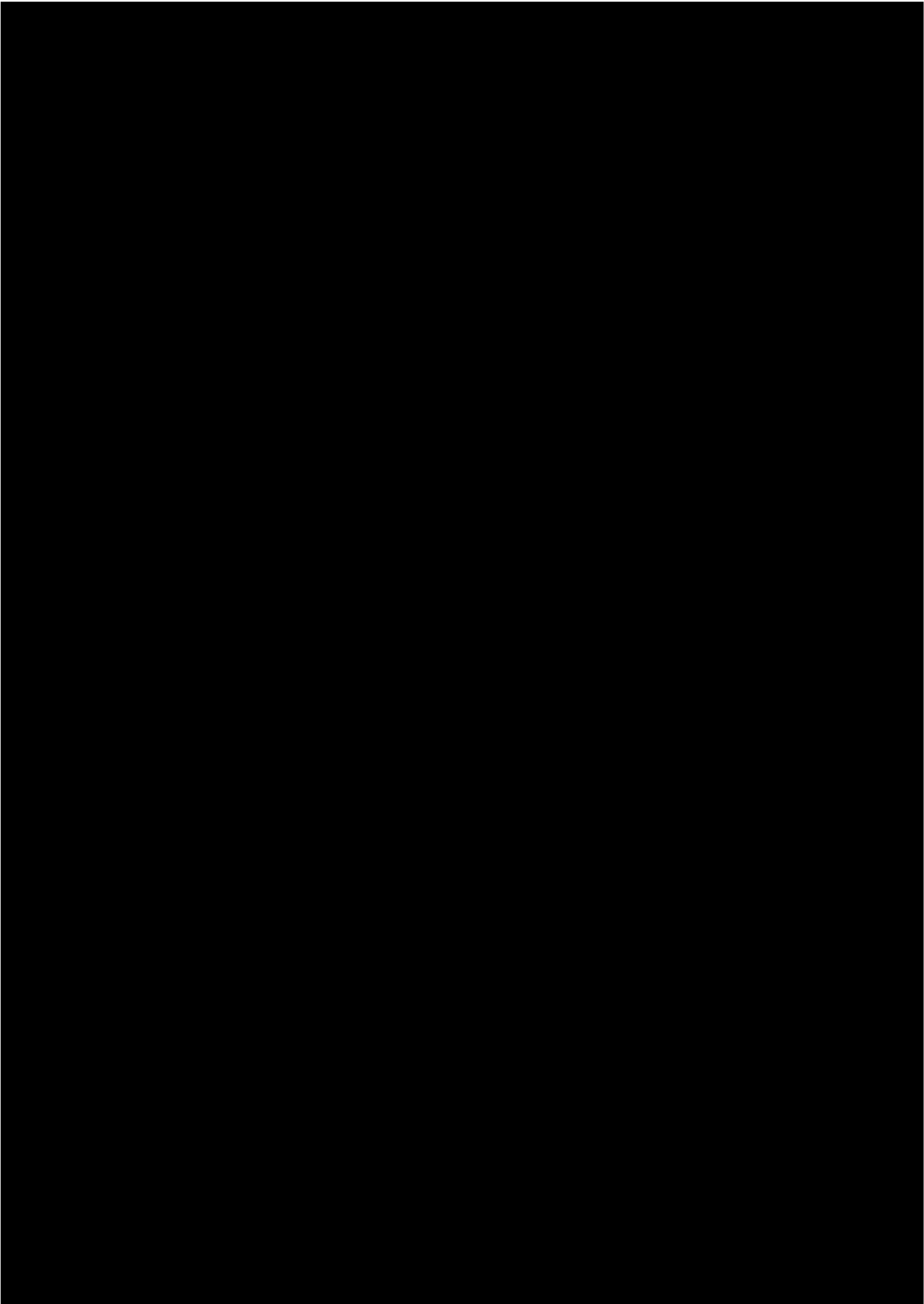


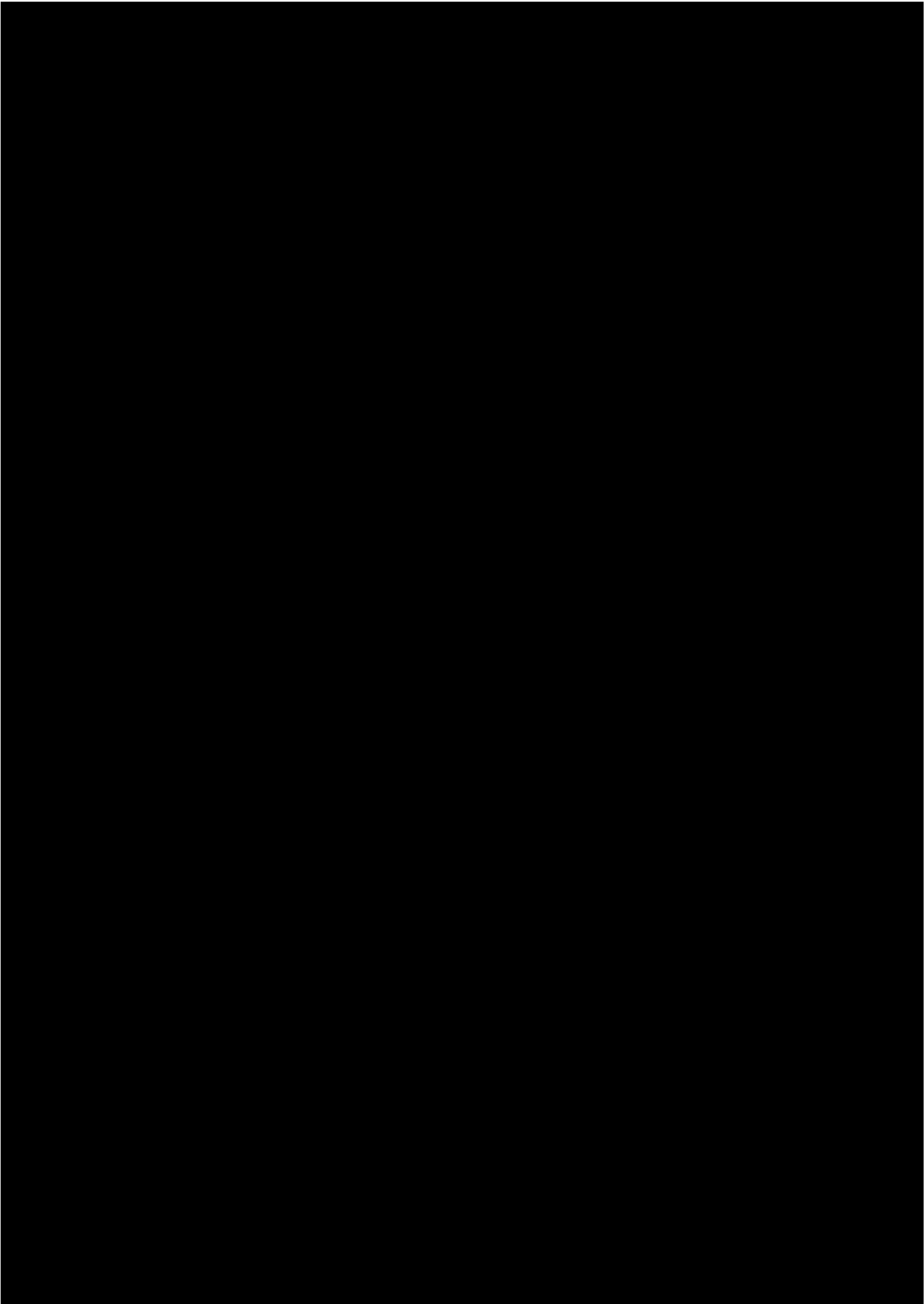


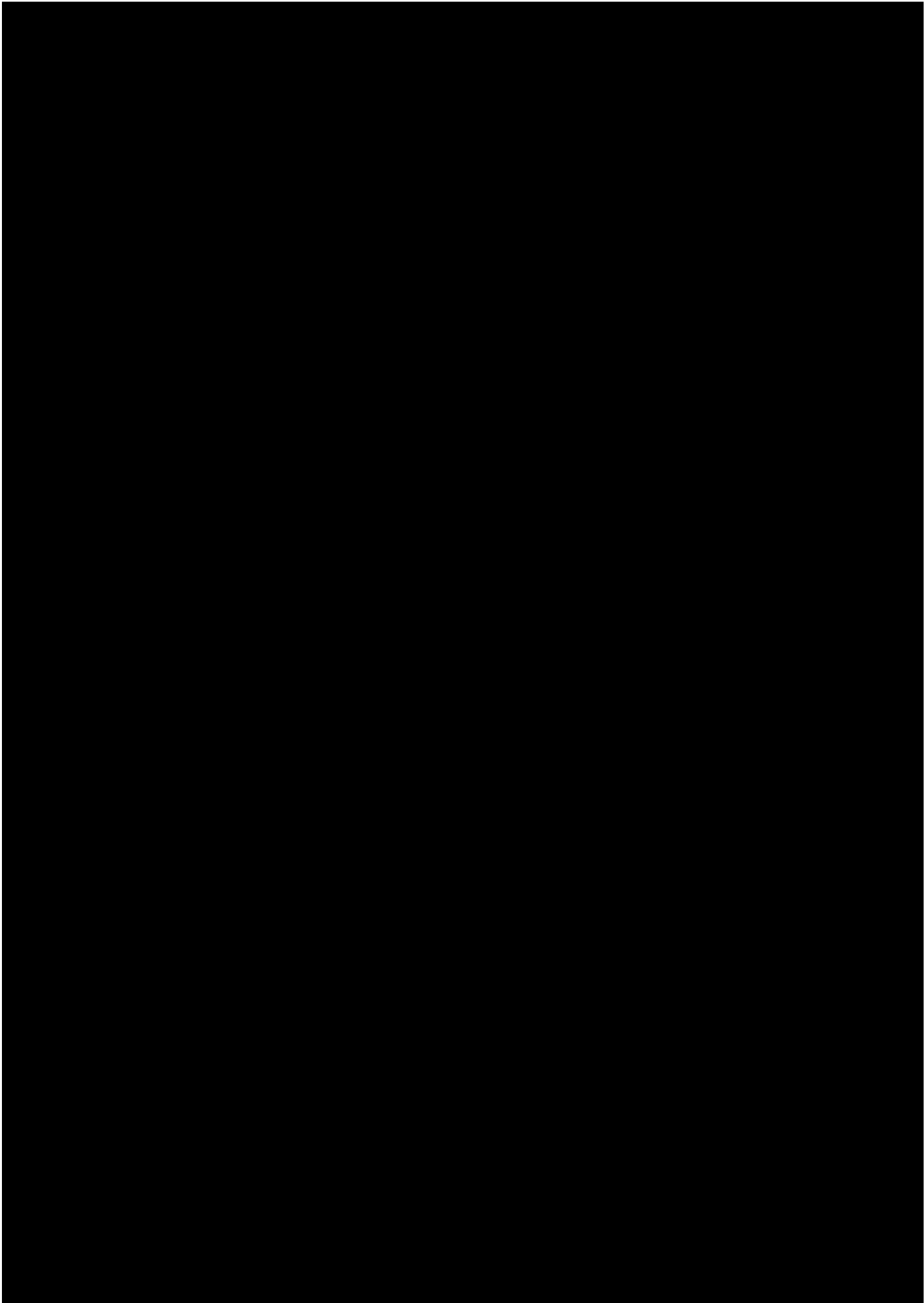


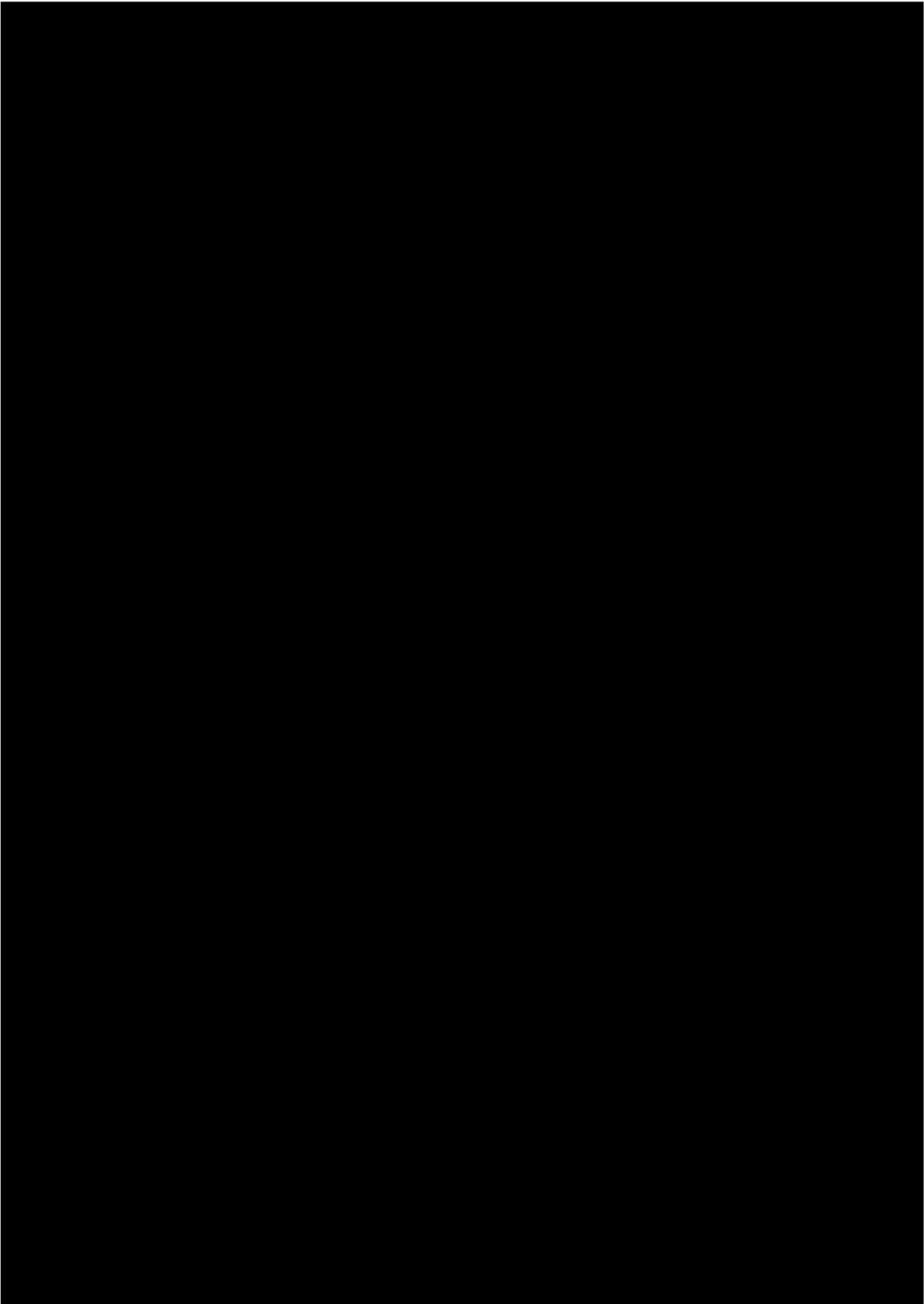


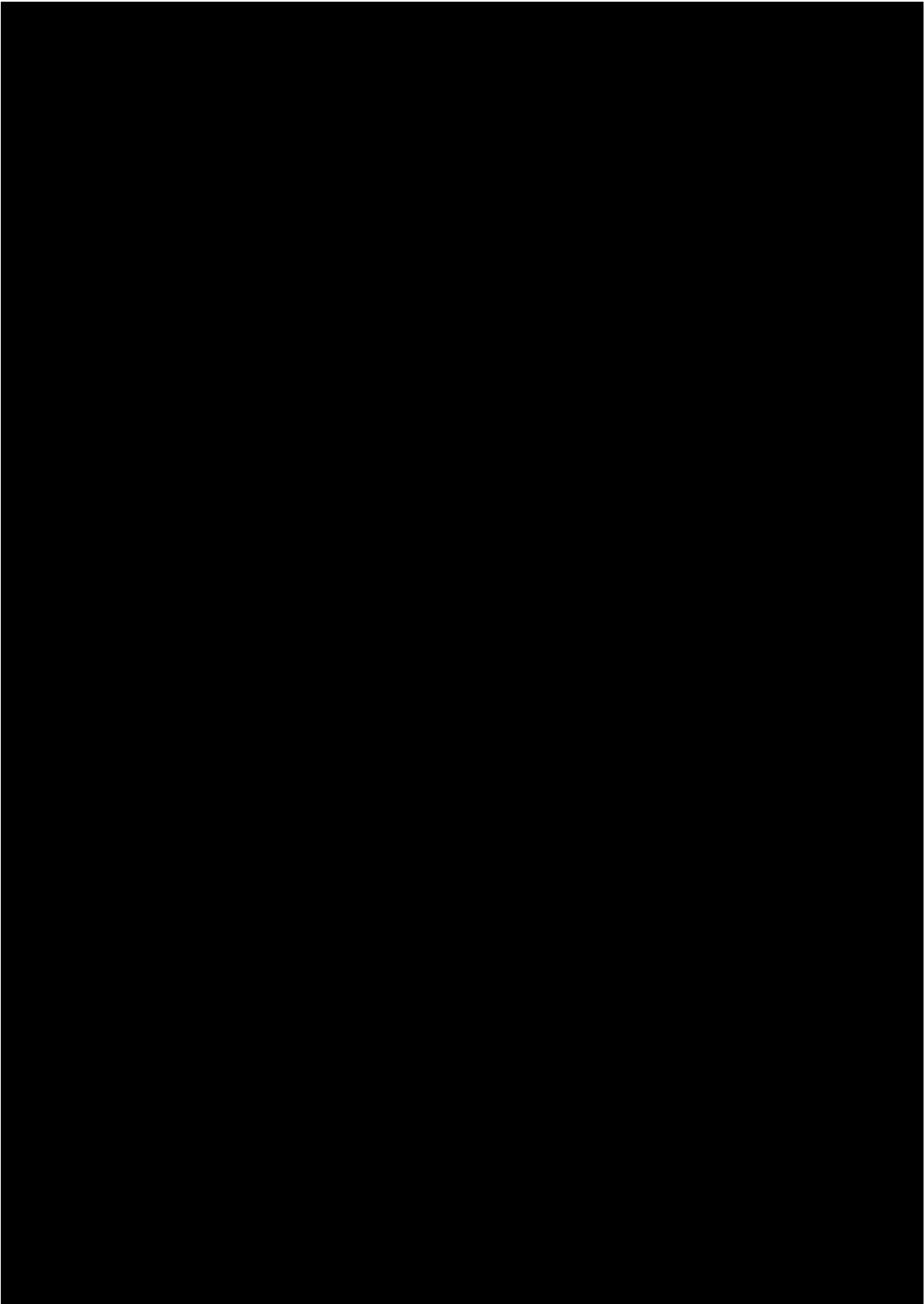


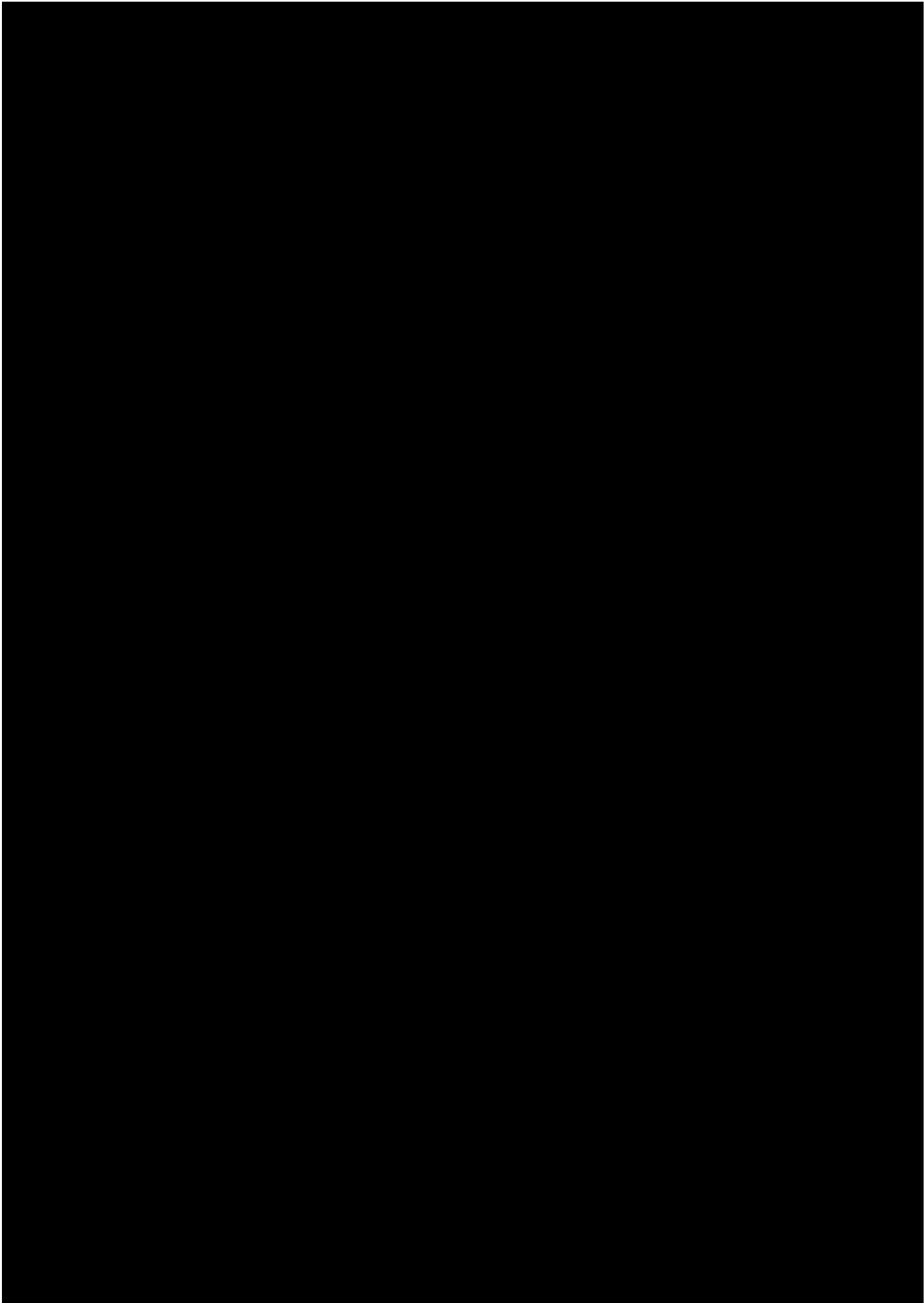


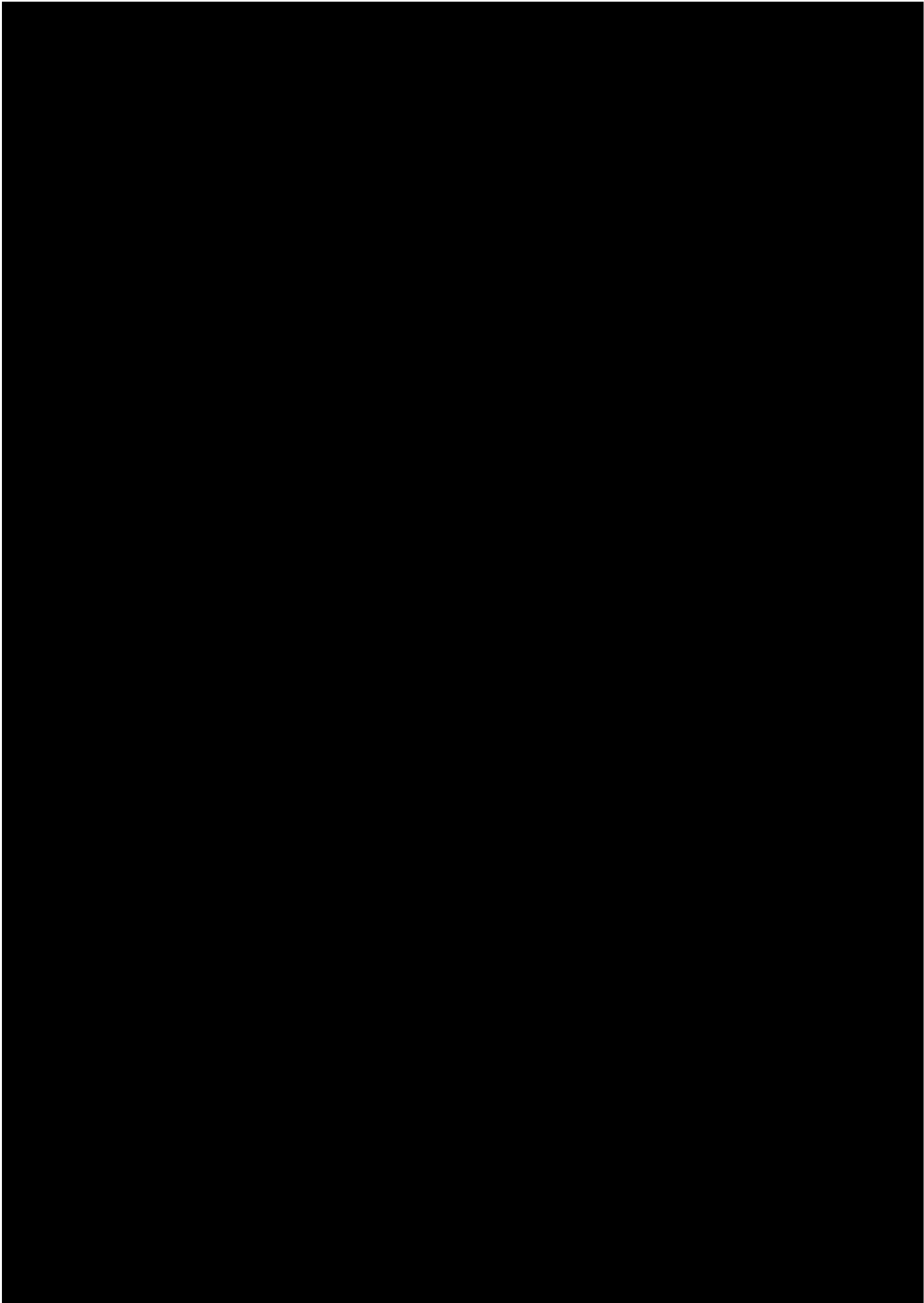


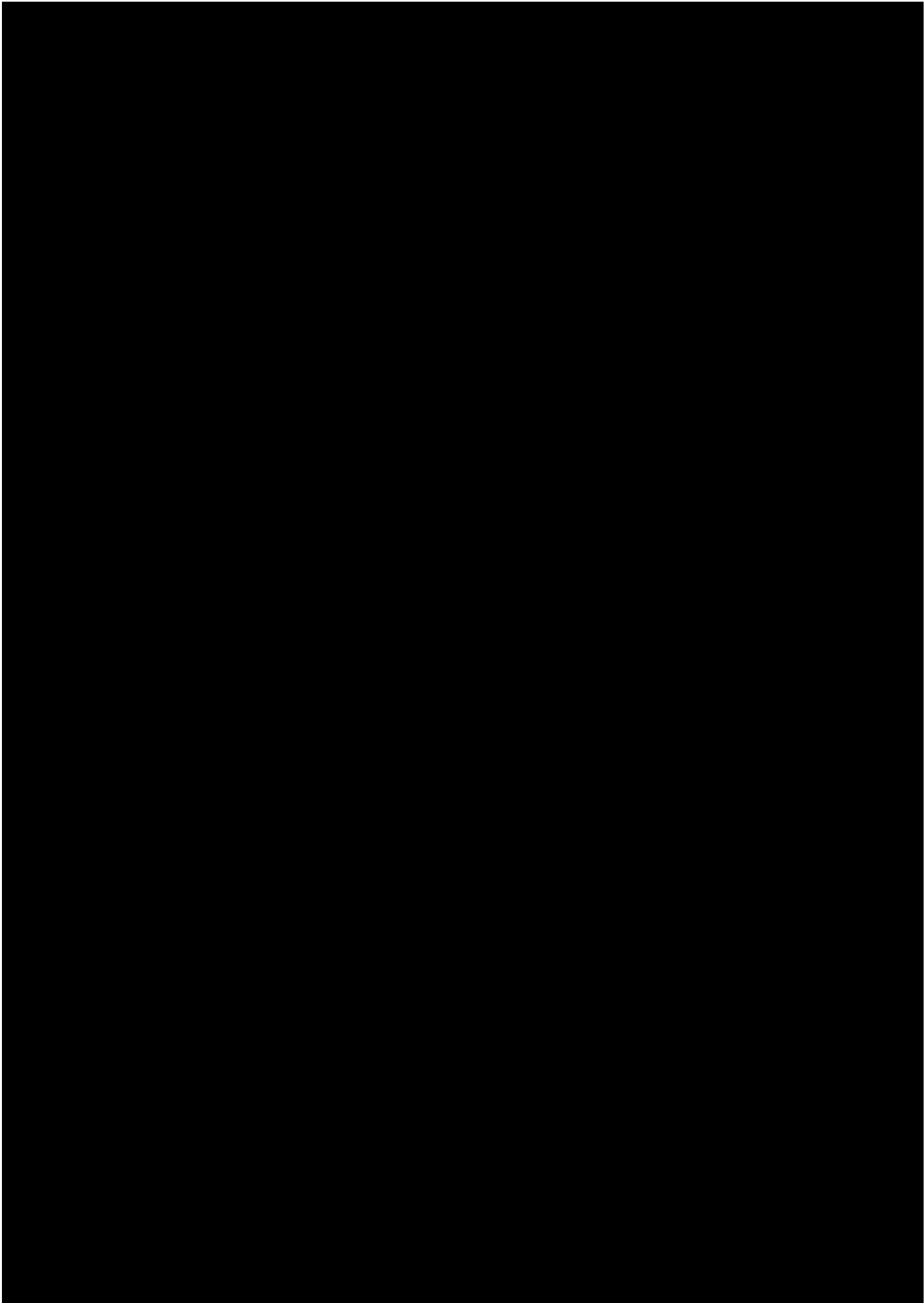


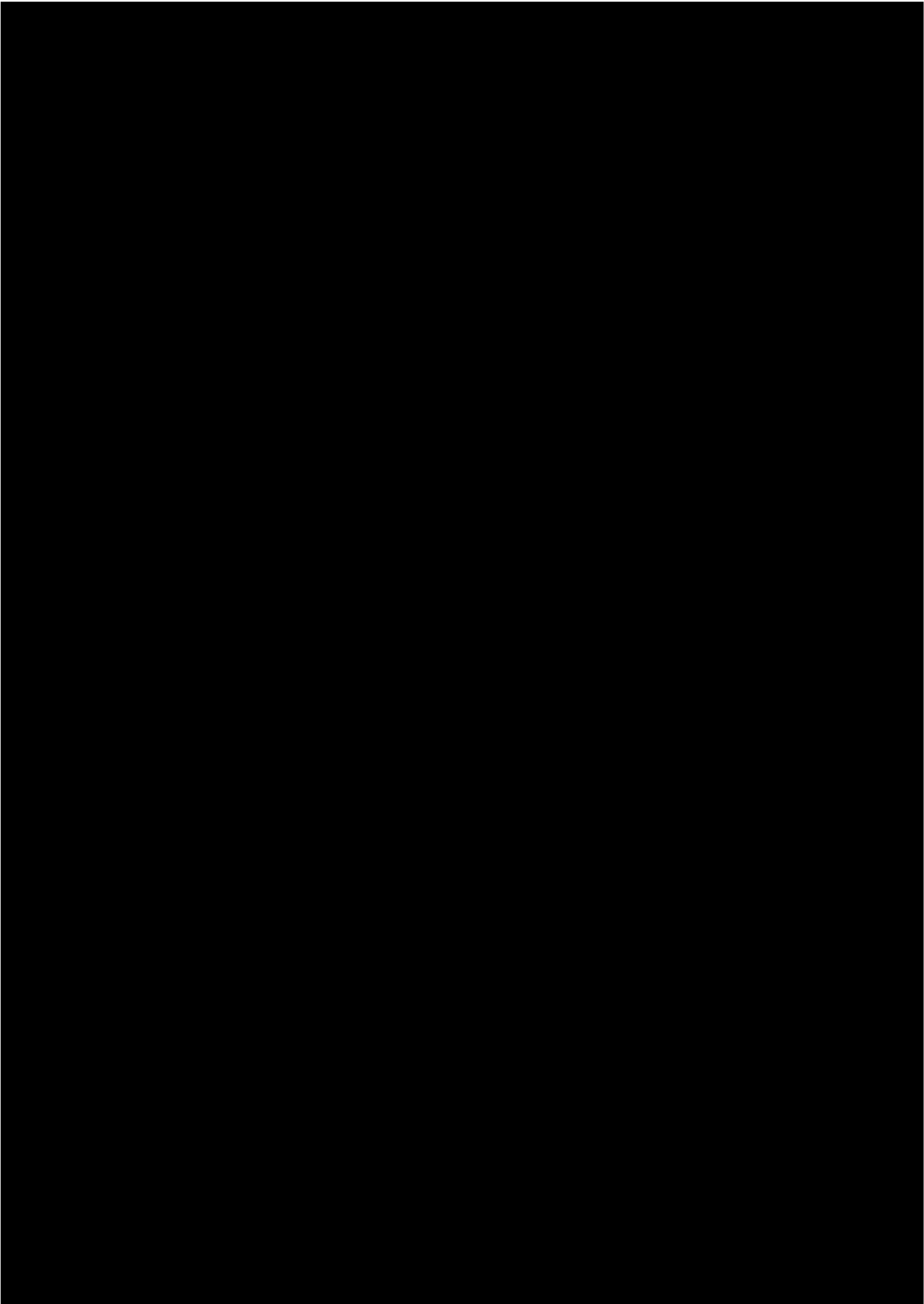


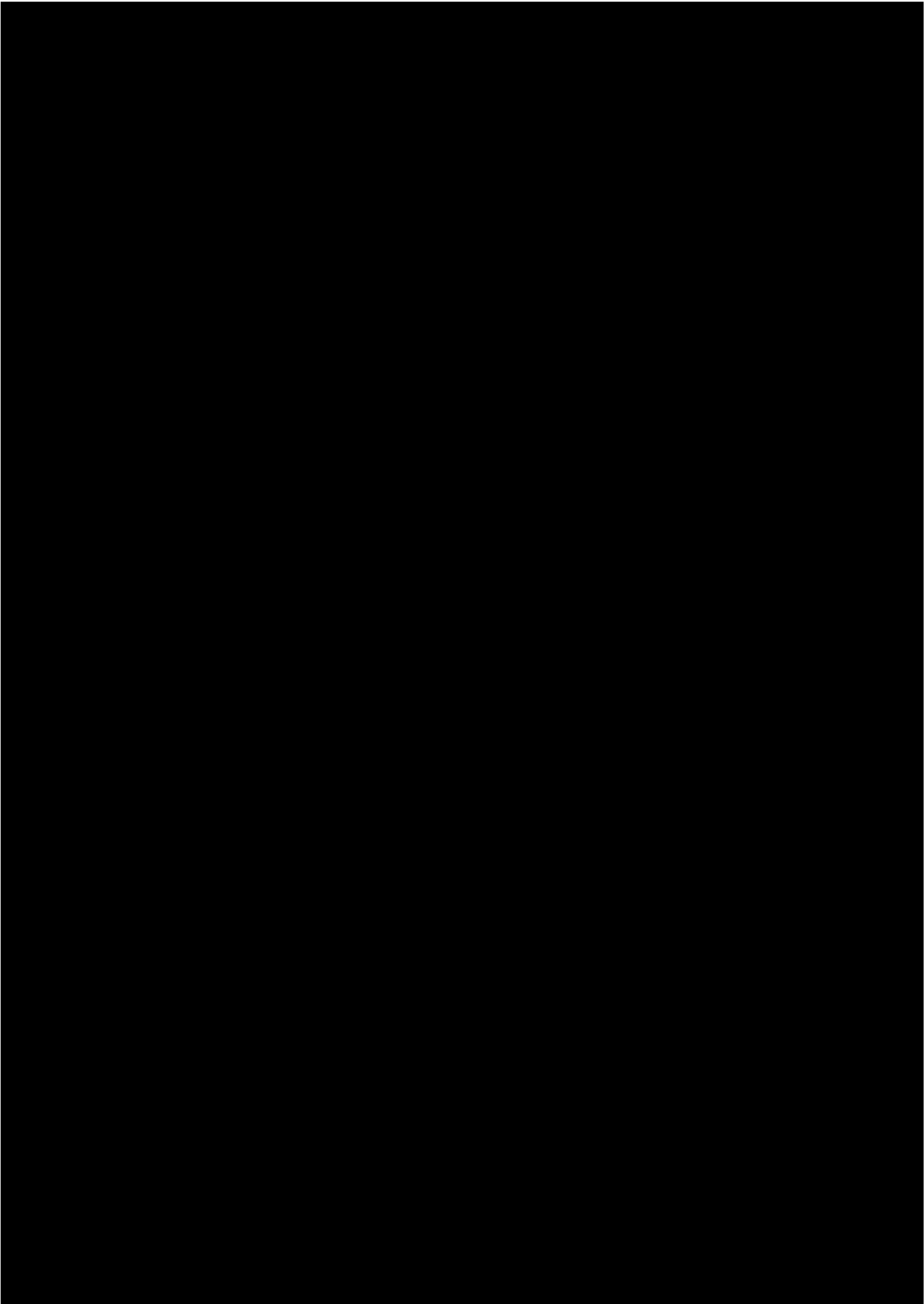


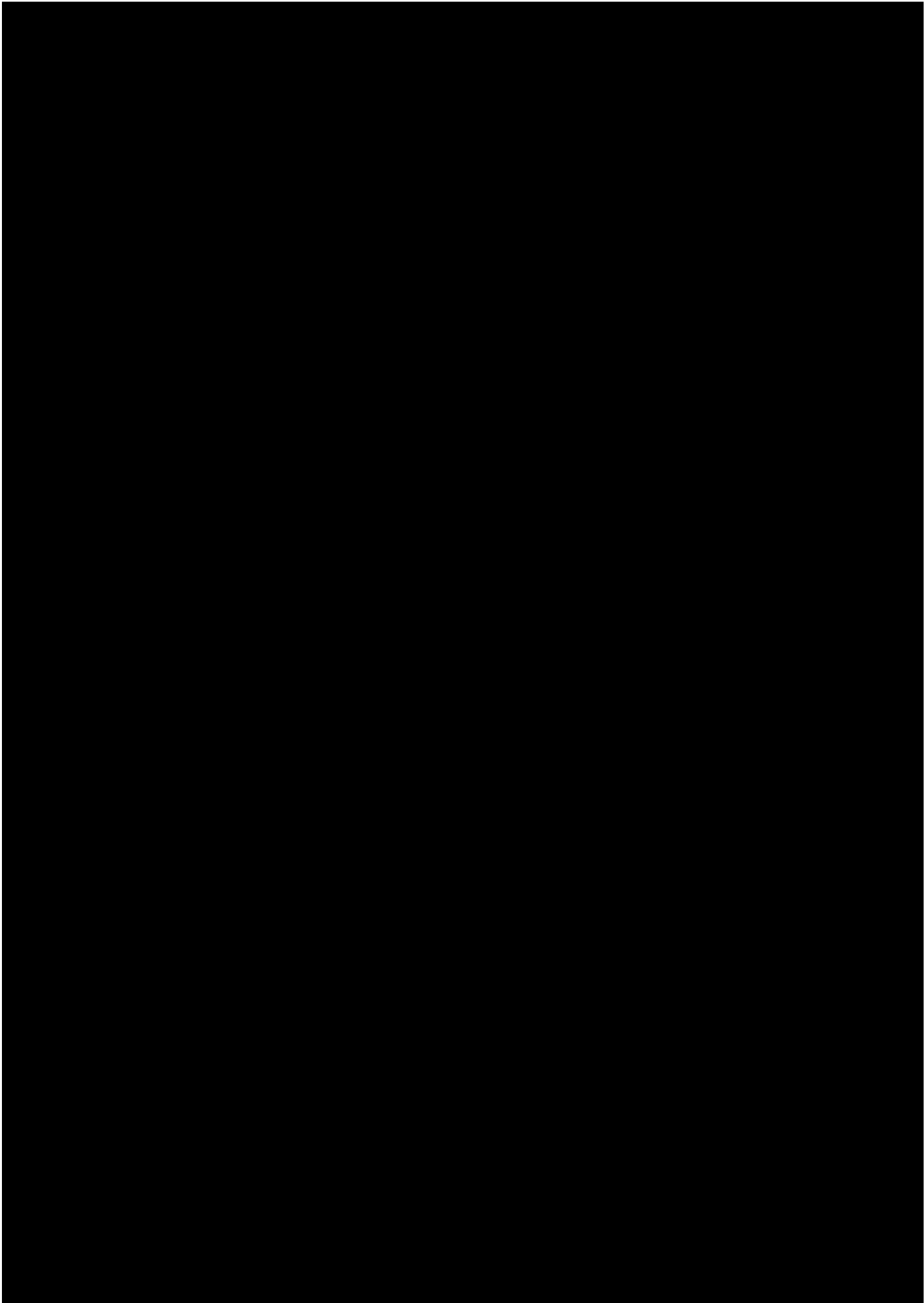


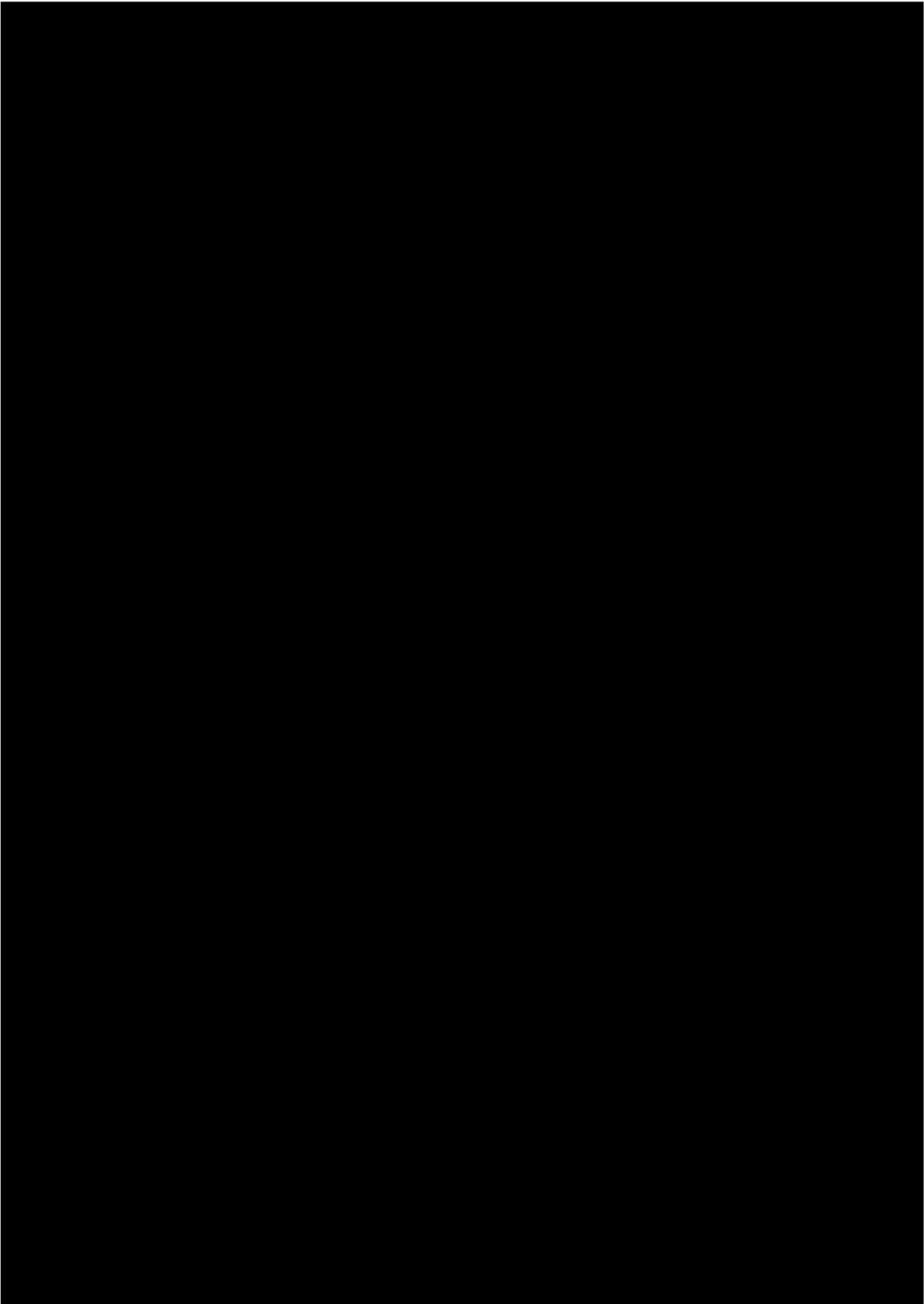


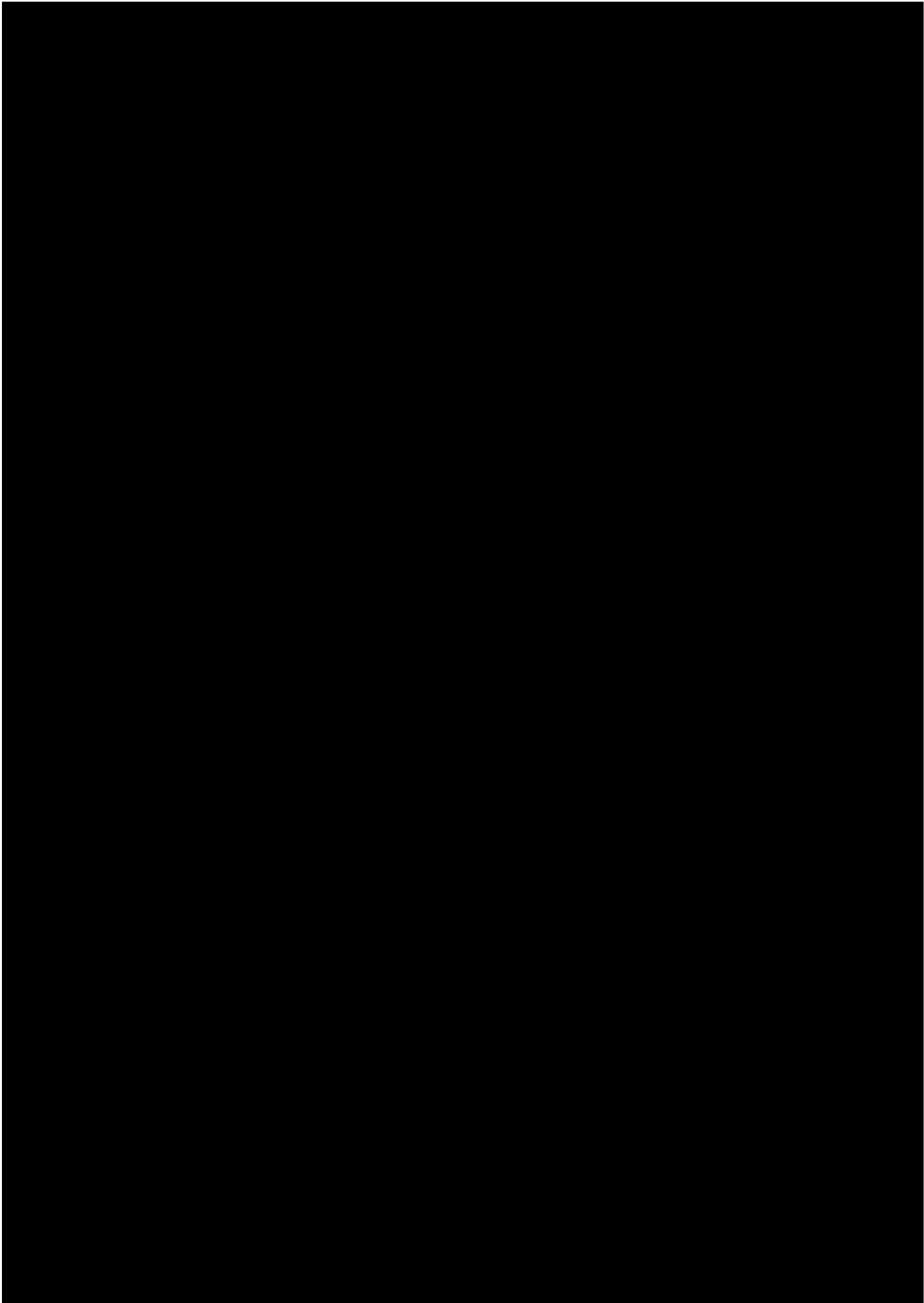


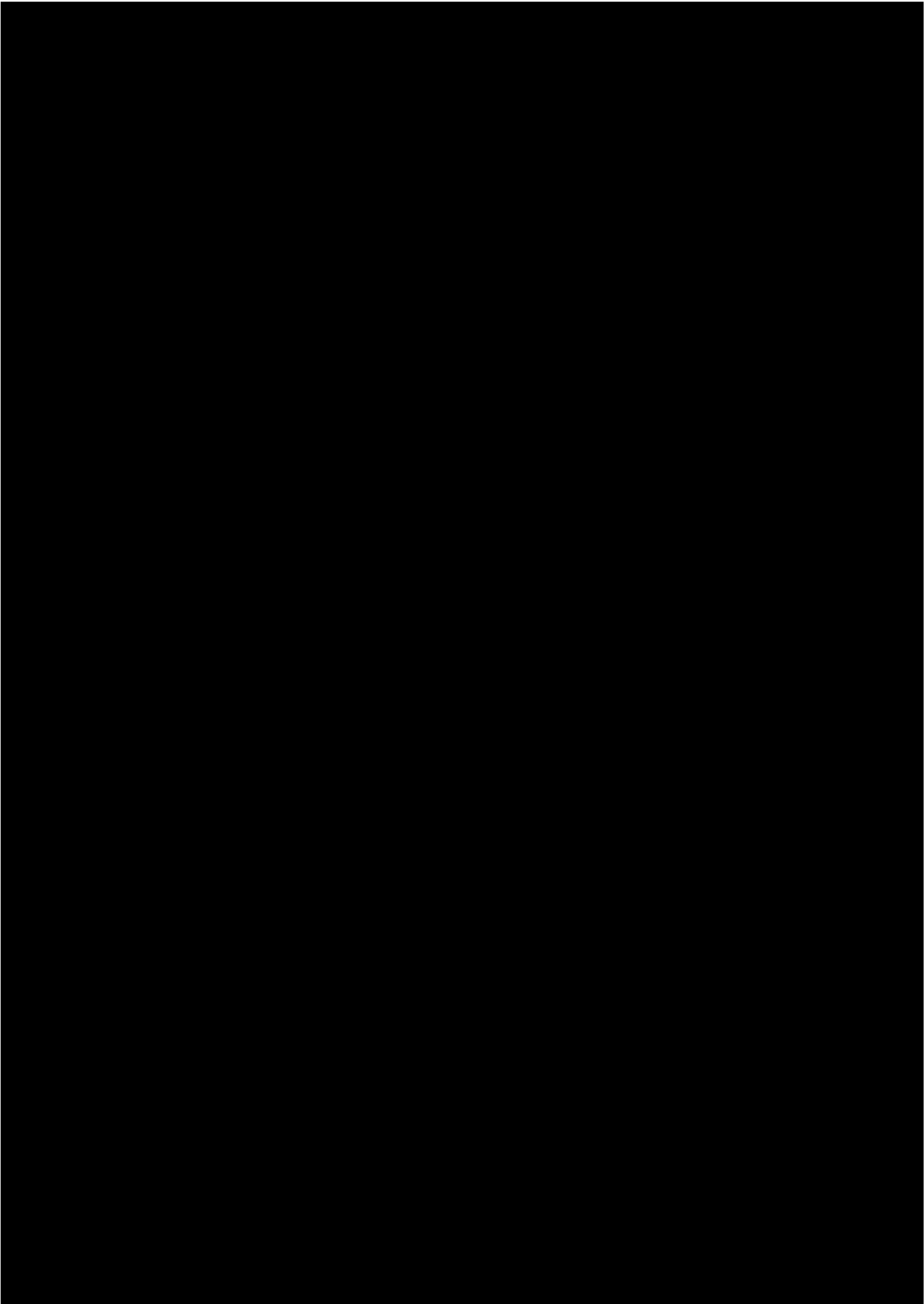


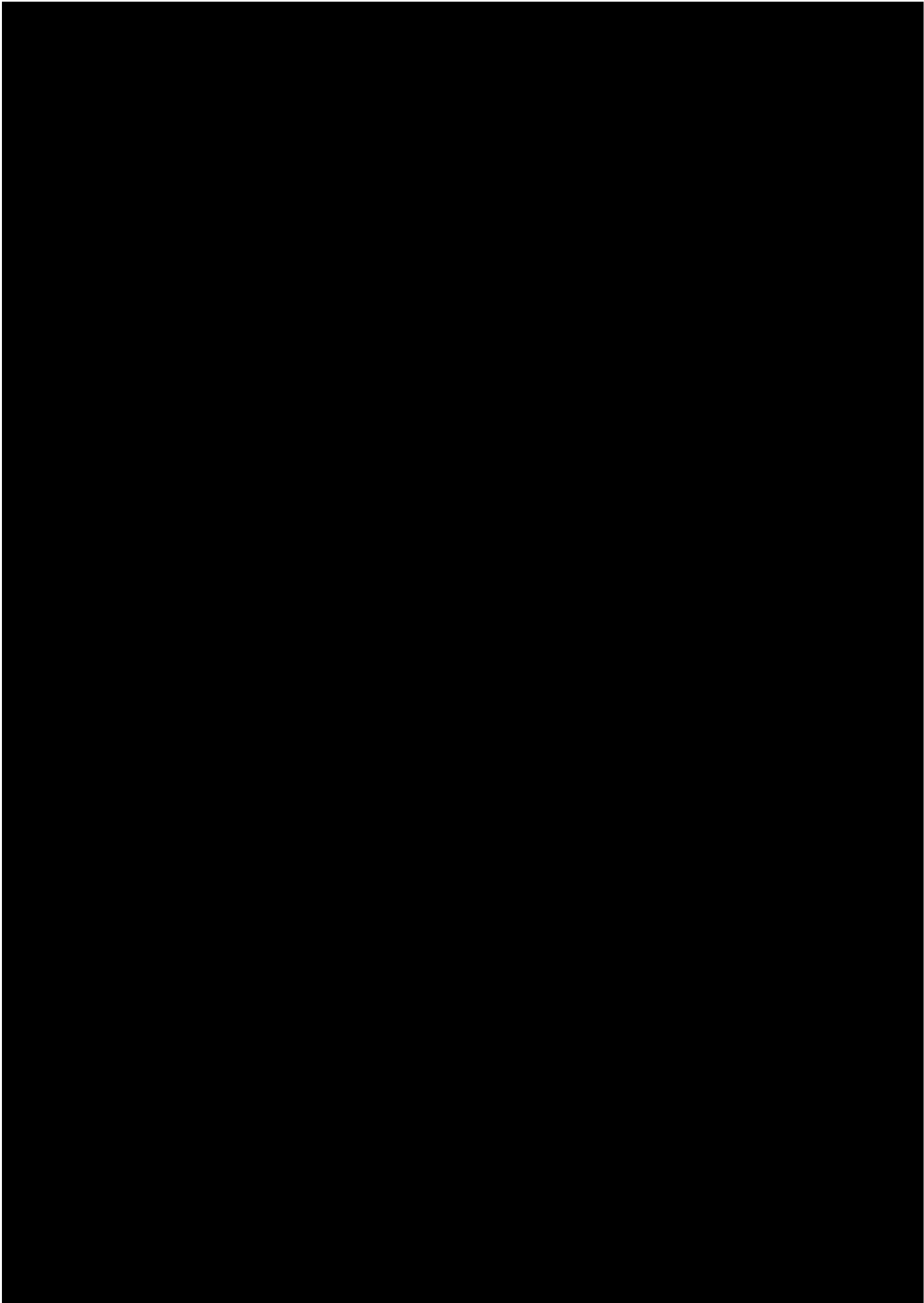


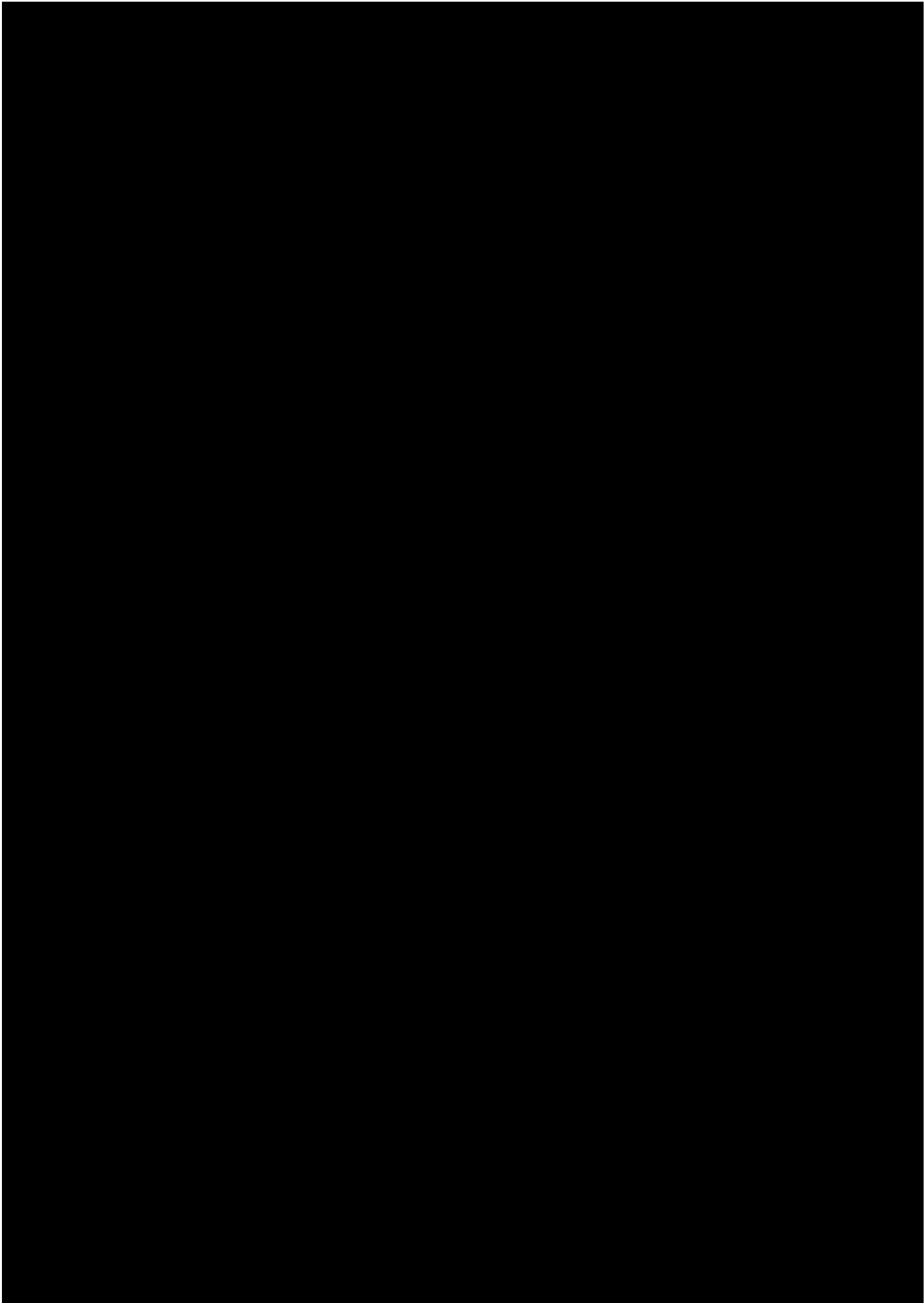


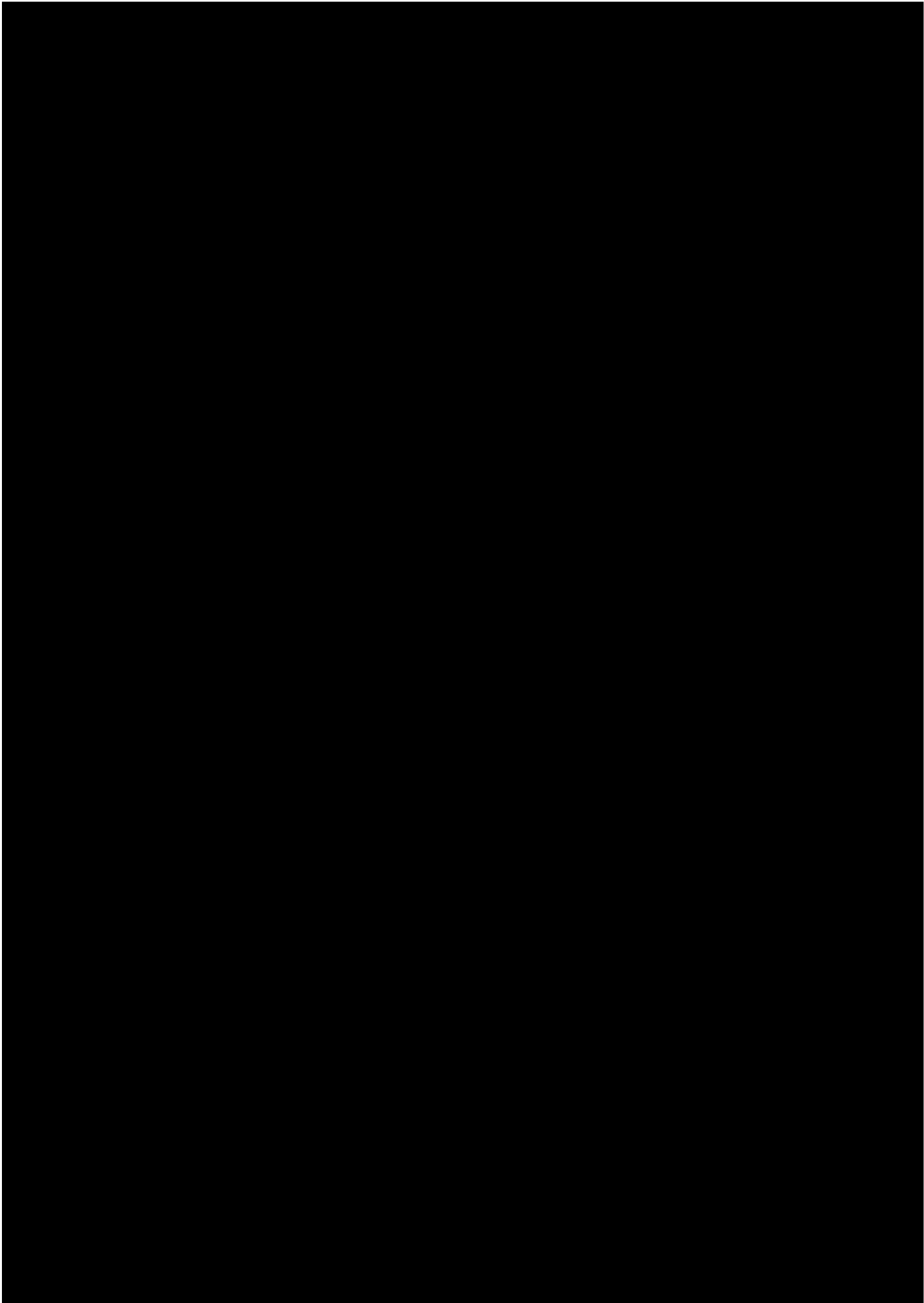


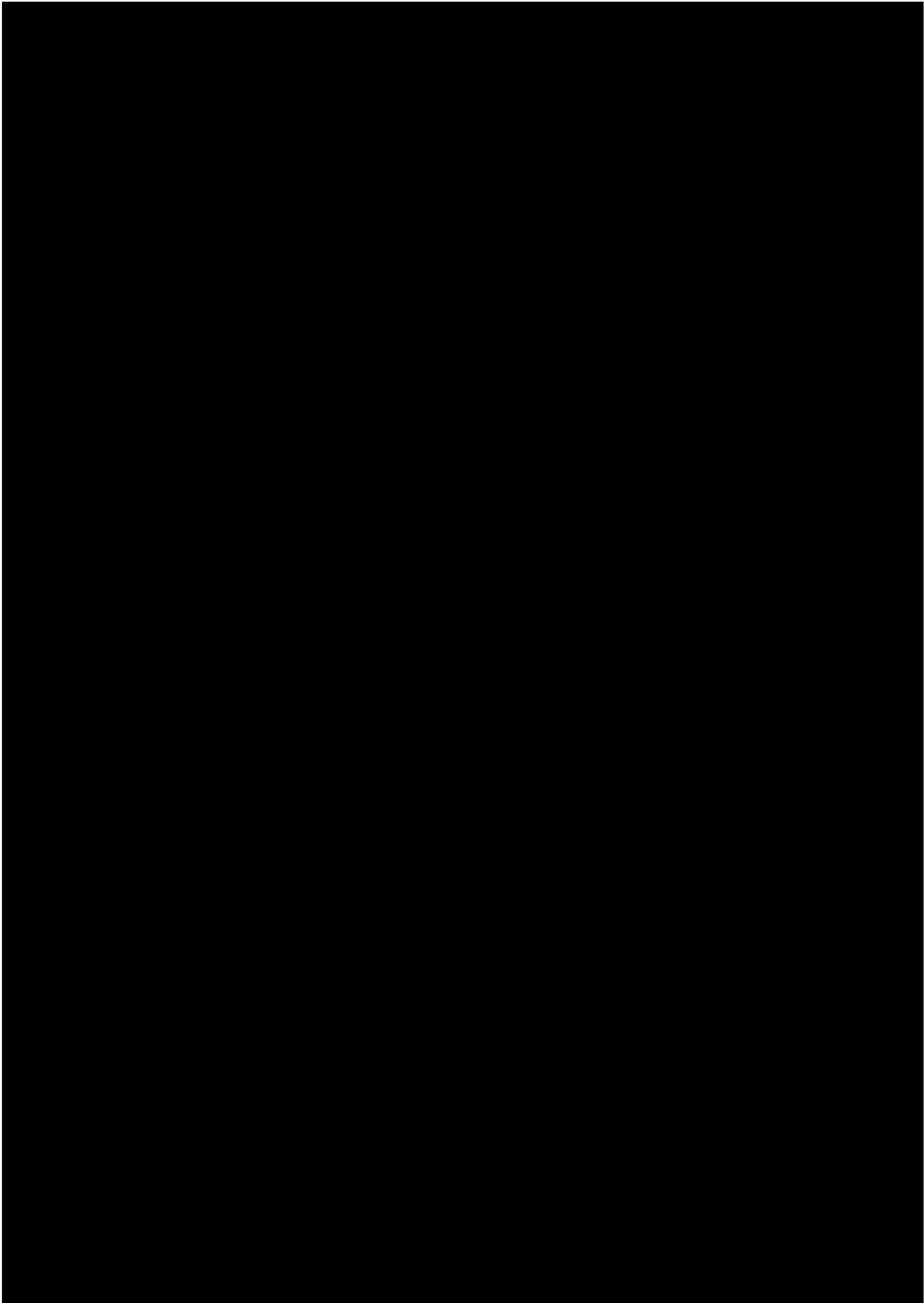


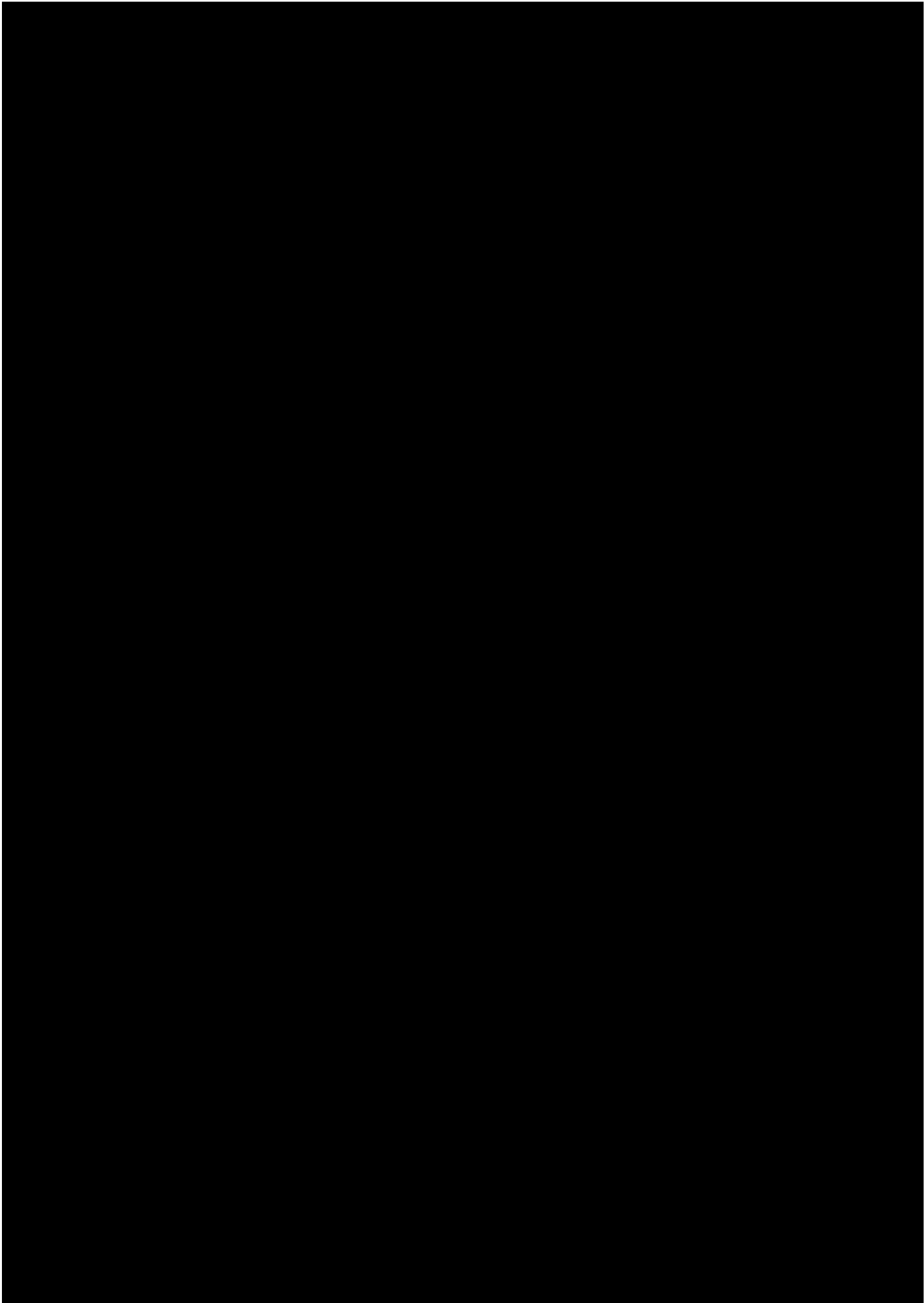


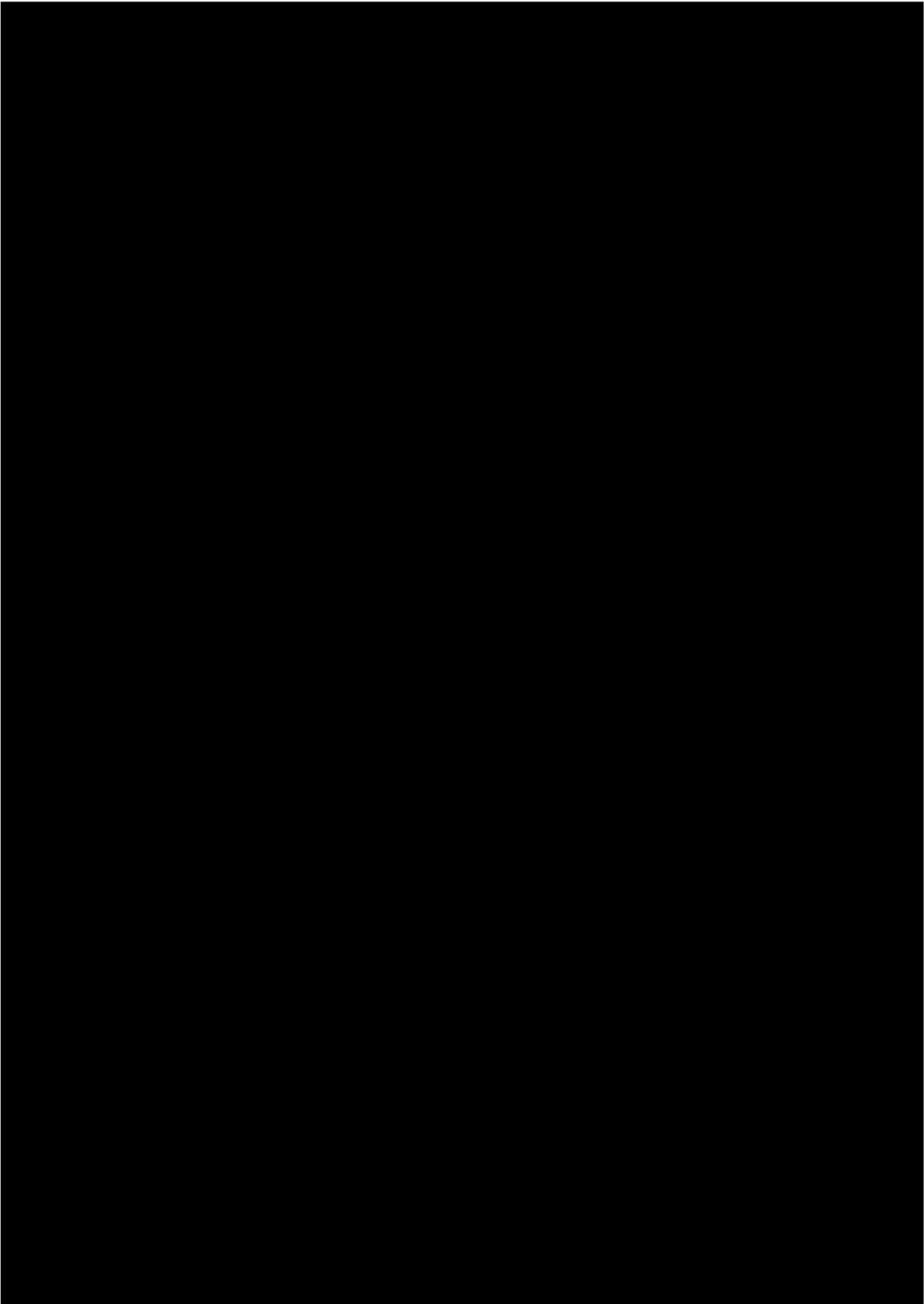


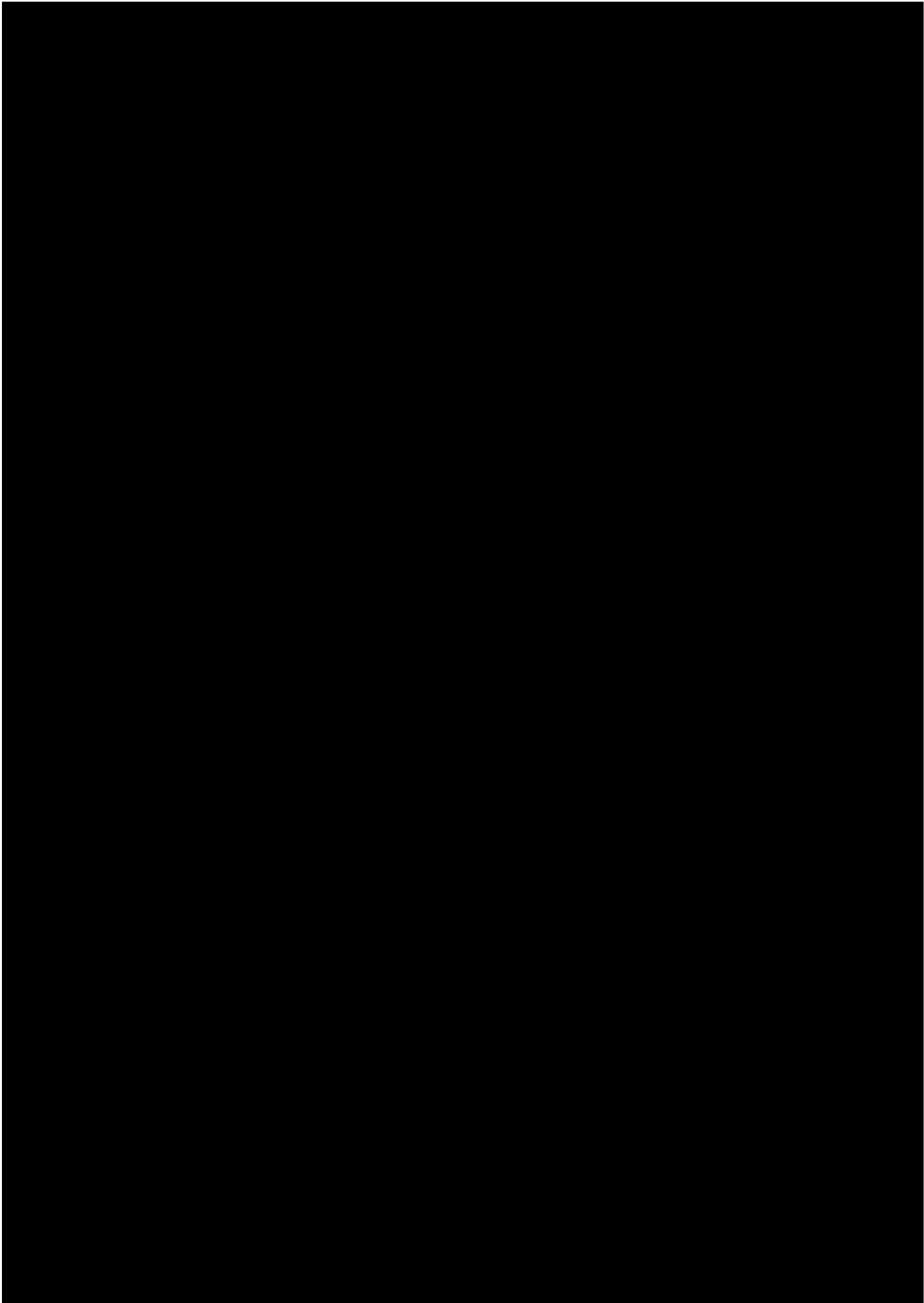


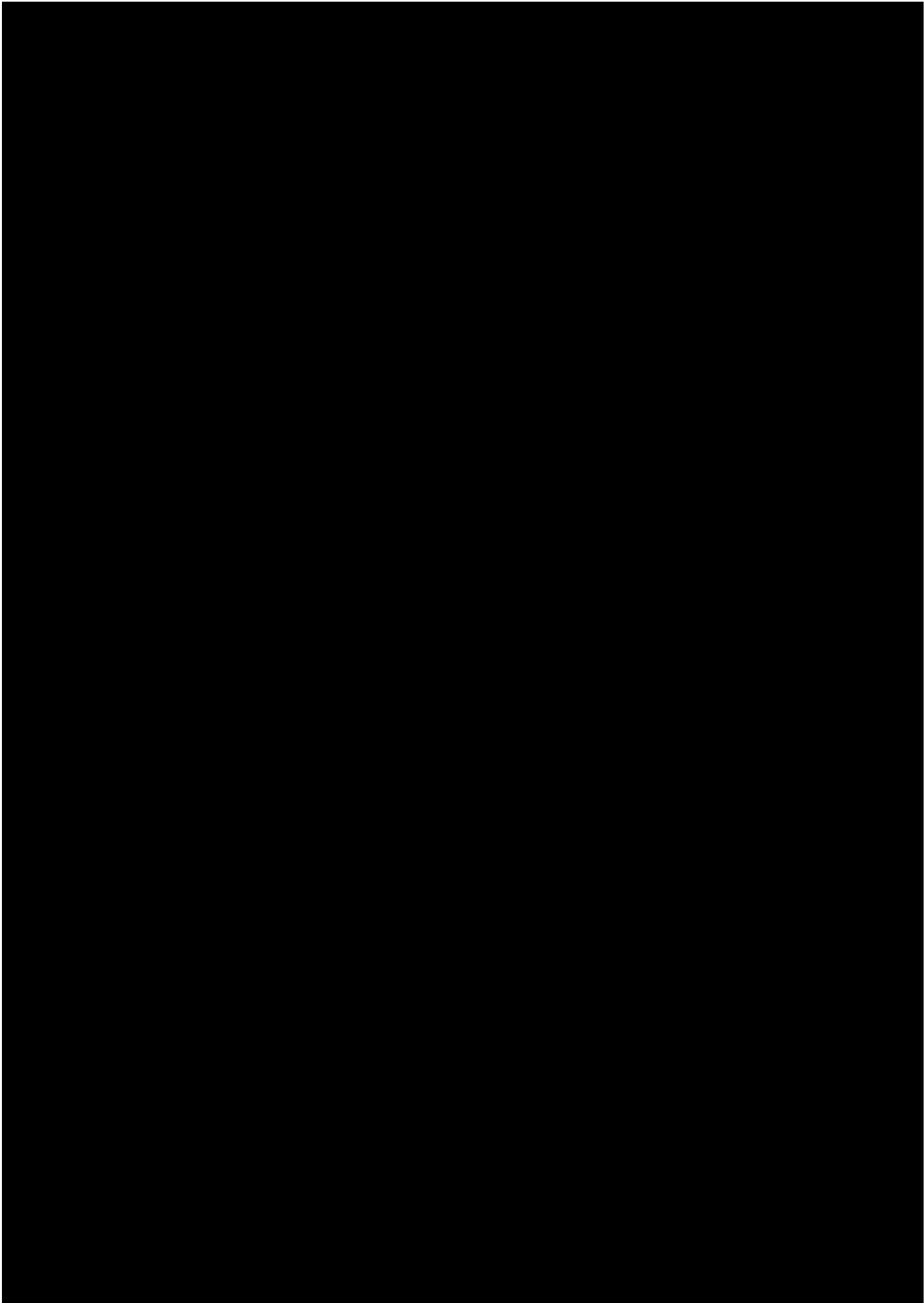


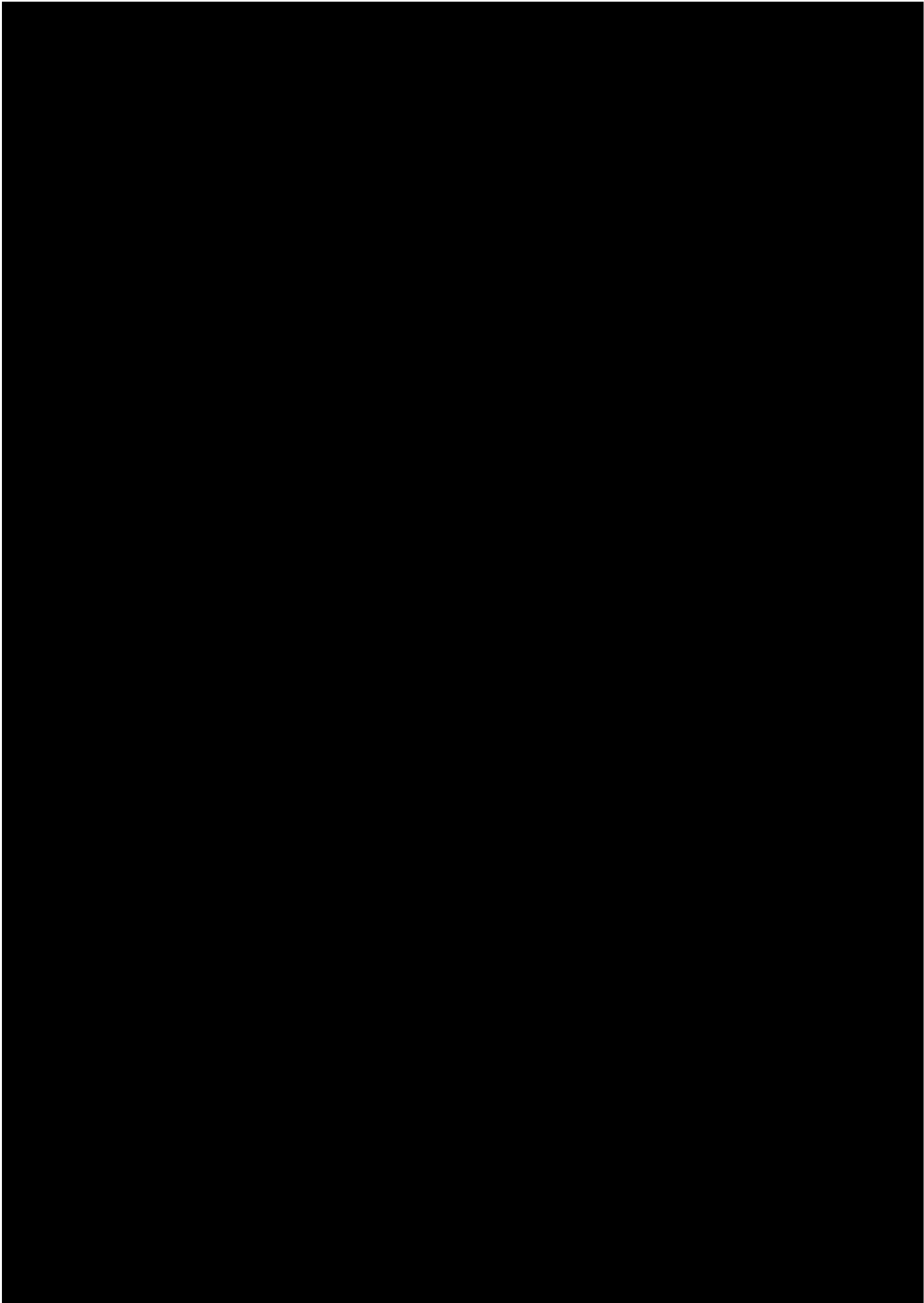


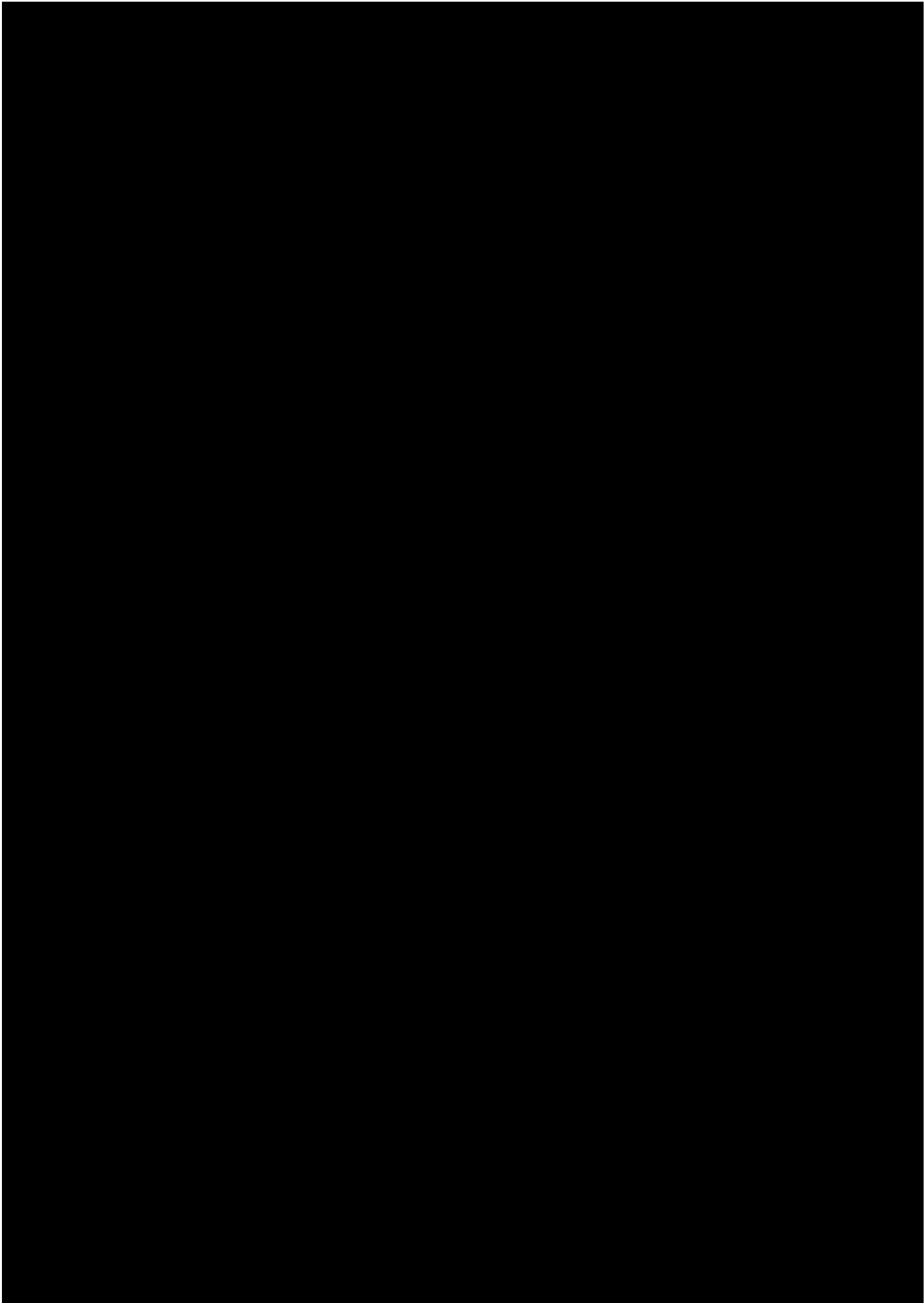


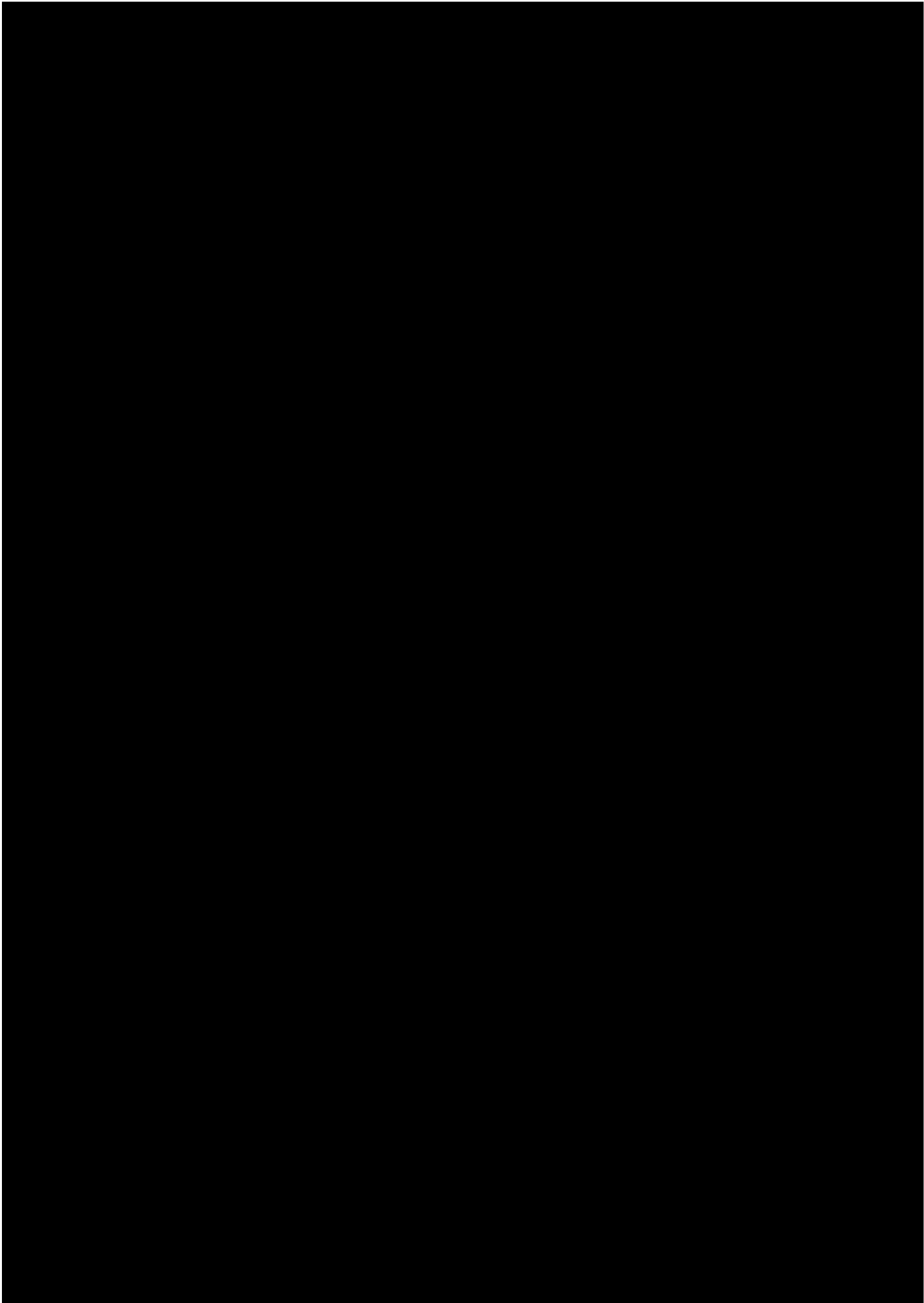


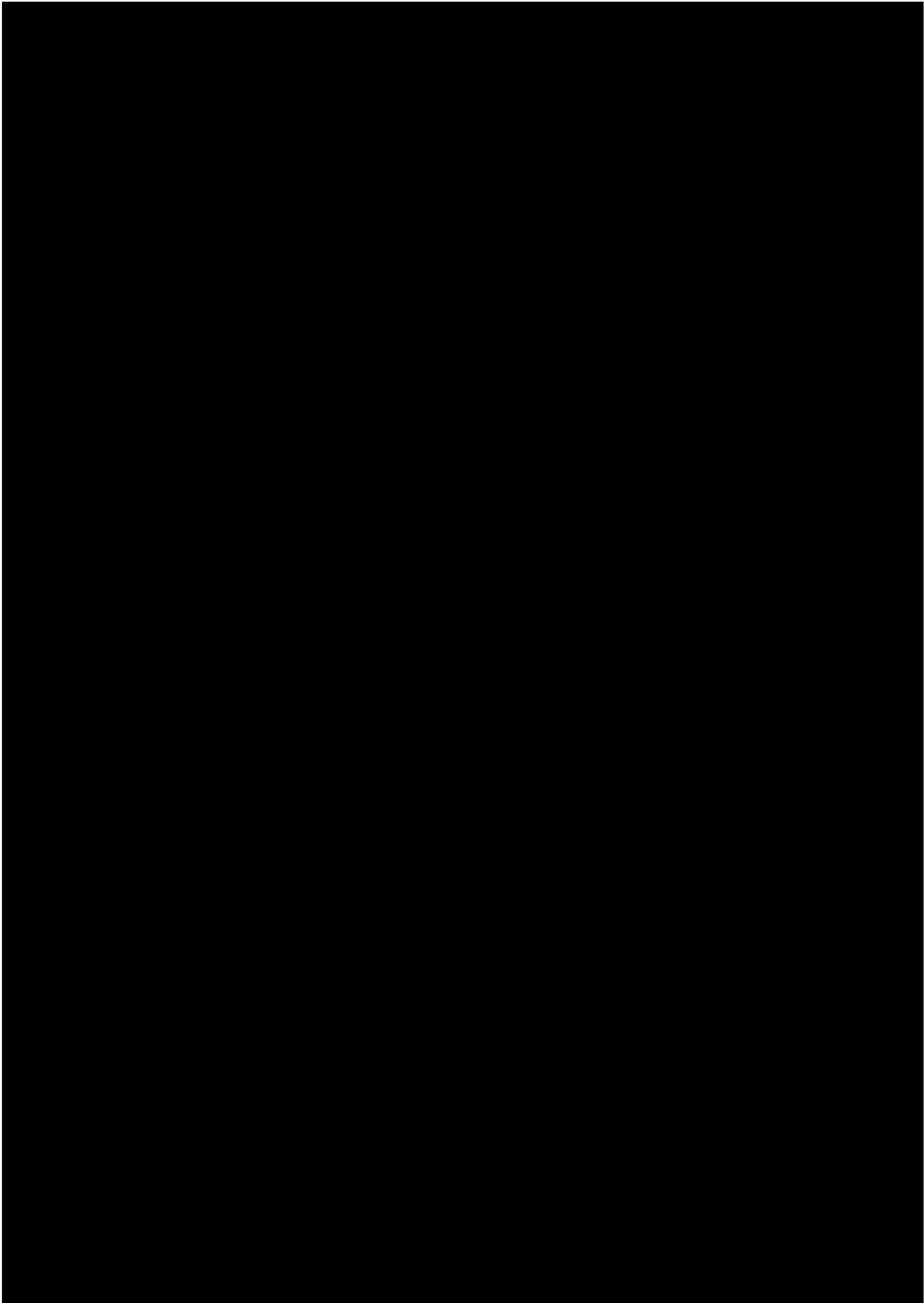


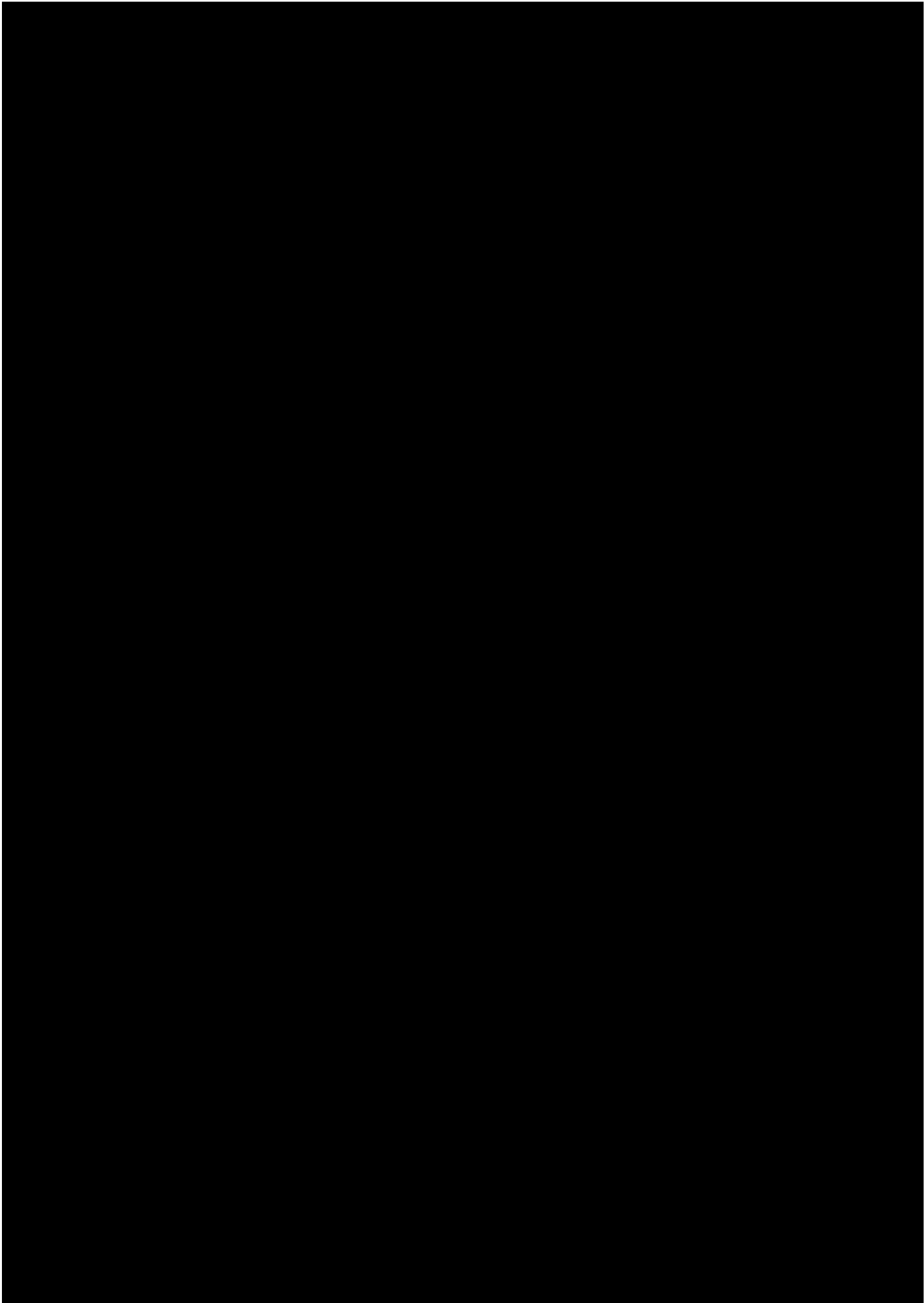


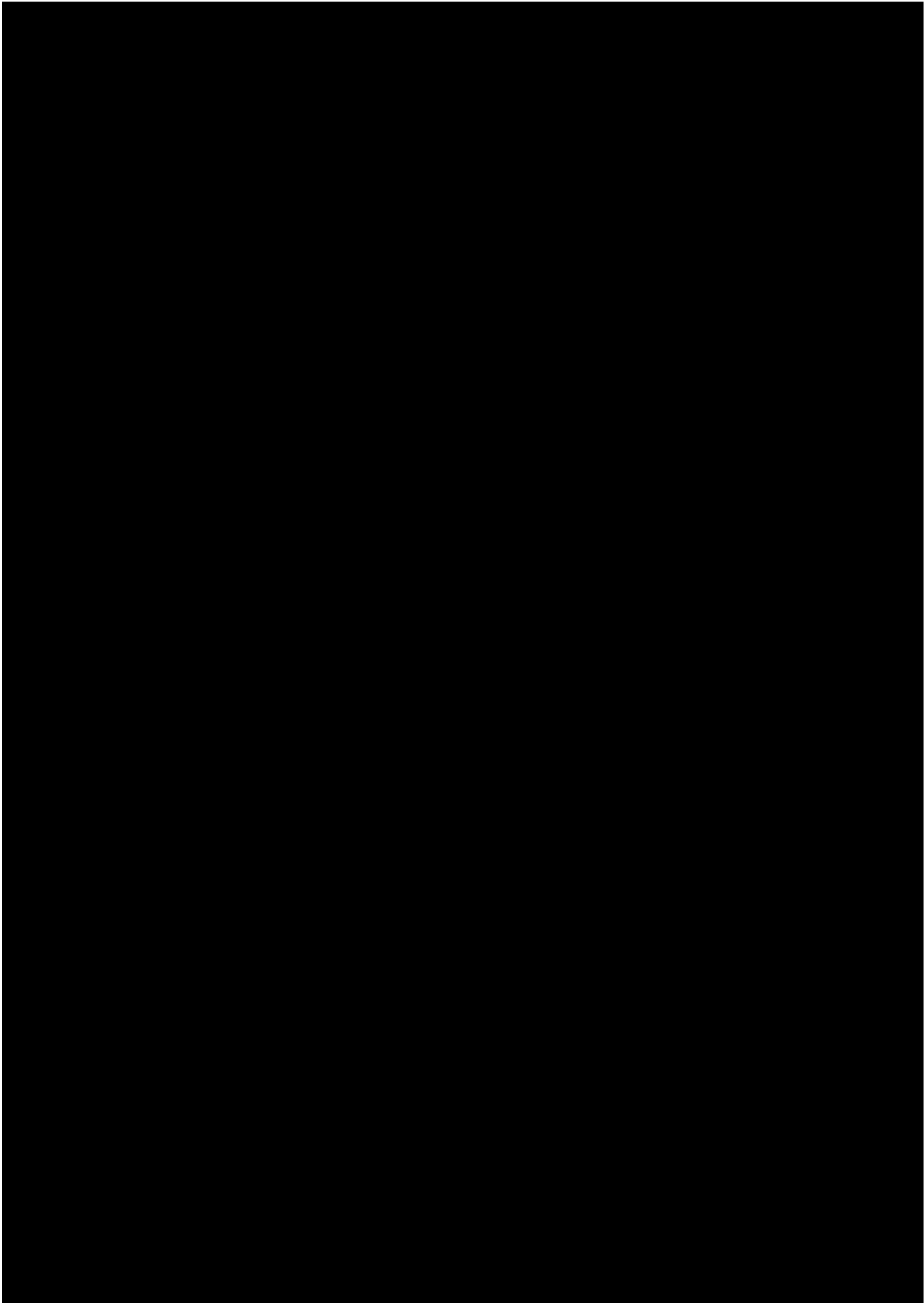


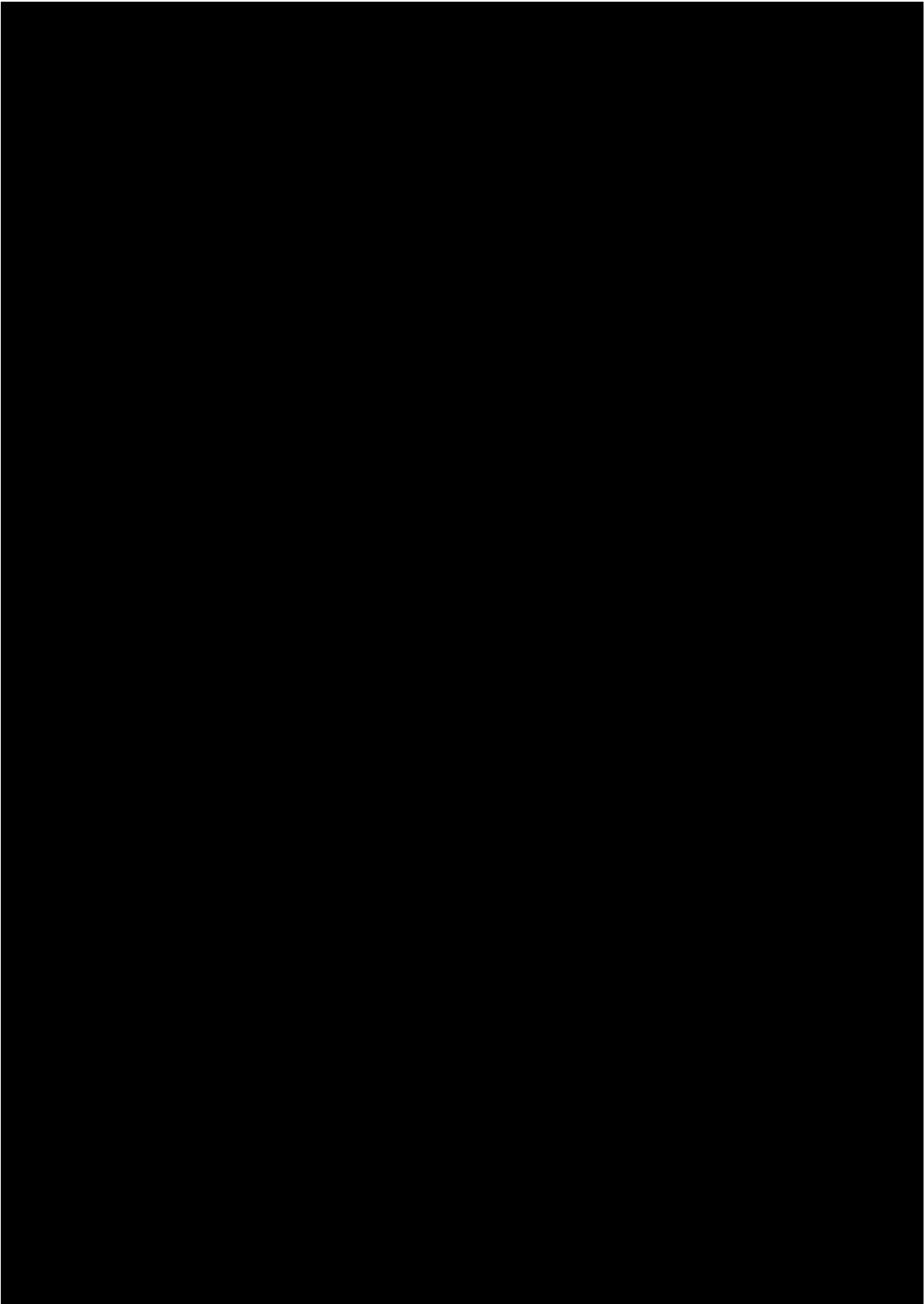


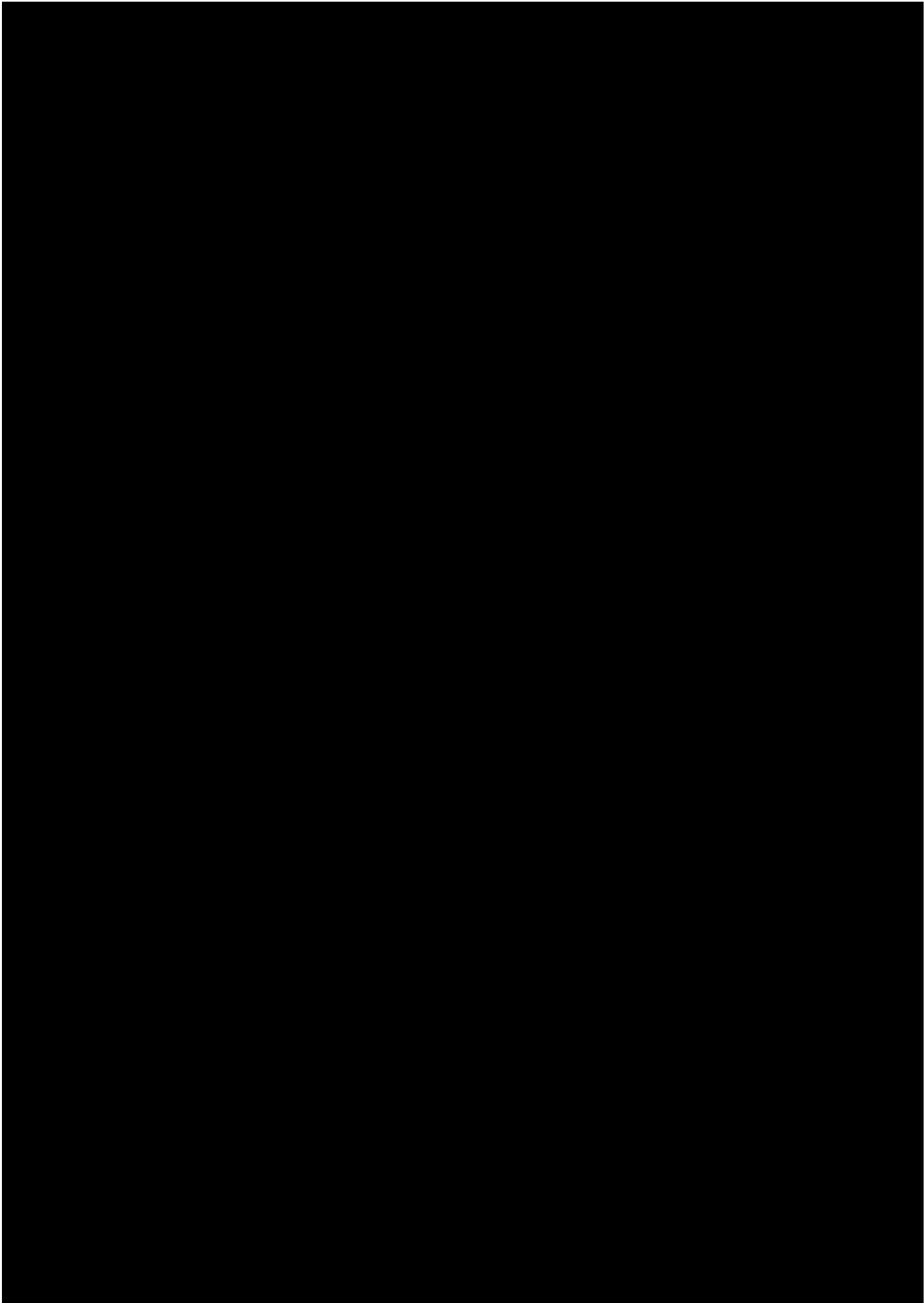


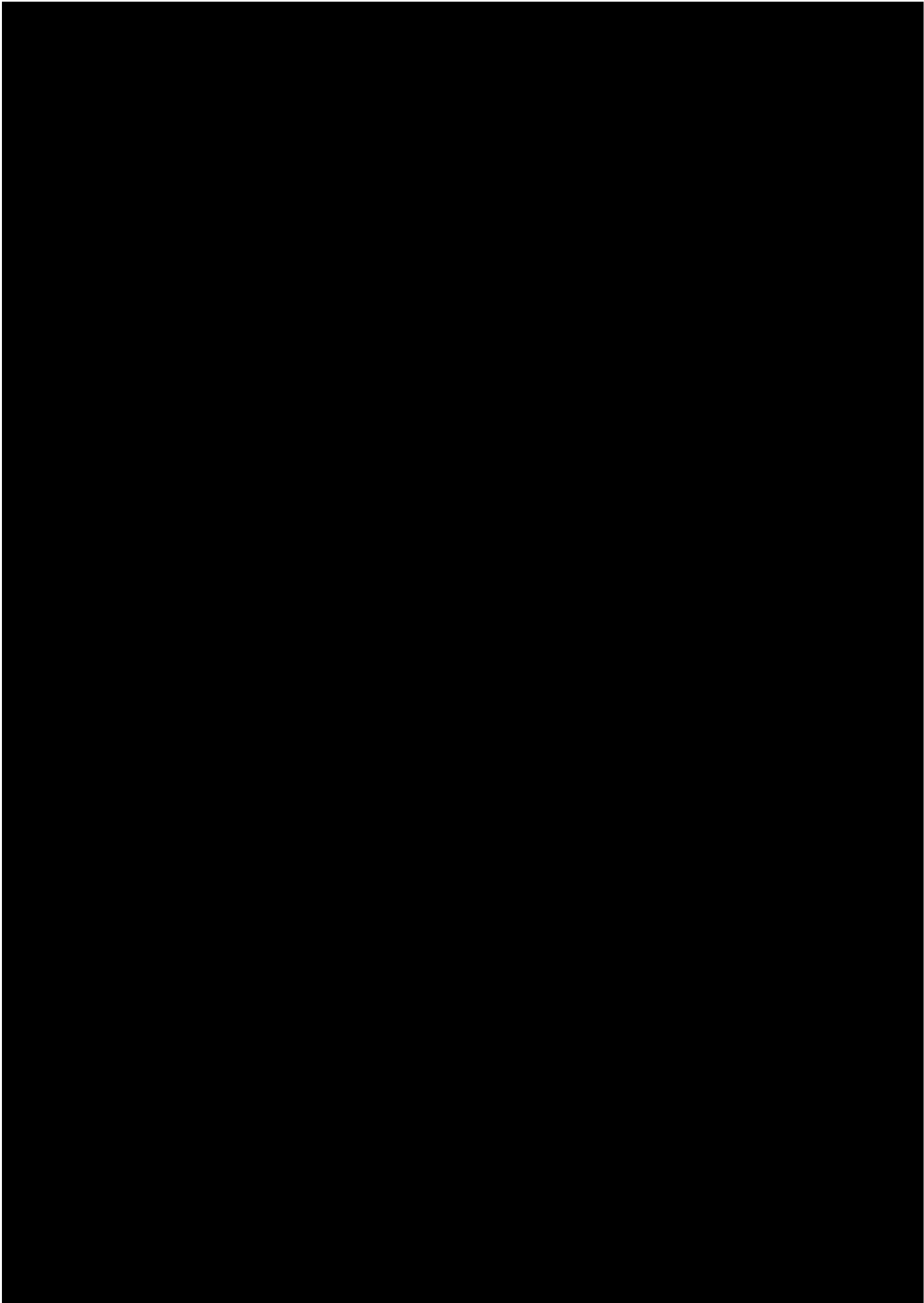


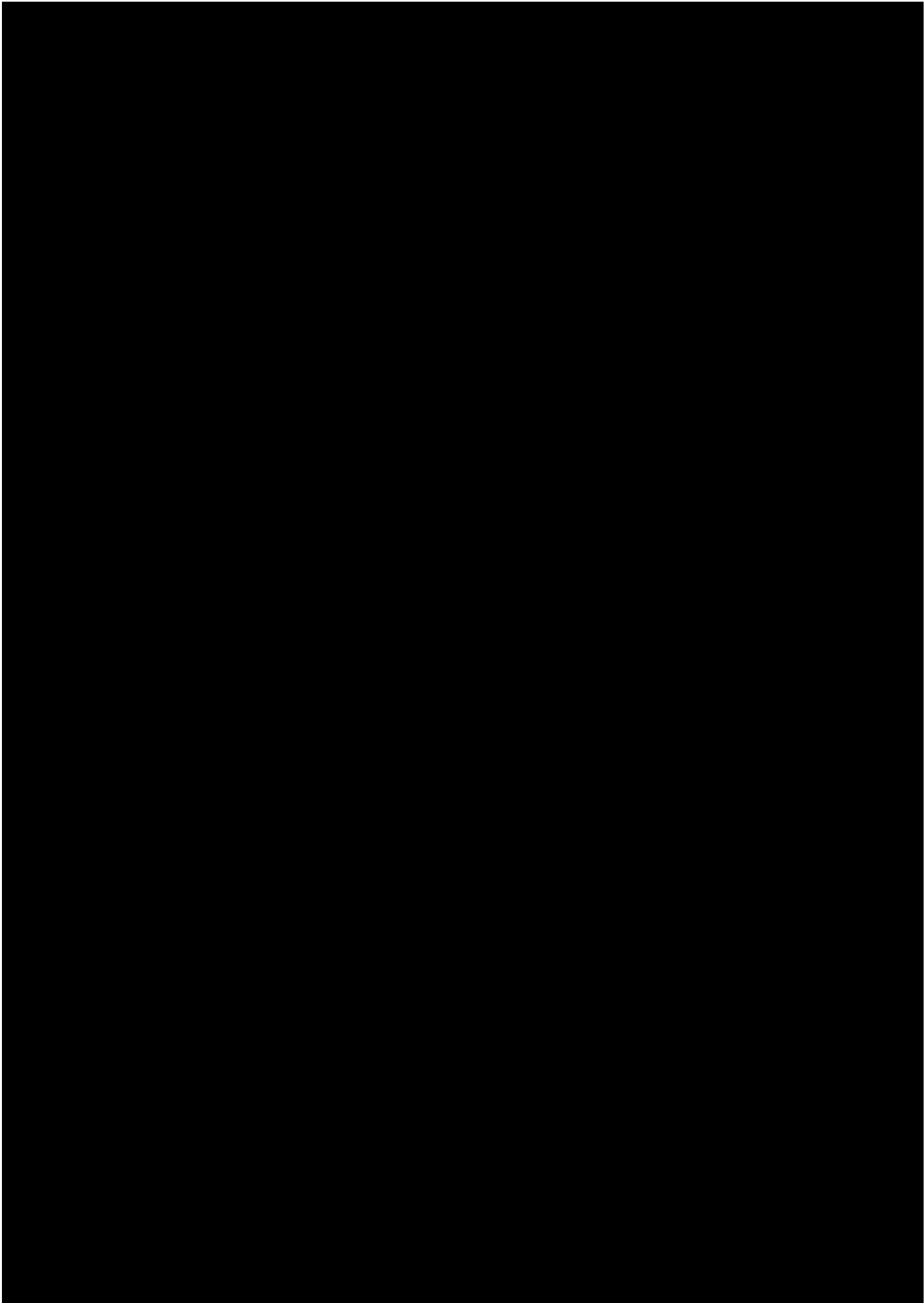


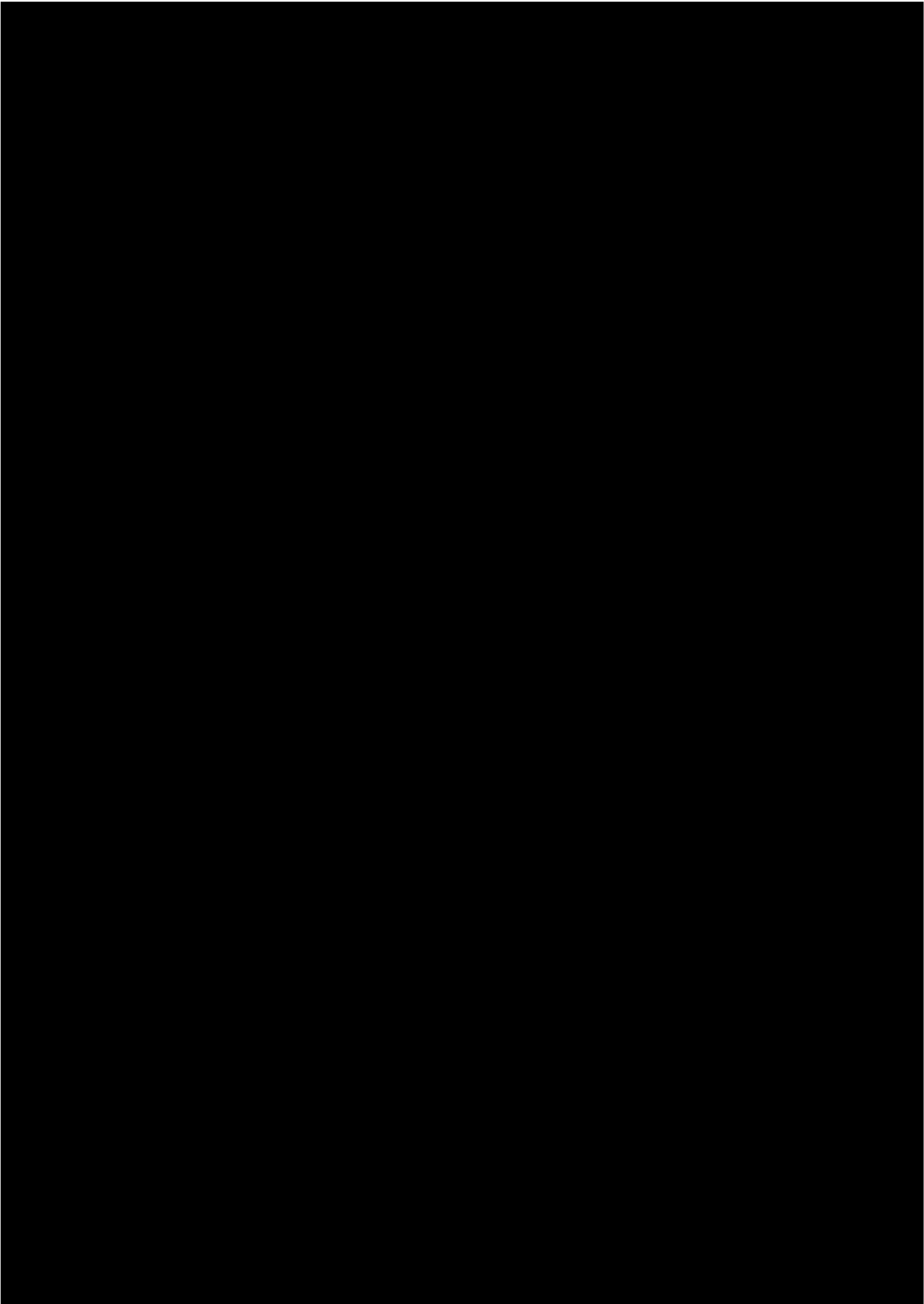


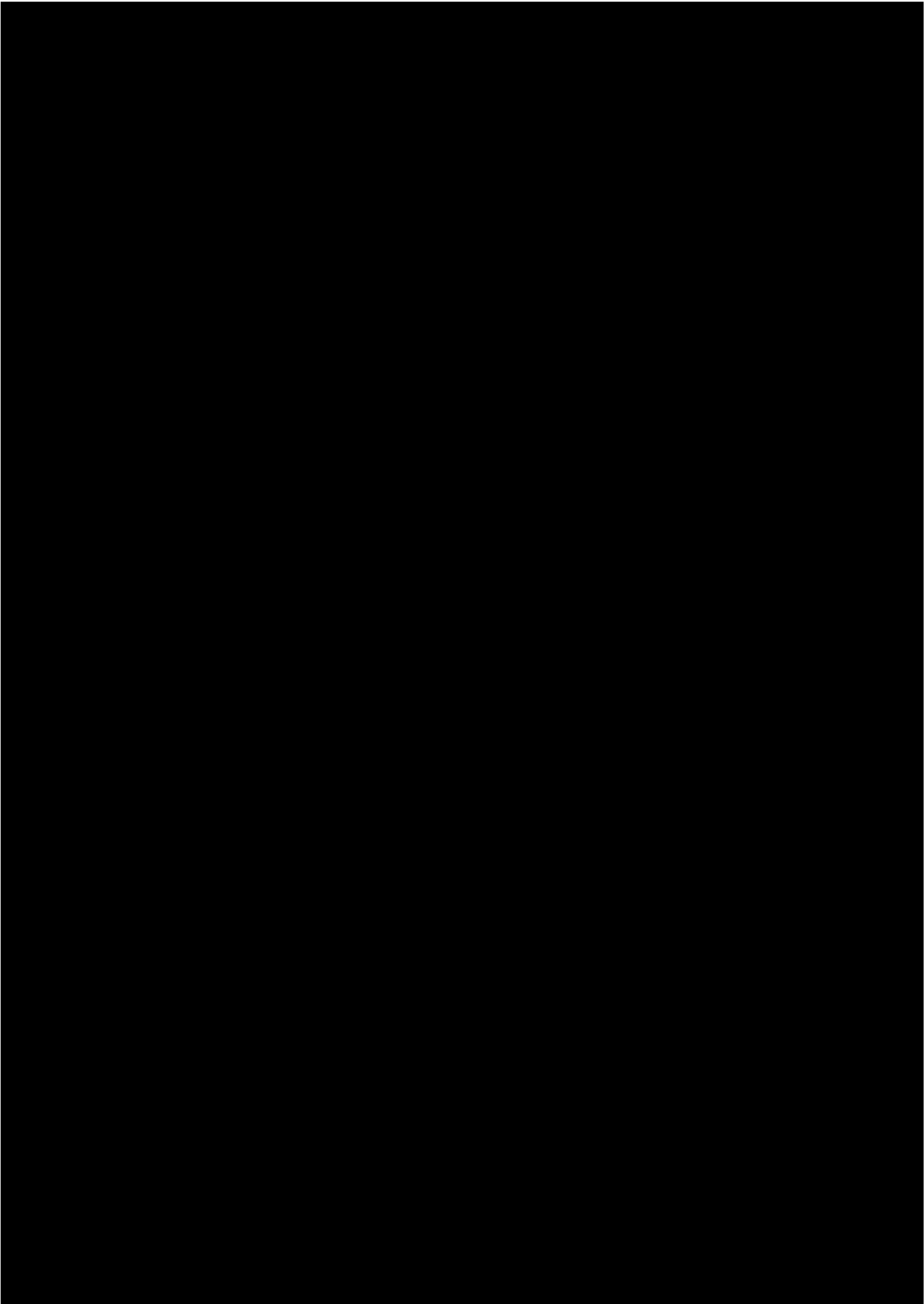


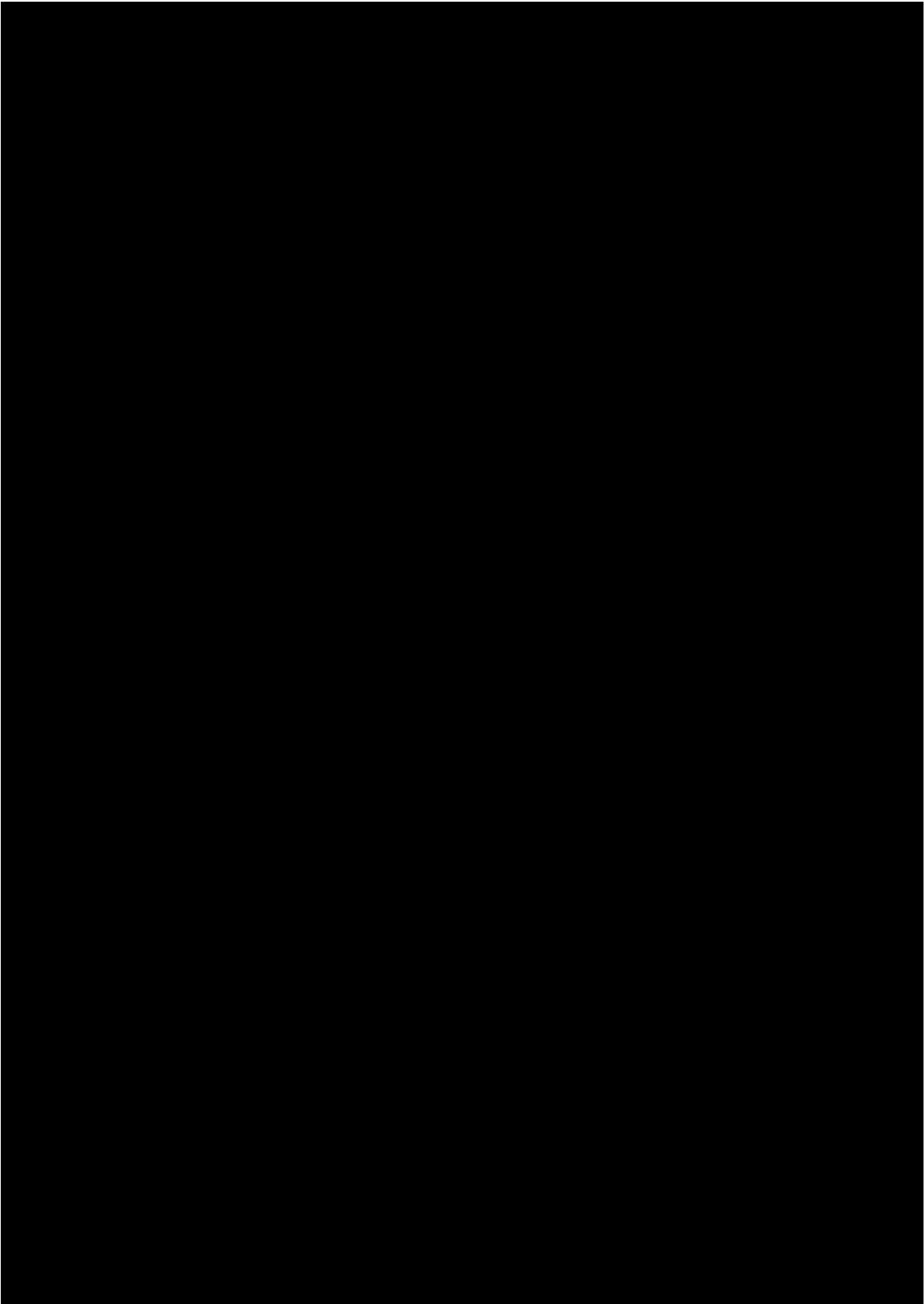


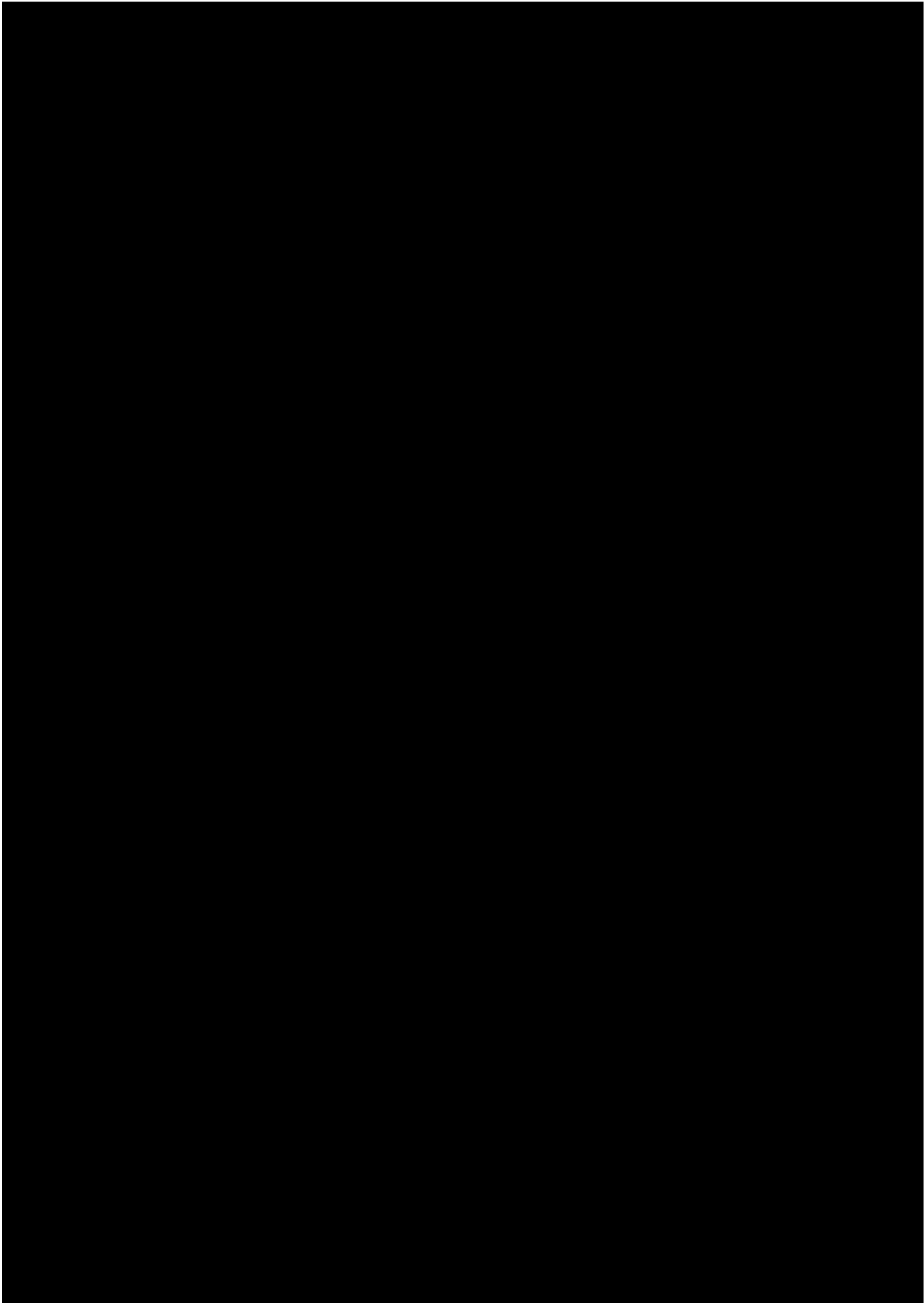


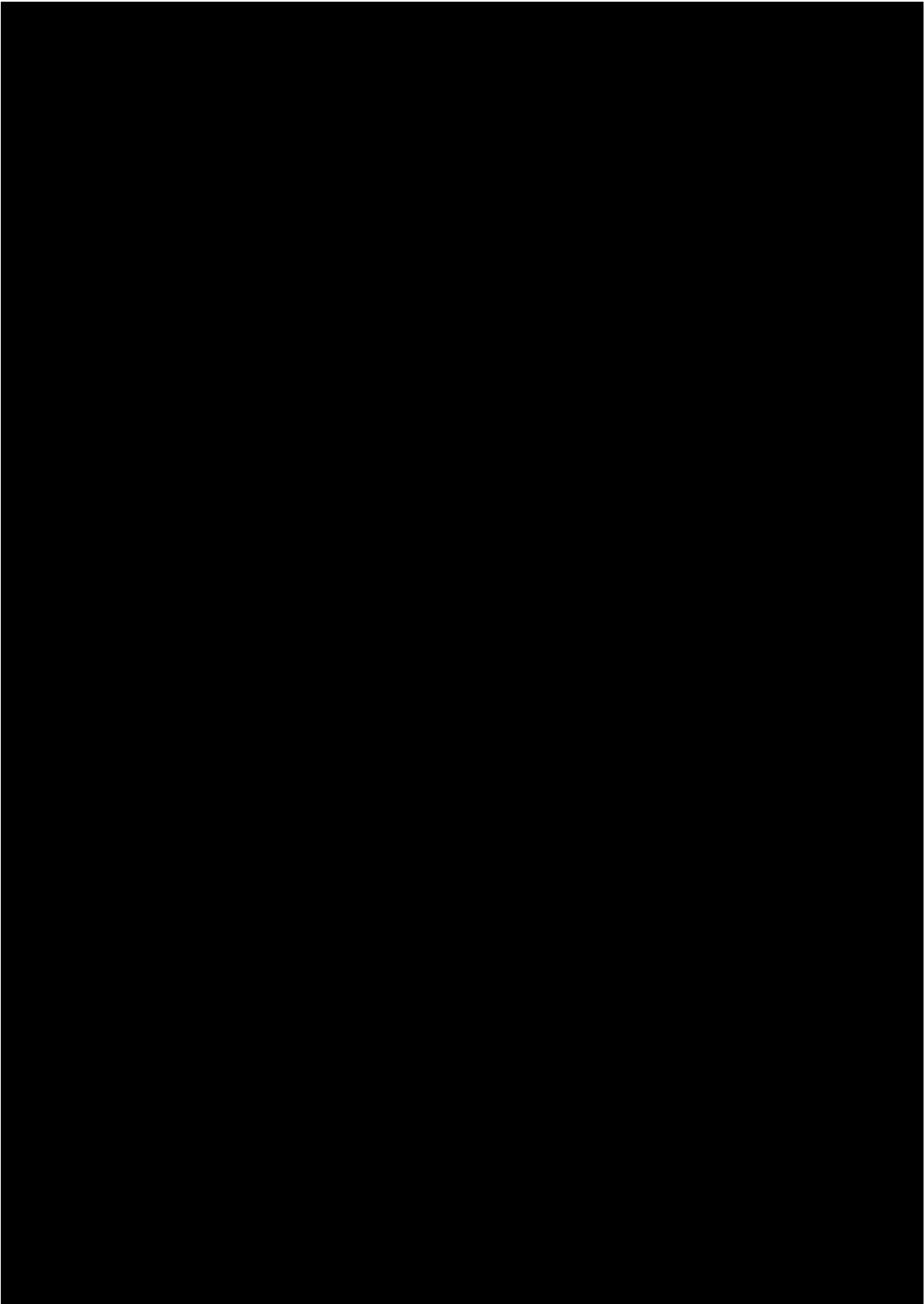


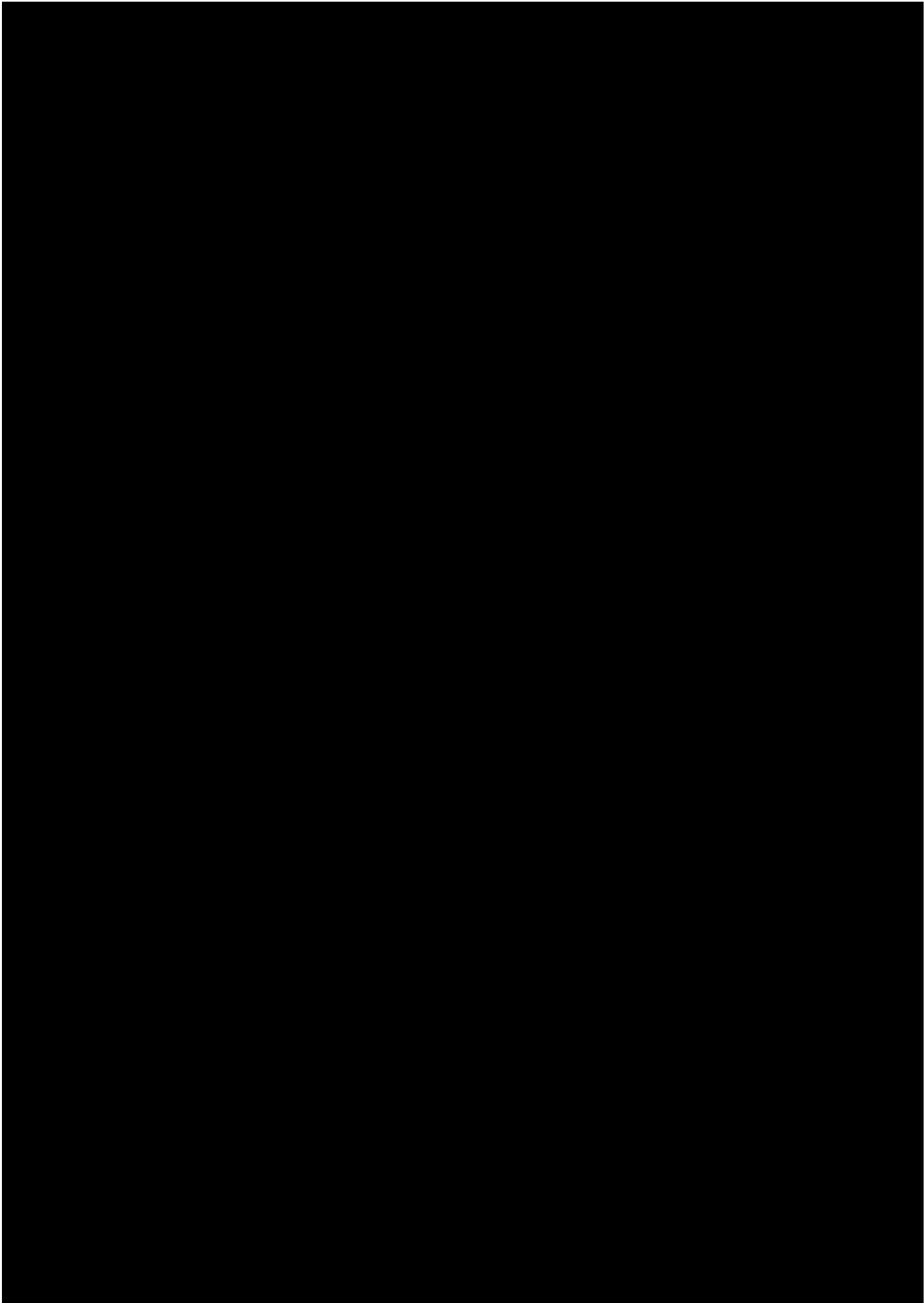


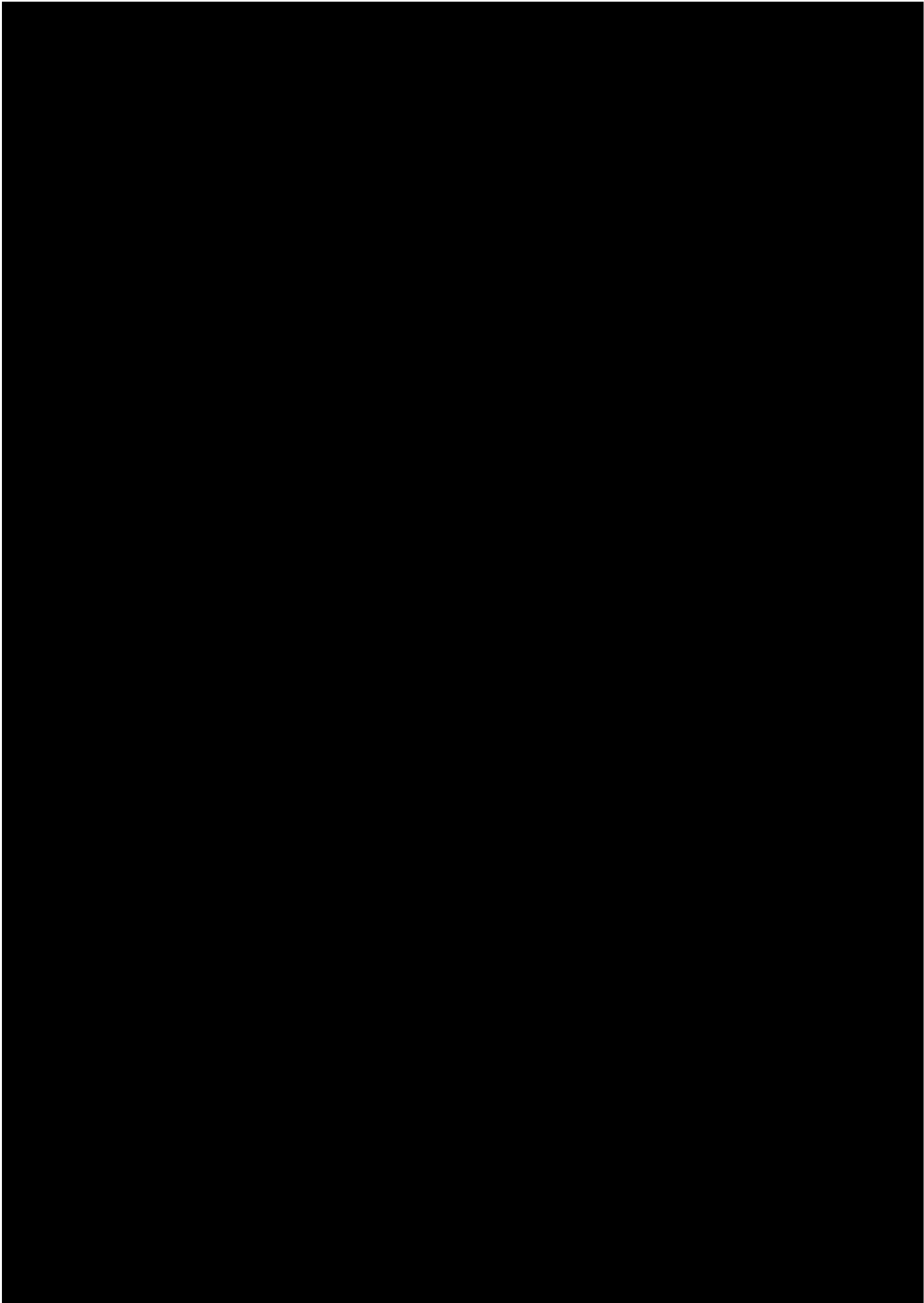


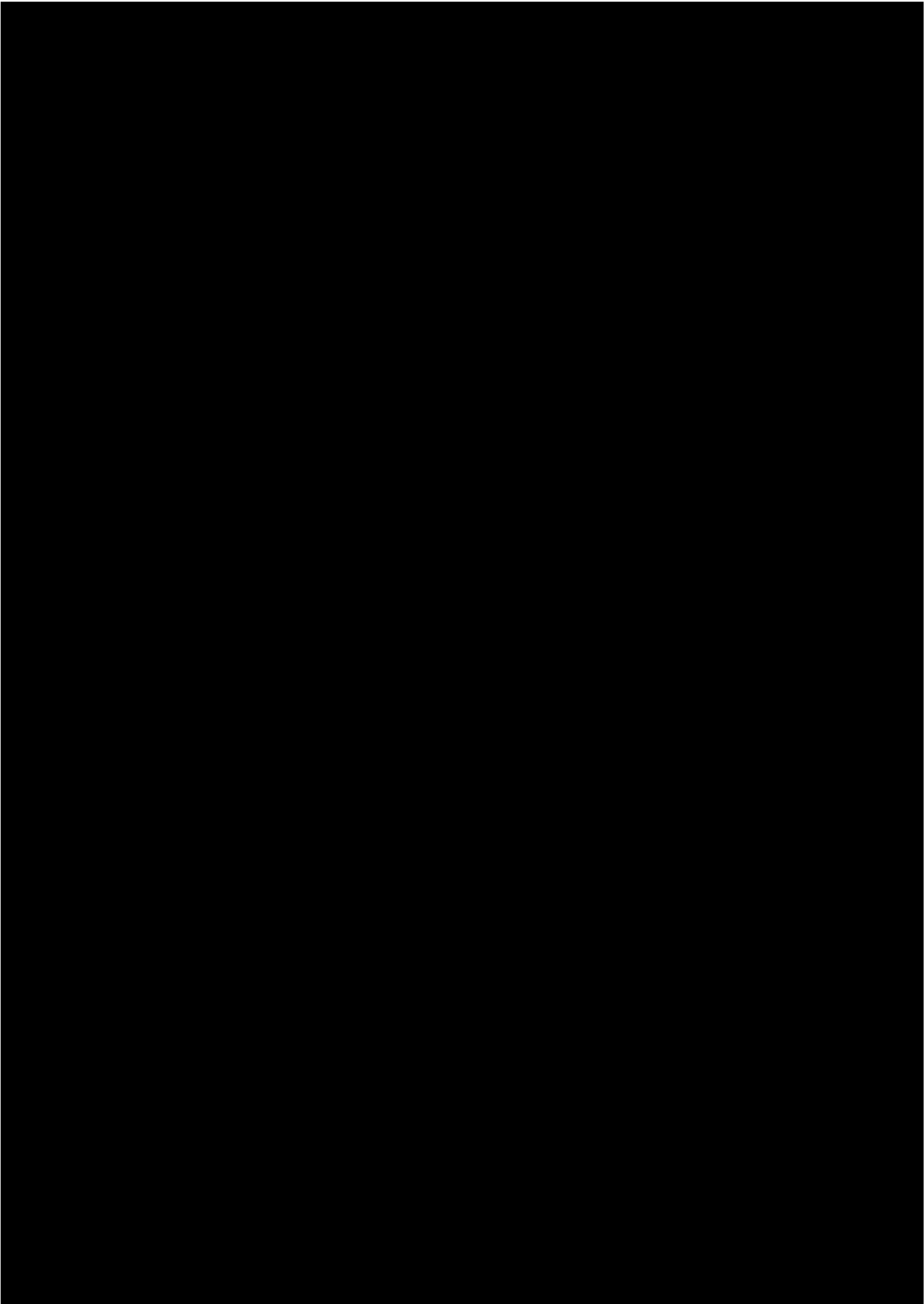


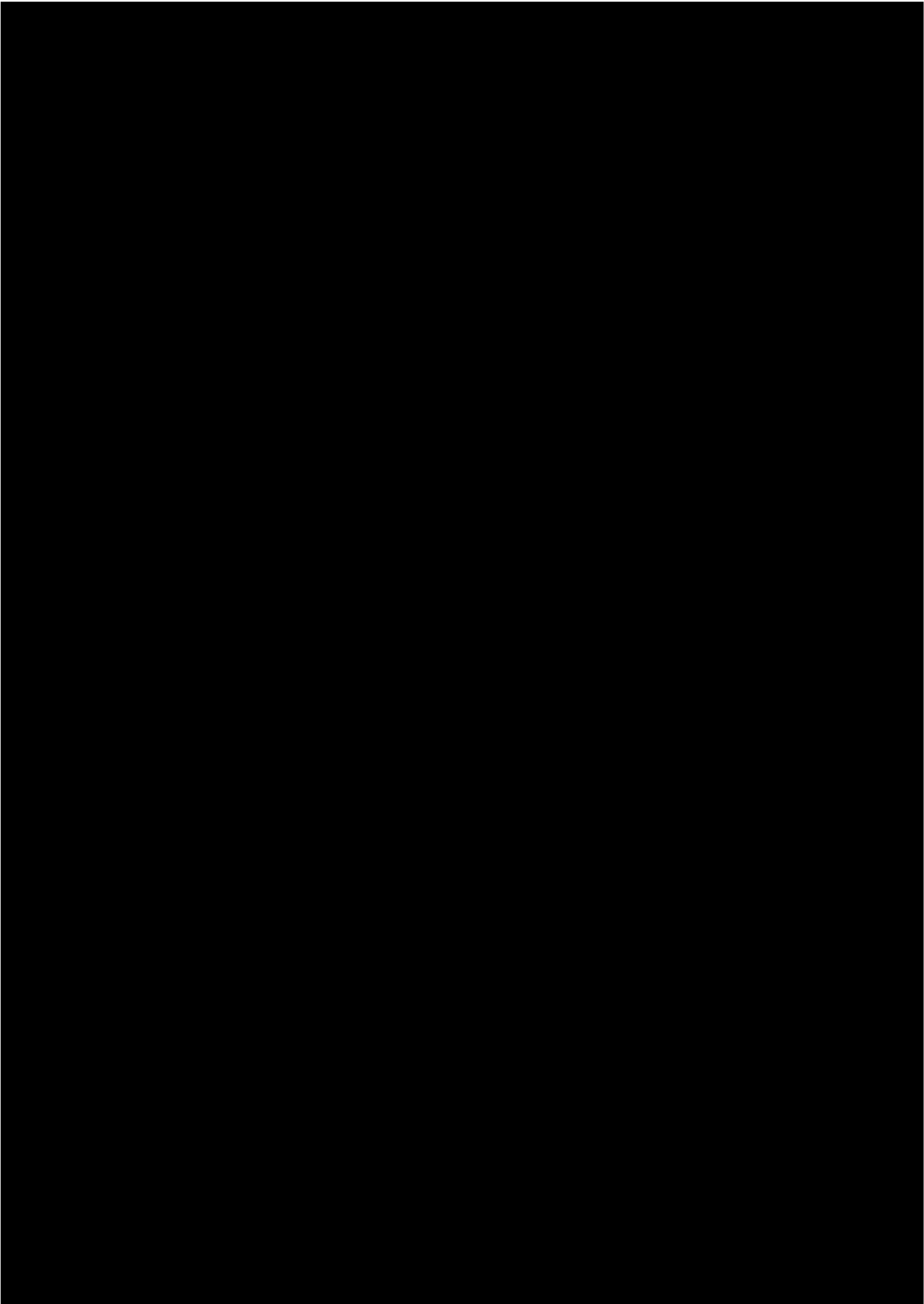


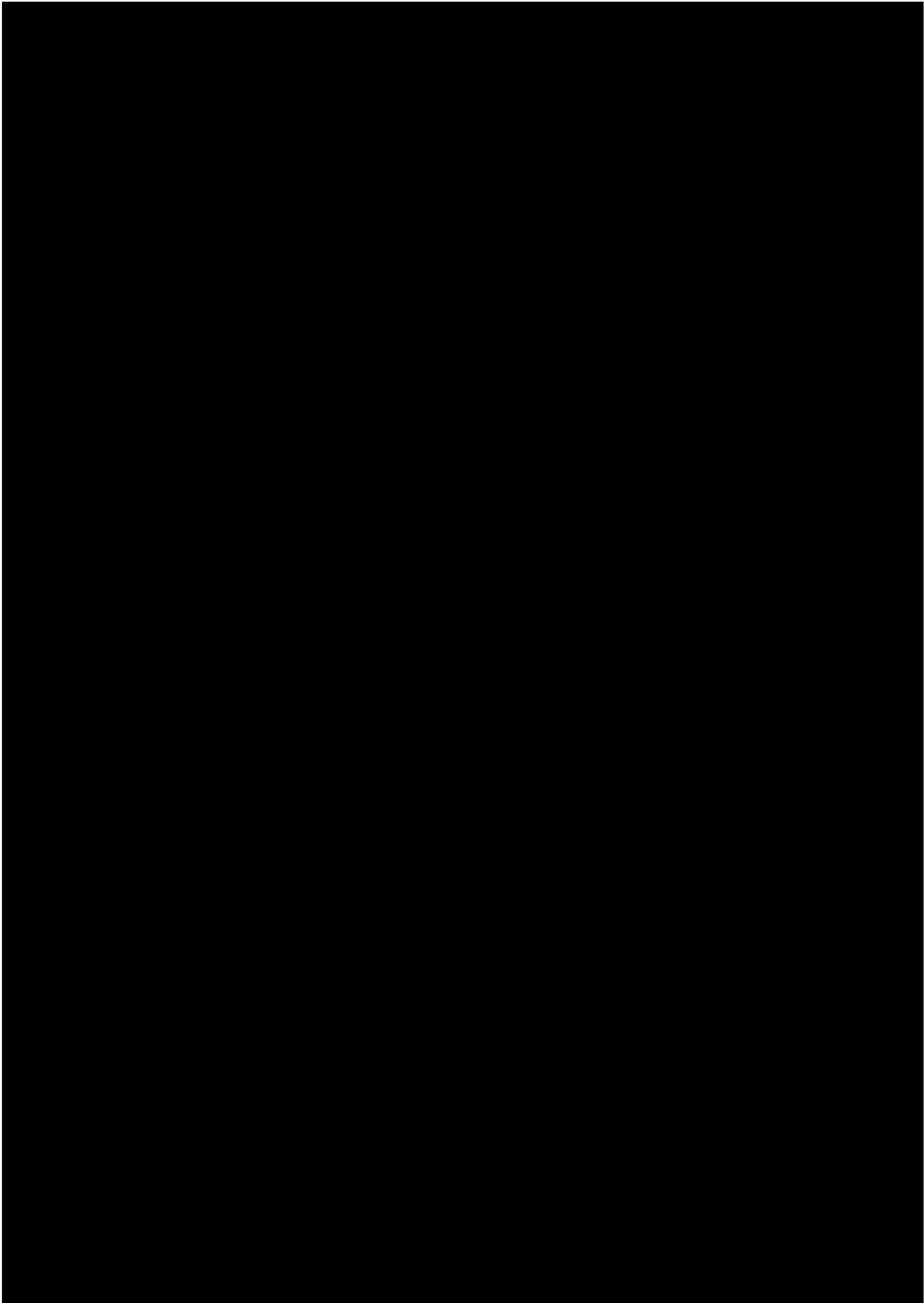


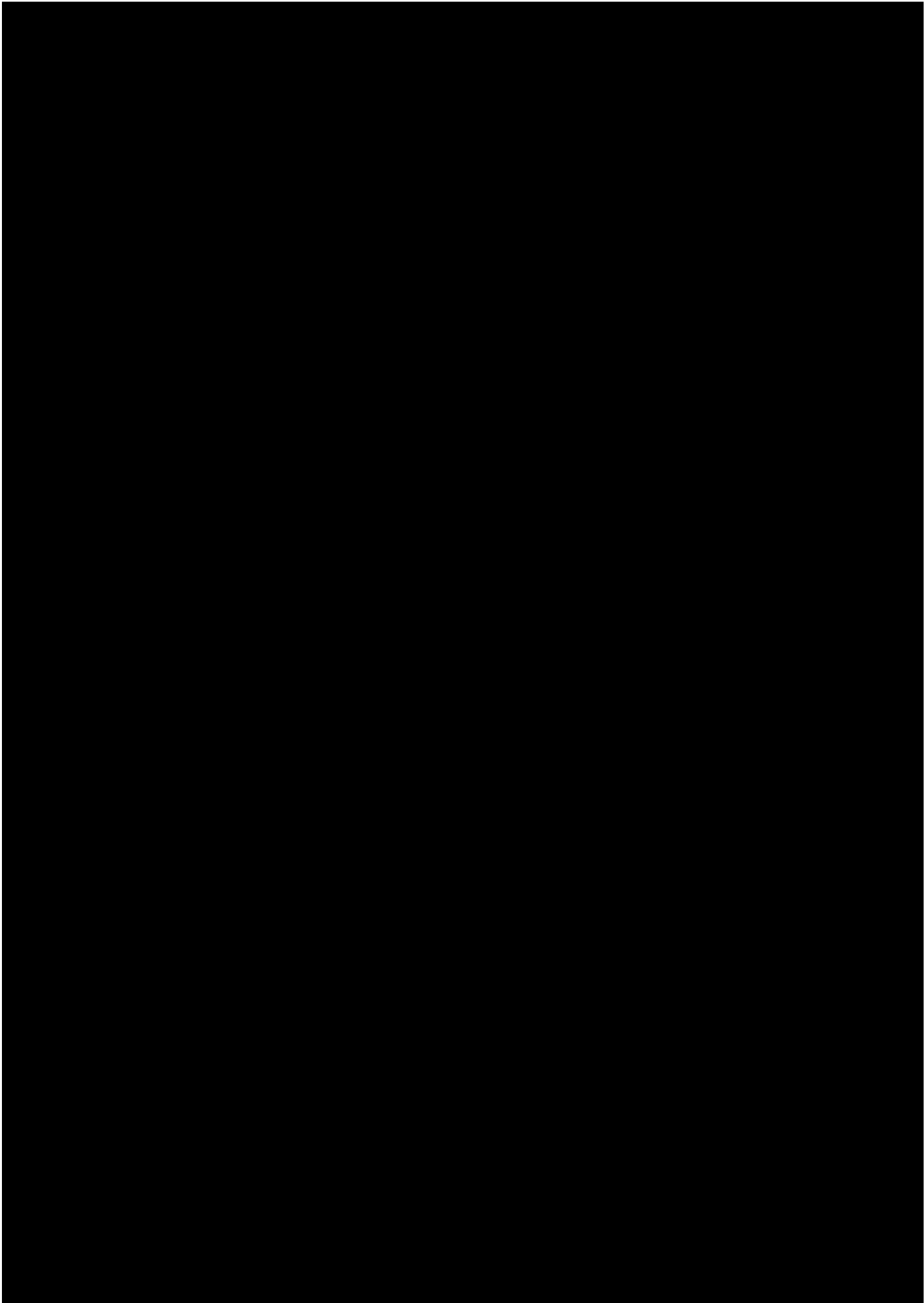


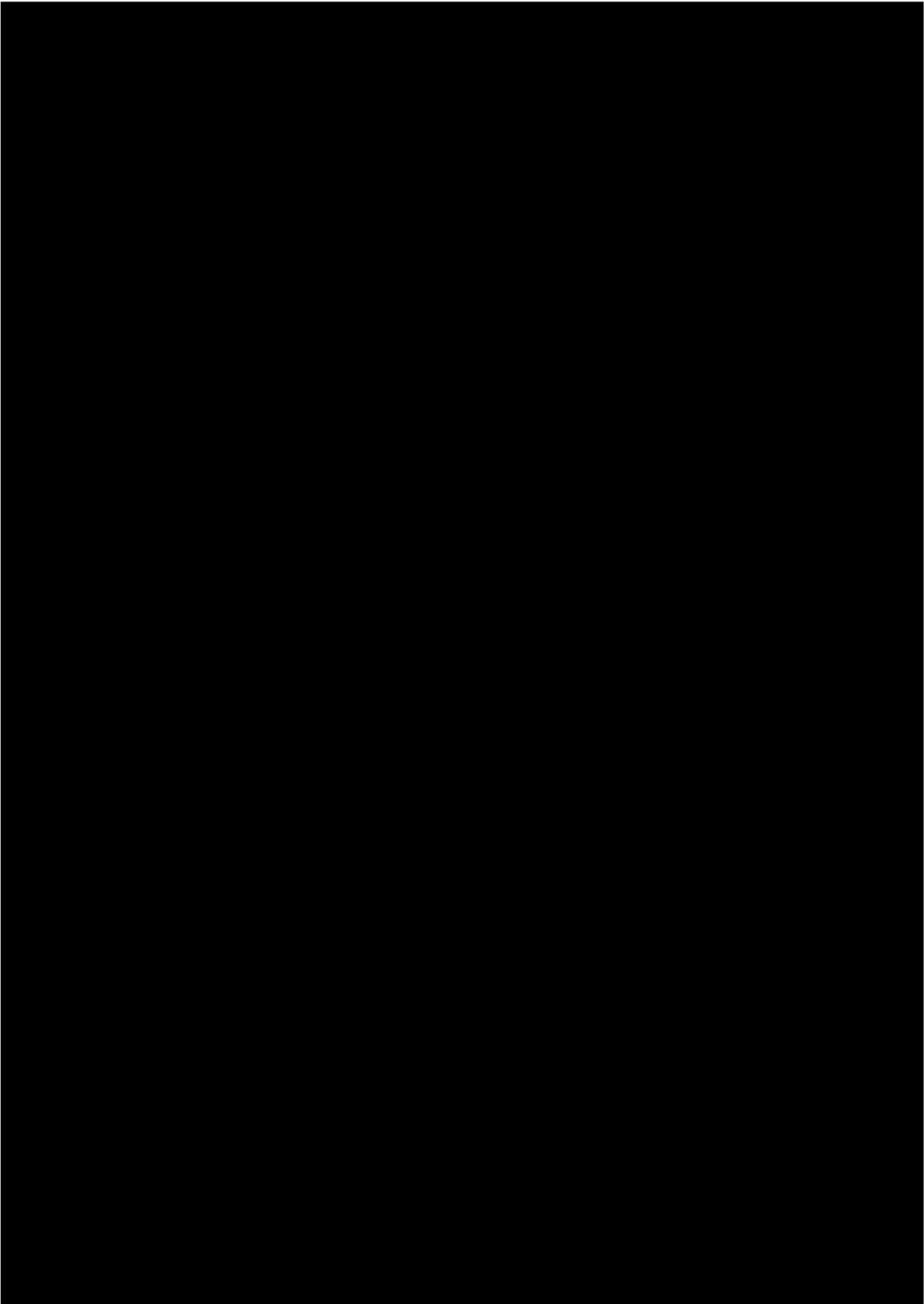


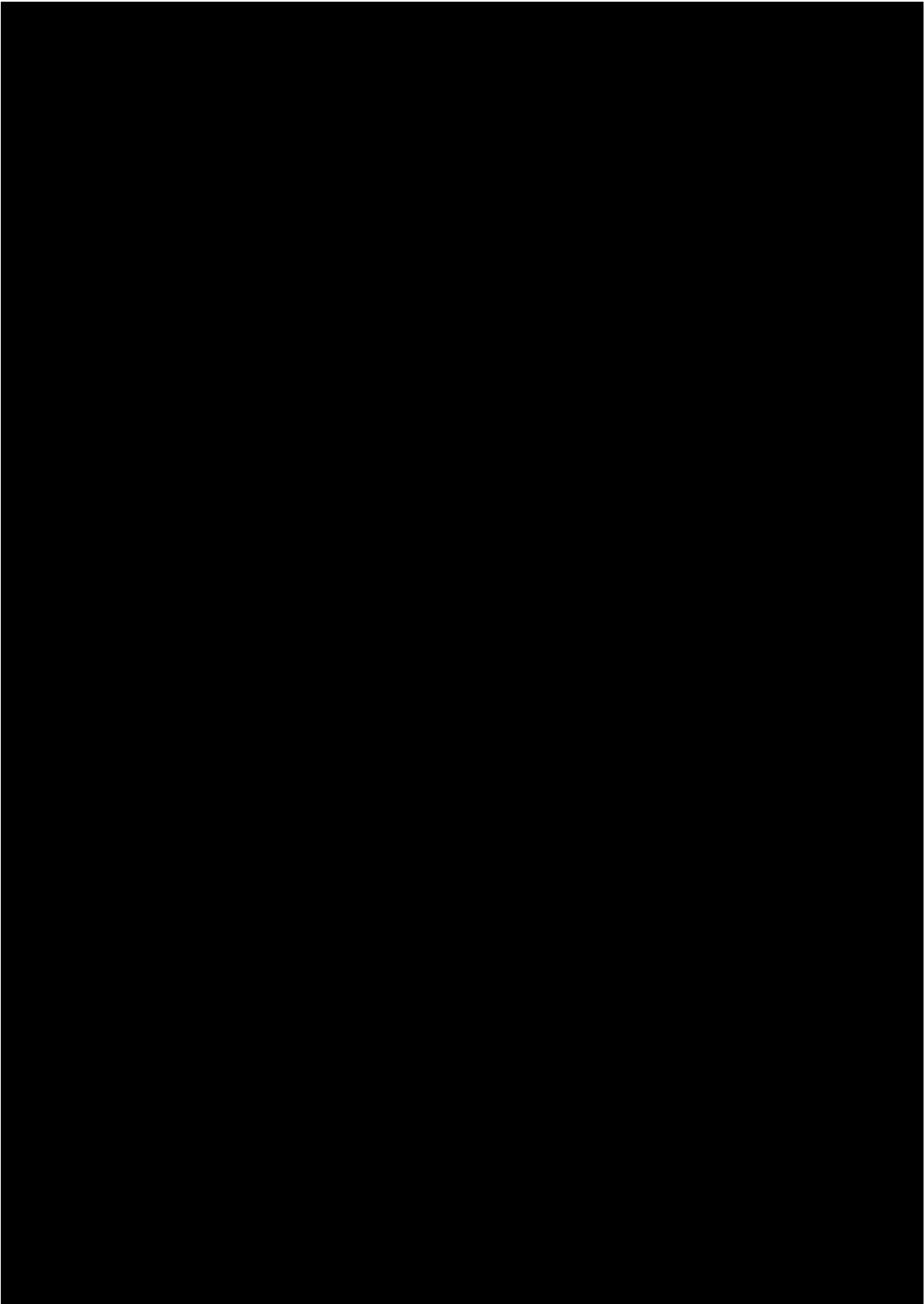


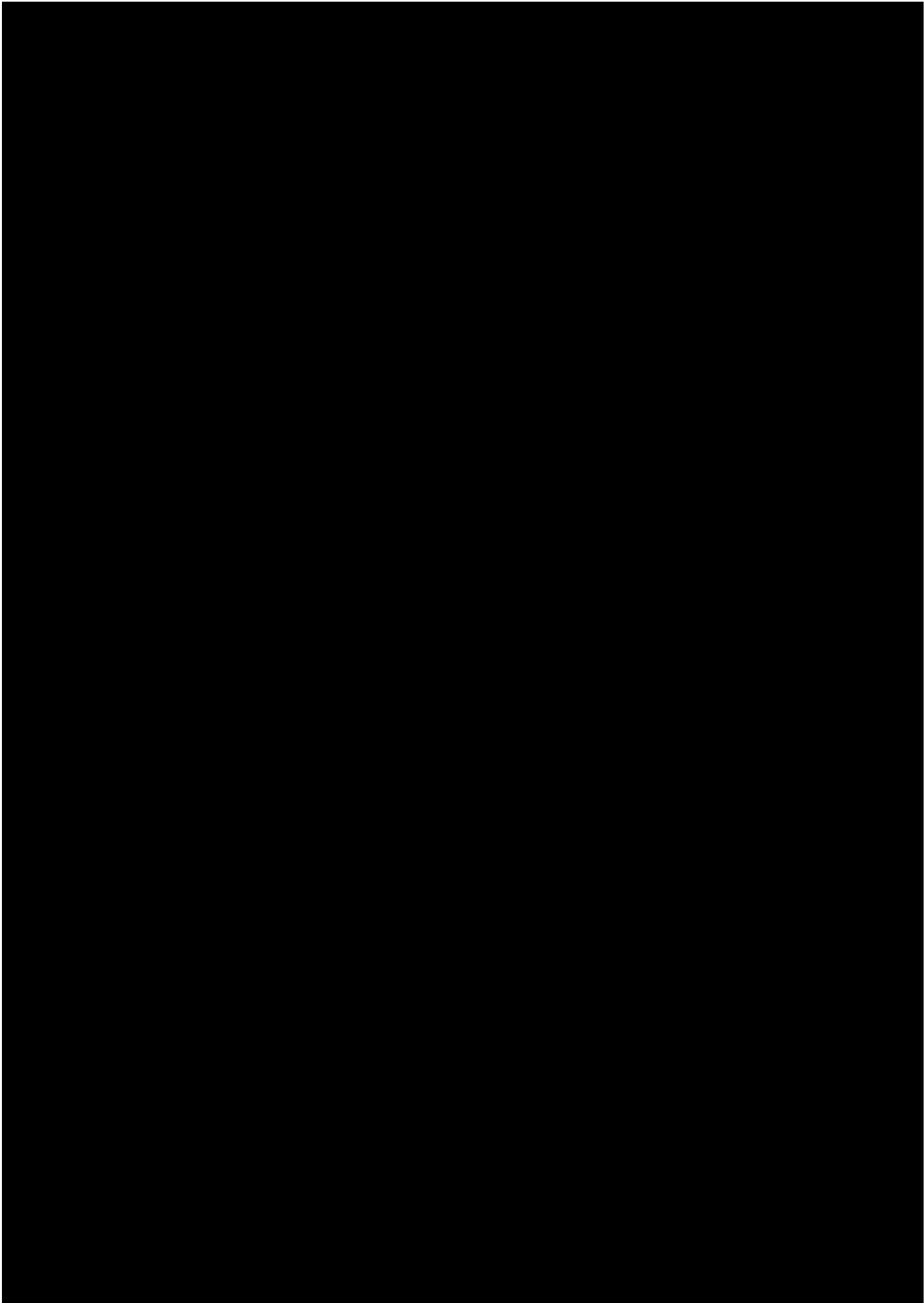


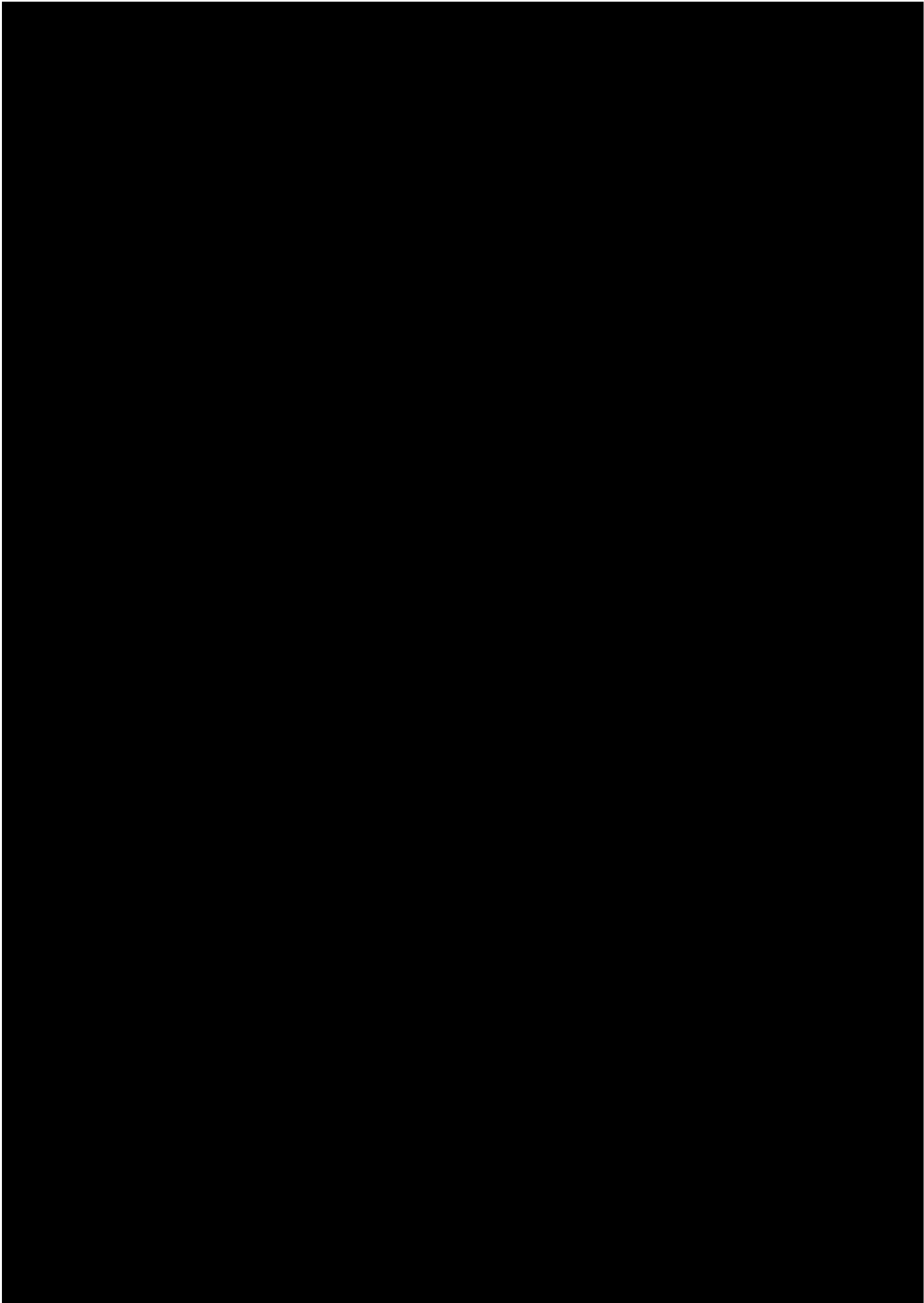


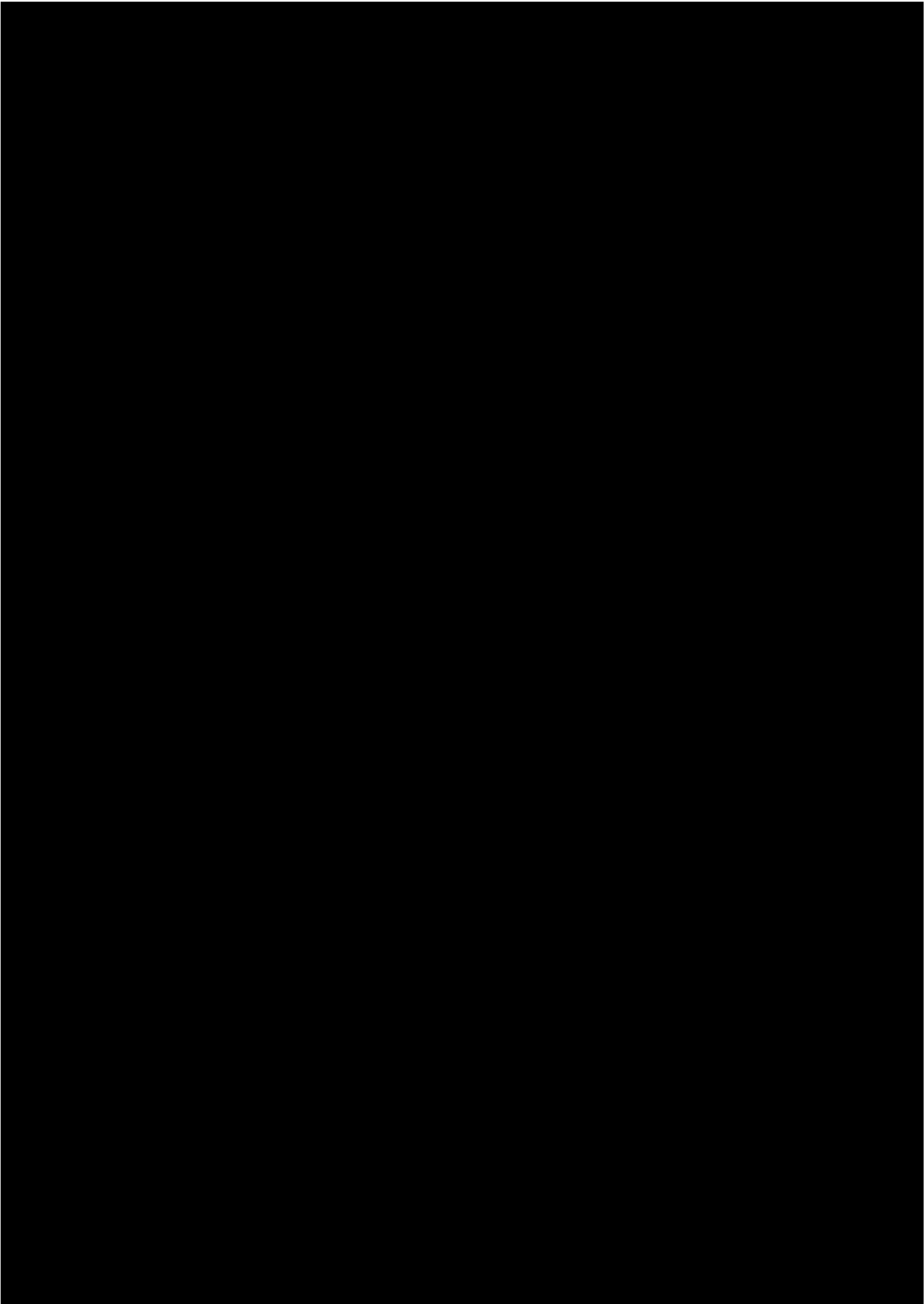


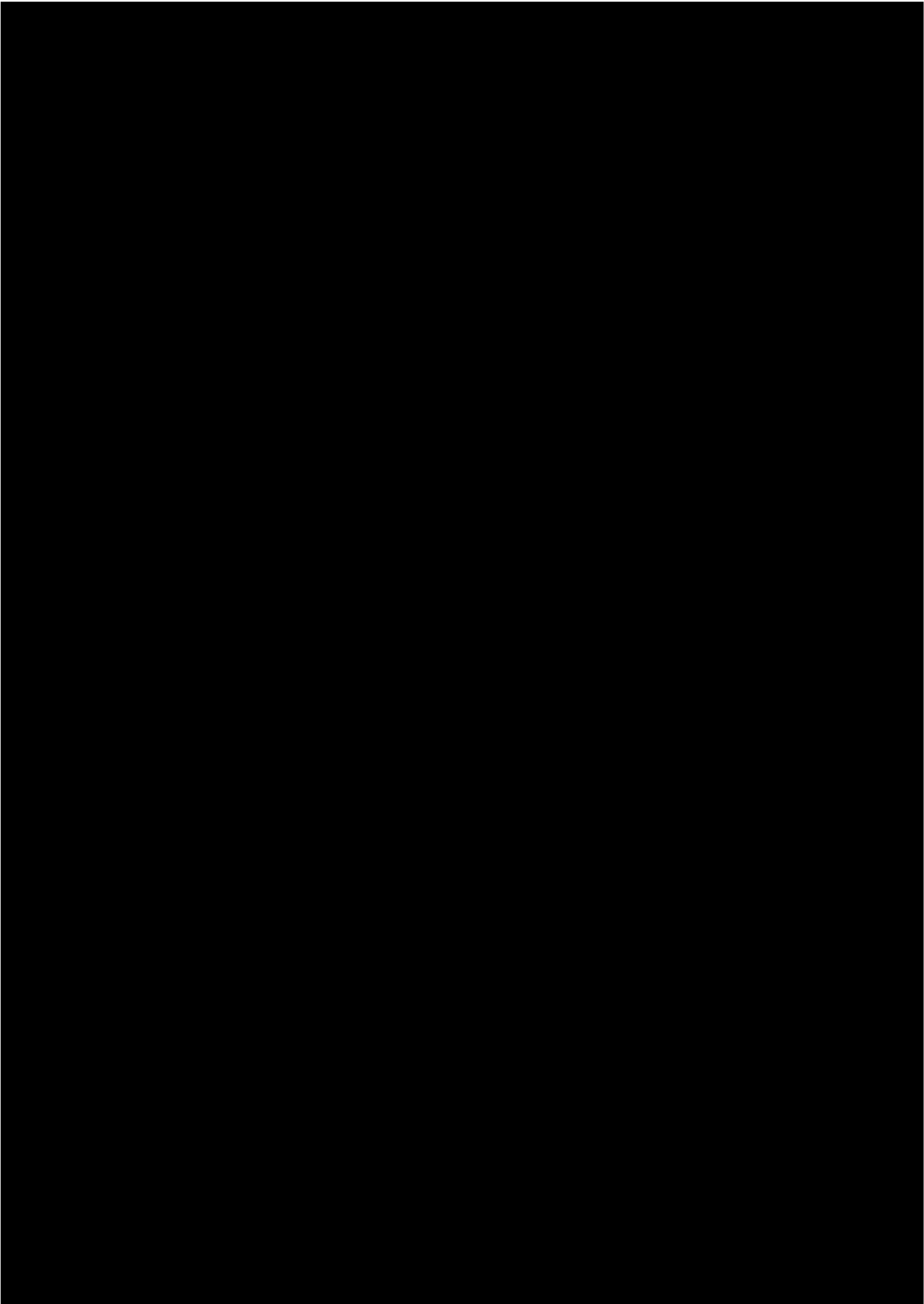


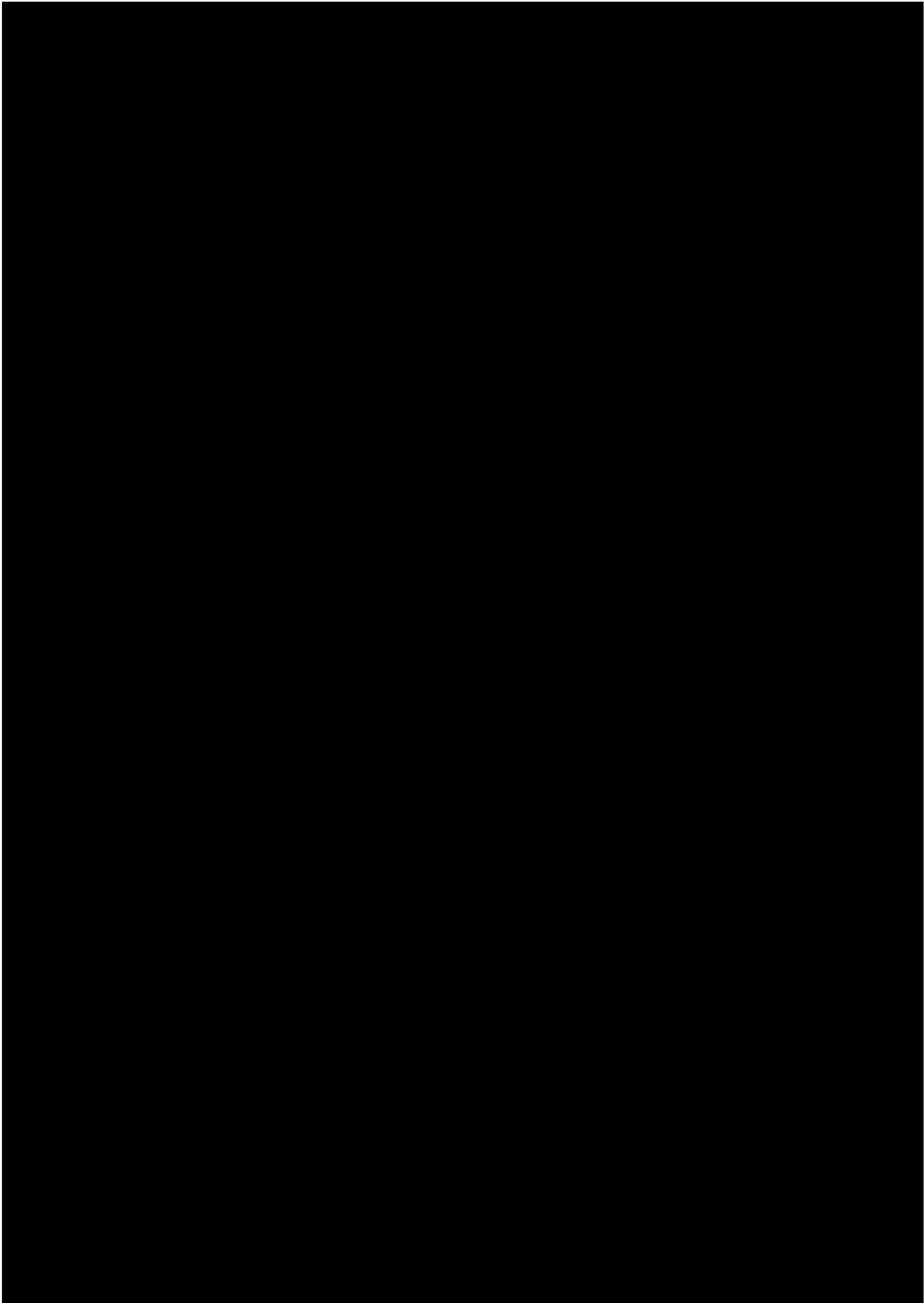


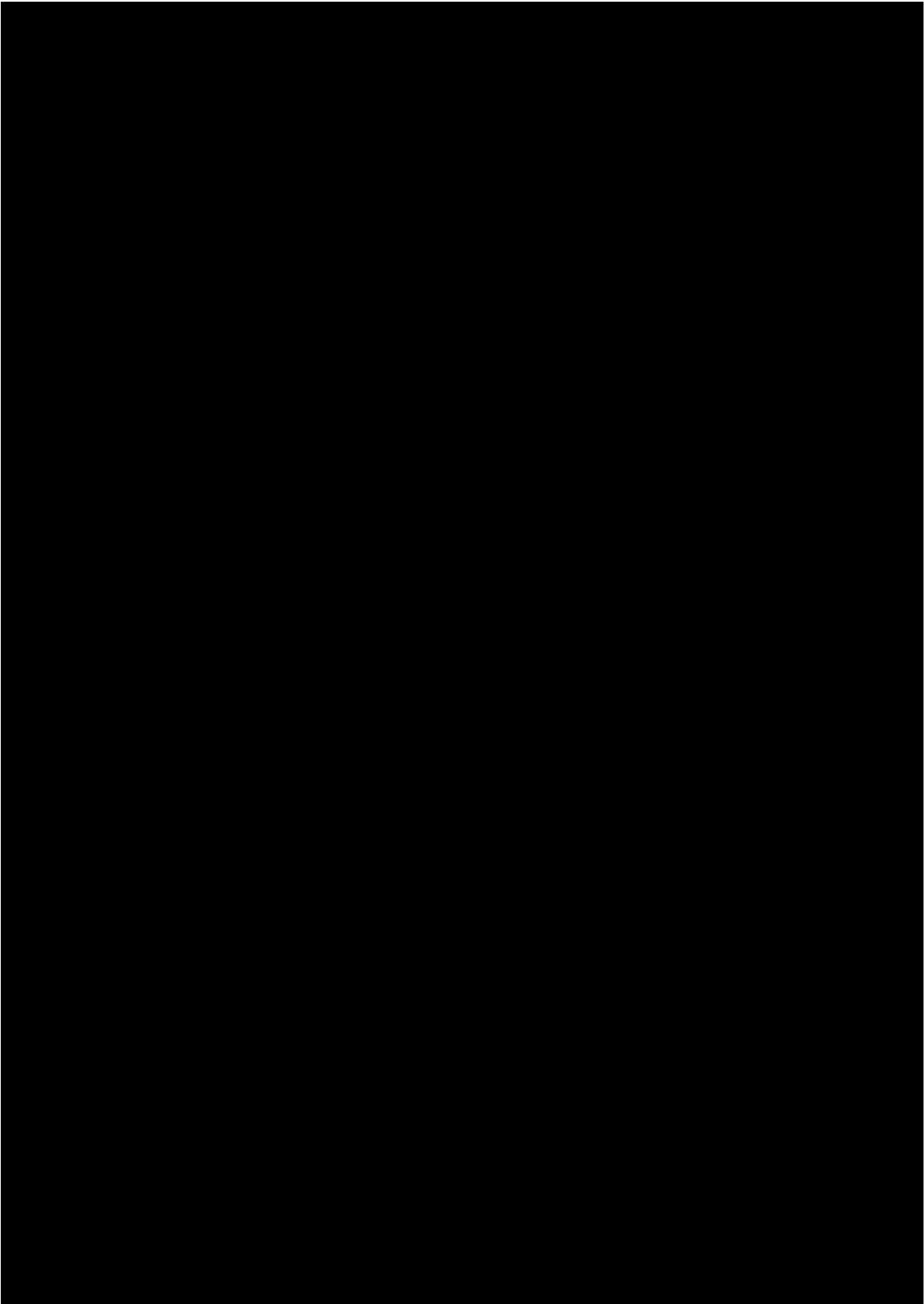


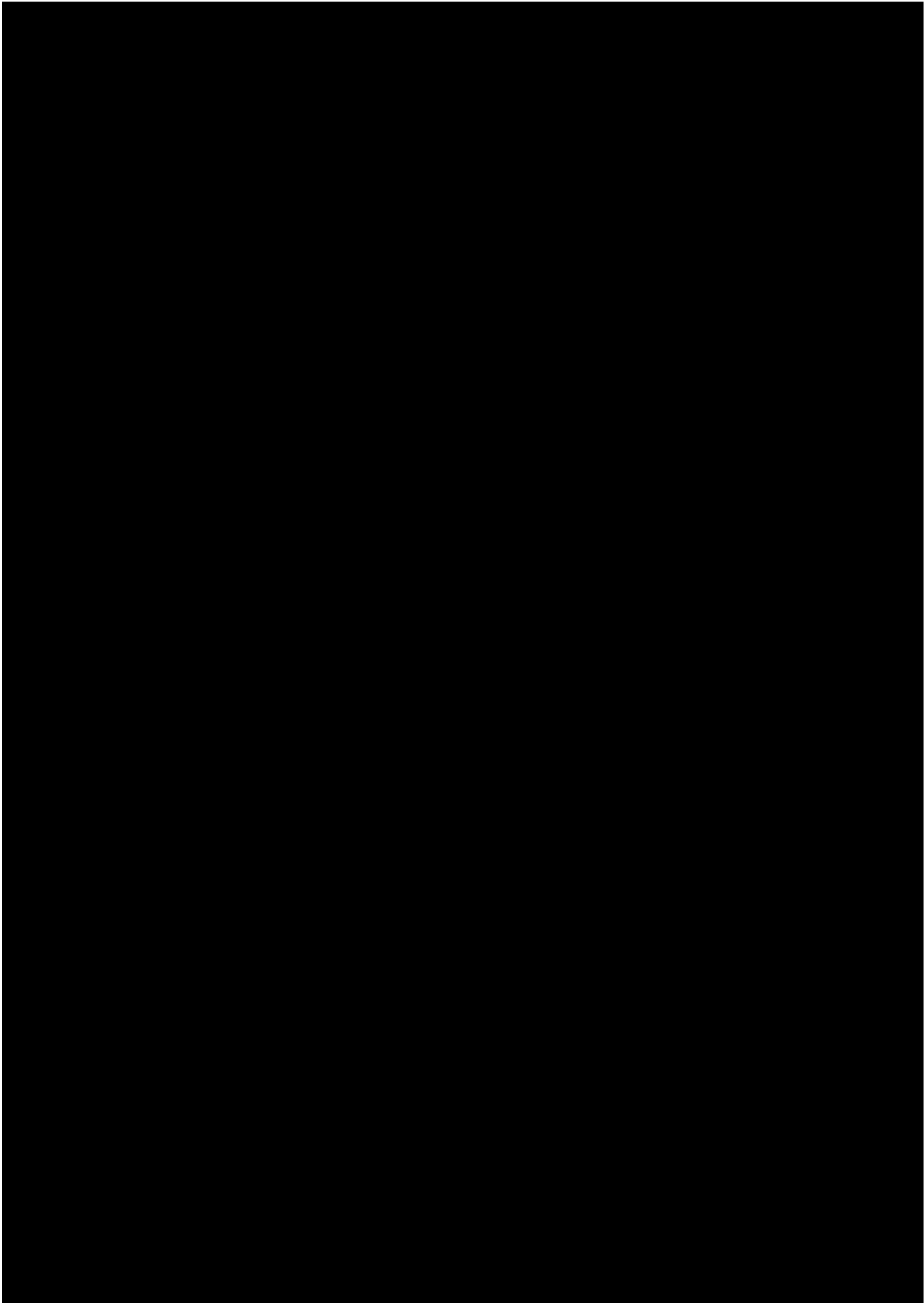


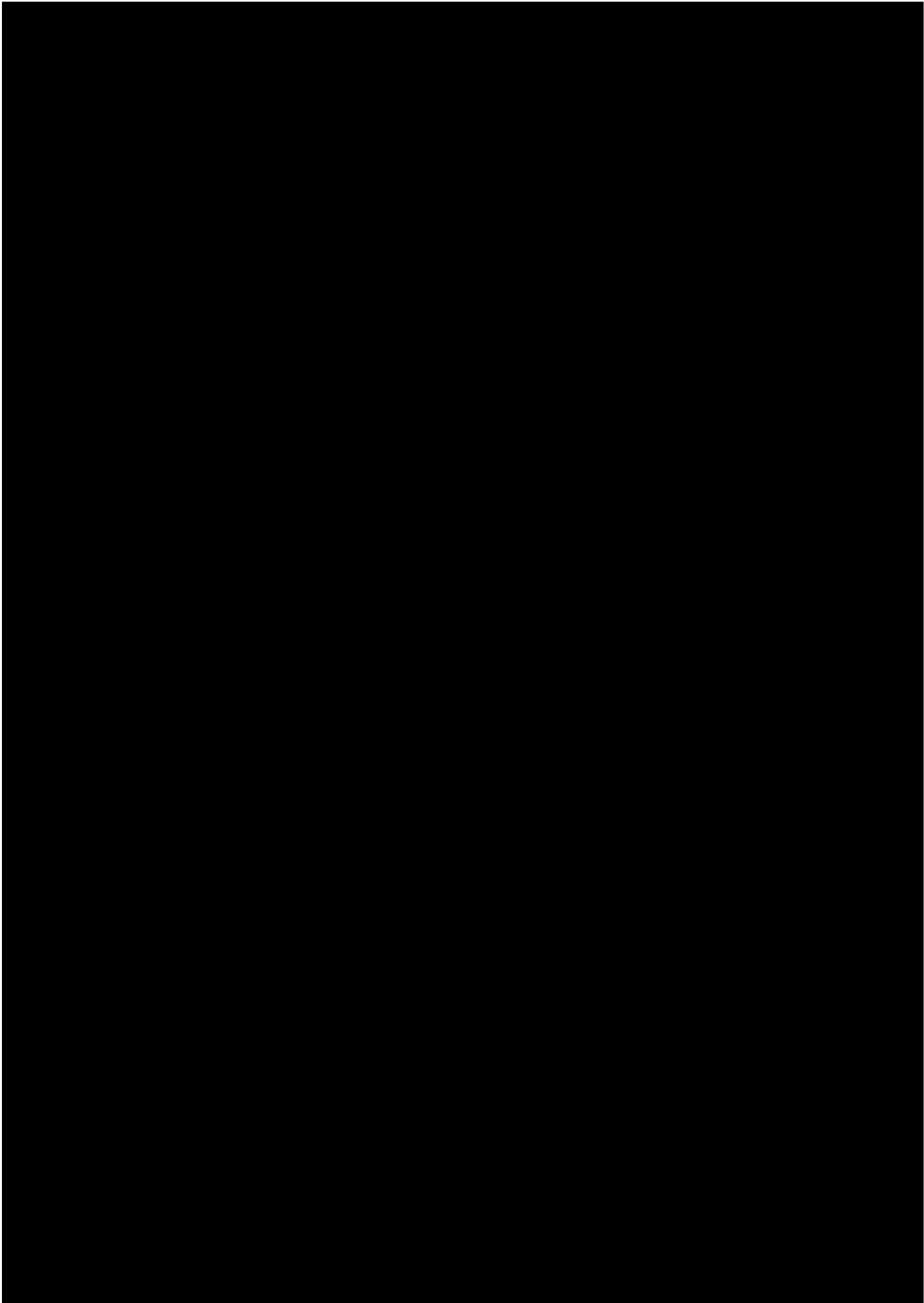


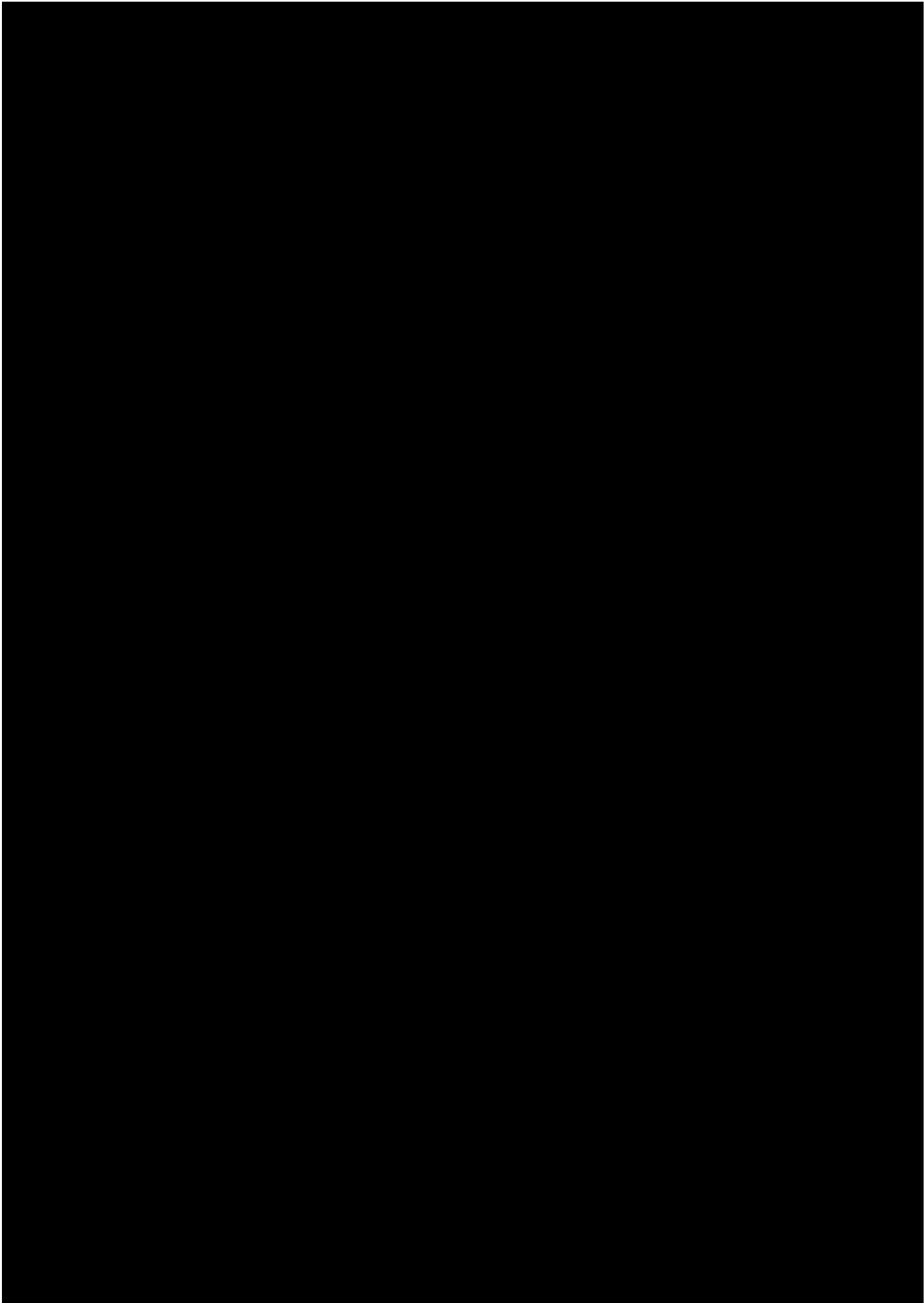


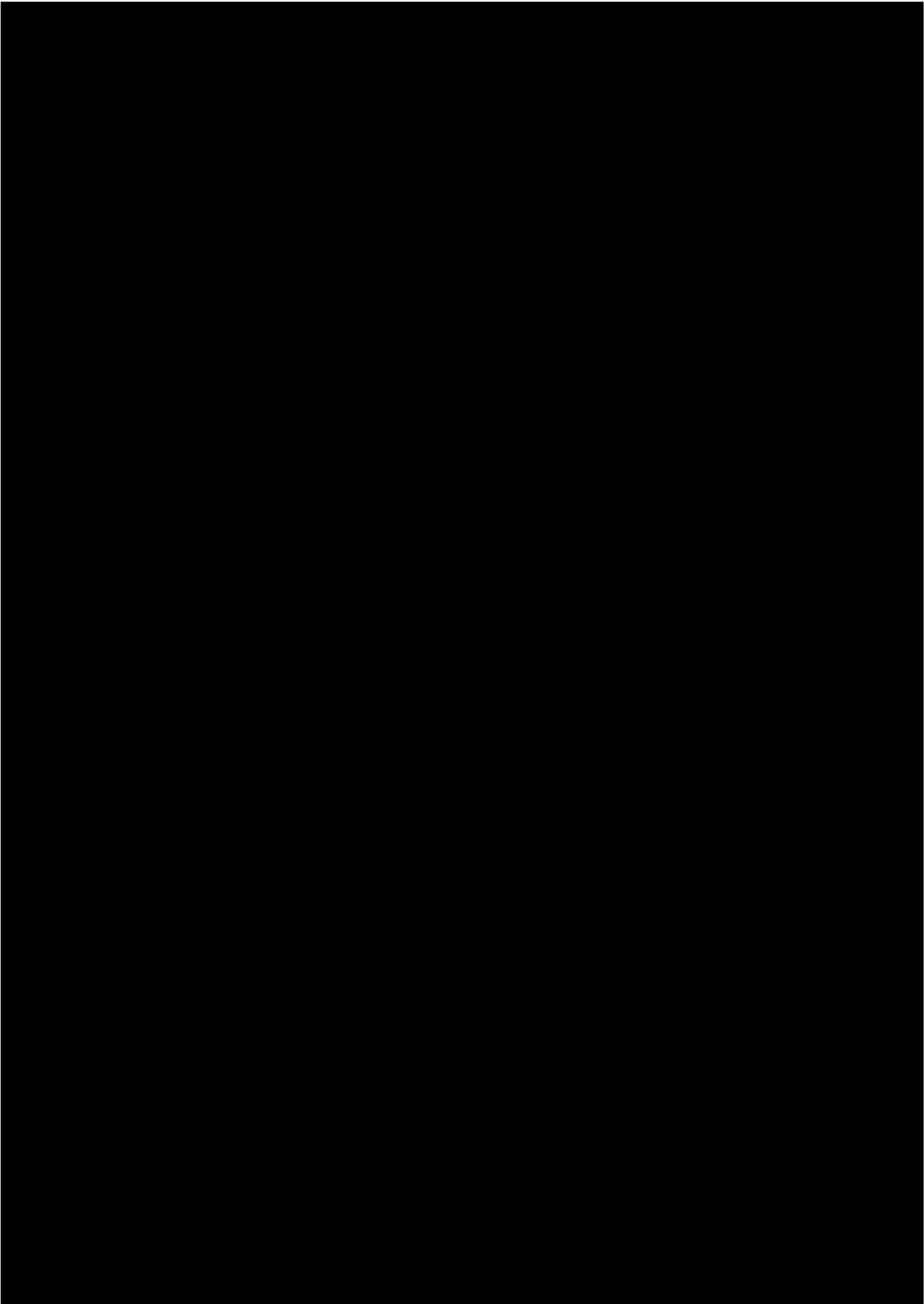


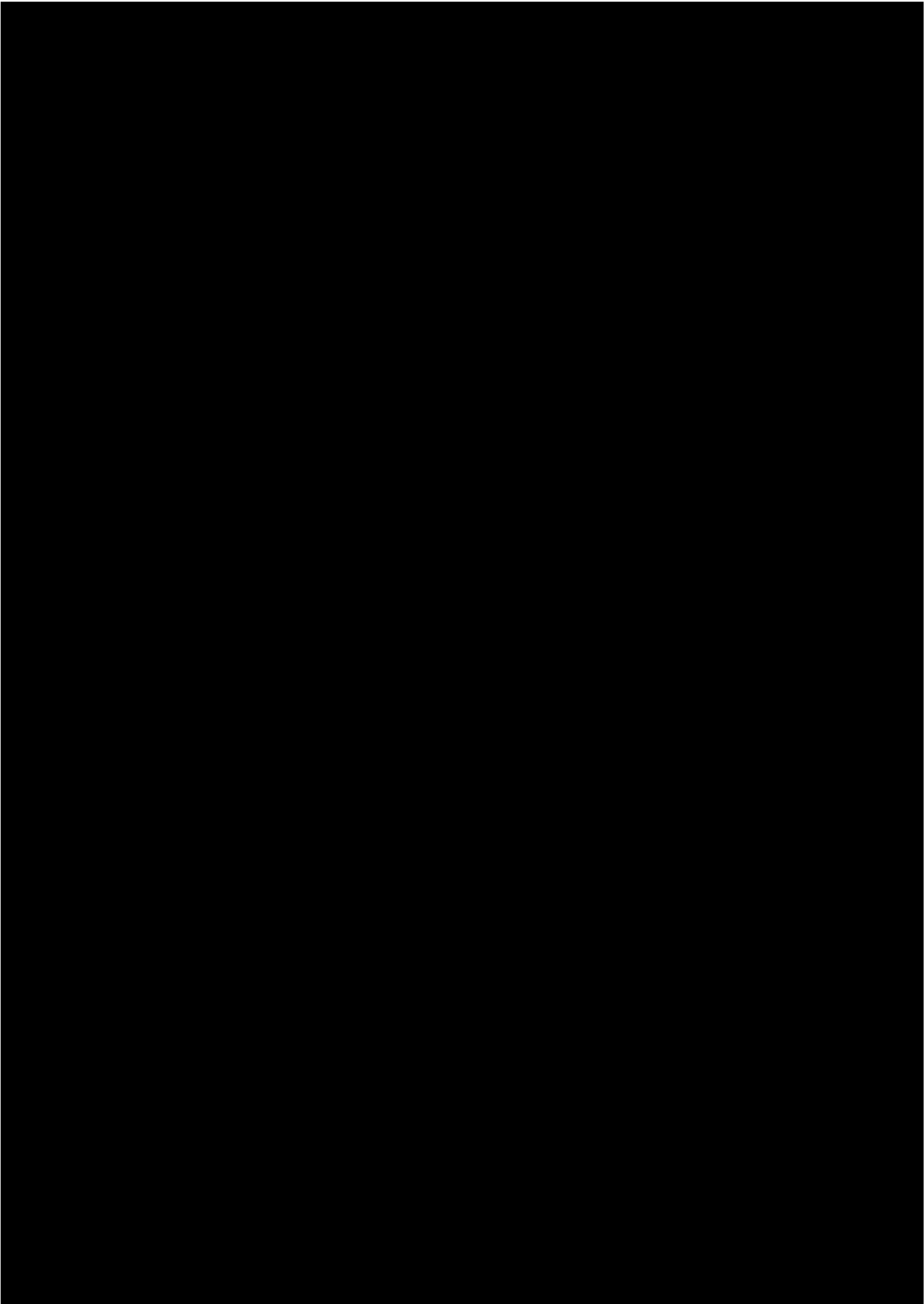


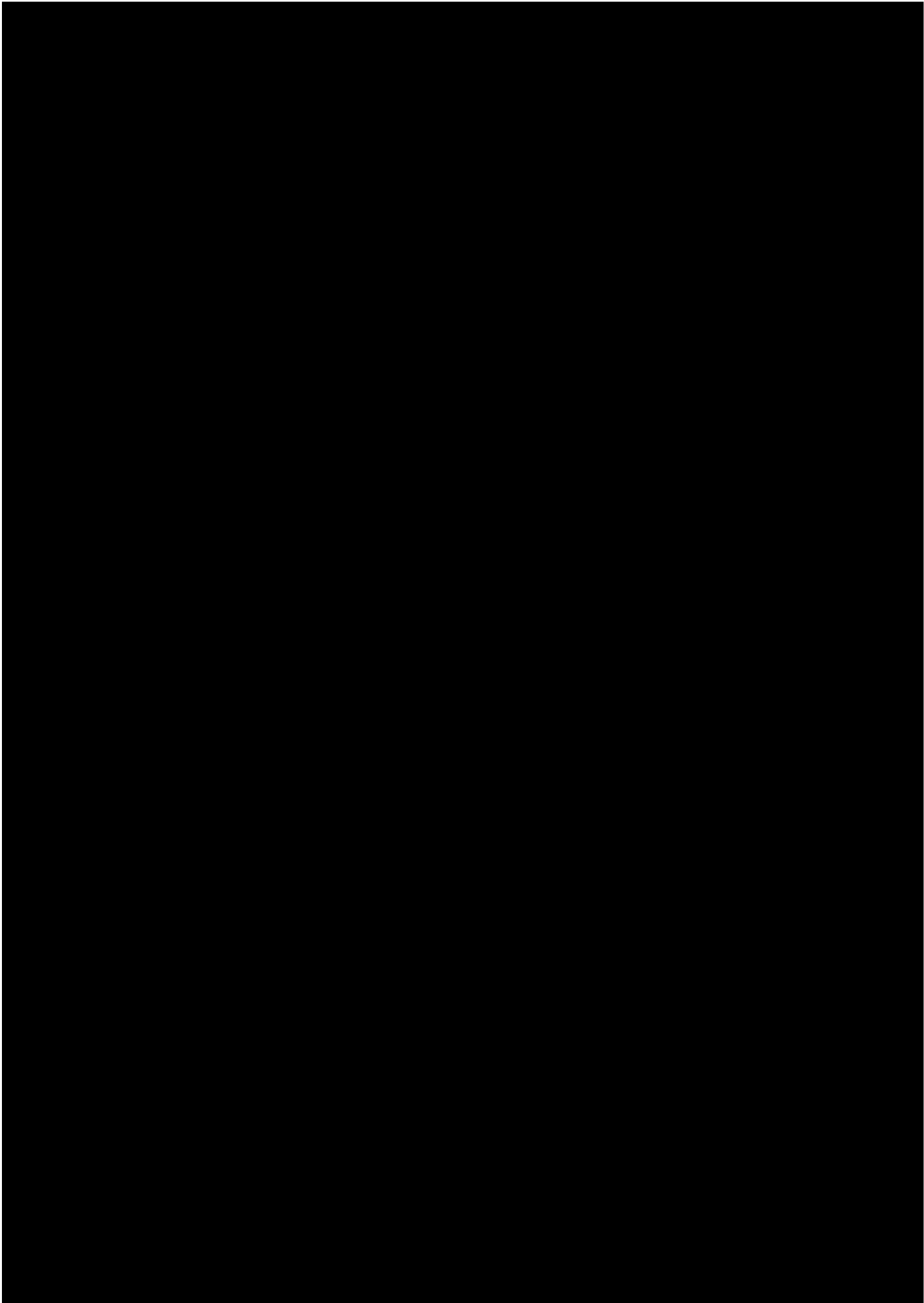


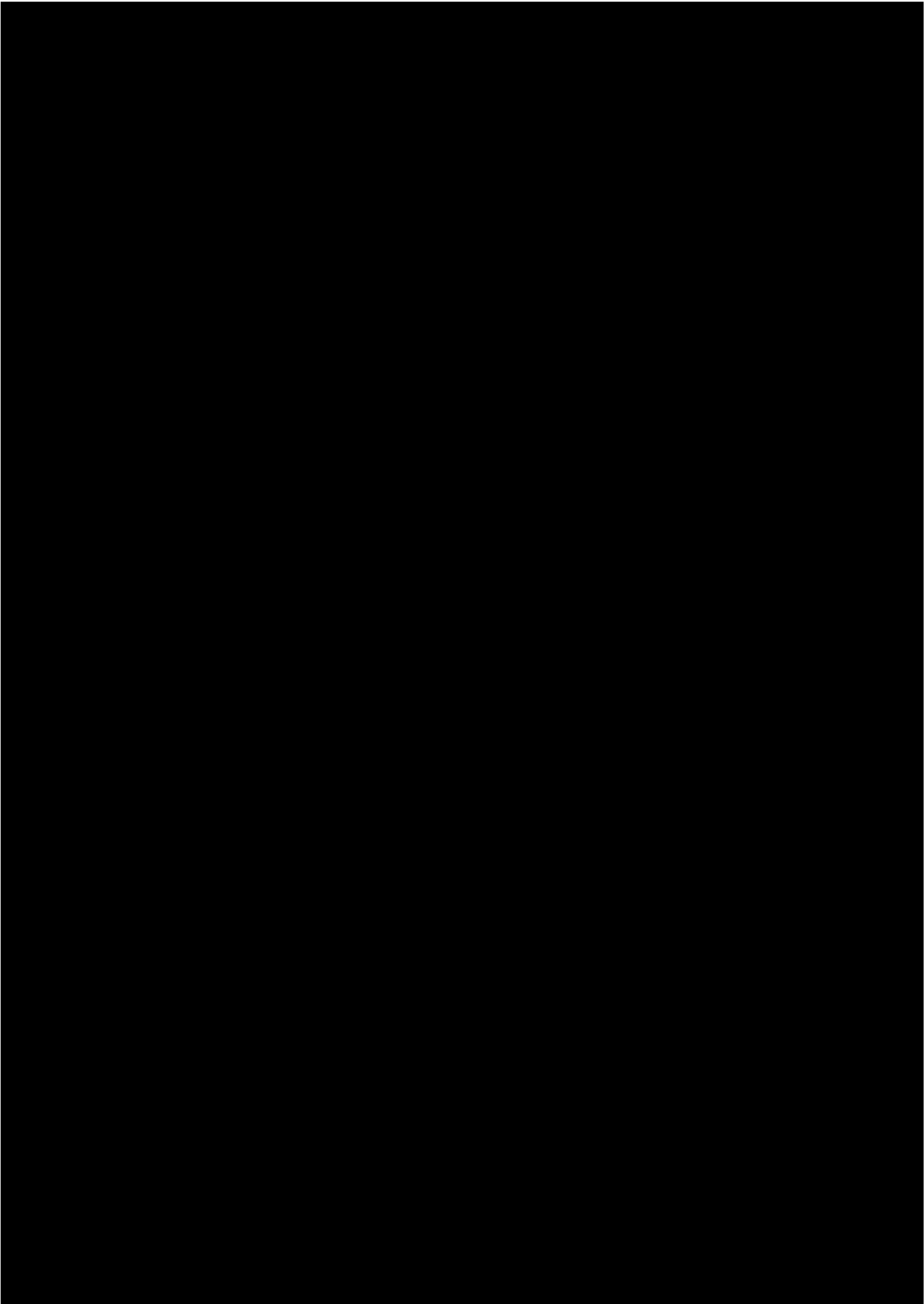


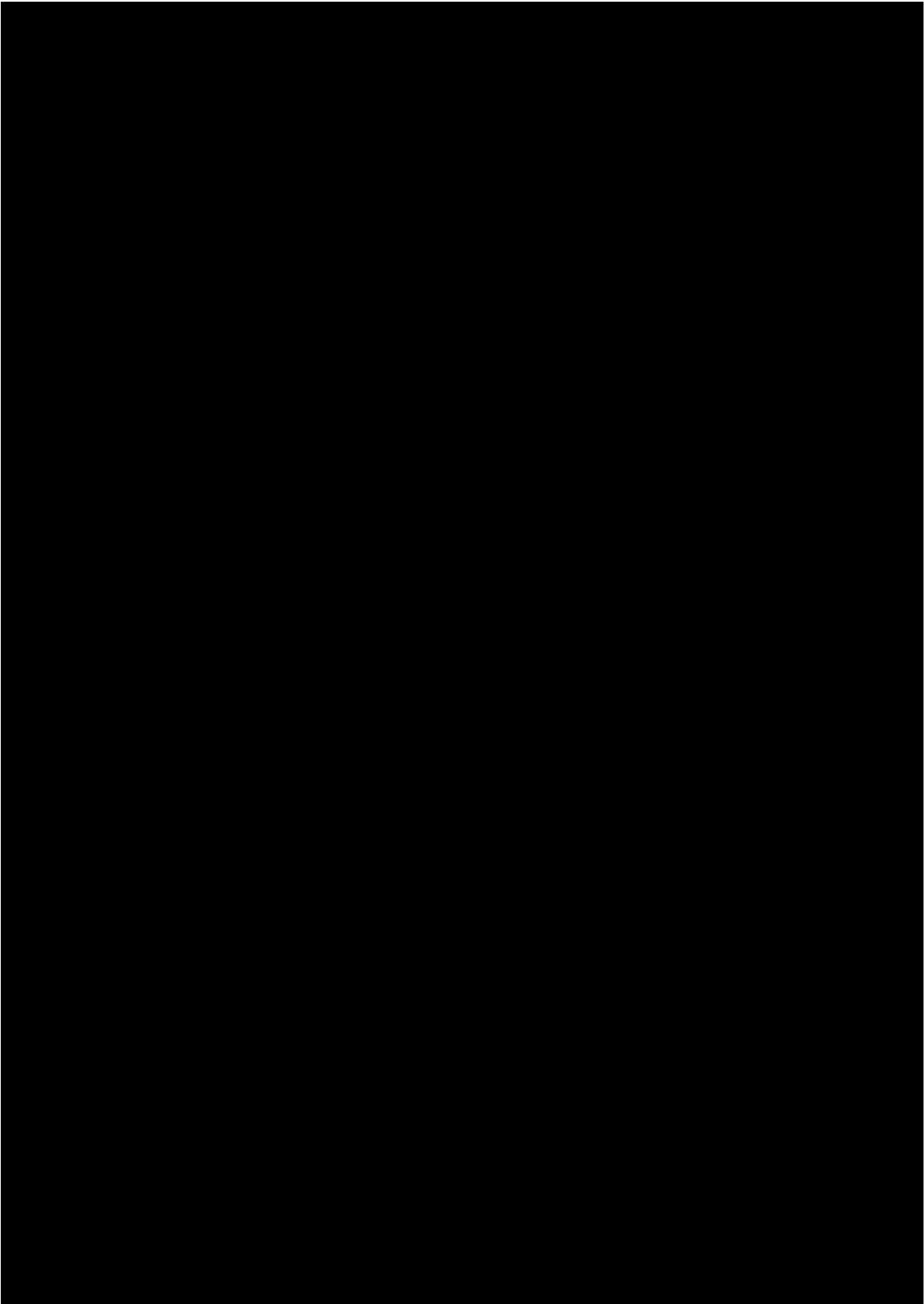


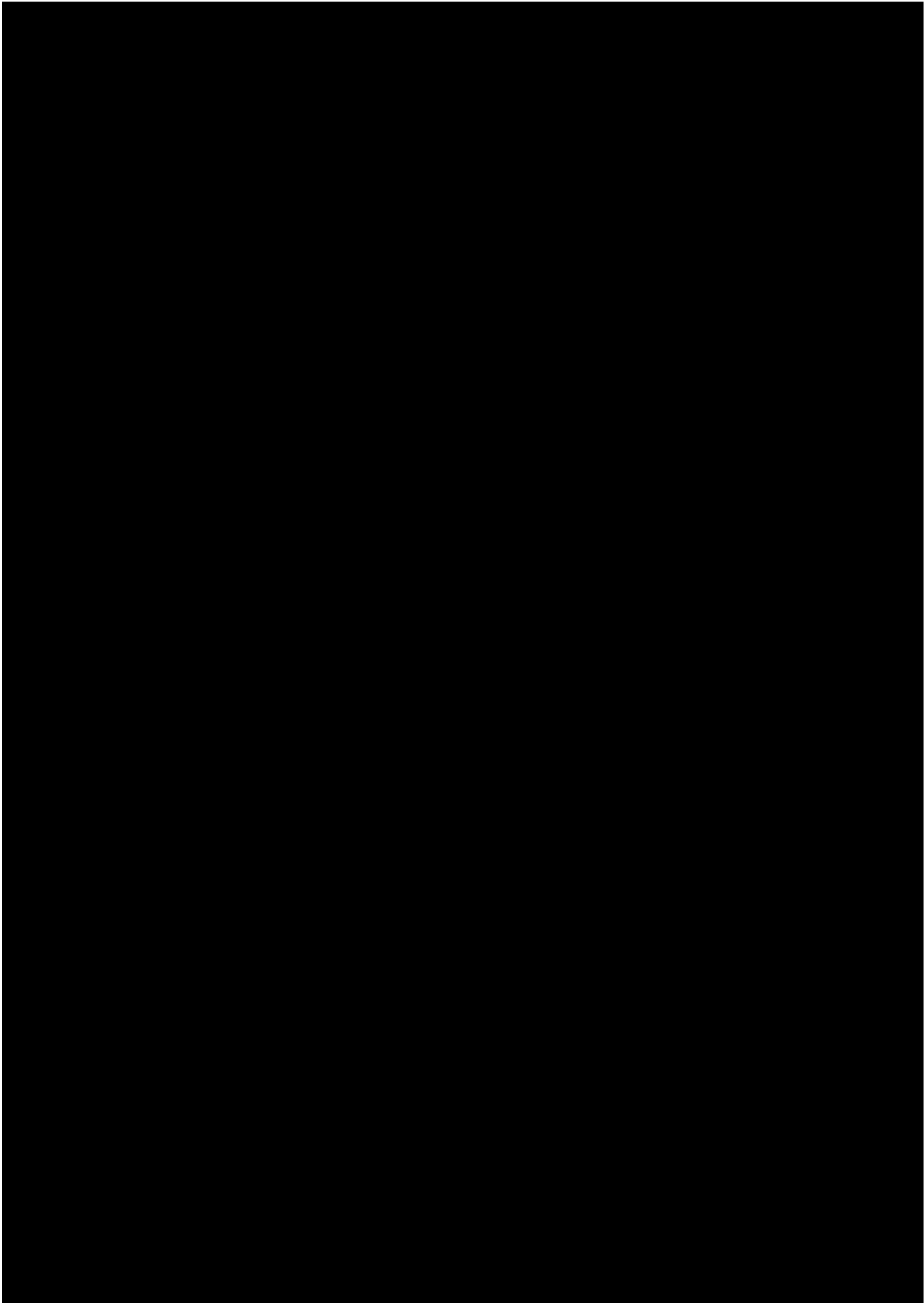


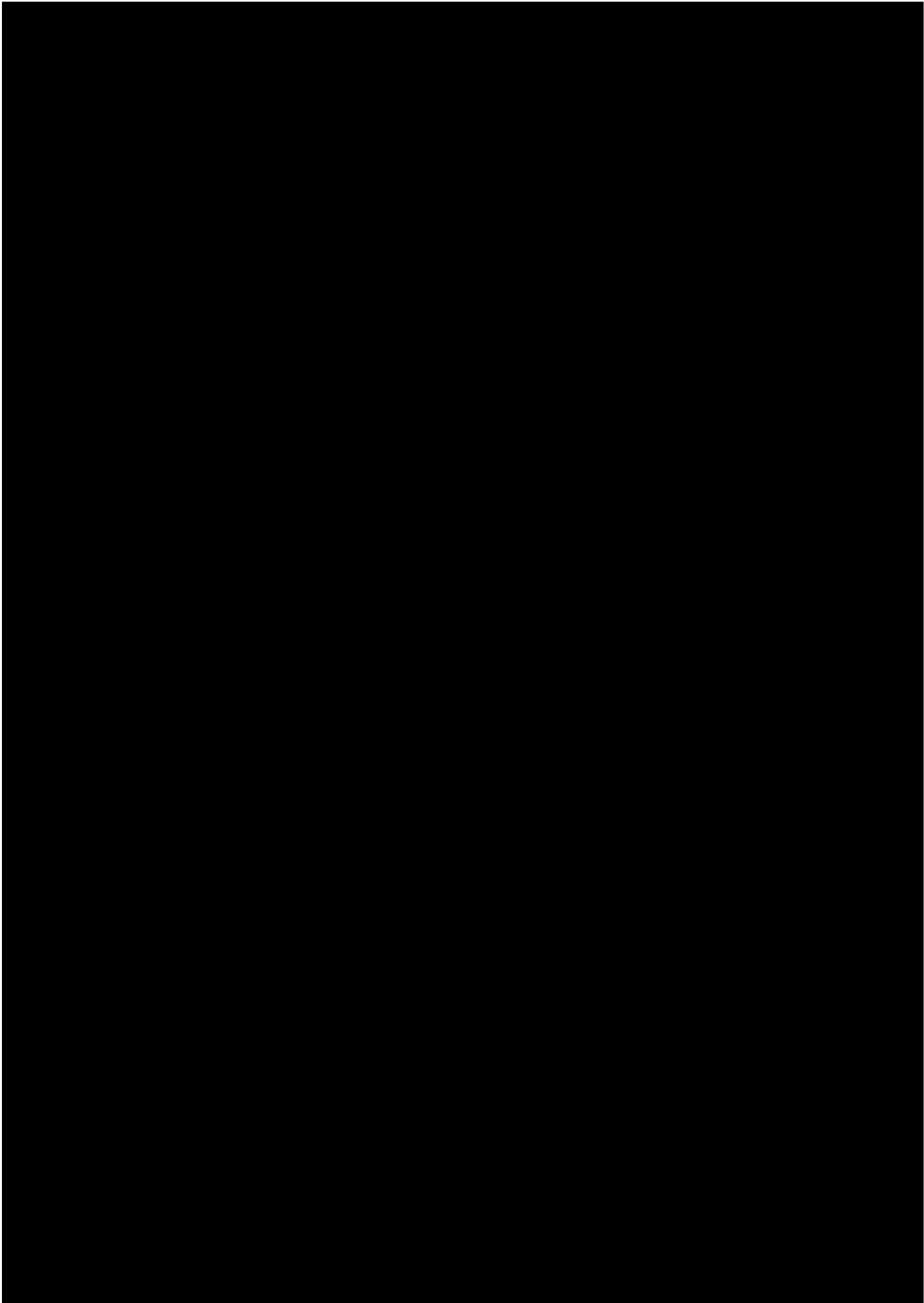


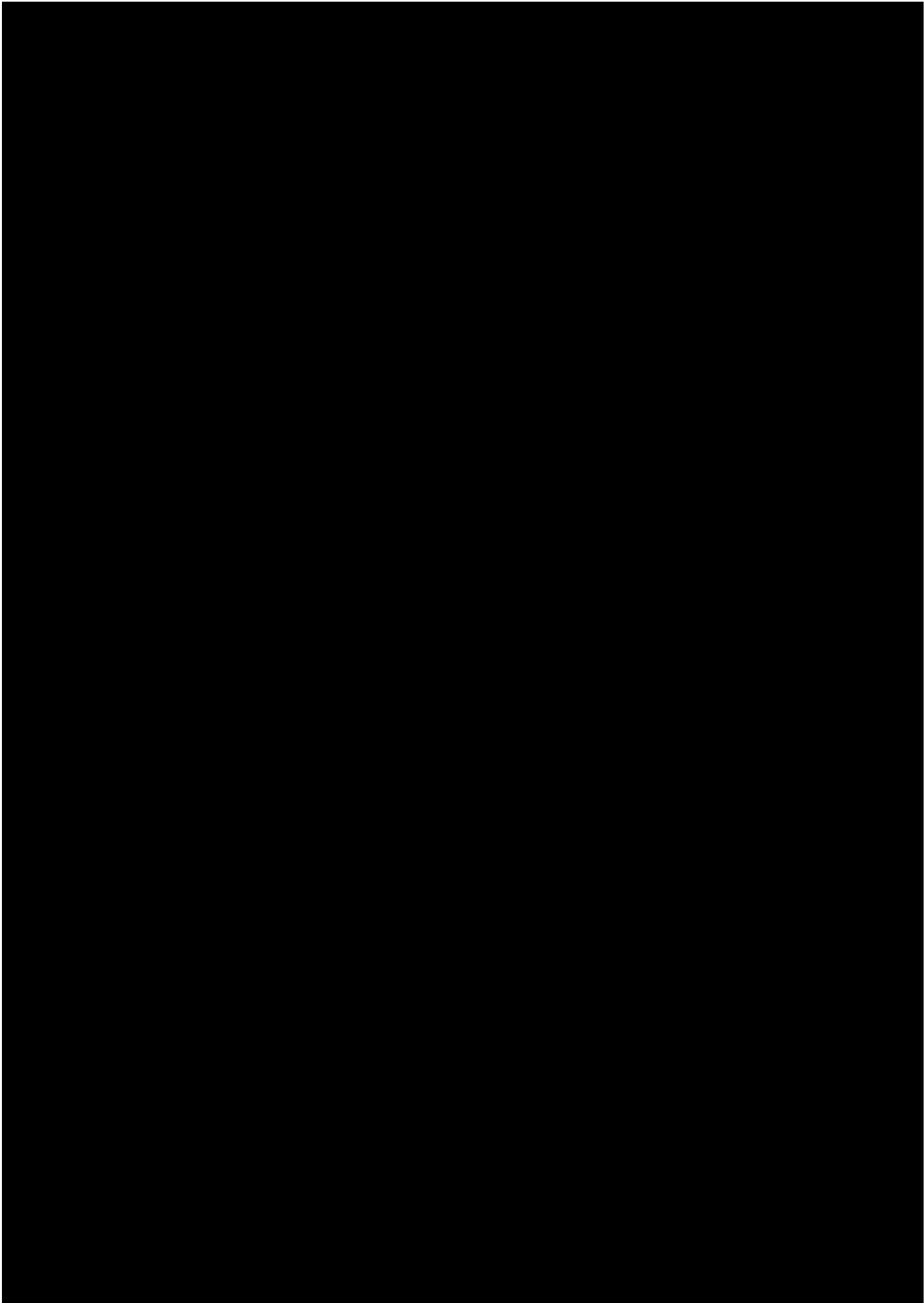


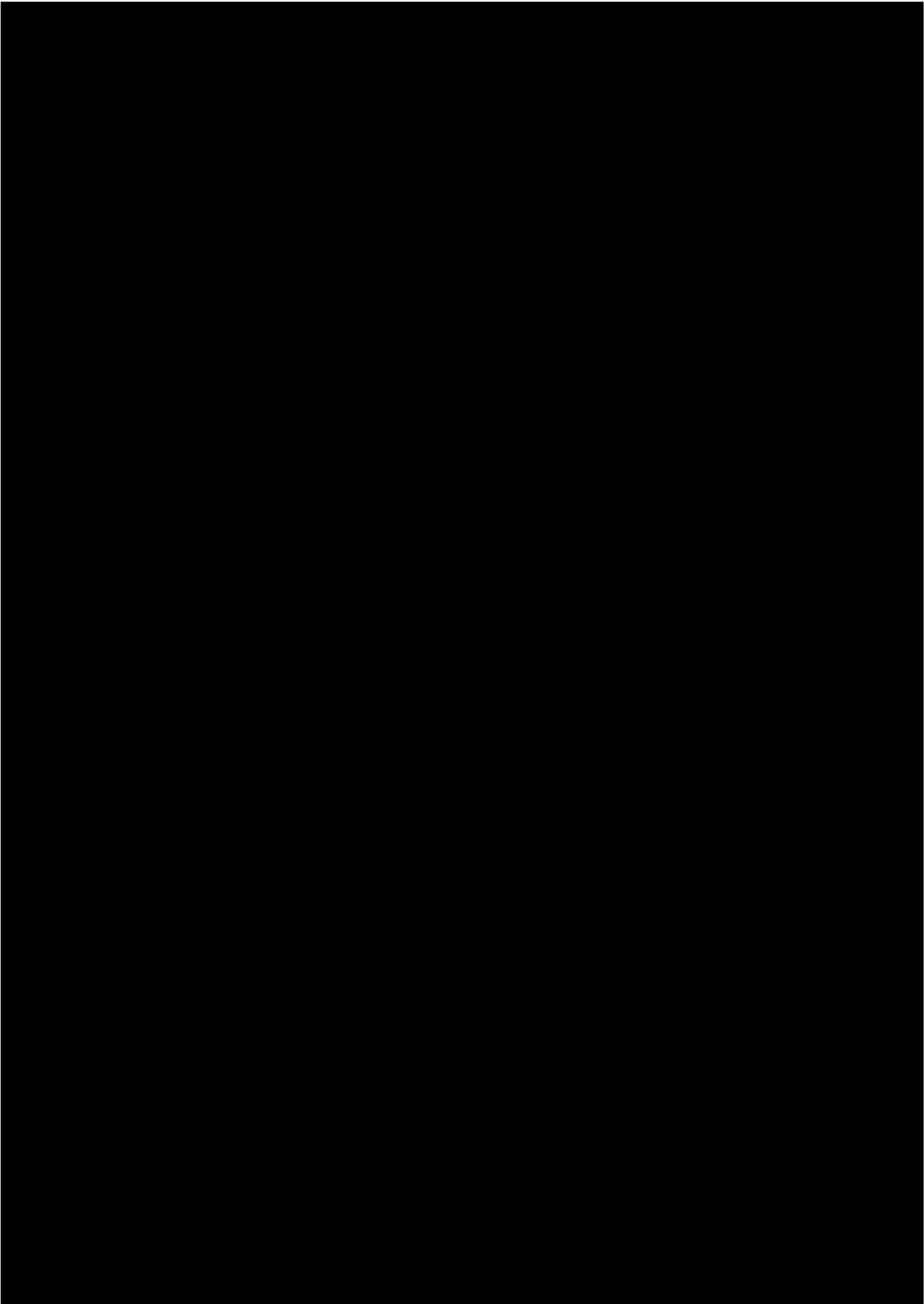


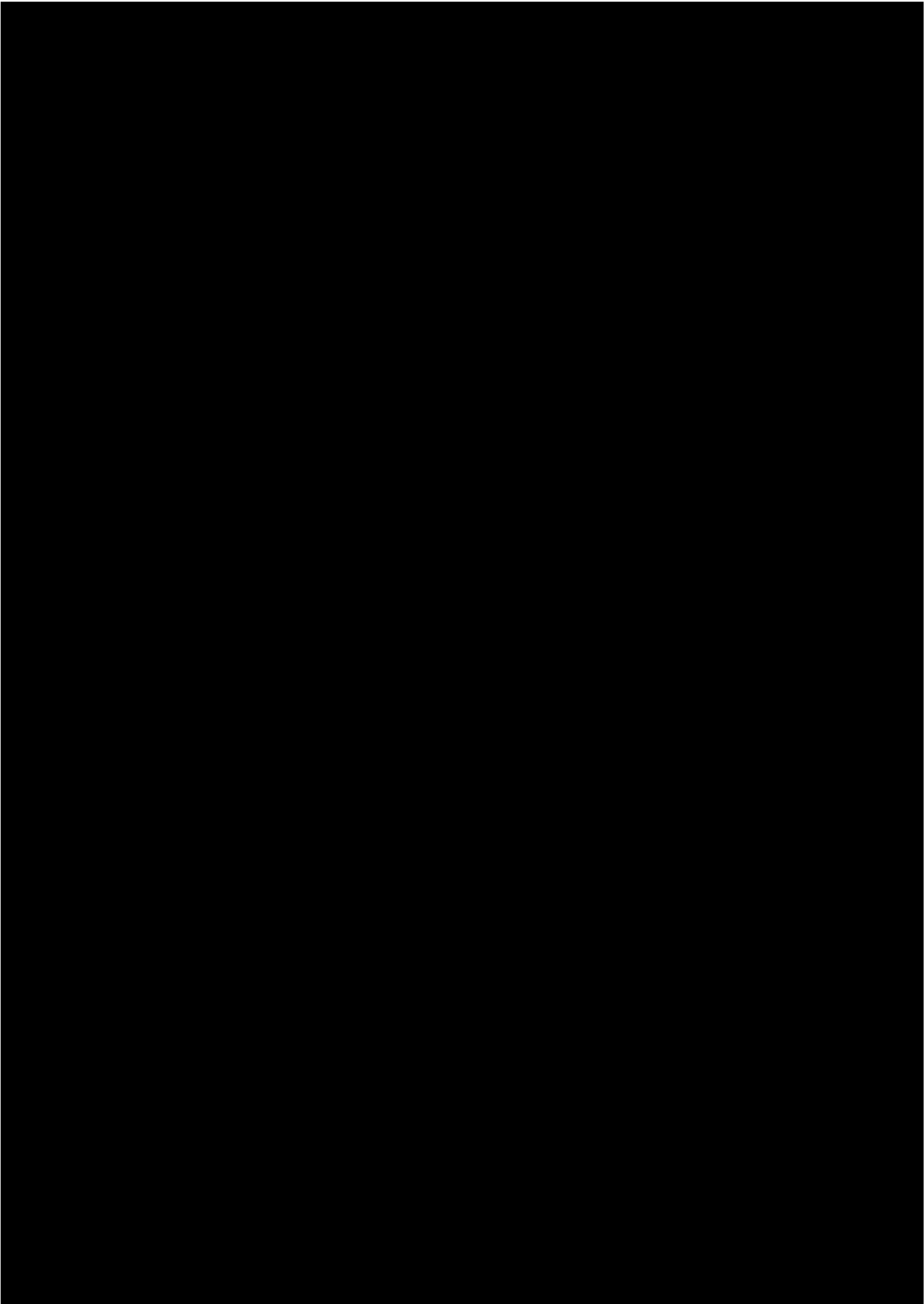


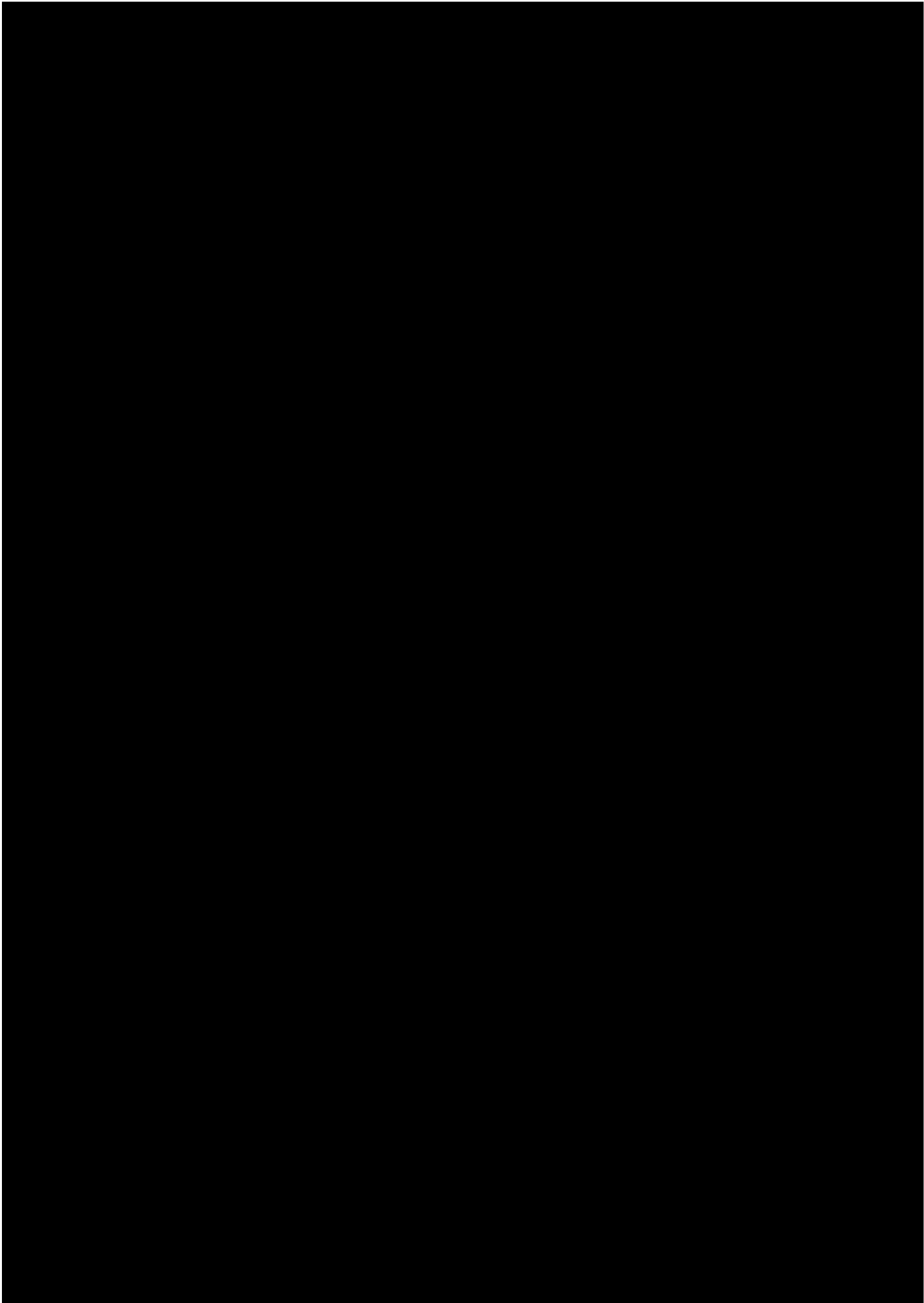


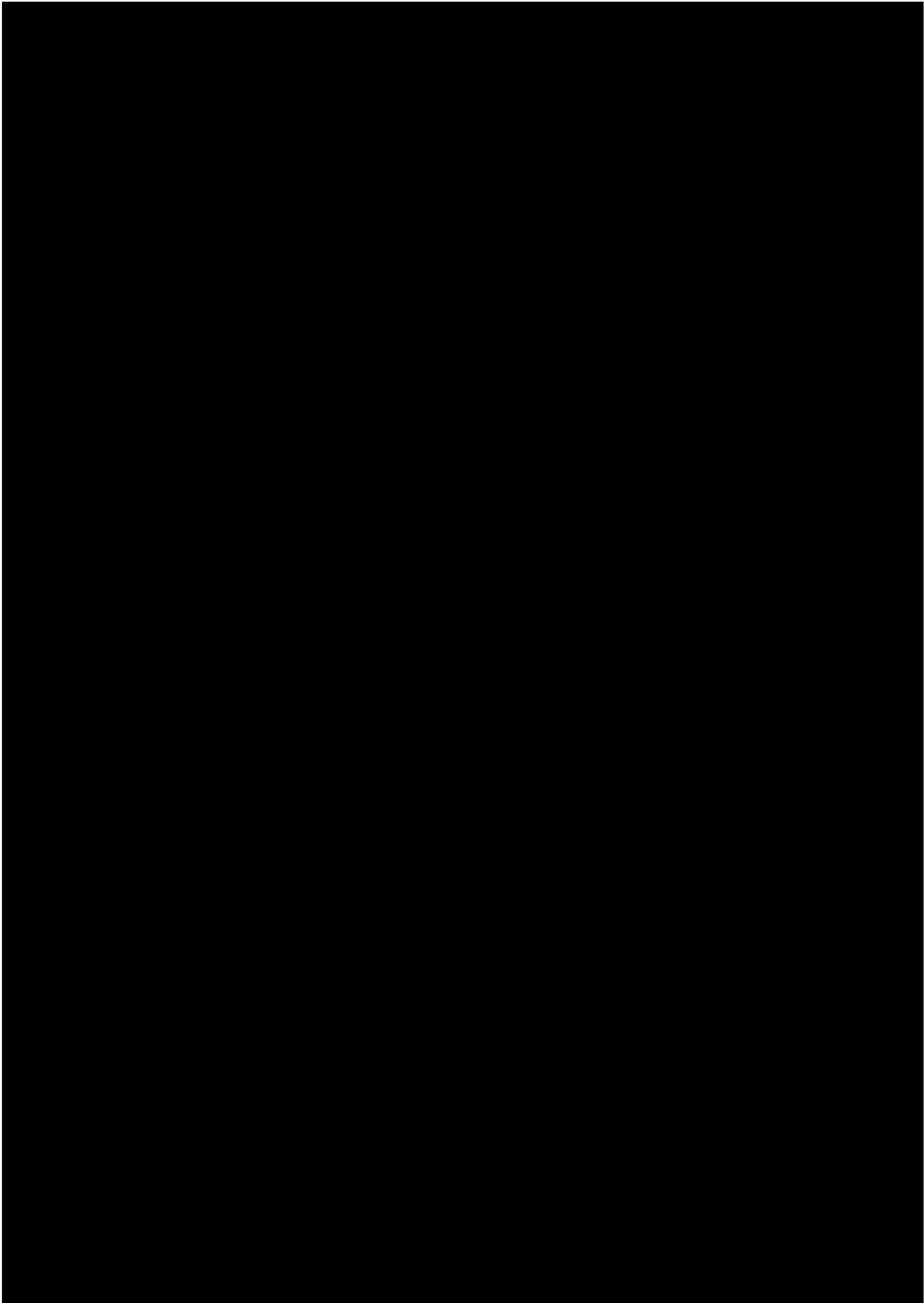


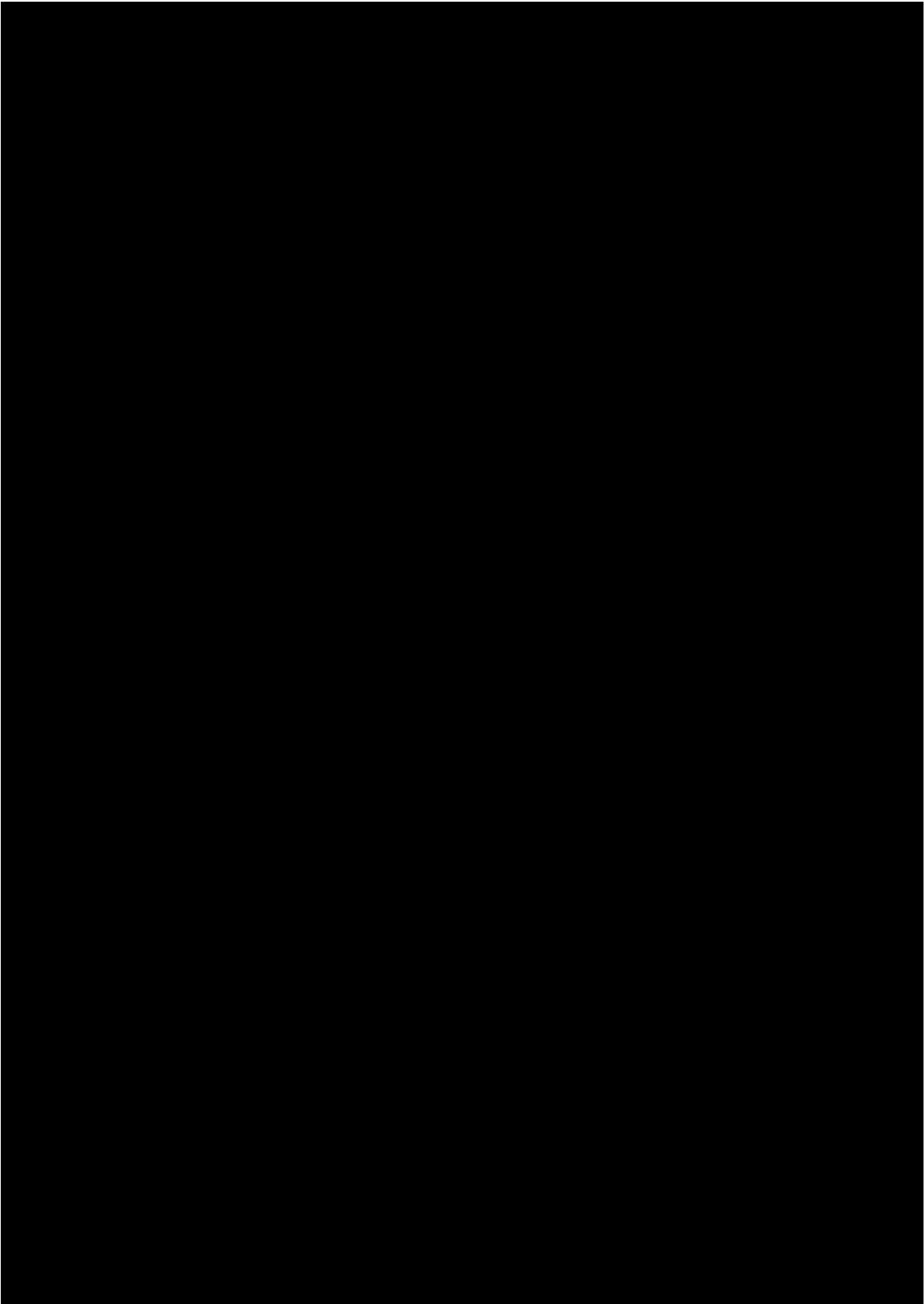


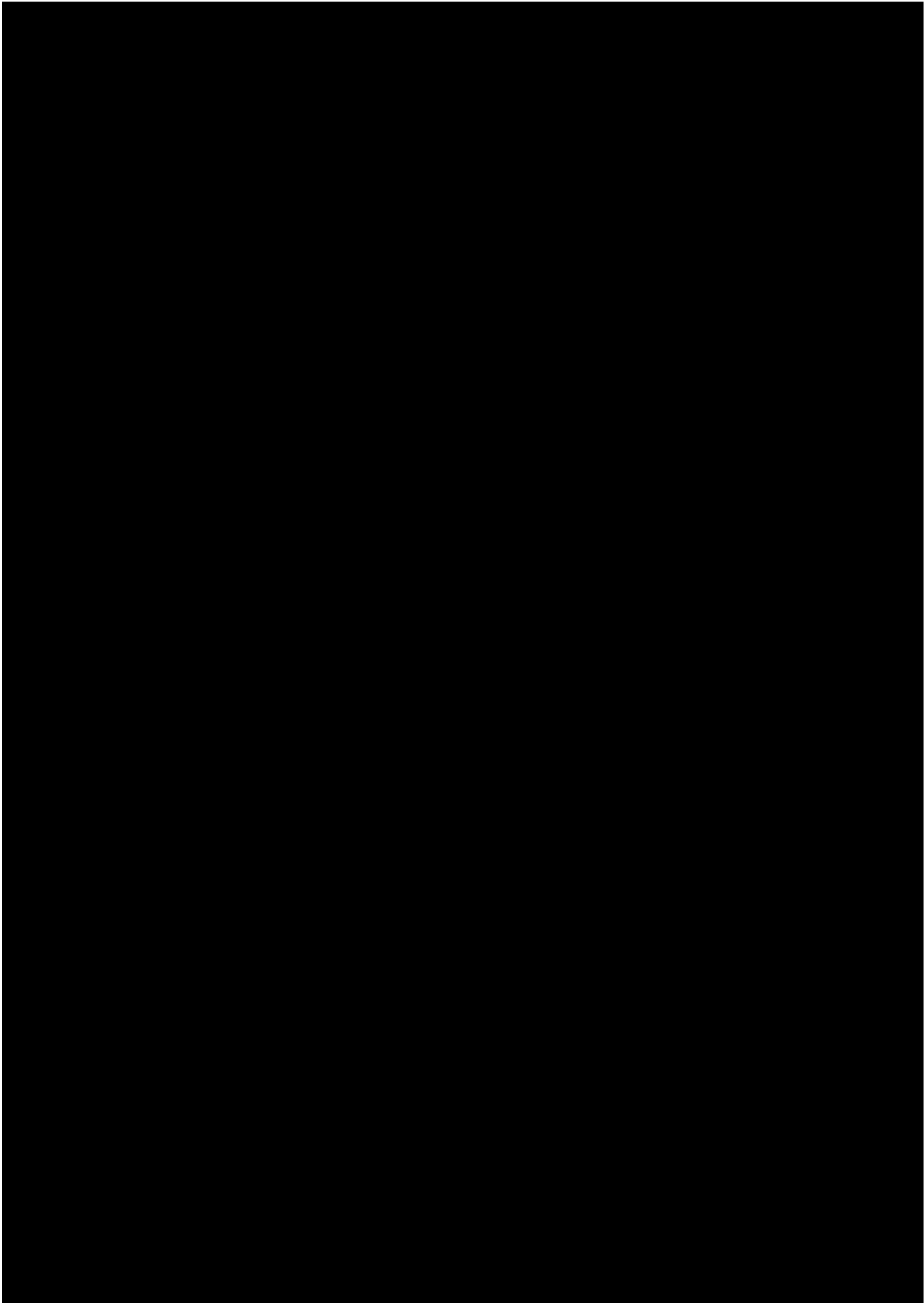


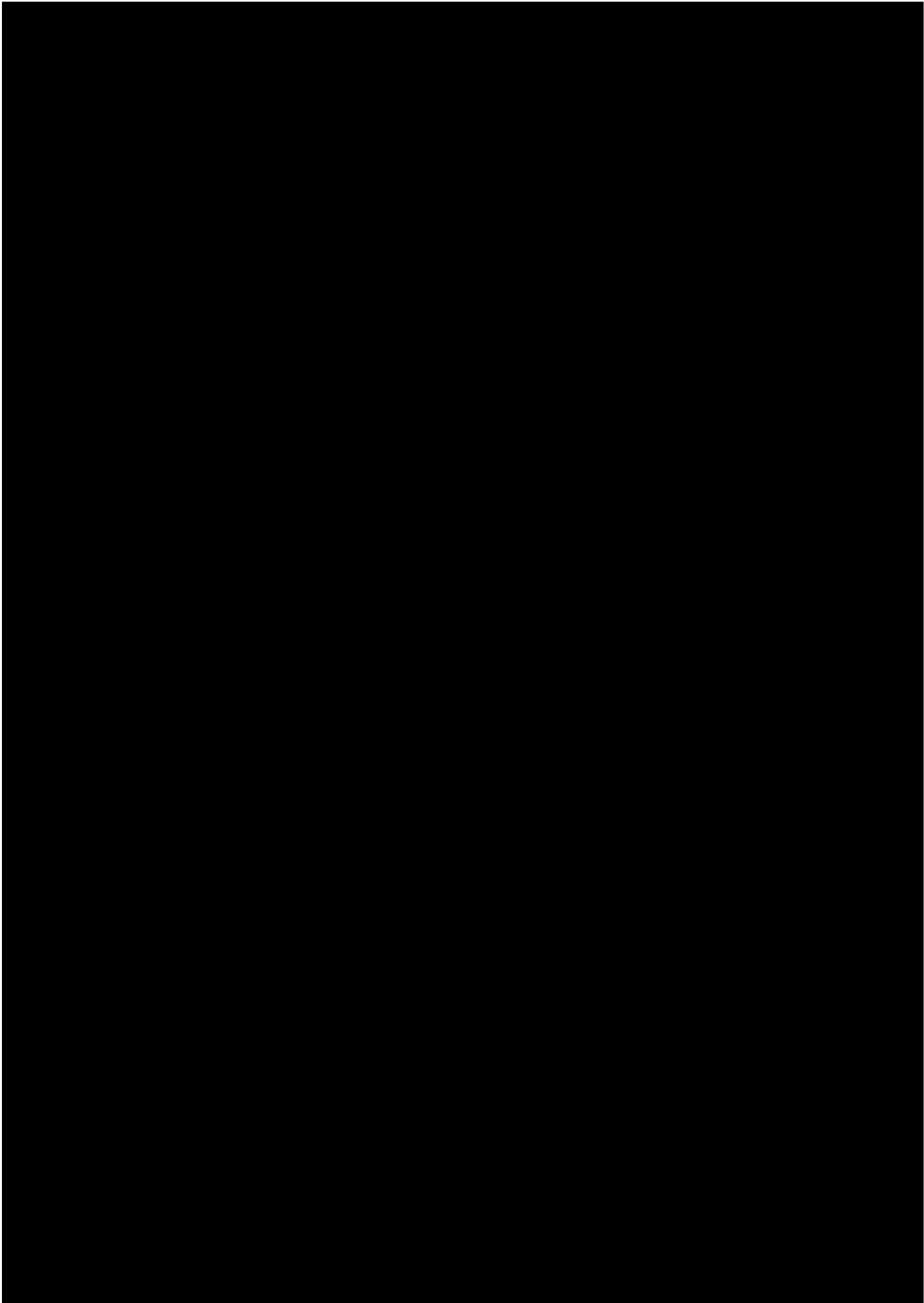


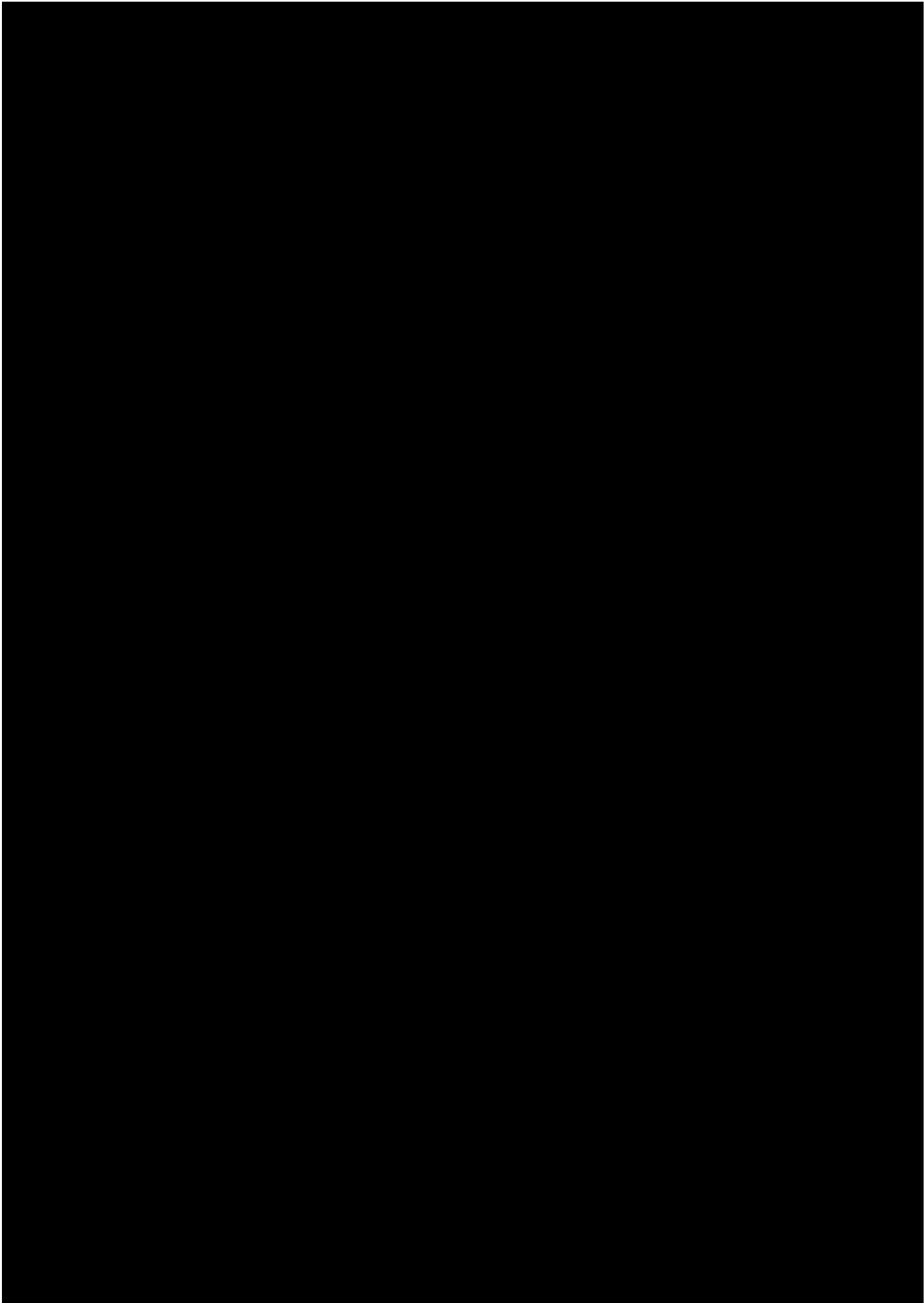


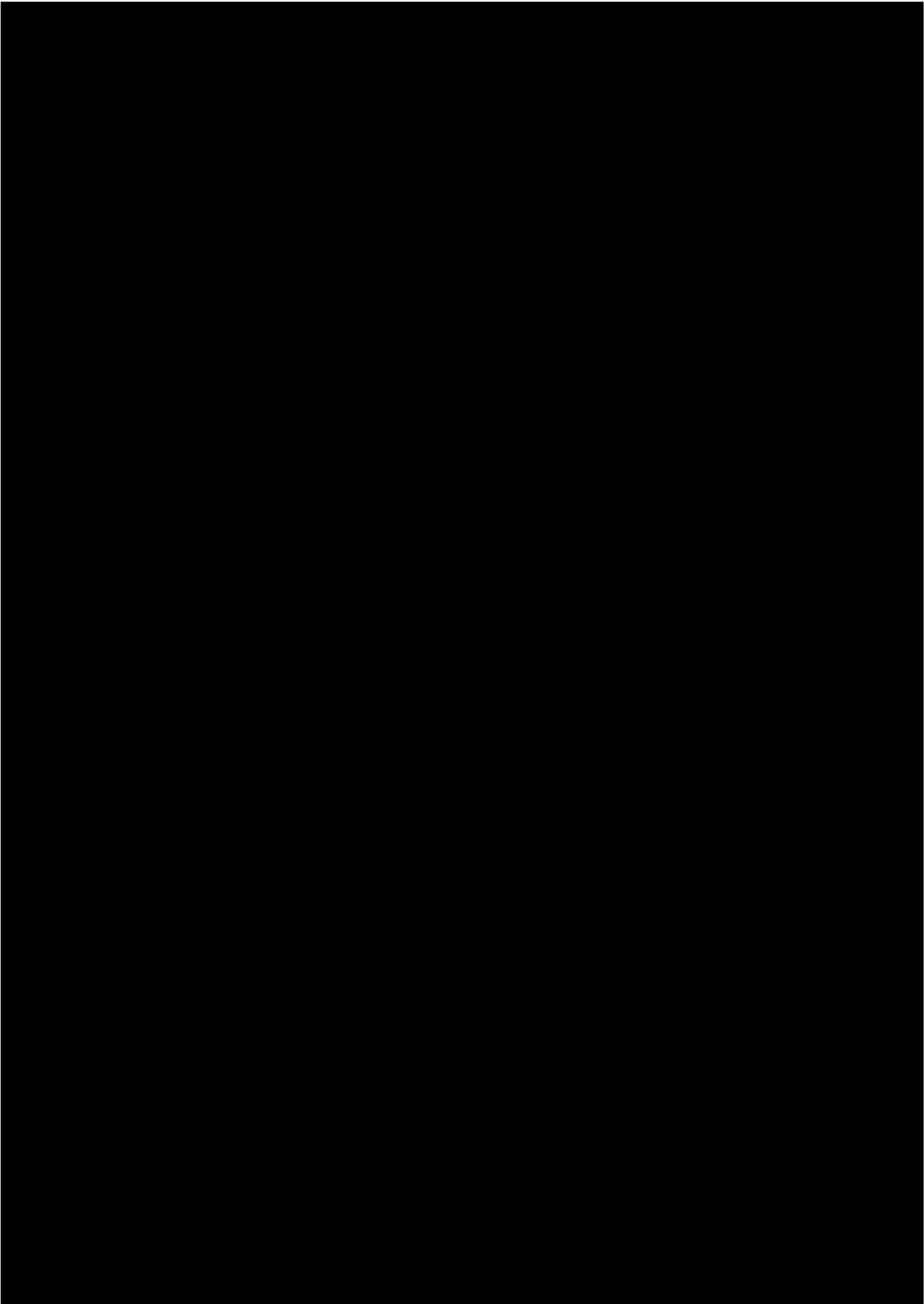


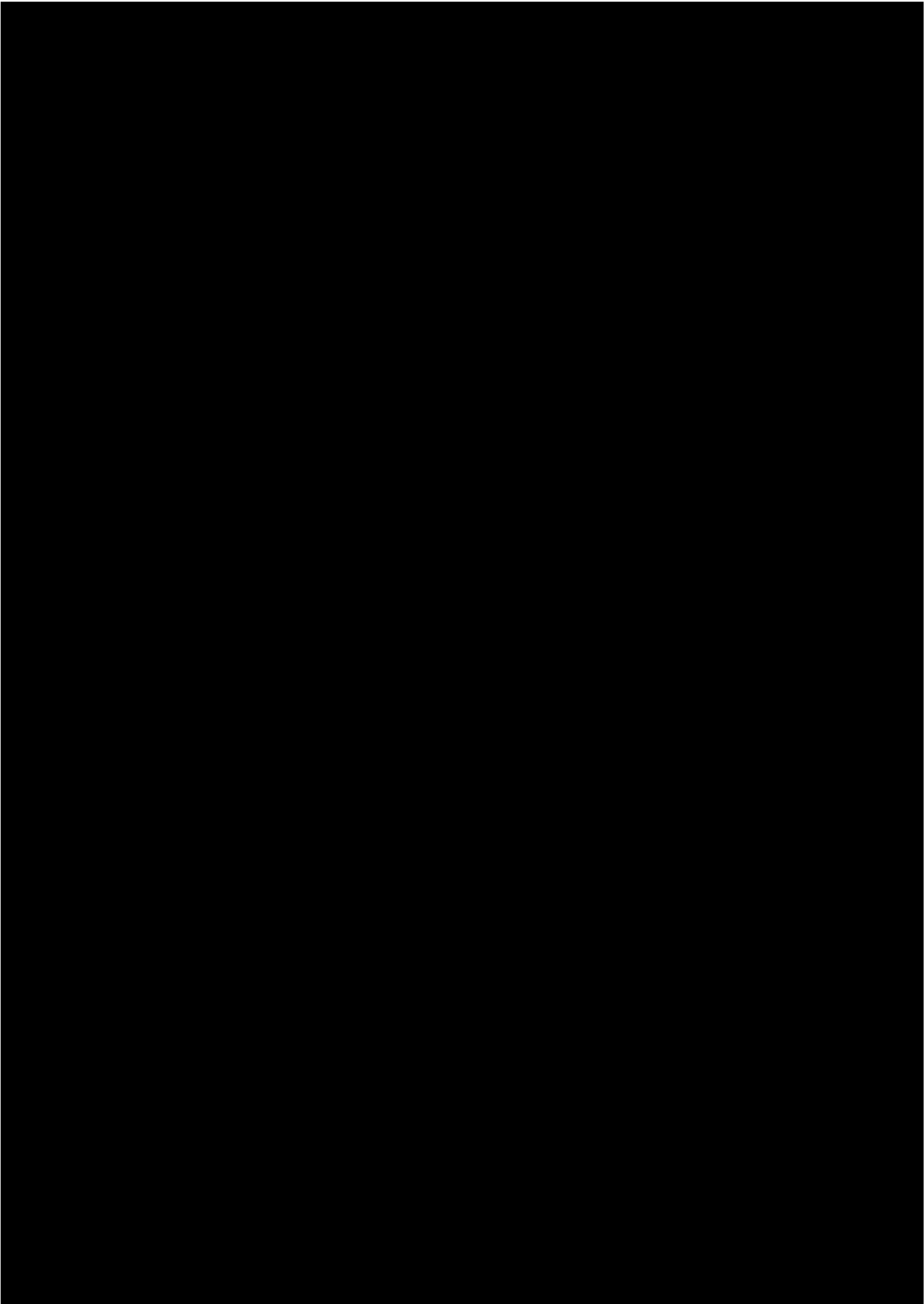


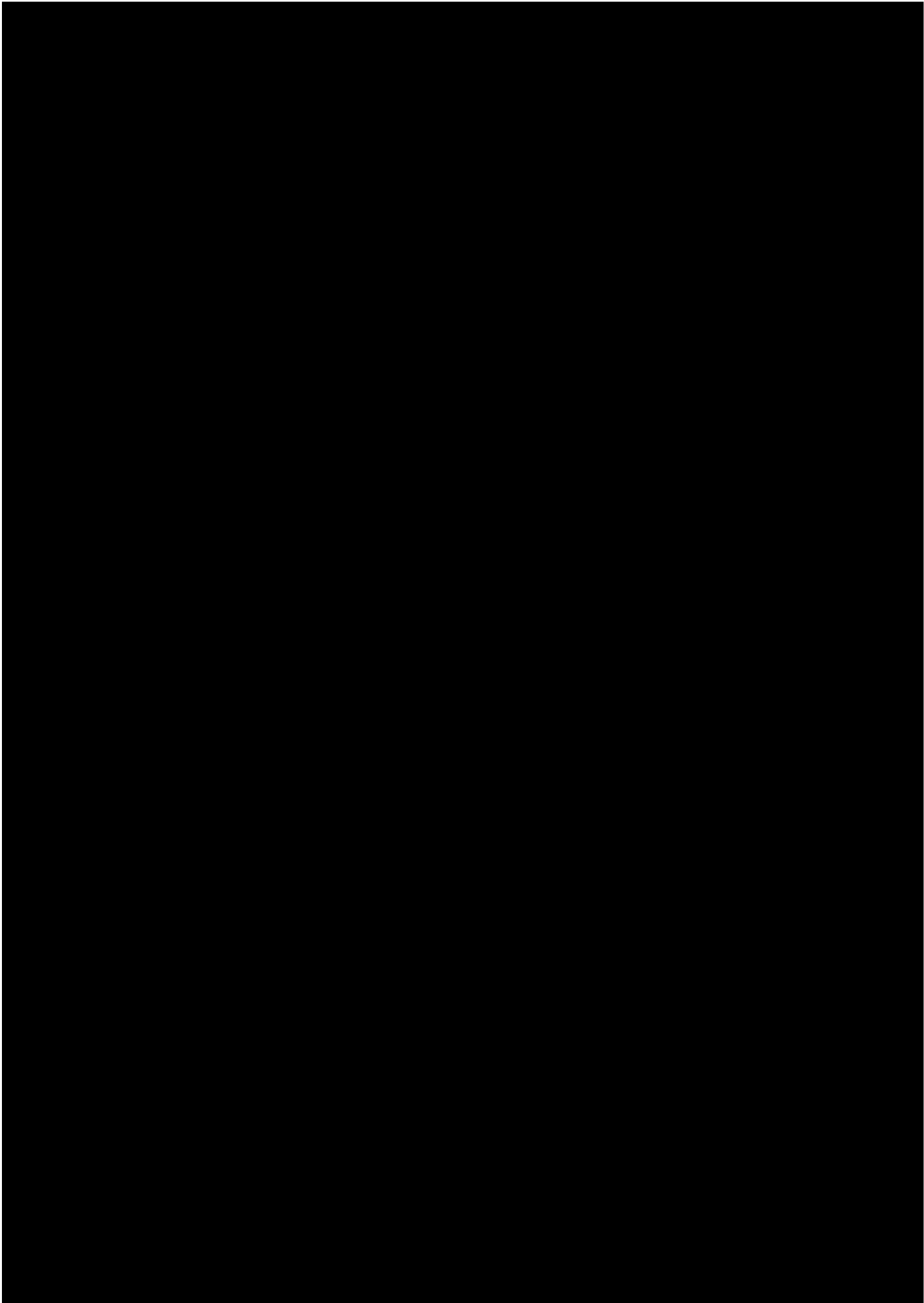


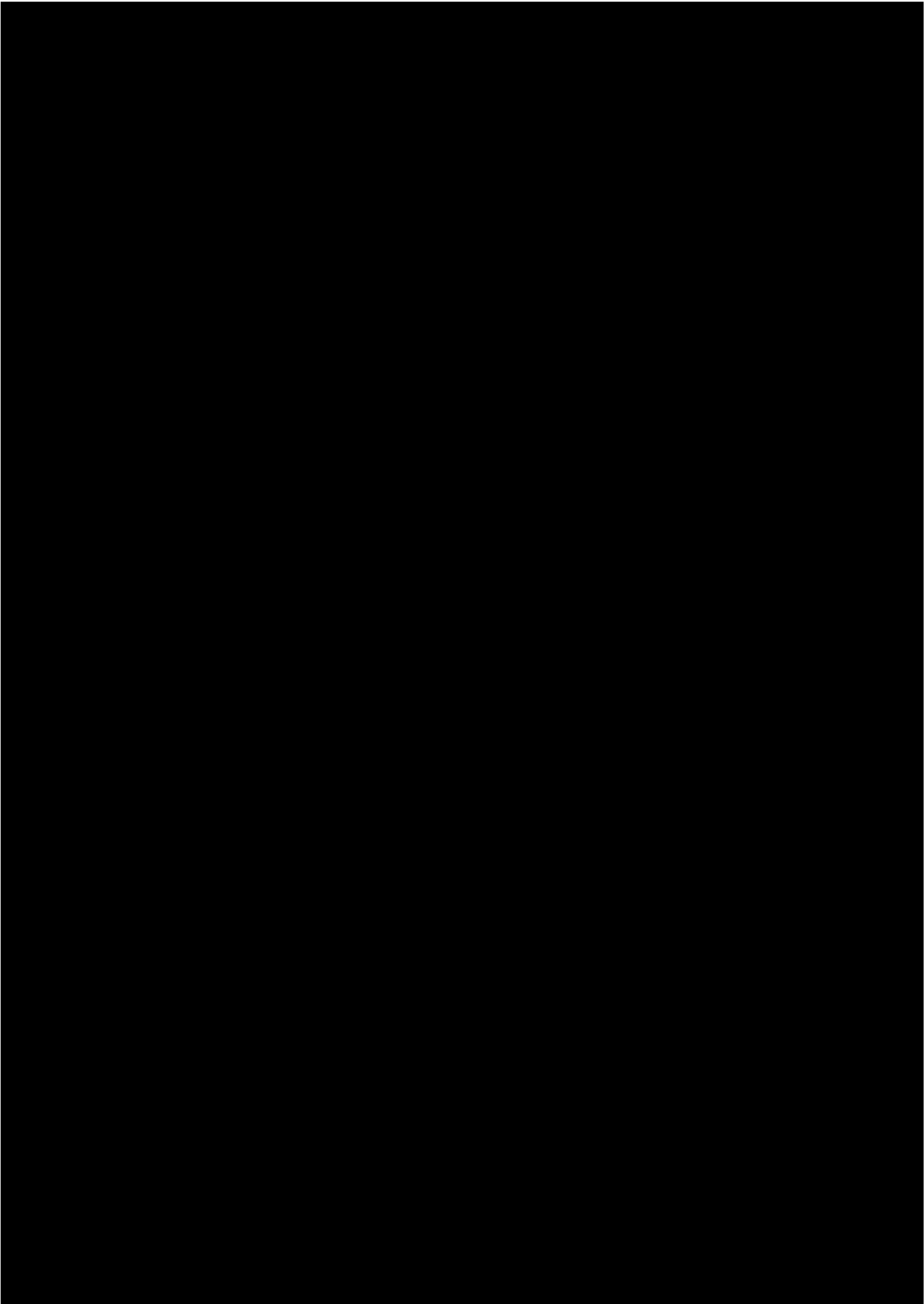


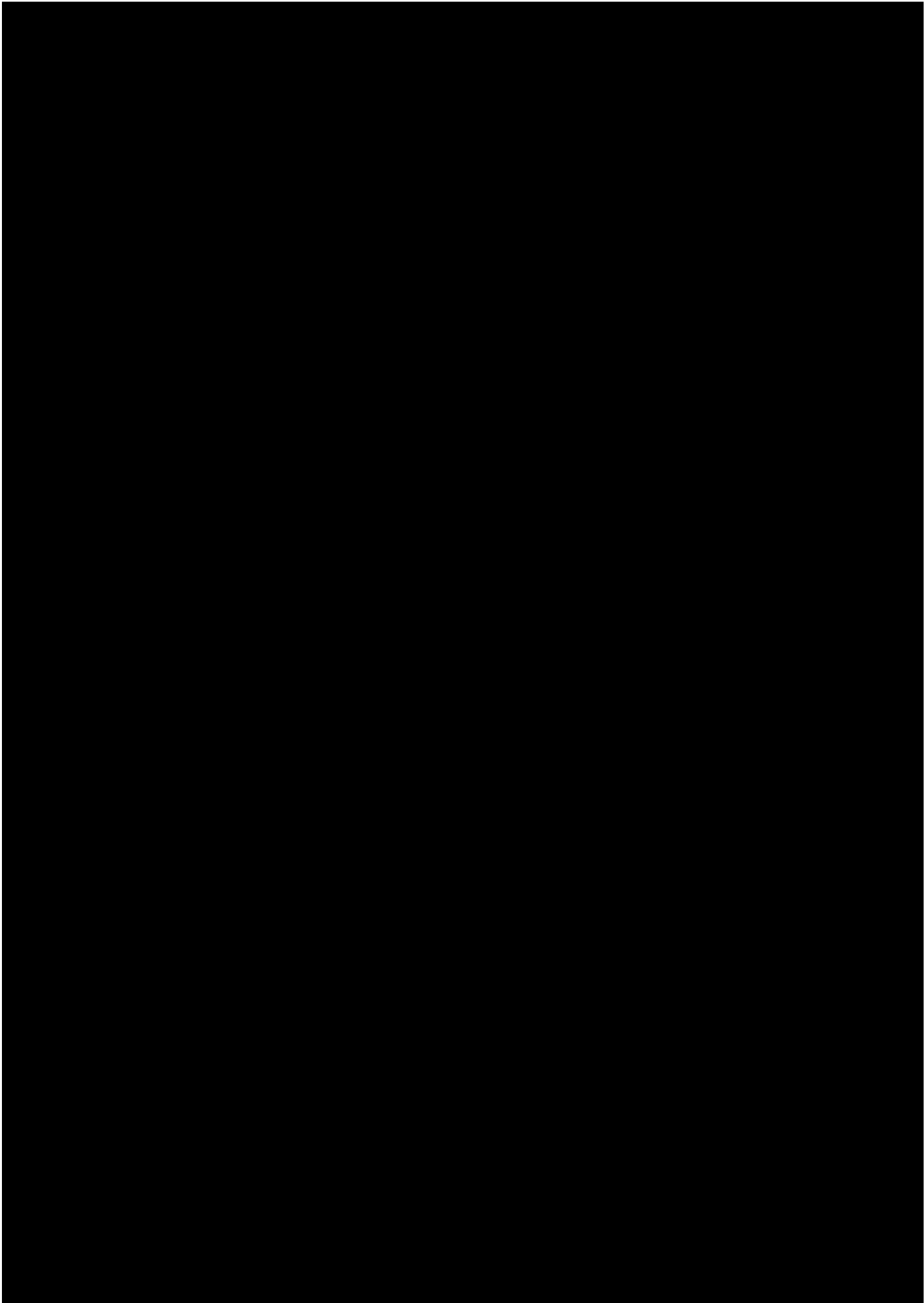


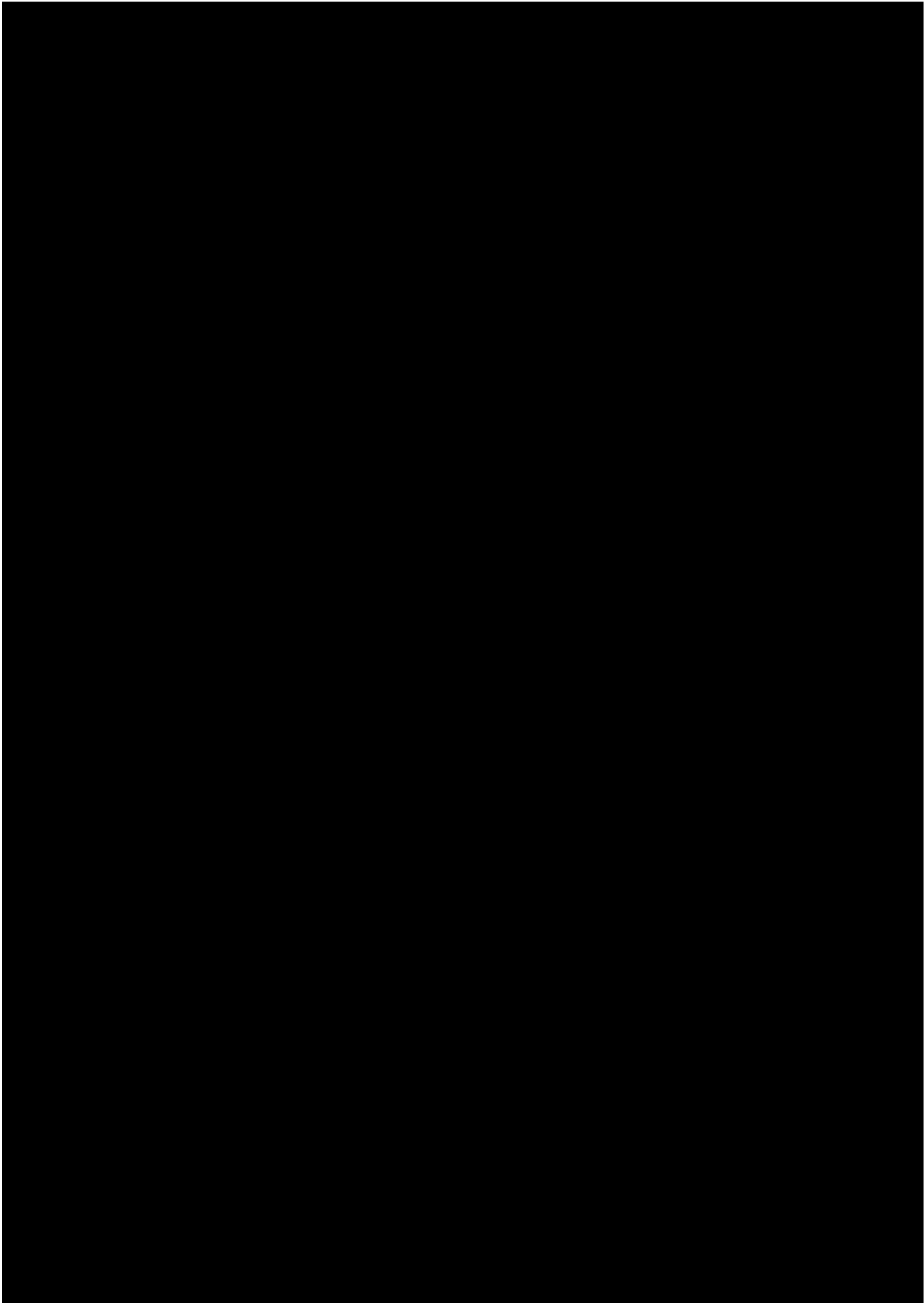


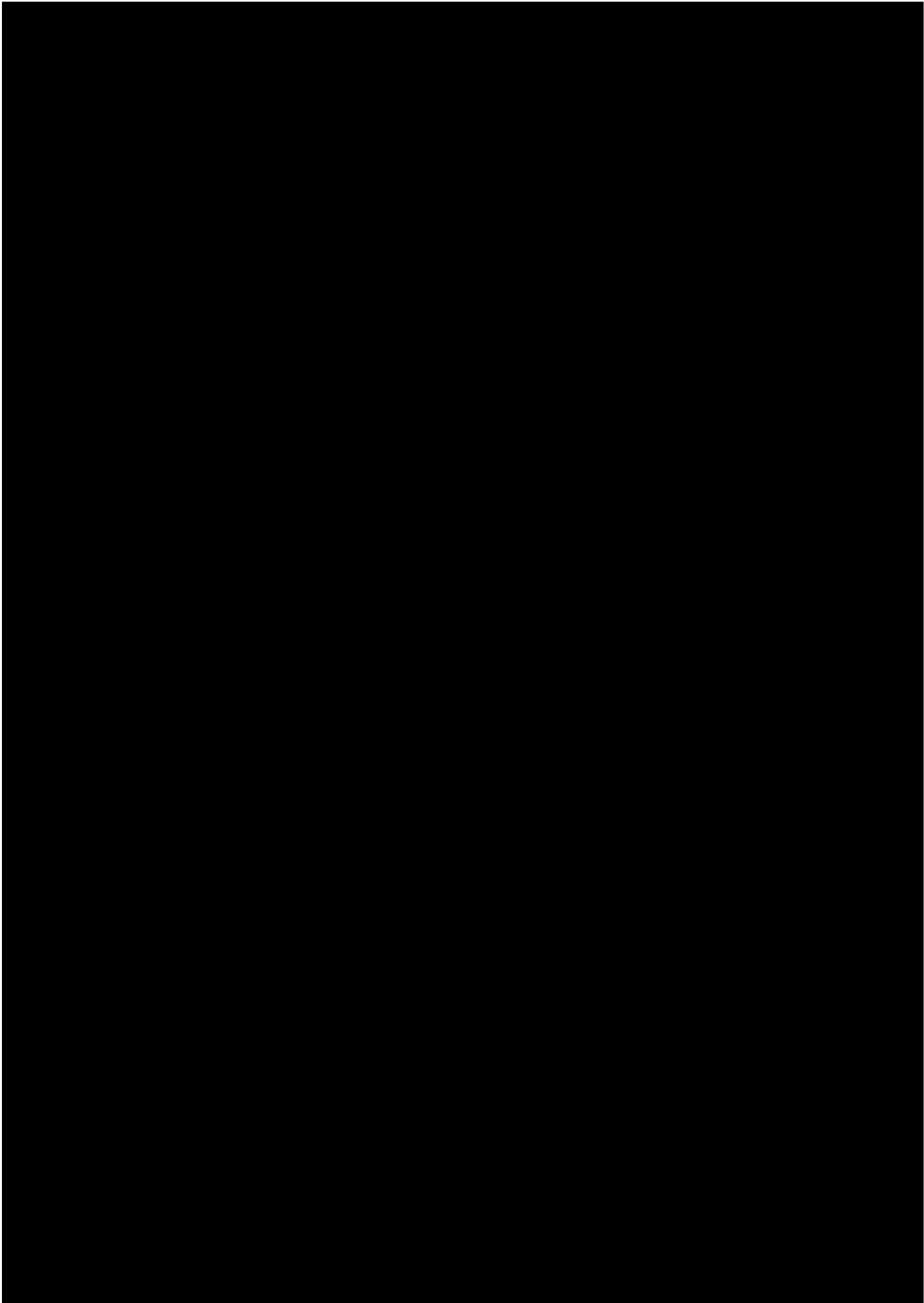


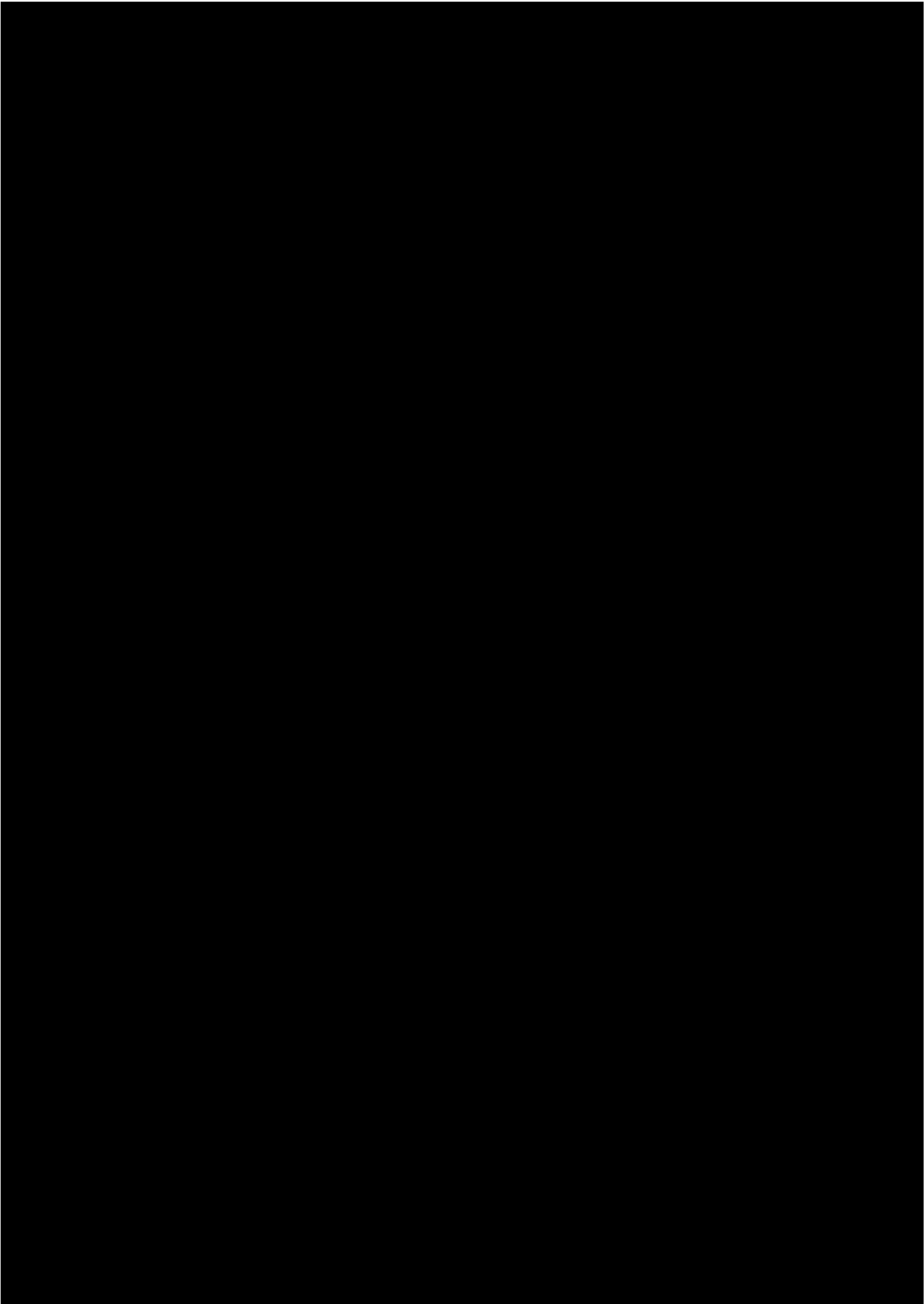


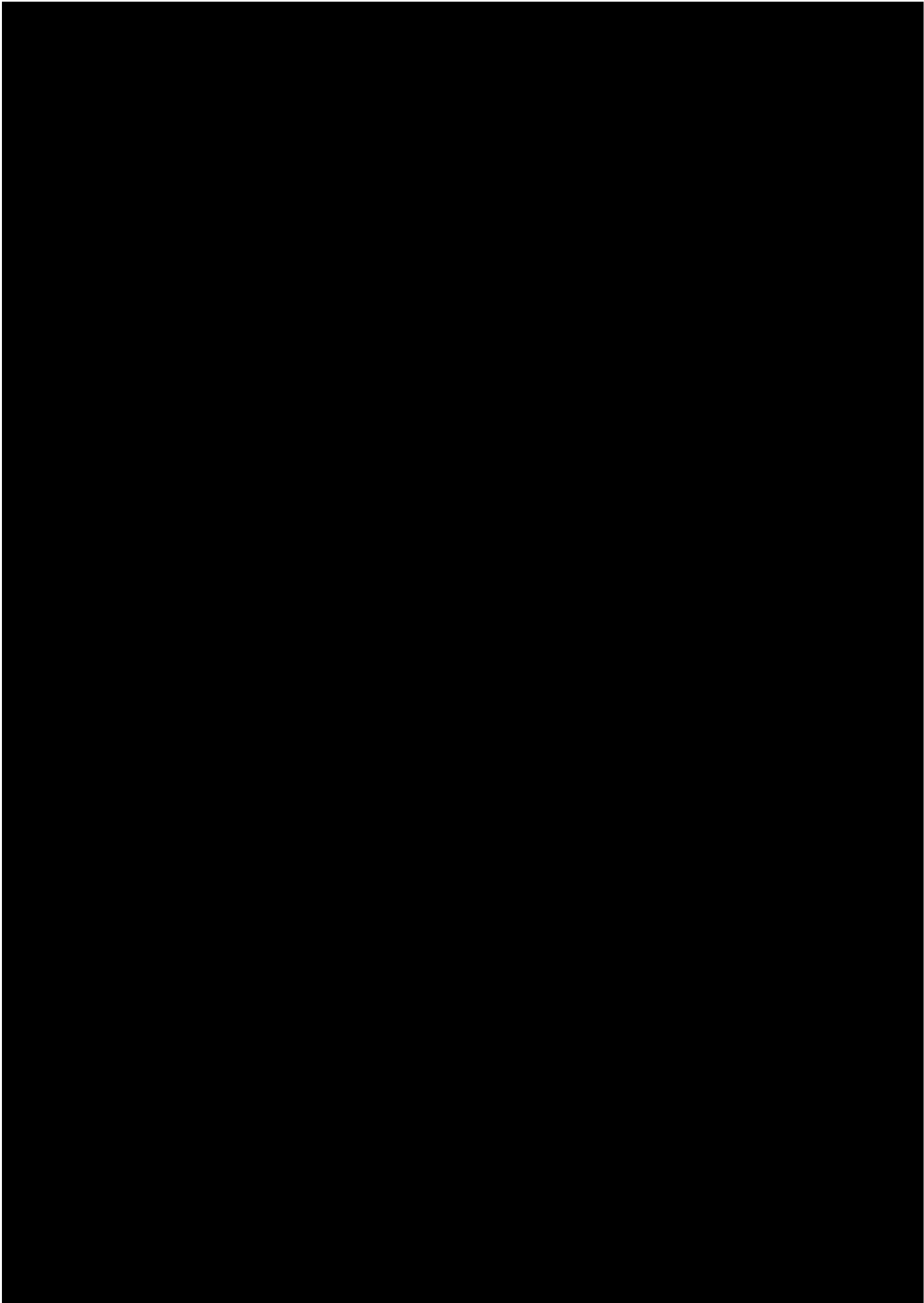


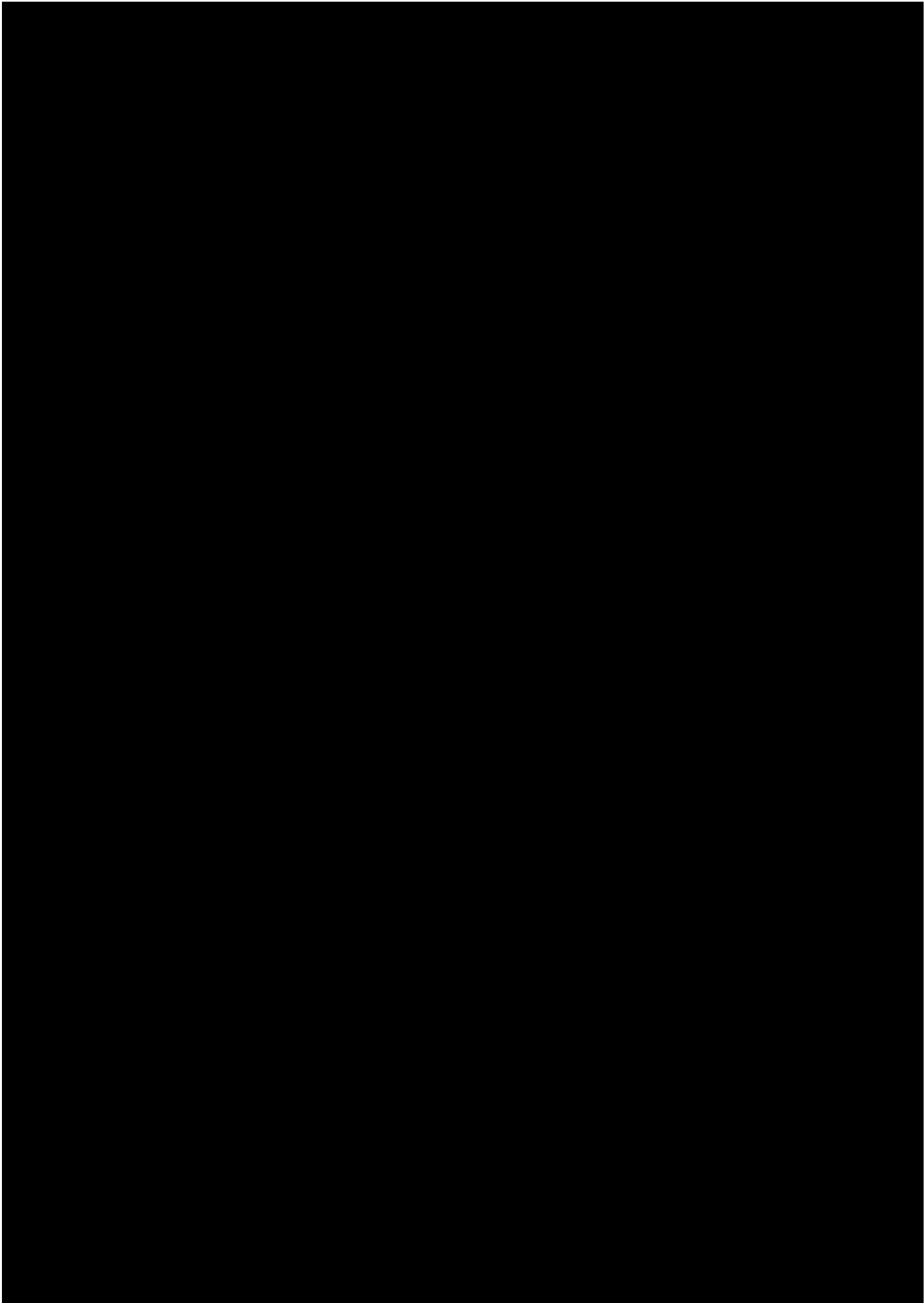


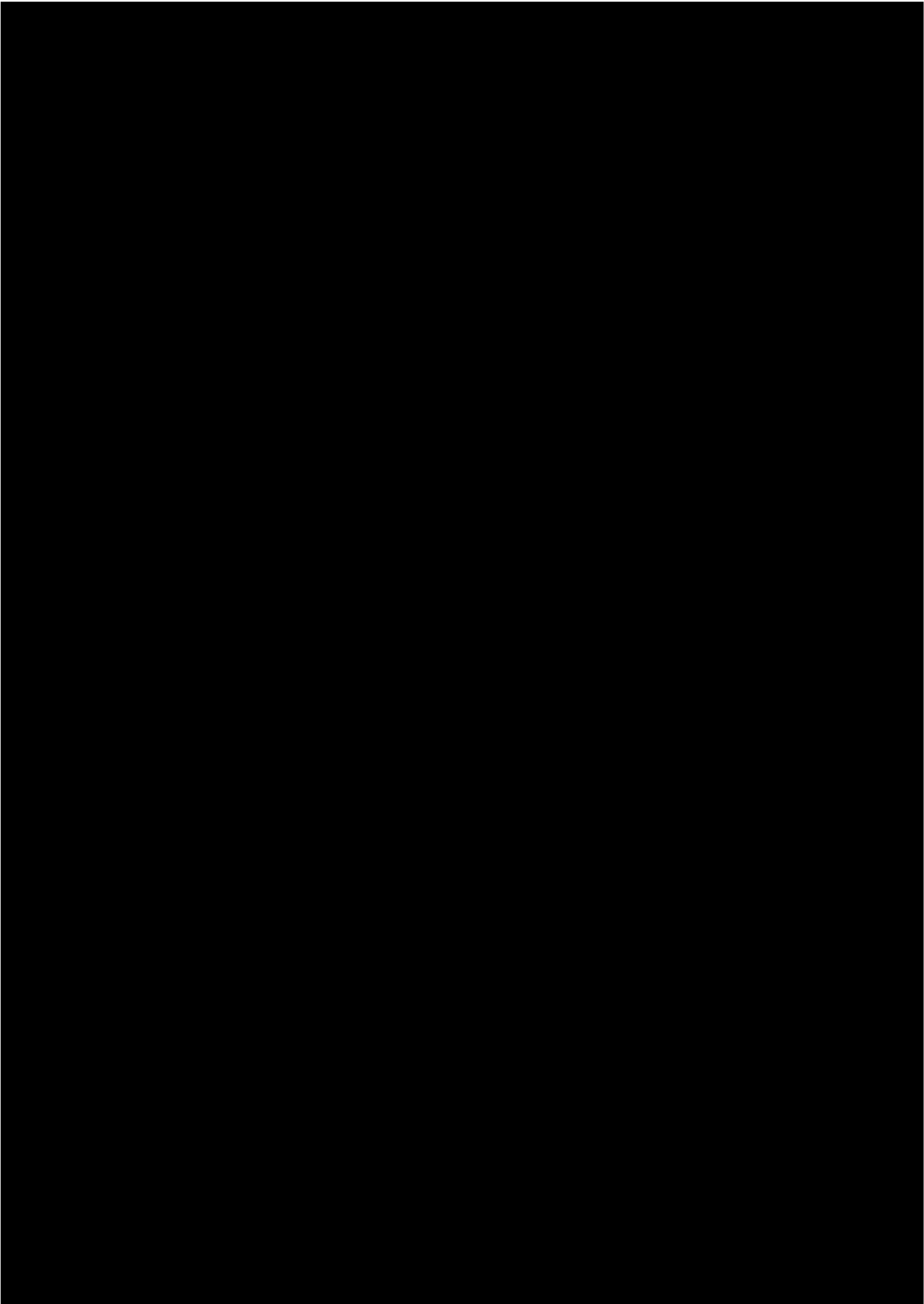


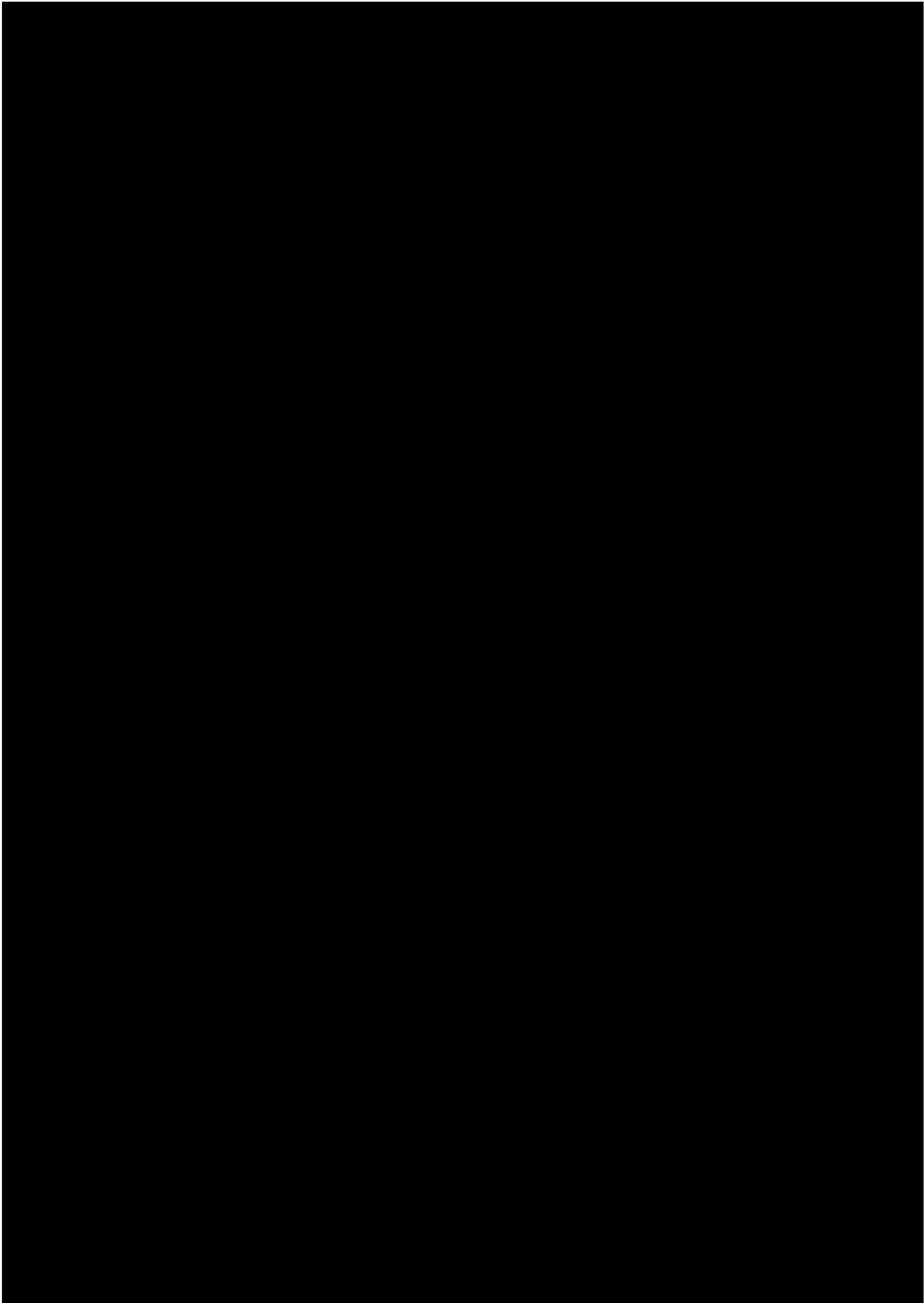


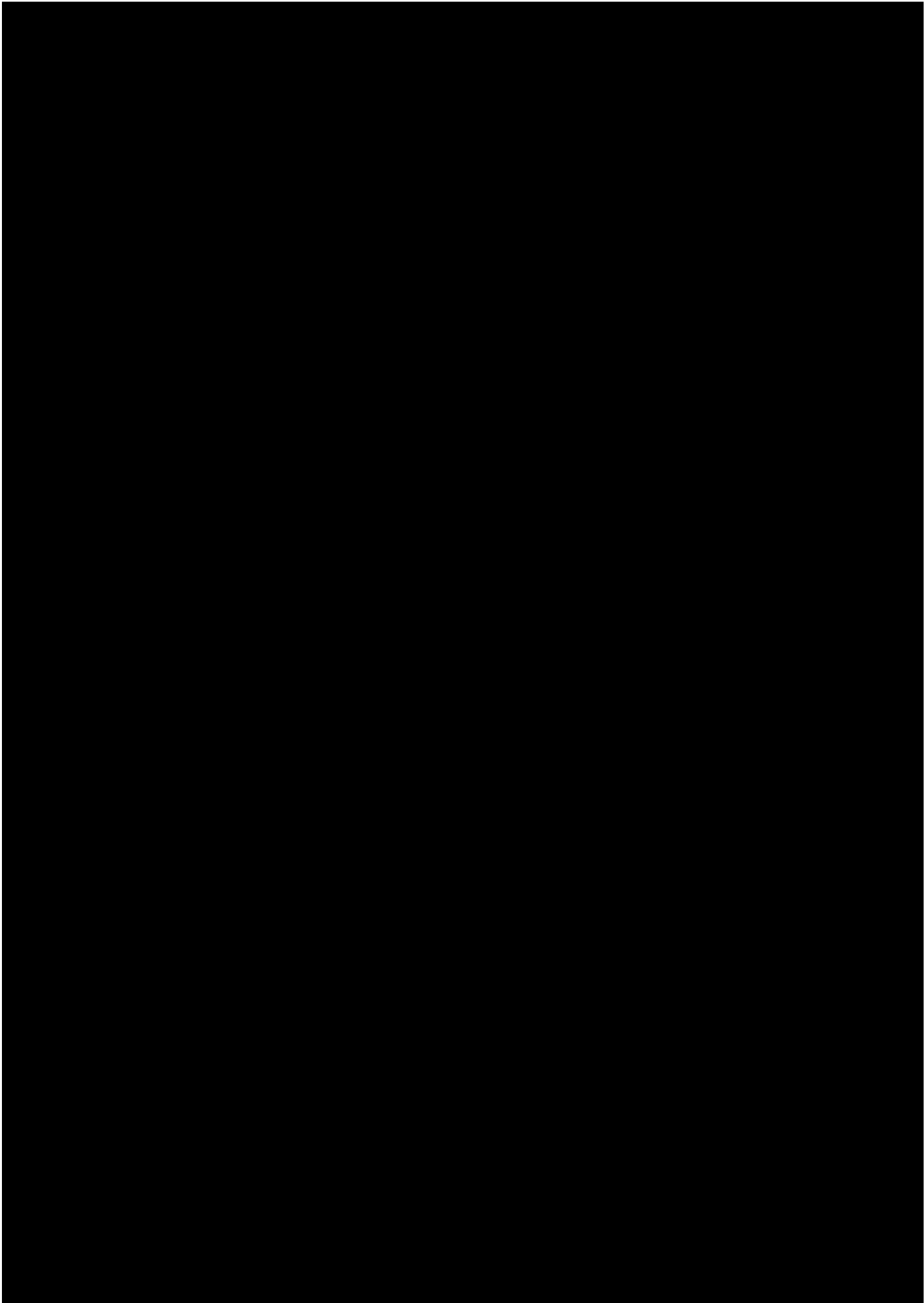


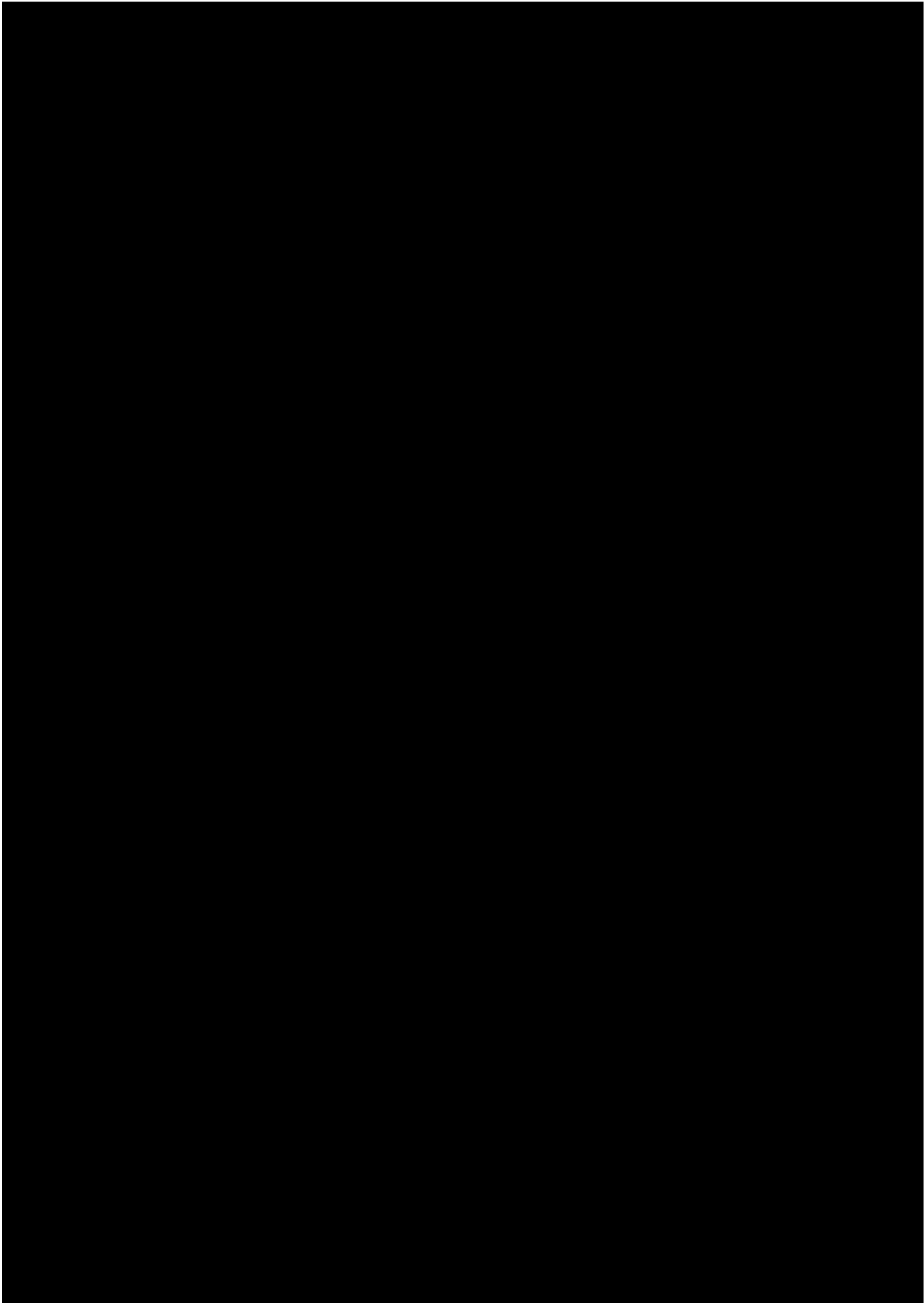


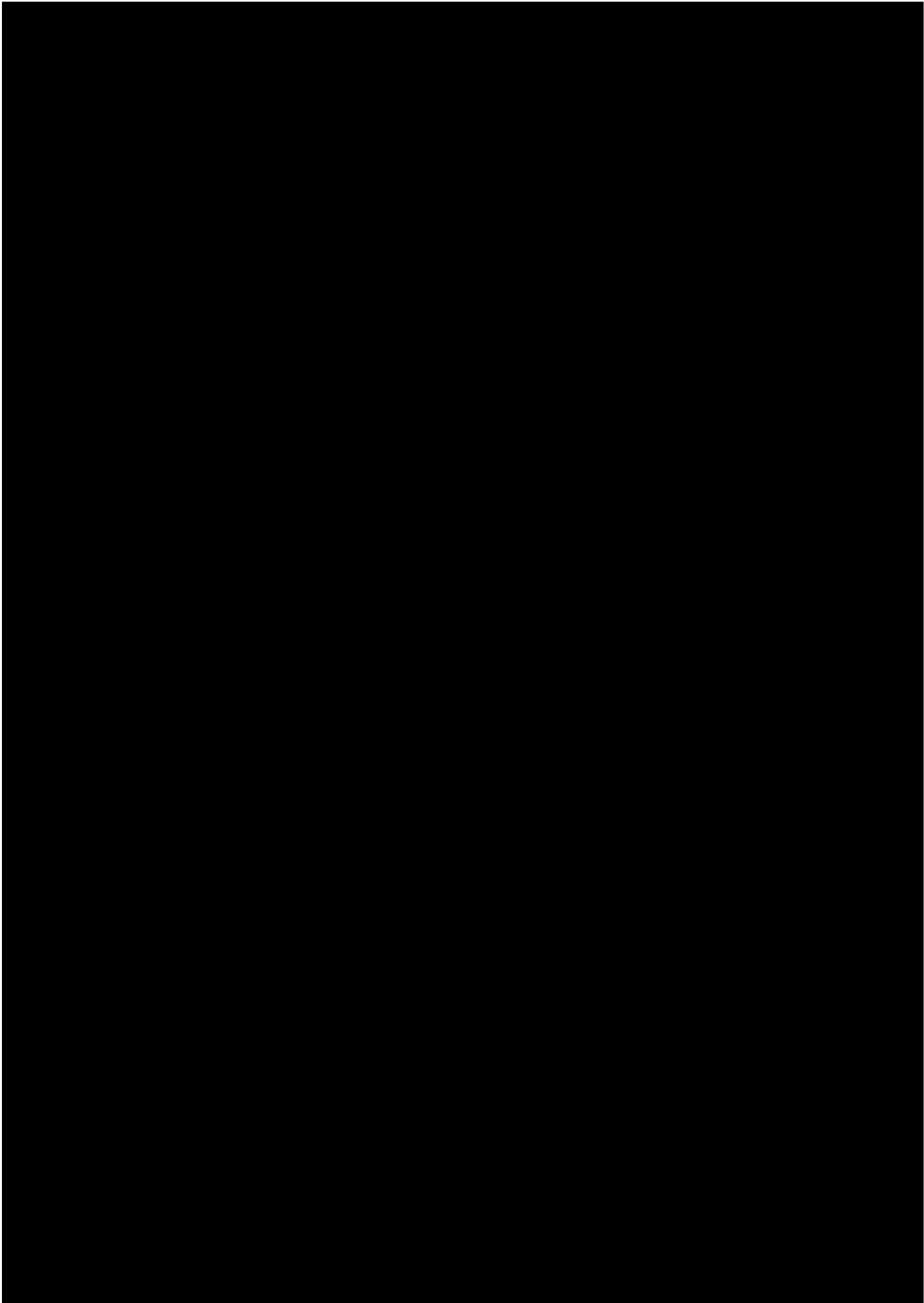


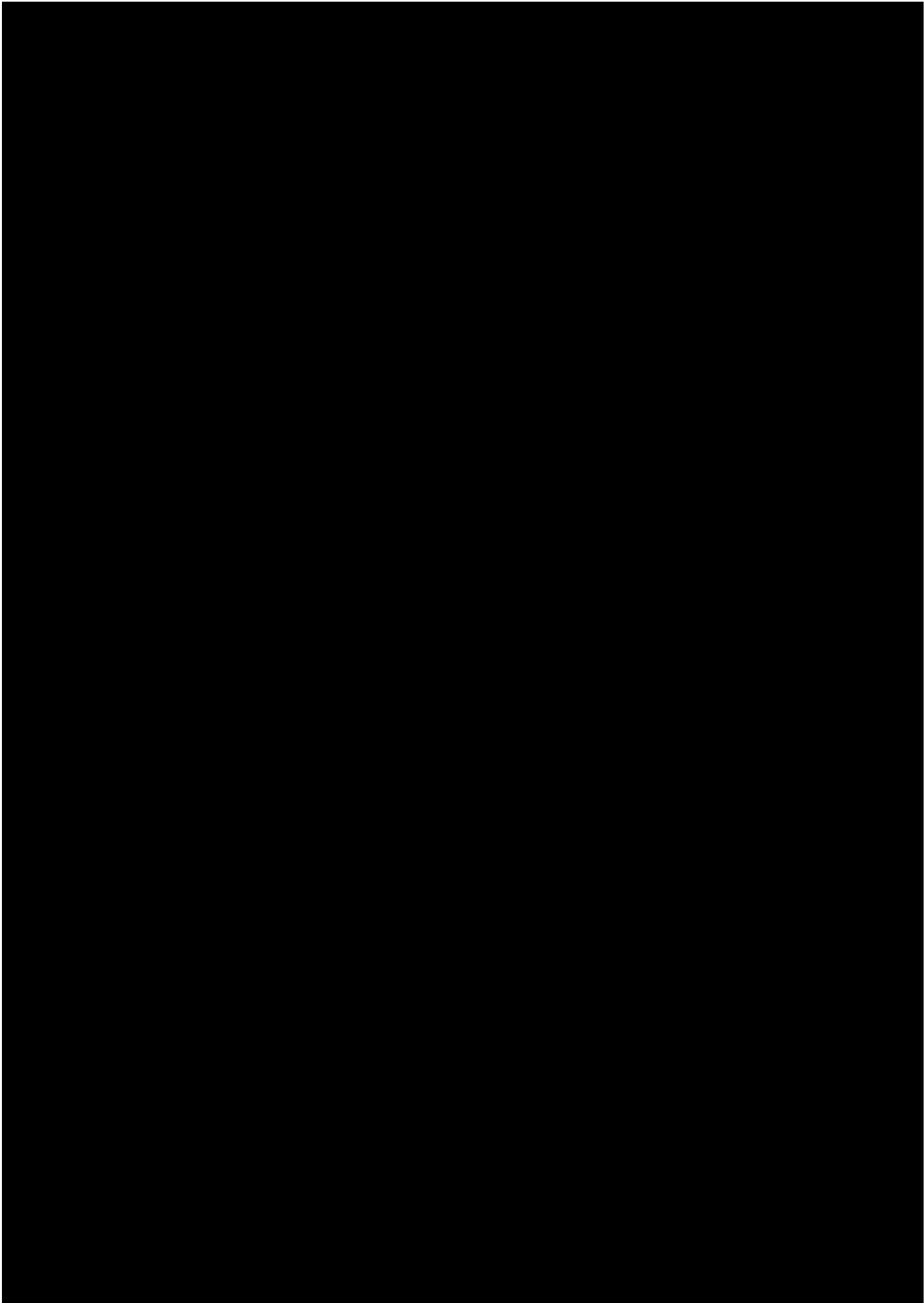


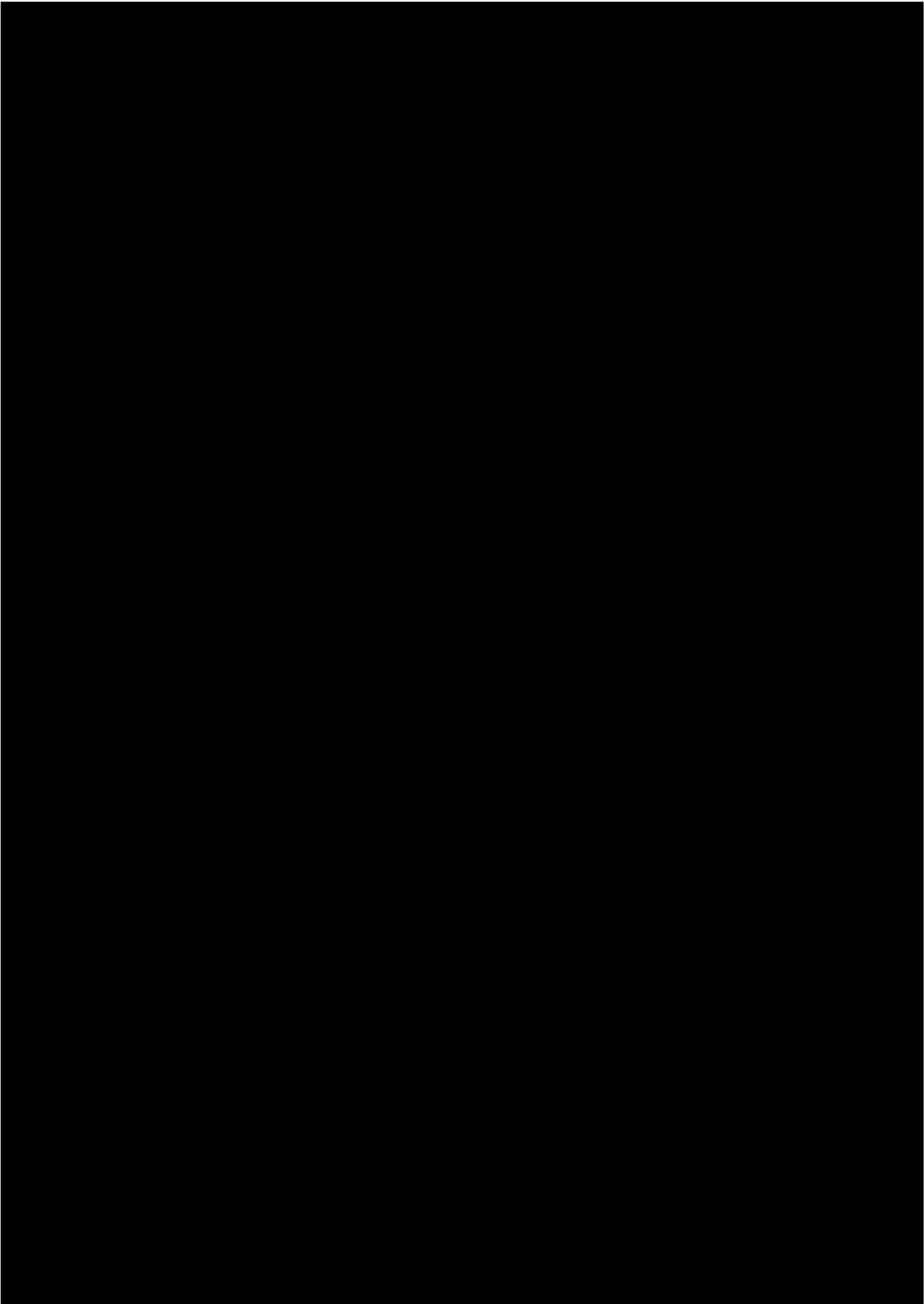


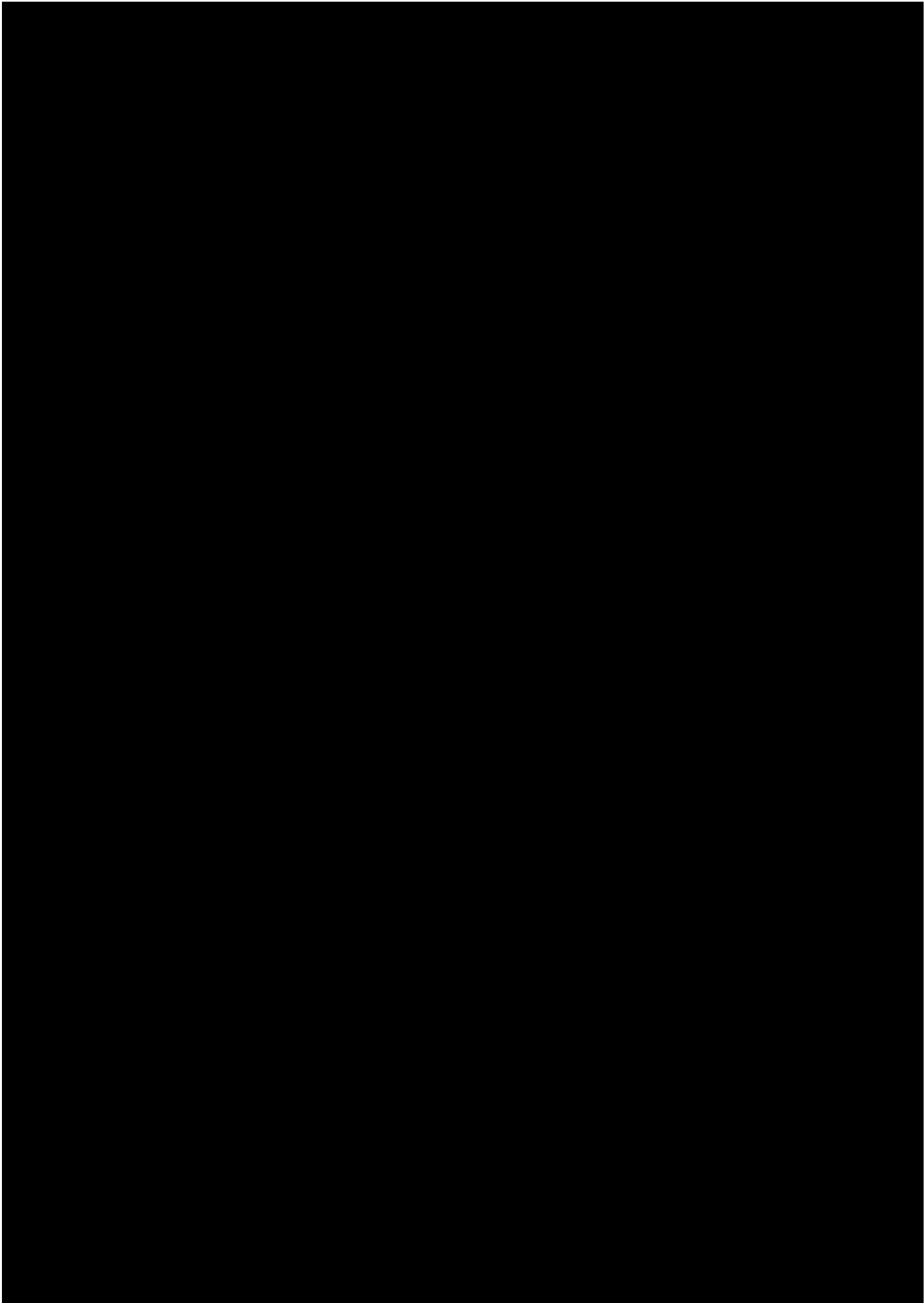


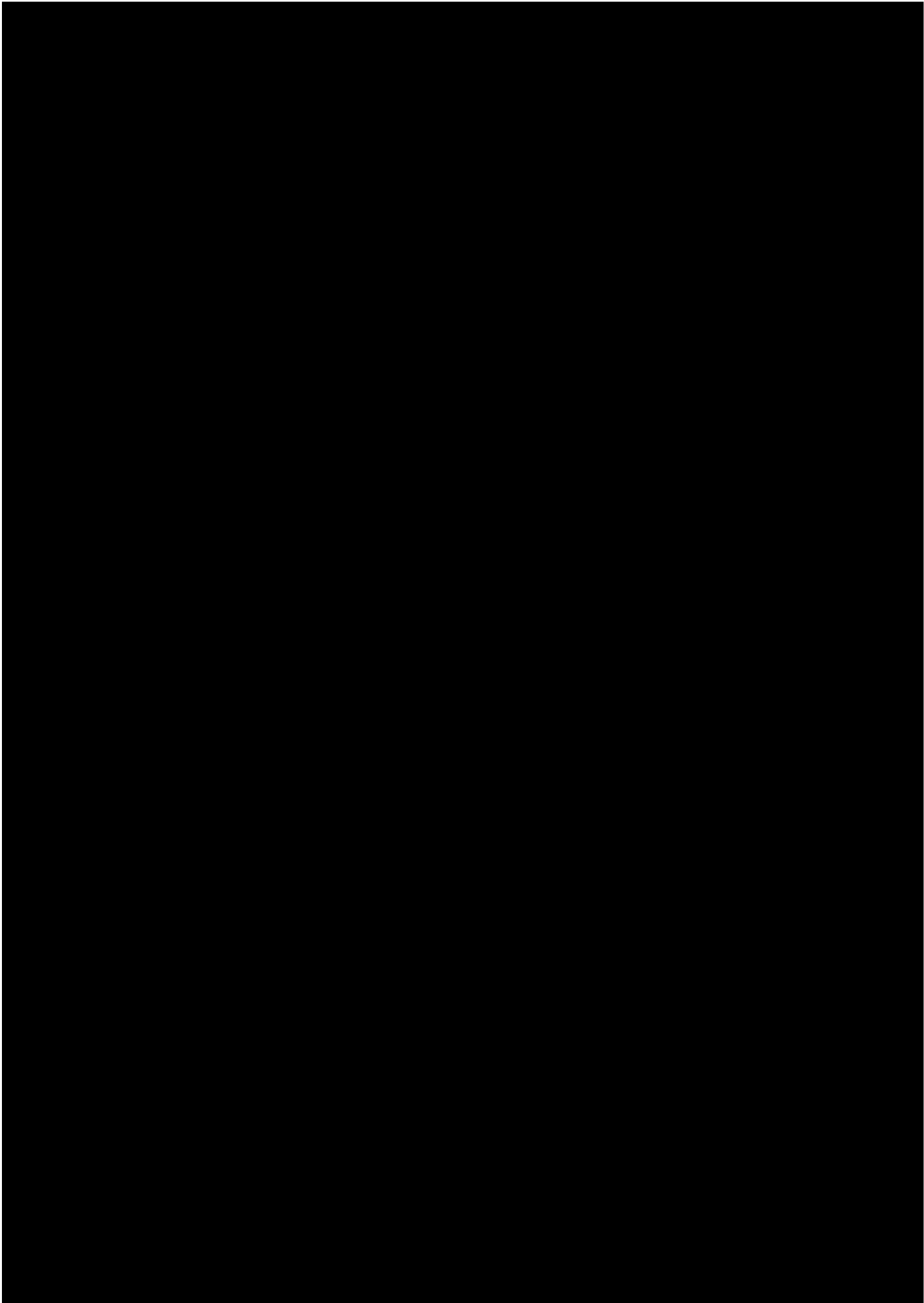


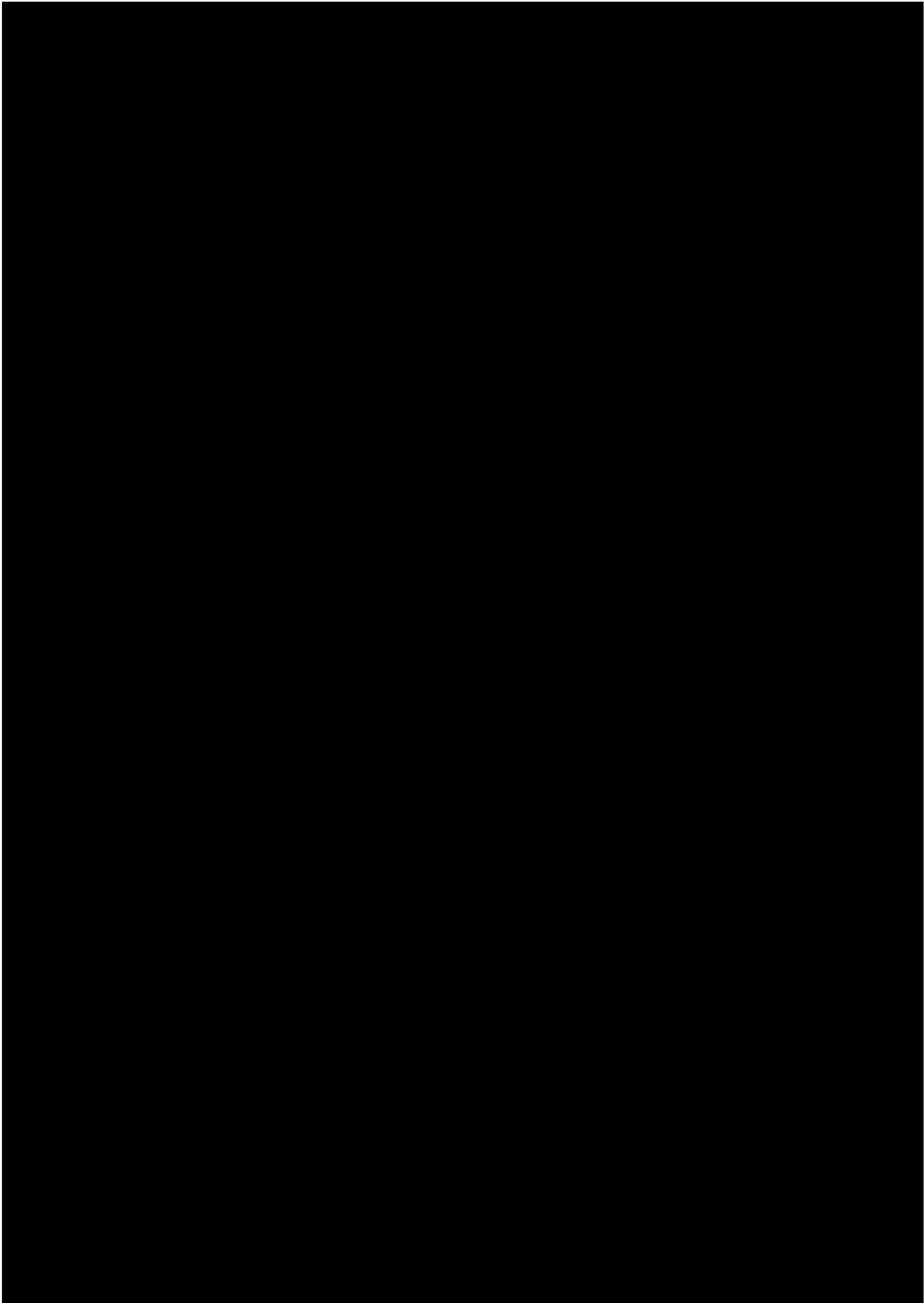


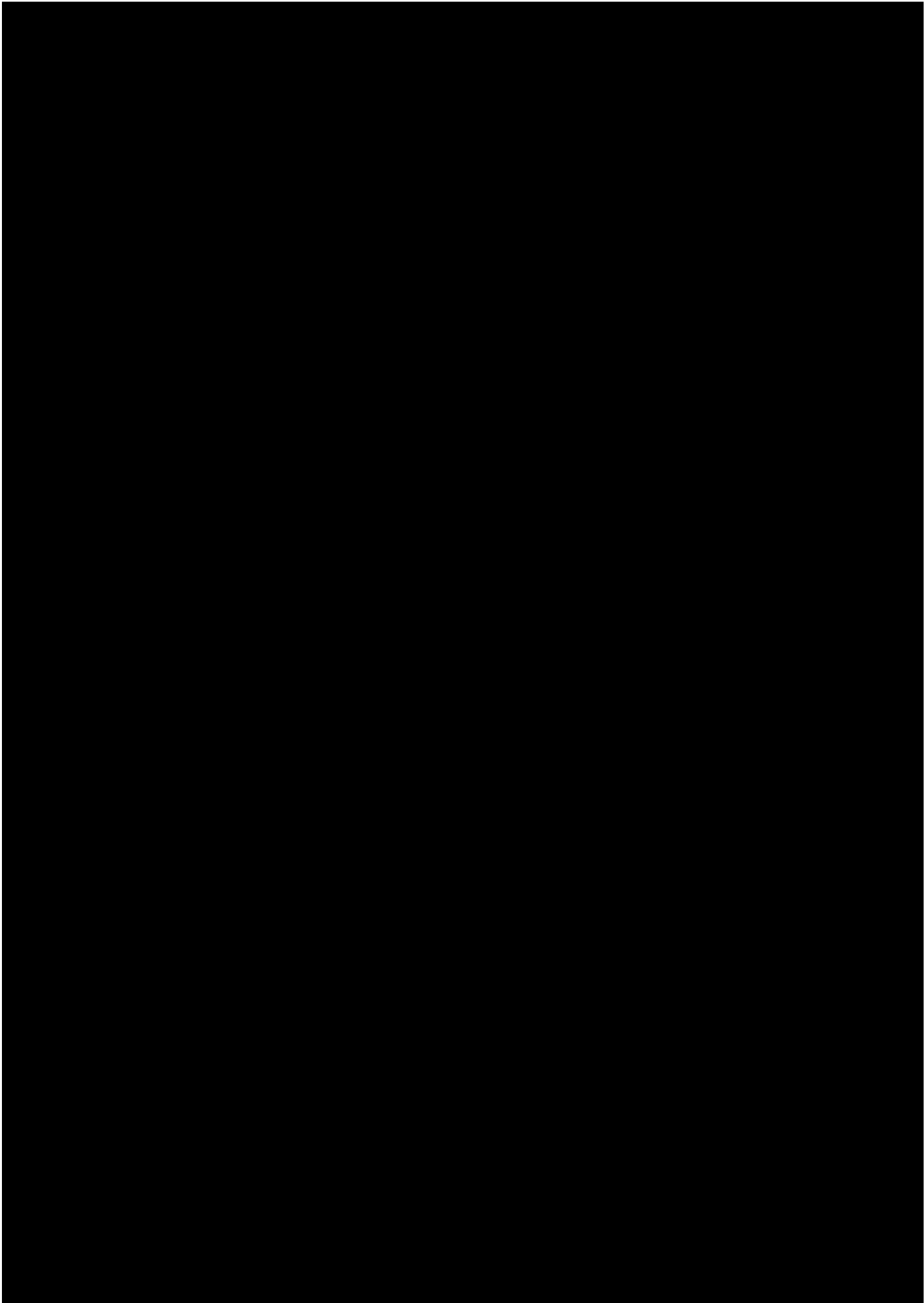


