

**Post Office Board Agenda (CCRC meeting)**

<b>Date:</b>	<b>Thursday 05 August 2021</b>	<b>Time</b>	<b>15:00 – 16:30 hrs</b>	<b>Location</b>	<b>Microsoft Teams Meeting/ Finsbury Dials</b>
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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)	• Lucie Lambert (General Counsel - UKGI)
• Elliot Jacobs (NED)	• Saf Ismail (NED)	• Hannah Laming (Peters & Peters Solicitors LLP)	• Brian Altman QC (2 Bedford Row)
• Alisdair Cameron (CFO)	• Ben Tidswell (NED)	• Simon Baker QC (2 Bedford Row)	• Jac Carey (2 Bedford Row)

**Apologies:** Nick Read (CEO)

[Join Microsoft Teams Meeting](#)

**GRO** United Kingdom, London (Toll)

Conference ID: 320 102 417#

Agenda Item		Action Needed	Lead
1.	<b>Welcome and Conflicts of Interest</b>	Noting	Chairman
2.	<b>Minutes and Matters arising</b> Minutes from 15 <sup>th</sup> and 22 <sup>nd</sup> July 2021	Approval	Chairman
3.	<b>Criminal Cases</b> <ol style="list-style-type: none"> <li>New appeals going to the Court of Appeal Criminal Division (CACD) – for decision</li> <li>Update – for noting</li> </ol>	Decision & Noting	Hannah Laming, Simon Baker QC, Jac Carey
4.	<b>Overtured Convictions</b> <ol style="list-style-type: none"> <li>Overview of interim payment process - for noting</li> <li>Interim payment decision: Susan Rudkin</li> </ol>	Noting & Decision	Alan Watts
5.	<b>Historical Shortfalls Scheme</b> <ol style="list-style-type: none"> <li>Summary of Panel's interim views on 29 shortfall only test cases – for noting</li> <li>Draft Case Assessment Principles for shortfall issues – for approval to provide to Panel</li> </ol>	Noting & Approval	Alan Watts
6.	<b>Any Other Business</b>	Noting	All

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## POST OFFICE LIMITED BOARD MEETING

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2.1

**MINUTES OF A CCRC MEETING OF THE BOARD OF DIRECTORS OF POST OFFICE LIMITED HELD ON THURSDAY 15 JULY 2021 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ BY CONFERENCE CALL AT 15.00 HRS<sup>1</sup>**

**Present:**

Tim Parker	Chairman <b>(TP)</b>
Tom Cooper	Non-Executive Director <b>(TC)</b>
Carla Stent	Non-Executive Director <b>(CS)</b>
Saf Ismail	Non-Executive Director <b>(SI)</b>
Alisdair Cameron	Group Chief Finance Officer <b>(AC)</b>
Nick Read	Group Chief Executive <b>(NR)</b>

**In attendance:**

Veronica Branton	Company Secretary <b>(VB)</b>
Ben Foat	Group General Counsel <b>(BF)</b>
Richard Taylor	Group Corporate Affairs, Brand and Communications Director <b>(RT)</b>
Declan Salter	Historical Matters Director <b>(DS)</b>
Lucie Lambert	General Counsel – UKGI <b>(LL)</b>
Alan Watts	Herbert Smith Freehills <b>(AW)</b>
Nick Vamos	Peters & Peters Solicitors LLP <b>(NV)</b>
Hannah Laming	Peters & Peters Solicitors LLP <b>(HL)</b>

**Apologies:** Ken McCall (SID), Zarin Patel (NED), Elliot Jacobs (NED), Lisa Harrington (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 to discuss the CCRC cases held on 08<sup>th</sup> July 2021.

The Board **NOTED** the action log.

**3. Criminal convictions****3.1 Court of Appeal Criminal Division (CACD) cases of Manjra, Price and Snow**

The Board considered the cases and **RESOLVED** that:

- the appeals for Mr Manjra and Ms Price's cases should not be opposed
- the appeal for Mr Snow's case should be opposed noting that the offences had occurred prior to the installation of Horizon in the branch and Mr Snow had pleaded guilty to the offences.

**3.2 Update on Thanabalasinghan**

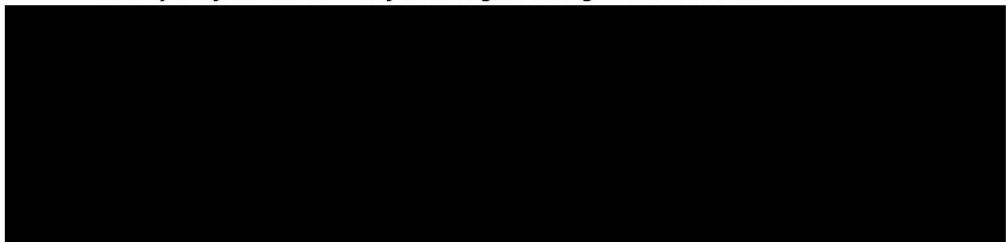
<sup>1</sup> Participation in the meeting was entirely via Microsoft Teams from participants' personal addresses. In such circumstances the Company's Articles of Association (Article 64) require that the location of the meeting be deemed as the chairman's location. However, it was not deemed appropriate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



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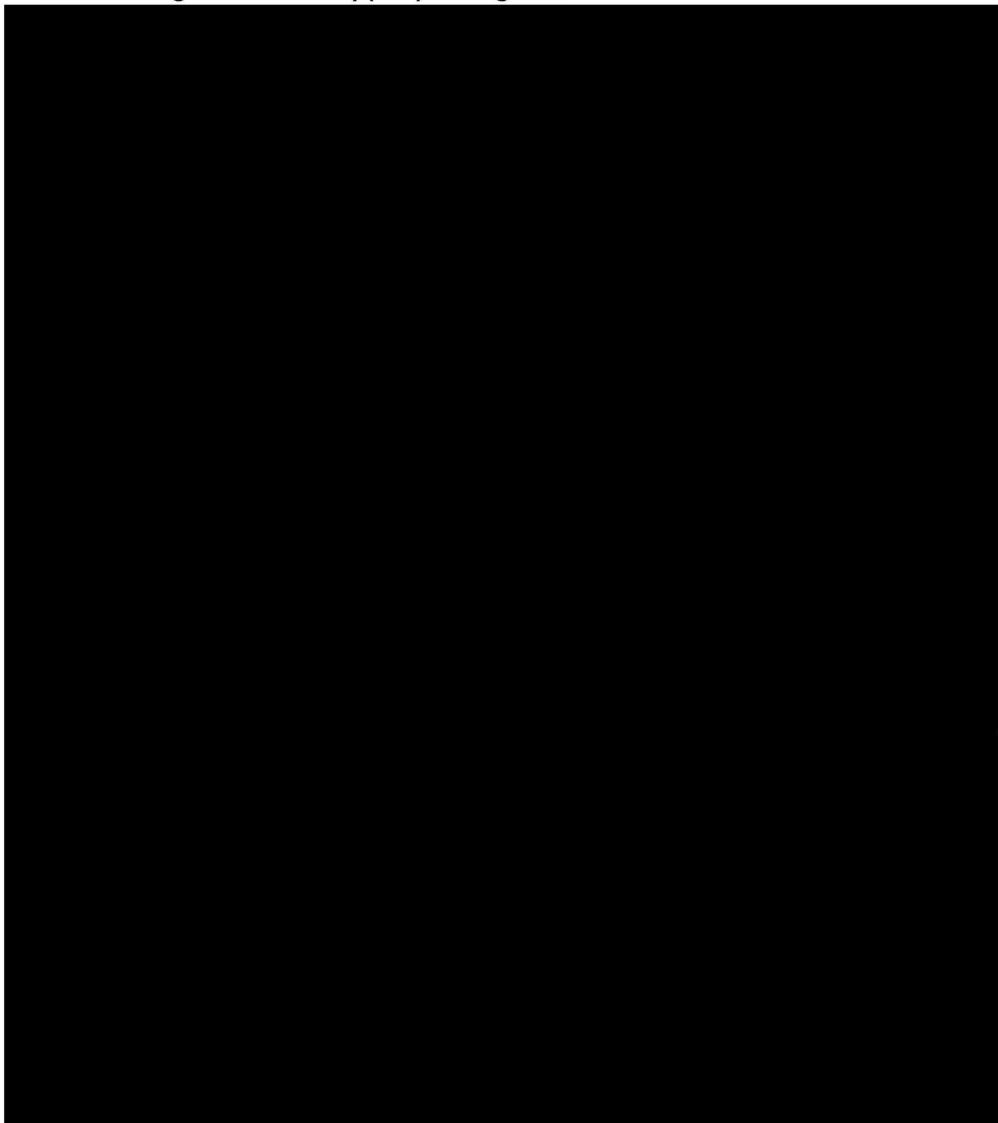
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**3.3 Update on CPS stance in cases in which it is the Respondent**



**4. Solicitors Regulation Authority (SRA) Investigation**

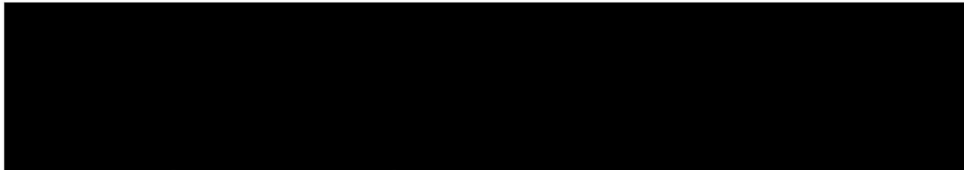


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**2.1**



3. The Board **APPROVED** the following:

- POL should continue to cooperate with the SRA, including the provision of material on the basis set out in the slides presented to the Board on 15<sup>th</sup> July 2021;
- Decisions relating to the exact material to be provided and the mechanism for its provision should be made by Sarah Gray, Legal Director, on behalf of Post Office Limited (in consultation with Ben Foat, as the recipient of the Notice and General Counsel), having regard to the risks/benefits identified in the slides presented to the Board on 15<sup>th</sup> July 2021. These risks/benefits would be different according to the nature of the data sought, and therefore different mechanisms would be appropriate;
- Should new issues arise, for example if it became advisable to challenge the lawfulness or proportionality of a Notice, or if the SRA sought the provision of legally professionally privileged material not previously disclosed in the PCDE/pursuant to other third party requests, this will be raised with the Board so that they could consider any revised approach.

5. **Overtured Convictions**

The approval of funding support by Government to enable Interim payments to be made to those individuals prosecuted by POL whose convictions had been overturned was discussed. The final approval rested with HM Treasury but we hoped there would be an announcement in Parliament next week in advance of the summer recess.



Tom Cooper added that BEIS was keen to make the process for approving interim payments as simple as possible and for payments to be made within 28 days of receipt of applications. Batches of approvals could be considered by the Board or the Board Committee each week and would then be recommended to BEIS for approval.

6. **Historical Shortfalls Scheme**

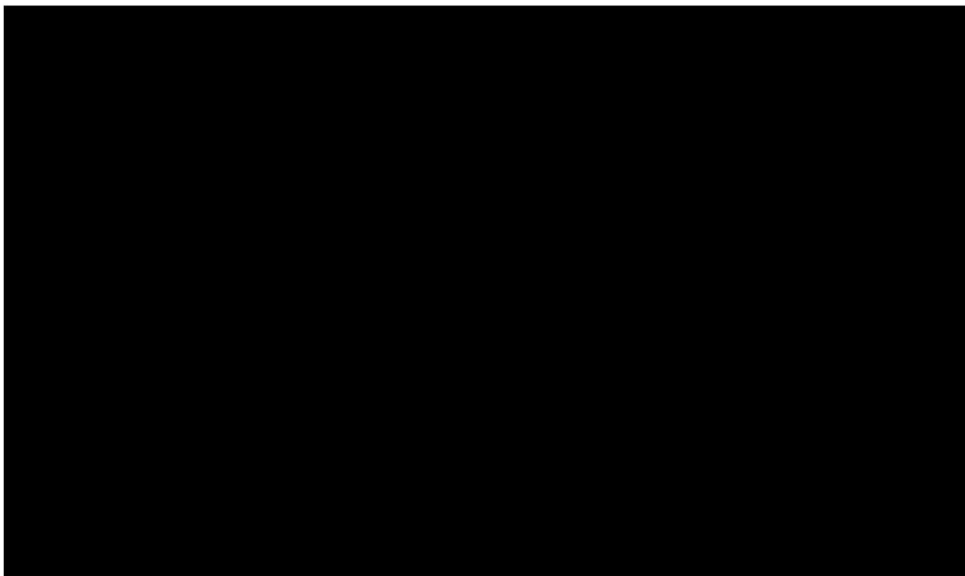
6.1 **Independent Advisory Panel's interim views on first shortfall only test cases**



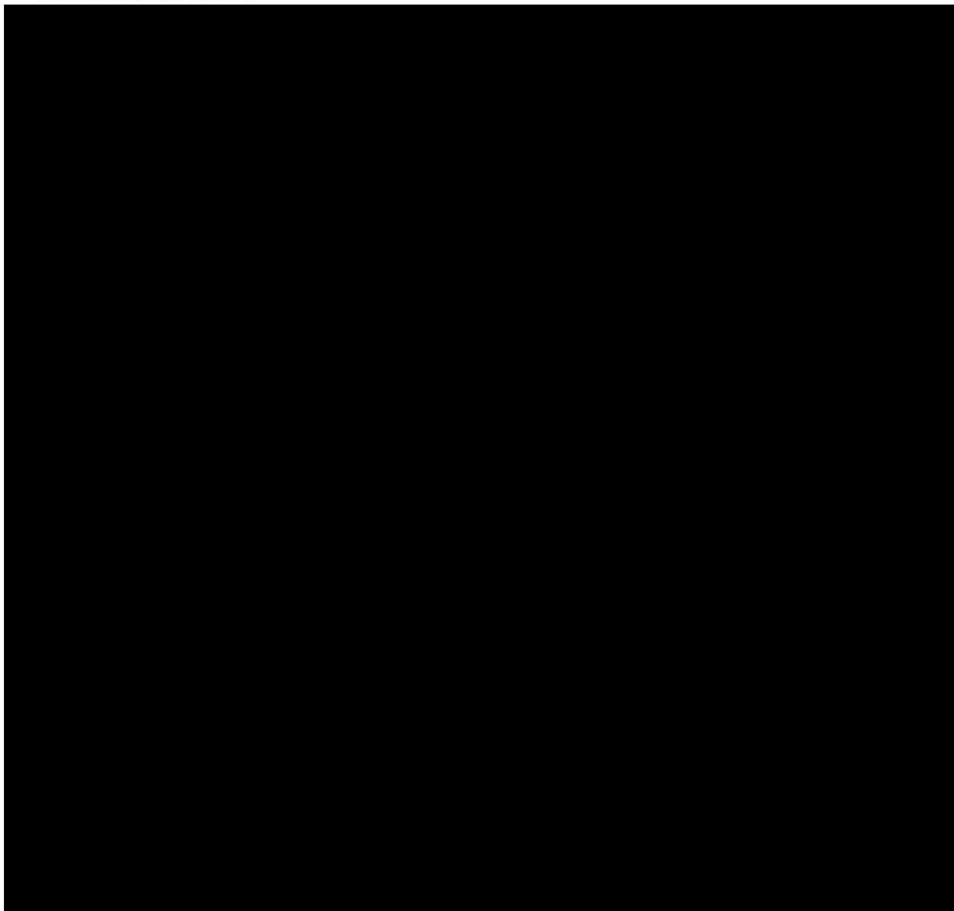


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**6.2 Remuneration Losses**



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**6.3 Tranche 6 of Test Cases for Panel (Consequential Losses)**

The Board **APPROVED** the submission of the test cases to the Independent Advisory Panel to the Historical Shortfalls Scheme.

**7. Any Other Business**

The Board **ADOPTED** the formal record provided by Peters & Peters of the Board's decisions in the 25 further appeal cases considered.

There being no further business the Chairman declared the meeting closed at 15:50 hrs.

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Chairman

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Date



## POST OFFICE LIMITED BOARD MEETING

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2.2

**MINUTES OF A CCRC MEETING OF THE BOARD OF DIRECTORS OF POST OFFICE LIMITED HELD ON THURSDAY 22 JULY 2021 AT 20 FINSBURY STREET, LONDON EC2Y 9AQ BY CONFERENCE CALL AT 15.00 HRS<sup>1</sup>**

**Present:**

Tim Parker	Chairman <b>(TP)</b>
Ken McCall	Senior Independent Director <b>(KM)</b>
Tom Cooper	Non-Executive Director <b>(TC)</b>
Zarin Patel	Non-Executive Director <b>(ZP)</b>
Elliot Jacobs	Non-Executive Director <b>(EJ)</b>
Alisdair Cameron	Group Chief Finance Officer <b>(AC)</b>
Nick Read	Group Chief Executive <b>(NR)</b>

**In attendance:**

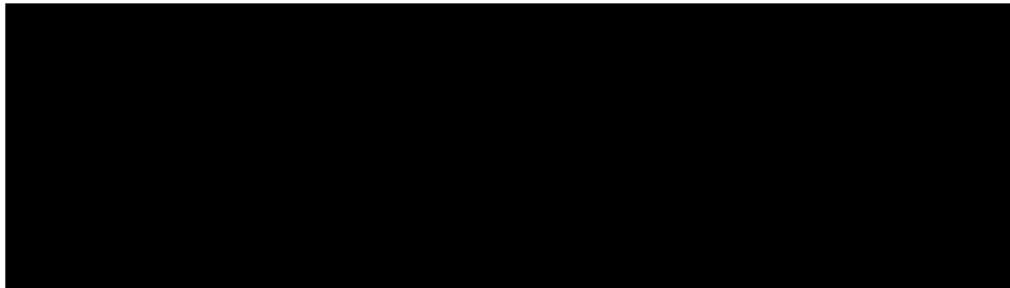
Veronica Branton	Company Secretary <b>(VB)</b>
Ben Foat	Group General Counsel <b>(BF)</b>
Richard Taylor	Group Corporate Affairs, Brand and Communications Director <b>(RT)</b>
Declan Salter	Historical Matters Director <b>(DS)</b>
Lucie Lambert	General Counsel – UKGI <b>(LL)</b>
Alan Watts	Herbert Smith Freehills <b>(AW)</b>
Hannah Laming	Peters & Peters Solicitors LLP <b>(HL)</b>
Dan Zinner	Group Chief Operating Officer <b>(DZ)</b> (Item 2.)
Jacki Adams	HM Operations Director <b>(JA)</b> (Item 2.)

**Apologies:** Carla Stent (NED), Lisa Harrington (NED), Saf Ismail (NED).

**Agenda Item****Action****1. Welcome and Conflicts of Interest<sup>2</sup>**

A quorum being present, the Chairman opened the meeting.

Elliot Jacobs declared a potential conflict of interest in relation to the Postmaster detriment paper. The Board members present<sup>3</sup> **AUTHORISED** the conflict of interest as permitted under Article 54. of the Articles of Association, such that Elliot Jacobs (and Saf Ismail where present for these discussions) could receive the papers and associated materials and participate in the discussions but would recuse themselves from any decisions sought on Postmaster detriment. There being no other conflicts of interest in relation to 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, the Chairman declared the meeting open.

**2. Postmaster Detriment**

<sup>1</sup> 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.

<sup>2</sup> The Minutes from the CCRC Meeting held on 15<sup>th</sup> July 2021 and action log will be carried over to the next scheduled CCRC Meeting.

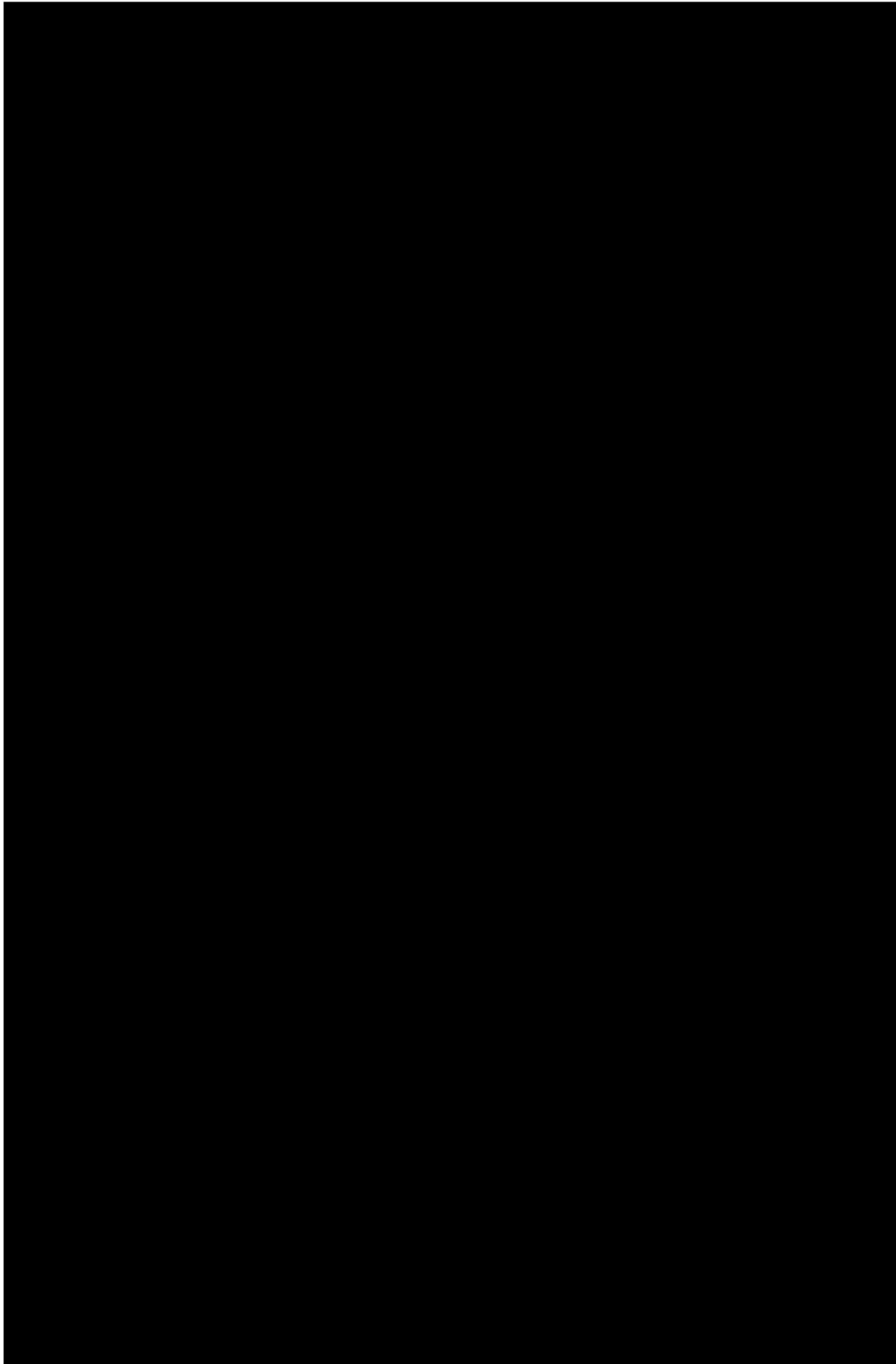
<sup>3</sup> Excluding Elliot Jacobs.



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**2.2**





POST OFFICE LIMITED BOARD MEETING

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2.2



Action: BF/  
DZ/ JA

**Horizon process detriments**

Dan Zinner set out the proposals for remediating potential detriment that had occurred under HNG-A. The recommendation was that this should be reactive and run in a similar way to the HSS.

A number of points were raised and addressed:

- Tim Parker asked whether we would require evidence to support a claim. Jacki Adams explained that the claim would be met if there was evidence of detriment. Postmasters should have this information in their accounts, noting whether they had paid the balance by cash or settled centrally and where they thought there had been an issue. This was potentially small amounts of money. Elliot Jacobs noted that Postmasters might know they had made a payment to make good but might not have evidence that it had been a matter that the Postmaster would have disputed had they been able to, by way of illustration you would not keep a parking ticket once it had been paid
- TP asked what the estimated maximum liability was. JA reported that the figures in the paper represented the full financial exposure based on the information we had but we did not have all the data available to us. TP noted that it was hard to gauge whether this was a reasonable estimate of what this might cost us
- TP reported that Carla Stent supported the reactive approach proposed and he shared this view
- TC commented on the multiples not being included and asked why they would be treated differently. JA explained that we were still establishing the potential detriment for the multiples for whom there were a number of different contracts and there were different ways of managing balances. We did not yet know what the quantum (if any)



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was. Dan Zinner noted that the treatment of detriment would be different with the multiples because the sums could be a matter for negotiation. Ken McCall noted that we had been looking at our partners over the last few years and it had not been apparent that they had ever had to settle centrally. AC confirmed that it did not work in the same way for the multiples and they were focussed on protecting their commercial interests. KM asked therefore why there should be any potential liability from the multiples

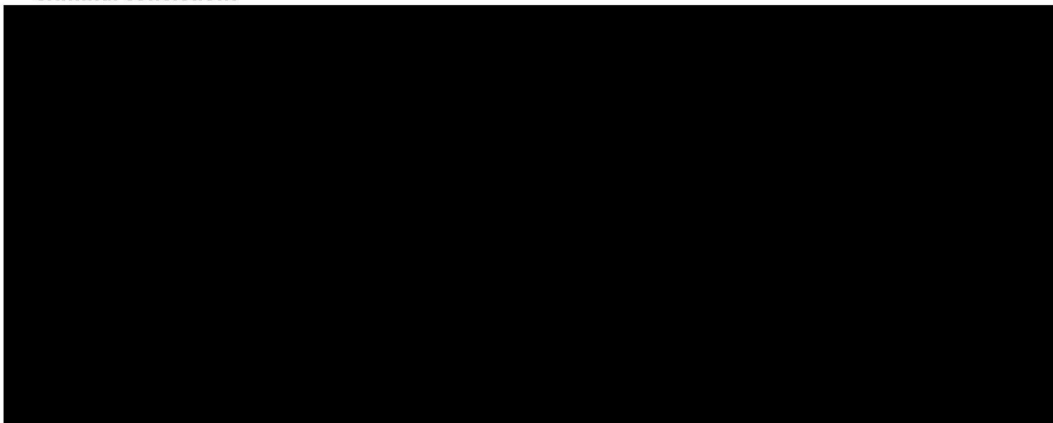
- EJ raised the issue of fake sterling; there would be detriment to account for in relation to this but that was not covered in the potential risks set out in the paper. JA explained that POL had accepted liabilities for fake sterling pre-2006 but there had been a different process after this and cases had been considered on an individual basis while earlier this year POL had reverted back to accepting all liabilities. We would need to get advice on this issue. EJ noted that he was not convinced that the process described reflected operational practice. TC noted that this underpinned the need to capture all potential detriment. DZ agreed and noted that we needed to have a BAU process to deal with all elements of potential detriment.

TP noted that the Board was nervous about the potential for further issues with significant liabilities emerging. There should be no targeted communications to Postmasters until we had a clearer picture of the overall situation. If we were going to invite people to apply through a BAU process that did not need to be communicated separately. The Board could take decisions on those areas of detriment for which small liabilities had been identified but it hard to agree a policy position overall without knowing the overarching liability, which would also need to be discussed with the Shareholder.

The Board<sup>4</sup> **APPROVED** Initiating a new BAU process to redress current and former postmasters impacted by ATM, Forex, and ME Limits, and Pouch detriment during the period of HNG-A. Claims would be met where we were able to identify the detriment caused from the data held.

Further work was required on Settle Centrally or Repaid Balances detriment since transitioning to HNG-A before any recommendation could be approved.

**3. Criminal convictions**



An email would be sent setting out the timetable over the summer.

<sup>4</sup> Excluding Elliot Jacobs who has recused himself from the decision because of the potential conflict of interest.



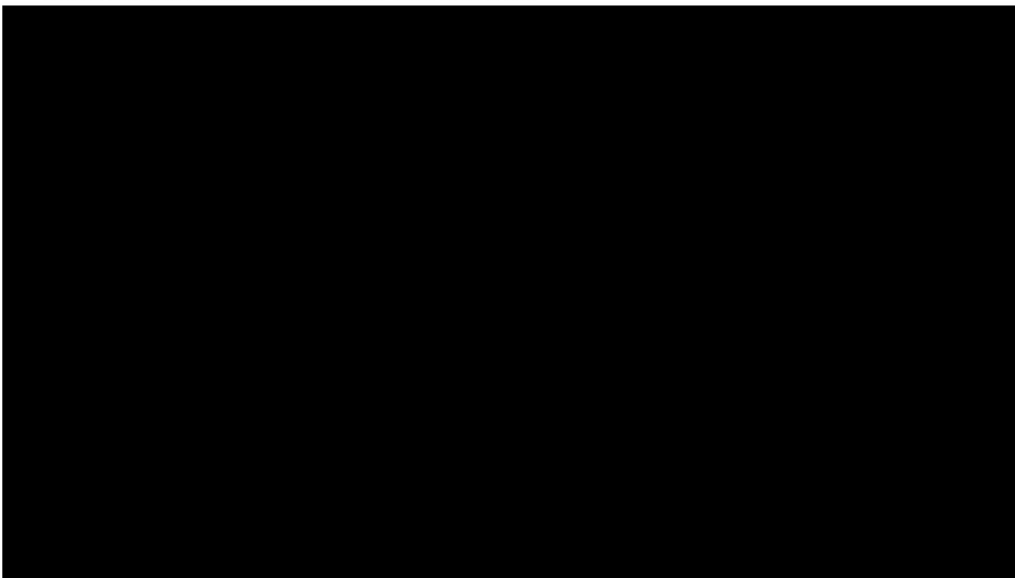
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**4. Overturned Convictions (verbal update)**



**5. Historical Shortfalls Scheme: Test case materials**



**6. Any Other Business**

**Historical Shortfalls Scheme Late Applications**

The Board was asked to consider exceptions for HSS applications received after the closure of the Scheme. Tom Cooper reminded the Board that BEIS's view on this matter was that these could be valid claims which should be addressed but not by re-opening the Scheme. In these instances, there should be a settlement from the company rather than through the HSS. Zarin Patel asked whether these applications would be reviewed by the IAP or not. TC thought that once the principles for the treatment of different types of claims had been established it should be possible to deal with these cases along similar lines to the HSS without them being part of the HSS process.

The Board **APPROVED** reviewing claims submitted to the HSS after the closure date for the Scheme as claims to be considered for settlement by the company.

The Board **RATIFIED** the decision sought and obtained by correspondence on 21<sup>st</sup> July 2021 to approve the funding commitment letter from BEIS to enable interim payments to be



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made to individuals prosecuted by POL whose cases have been overturned by the Court of Appeal Criminal Division.

There being no further business the Chairman declared the meeting closed at 16:00 hrs.

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Chairman

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Date

Post Office Limited Board CCRC Actions as at 26.07.2021

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

CCRC Meeting - 05 August 2021-05/08/21

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Post Office Limited Board CCRC Actions as at 26.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
<b>Board (CCRC) Meeting 13 May 2021</b>					
3.1 Historical Shortfall Scheme: Decision-making a)	[REDACTED]	Declan Salter/ Alan Watts	July	With the Panel to provide feedback as to what size/circumstance they might like to make a D&I offer.	Open
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	July	A paper is being drafted for the Board to review the approach to investigation procedures.	Open
3.1 Historical Shortfall Scheme: Decision-making d)	[REDACTED]	Alan Watts			Open
<b>Board (CCRC) Meeting 25 May 2021</b>					
3.2 William Michael Penney	[REDACTED]	Alan Watts			Open
3.6 Asif Latif a)	[REDACTED]	Alan Watts			Open
<b>Board (CCRC) Meeting 24 June 2021</b>					
7.1 Historical Shortfall Scheme Options Paper	We needed to be comfortable that the approach we followed was not disadvantaging certain categories of claimants. We needed to see the	Declan Salter			Open

Post Office Limited Board CCRC Actions as at 26.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
a)	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.				
7.1 Historical Shortfall Scheme Options Paper	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
b)					
7.1 Historical Shortfall Scheme Options Paper	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
c)					
<b>Board (CCRC) Meeting 01 July 2021</b>					
3.1 Admission of Liability		Alan Watts			Open
<b>Board (CCRC) Meeting 08 July 2021</b>					
3. Historical Shortfalls Scheme: Test case materials		Alan Watts			Open
<b>Board (CCRC) Meeting 15 July 2021</b>					
4. Solicitors Regulation Authority (SRA)		Hannah Laming			

CCRC Meeting - 05 August 2021-05/08/21

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Post Office Limited Board CCRC Actions as at 26.07.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
Investigation	[REDACTED]				
Board (CCRC) Meeting 22 July 2021					
2. Postmaster Detriment	[REDACTED]	en Foat/ Dan Zinner/ cki Adams			

Post Office Limited Board CCRC Actions as at 05.08.2021

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

CCRC Meeting - 05 August 2021-05/08/21

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Post Office Limited Board CCRC Actions as at 05.08.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
f)	Tom Cooper.				
<b>Board (CCRC) Meeting 13 May 2021</b>					
3.1 Historical Shortfall Scheme: Decision-making a)		Declan Salter/ Alan Watts	July		To close
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	July	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
<b>Board (CCRC) Meeting 25 May 2021</b>					
3.2 William Michael Penney		Alan Watts			To close

Post Office Limited Board CCRC Actions as at 05.08.2021

REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
3.6 Asif Latif a)	[REDACTED]	Alan Watts			Open
<b>Board (CCRC) Meeting 24 June 2021</b>					
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
<b>Board (CCRC) Meeting 01 July 2021</b>					
3.1 Admission of Liability	[REDACTED]	Alan Watts			Open

Post Office Limited Board CCRC Actions as at 05.08.2021

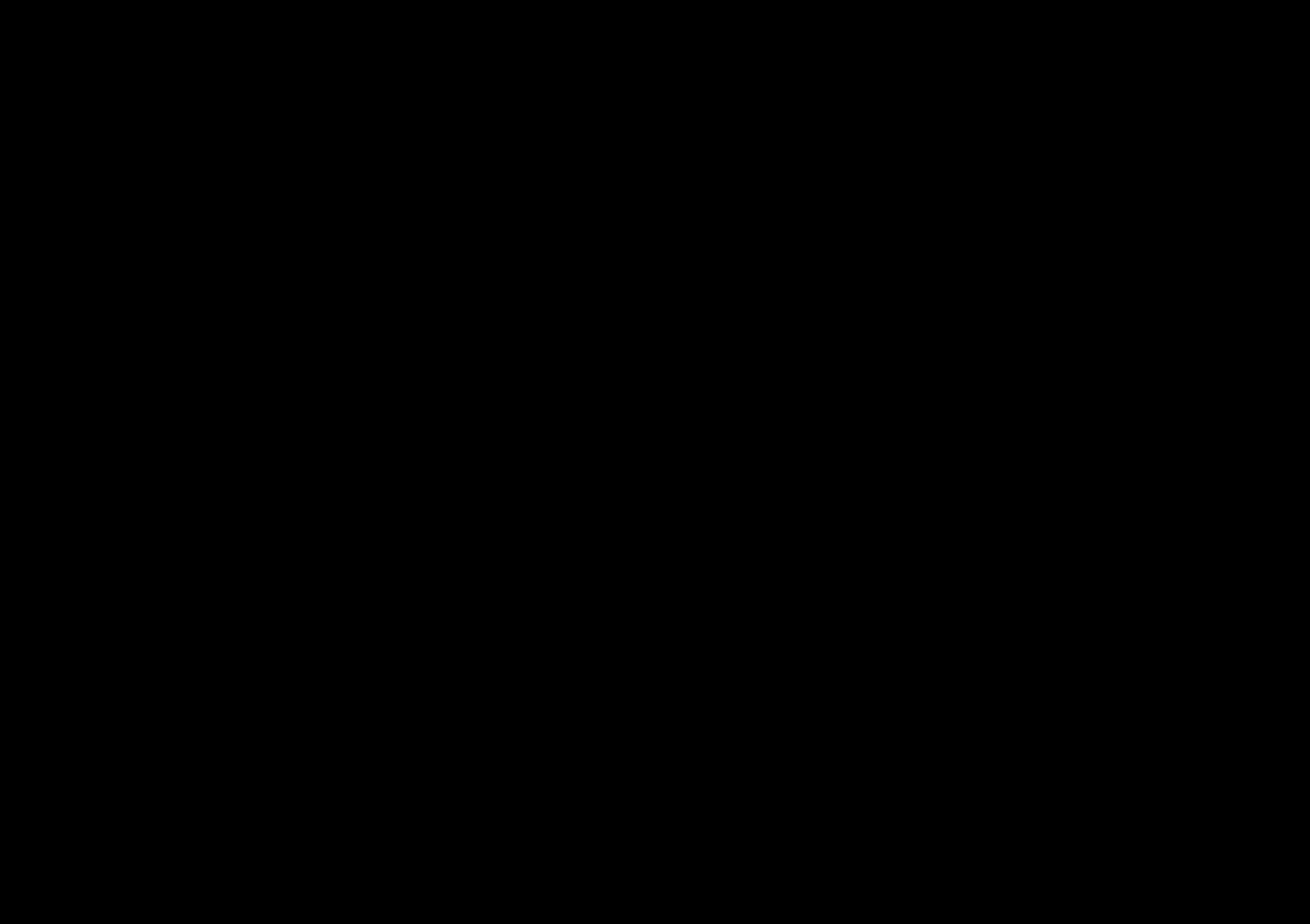
REFERENCE	ACTION	ACTION OWNER	DUE DATE	STATUS	OPEN/CLOSED
<b>Board (CCRC) Meeting 08 July 2021</b>					
3. Historical Shortfalls Scheme: Test case materials	[REDACTED]	Ian Watts			Open
<b>Board (CCRC) Meeting 15 July 2021</b>					
4. Solicitors Regulation Authority (SRA) Investigation	[REDACTED]	Hannah Laming			
<b>Board (CCRC) Meeting 22 July 2021</b>					
2. Postmaster Detriment	[REDACTED]	Ben Foat/ Dan Zinner/ Nick Adams			

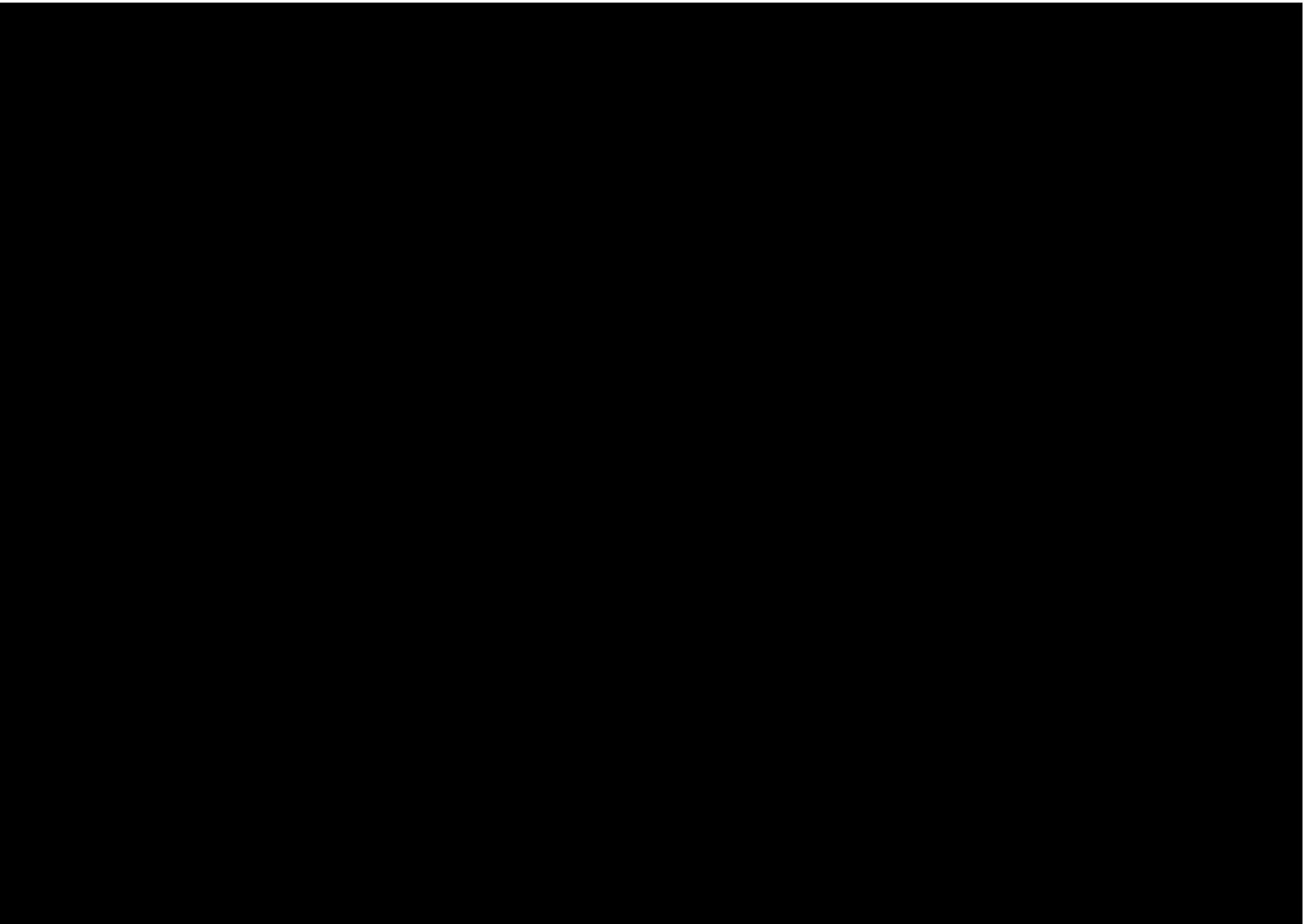


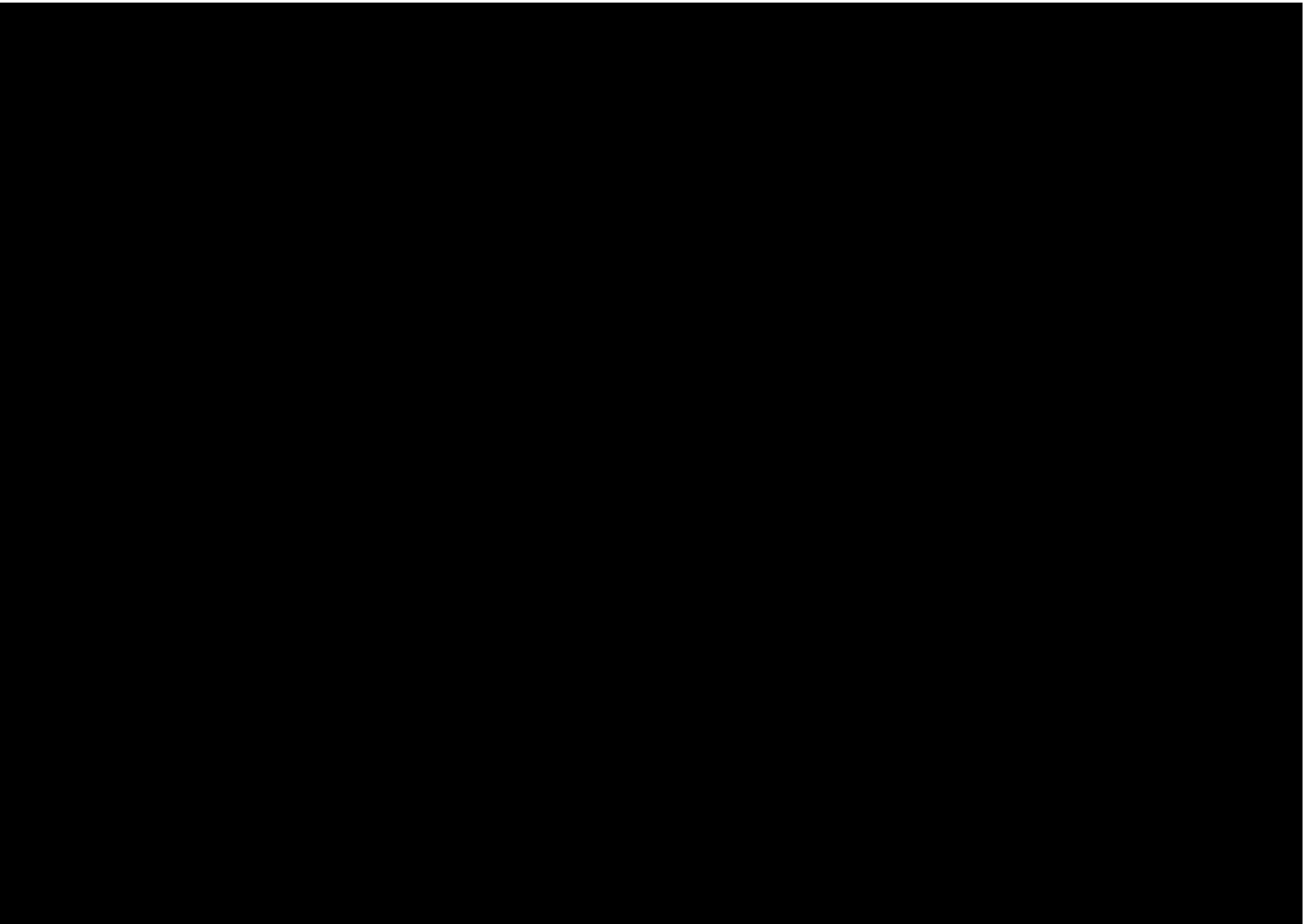
# CACD guidance on cases with limited information – advice and options