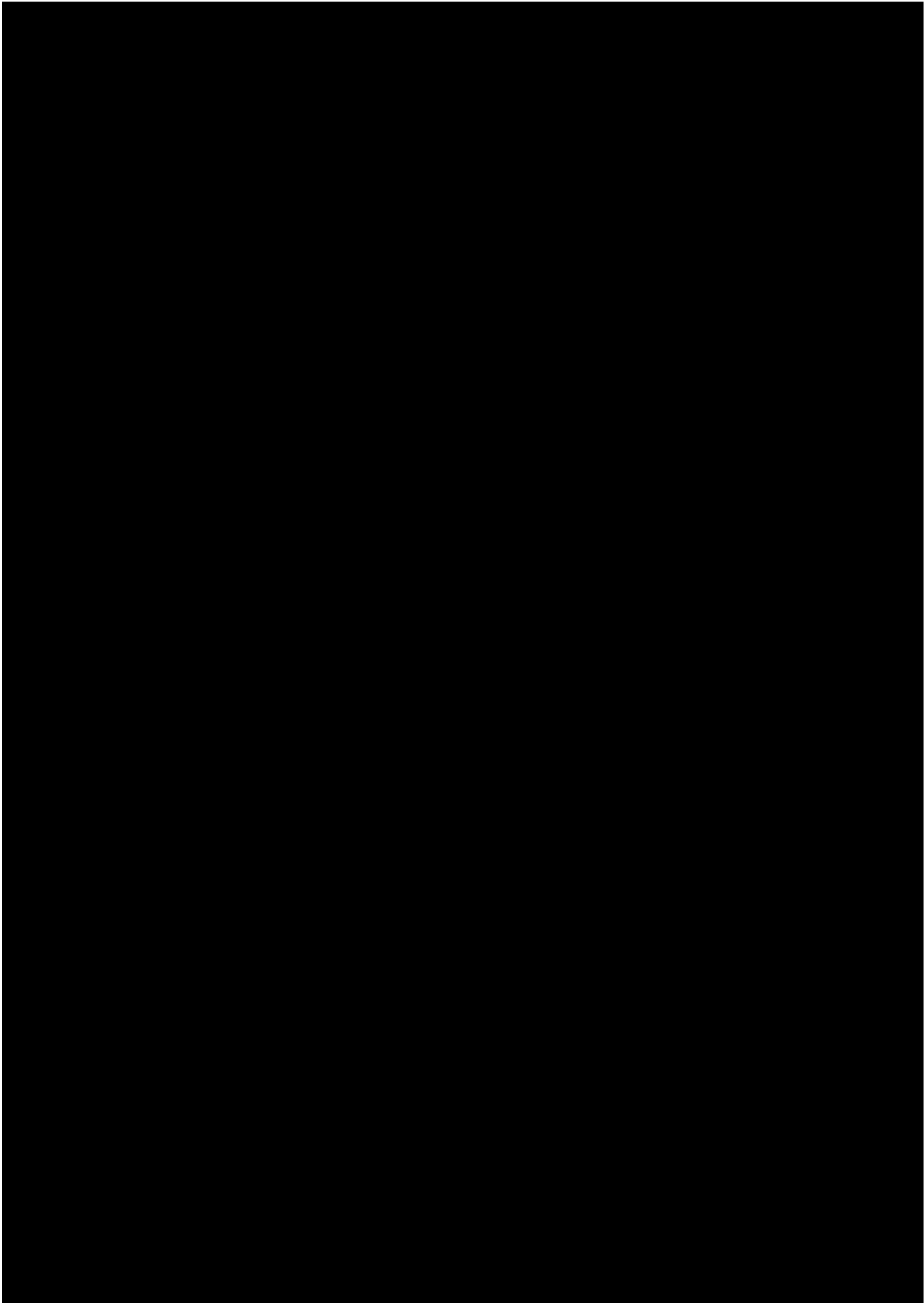


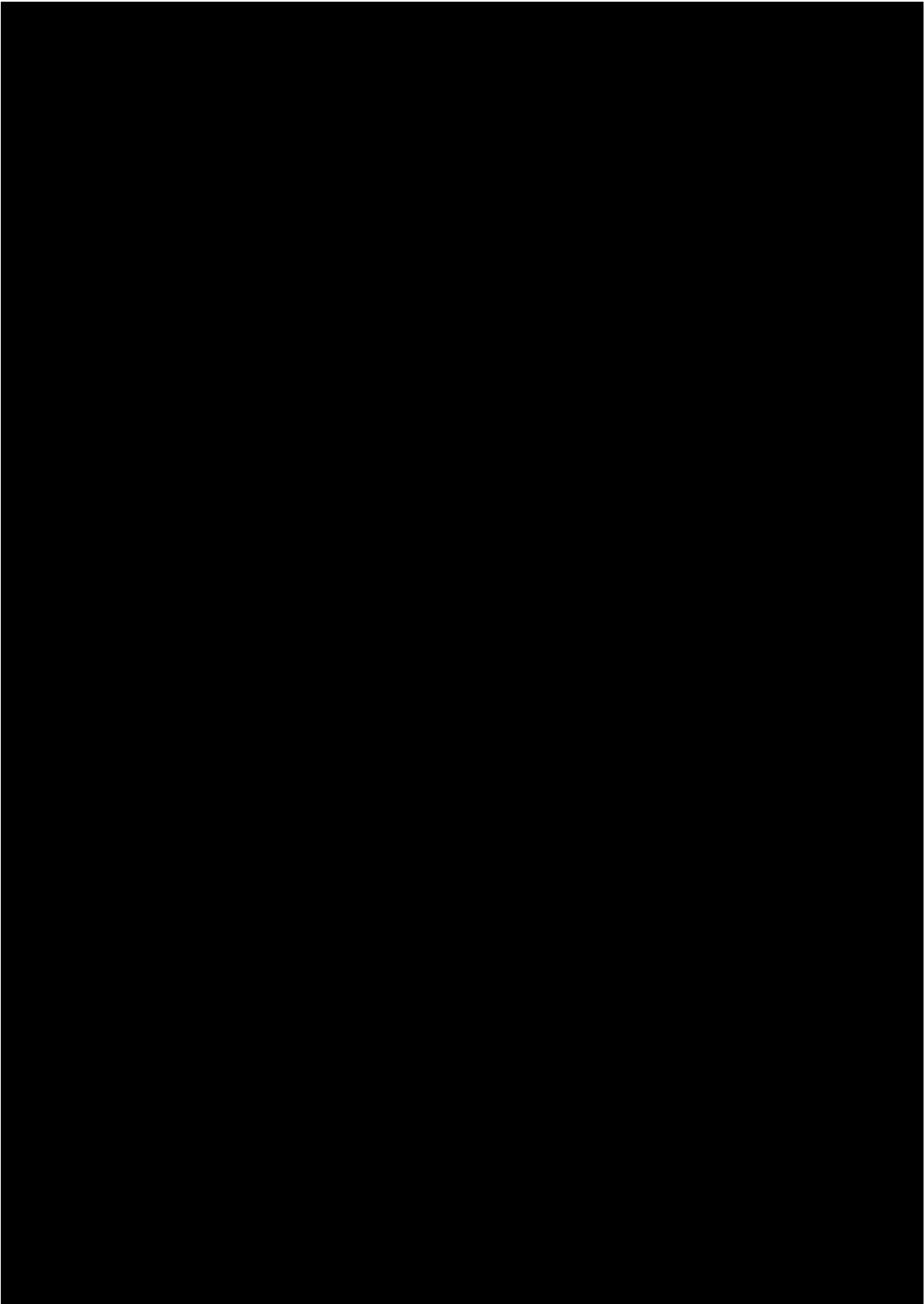


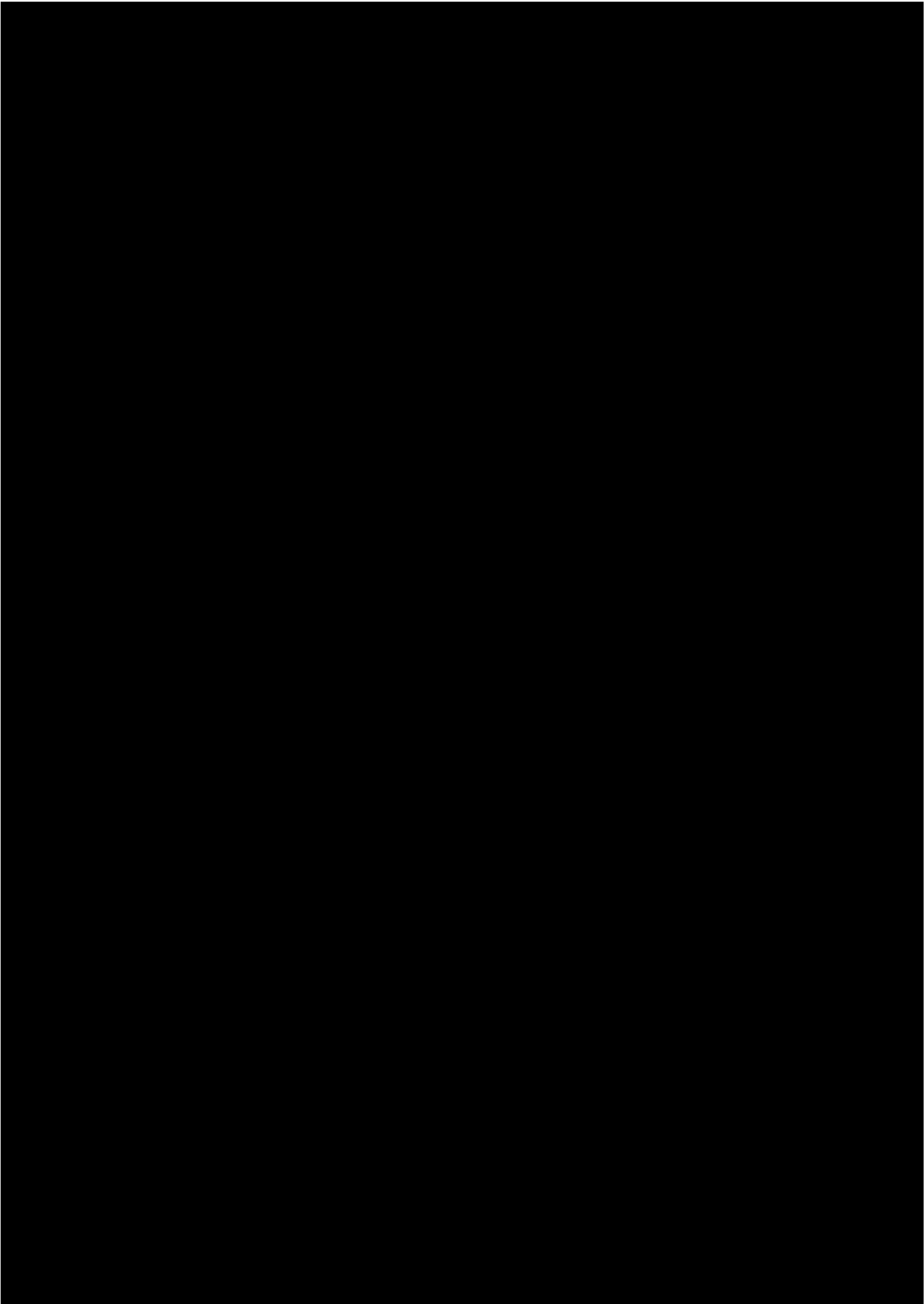


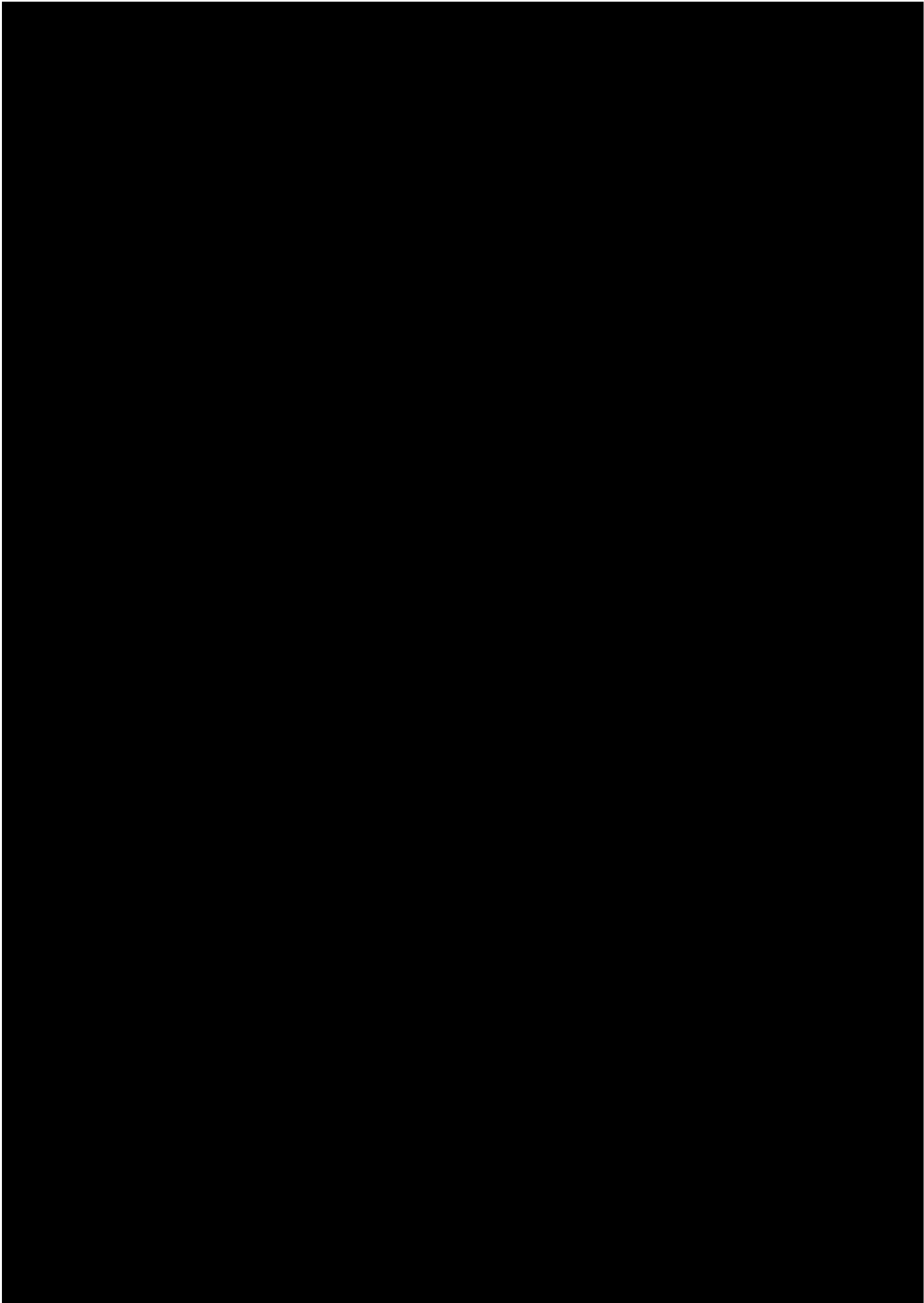


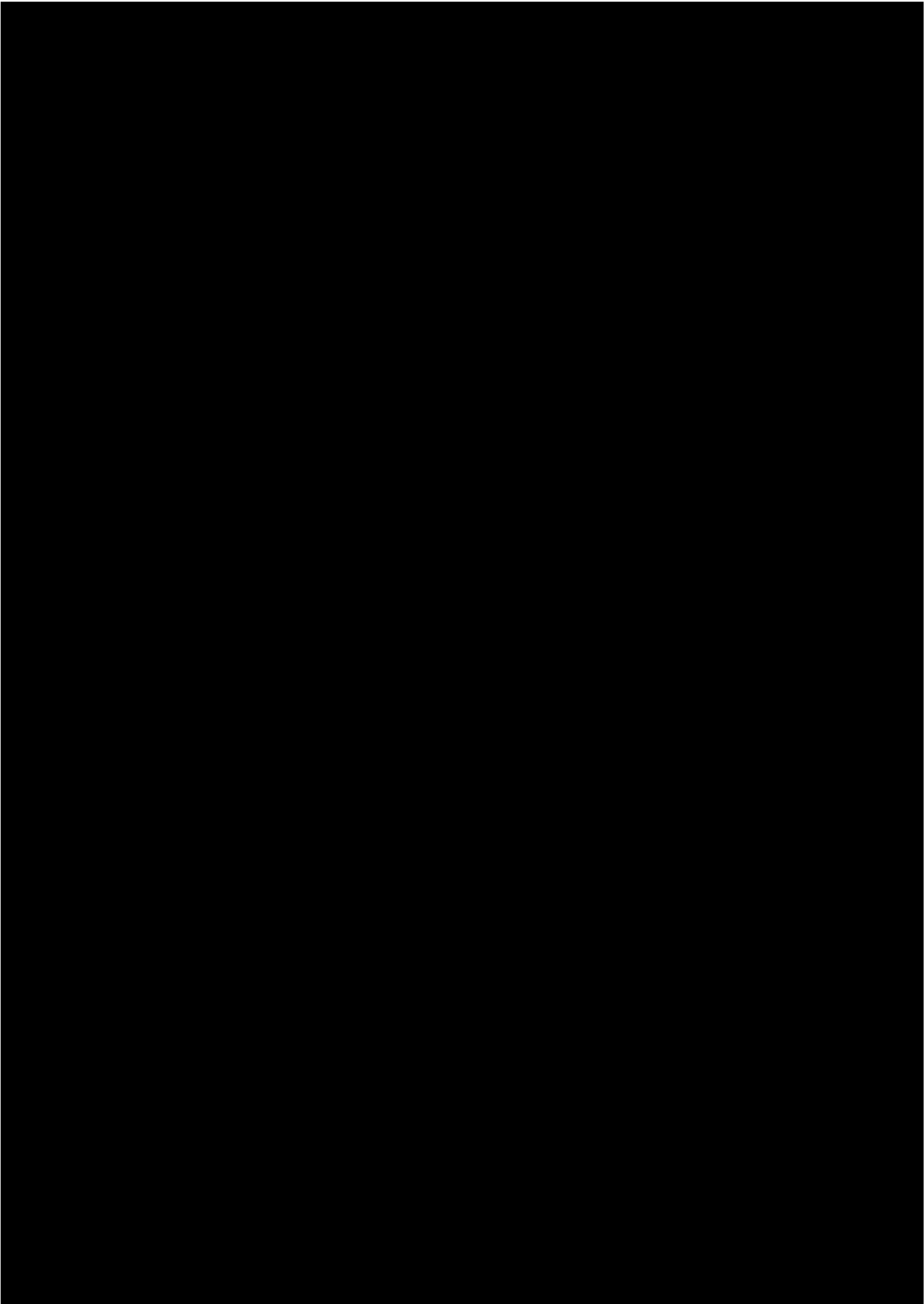


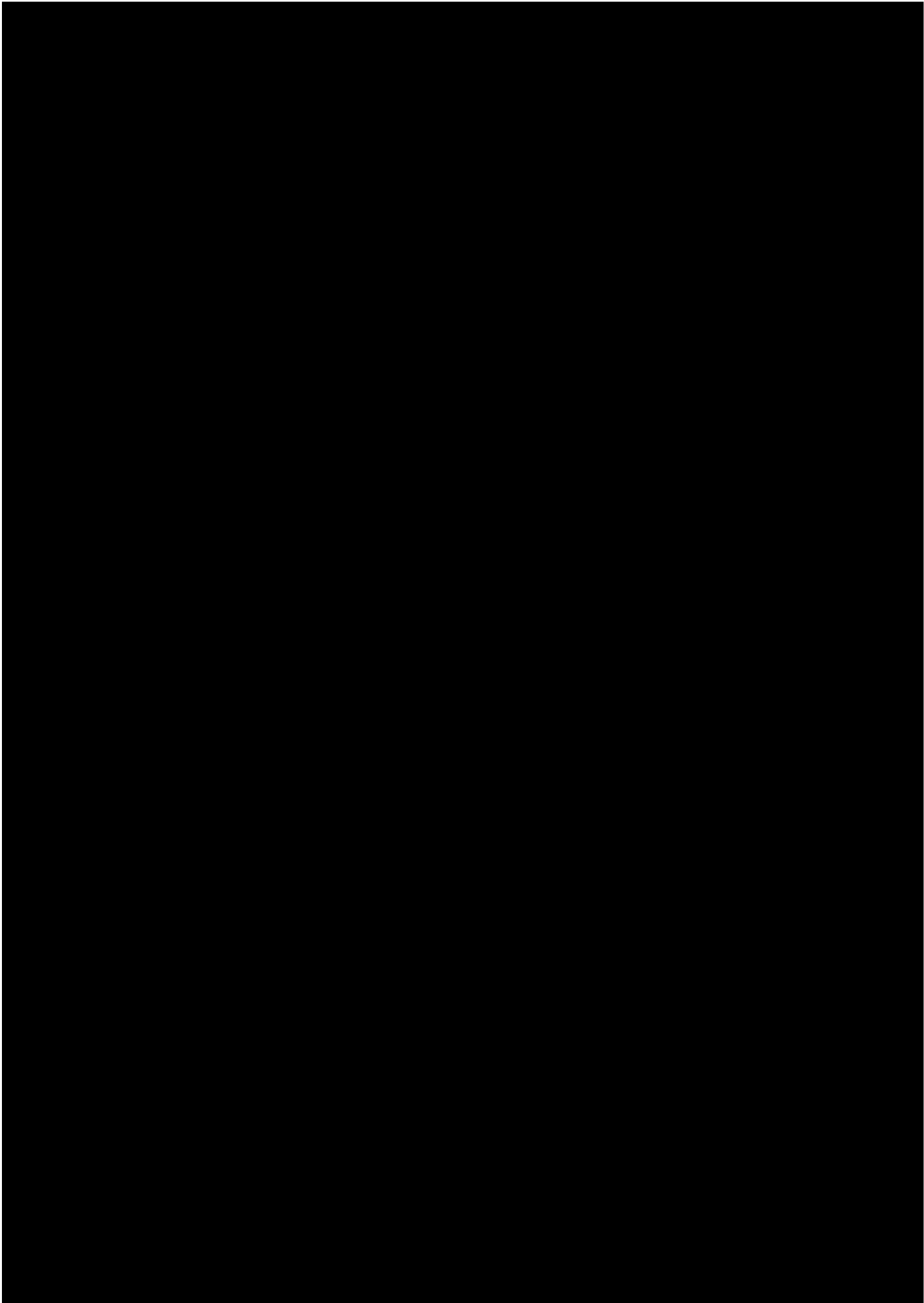


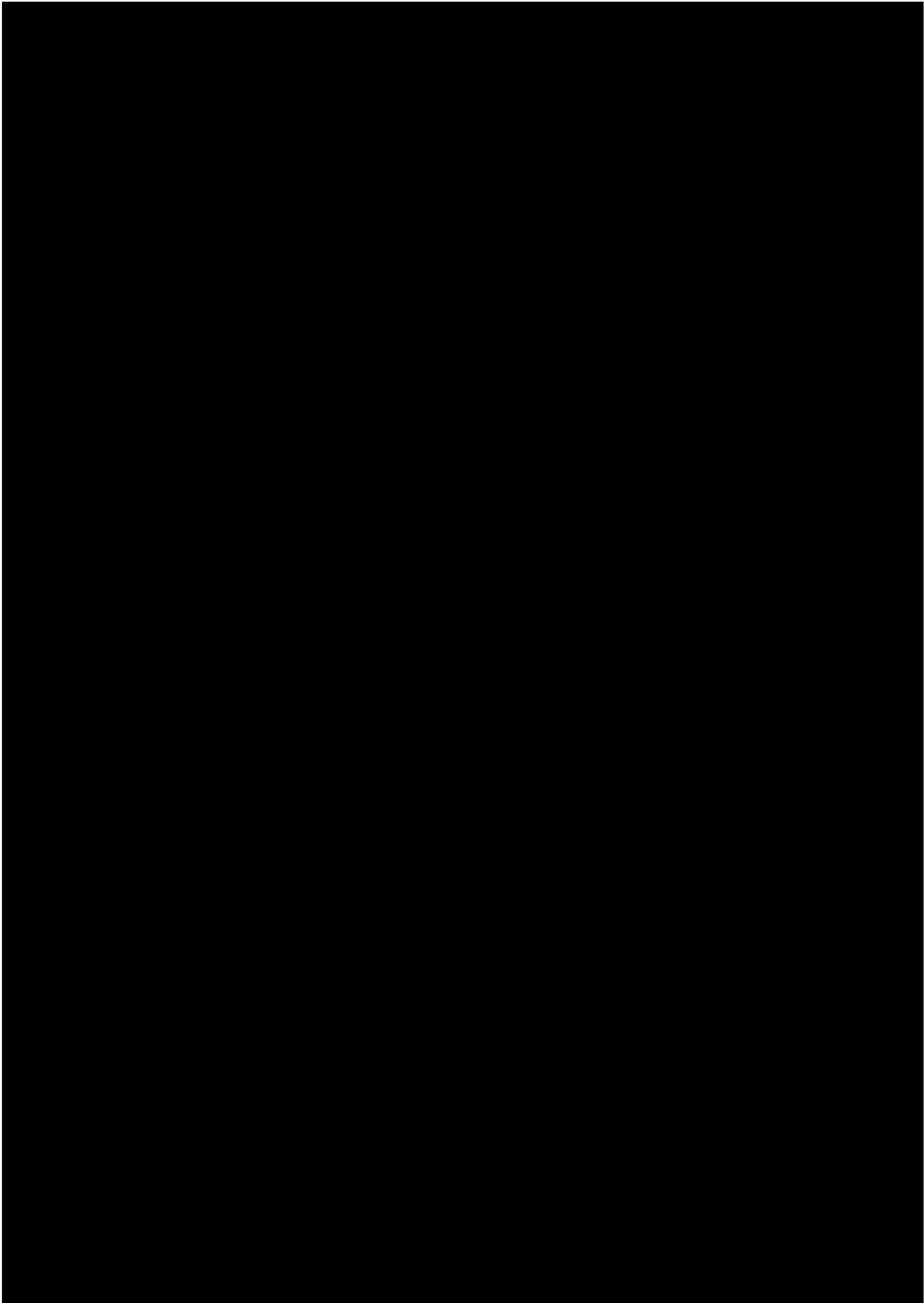


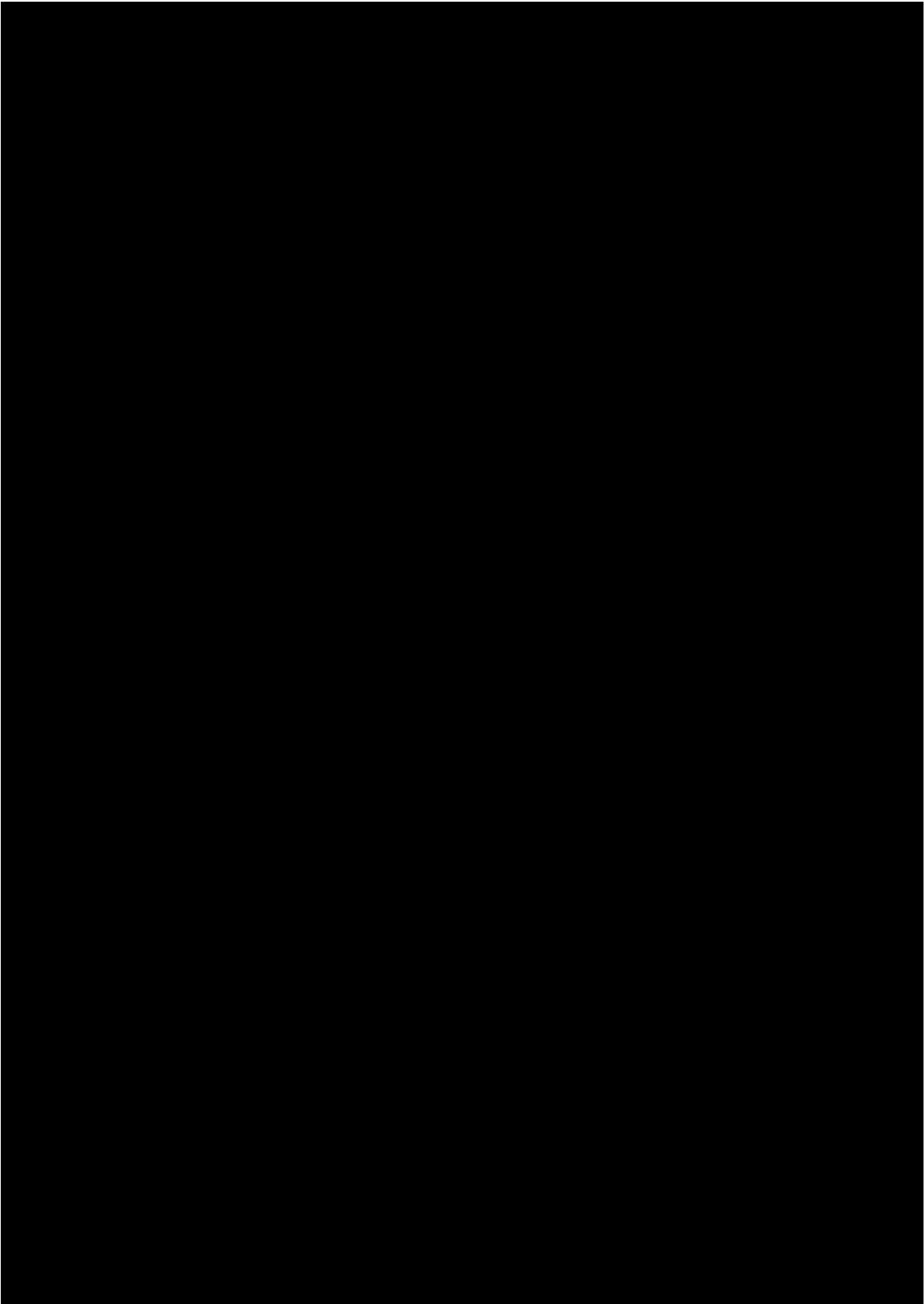


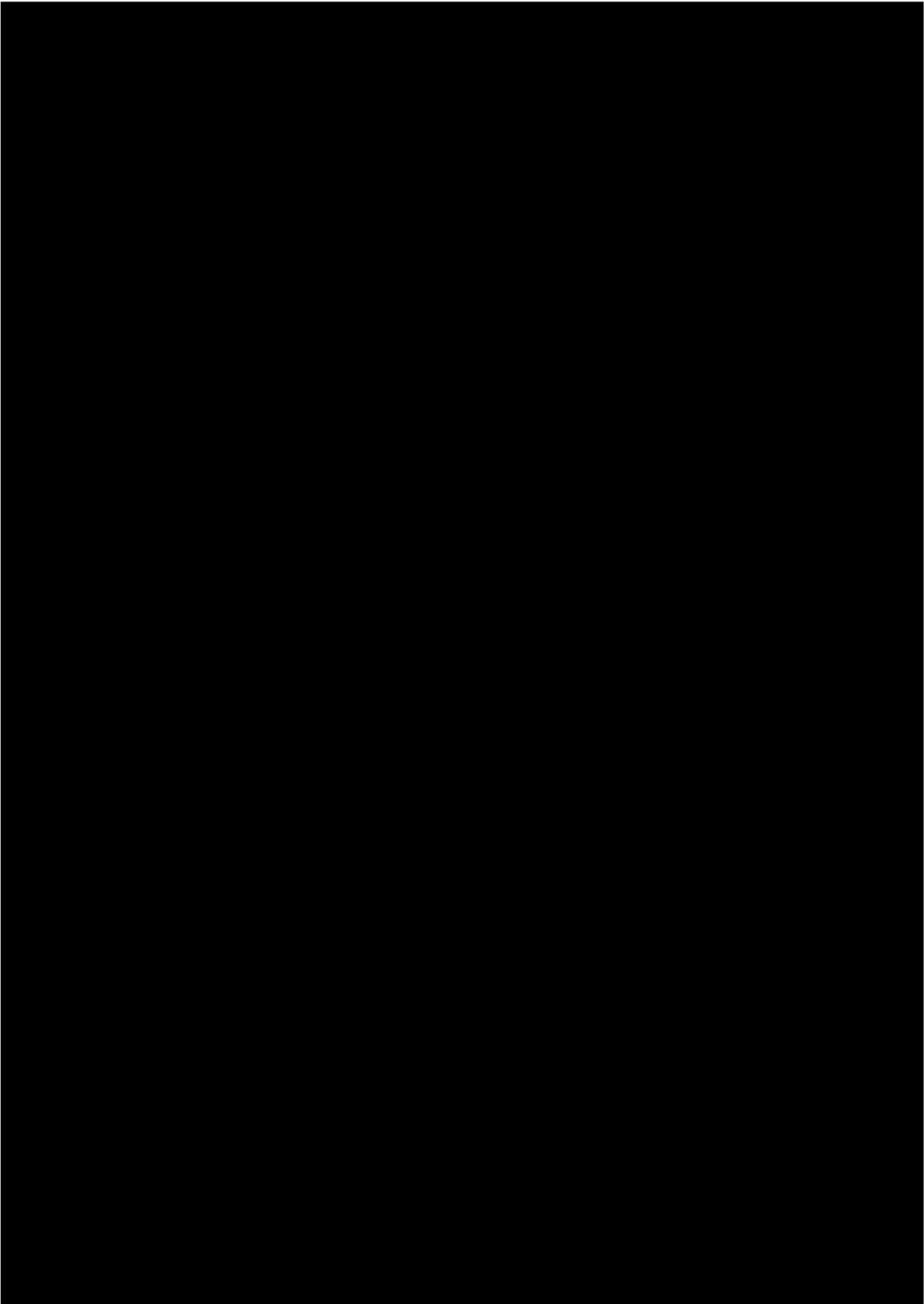


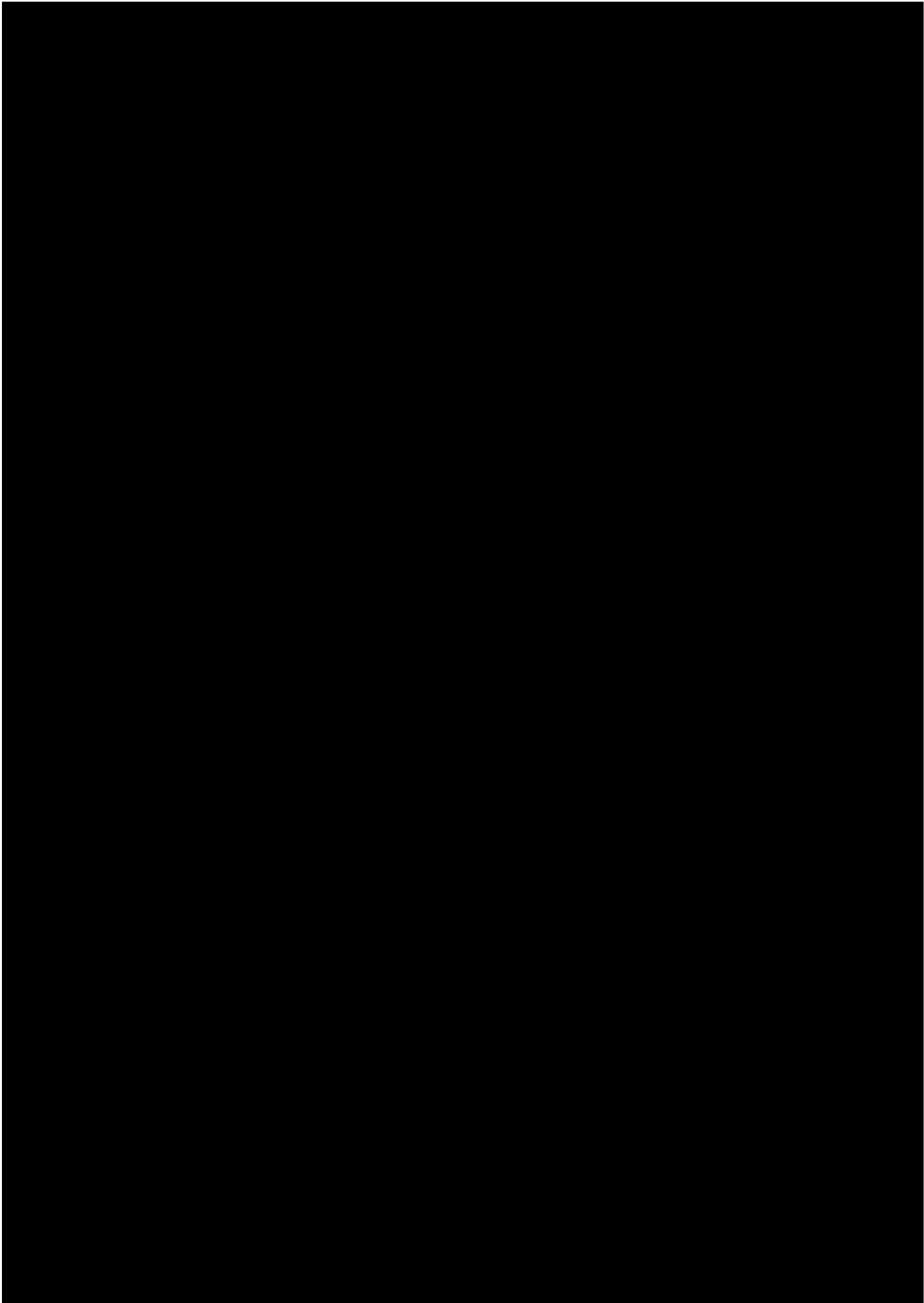


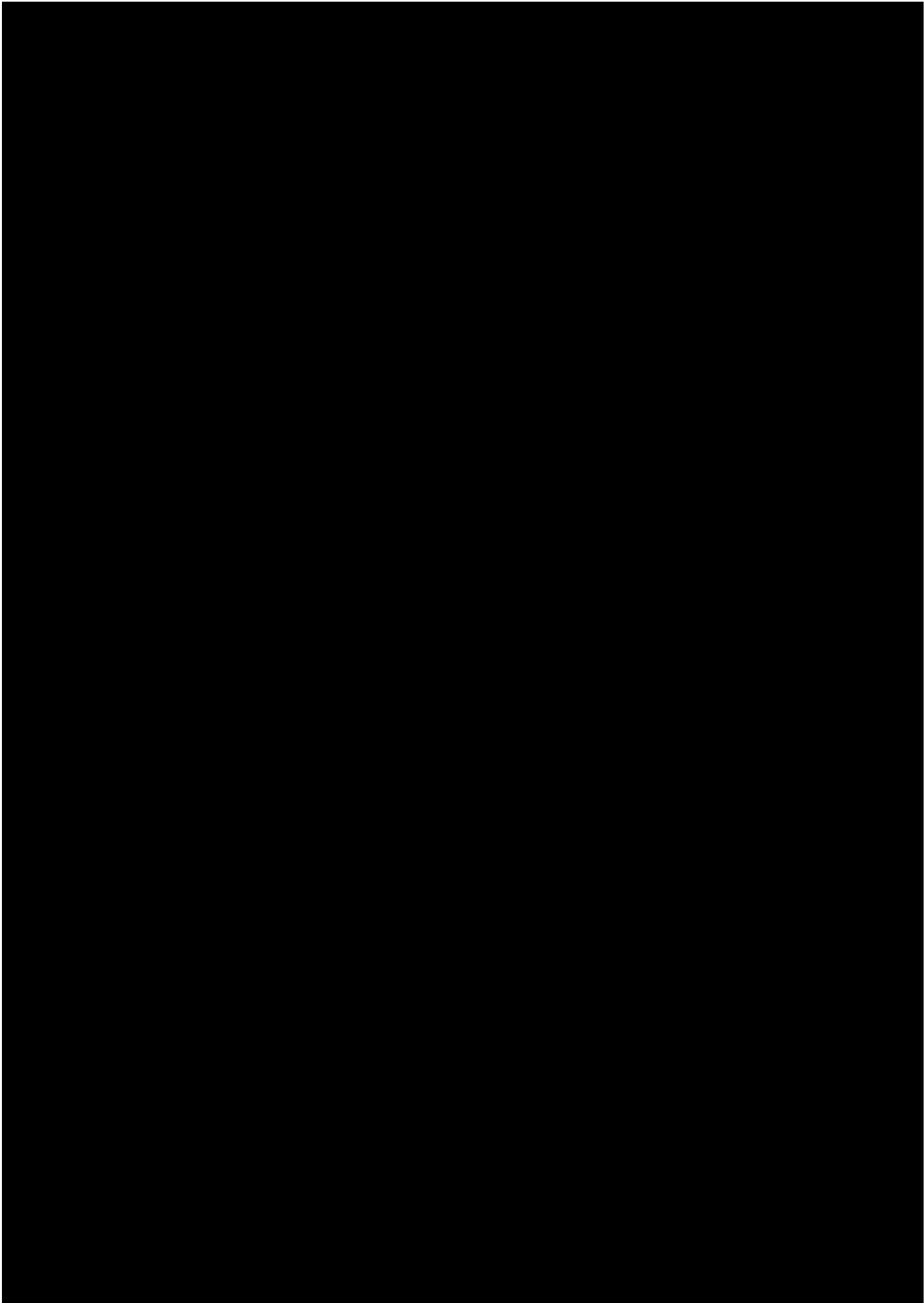


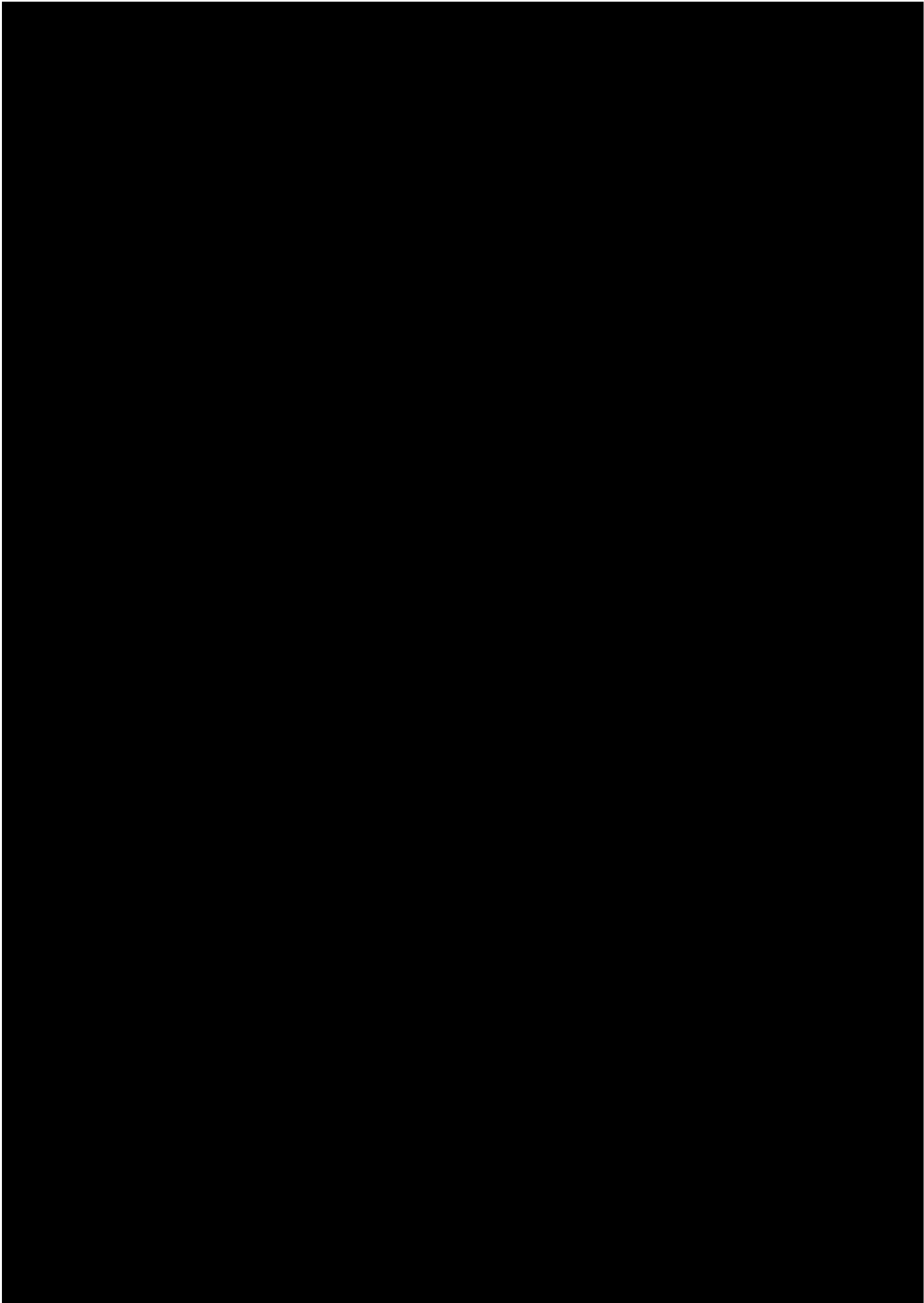


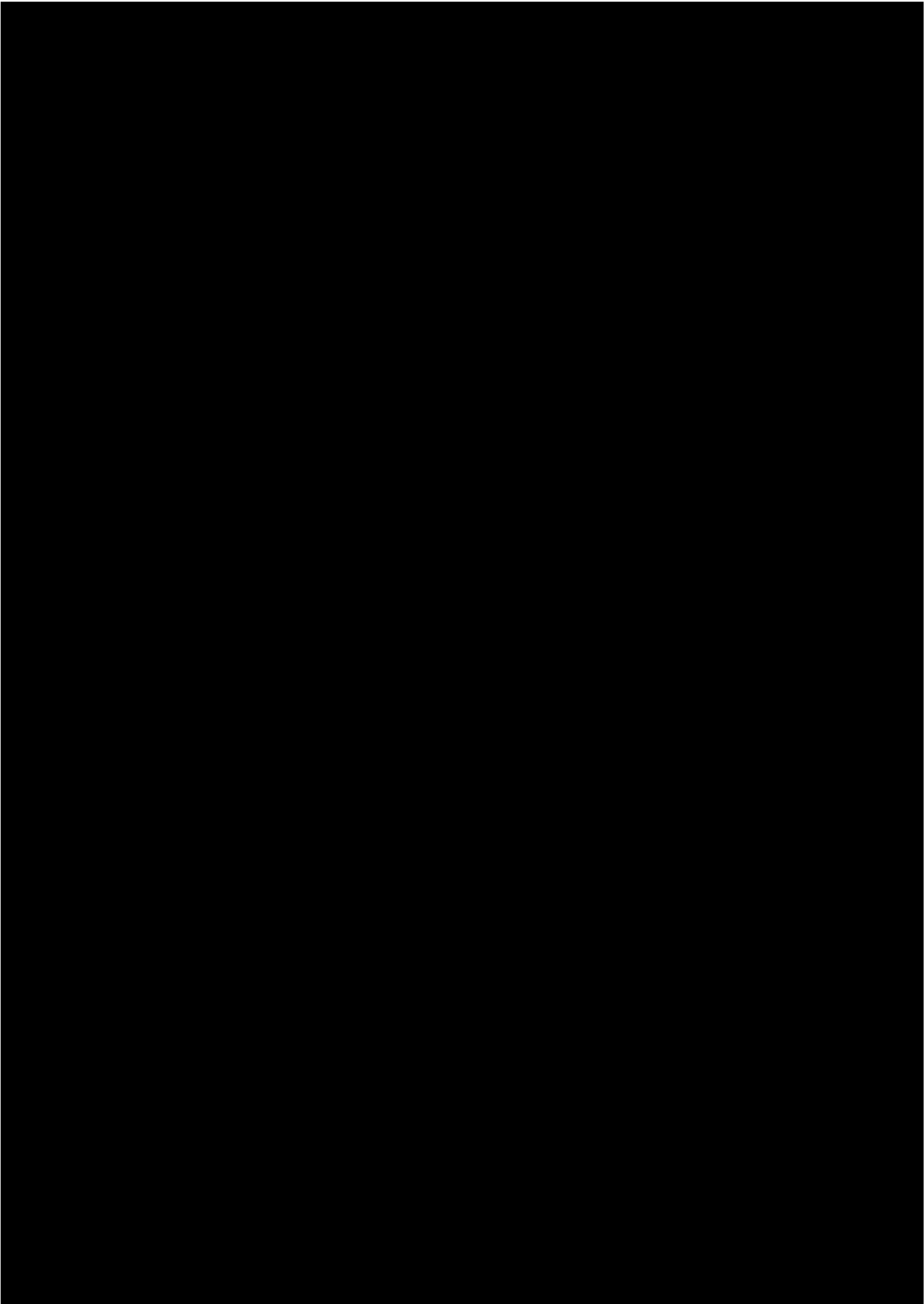


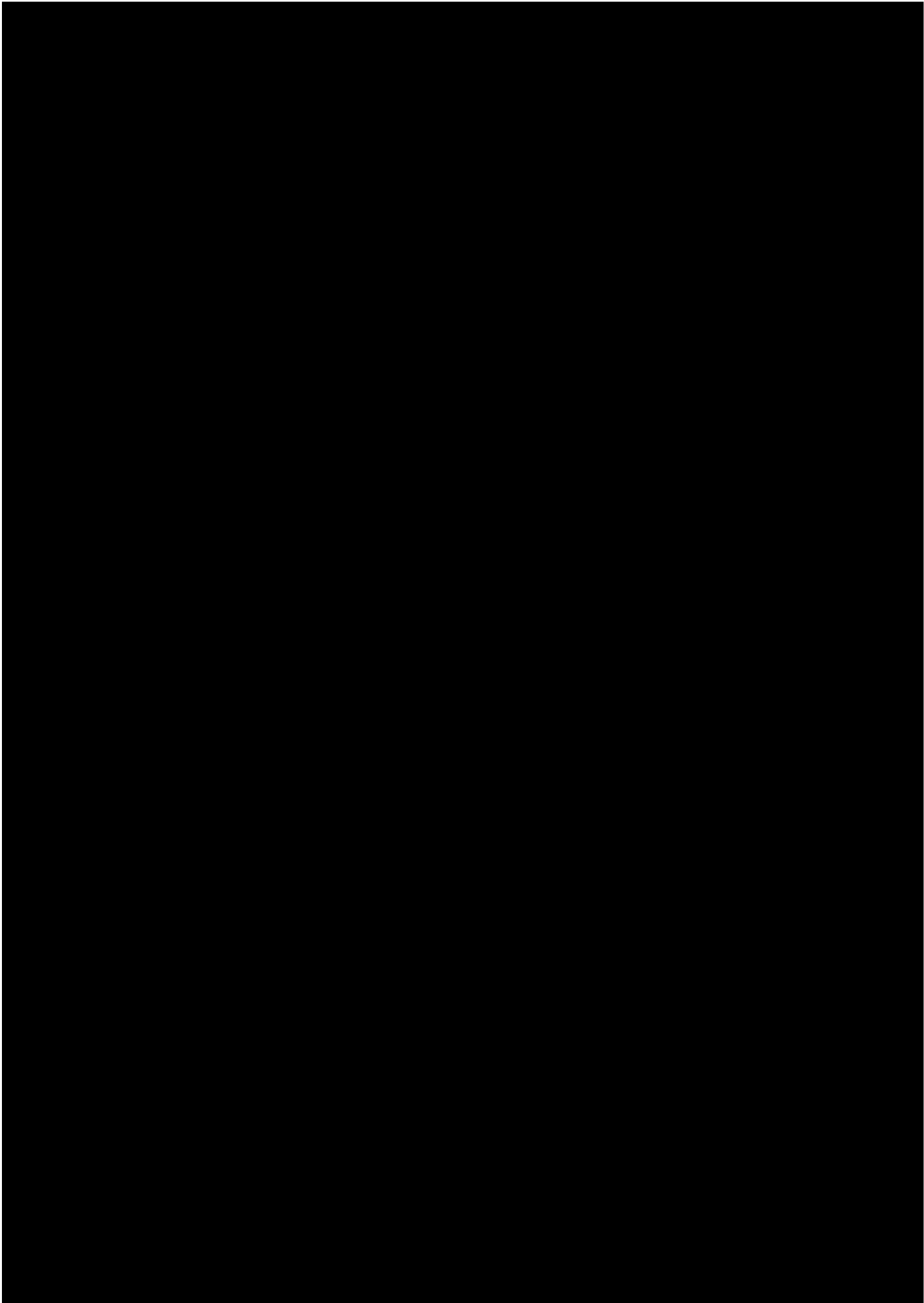














POST OFFICE LIMITED BOARD MEETING REPORT

Title:	Post Office Horizon IT Inquiry: Proposed Strategy	Meeting Date:	8 July 2021
Author:	Kevin Hutchinson	Sponsor:	Group General Counsel: Ben Foat

4

Input Sought:

The Board is asked to **discuss** and **approve** the strategic approach, the tactical issues to be discussed with the Inquiry office and note the project management update, including governance and budget.

Previous Governance Oversight

GE Meeting of 30 June 2021

Executive Summary

- On 1 June 2021, the Post Office Horizon IT Inquiry ("The Inquiry") became a statutory inquiry with expanded Terms of Reference ("ToR"). The expanded ToR enable it to consider the recent judgments from the Court of Appeal Criminal Division ("CADC") and other historical practices of Post Office. Statutory inquiries are typically more legalistic and explore matters more forensically. In most cases, they take longer to conclude.
- As statutory inquiries are governed by legislation, the Inquiry will now be able to compel evidence, request witness statements in advance of oral hearings and take evidence under oath. Oral hearings will be taking place in public. Alongside the formal hearings, there will also be a process for people to "tell their story" to contribute to a better understanding of the human impact. The Inquiry is aiming to submit its findings to the Secretary of State for BEIS in Autumn 2022. This is accompanied by an ambitious timetable¹.
- The Board is asked to **approve**:
 - The adoption a more proactive engagement strategy with the Inquiry.
 - Establishing clear governance arrangements and, once appointed, delegating authority to the Inquiry Director regarding correspondence, procedural matters and giving instructions to Post Office's legal representatives when needed.
 - Writing to the Inquiry's solicitor to request a meeting. At which, Post Office will:
 - Seek further guidance regarding the proposed timetable including when the issues covered by the Inquiry are likely to be finalised, at what point the identity of likely witnesses will be determined, and establish what assistance Post Office can provide in helping the Inquiry meet the deadlines it has set. Care will be taken to ensure that this will not be perceived as Post Office seeking preferential treatment or seeking to direct the inquiry.
 - Seek clarity regarding the Inquiry's approach to documentation, including privilege and whether the Inquiry is willing to receive privileged material on a limited waiver basis.
 - Post Office applying for Core Participant status.

¹ Please see Annex C

Confidential – Contains Legal Advice. Subject to Legal Privilege



4. The move to a statutory footing, expanded and ambitious timeline, and emphasis on prosecutions necessitates bolstering the current programme team and level of support received from legal and external counsel. Accordingly, the Board is asked to **note** a projected budget increase from **£1.6m to £9m**. Upon publication of the List of Issues², the Board will be asked to approve a finalised budget for the duration of the Inquiry. In the Interim, the Board is asked to **approve** instructing HSF to support with the execution of the strategic approach and tactical issues contained within this paper.

Questions addressed

1. What Statement did the Chairperson of the Inquiry make on 19 May 2021?
2. What are the key differences between a non-statutory and statutory Inquiry? What implications does this have for Post Office?
3. What should Post Office's strategy be? What issues should Post Office be raising now with the Inquiry and how should it engage with it? What else should Post Office be considering and what decisions will it need to take?
4. What impact will these changes have on governance, management and cost of the Inquiry programme?

Report

1. On 19 May 2021 Paul Scully MP³ made a statement⁴ to Parliament, confirming the Inquiry will be converted to a statutory footing from 1 June 2021. Sir Wyn Williams, the Chairperson of the Inquiry, subsequently provided a written statement in which he said the powers available to a statutory public inquiry were necessary to support a proper assessment of all the relevant facts in relation to the recent judgments from the CACD, in the context of the Judgments from the civil litigation. Sir Wyn said it was for these reasons that he made the request to the Minister for the Inquiry to become a statutory Inquiry.
2. Sir Wyn also asked for some amendments to be made to the ToR. A comparison between the previous and new ToR is included in **Annex A**. The key changes are:
 - The broadening of scope to include reference to the recent judgments from the CACD and overturning of criminal convictions, including Post Office's use of information from Horizon when taking action against persons alleged to be responsible for shortfalls. Previously, the ToR had explicitly stated criminal matters were outside the scope of the Inquiry.
 - The examination of governance and whistleblowing controls being expanded to include those which were in place historically.
3. Legal has advised on the key differences between non-statutory and statutory inquiries and the implications for Post Office. These are set out at **Annex B**.
4. On 11 June 2021, Sir Wyn published a new Statement of Approach ("SoA 4") to provide details on how the Inquiry will now proceed - a summary for which is provided below.
 - The Inquiry will operate under the Inquiries Act and Rules.

² The detailed matters the Inquiry is considering within its ToR

³ Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets)

⁴ Within his written statement, the Minister stated "Government wants to be fully assured that through the Inquiry there is a public summary of the failings associated with Post Office Ltd's Horizon IT system. The Inquiry will draw on the findings made by Mr Justice Fraser from the Bates and others v Post Office Limited Group Litigation (in particular Judgment (No3) 'Common Issues' and Judgment (No 6) 'Horizon issues'), the judgments of the Court of Appeal (Criminal Division) in R v Hamilton and others, and other judgments in which convictions have been quashed. It will consider all other relevant evidence, listen to those that have been affected, understand what went wrong, and assess whether lessons have been learned and whether concrete changes have taken place, or are underway, at Post Office Ltd."



- Segun Jide from the Government Legal Department has been appointed as Solicitor to the Inquiry, with Jason Beer QC of 5 Essex Court and Julian Blake of 11KBW as Counsel.
 - There will be an enlarged Inquiry team, an independent website, a document management system for review and disclosure to Core Participants and a venue for the public hearings and for the Inquiry to conduct its work.
 - The Inquiry team are drafting 'Protocols' to address outstanding issues such as Redactions and Document Handling, Restriction Orders, Costs, and Anonymity.
 - Alongside the formal hearings⁵, there will be a process for people to "tell their story" to contribute to a better understanding of the human impact.
5. The Inquiry is aiming to submit its findings to the Secretary of State for BEIS in Autumn 2022. The associated timetable set out within **Annex C**.