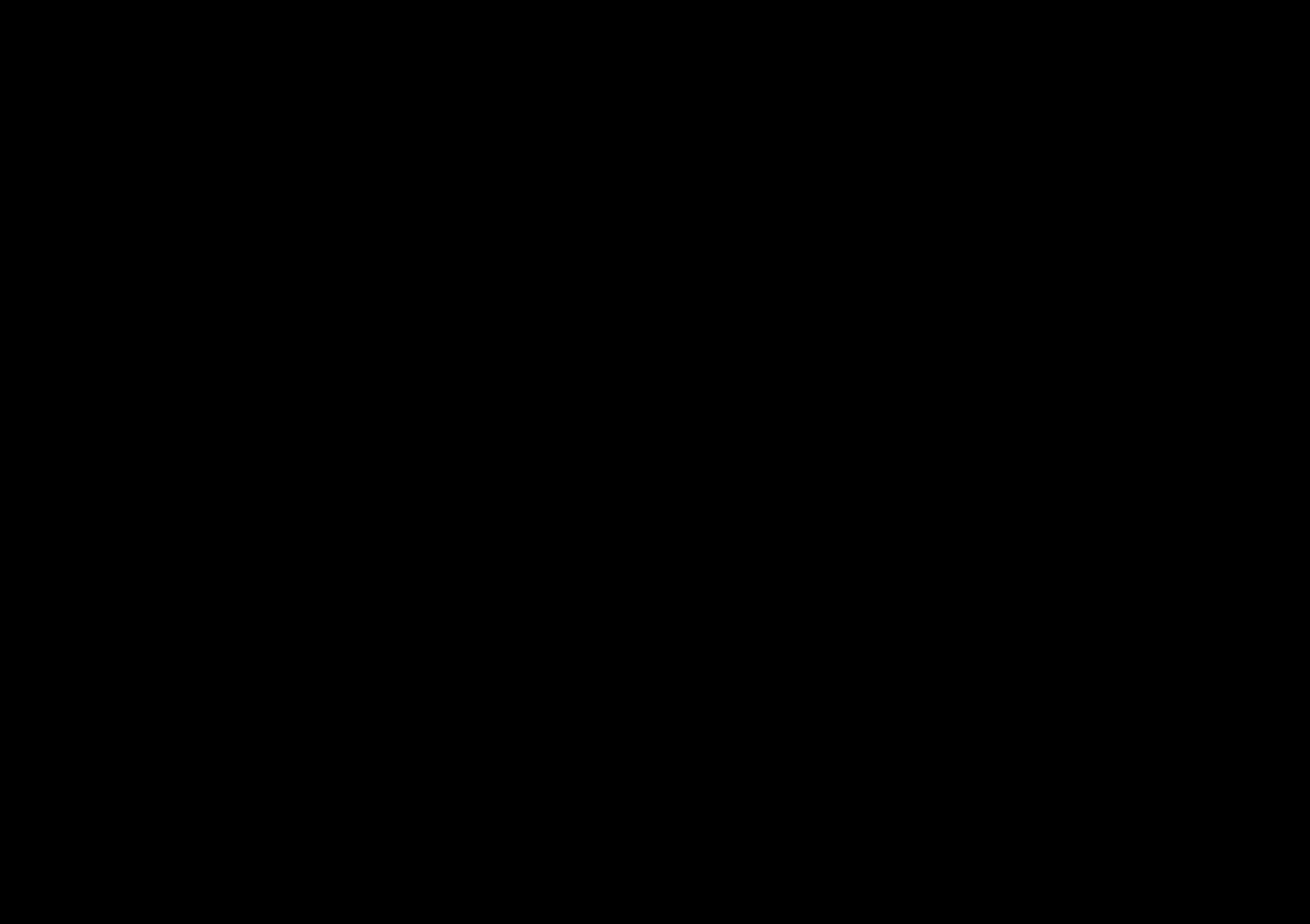
Board meeting 5 August 2021

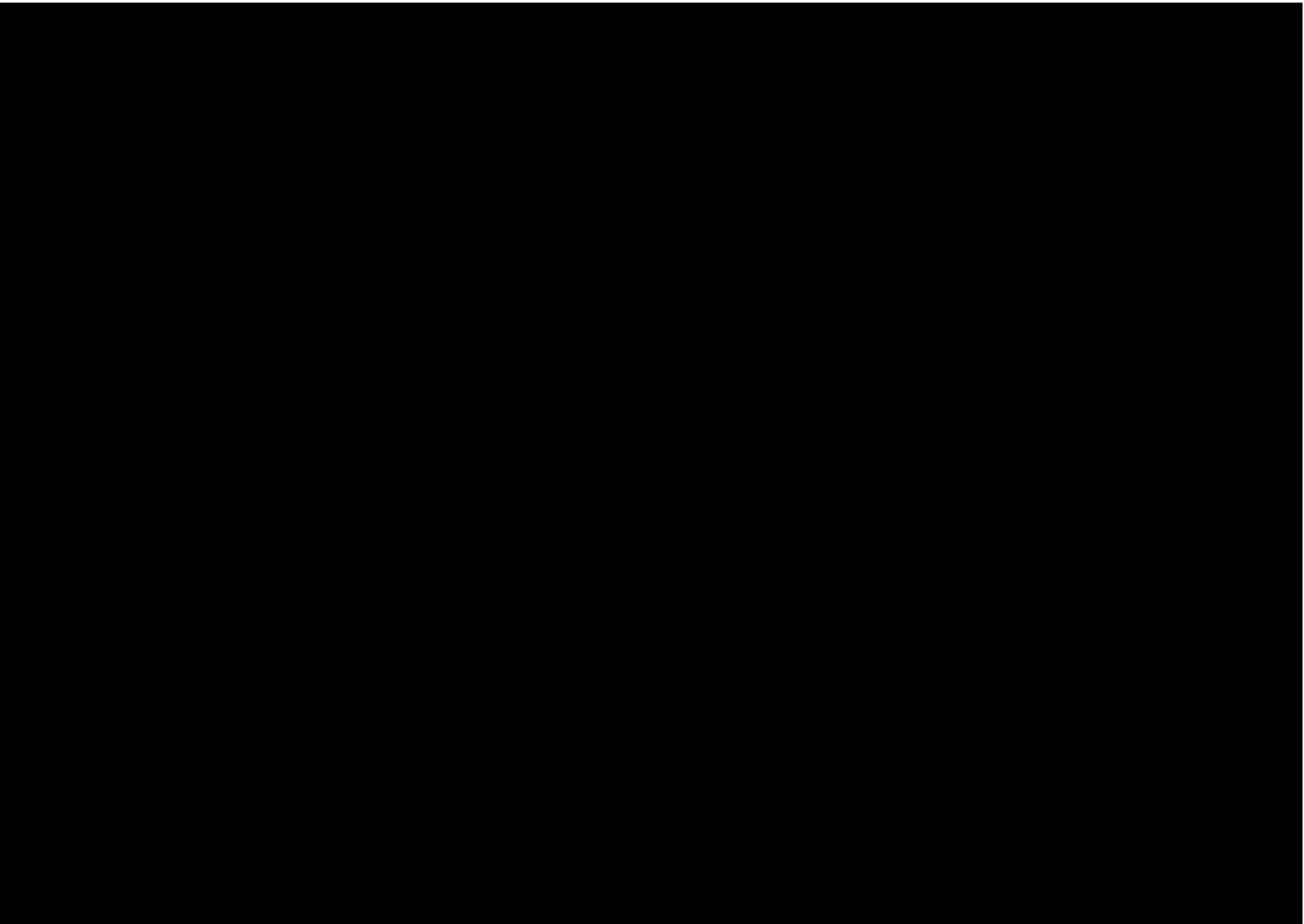


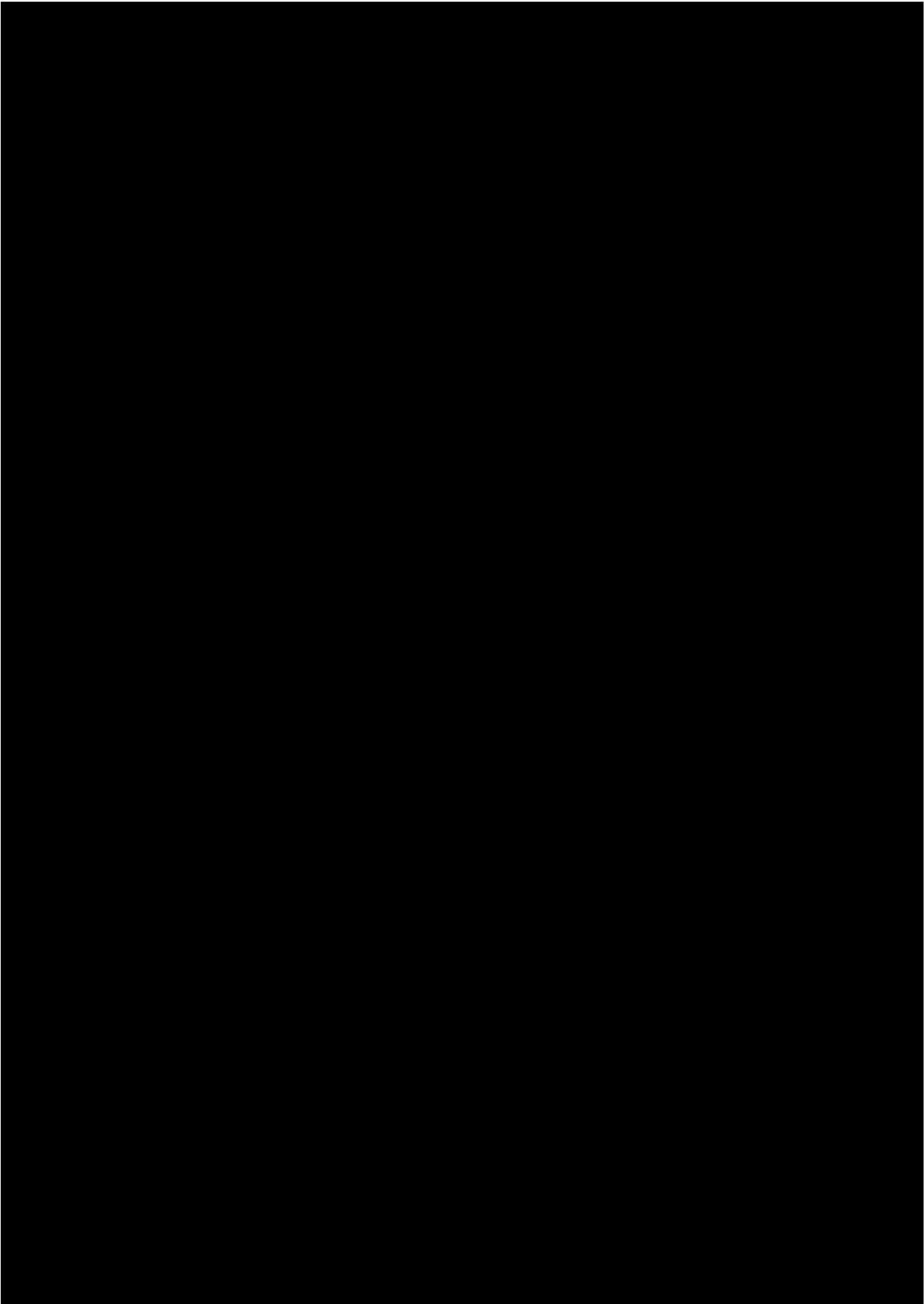


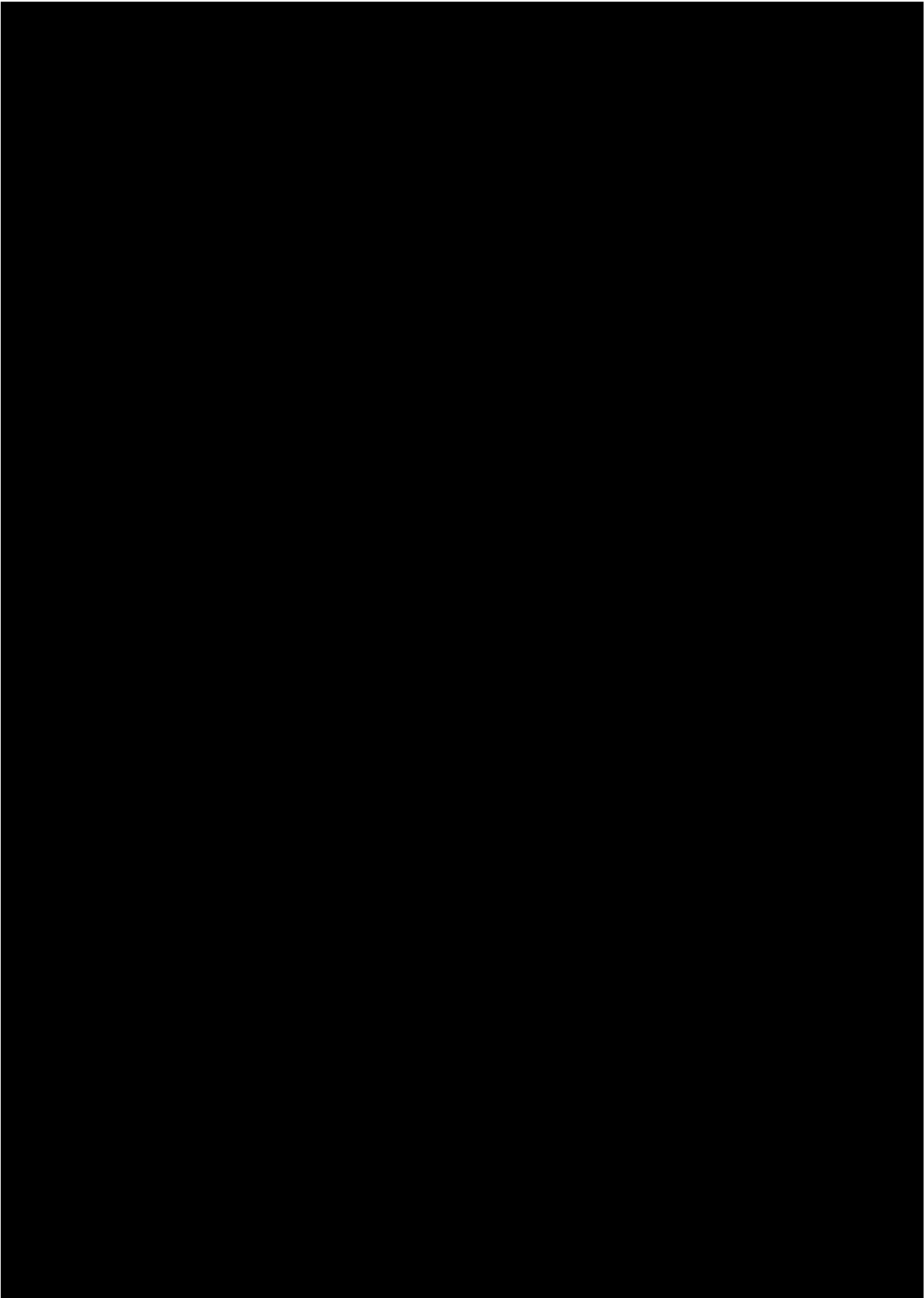


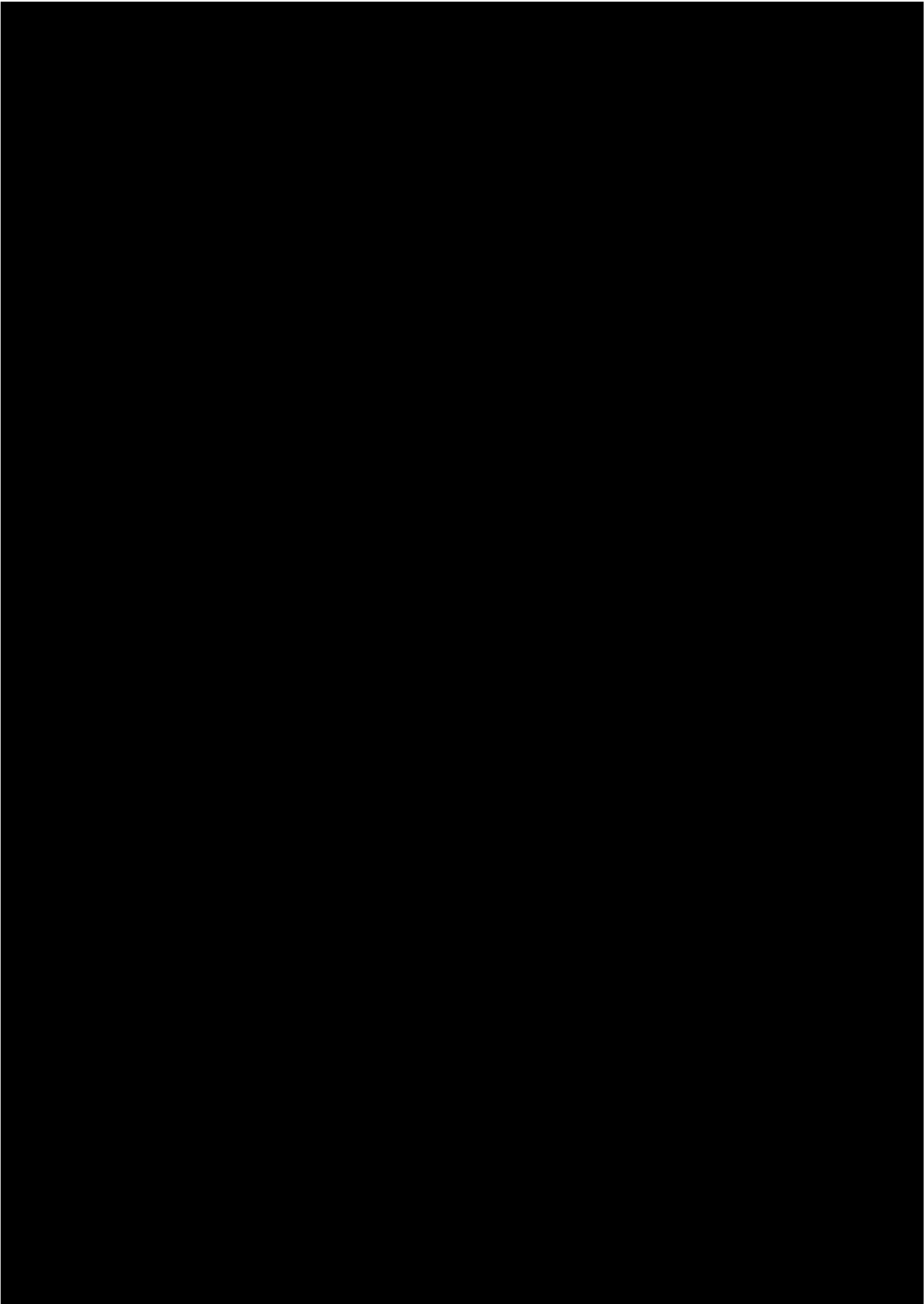


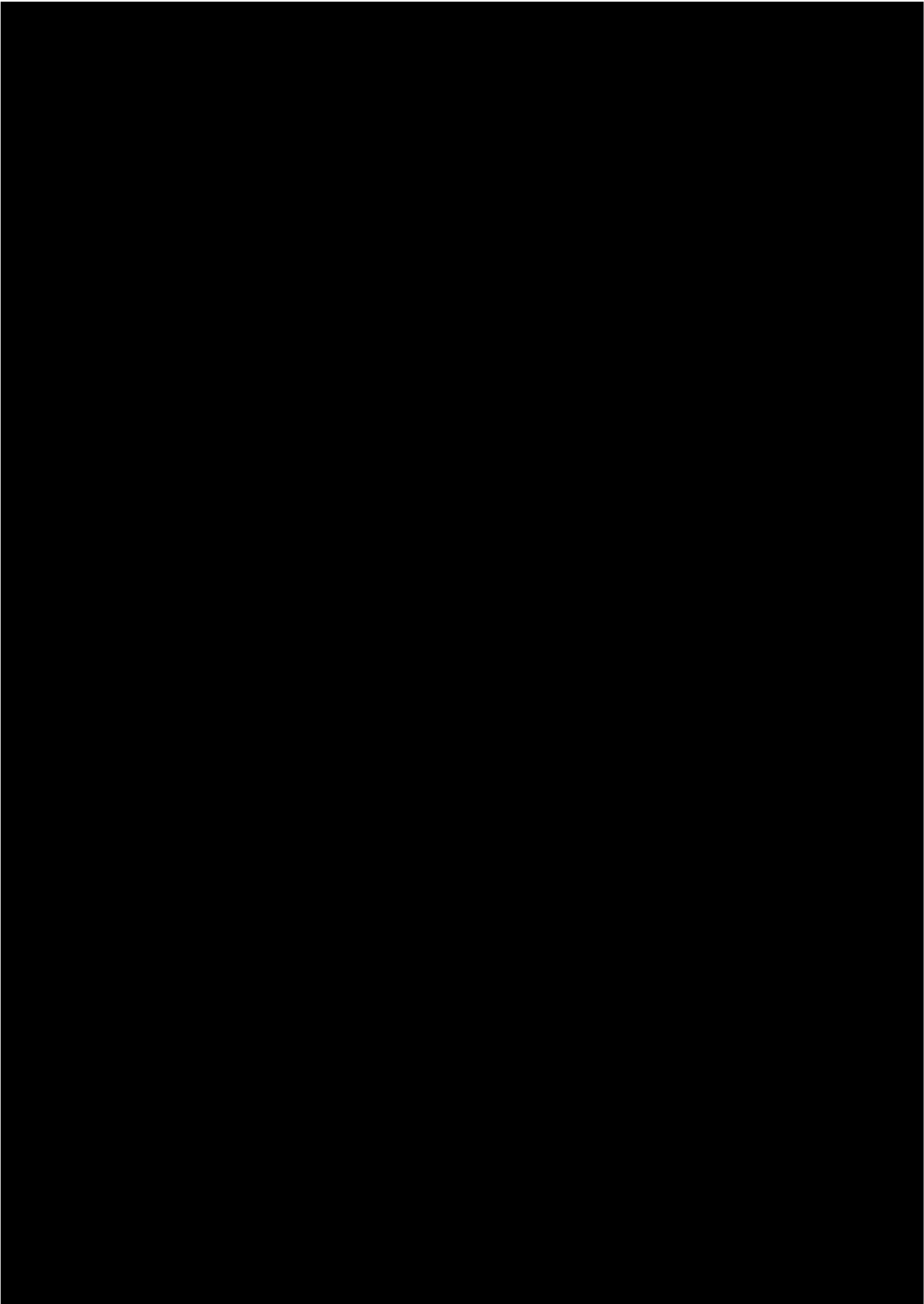


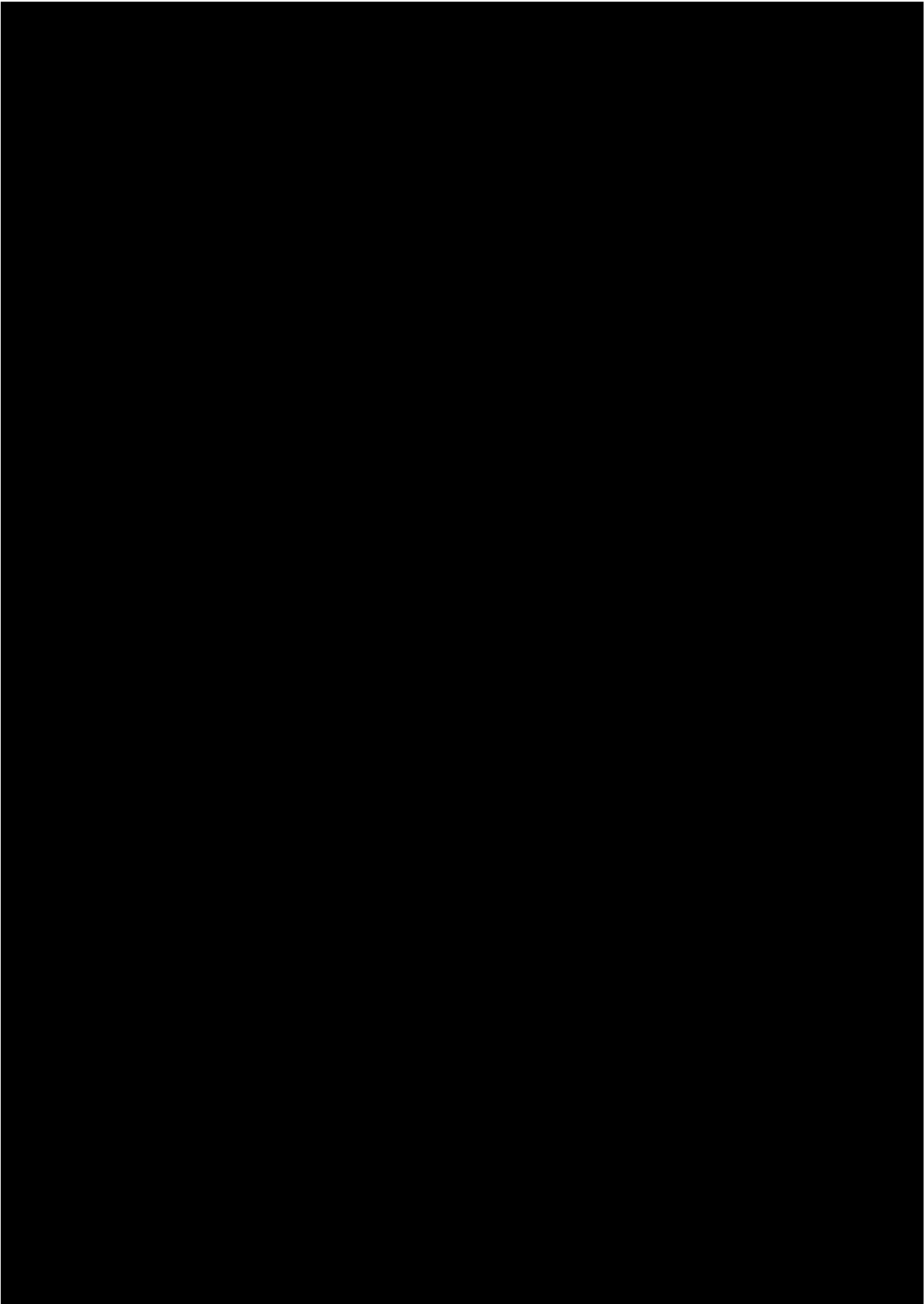


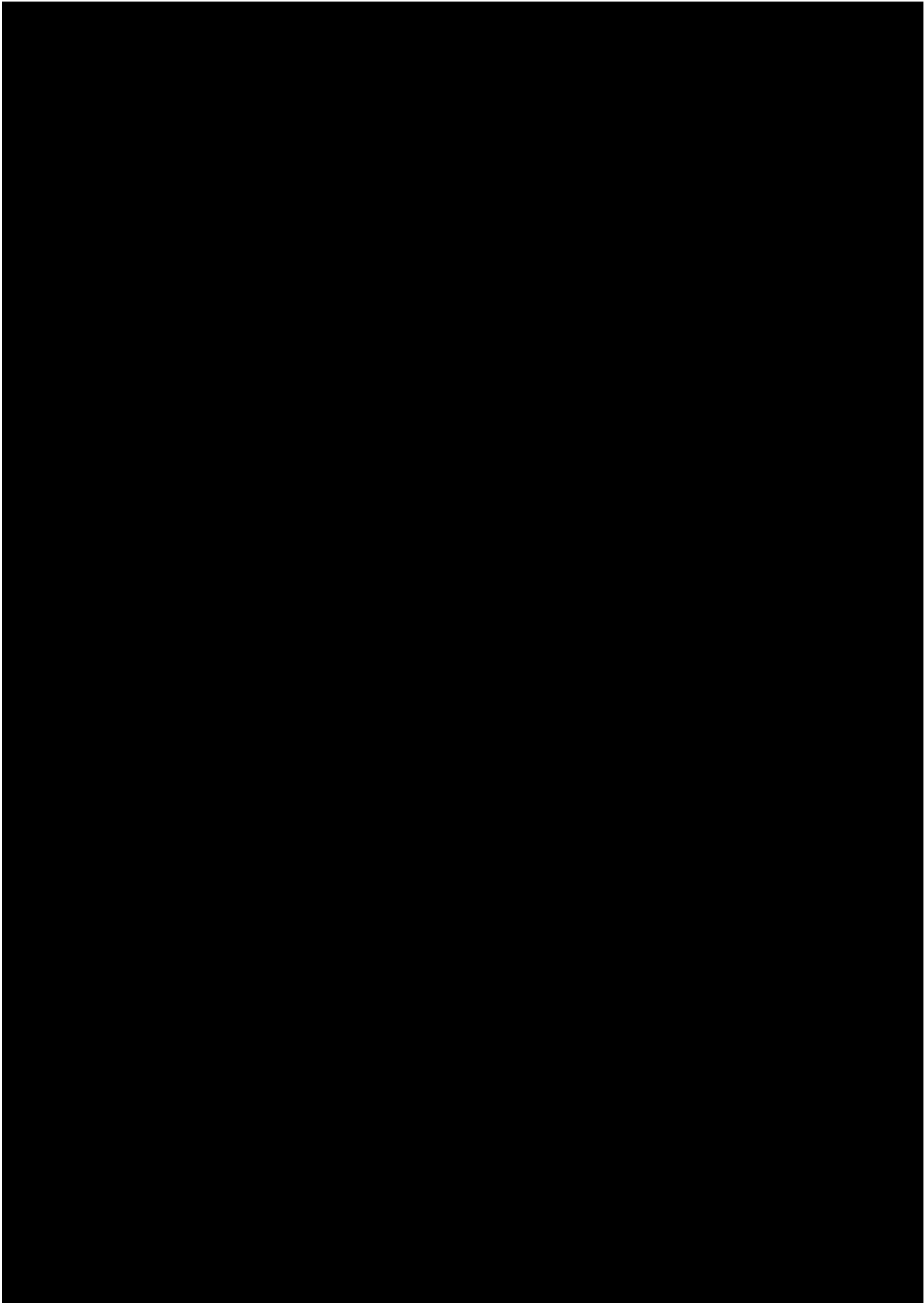


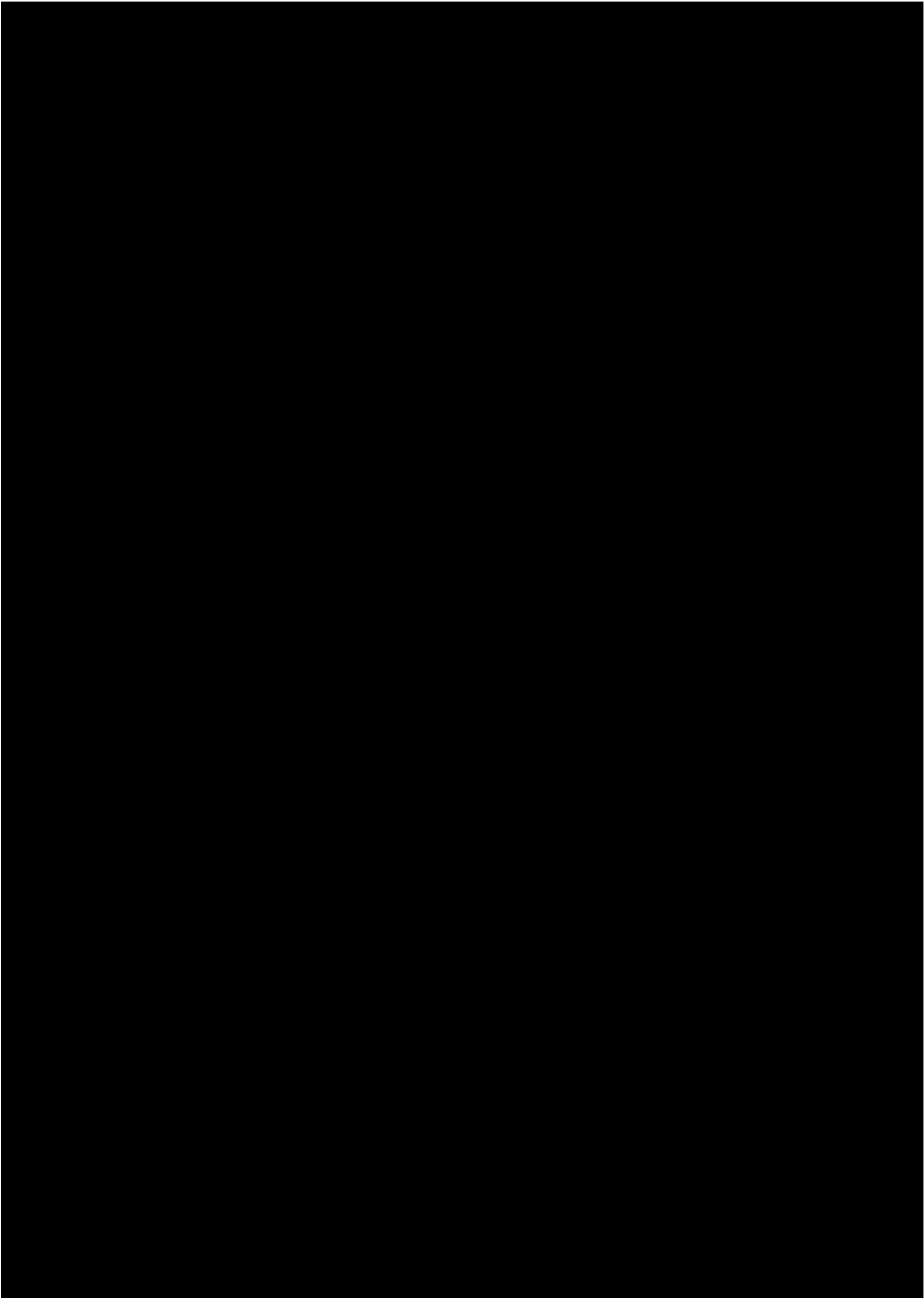


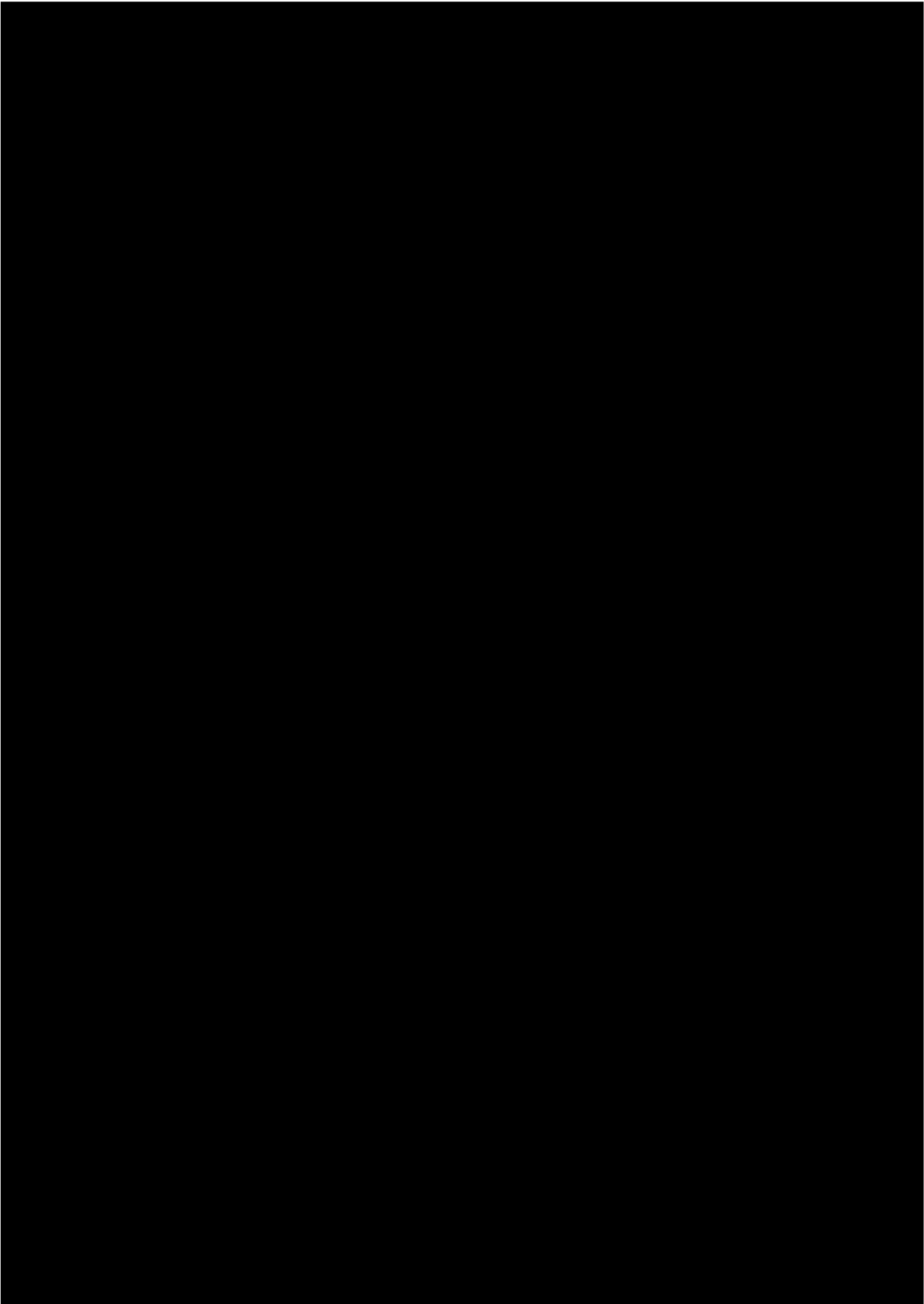


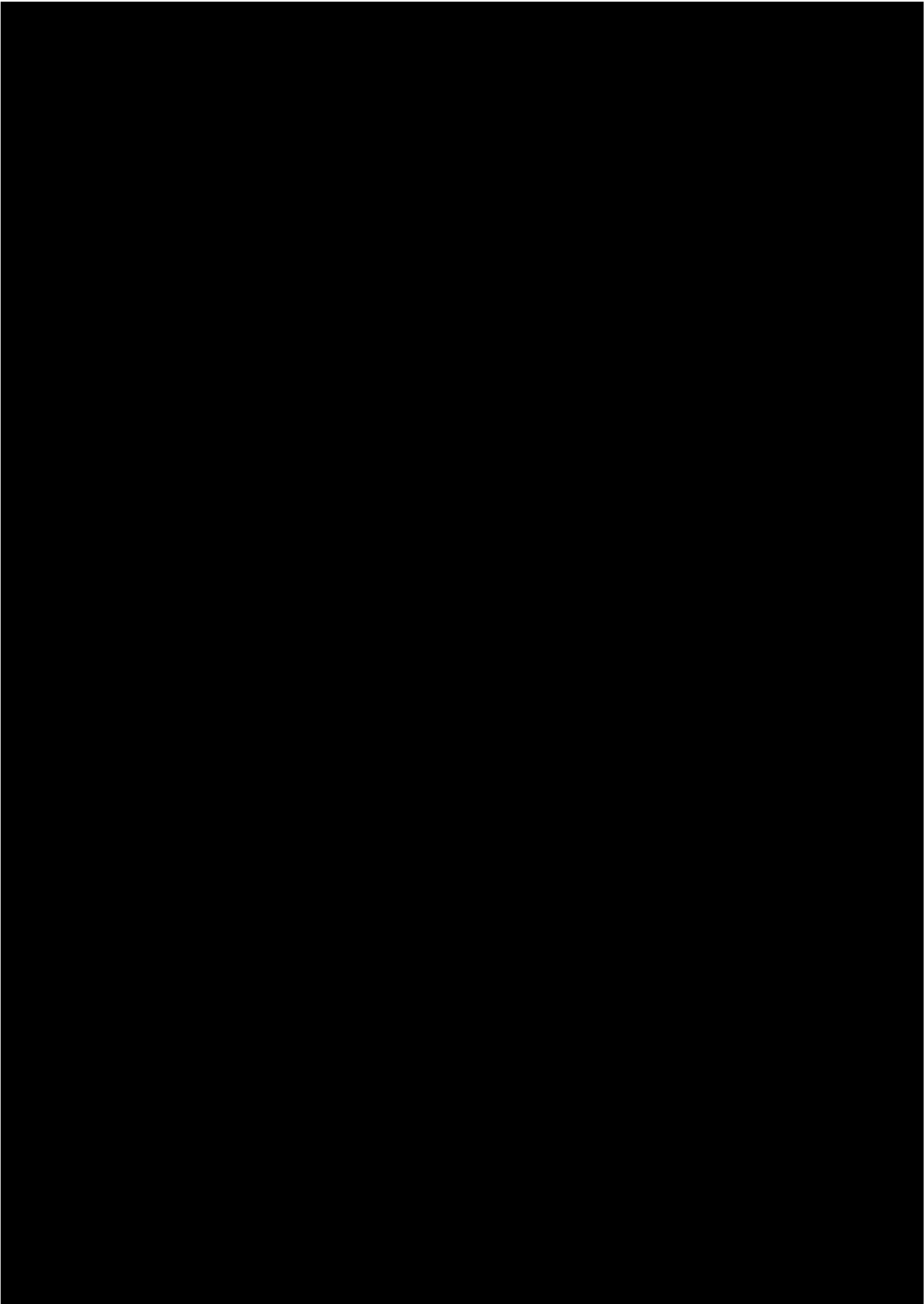


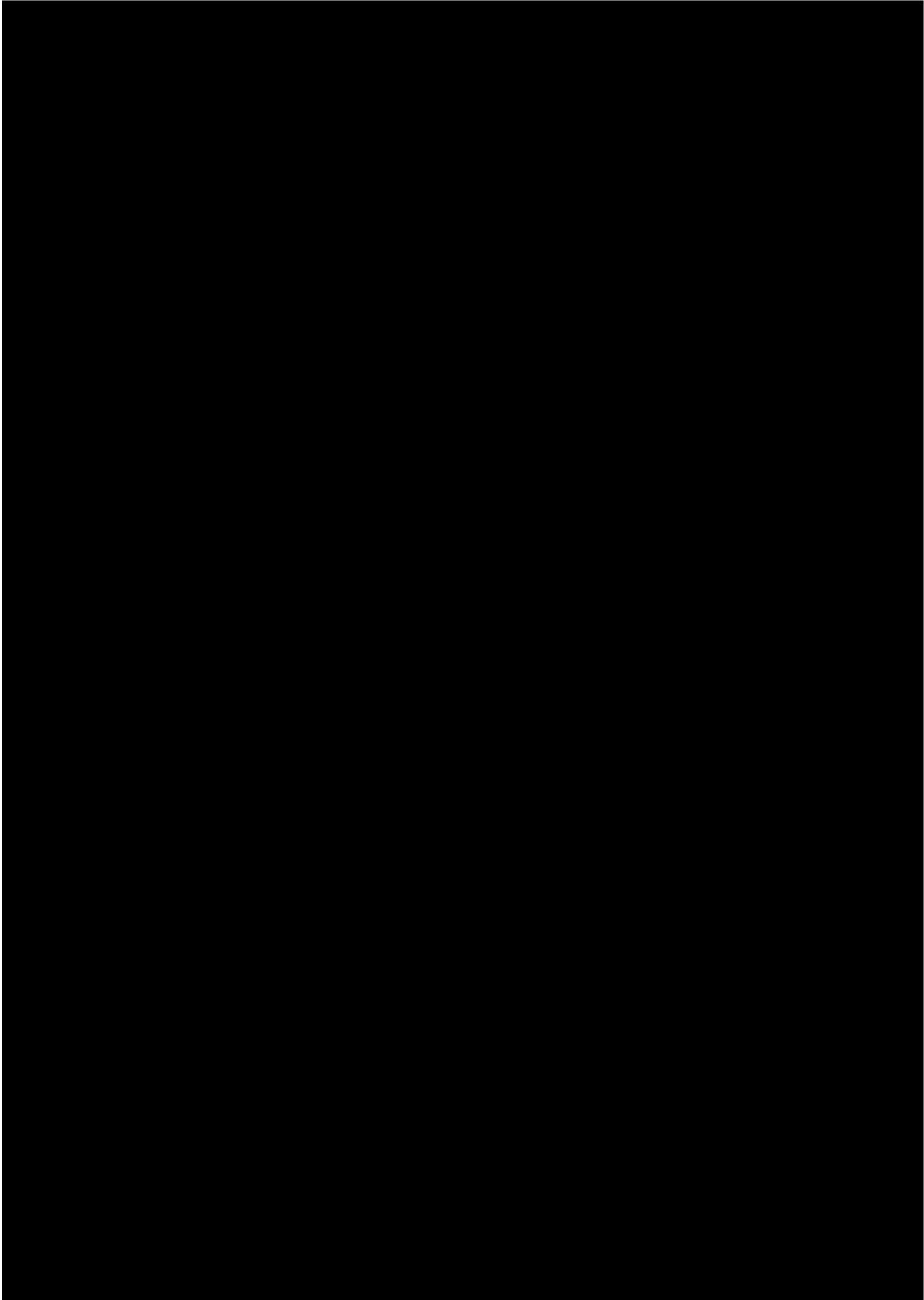