What should Post Office's engagement strategy be?

6. The Inquiry's move to a statutory footing will necessarily require an increased degree of formality and legal process, and this presents Post Office with an opportunity to revisit its strategic approach during this period of change. While Post Office will continue to assist and accommodate the Inquiry as much as it can, a more pro-active engagement strategy with the Inquiry is considered desirable to address historic issues with 'last-minute' requests. A more pro-active engagement strategy will also serve to put Post Office in the strongest position that it can be for its own preparation, in terms of the identification and provision of relevant documents to the Inquiry, the preparation of witness statements, and the subsequent oral hearings to take place.
7. This strategy will involve:
- Continued frequent and direct dialogue with the Inquiry team and early engagement regarding matters of relevance and importance to Post Office.
 - Advocating Post Office's position through written and verbal correspondence.
 - Prompt identification and clarification of ambiguity in the Inquiry's protocols and processes.
 - Clear explanations in order to manage the Inquiry's expectations (for example, explaining the documentation that Post Office does and does not hold, and which parties may hold it e.g. Royal Mail and/or Fujitsu).

What issues should Post Office be raising now with the Inquiry and how should it engage with it?

8. There are a number of matters arising from SoA4 which, in accordance with its more pro-active strategy, should be raised with the Inquiry as soon as possible. While some of these matters may be resolved in the yet-to-be published Protocols, others may not be, and so by bringing these issues to the Inquiry's attention now, it is hoped that the Inquiry may be able to take them into account to ensure that they are adequately addressed.
9. By the Inquiry's own admission, the **timetable** is "*ambitious*" however SoA4 notes that "*Sir Wyn is determined that it should be achieved to the fullest extent possible*". The Inquiry (in its previous non-statutory form) has been operating since October 2020 and has said that it intends to "*build upon the work that has been done to date*" which may be one explanation for the 'indicative' timetable.
10. The timetable only provides three months for the determination of the List of Issues, the approach for written witness statements, and the deadline for submitting them. Depending

⁵Separately, Sir Wyn has committed to setting out in September the relevant details of the public hearings he intends to convene later this year and into 2022.



on the nature and size of the List of Issues and the number of witness statements sought from current Post Office employees / Board members, this may be an insufficient amount of time for Post Office and the witnesses to respond comprehensively.

11. There is also no provision in the timetable for Post Office to have a dialogue with the Inquiry about the appropriateness of current employee/Board member witnesses giving evidence about historical matters they may not have been involved with at the time, should they be asked to do so. Post Office should seek further clarification and guidance with the Inquiry as soon as possible to ensure that POL can best support the Inquiry in respect of this point

4

12

13. There are a number of ambiguities in the Inquiry's **approach to documents** and answers to the following questions should be sought:

- What further documentation does the Inquiry want from Post Office? What documents will the Inquiry share with Core Participants versus the public, and will it share what has been disclosed to date?
- What document platform will the Inquiry use and how does it want to receive documents going forwards? Will the Inquiry's document platform be compliant with Post Office's own ICO obligations for data security?

14. The Inquiry Chair, Sir Wyn Williams has commended Post Office's participation in the Inquiry to date. Following the move to a statutory footing, Post Office should ask the Inquiry whether the approach to identifying and disclosing relevant documents needs to change. To date, Post Office has relied on certain individuals within the business providing the relevant documents that they hold and are aware of to the Inquiry team for disclosure, rather than a process of harvesting and reviewing custodians' email data, shared drives and other document repositories. This question is important to ask in light of the increased (and potentially criminal) consequences for failure to provide requested documents to a statutory inquiry, and to ensure there is transparency about the approach Post Office has taken.

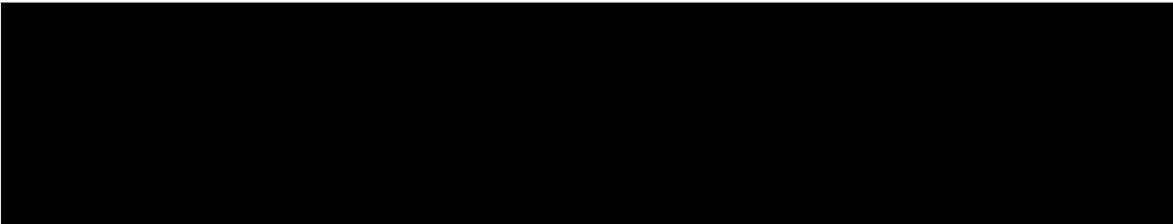
15. If the Inquiry indicates that the approach to identifying and disclosing relevant documents needs to change, a more robust search, review and disclosure process may need to be performed. While this could result in significantly more documents being disclosed and more expense incurred, it is likely to be preferable to the Inquiry criticising Post Office in its report and in the press for failing to identify and provide relevant documentation and/or hampering its investigation. Post Office should also clarify for the Inquiry the documents that it does and does not hold to ensure that the Inquiry does not expect Post Office to produce material that it does not have, and that that Inquiry asks the correct parties who will likely hold the documentation sought.

16. Post Office should ask the Inquiry whether it will receive **privileged documents** on a 'limited waiver basis for a specific purpose'. This was the approach the Inquiry indicated it would adopt before it moved to a statutory footing, but it is not yet clear if this remains the Inquiry's position now and how that might fit with the Inquiry providing disclosure of certain documents to Core Participants.

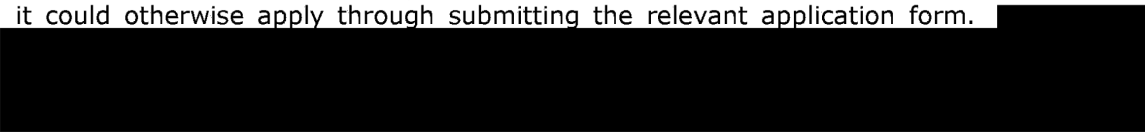
4

Confidential – Contains Legal Advice. Subject to Legal Privilege



17. If the Inquiry is content to proceed on this basis, this would mean that Post Office could share its relevant privileged documents (e.g. previous legal advice it has received, and communications with its legal advisers and third parties for the dominant purpose of the group litigation) on this limited basis with the Inquiry without losing its privilege in that material in relation to third parties. This should be Post Office's preferred position as it will enable the Inquiry to understand the legal advice that it received and which formed the basis for some decisions that Post Office took, whilst otherwise maintaining its privileged status. However, if the Inquiry is not prepared to proceed on this basis, Post Office will need to consider whether to waive its privilege over some or all of its relevant privileged material, or not, and the implications of either approach could have far-reaching consequences. The Board will be kept updated on this position and asked to make a decision on this point in due course, if needed.
18. Post Office has provided **documents to former employees and board members** upon their request to assist their preparation for the Inquiry. As the Inquiry's ToR now encompass the historical prosecutions which effectively ceased in 2013, it is anticipated that more requests may be made for documentation from further individuals involved at that time. Indeed, we have already received further requests from former employees. Post Office should ensure that the Inquiry is content with it providing these documents to these individuals, because unless specifically requested, the Inquiry will not have sight of the material sought and provided.