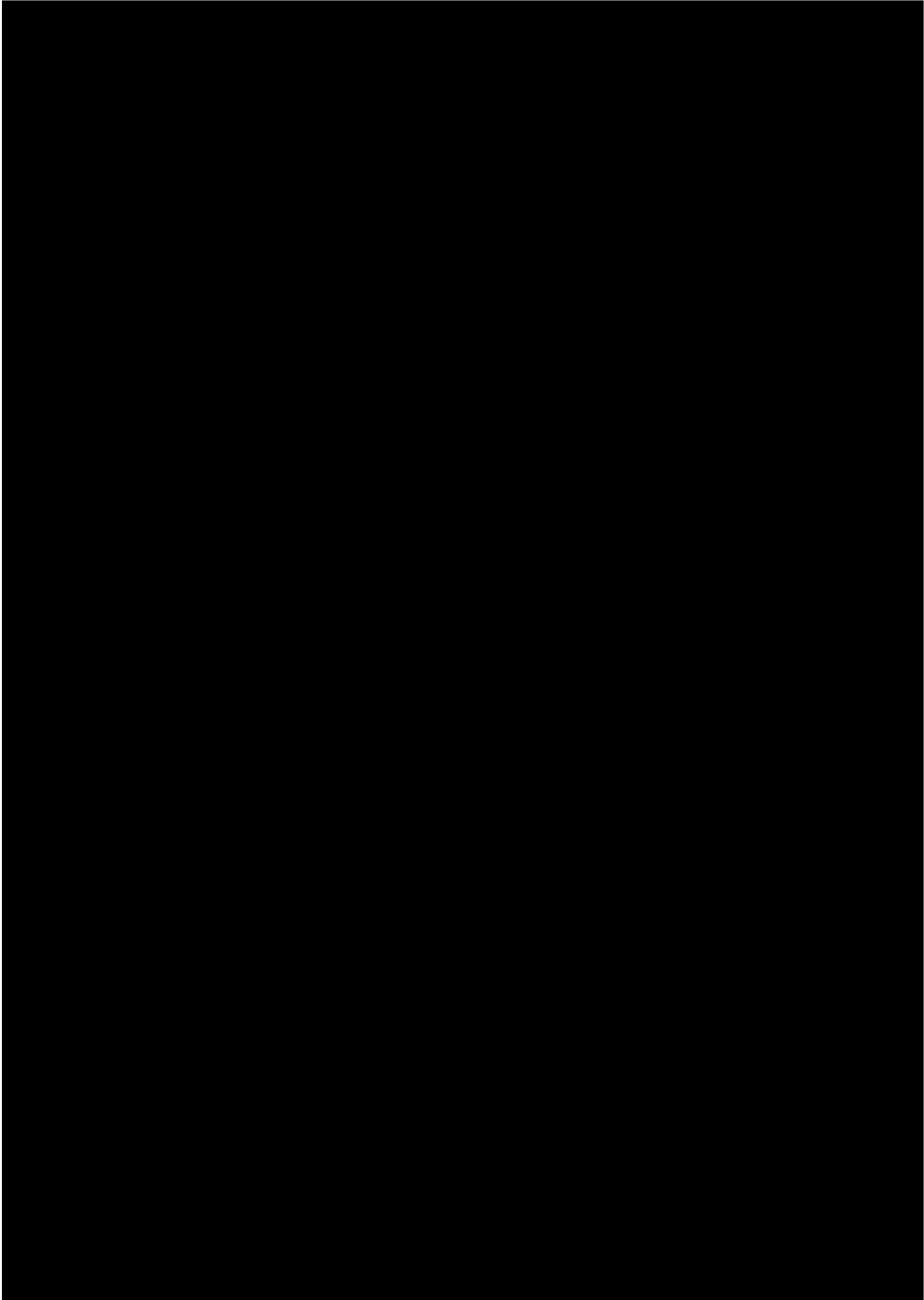


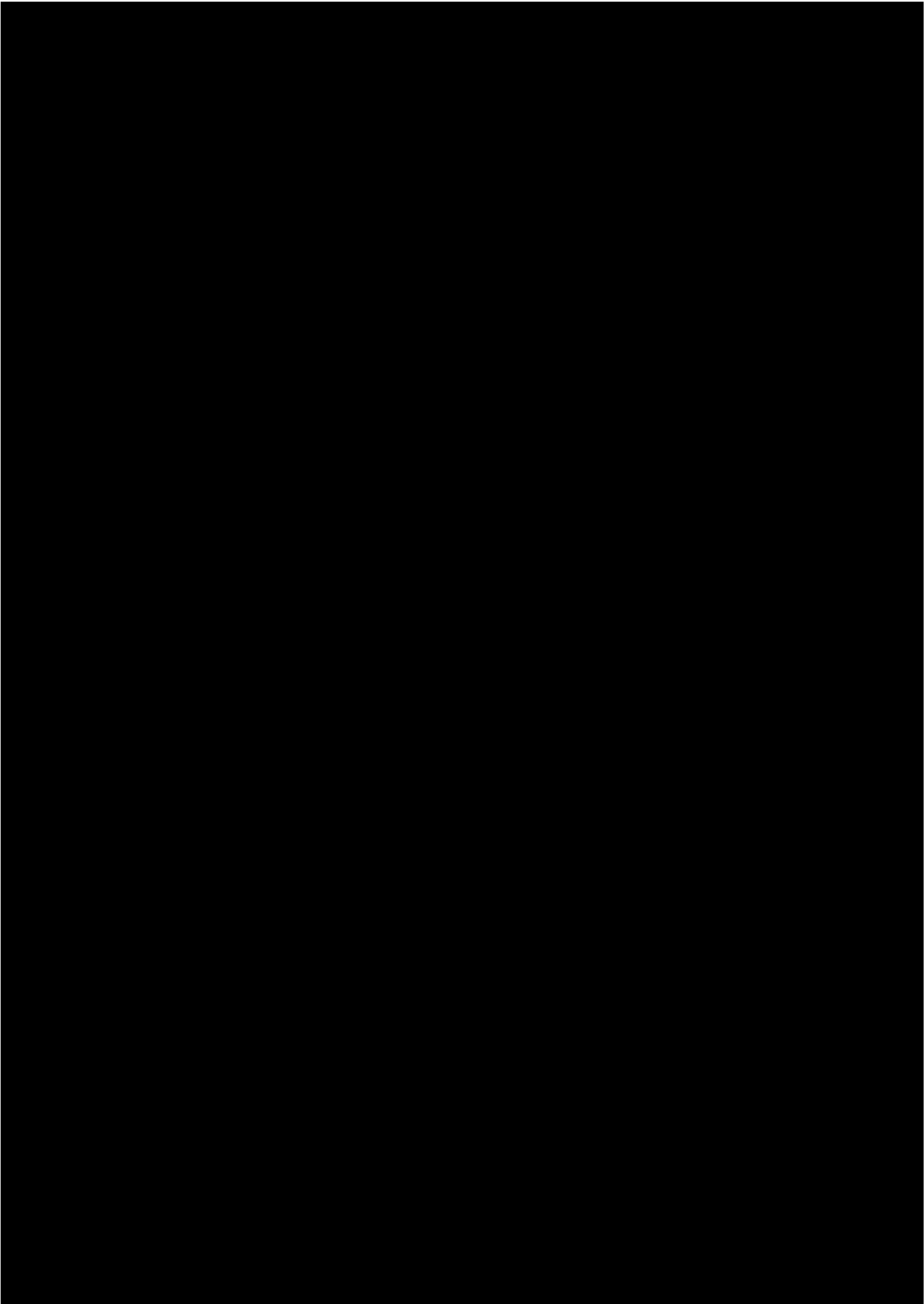


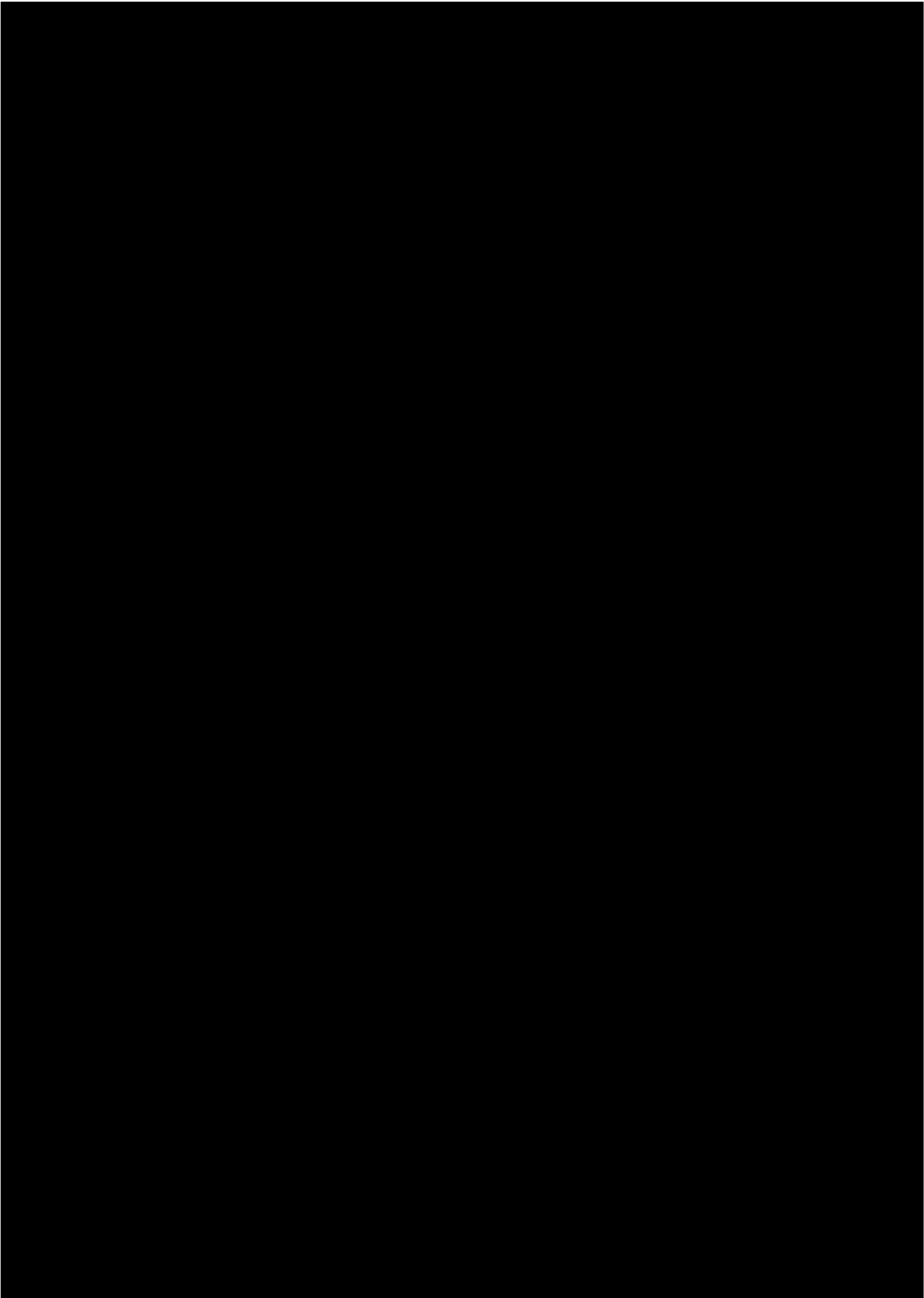


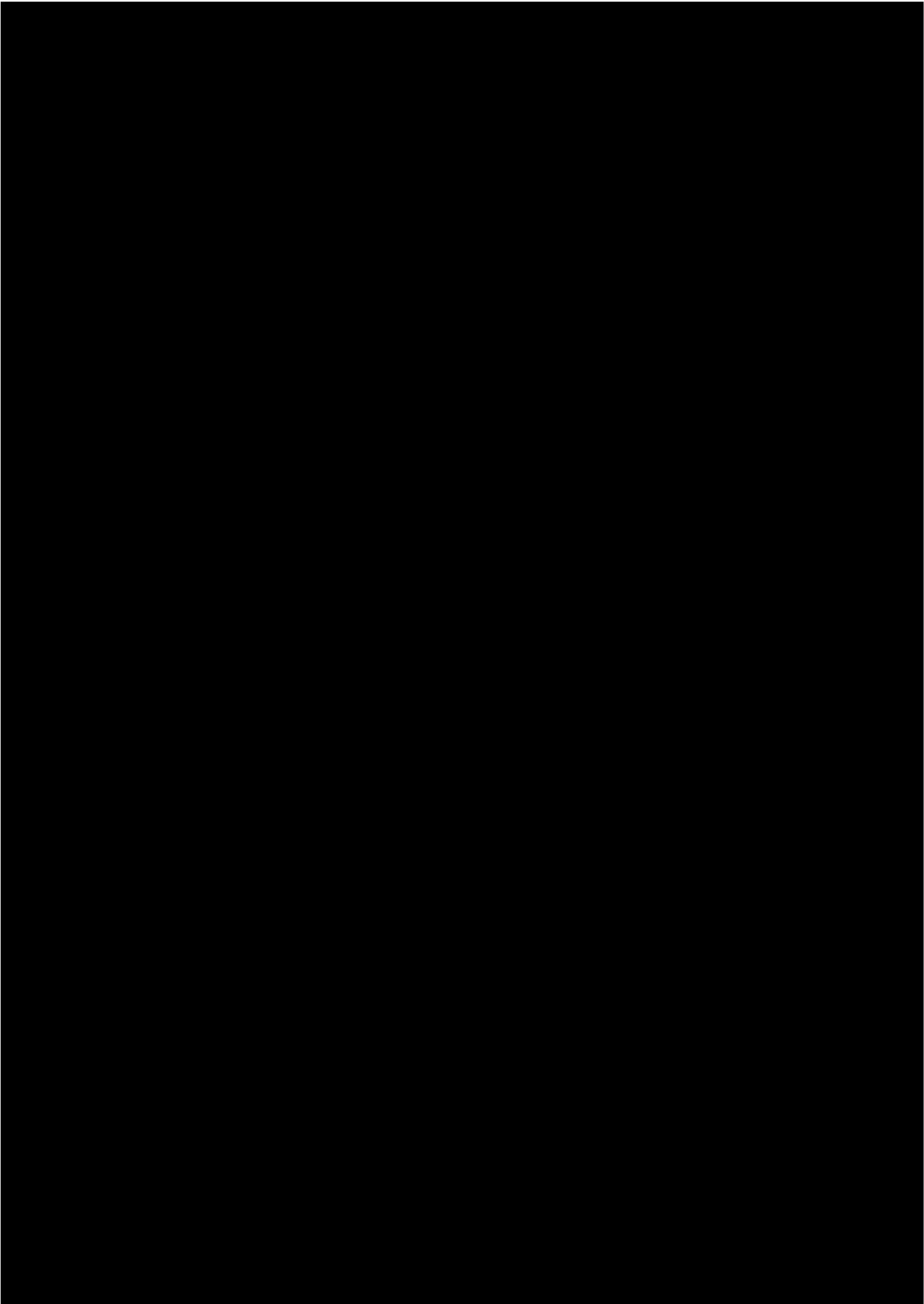


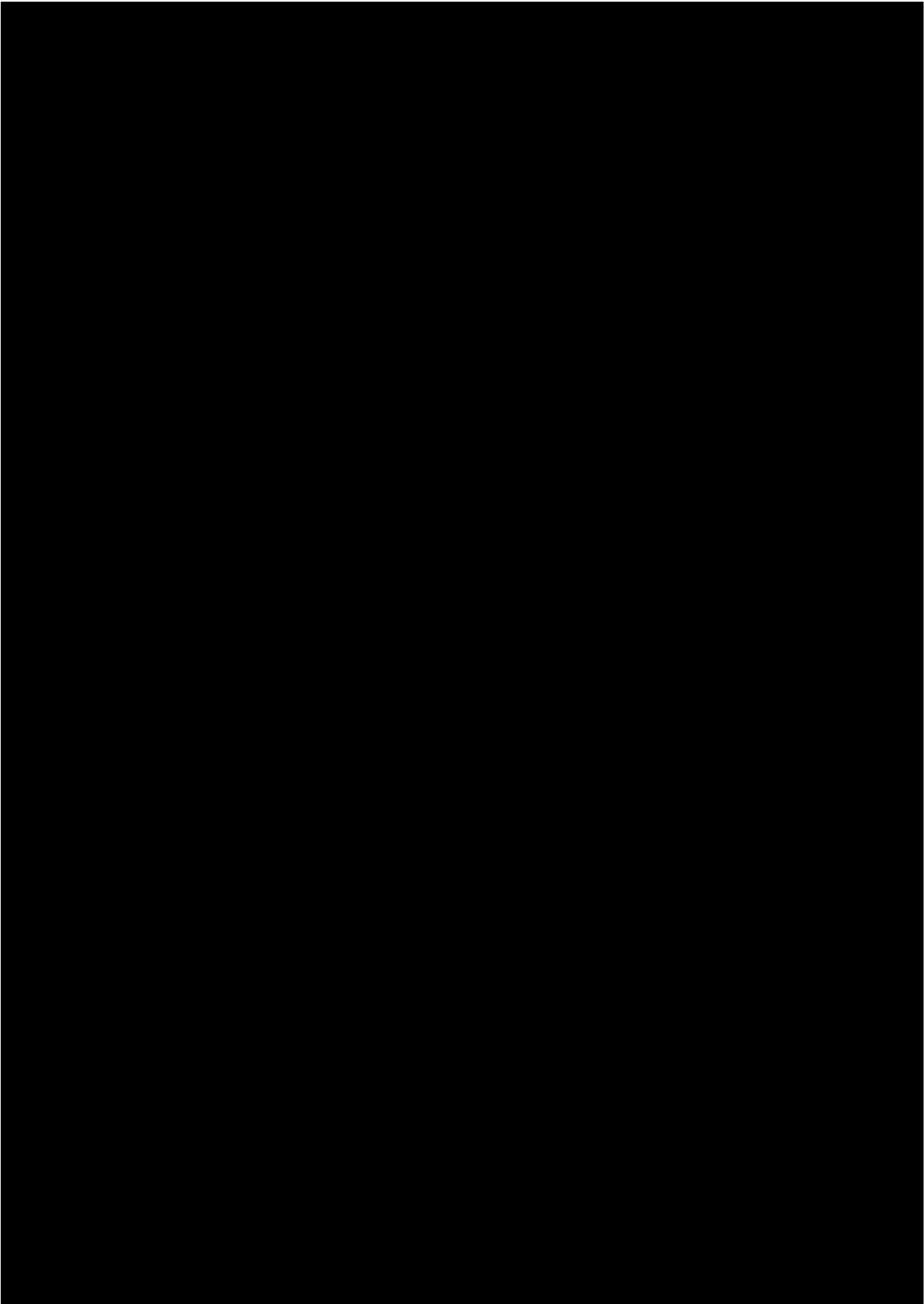


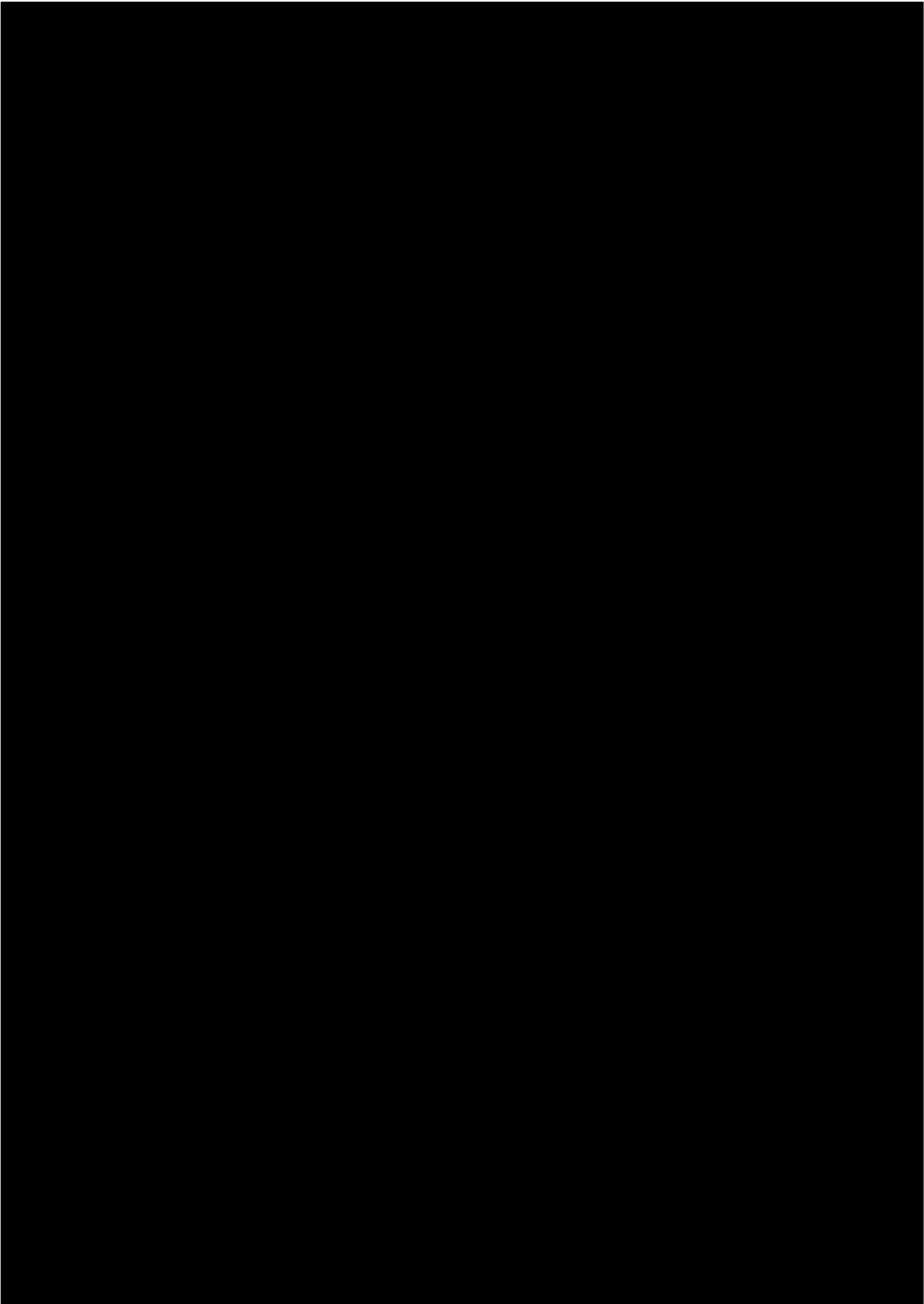


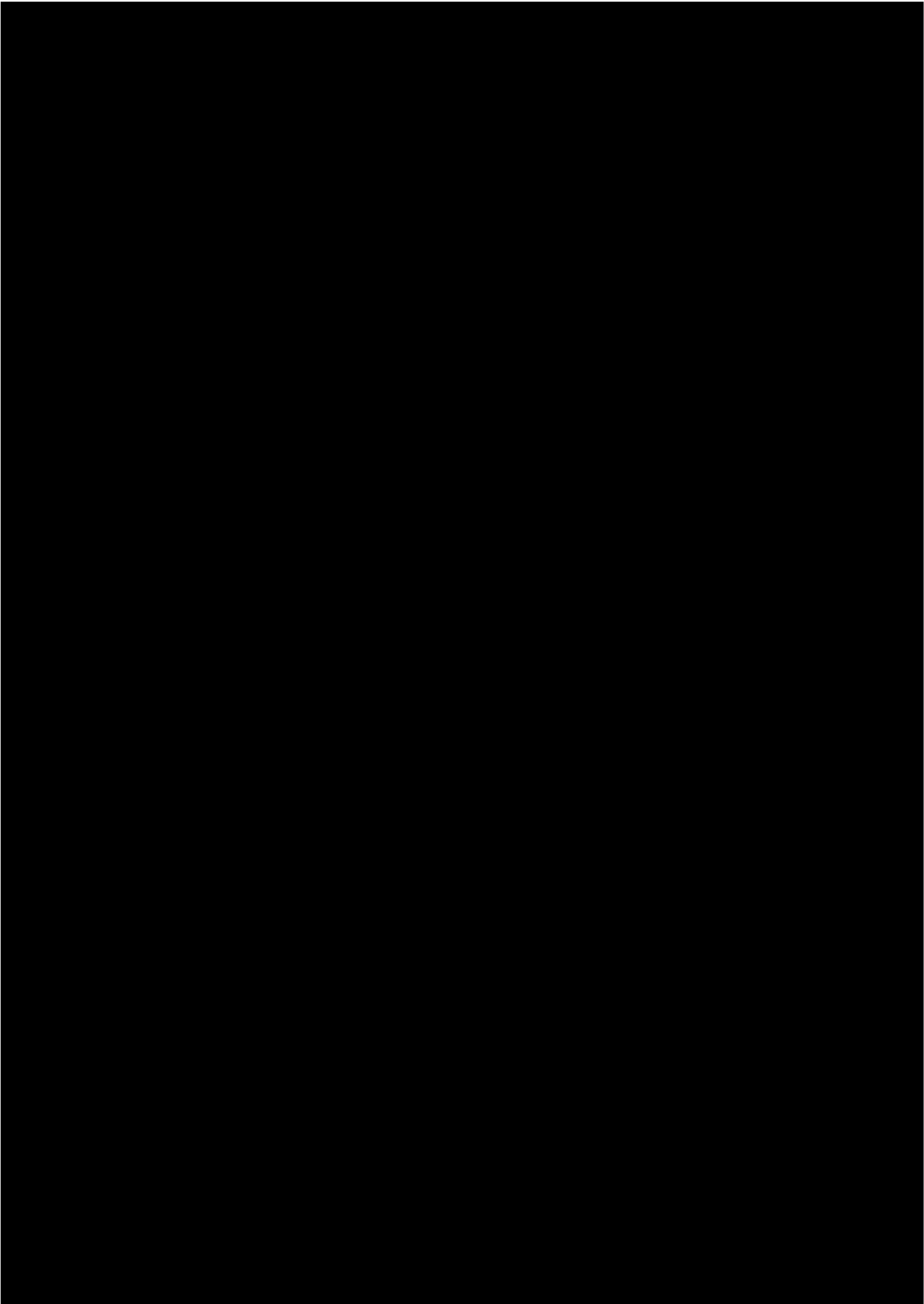


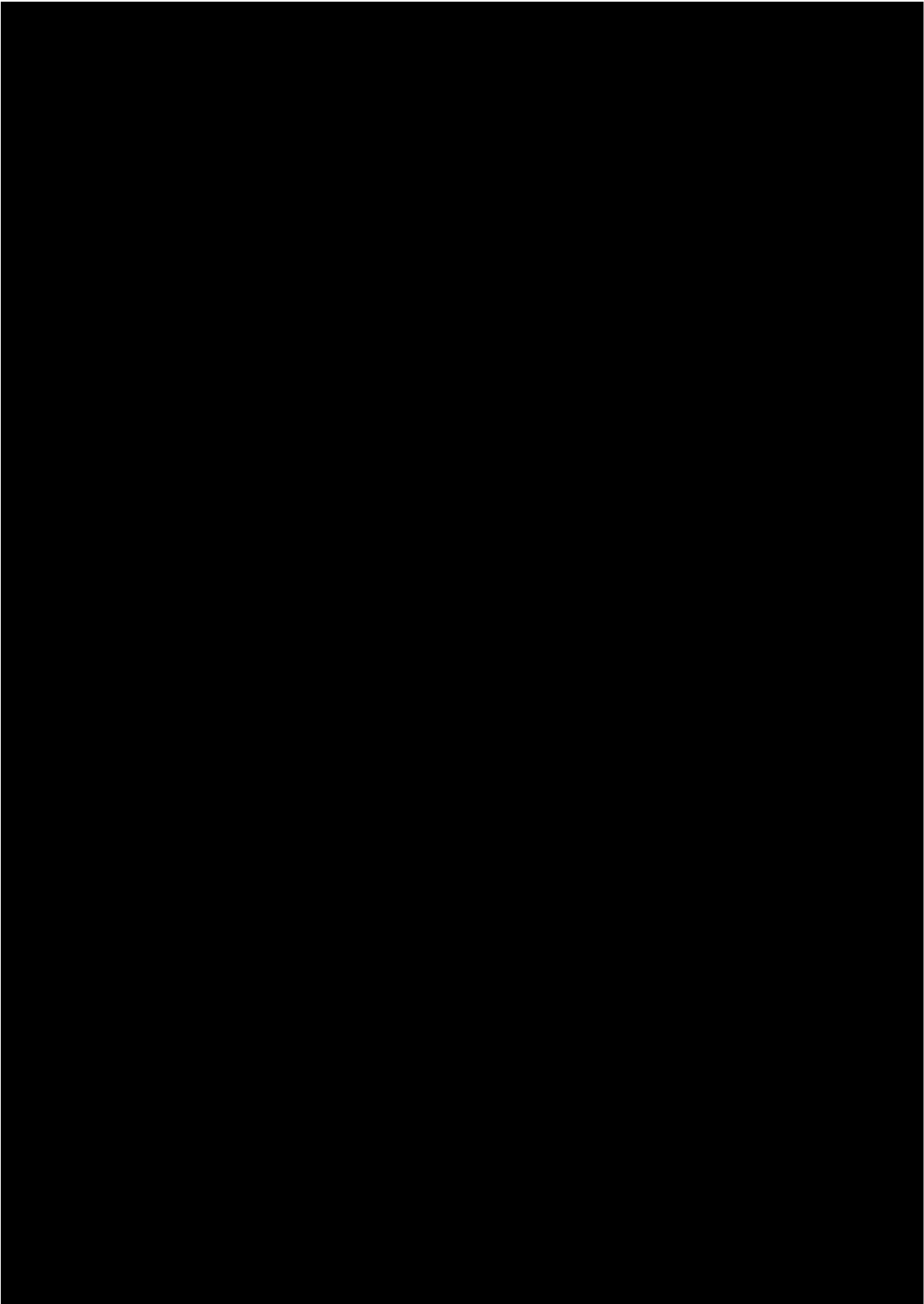


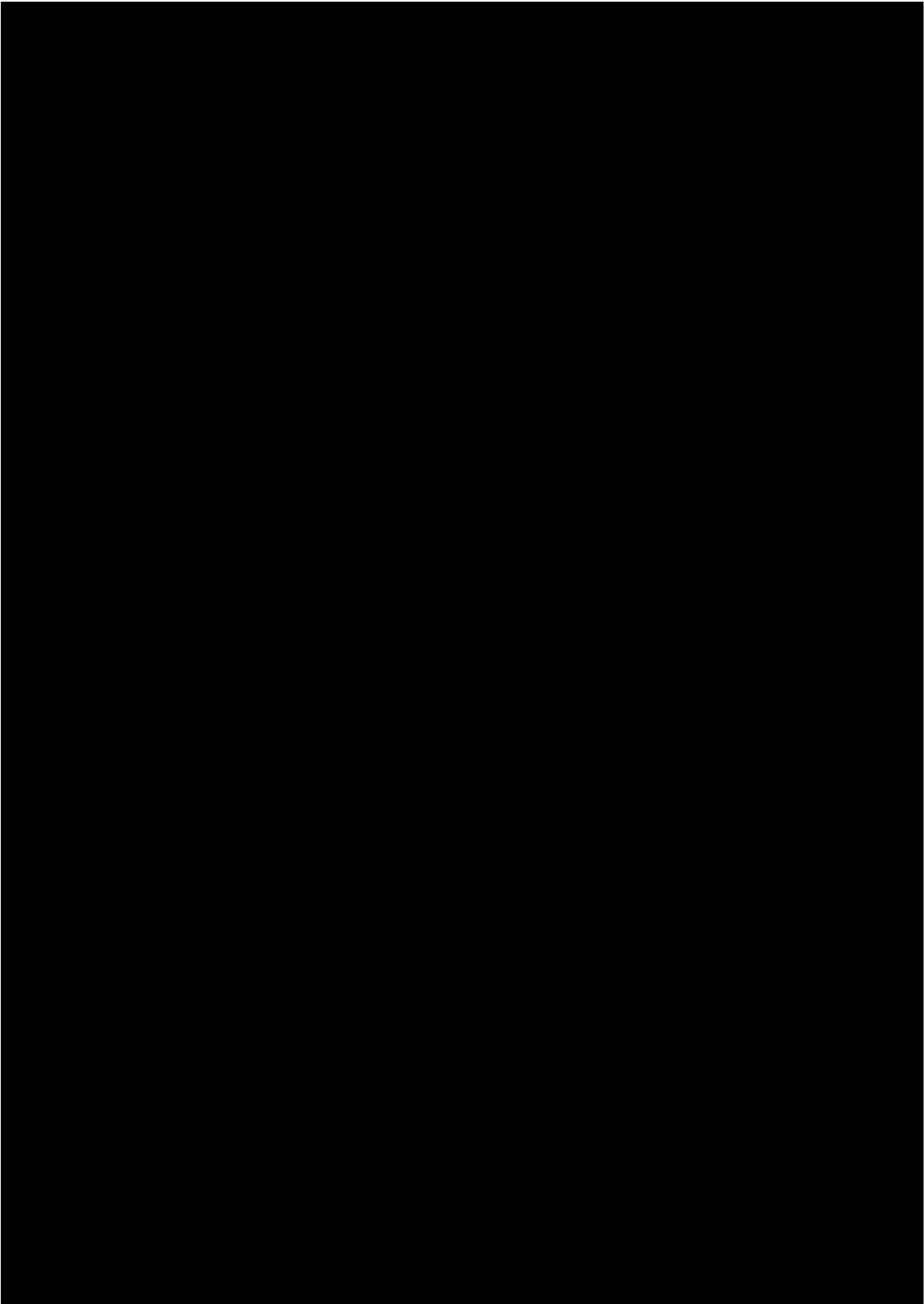


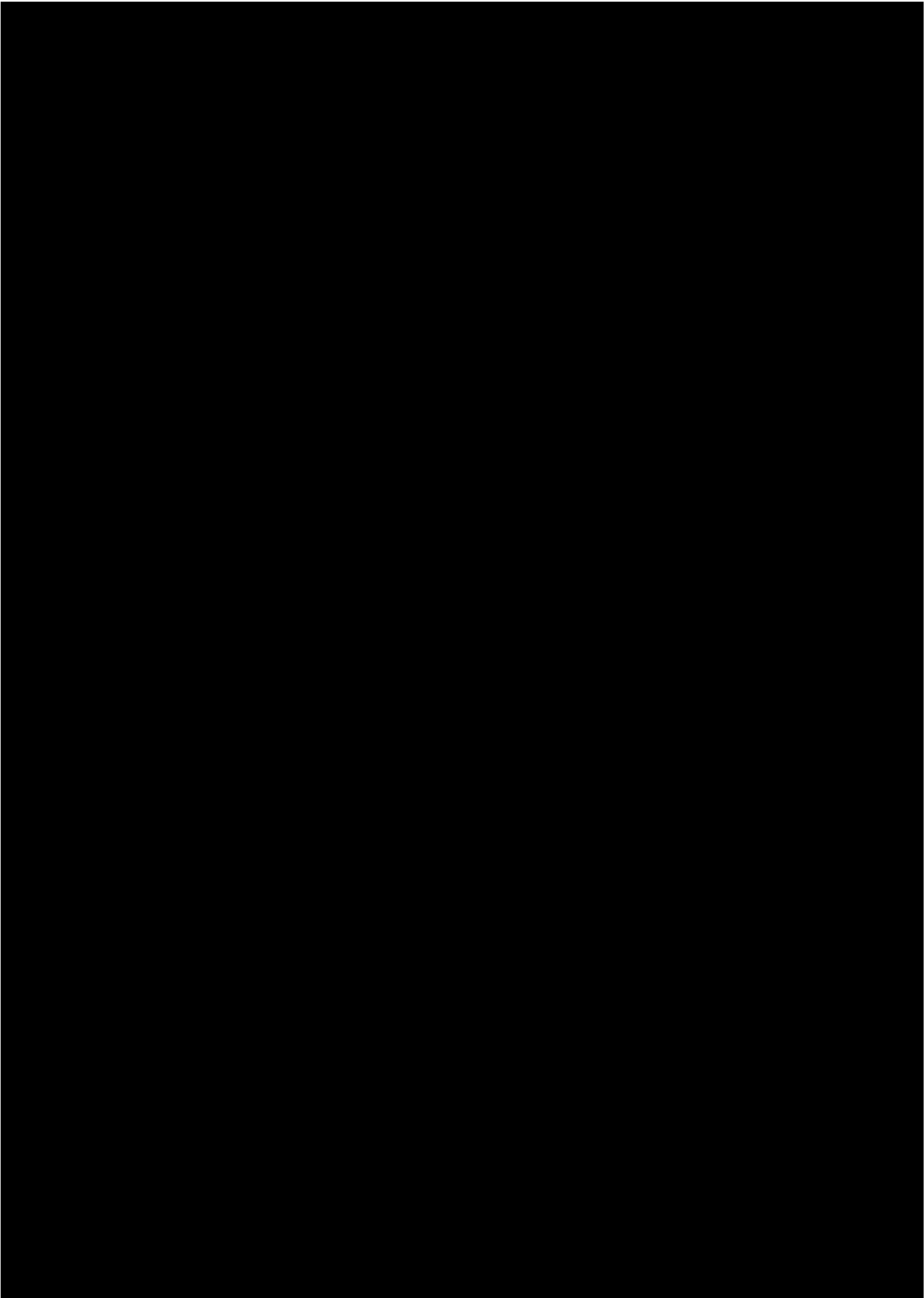


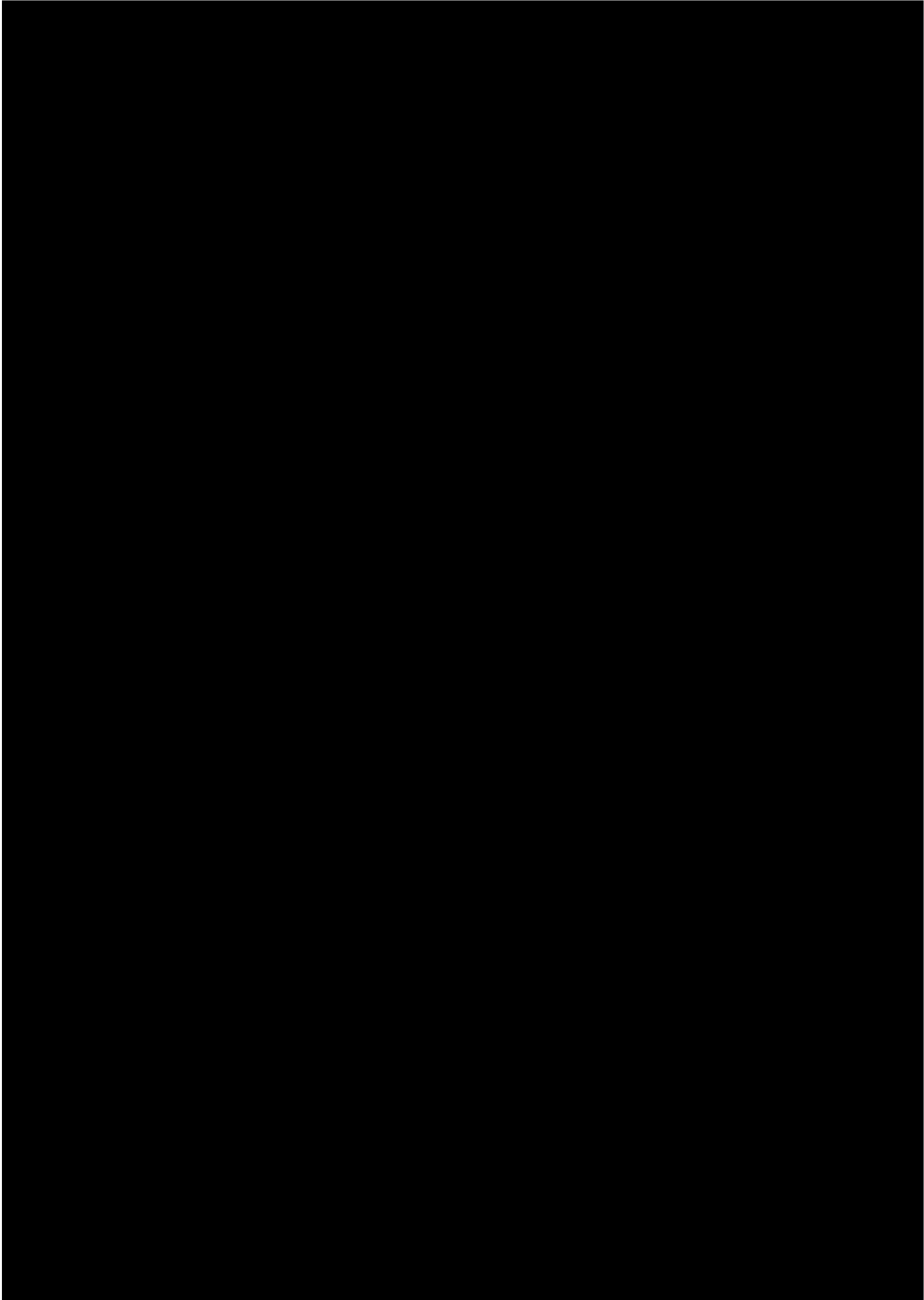


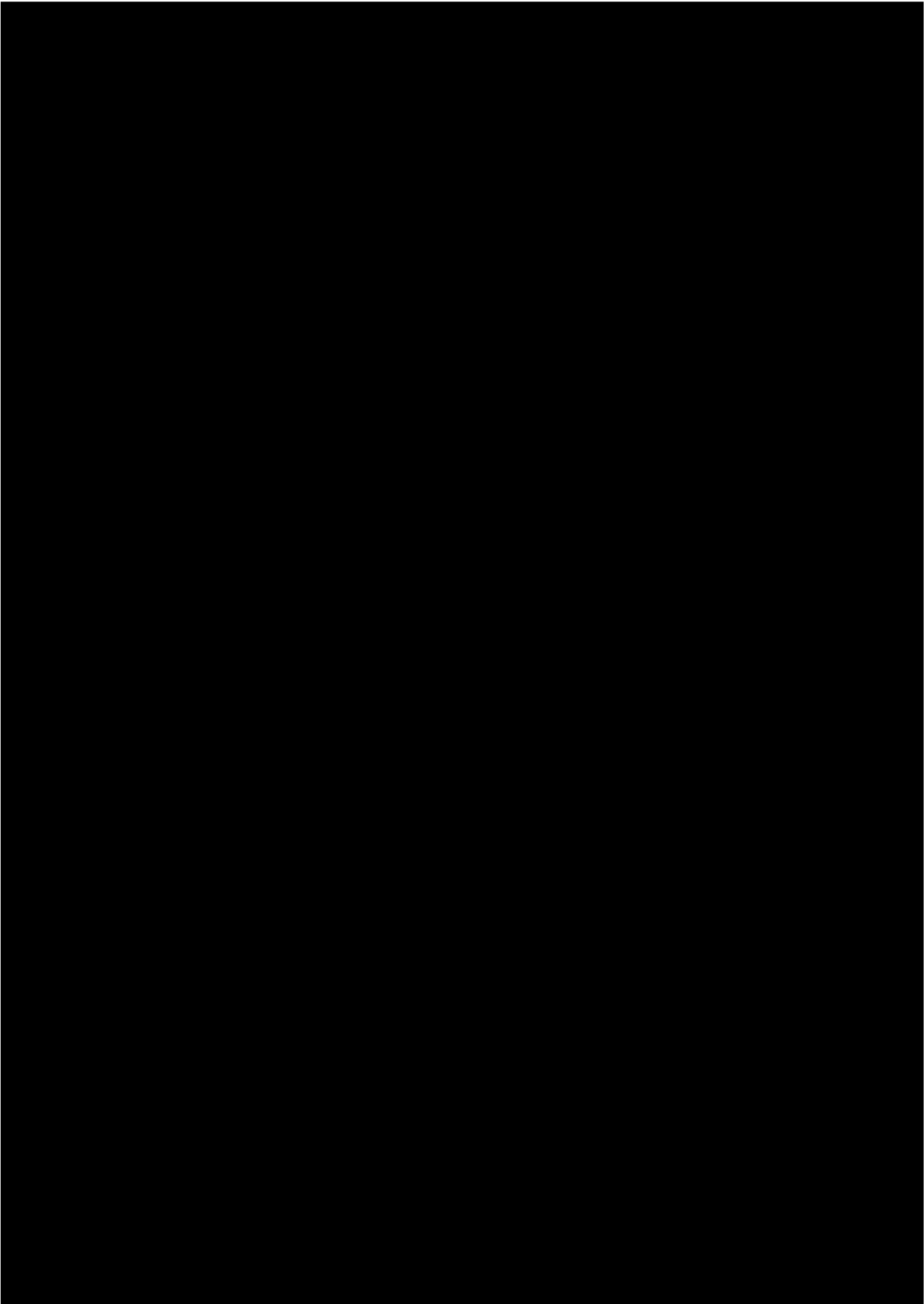


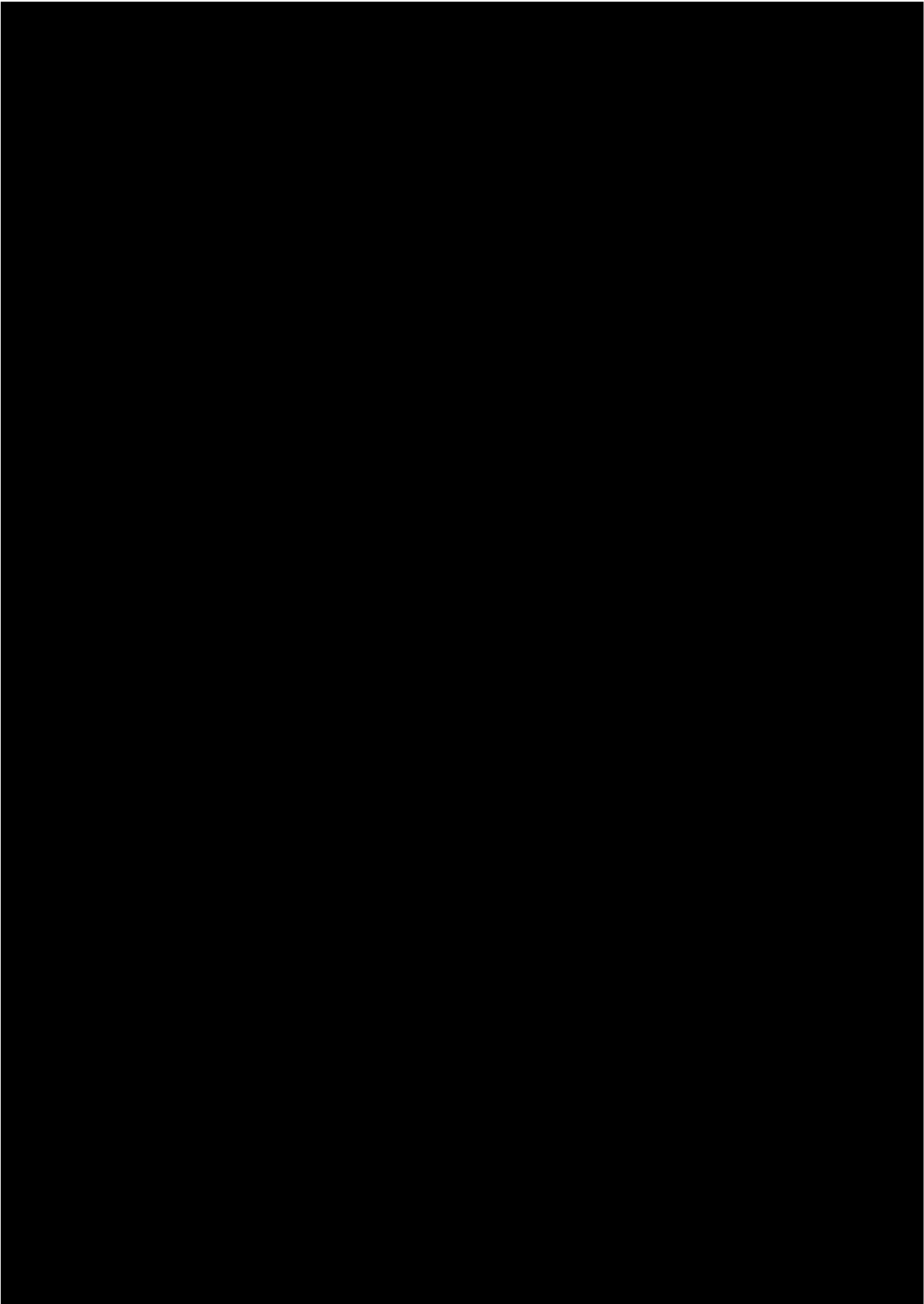