19. 
20. It is recommended that Post Office write to the Inquiry's Solicitor through its legal representative (when appointed) in order to request a meeting to raise the above questions and concerns either at a meeting or in correspondence.

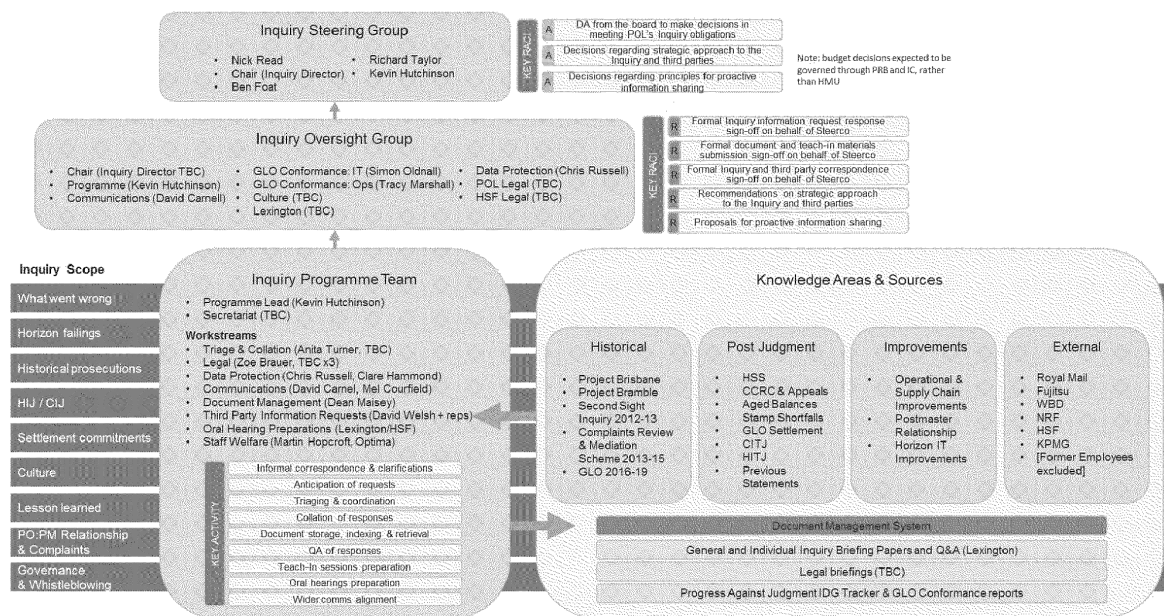
What else should Post Office be considering and what decisions will it need to take?

21. Post Office will either be invited by the Inquiry to be designated as a **Core Participant**, or it could otherwise apply through submitting the relevant application form. 
22. Applications for CP status are due by 20 July 2021, with final decisions to be taken by the Inquiry by 10 August 2021. The Board is asked to approve the recommendation that Post Office apply for Core Participant status.
23. Core Participants typically have formal **legal representatives** (solicitors) in statutory inquiries, who advocate and communicate on their behalf. Likewise, Legal Counsel (usually a QC assisted by a junior barrister) are also appointed to attend and make opening and closing submissions on the Core Participant's behalf at the Oral Evidence hearings, and in respect of any procedural applications that may be required (for example, SoA4 contemplates an oral hearing for Core Participants, if needed, in order to finalise the List of Issues the Inquiry will consider).

24. Given the pace at which the Inquiry intends to move forward, Post Office should appoint its legal representatives as soon as possible and engage Counsel, as it is anticipated that other Core Participants will also need to instruct Counsel too, which may result in less choice for Post Office.
25. Post Office has received a number of enquiries from several former employees regarding the extent to which they are covered by Post Office's **D&O insurance**. POL's D&O policy covers Insured Persons. These are individuals who hold/held positions as directors or officers of POL, or POL employees "whilst acting in a managerial or supervisory capacity for a Company" or "to the extent that such employee is named as a defendant in connection with an Employment Practice Wrongful Act." Advice is being sought to determine whether these individuals and or other former employees are covered by the two D&O policies which have been notified in respect of Horizon issues (2012/2013 and 2019/20 Policies). Insurers will consider claims for reimbursement of costs on a claim-by-claim basis, but cover is not guaranteed. The position will be clearer once the Inquiry publishes its list of issues and who will be called to provide evidence.

Impact on the governance, management and cost of the Inquiry programme

26. The diagram below shows the proposed composition of the governance groups and programme team, together with the key accountabilities, responsibilities and activities. It sets these within the context of the expanded Inquiry scope and the likely knowledge sources to be drawn upon.



27. The Inquiry Steerco should be retained with delegated authority from the board to make decisions in meeting Post Office's Inquiry objectives. Its specific accountabilities will include making decisions regarding the strategic approach to the Inquiry and third parties, and establishing the principles for proactive information sharing.
28. The Inquiry Oversight Group should continue with the responsibility to sign-off Inquiry and third-party materials that follow the strategic approach and principles for information sharing approved at the Inquiry Steerco. Attendees should be expanded to reflect the



increased emphasis on legal oversight and alignment with progress against the GLO commitments and improvements for postmasters.

29. The Inquiry Director will provide appropriate updates at all GE and board meetings.

Programme Costs

30. Total spend to end-May 2021 is £1,406k against an authorised budget of £1,639k.