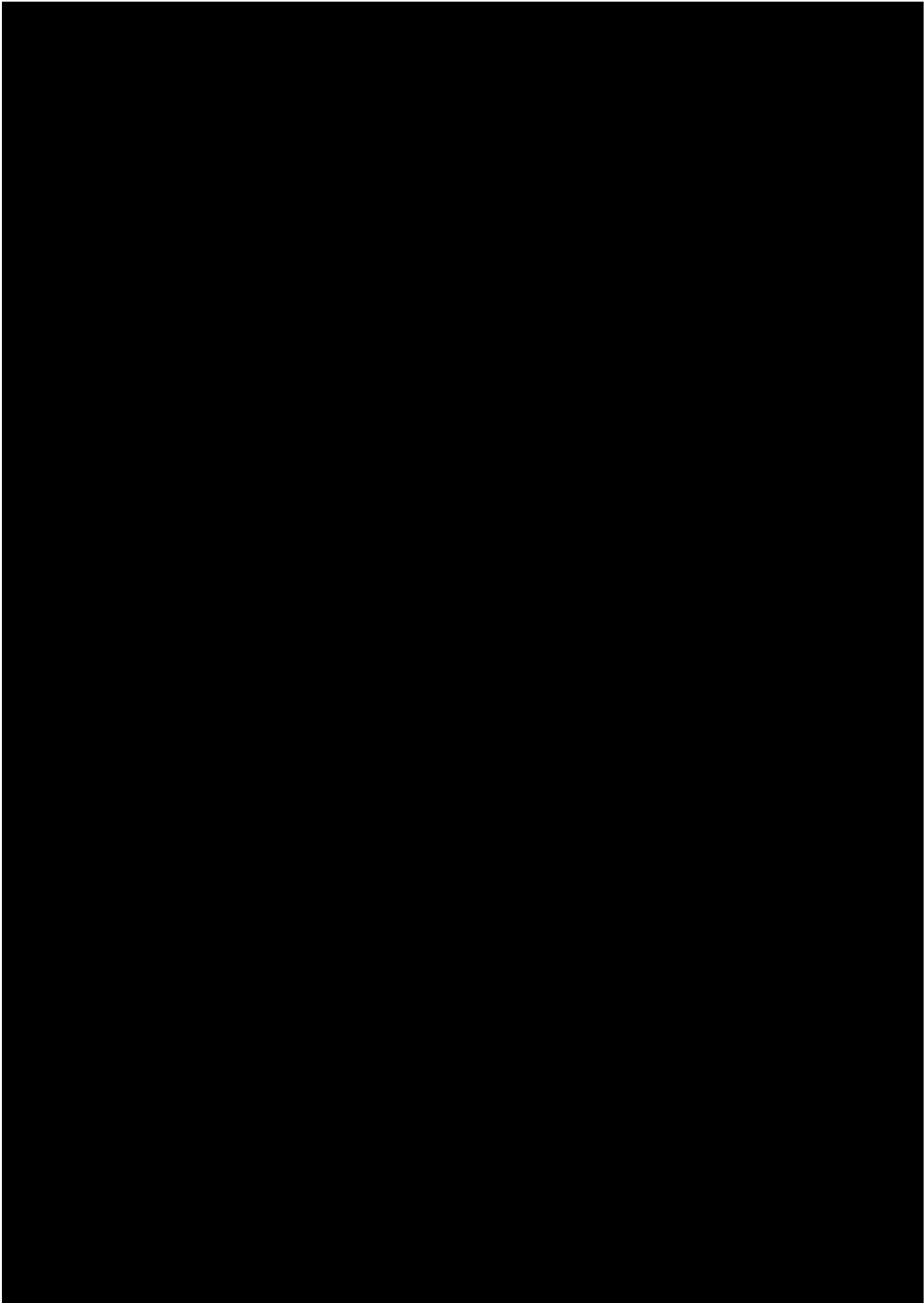


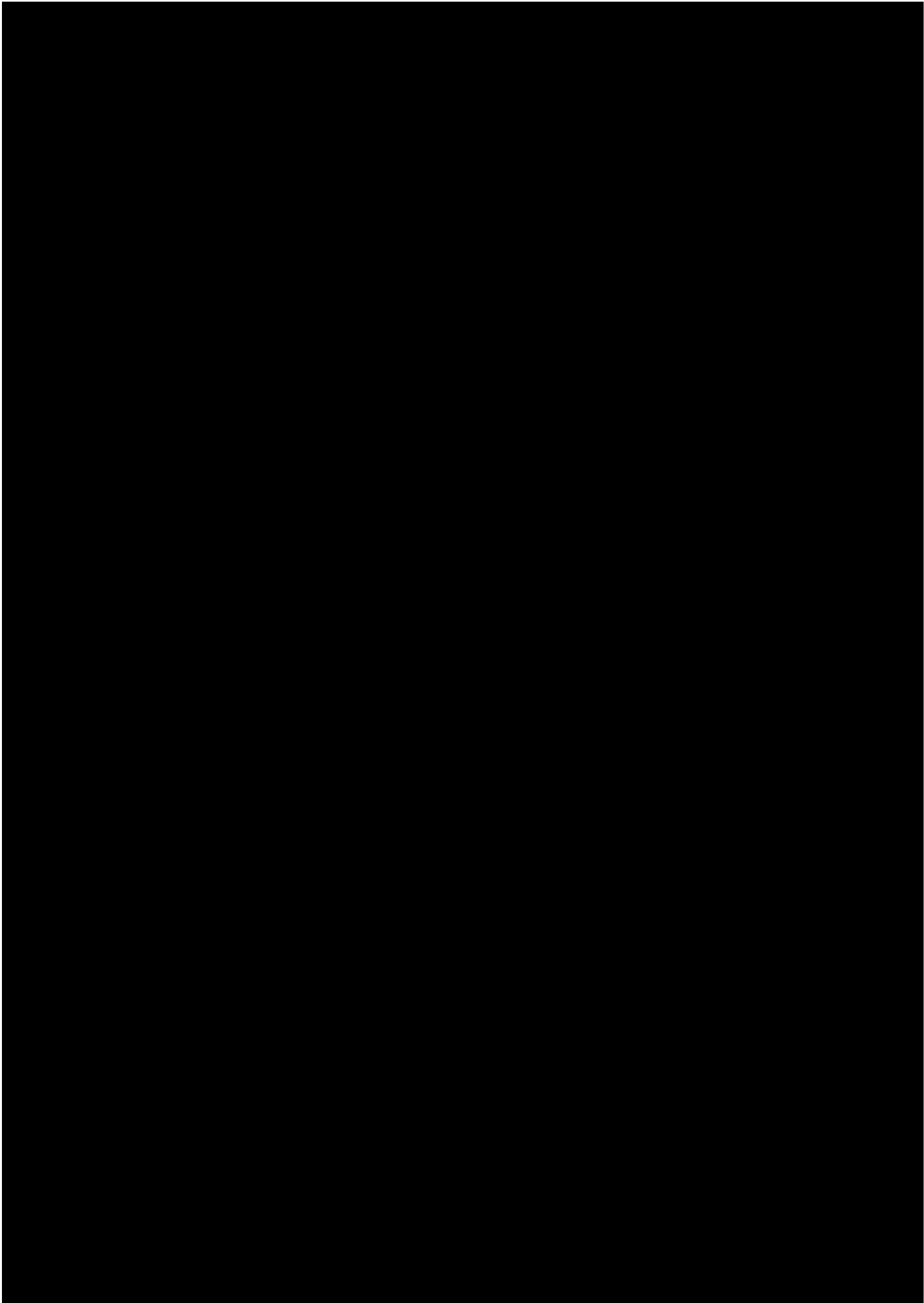


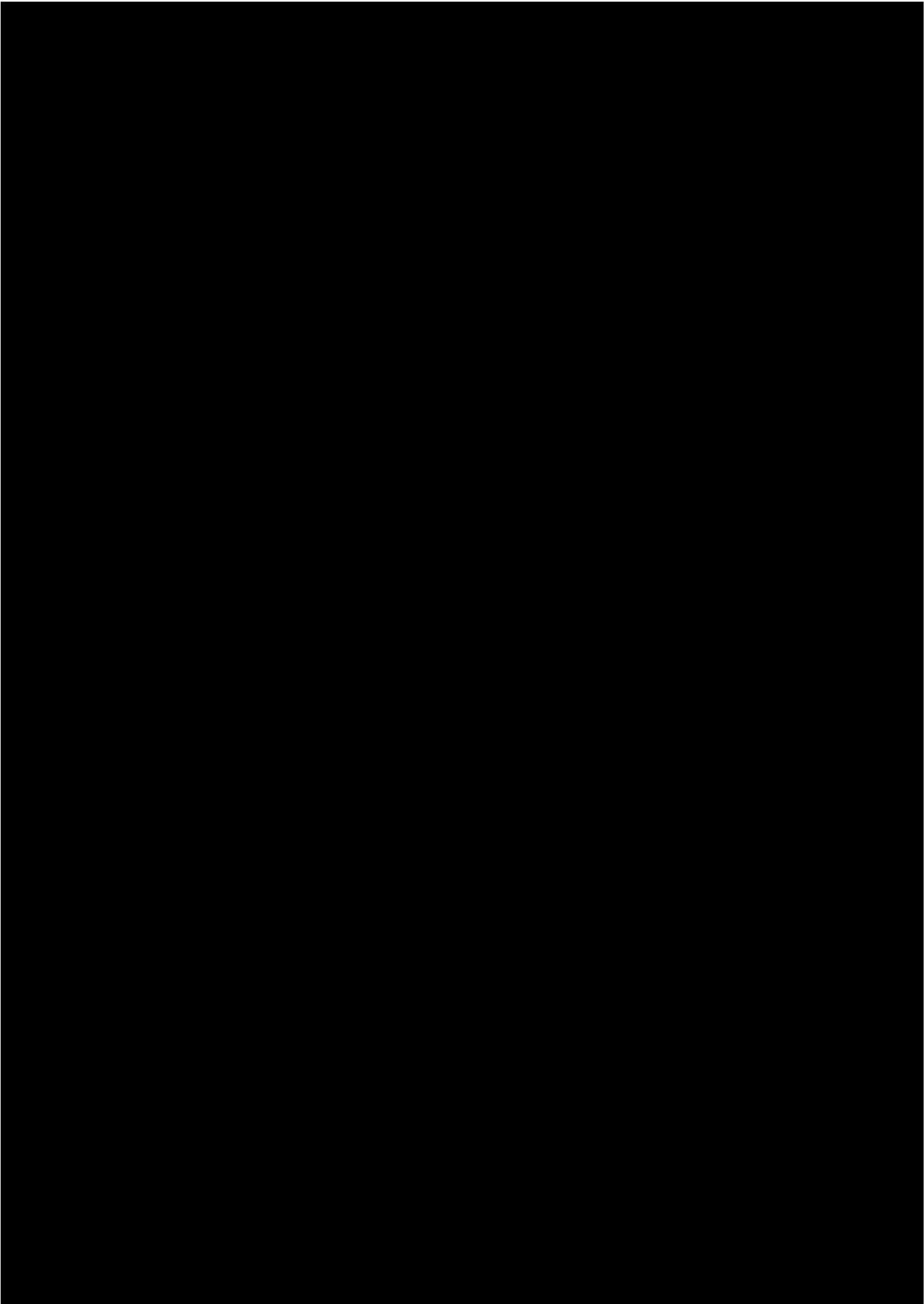


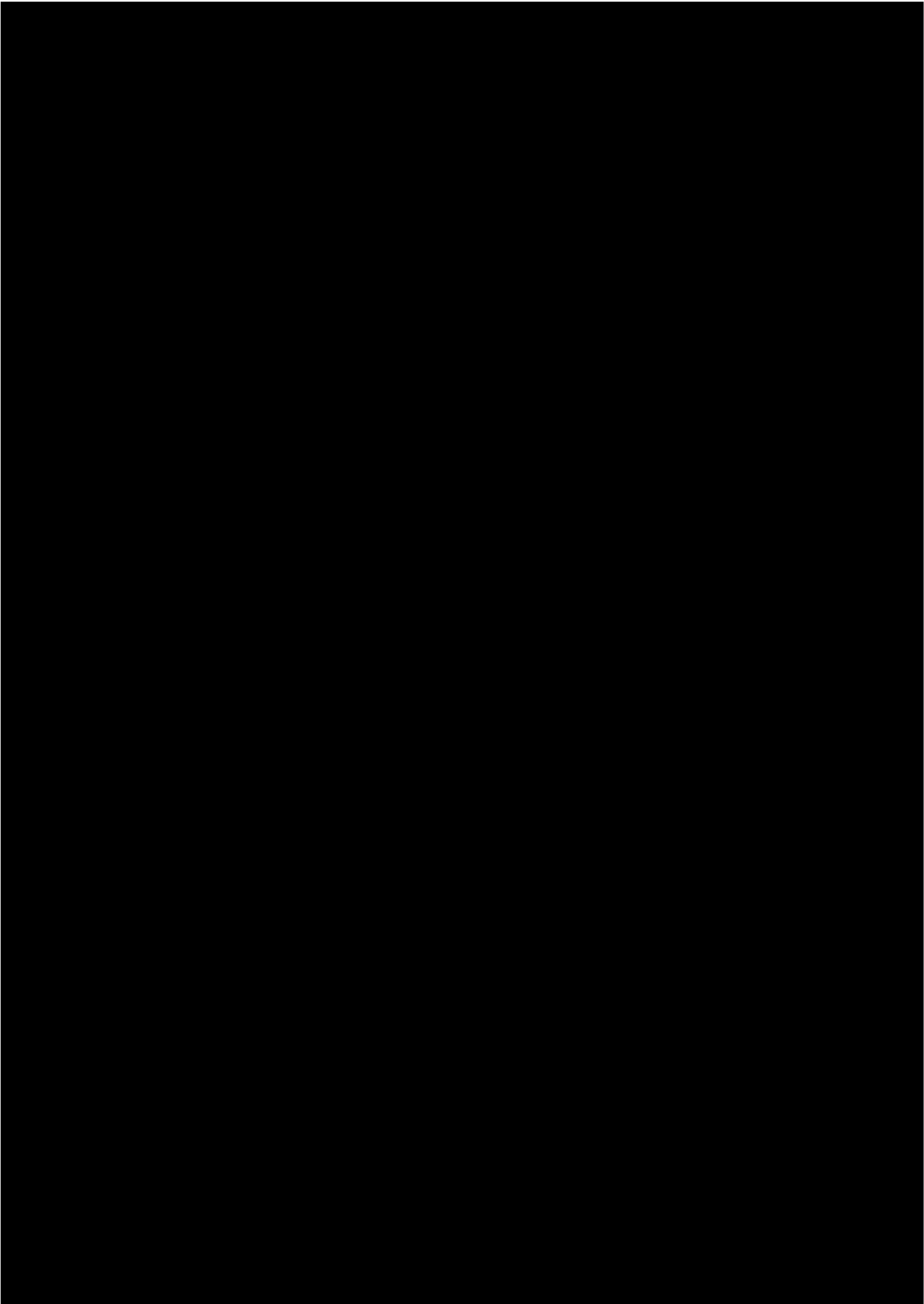


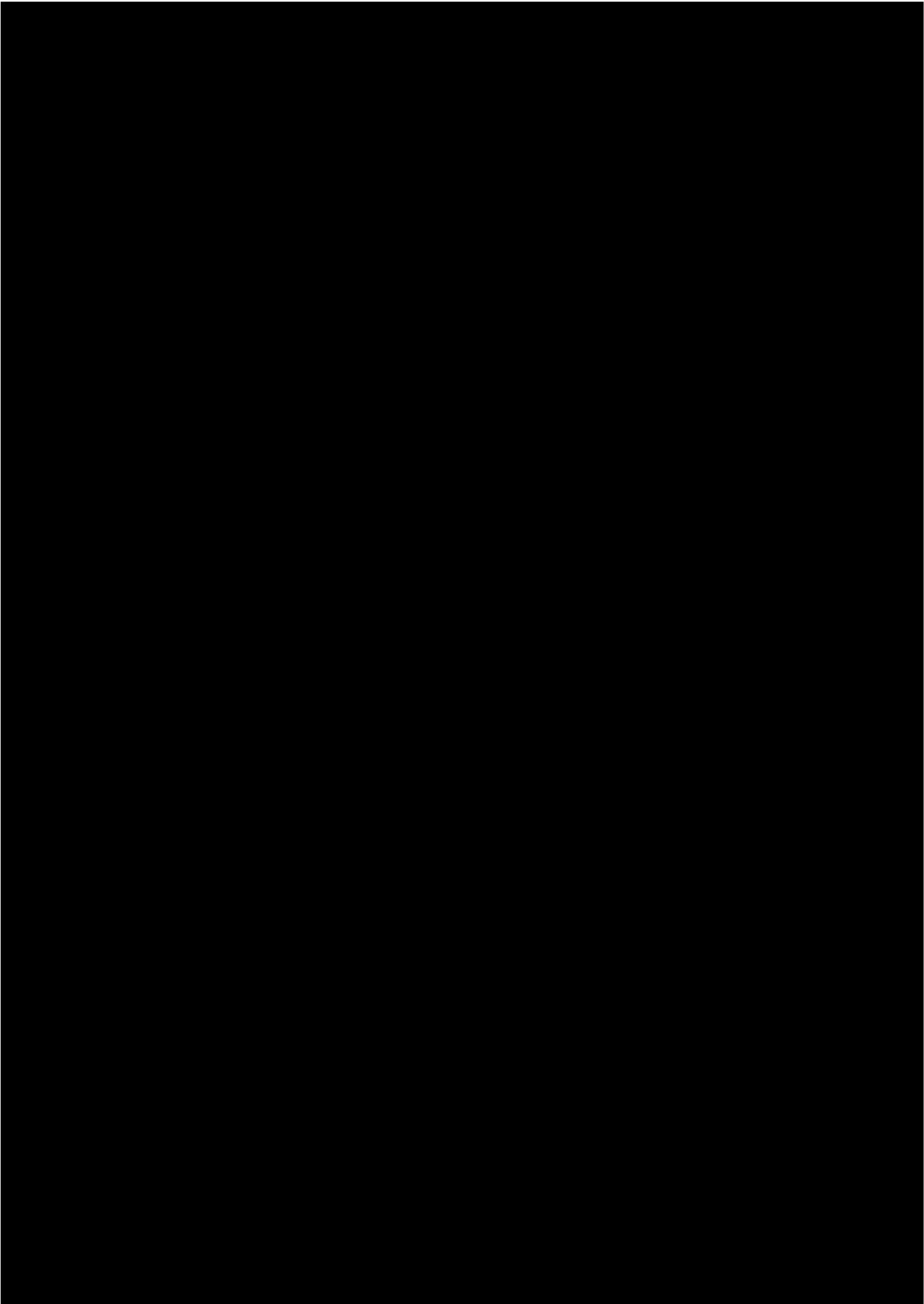


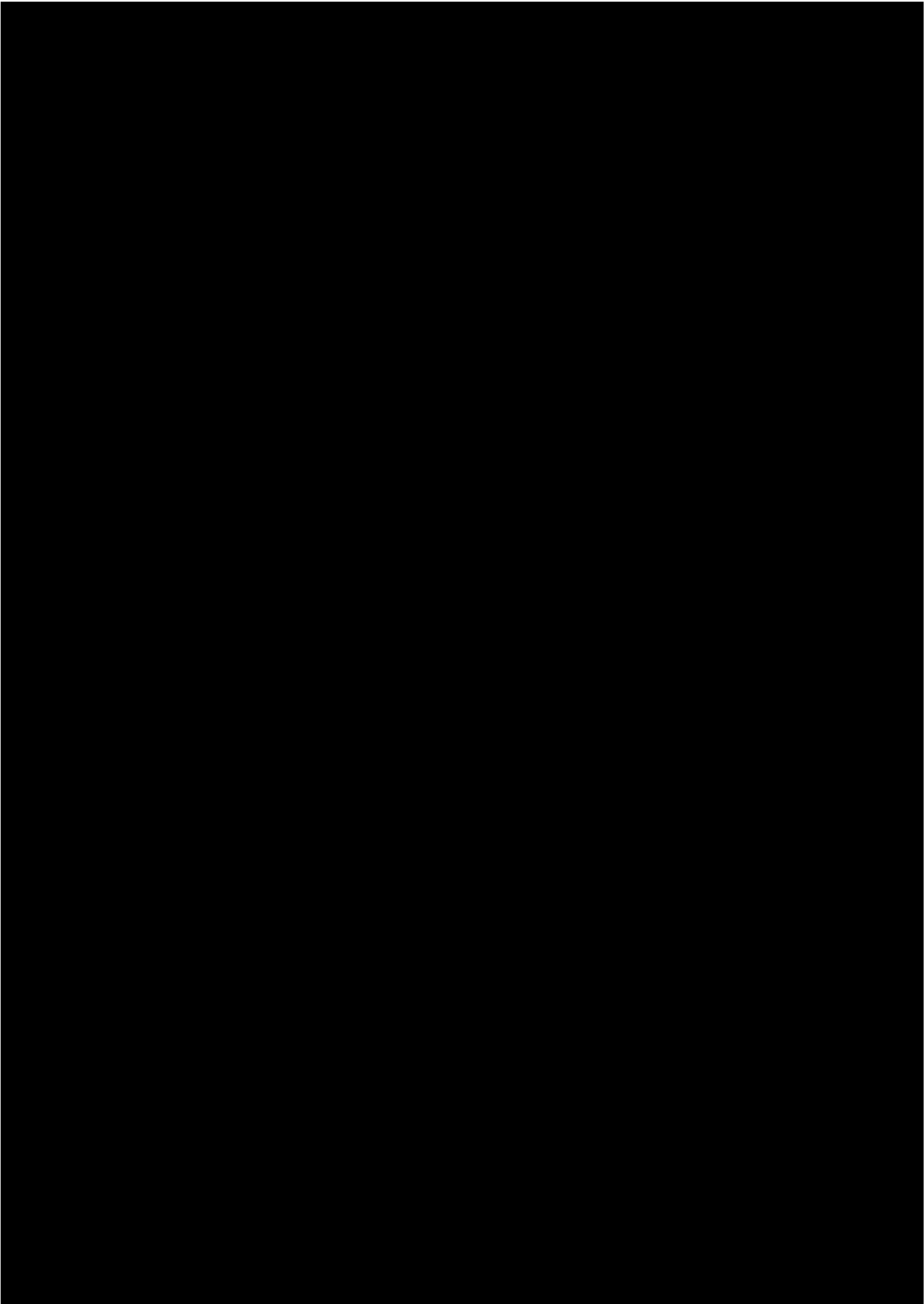


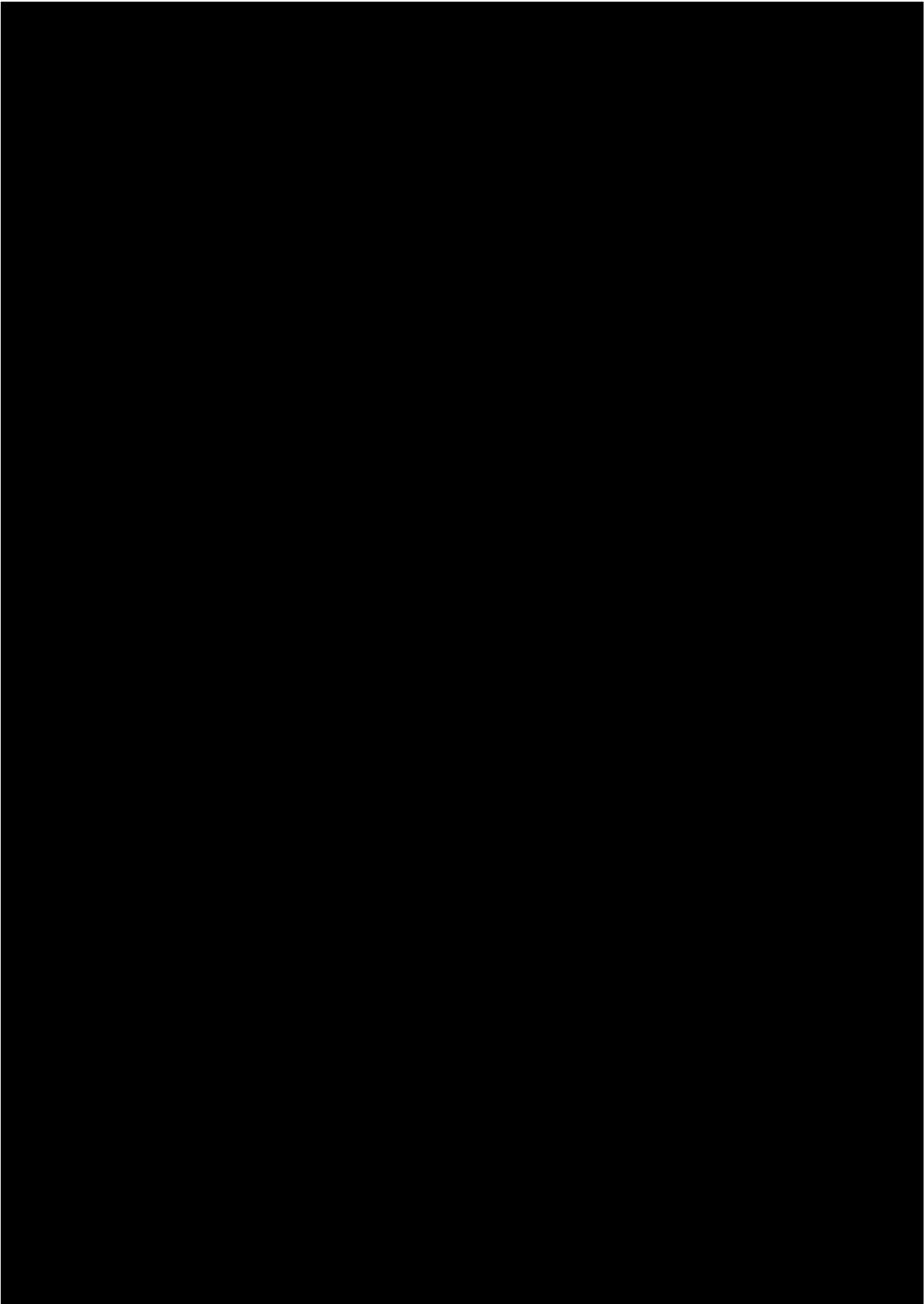


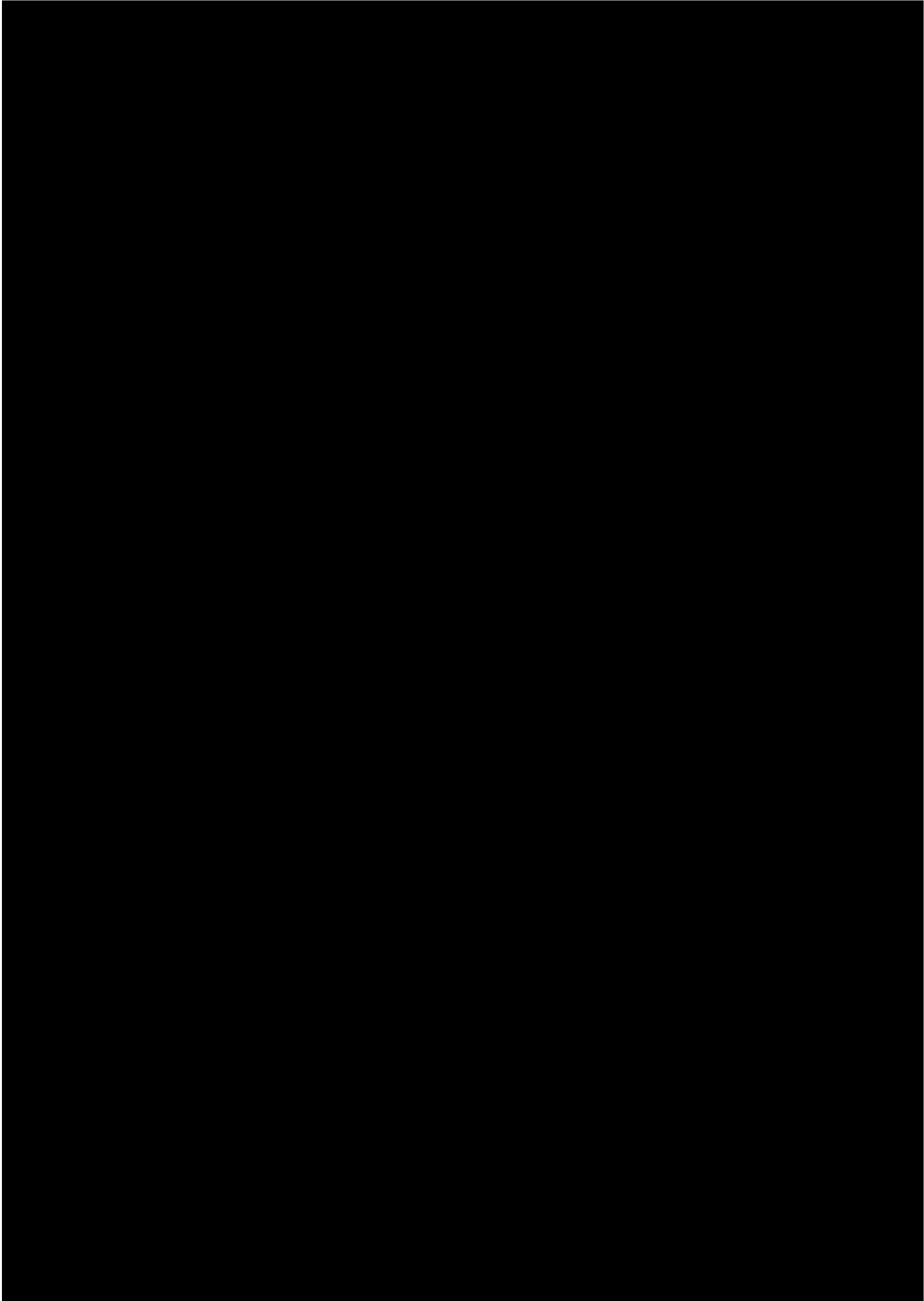


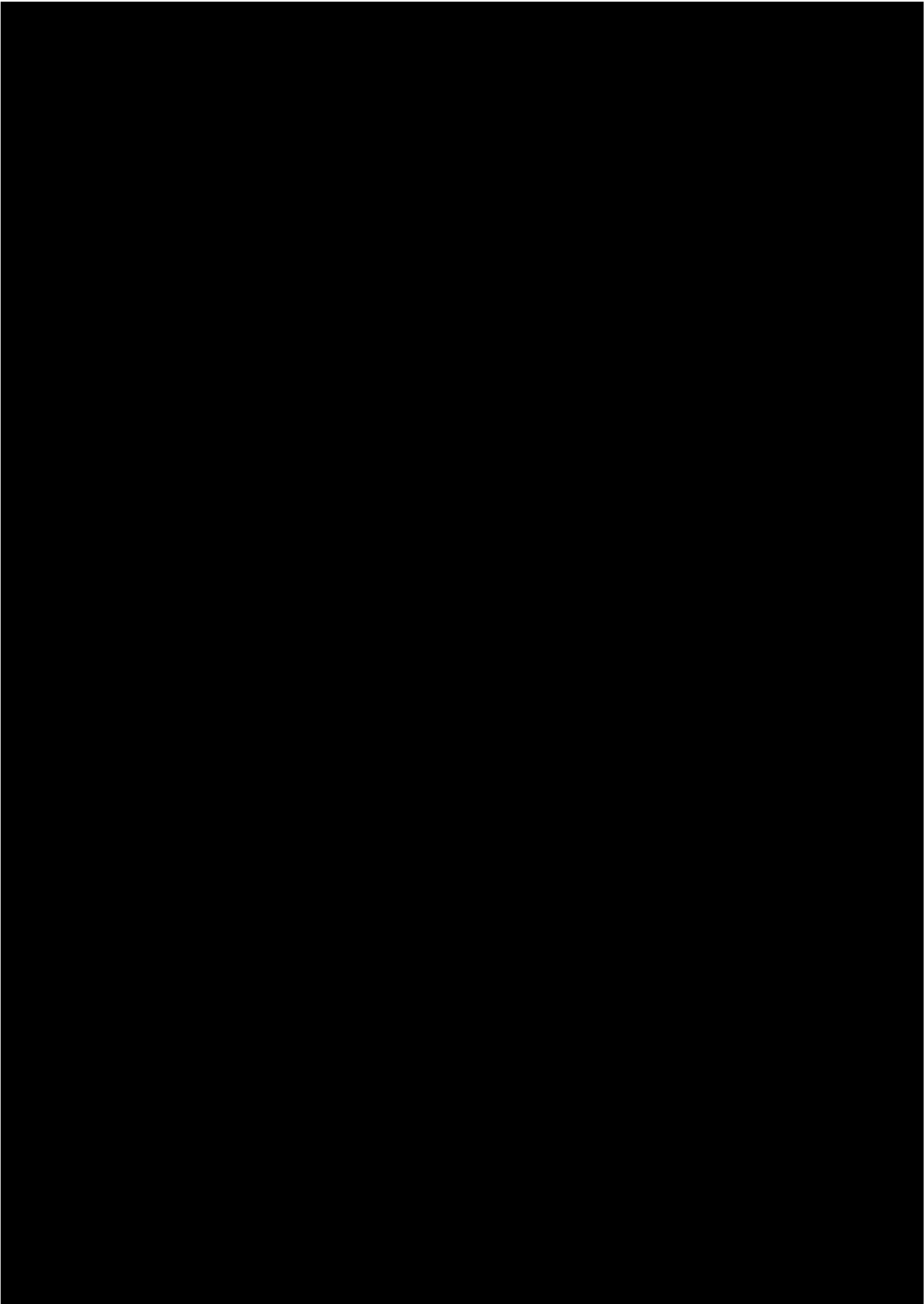


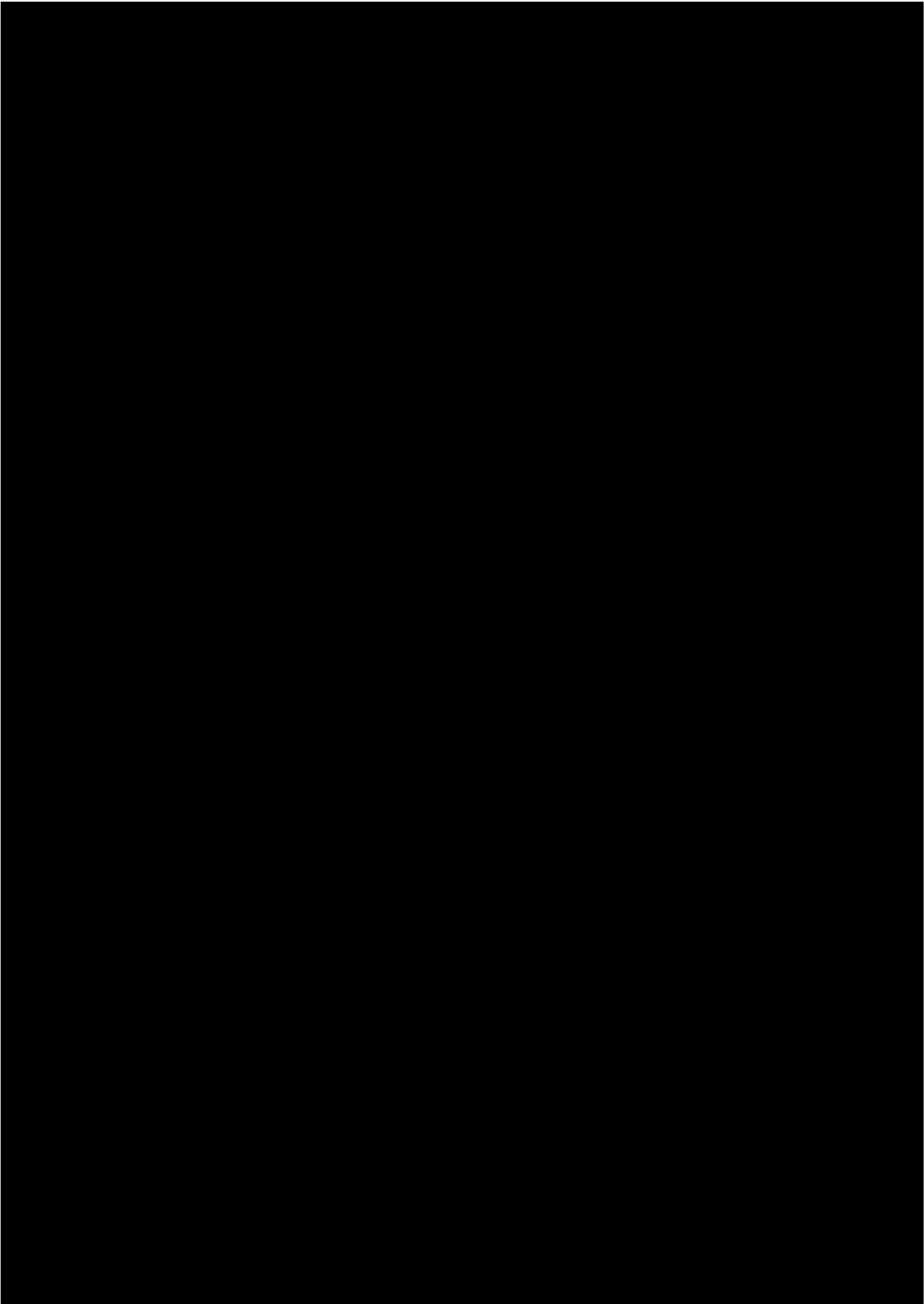


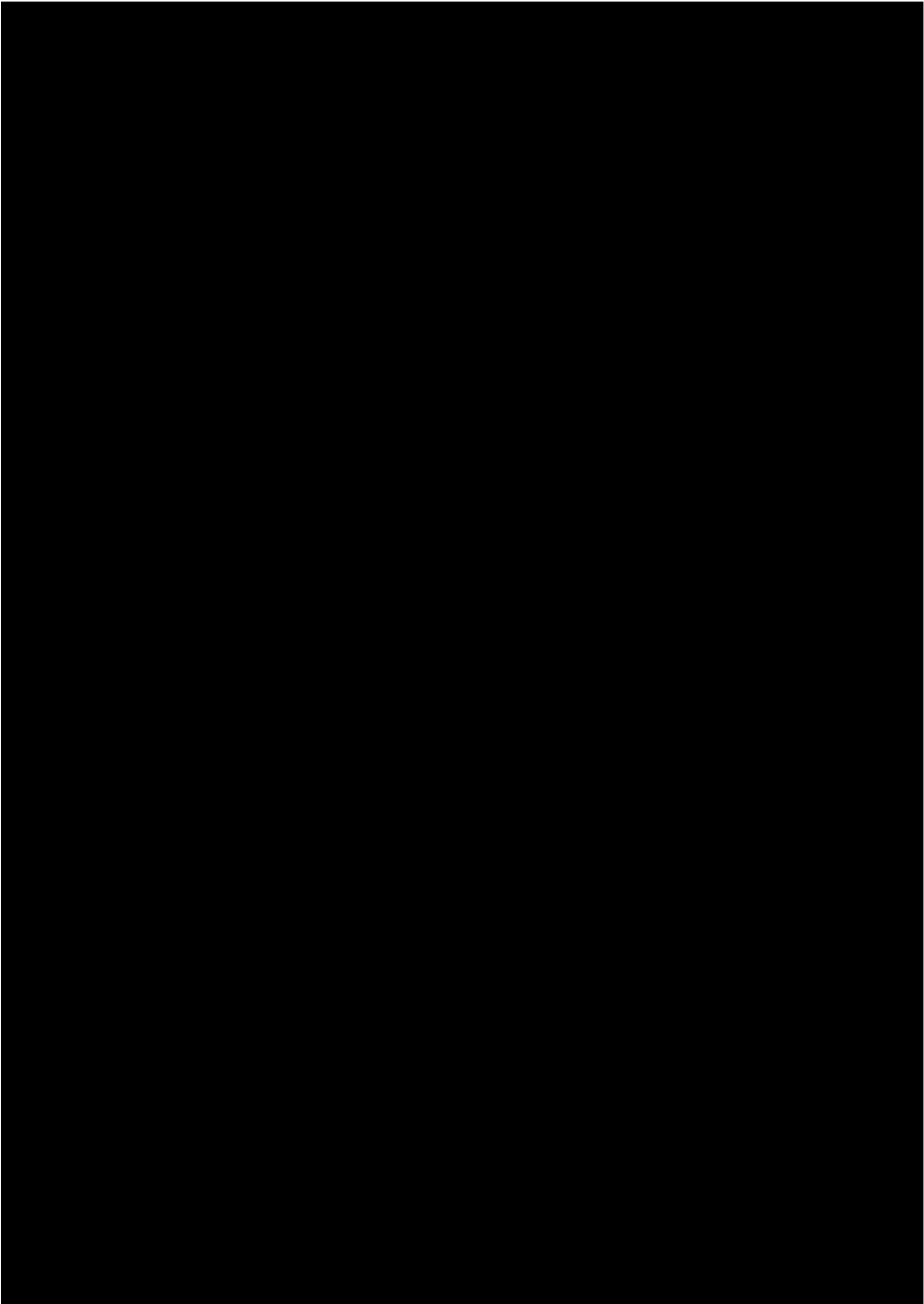


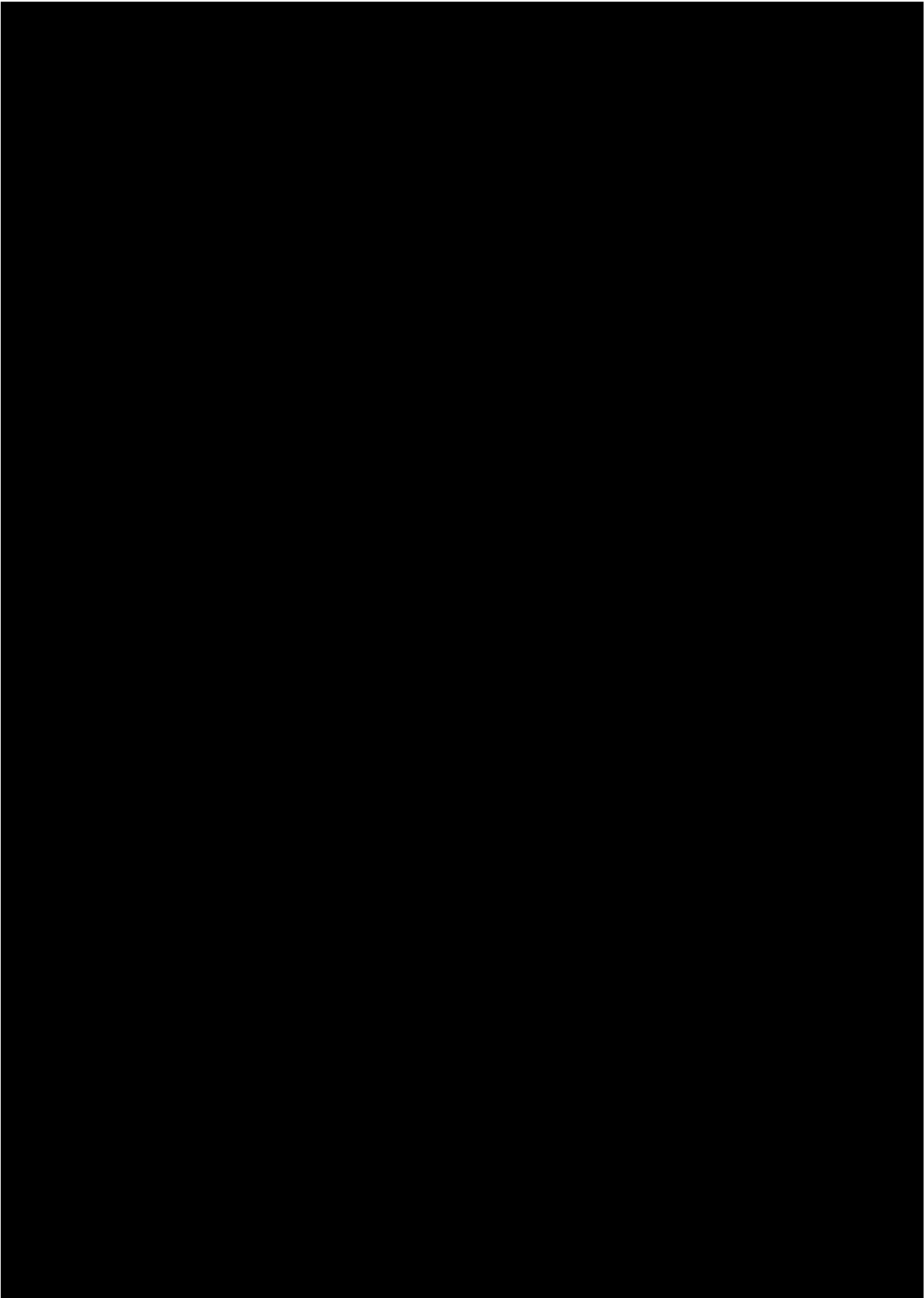


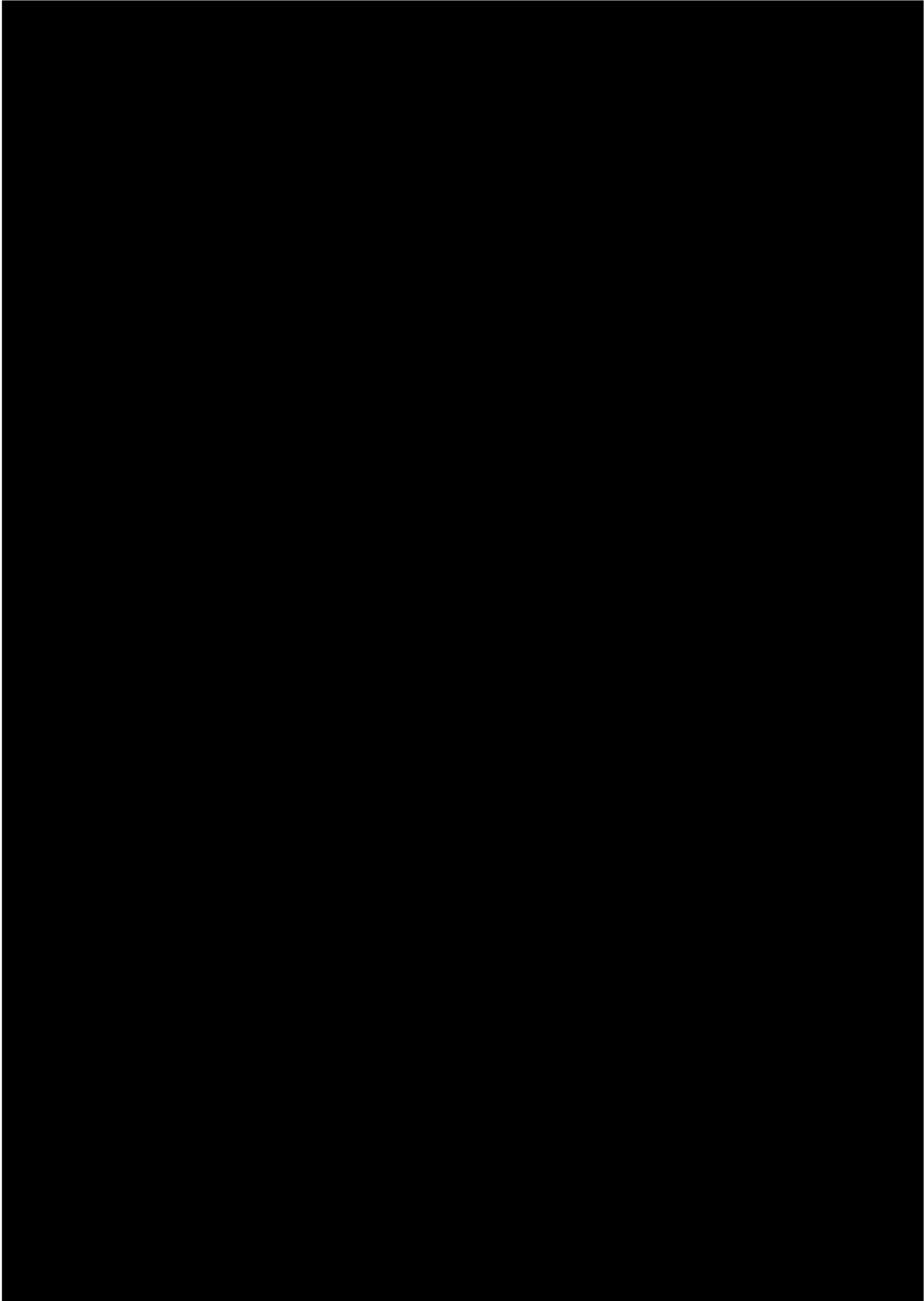


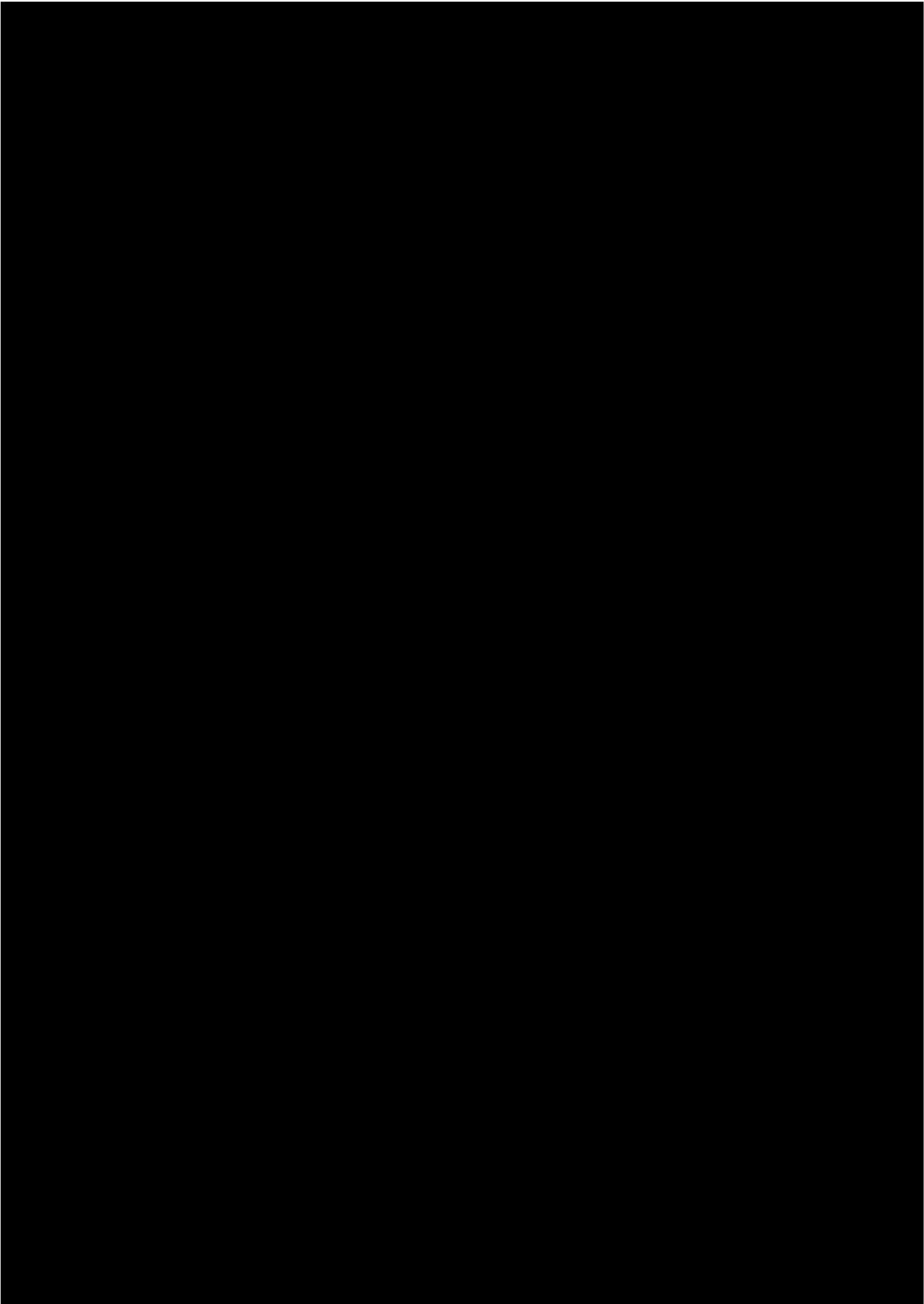


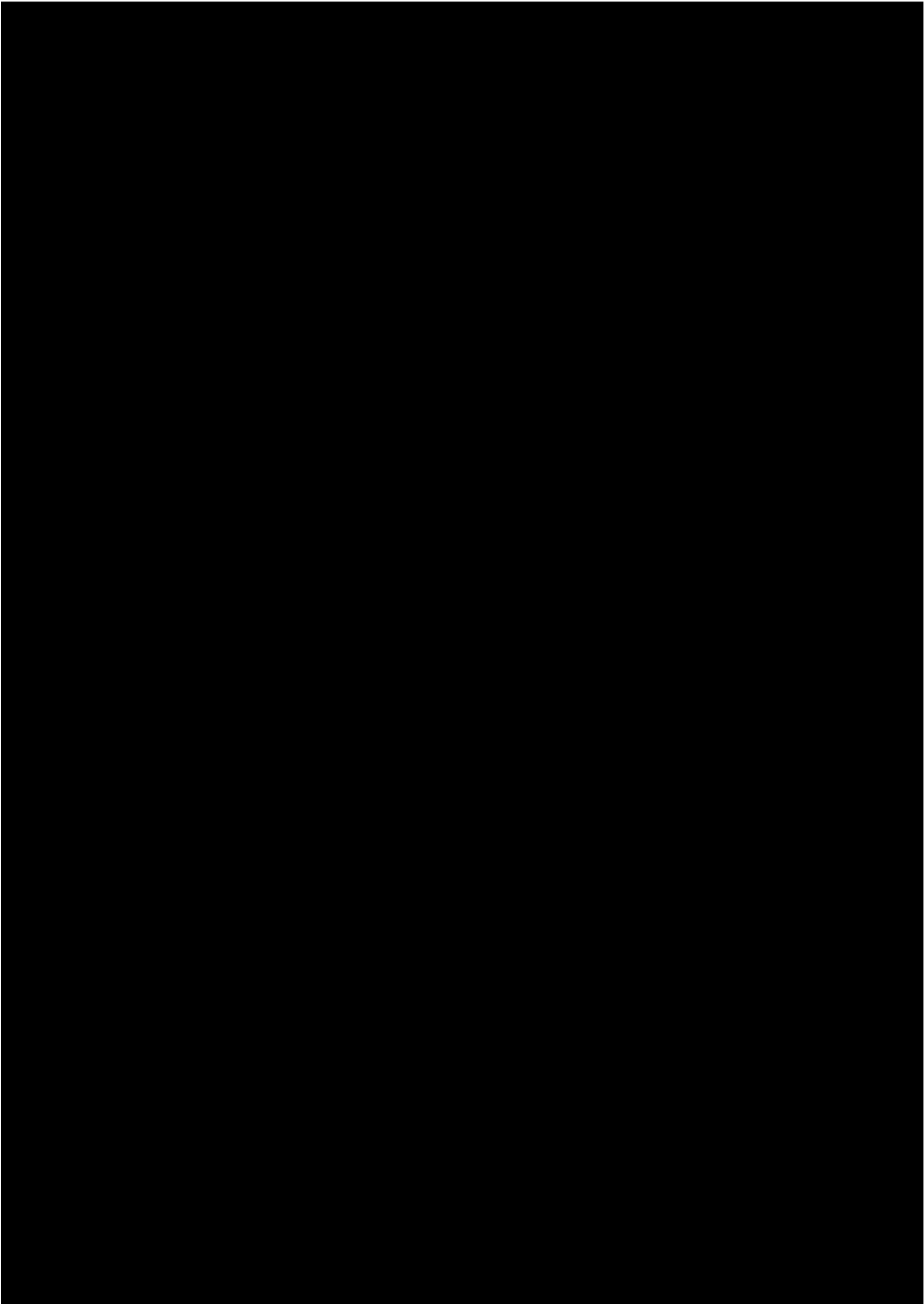


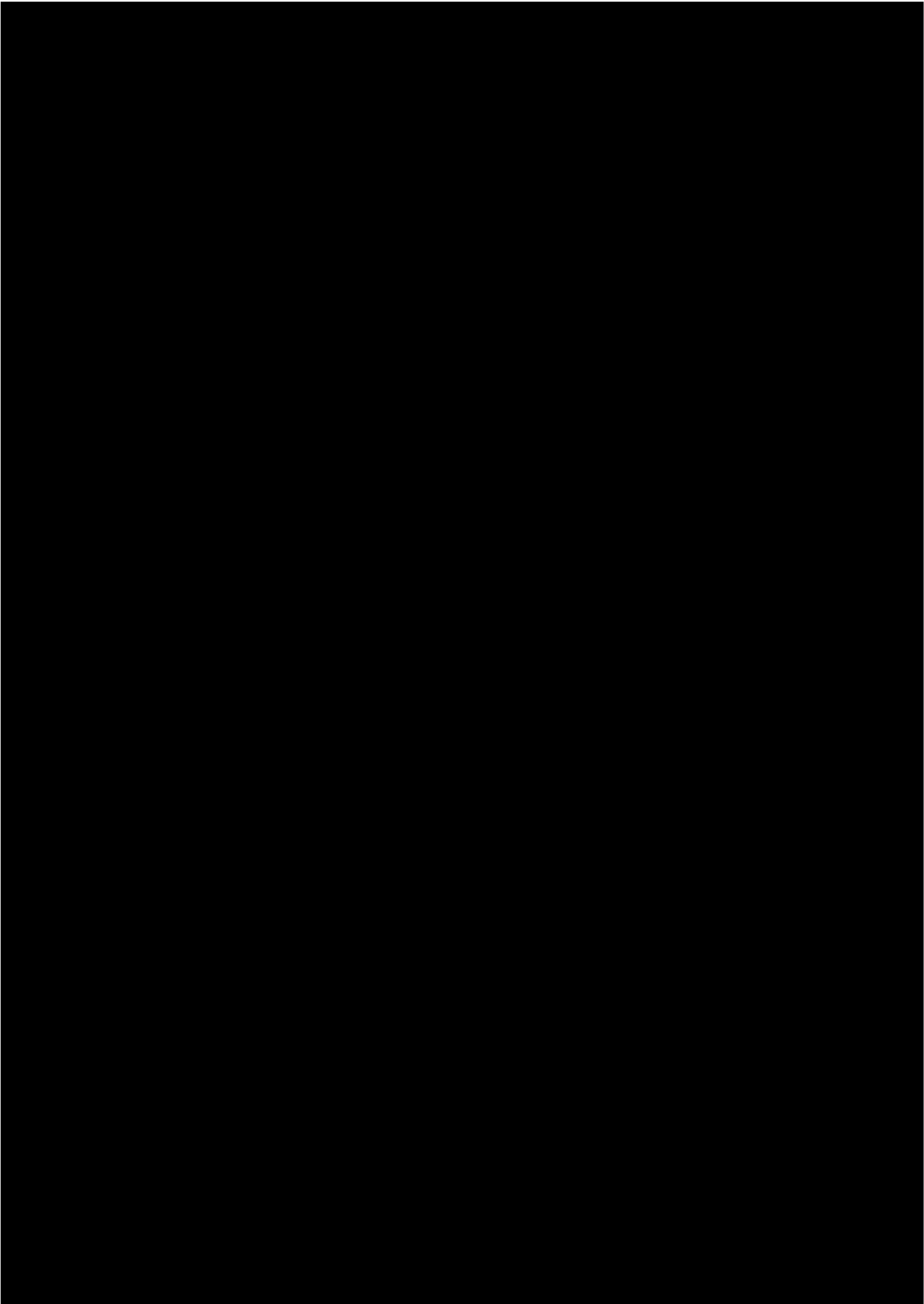


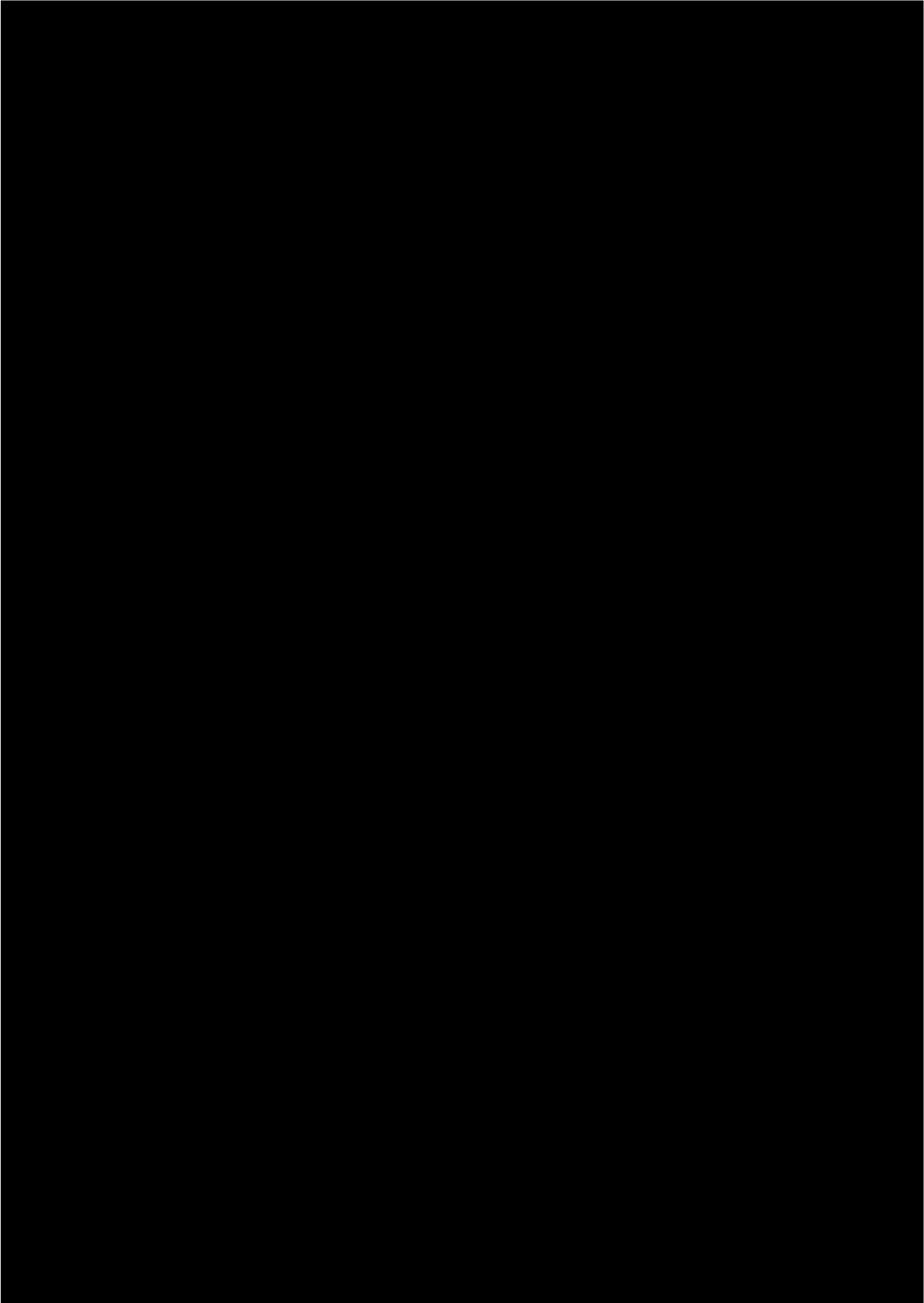


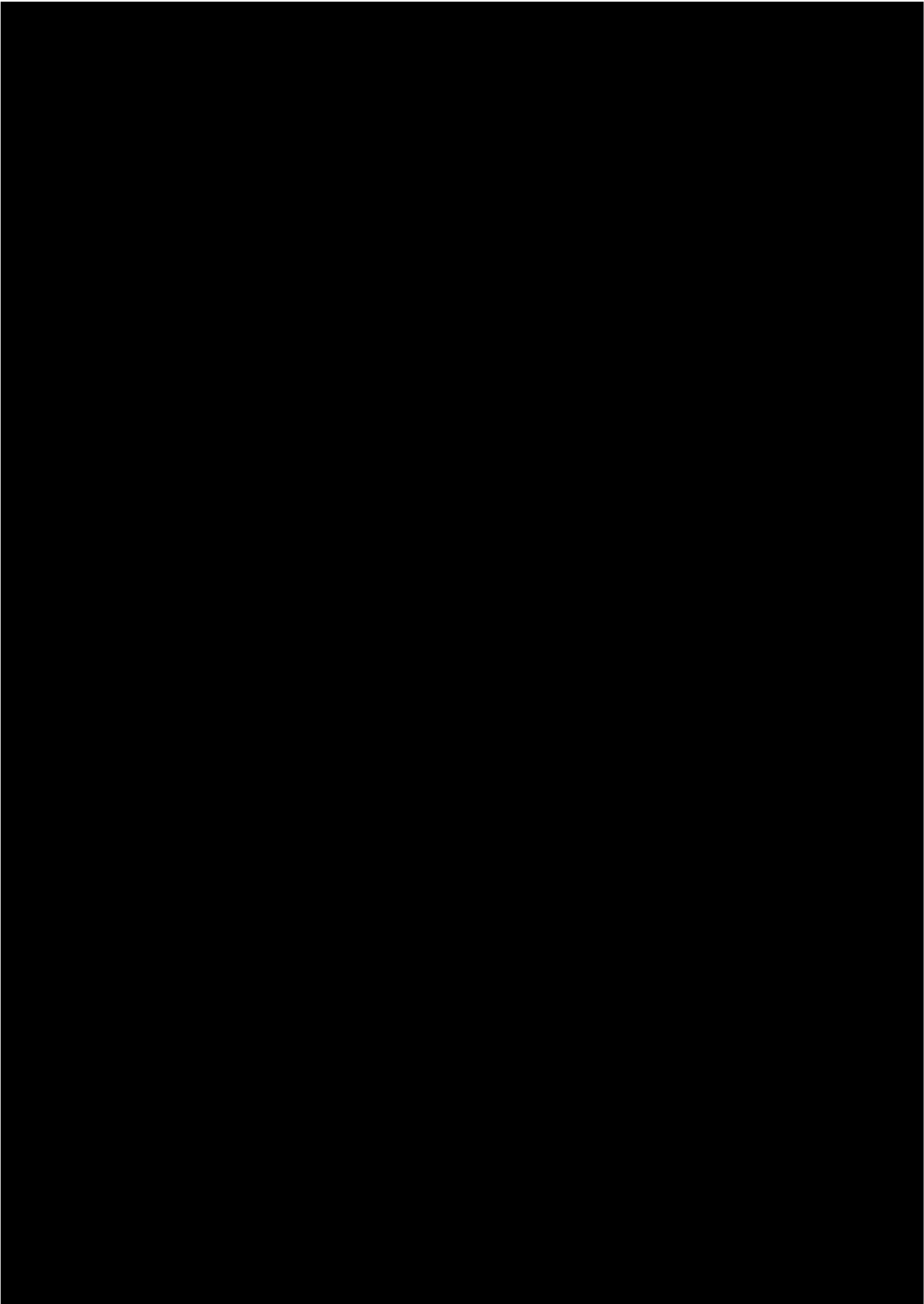


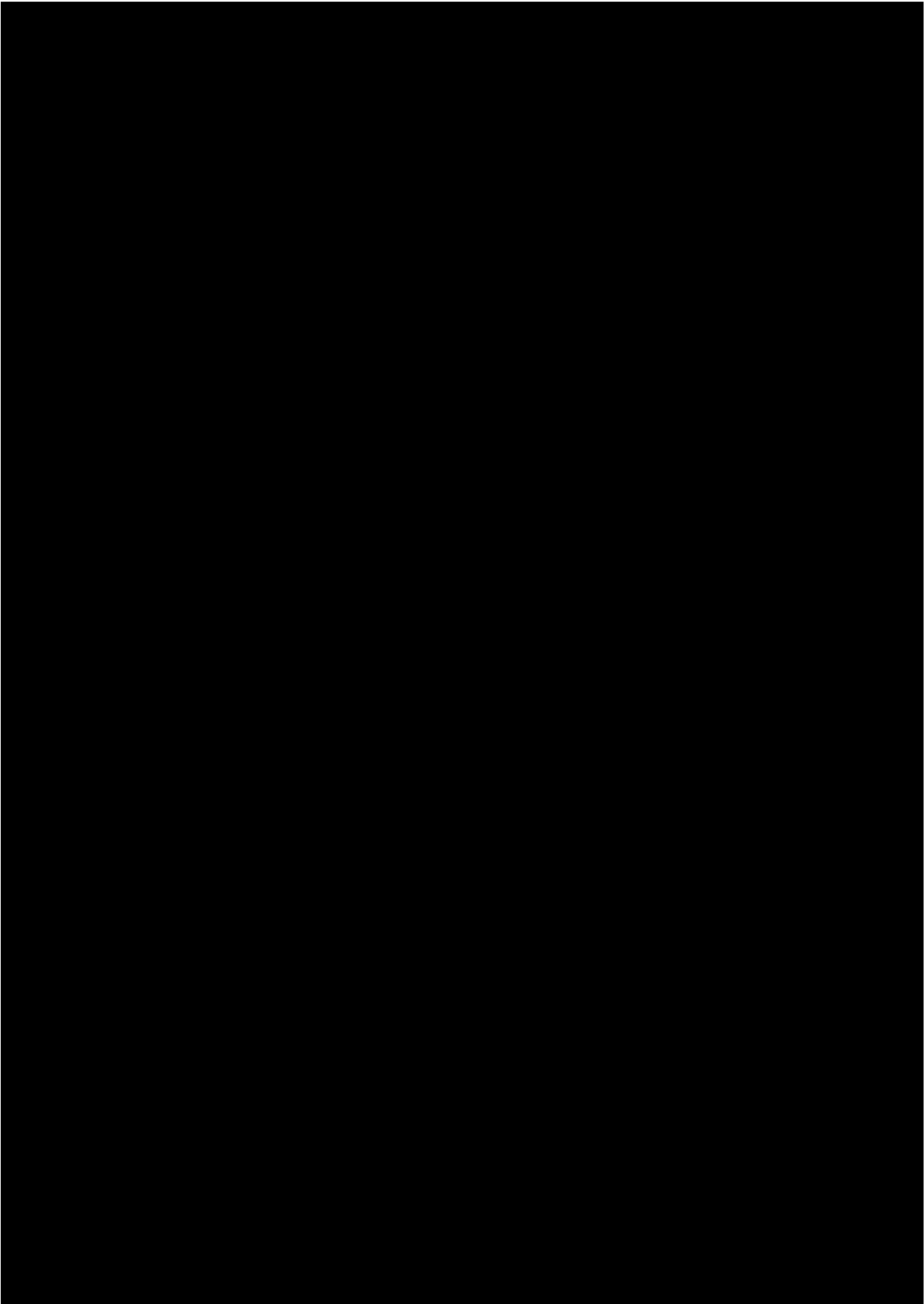


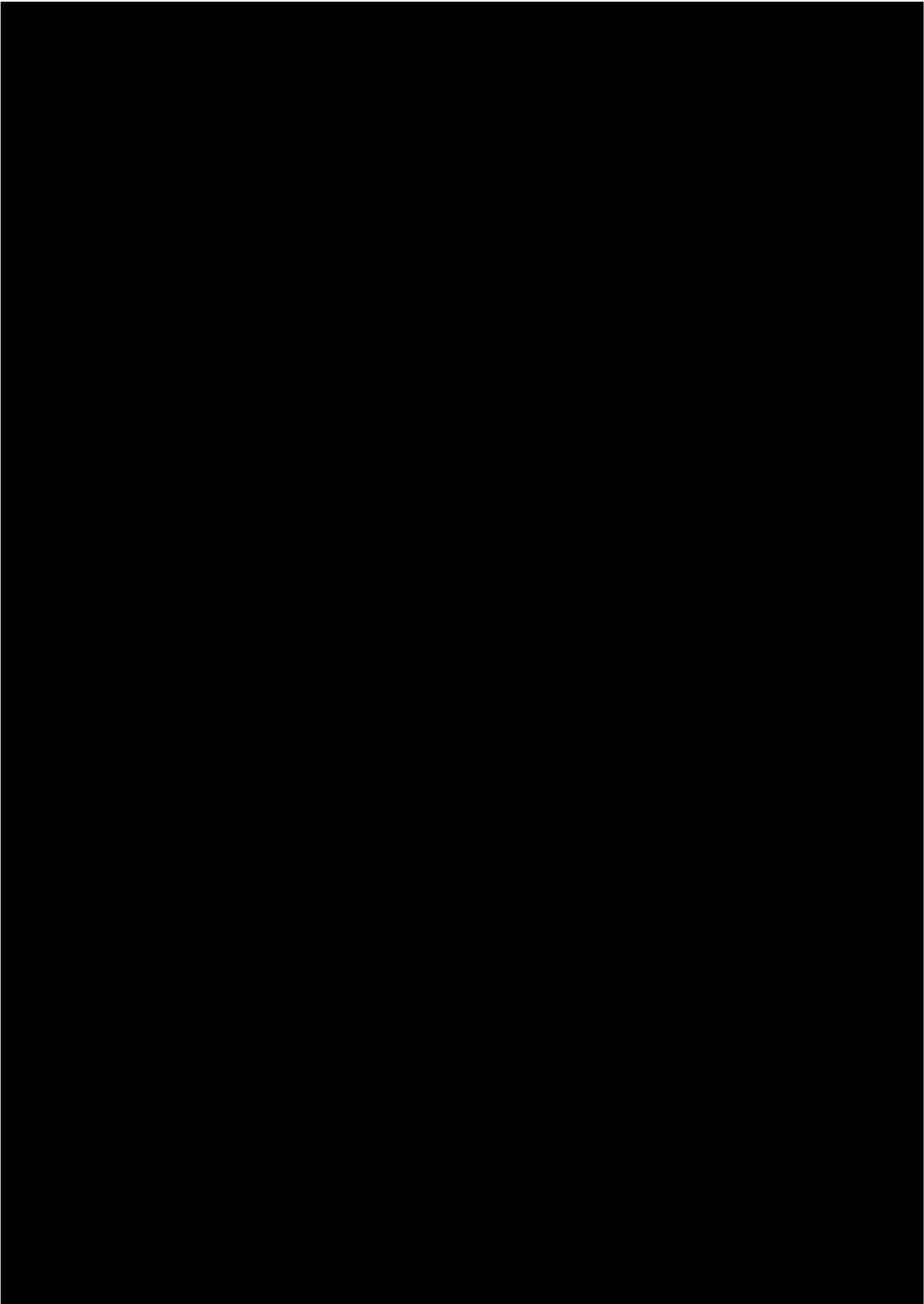


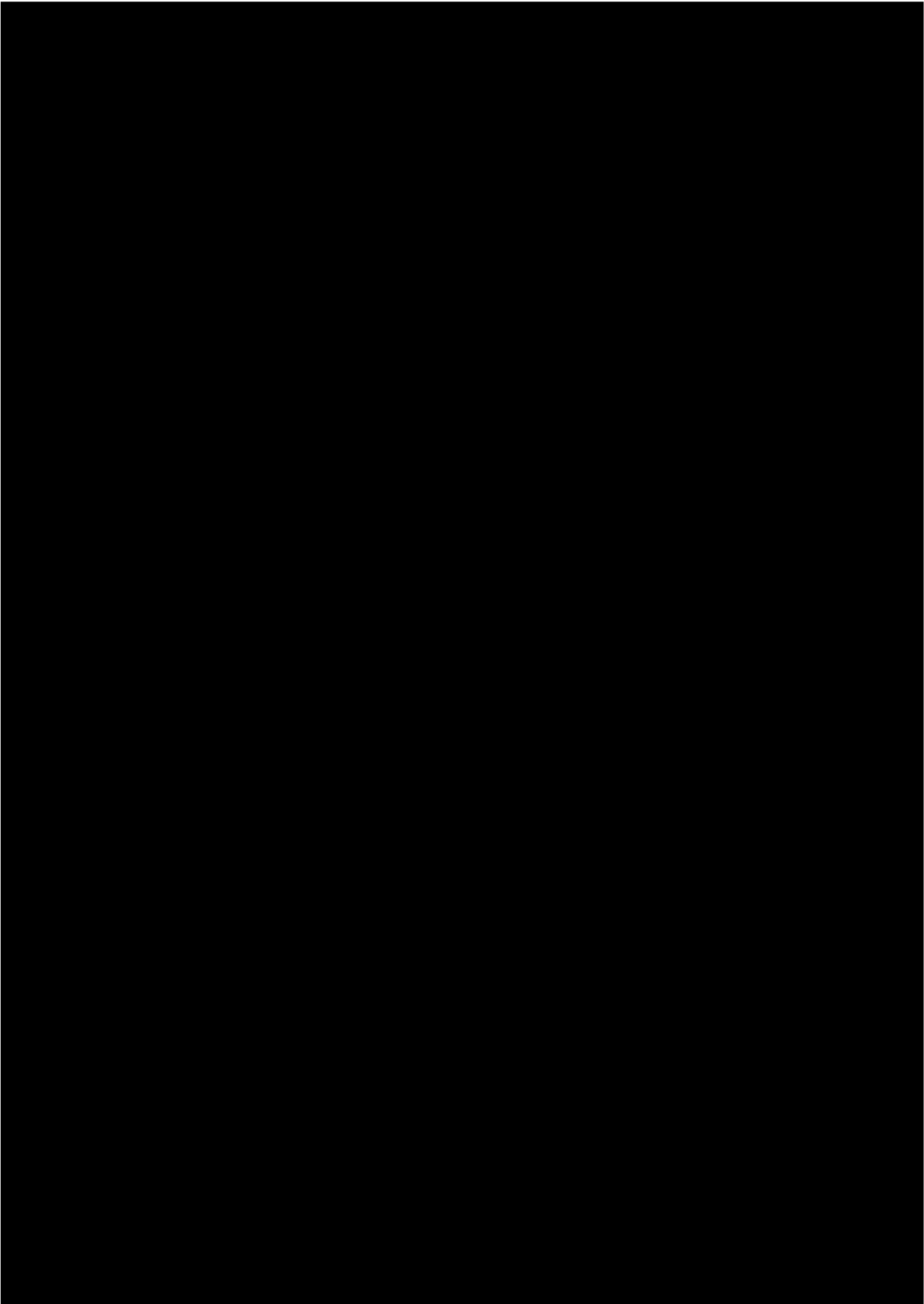


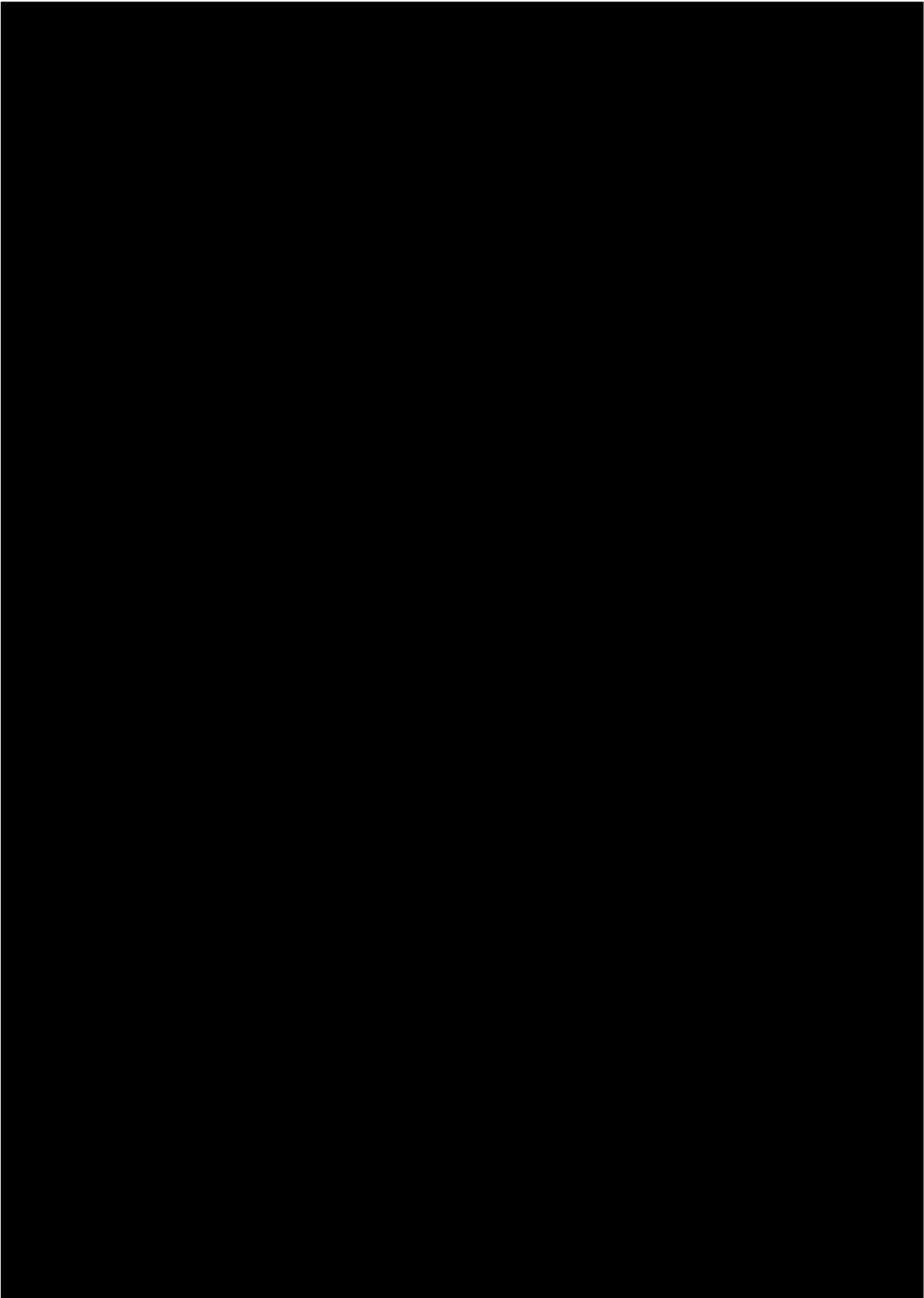


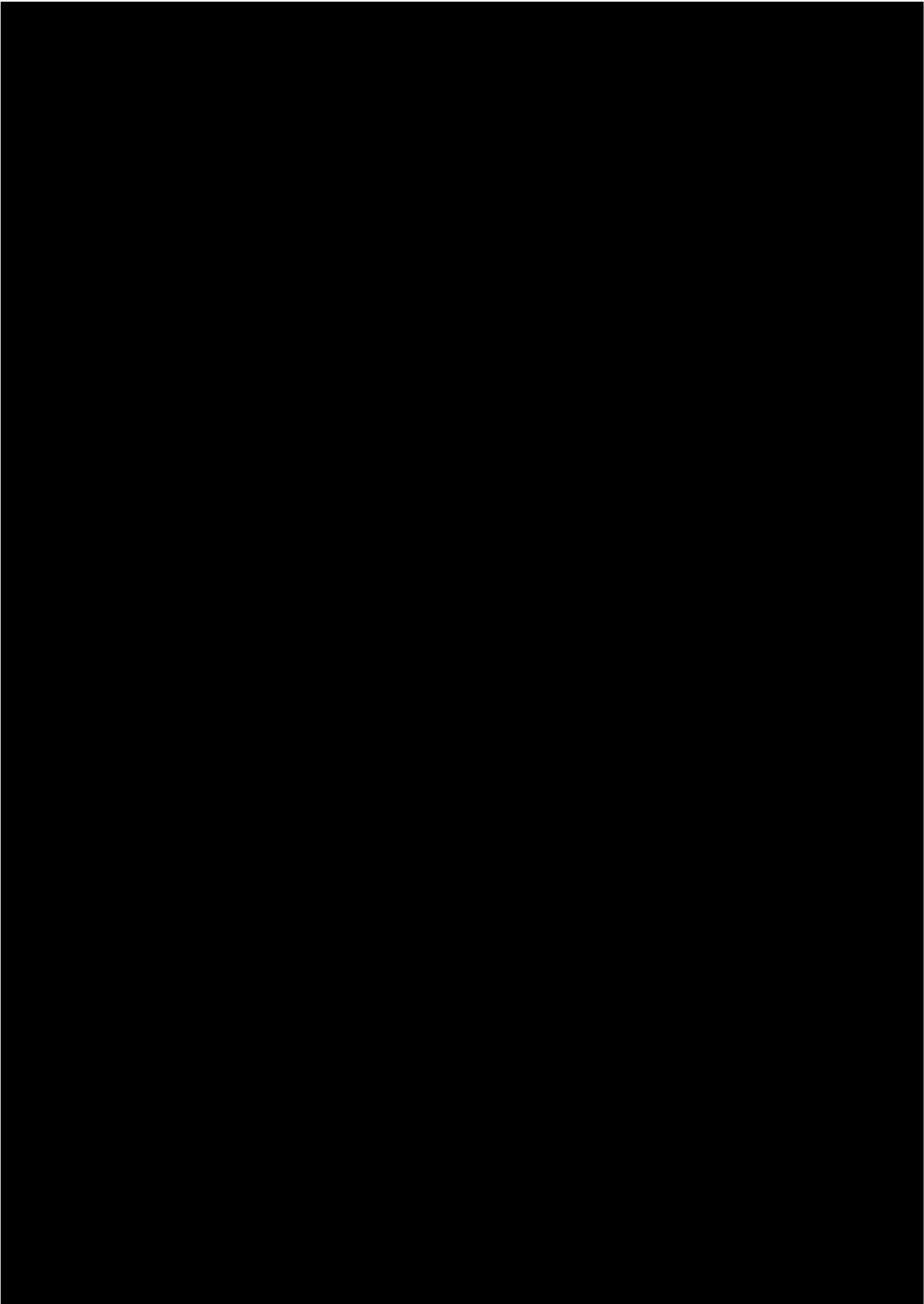


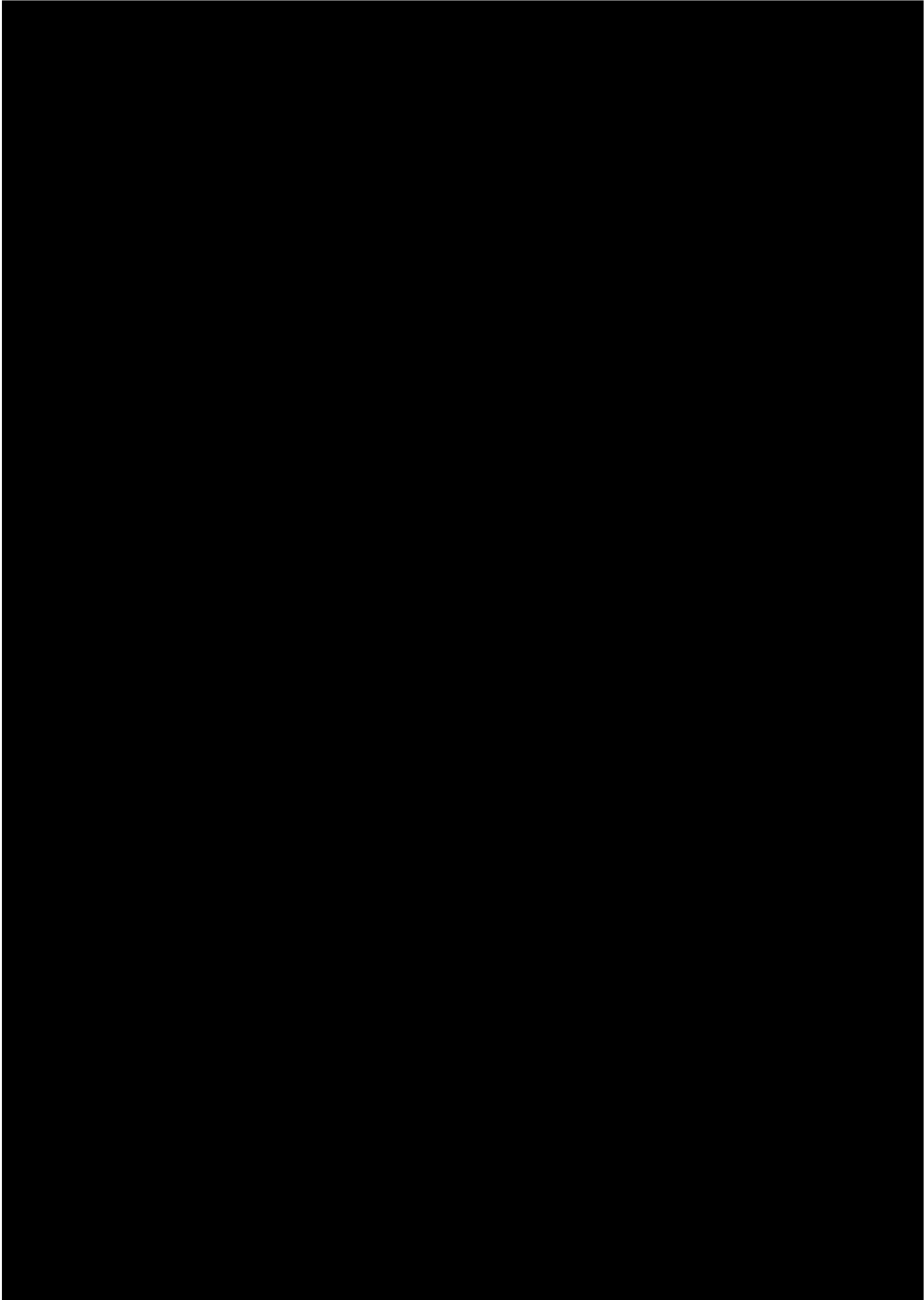


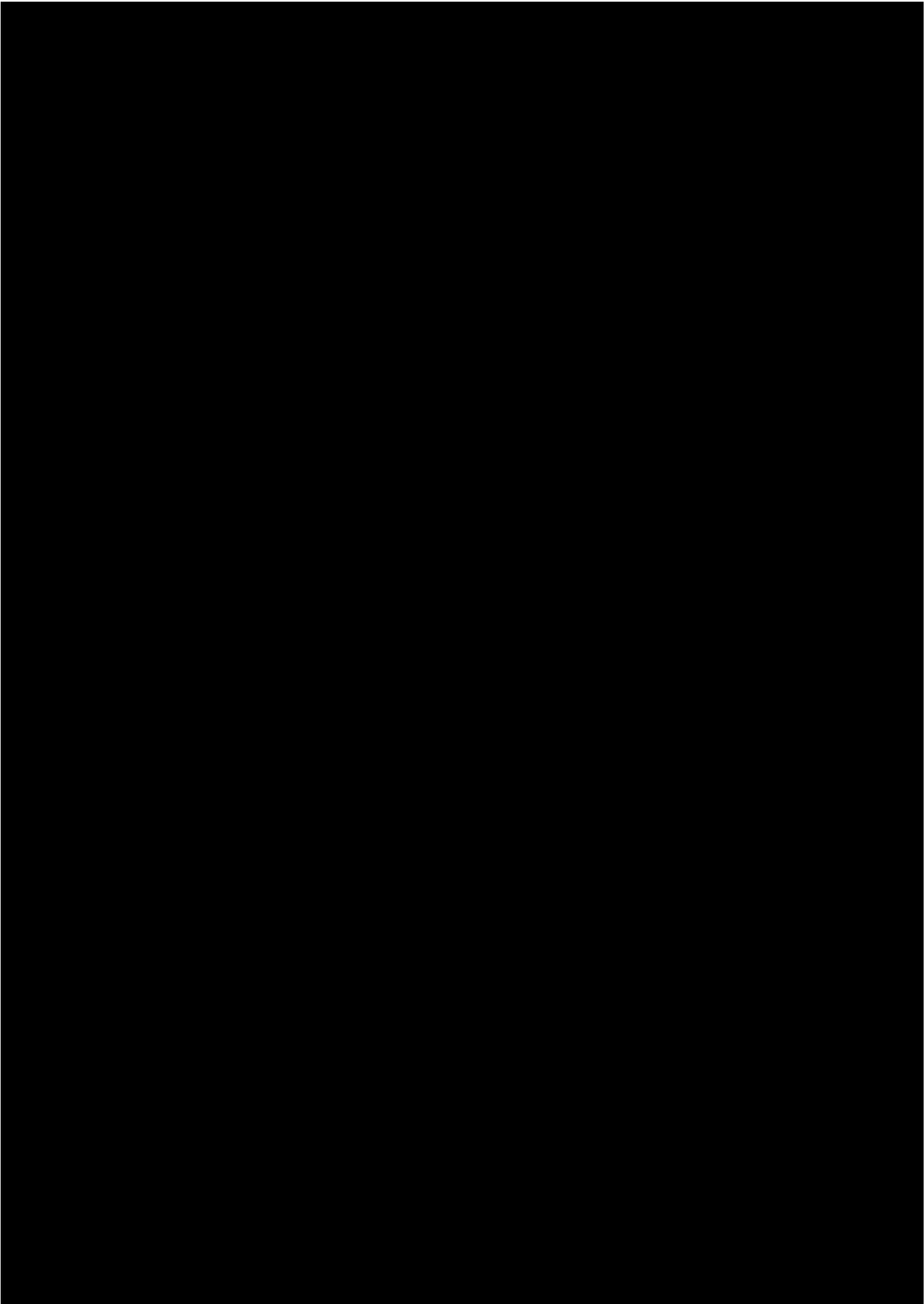


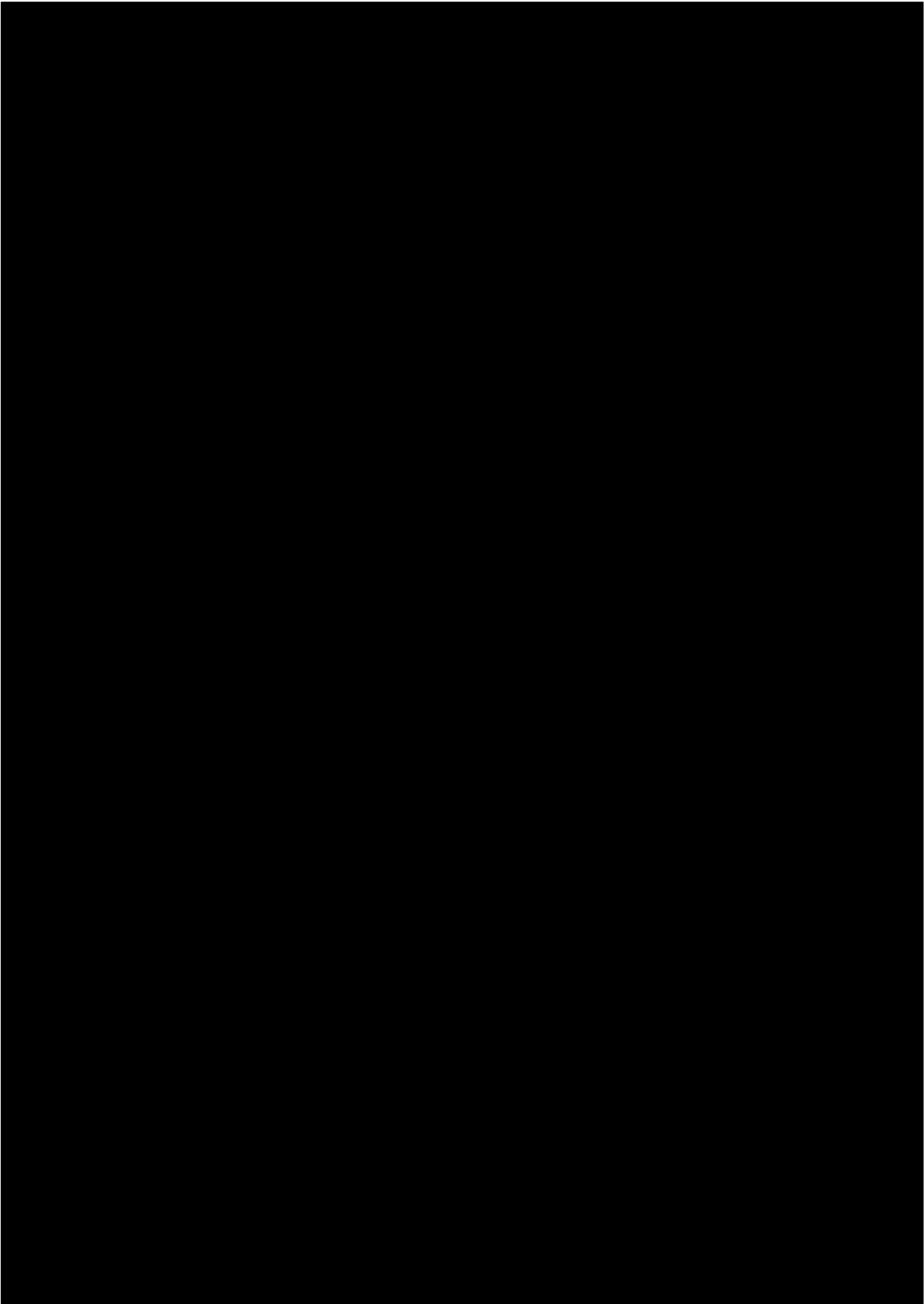