31. The programme has provided a forecast estimate for further spend based on the expanded Inquiry scope and timeline, increased resource costs and revised provisional estimates from suppliers based on their recommended support. This will be finalised upon publication of the List of Issues.
32. The preliminary forecast estimate indicates a further spend of £7.6m (including counsel fees but excluding third-party information request support from HSF) from June 2021 to the end of the indicative Inquiry timeline, September 2022. However, given that the Inquiry timeline is recognised as ambitious and subject to change, the programme recommends a contingency of £3,235k, representing 6 months potential slippage.
33. The total estimated budget, based on the assumptions noted, excluding contingency, is £9m.

4

Annex A: Current vs Previous Terms of Reference for the Inquiry

Original Terms of Reference for Inquiry (10 June 2020)	Terms of Reference for Statutory Inquiry (19 May 2021)
A: Understand and acknowledge what went wrong in relation to Horizon, leading to the Group Litigation Order, by drawing on evidence from the Horizon judgments and affected postmasters' experiences and identify what key lessons must be learned for the future.	A: Understand and acknowledge what went wrong in relation to Horizon, leading to the civil proceedings in <i>Bates and others v Post Office Limited</i> and the quashing of criminal convictions, by drawing from the judgments of Mr Justice Fraser in <i>Bates and others</i> , the judgments of the Court of Appeal (Criminal Division) in <i>R v Hamilton and others</i> , other judgments in which convictions have been quashed, affected postmasters' experiences and any other relevant evidence in order to identify what key lessons must be learned for the future.
B: Build upon the findings of Mr Justice Fraser, by obtaining all available relevant evidence from Post Office Ltd, Fujitsu and BEIS to establish a clear account of the implementation and failings of Horizon over its lifecycle.	B: Build upon the findings of Mr Justice Fraser and the judgments of the criminal courts specified in A above by obtaining all available relevant evidence from Post Office Ltd, Fujitsu, BEIS and UKGI to establish a clear account of 1) the implementation and failings of Horizon over its lifecycle and 2) Post Office Ltd's use of information from Horizon when taking action against persons alleged to be responsible for shortfalls.
C: Assess whether Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in the 'Common Issues' and 'Horizon Issues' trials and those identified by affected postmasters and has delivered or made good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future.	C: Assess whether Post Office Ltd has learned the lessons from the criticisms made by Mr Justice Fraser in his judgments following the 'Common Issues' and 'Horizon Issues' trials and those identified by affected postmasters and has delivered or made good progress on the organisational and cultural changes necessary to ensure a similar case does not happen in the future.
D: Assess whether the commitments made by Post Office Ltd within the mediation settlement – including the historical shortfall scheme – have been properly delivered.	D: Assess whether the commitments made by Post Office Ltd within the mediation settlement – including the historical shortfall scheme – have been properly delivered.