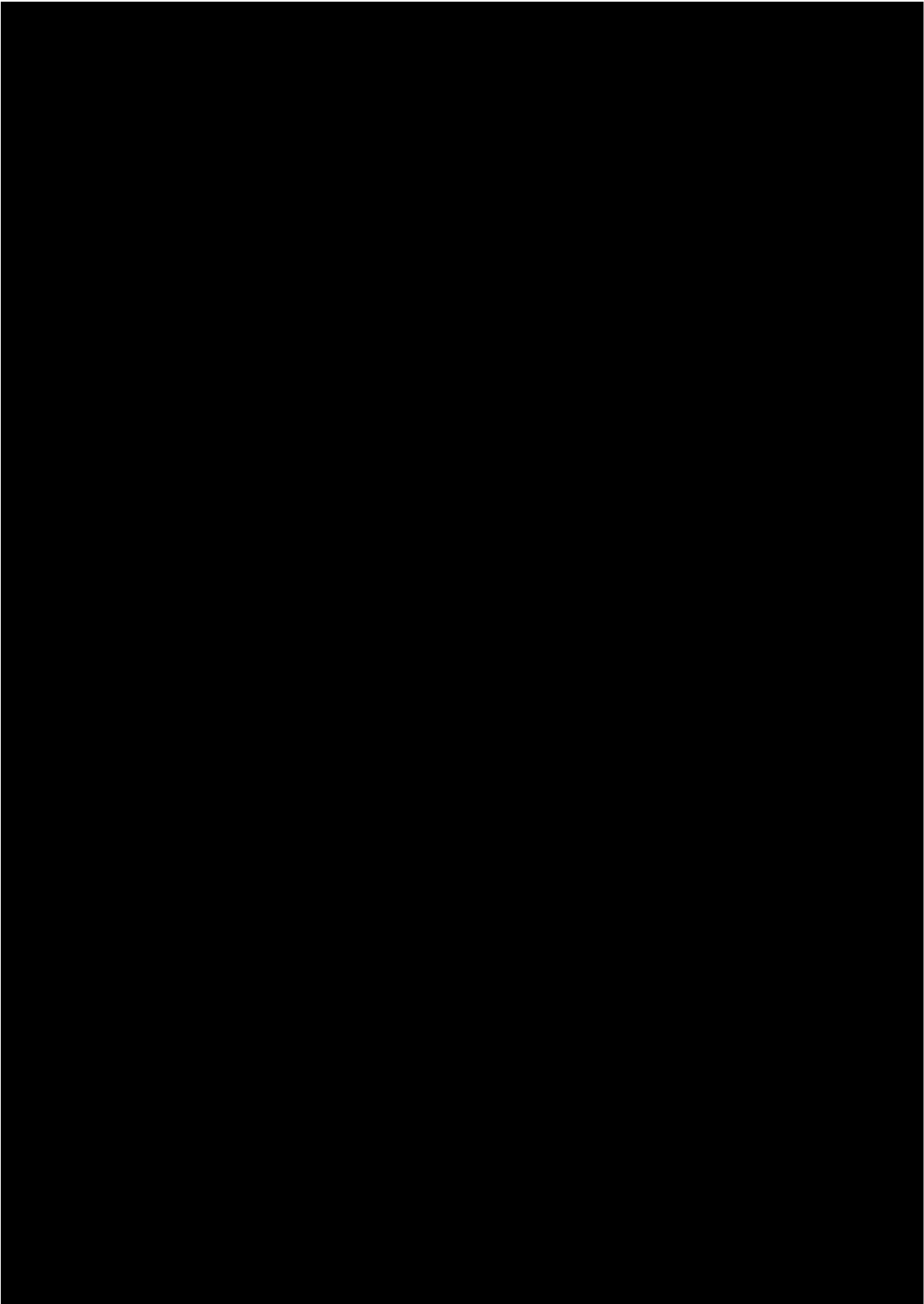


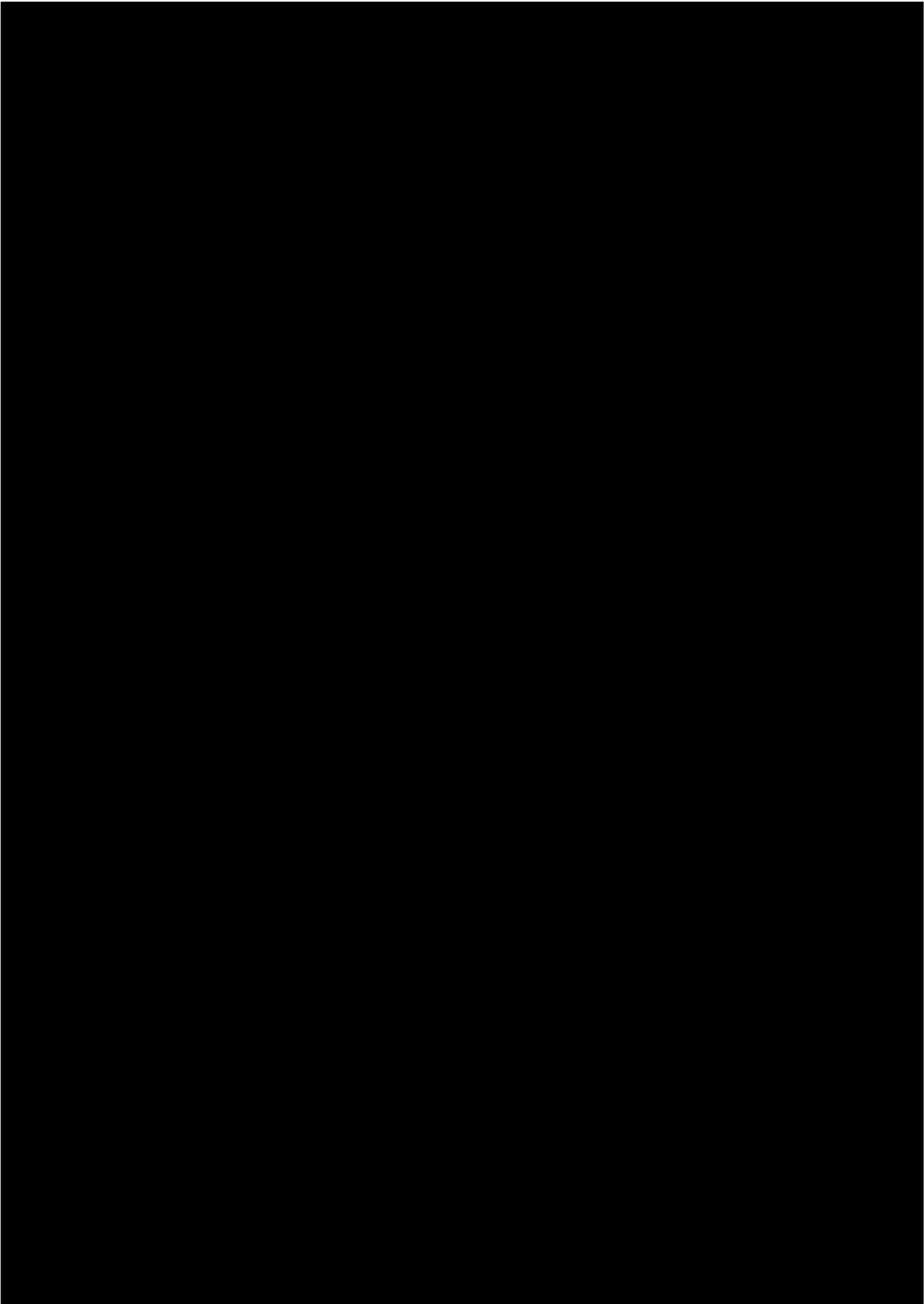


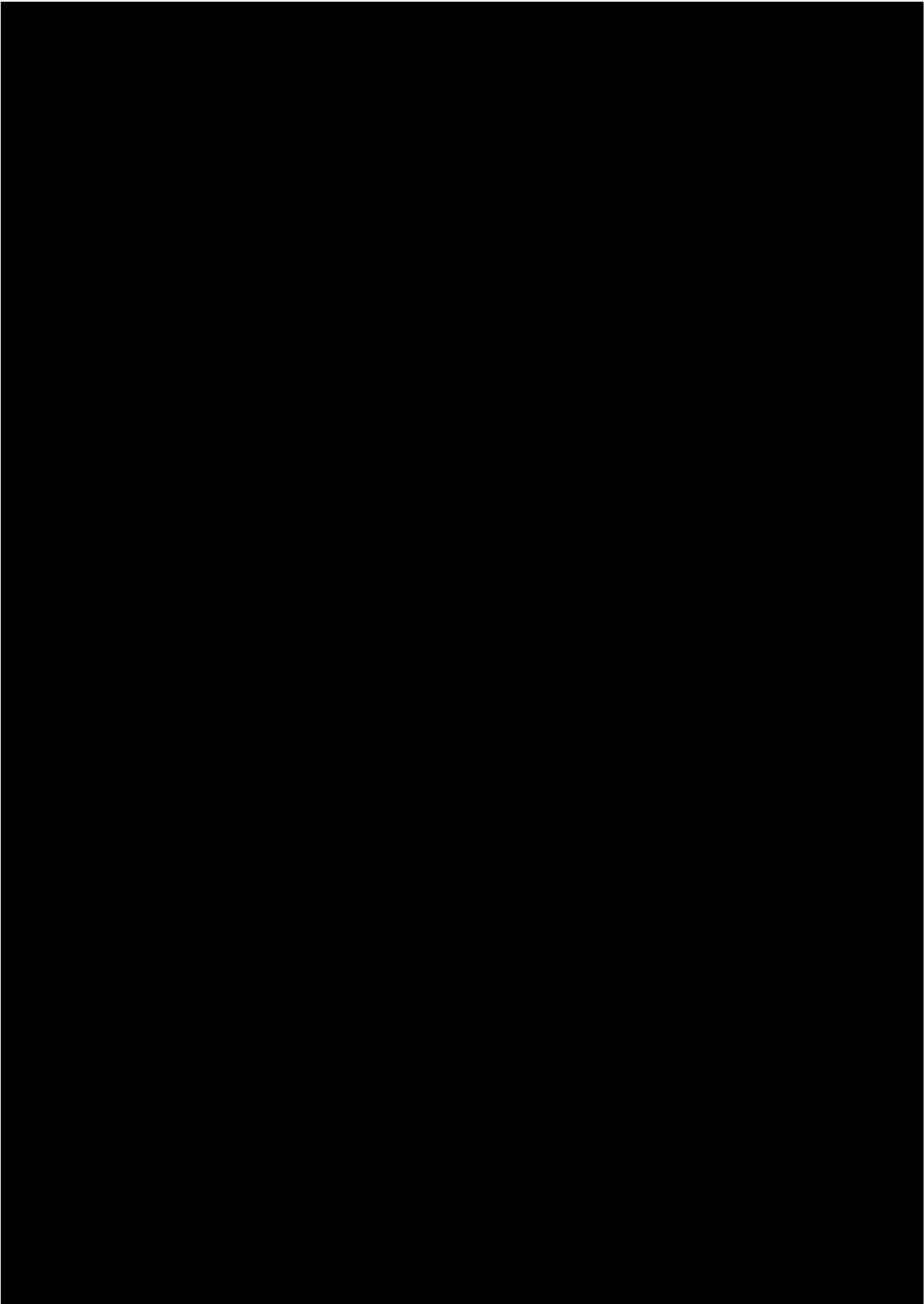


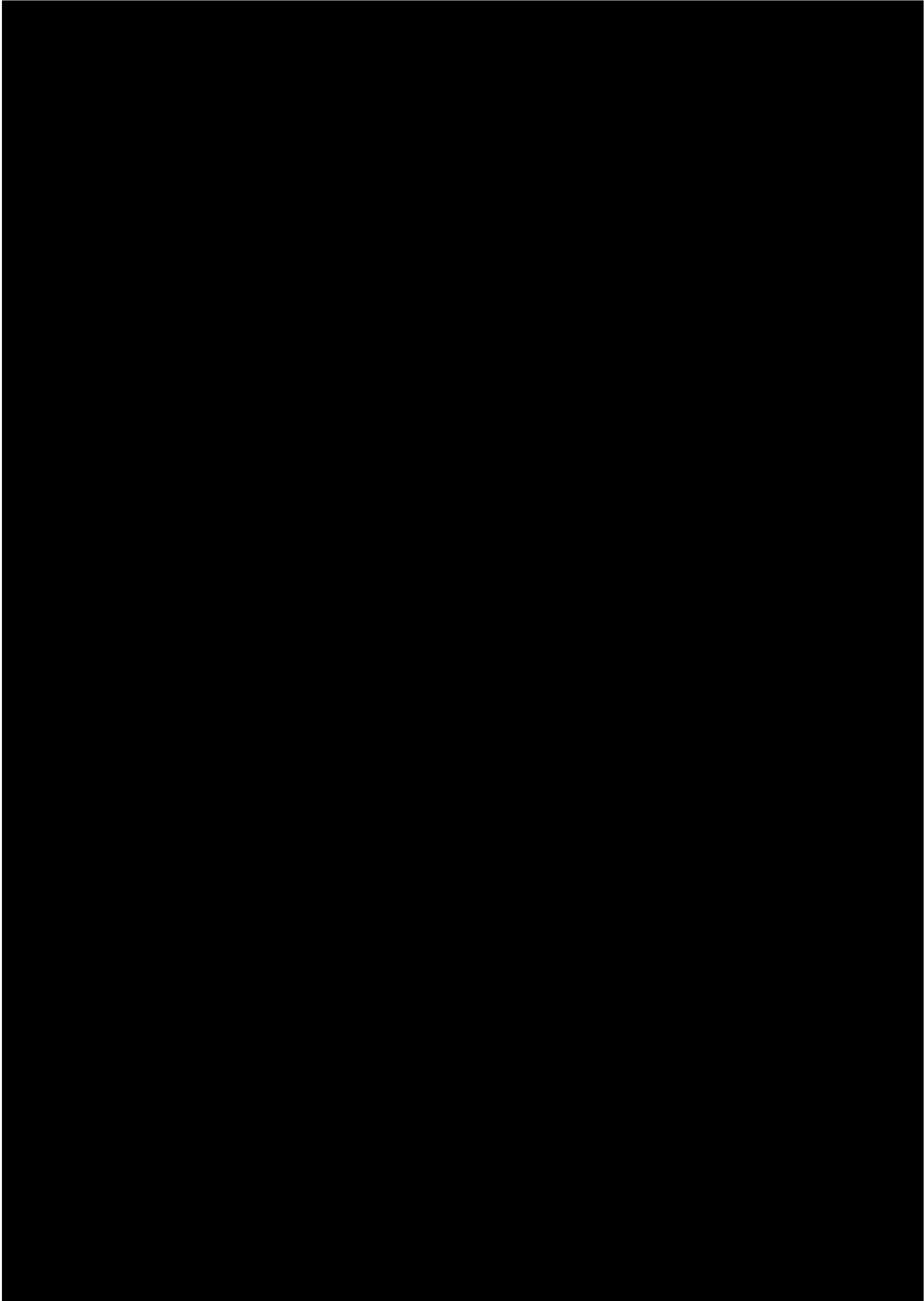


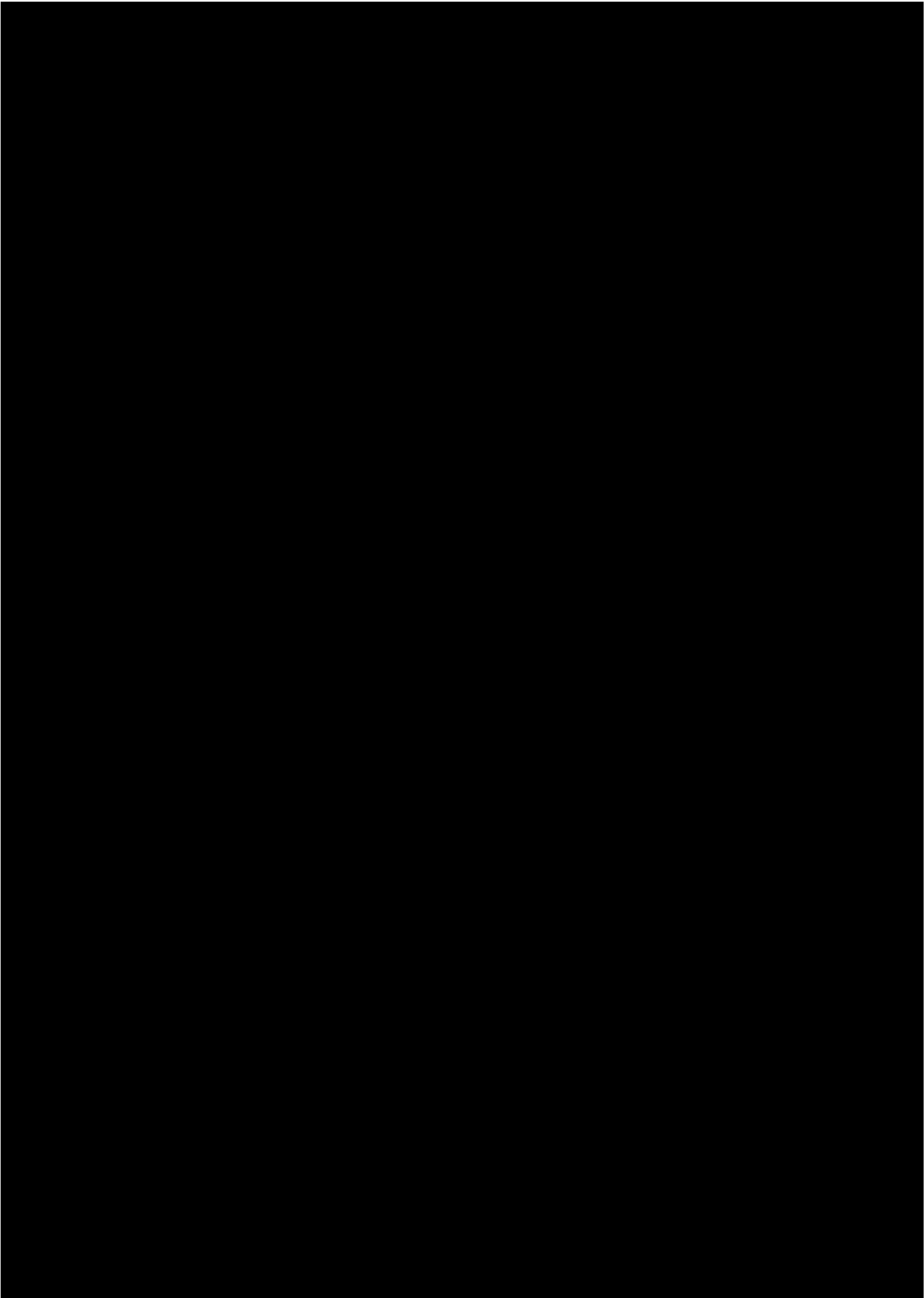


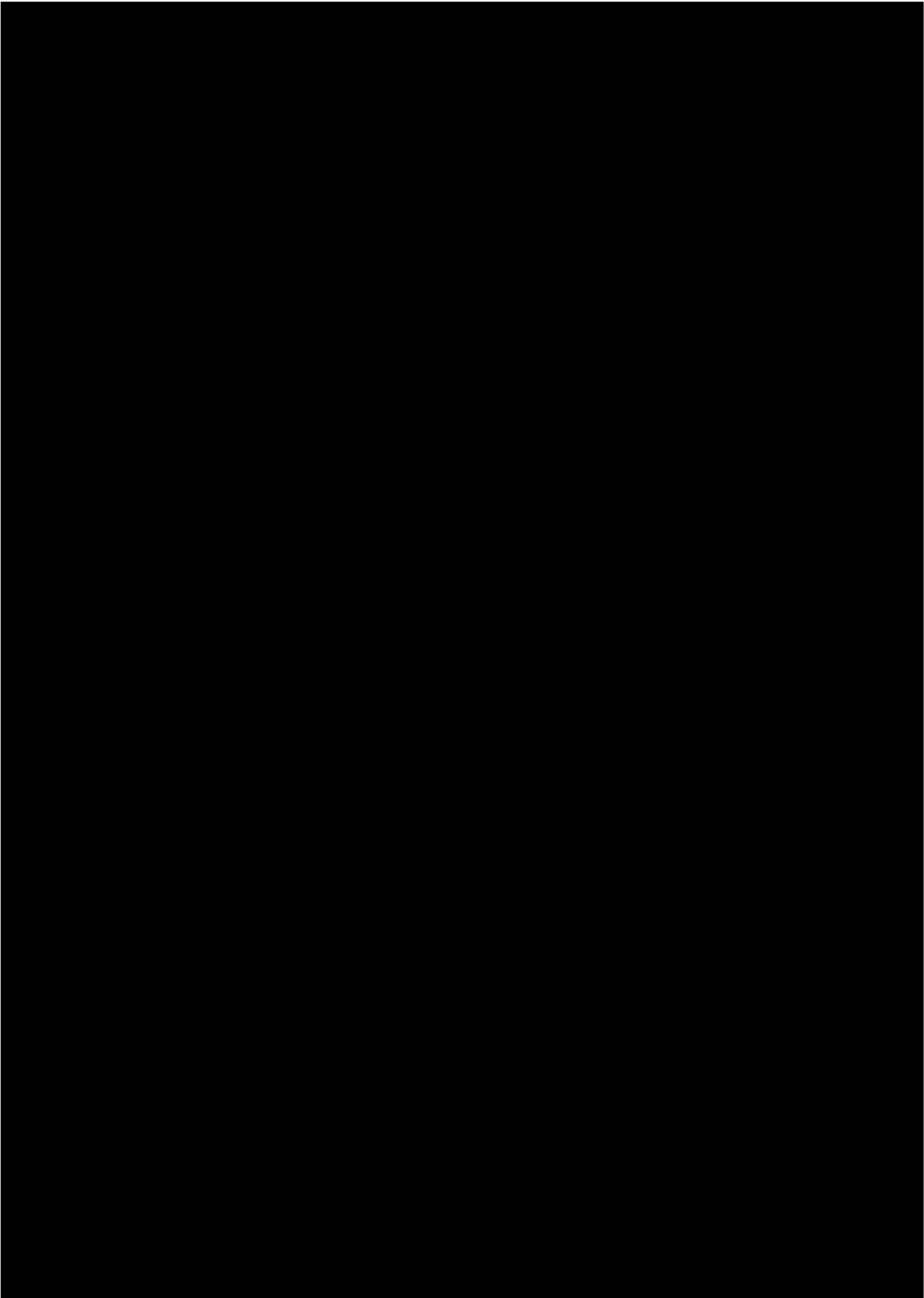


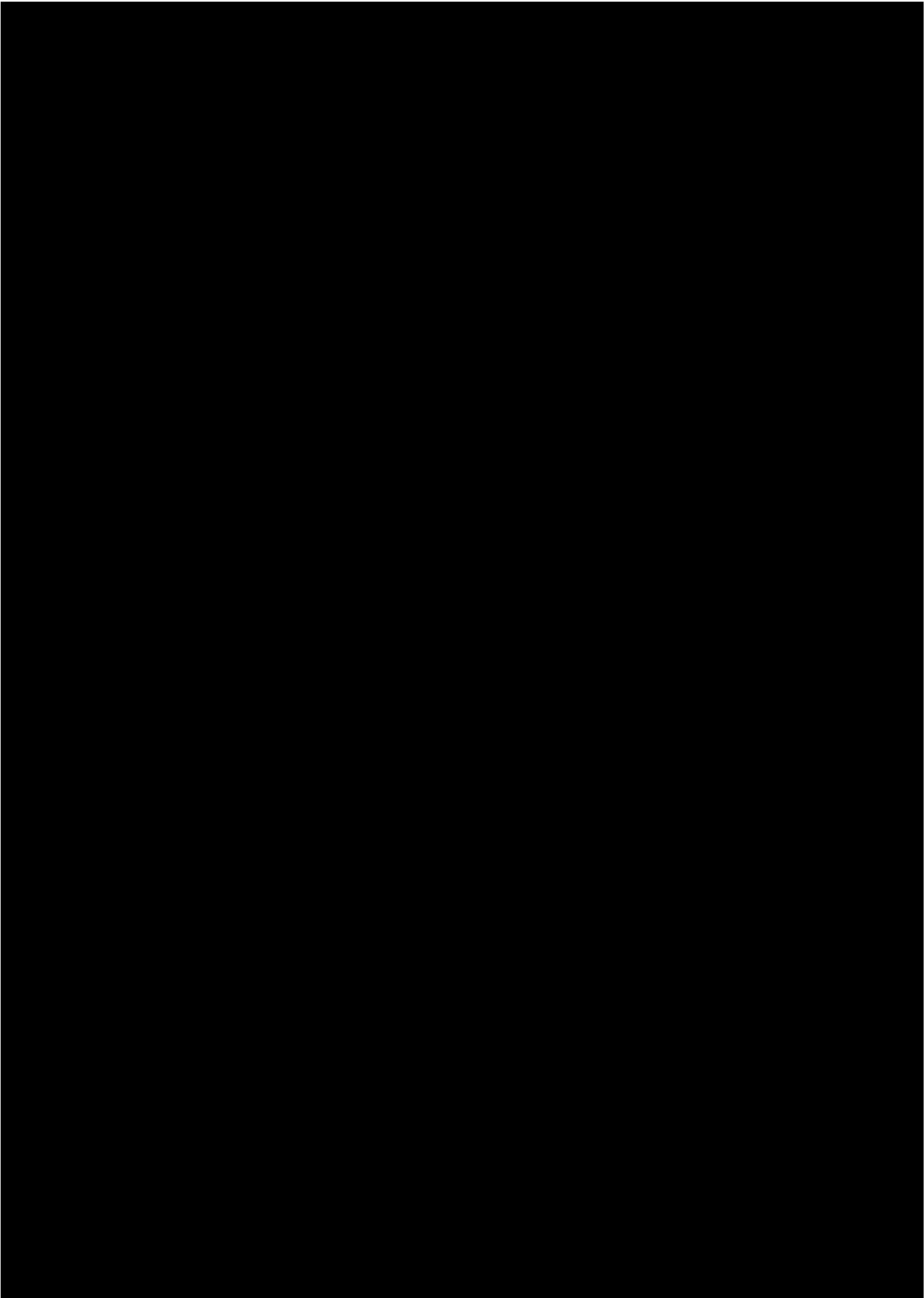


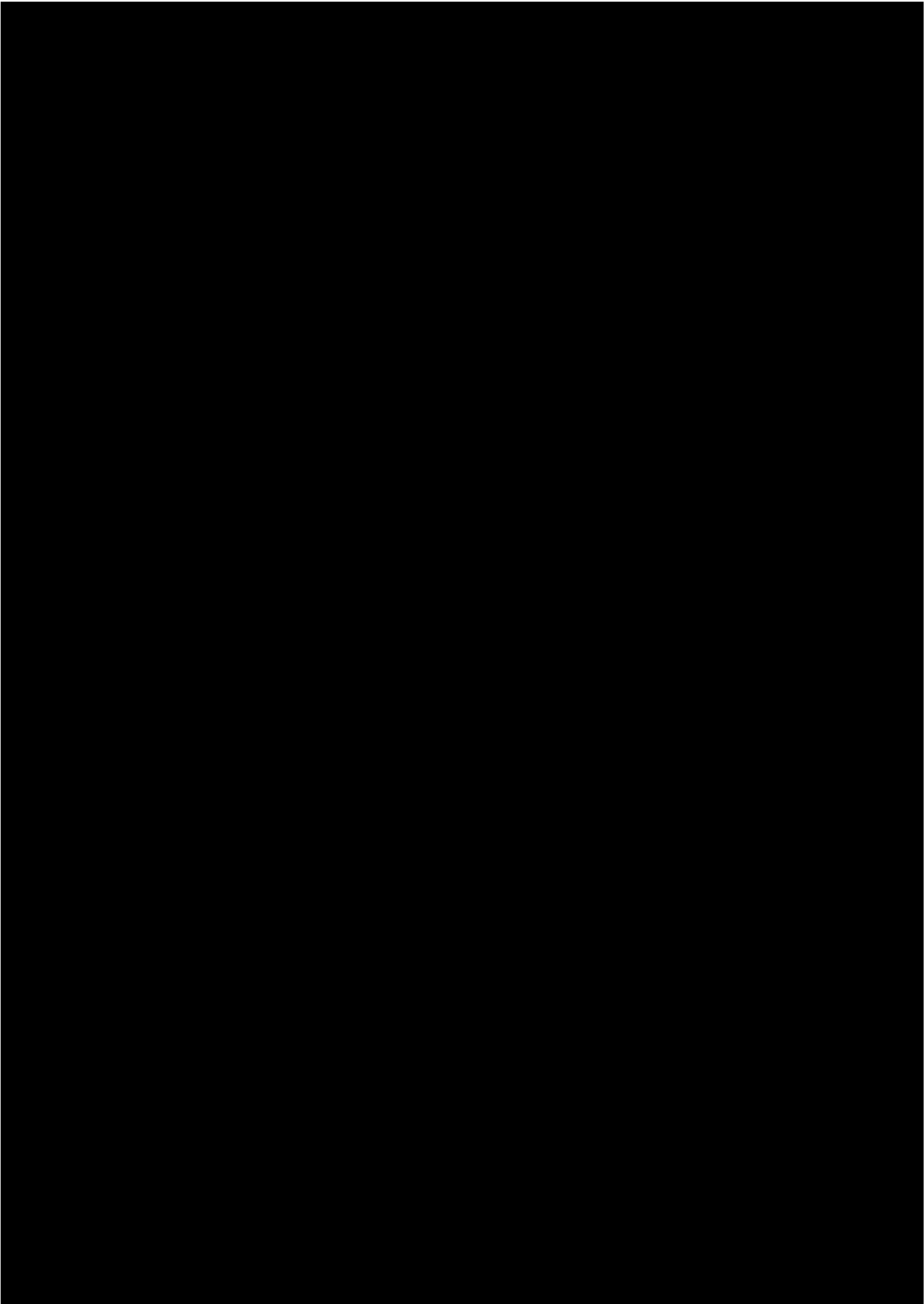


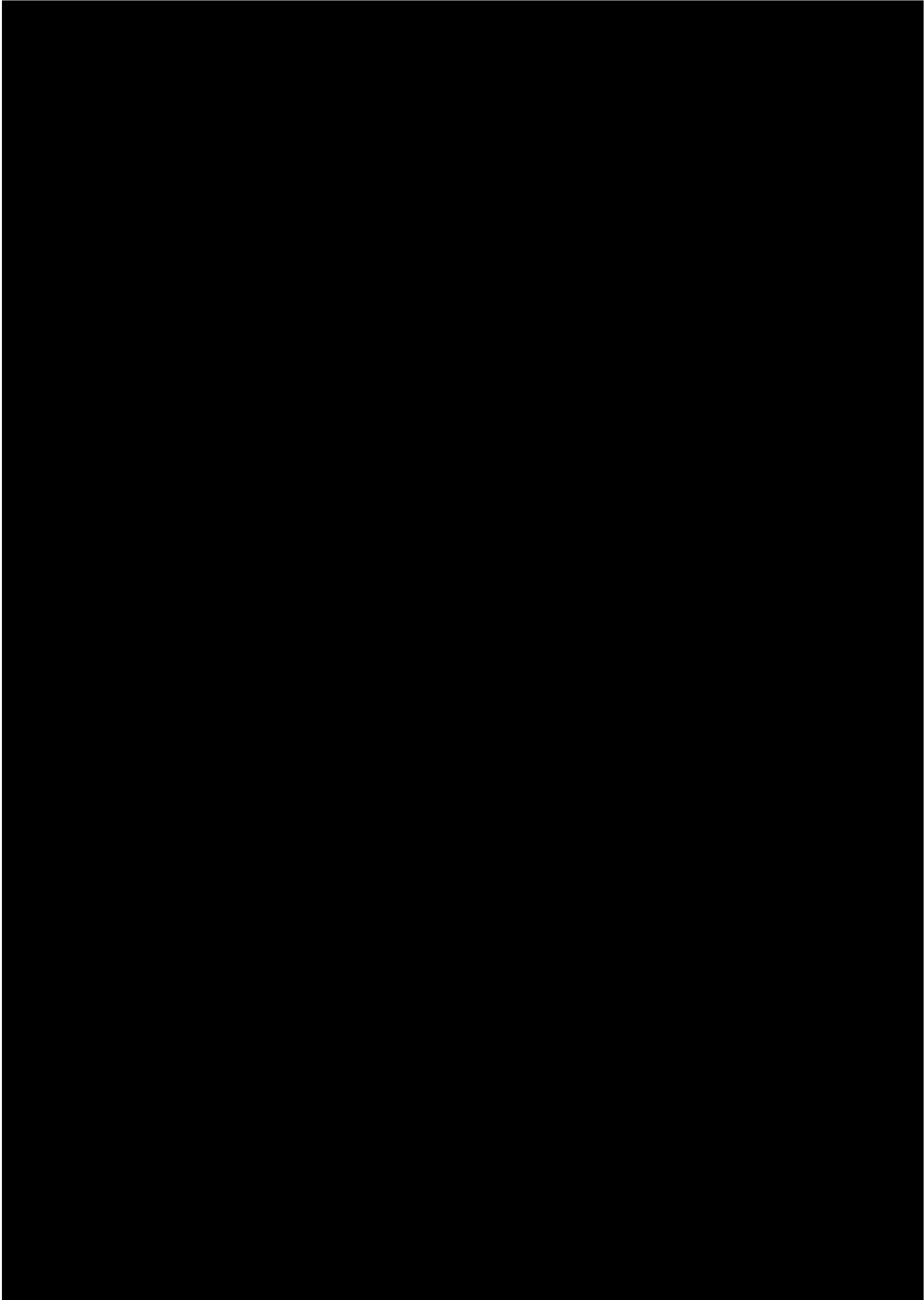


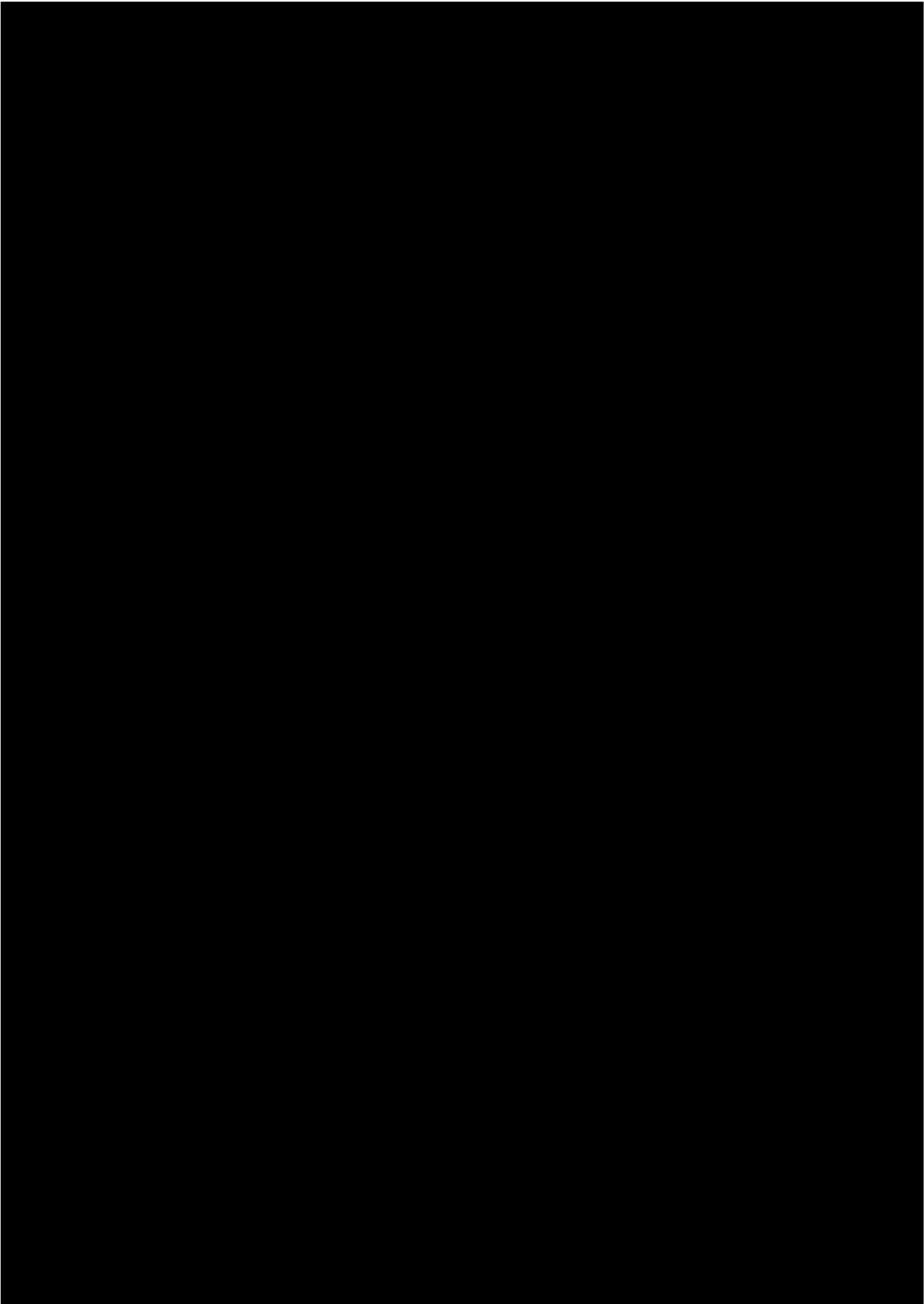


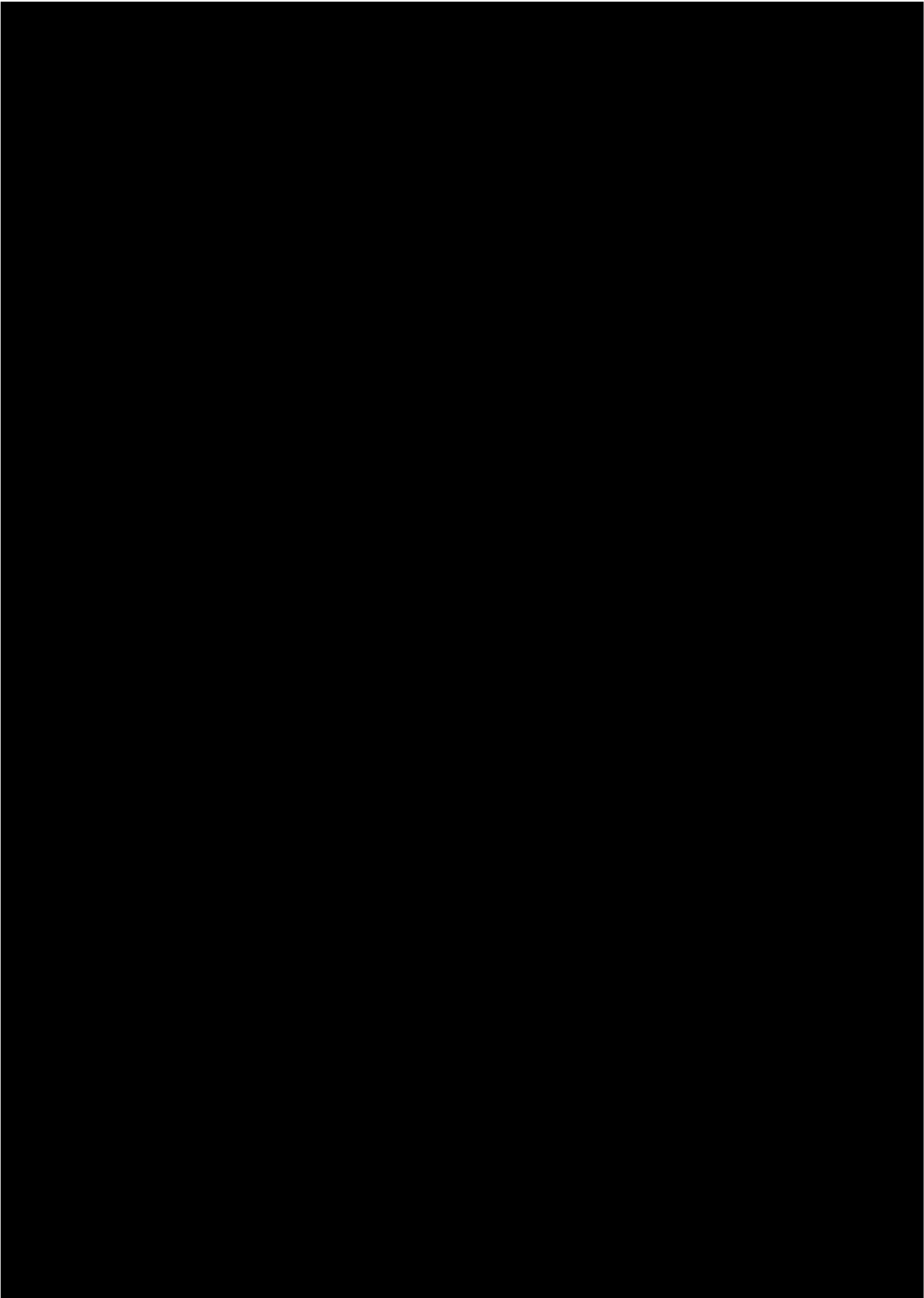


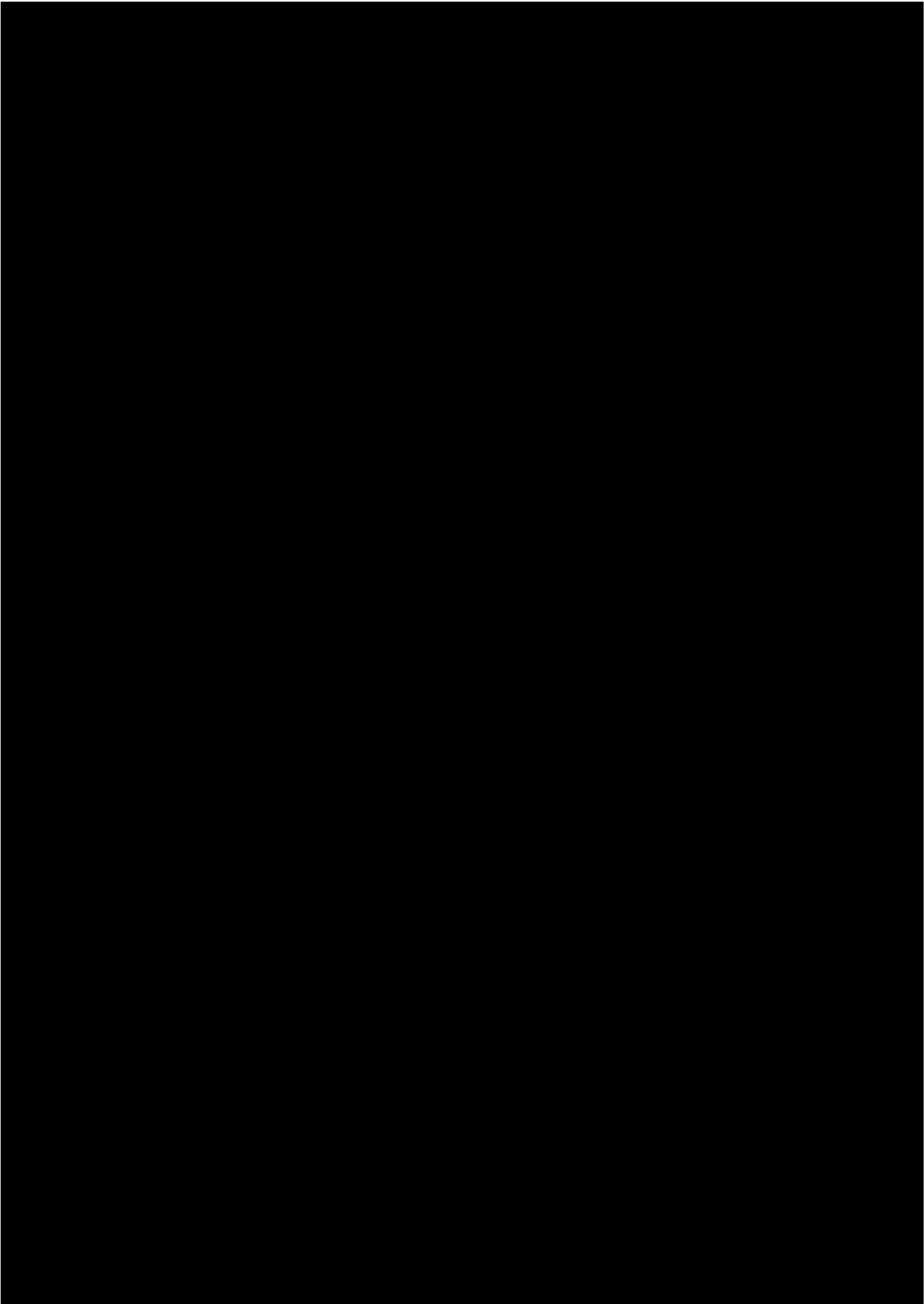


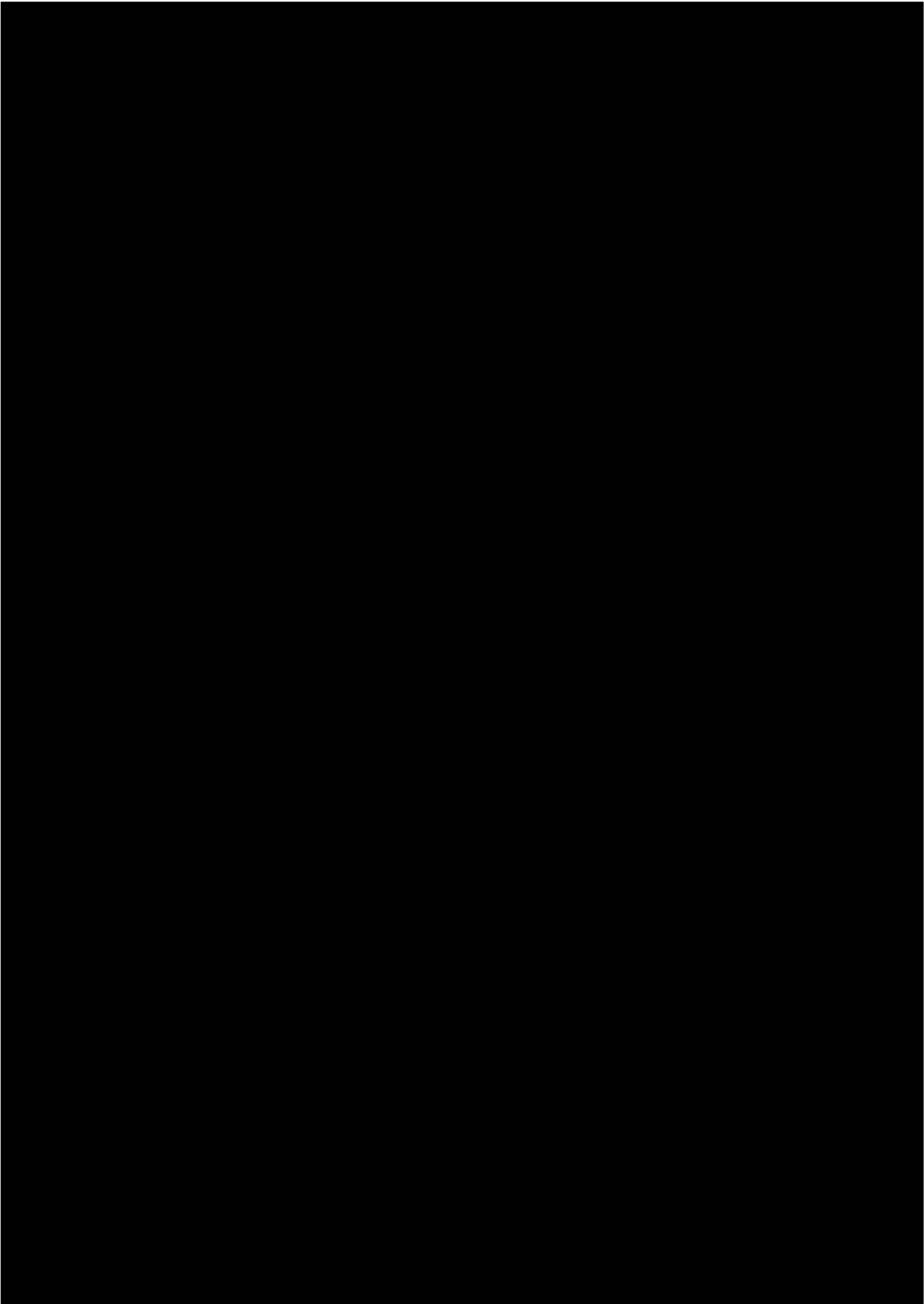


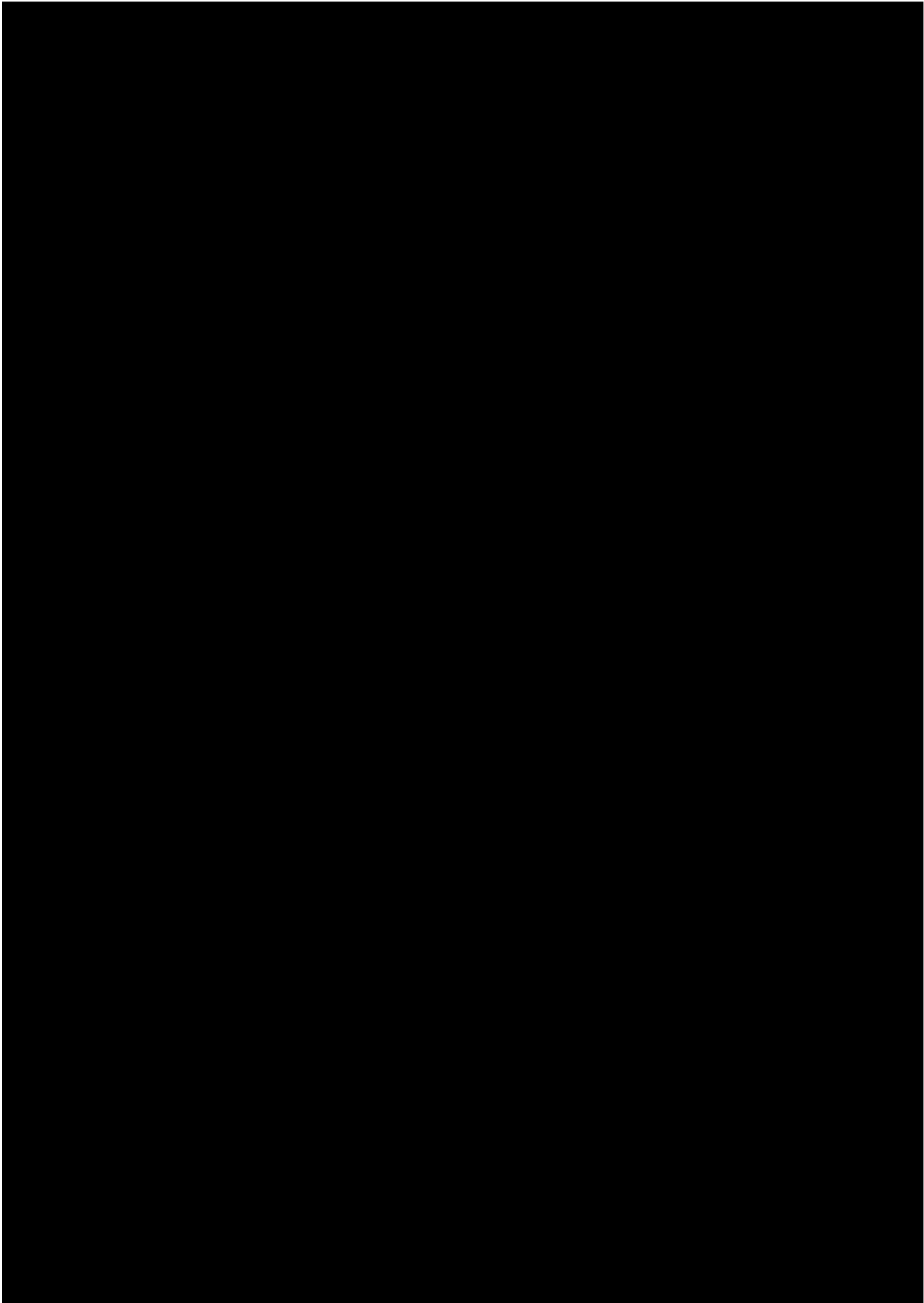


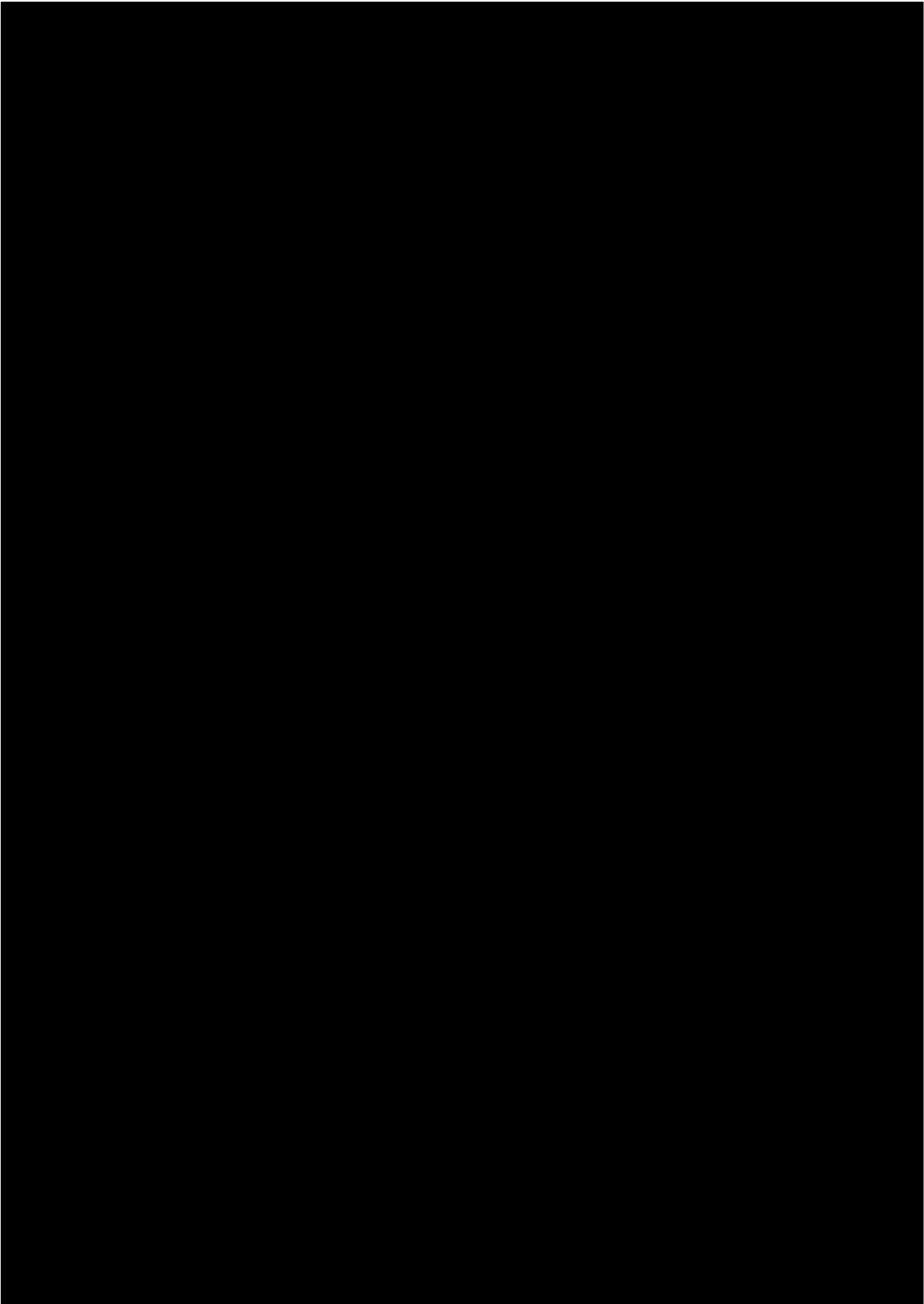


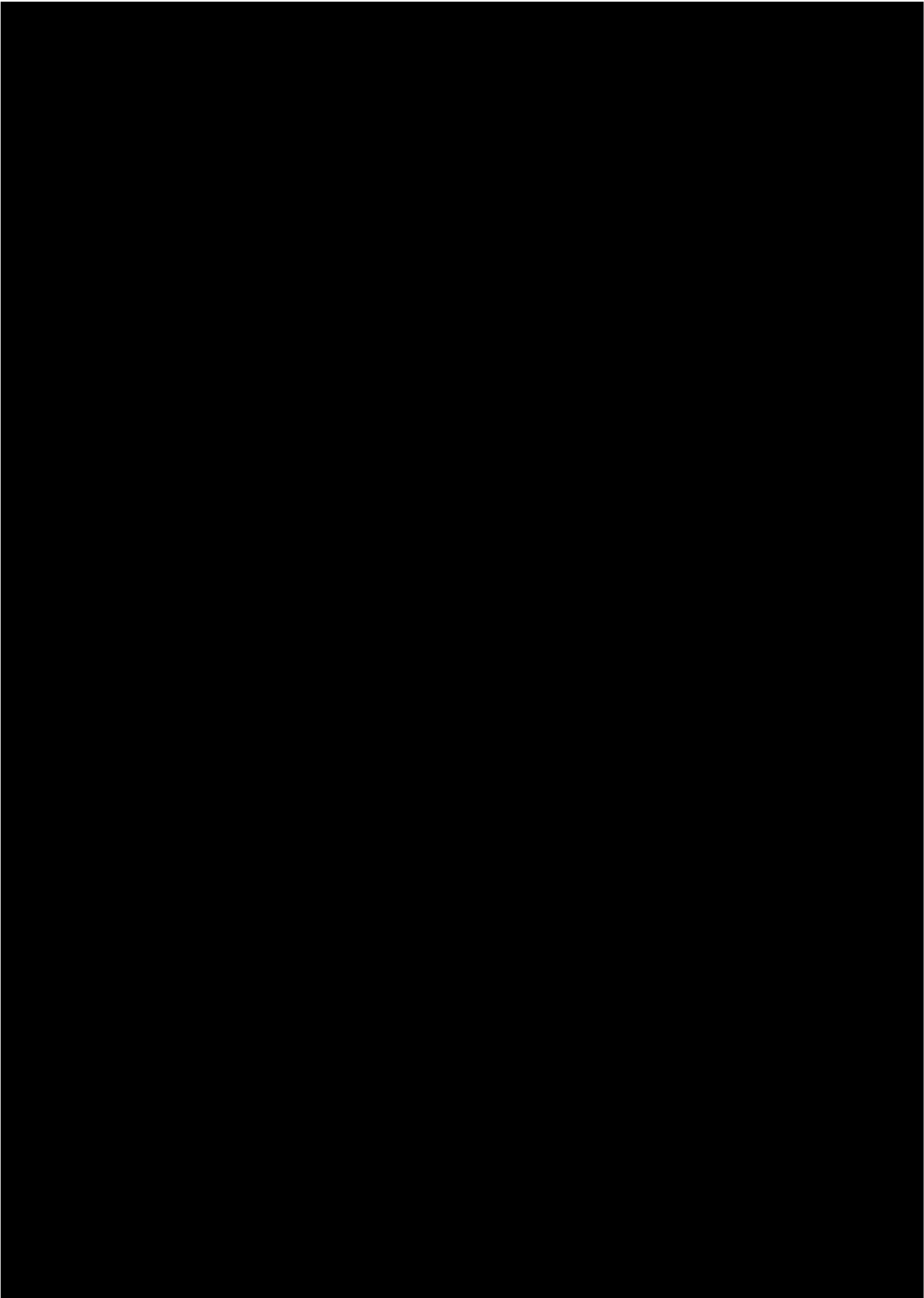


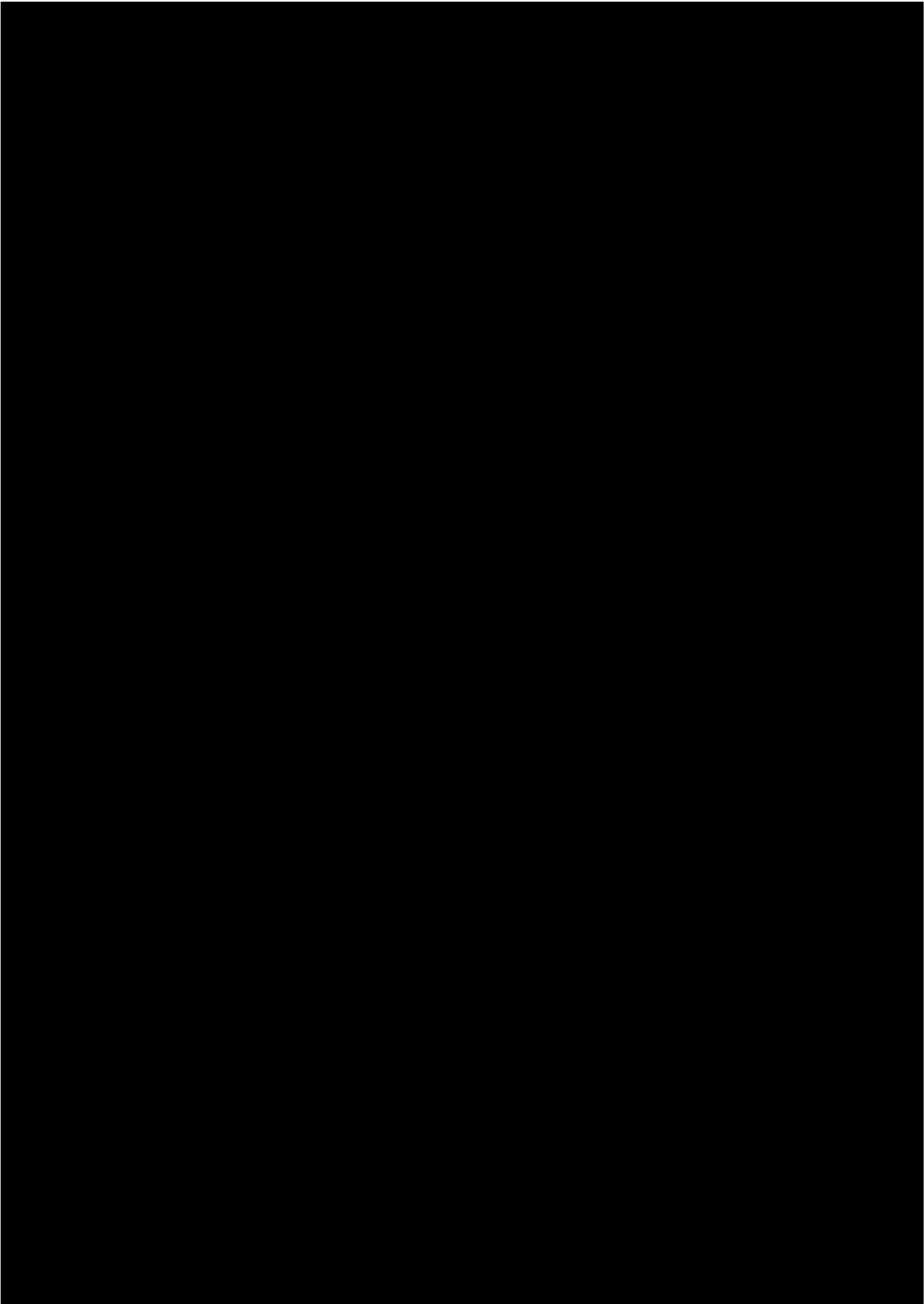


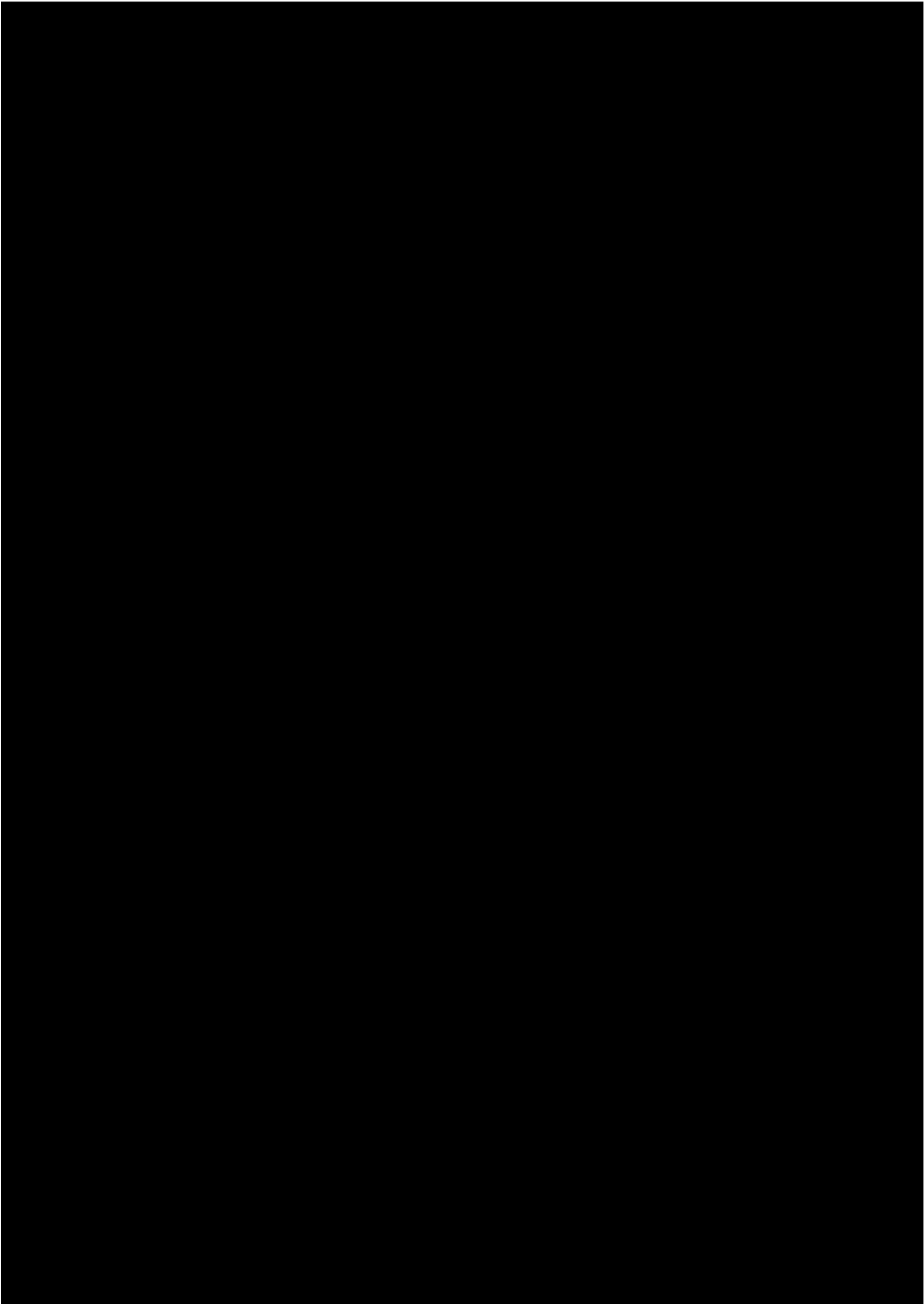


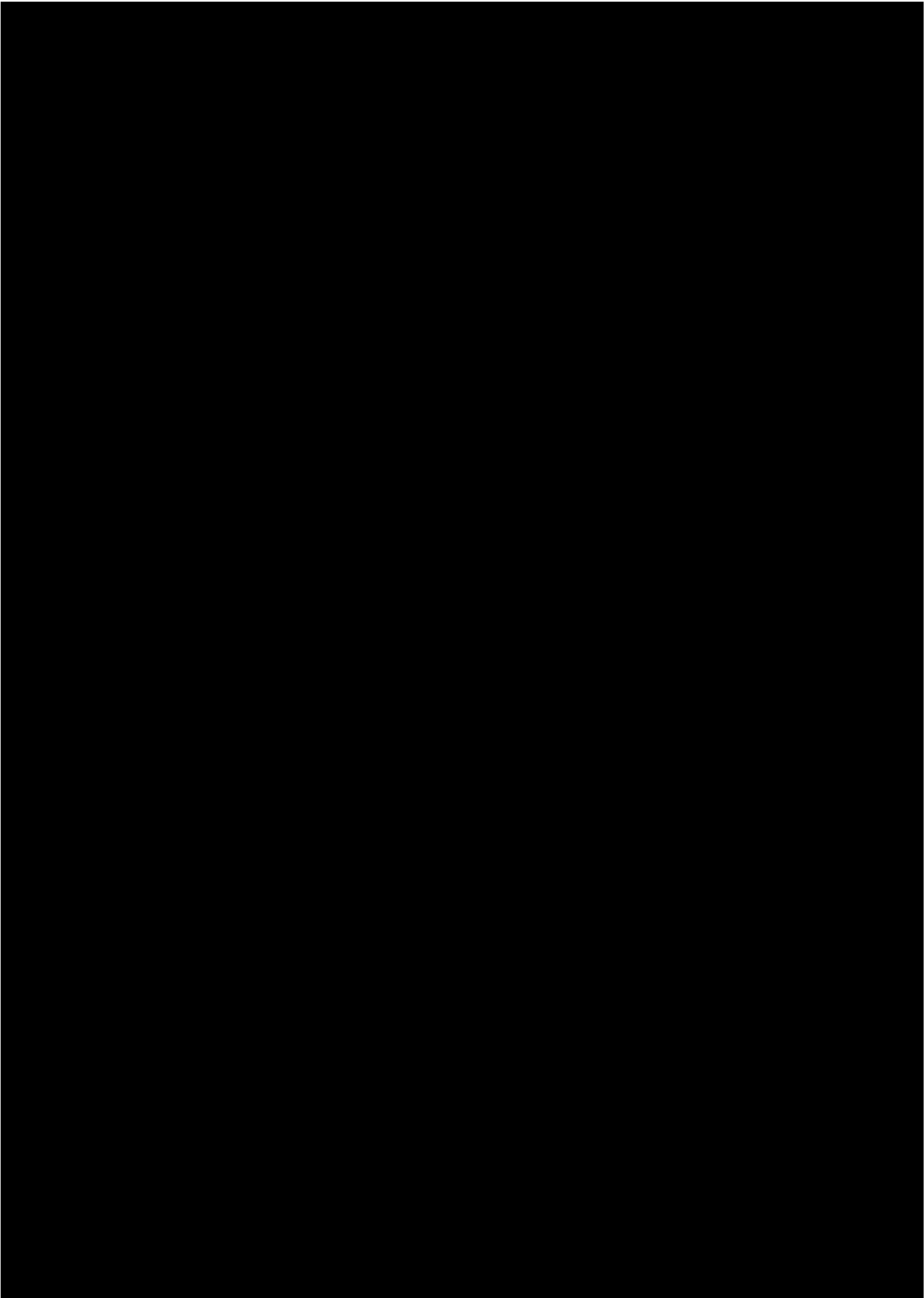


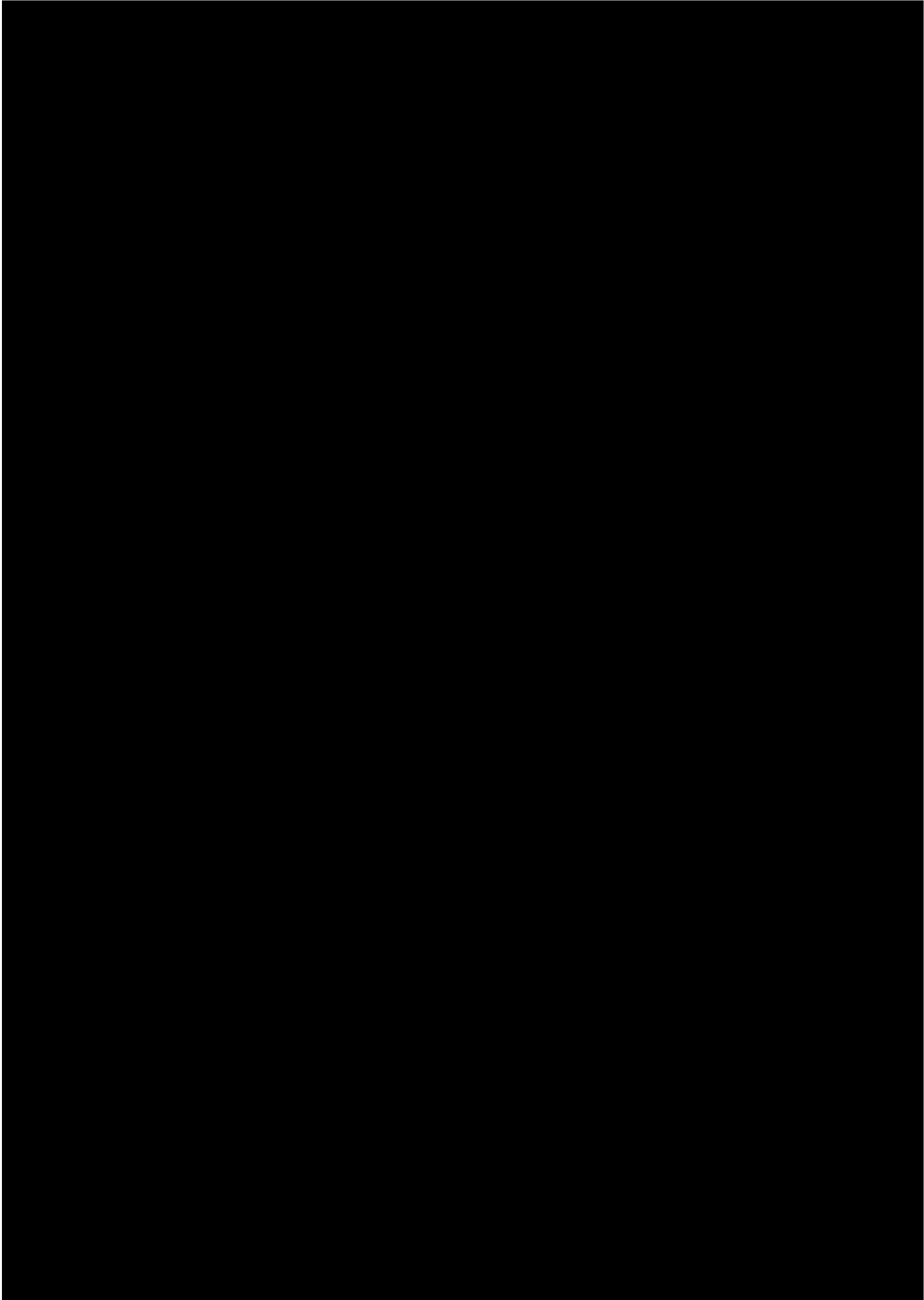


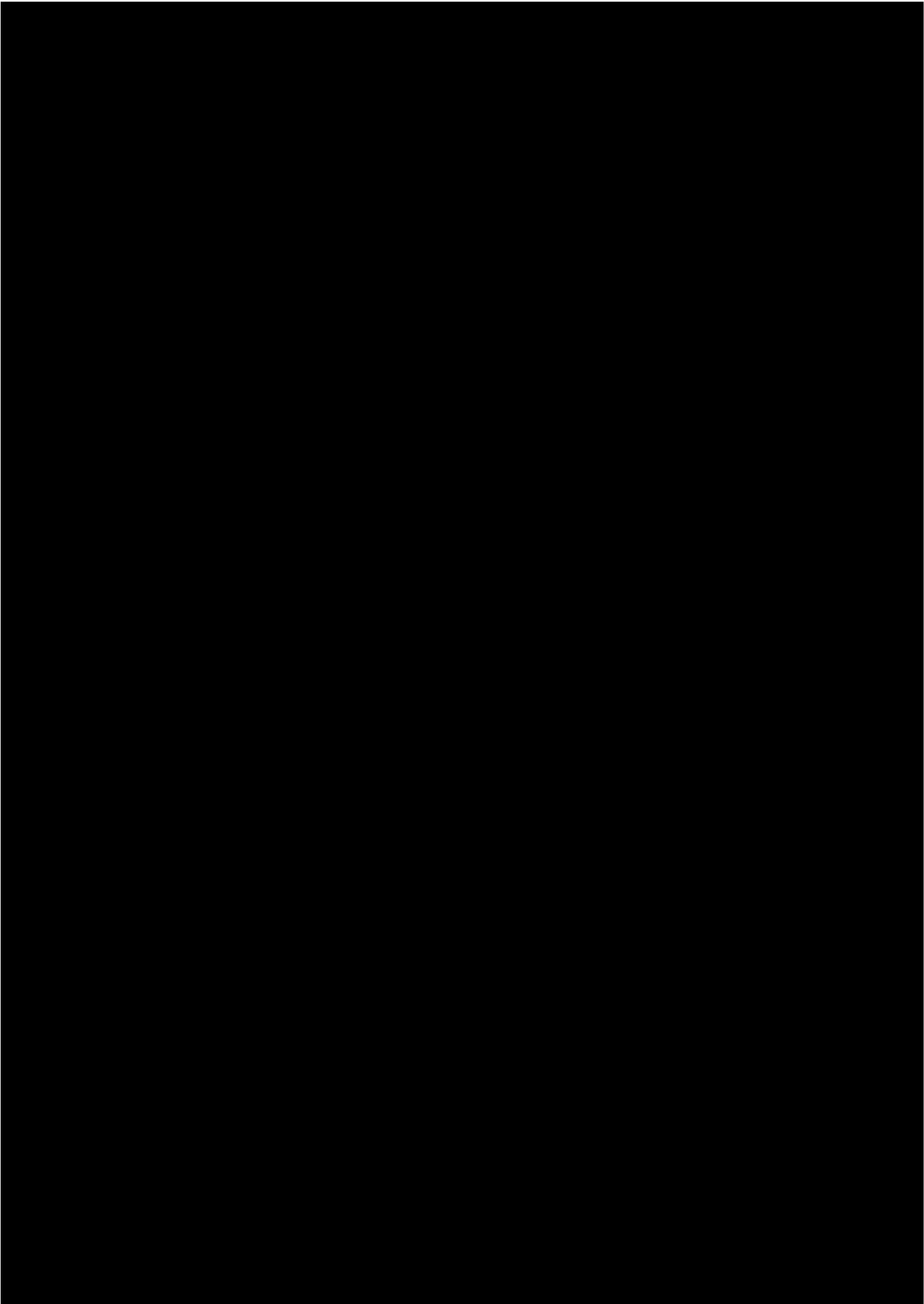


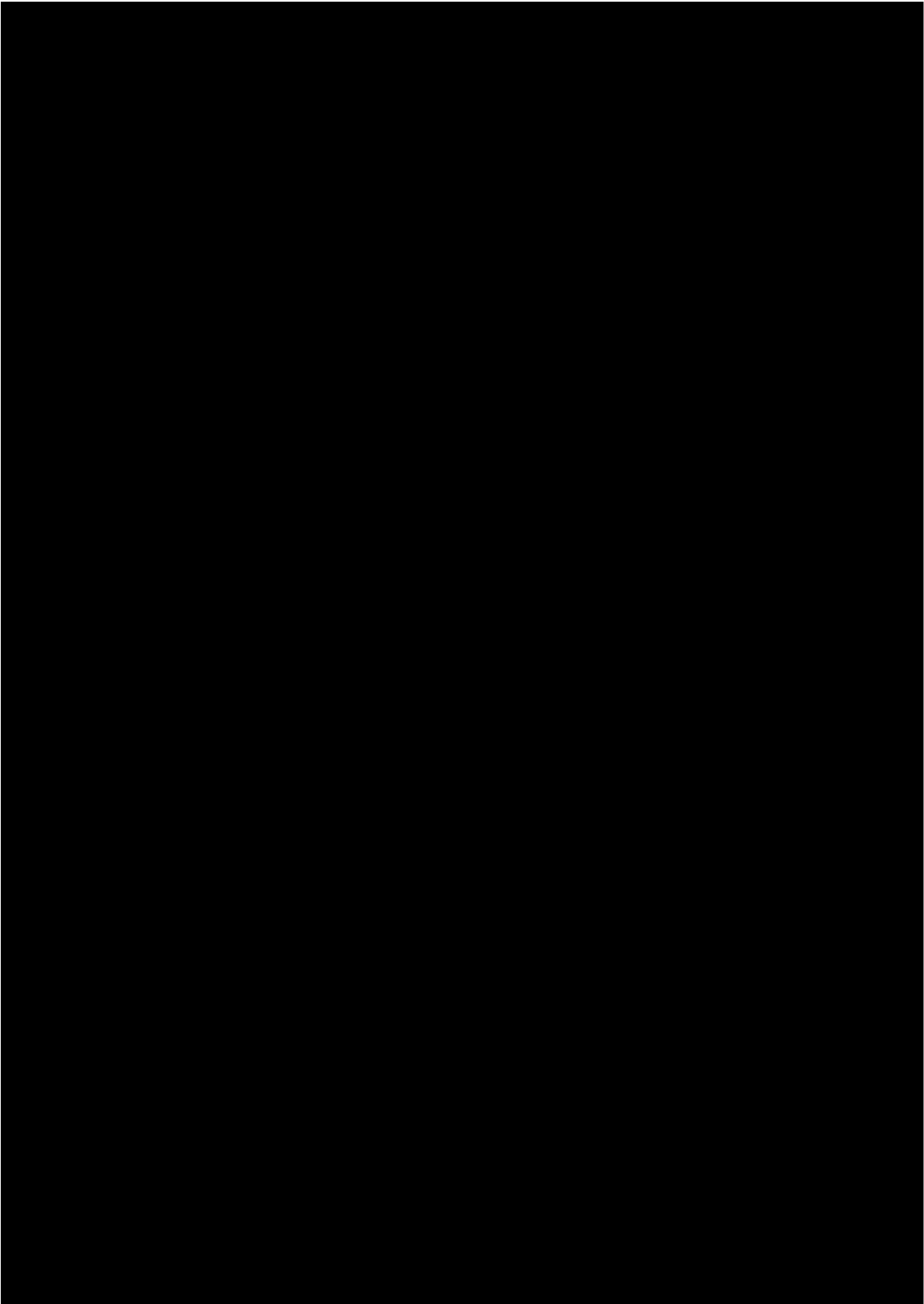


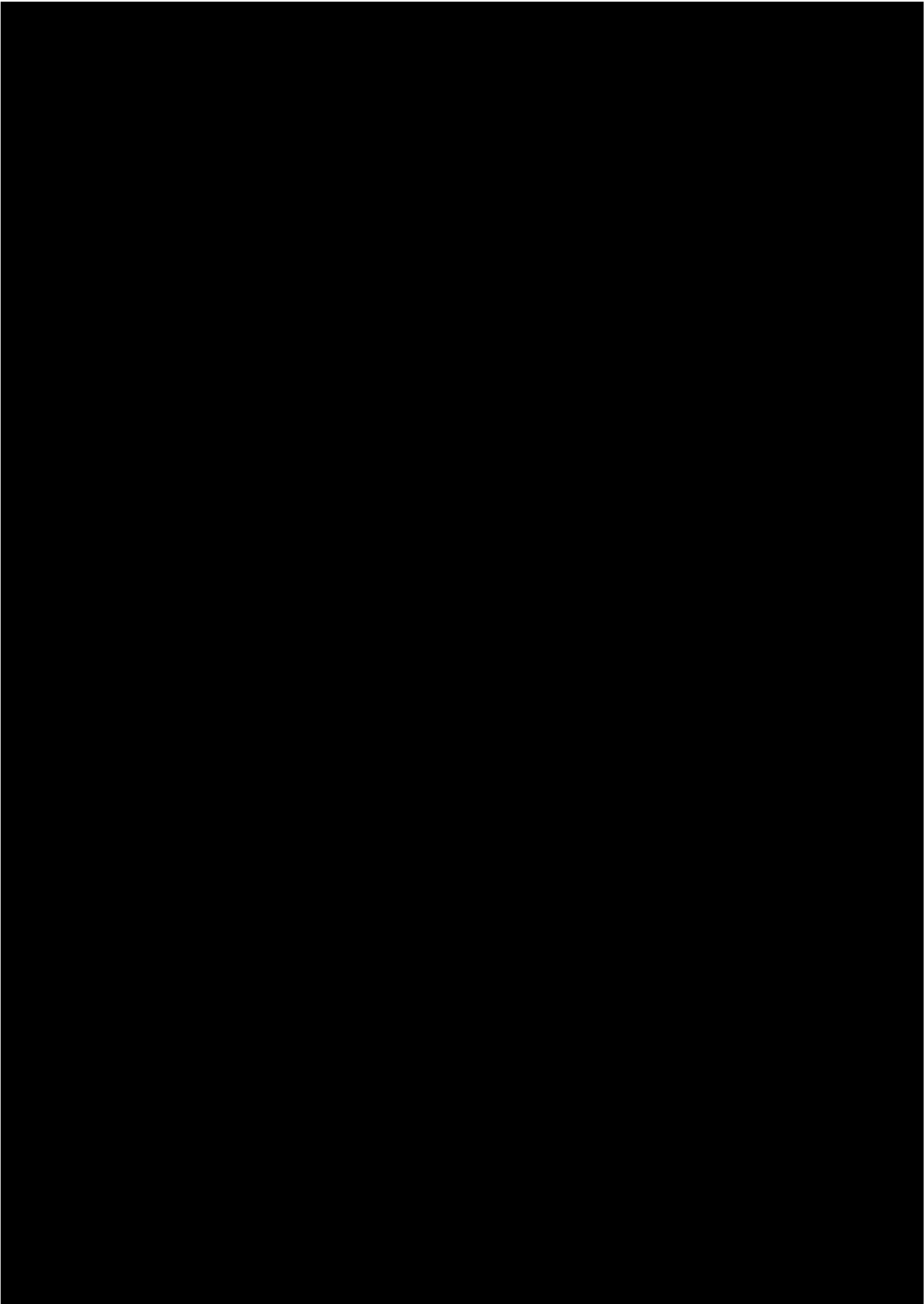


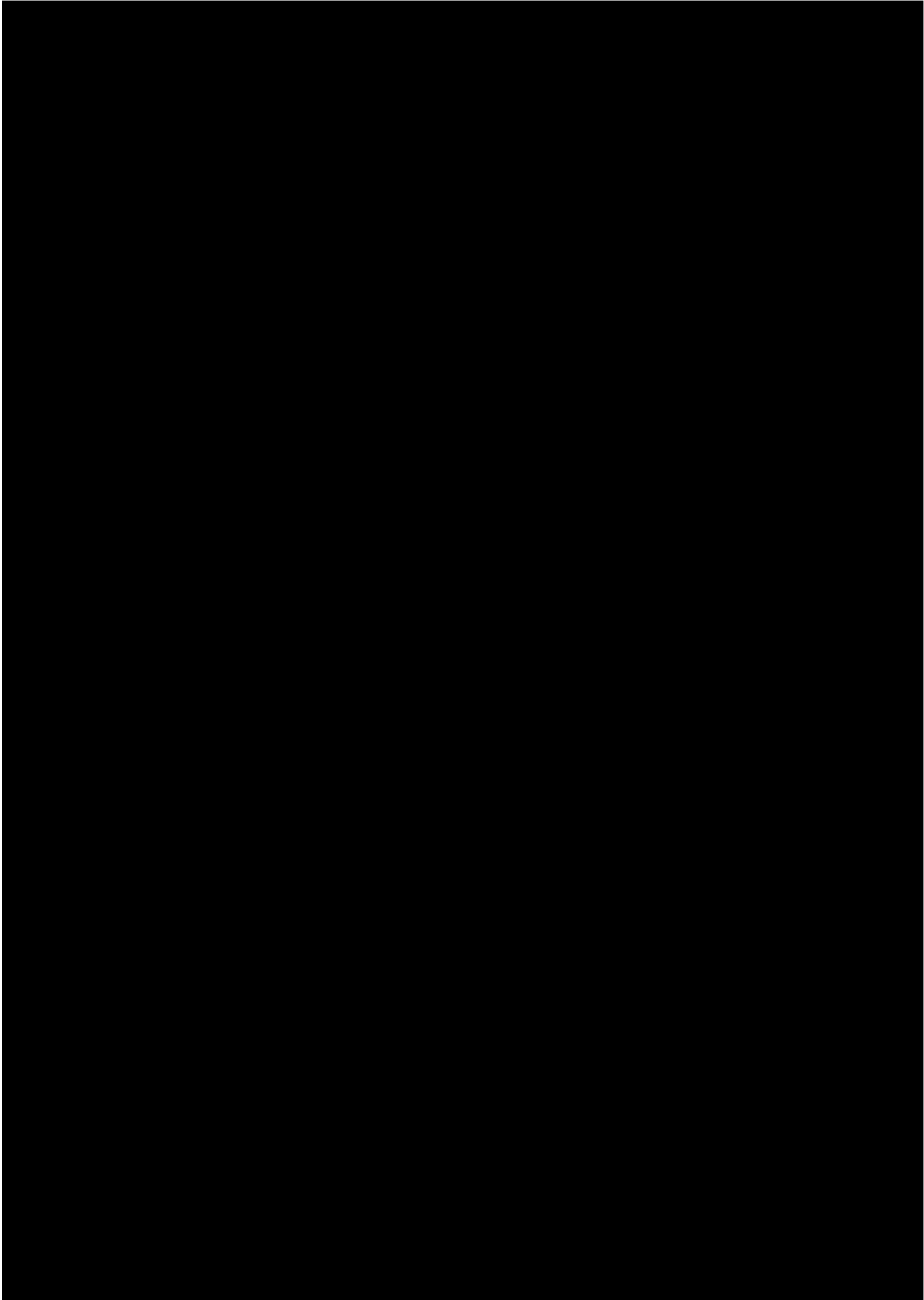


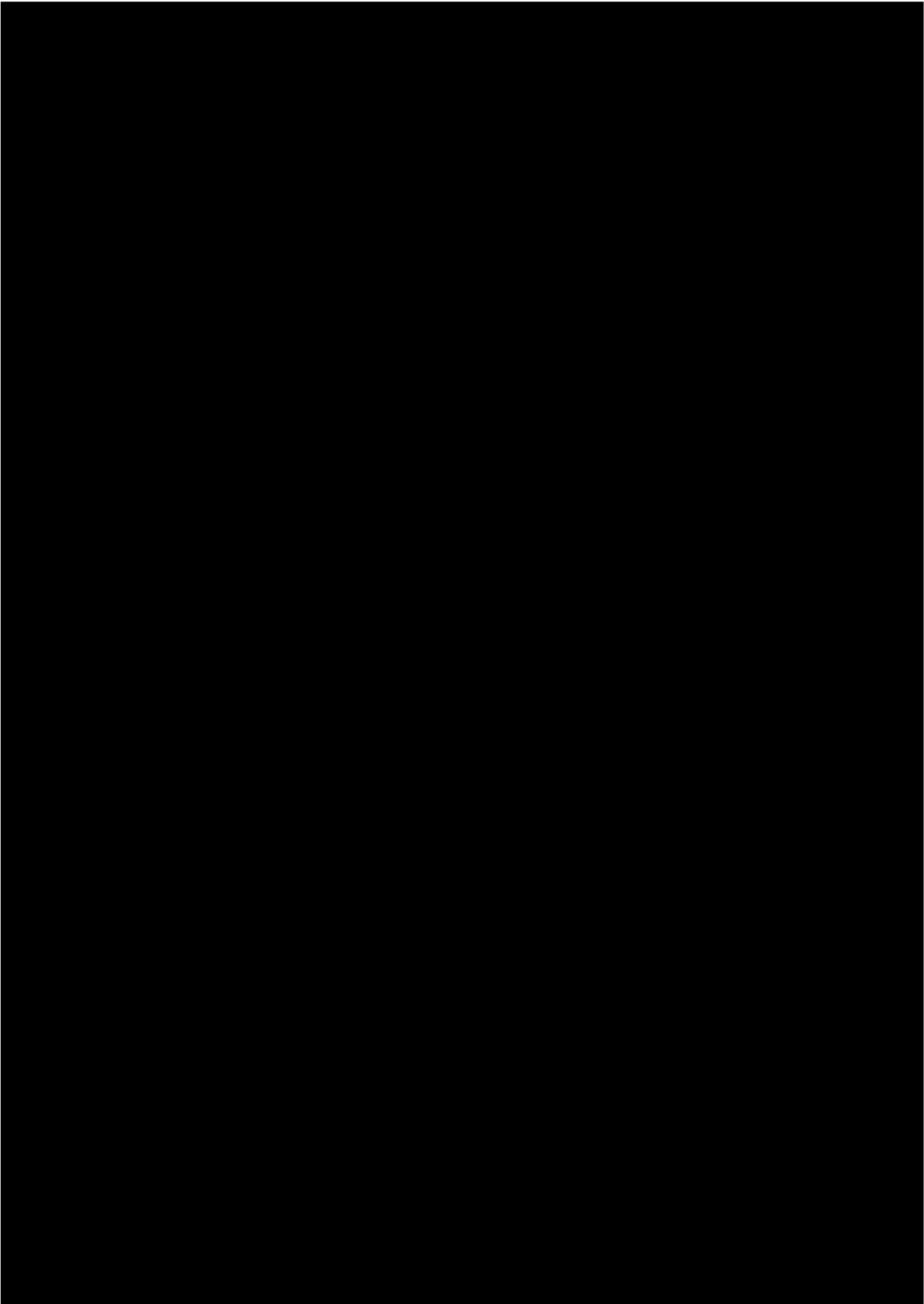