E: Assess whether the processes and information provided by Post Office Ltd to postmasters are sufficient: (i) to enable both parties to meet their contractual obligations (ii) to enable postmasters to run their businesses. This includes assessing whether Post Office Ltd's related processes such as recording and resolving postmaster queries, dispute handling, suspension and termination are fit for purpose. In addition, determine whether the quality of the service offer for postmasters and their relationship with Post Office Ltd has materially improved since the conclusions reached by Mr Justice Fraser.	E: Assess whether the processes and information provided by Post Office Ltd to postmasters are sufficient: i. to enable both parties to meet their contractual obligations ii. to enable postmasters to run their businesses. This includes assessing whether Post Office Ltd's related processes such as recording and resolving postmaster queries, dispute handling, suspension and termination are fit for purpose. In addition, determine whether the quality of the service offer for postmasters and their relationship with Post Office Ltd has materially improved since the conclusions reached by Mr Justice Fraser.

7

Confidential – Contains Legal Advice. Subject to Legal Privilege



F: Examine the governance and whistleblowing controls now in place at Post Office Ltd and whether they are sufficient to ensure that the failings that led to the Horizon case issues do not happen again.

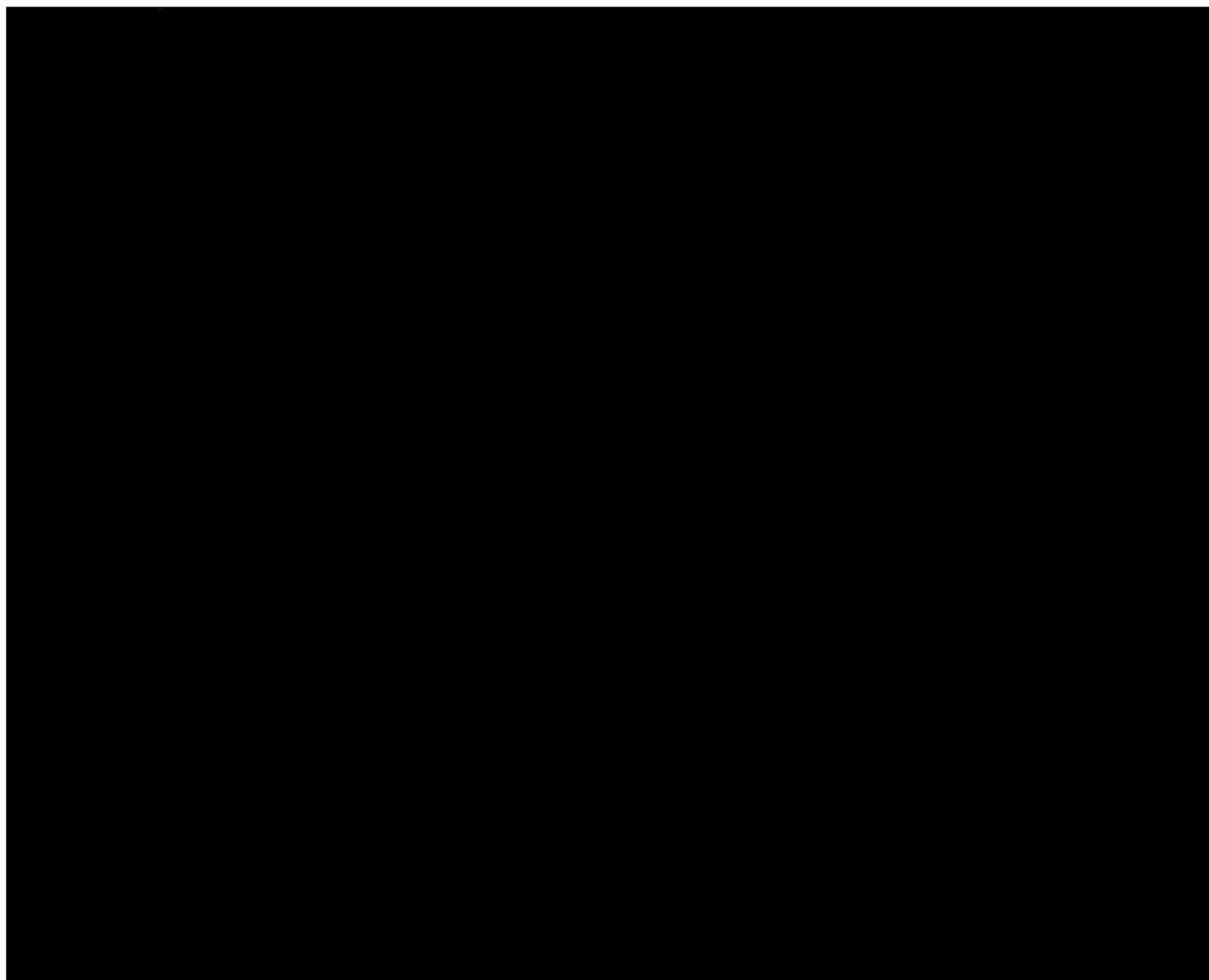
The Review shall set out Post Office Ltd's actions in response to the findings of Mr Justice Fraser. While avoiding a re-examination of the findings made by Mr Justice Fraser through the lengthy court proceedings, it must use these and the experiences of affected postmasters as the basis for its work. The Review should not encroach on the work of the Criminal Case Review Commission and the Court of Appeal. The Review should make any recommendations it sees fit, including actions that may, in its view, be appropriate as a result of its findings. The final report will be laid in the Libraries of both Houses upon completion of the review.

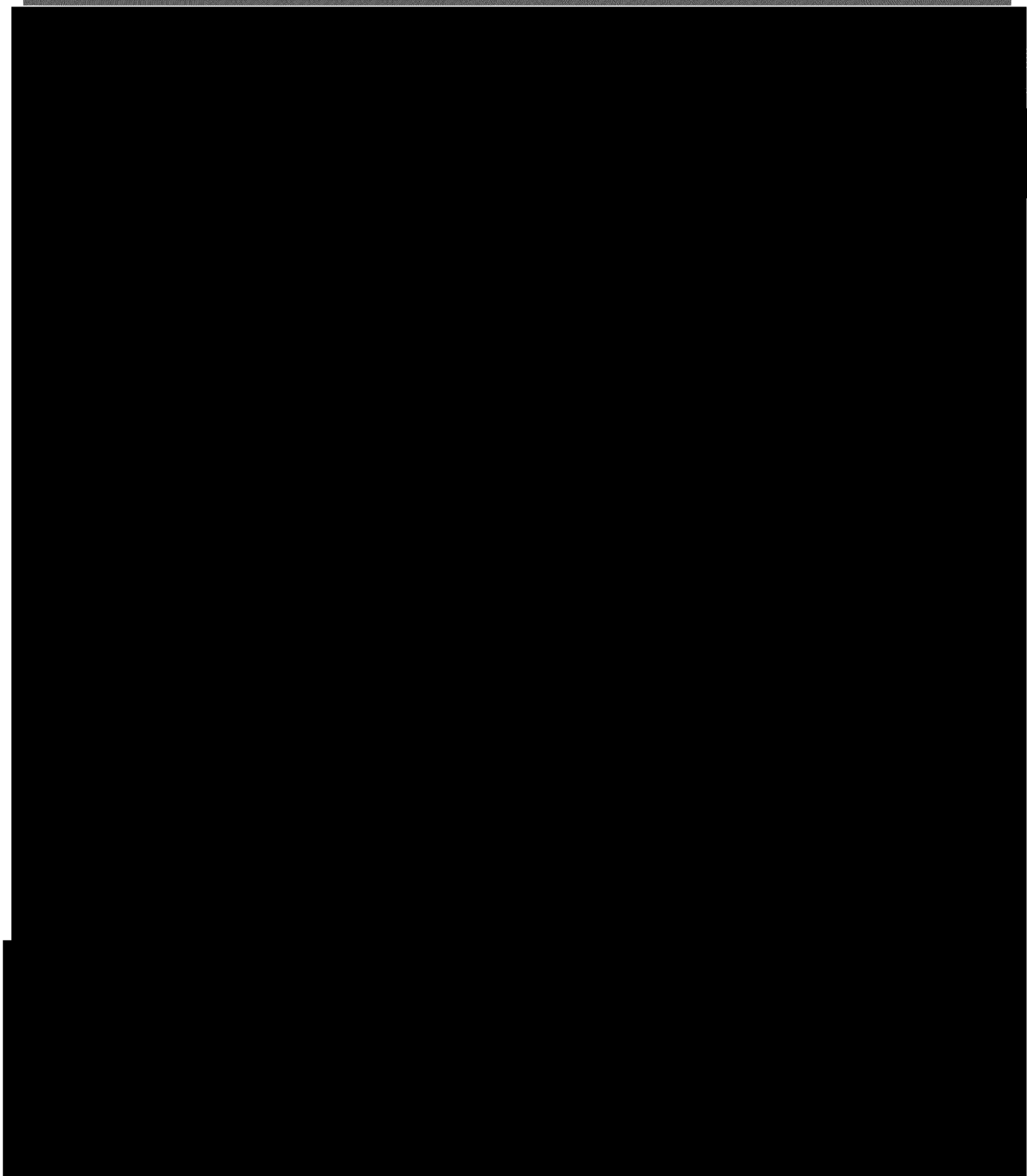
F: Examine the historic and current governance and whistleblowing controls in place at Post Office Ltd, identify any relevant failings, and establish whether current controls are now sufficient to ensure that failing leading to the issues covered by this Inquiry do not happen again.

The Inquiry will consider only those matters set out in the preceding sections A-F. The Inquiry will not consider any issue which is outside the scope of the powers conferred upon the Inquiry by the Inquiries Act 2005. The Horizon group damages settlement (albeit the Inquiry may examine the events leading to the settlement), and/or the engagement or findings of any other supervisory or complaints mechanisms, including in the public sector, are outside the Inquiry's scope.

4

Annex B: What are the key differences between statutory and non-statutory inquiries?





Confidential – Contains Legal Advice. Subject to Legal Privilege



4

Annex D: Indicative Inquiry Timetable

- **June 2021:** Publication of Protocol, followed by applications for Core Participant status and recognition of legal representatives in accordance with the Protocol. Formulating provisional list of issues.
- **July 2021:** Determination of Core Participant and Recognised Legal Representative applications. Finalising provisional list of issues. Commencement date for making written submissions about the provisional list.
- **August 2021:** Closing date for the making of Written Submissions on the provisional List of Issues. Core Participants and others to disclose documents to the Inquiry.
- **September 2021:** Determination of the List of Issues (if necessary after oral submissions). Training on the Document Management System for Core Participants. Disclosure to begin.
- **October 2021:** Requests for witness statements made by the Inquiry (under Rule 9 of the Rules and with s.21 Inquiries Act 2005 notices where required).
- **November 2021:** Witness statements to be provided to the Inquiry and disclosed. Any necessary preliminary hearings.
- **December 2021:** Witnesses to be notified of whether they will be required to give oral evidence and, if so, when.
- **Early 2022** (either January or February): Oral Hearings of the Inquiry.