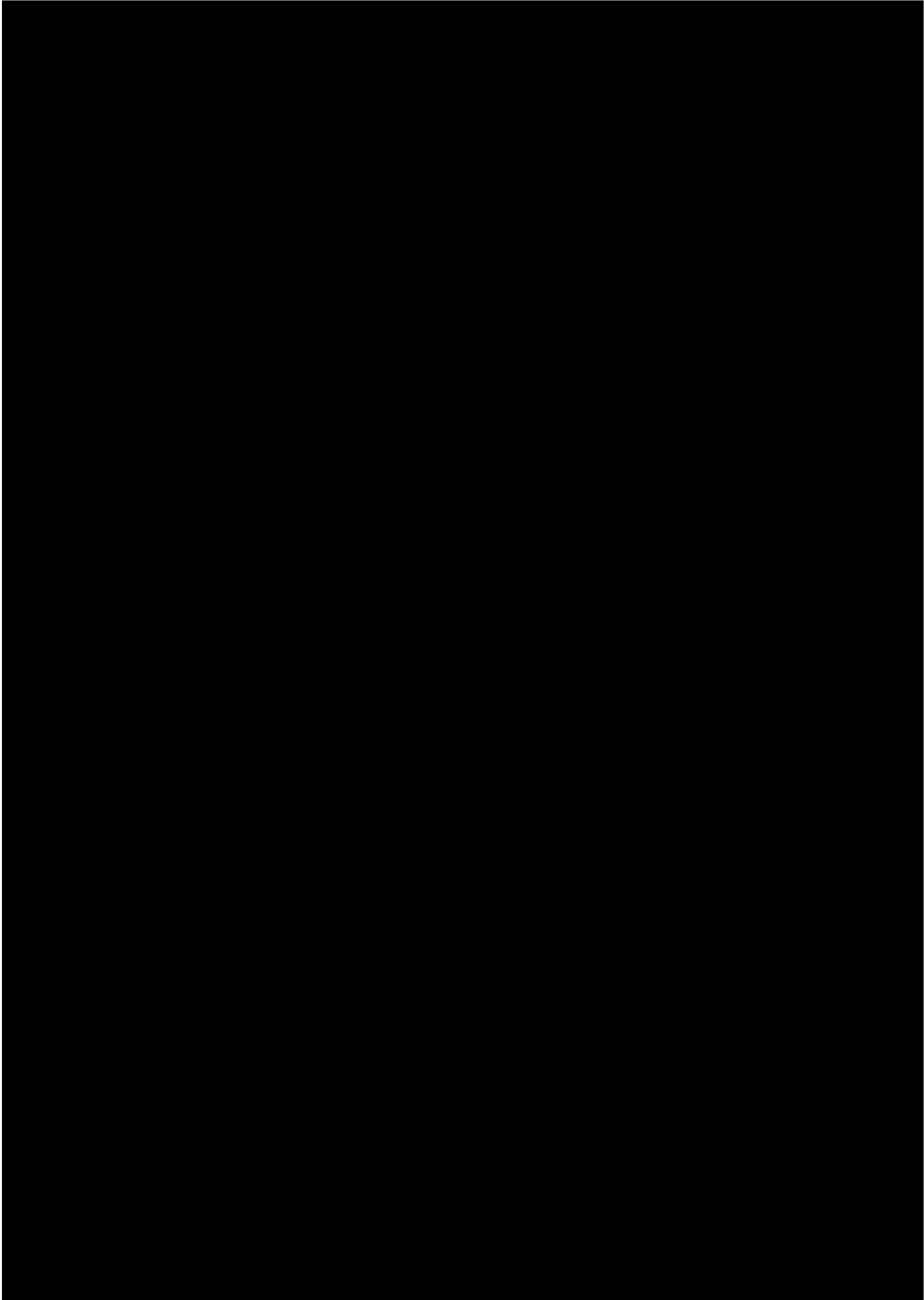


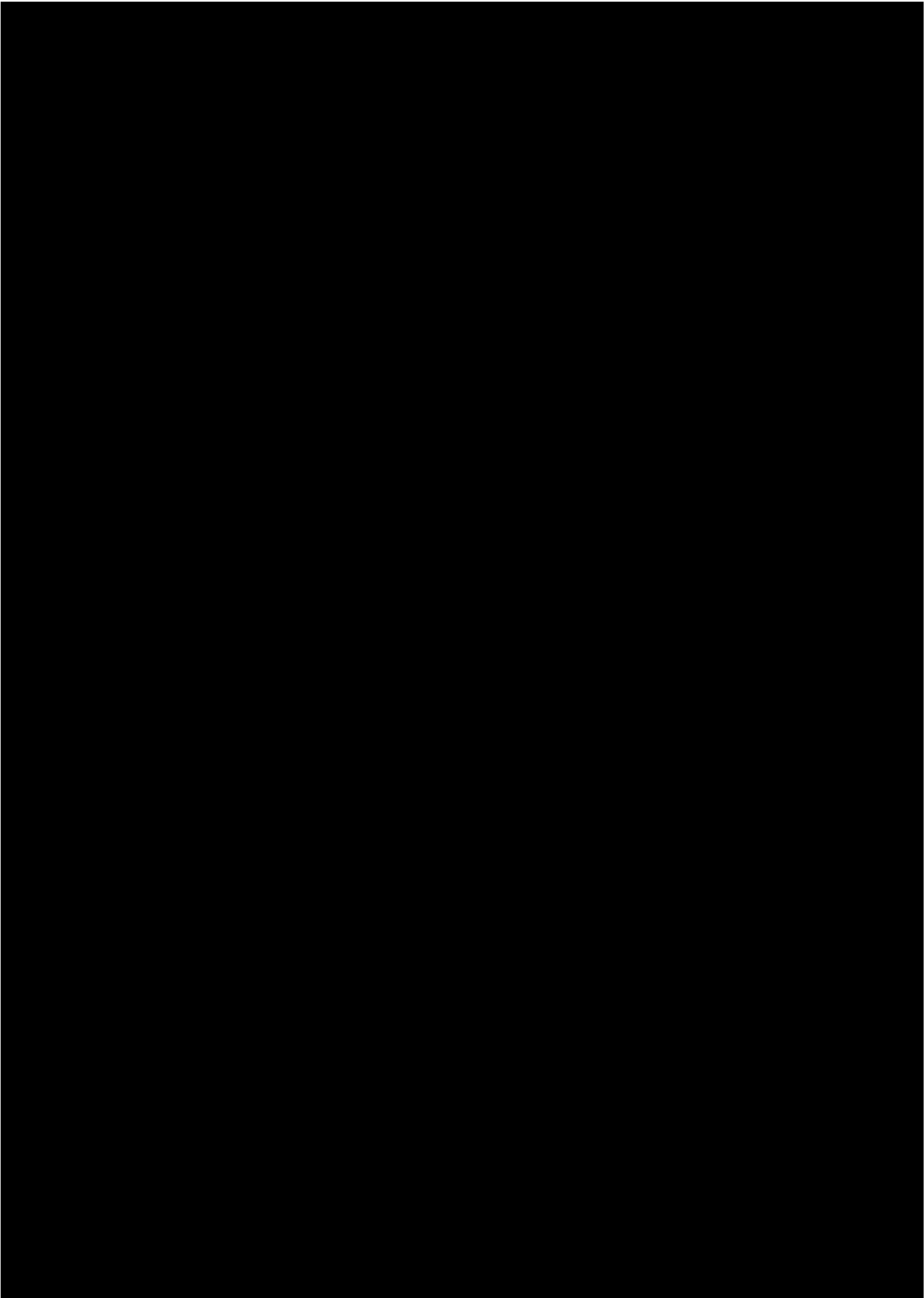


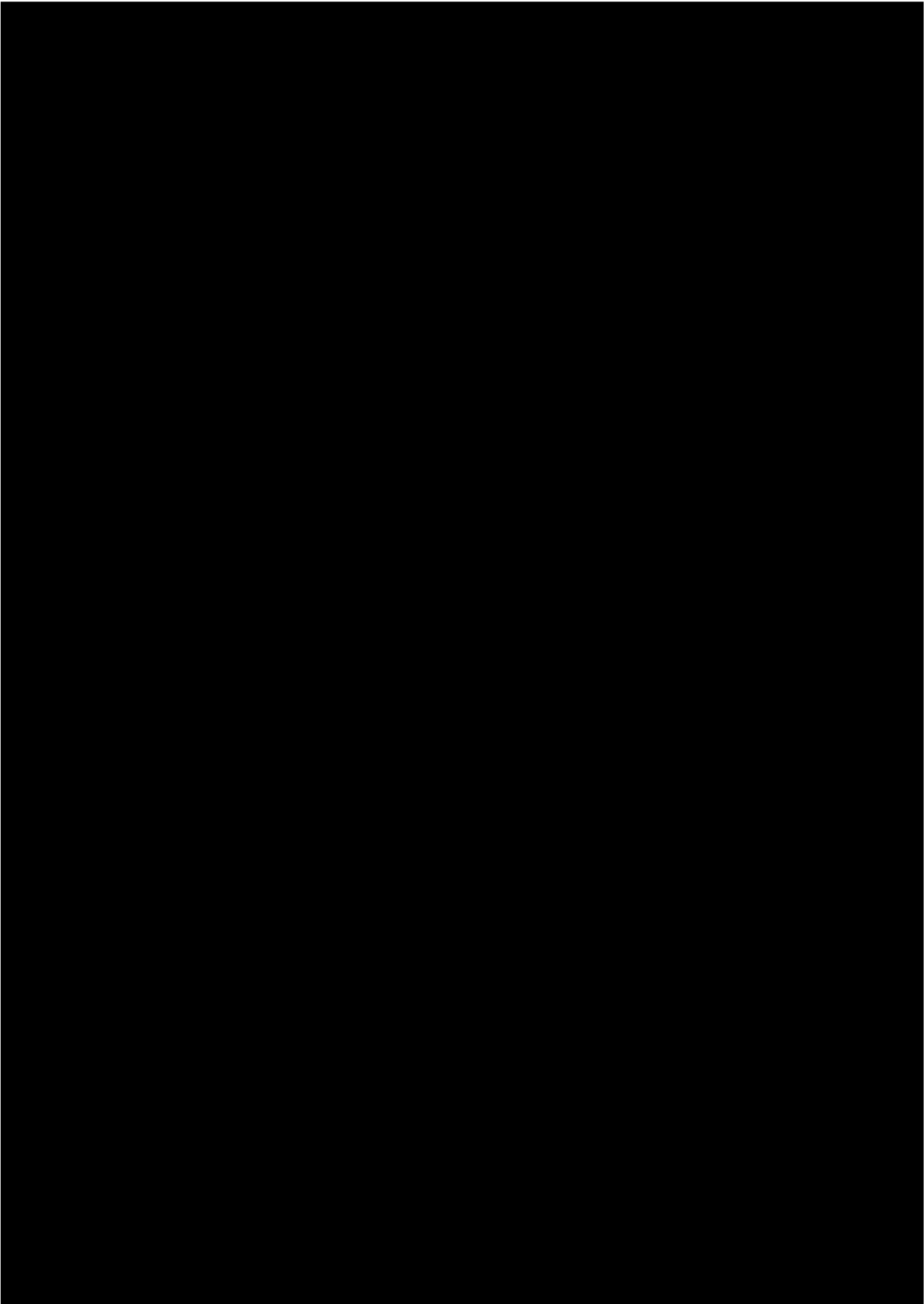


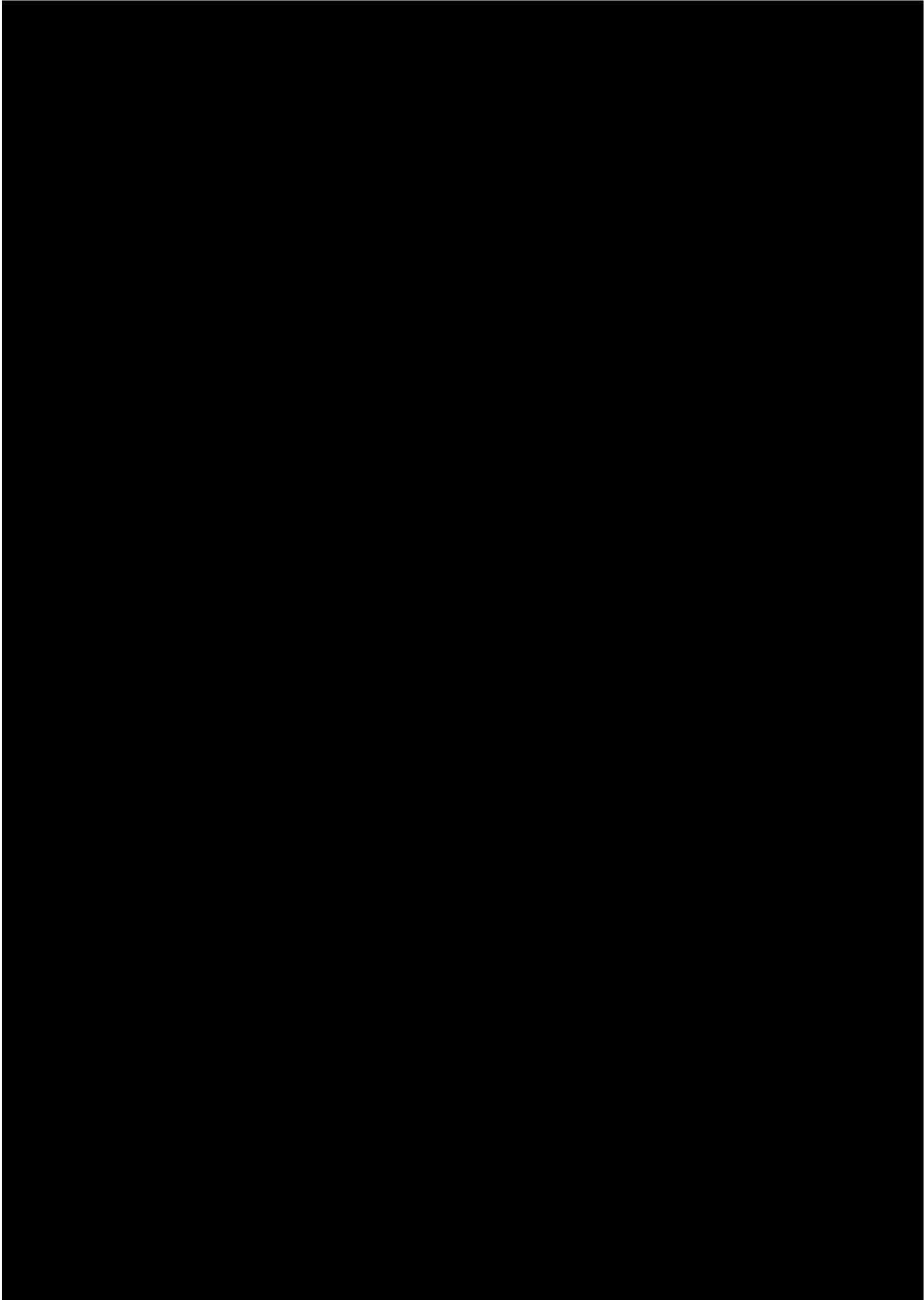


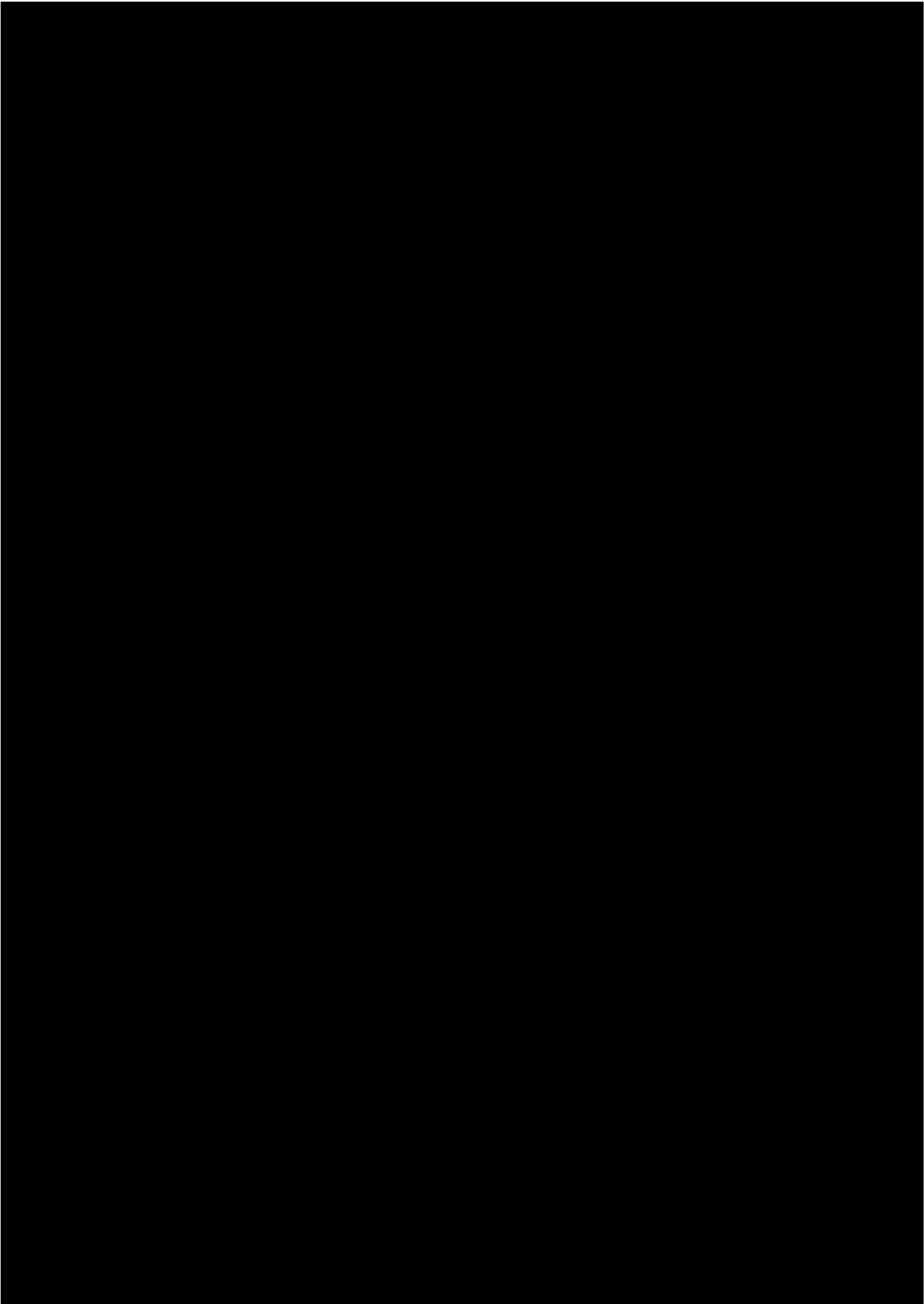


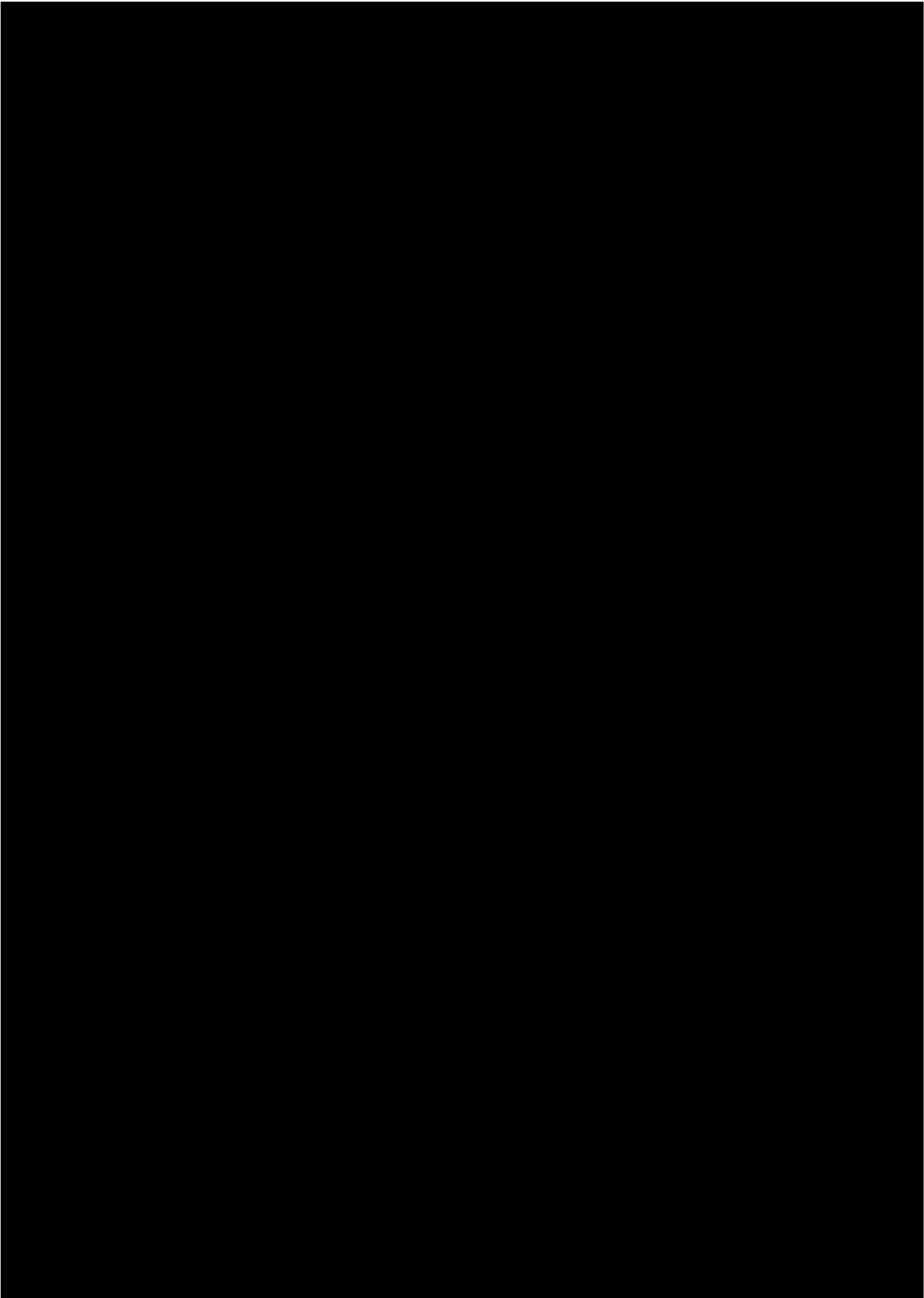


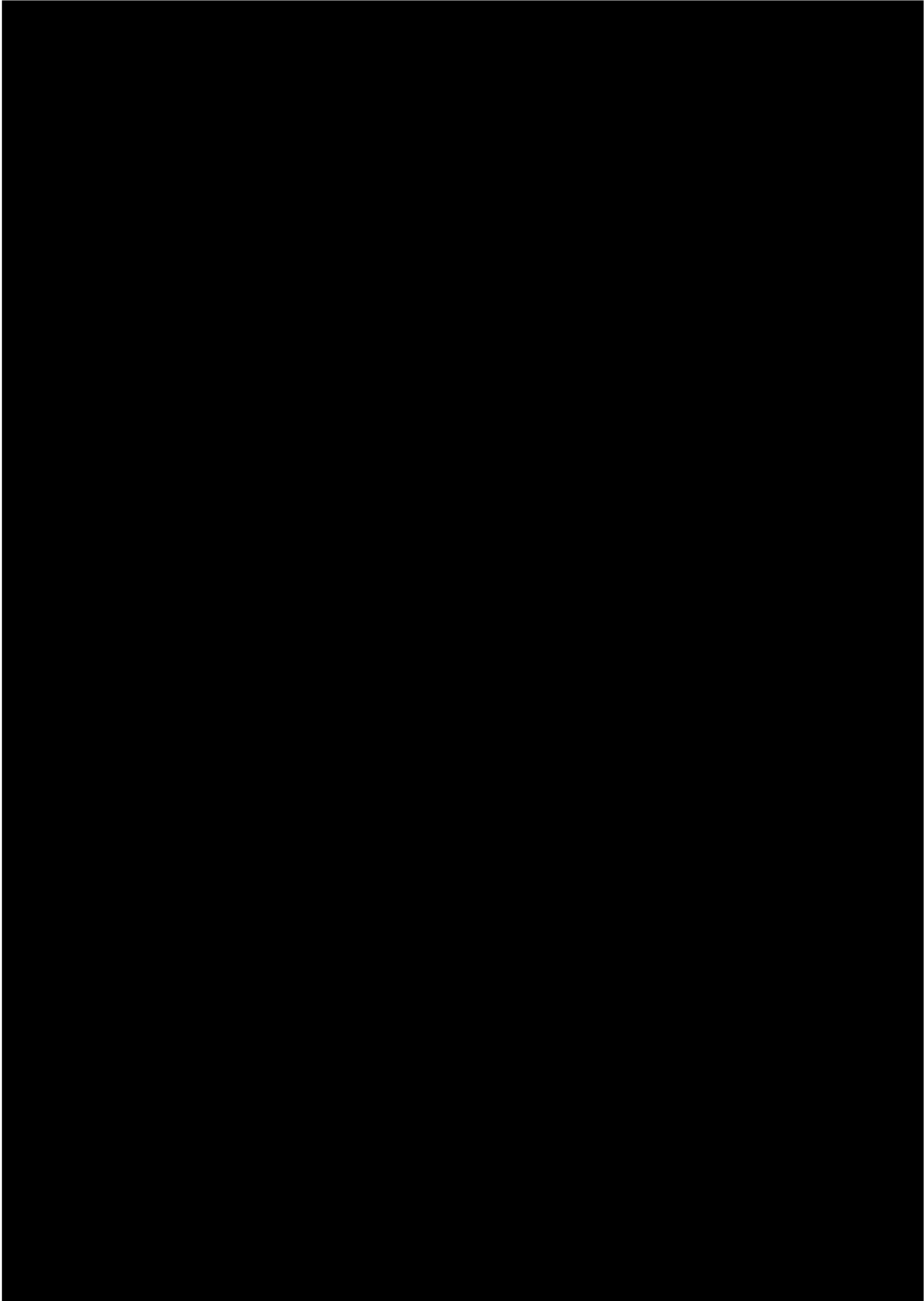


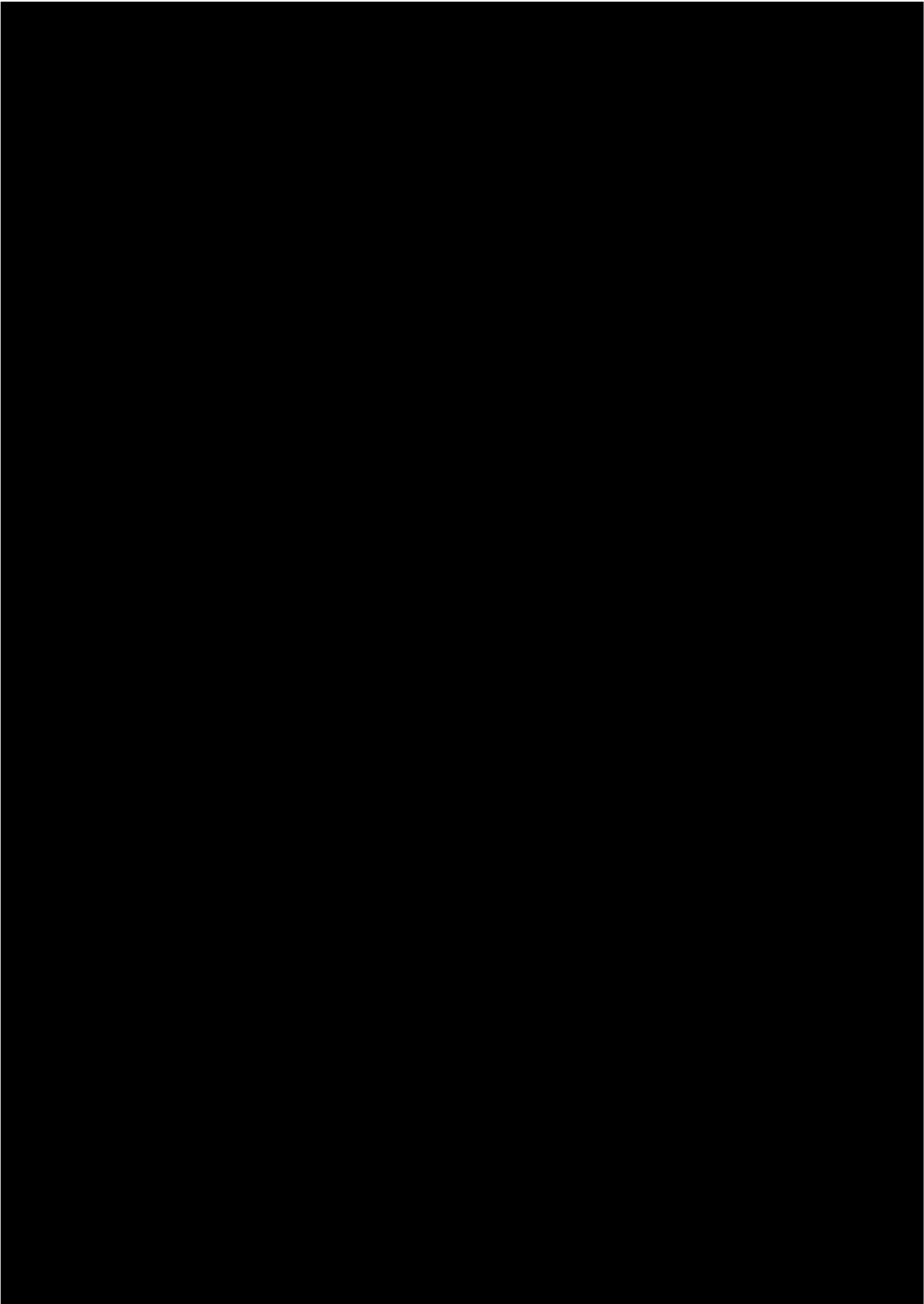


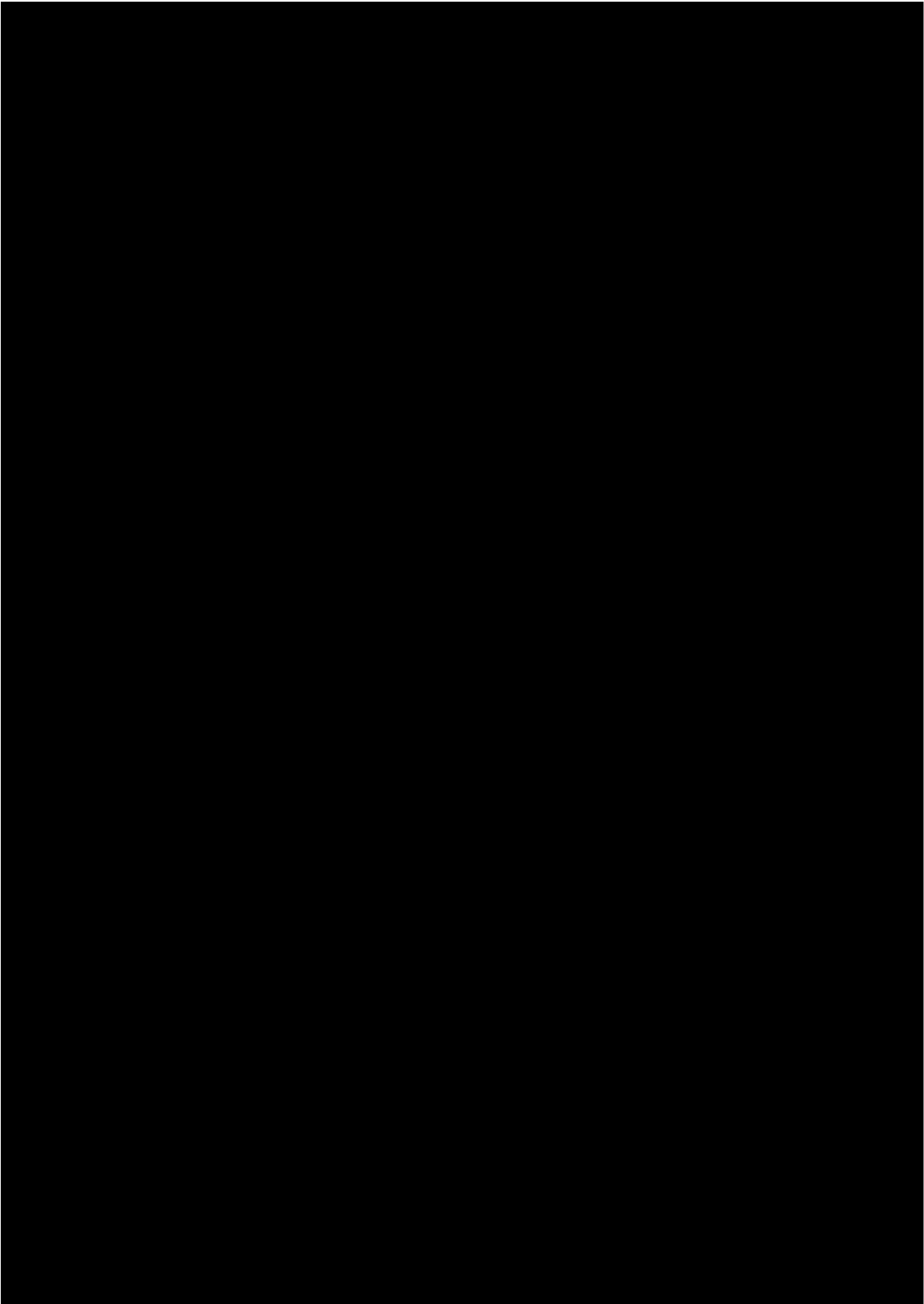


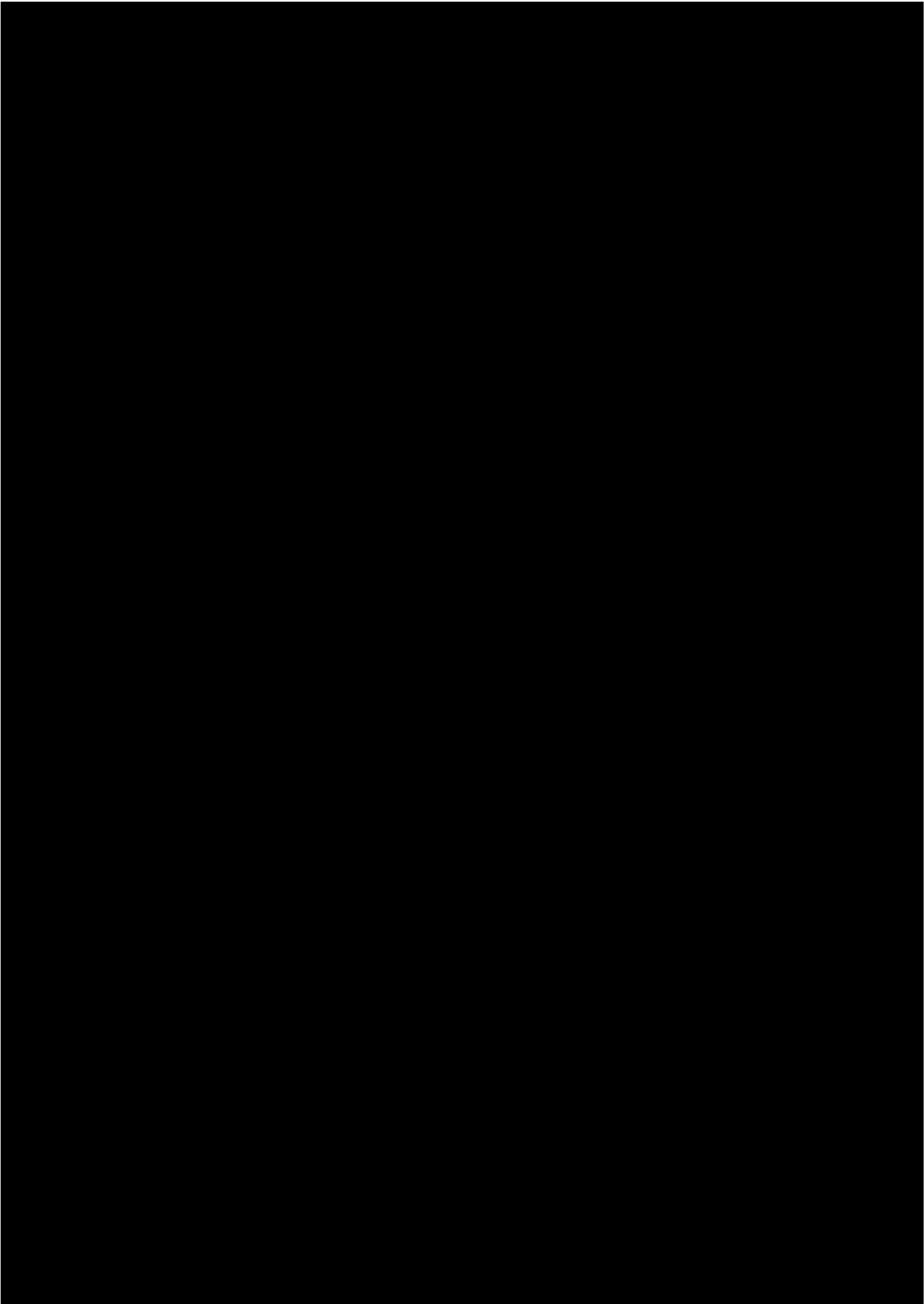


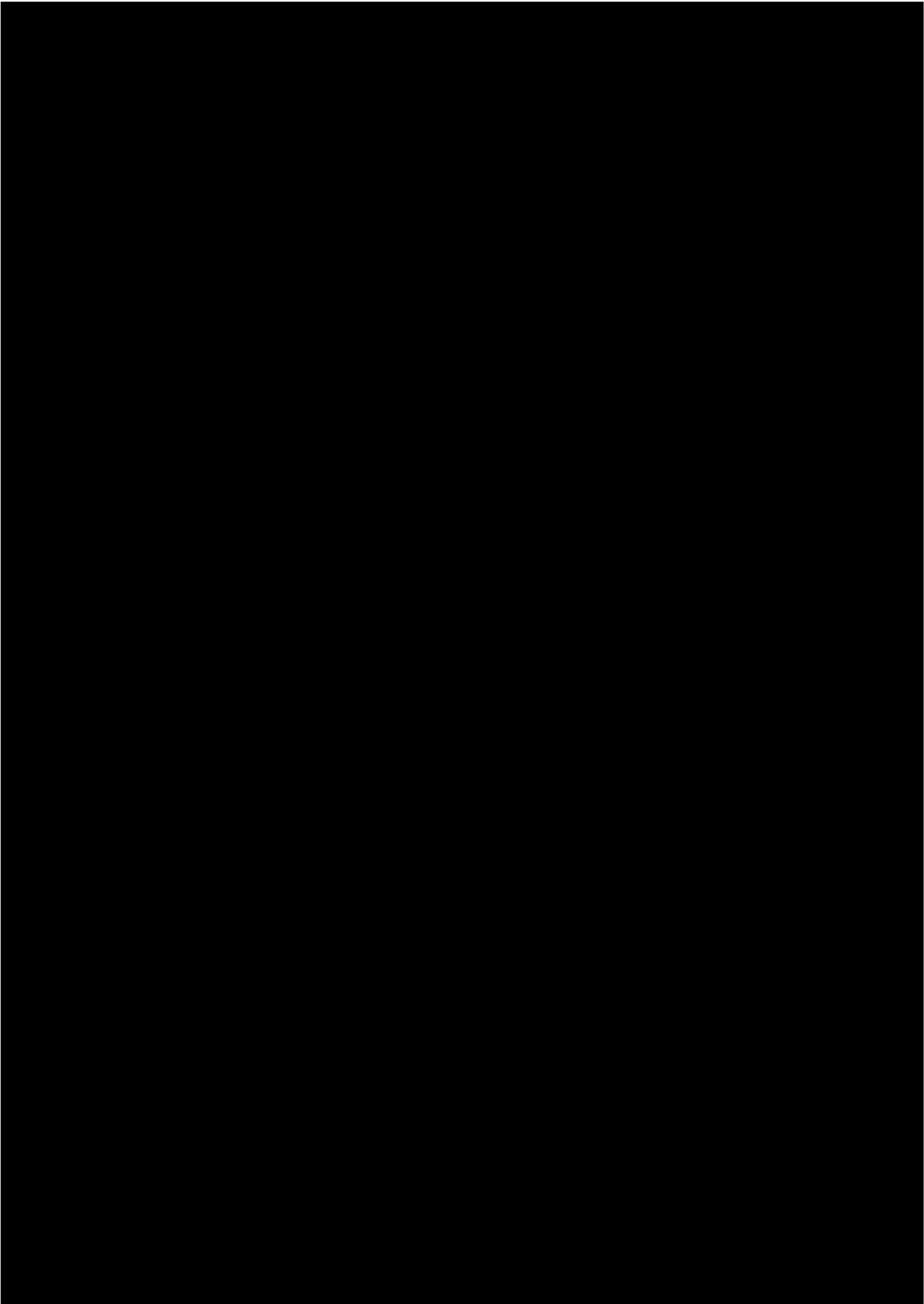


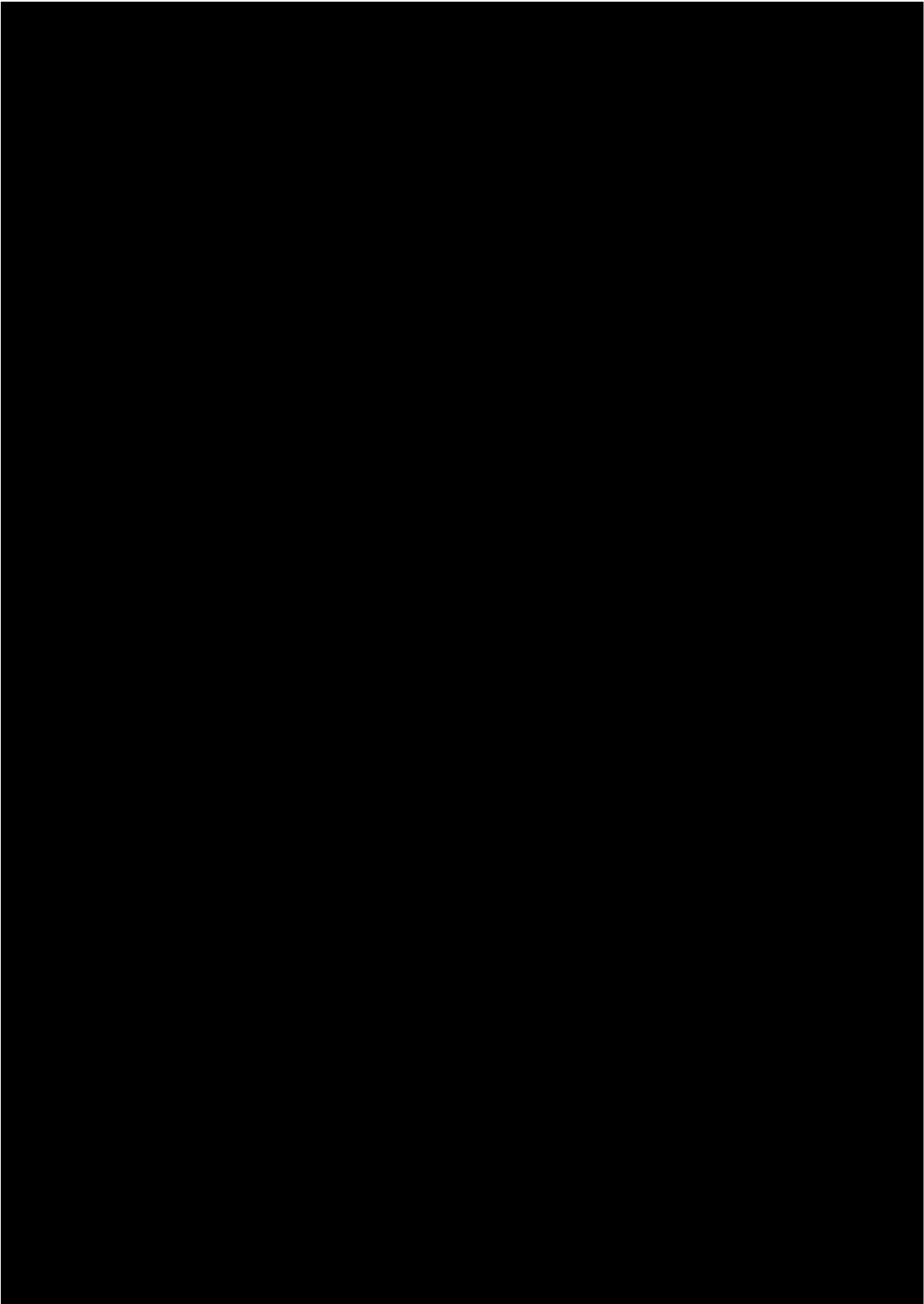


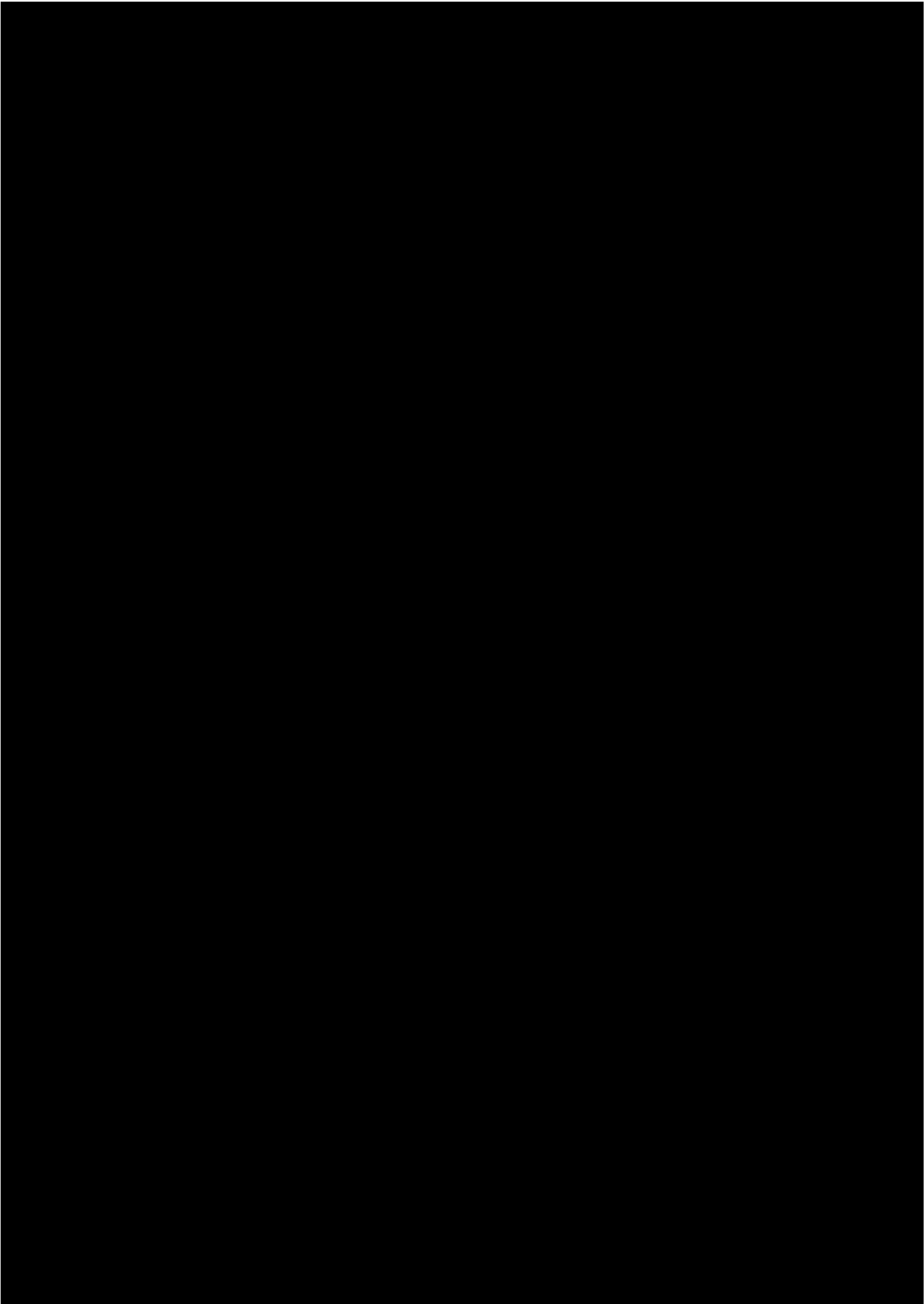


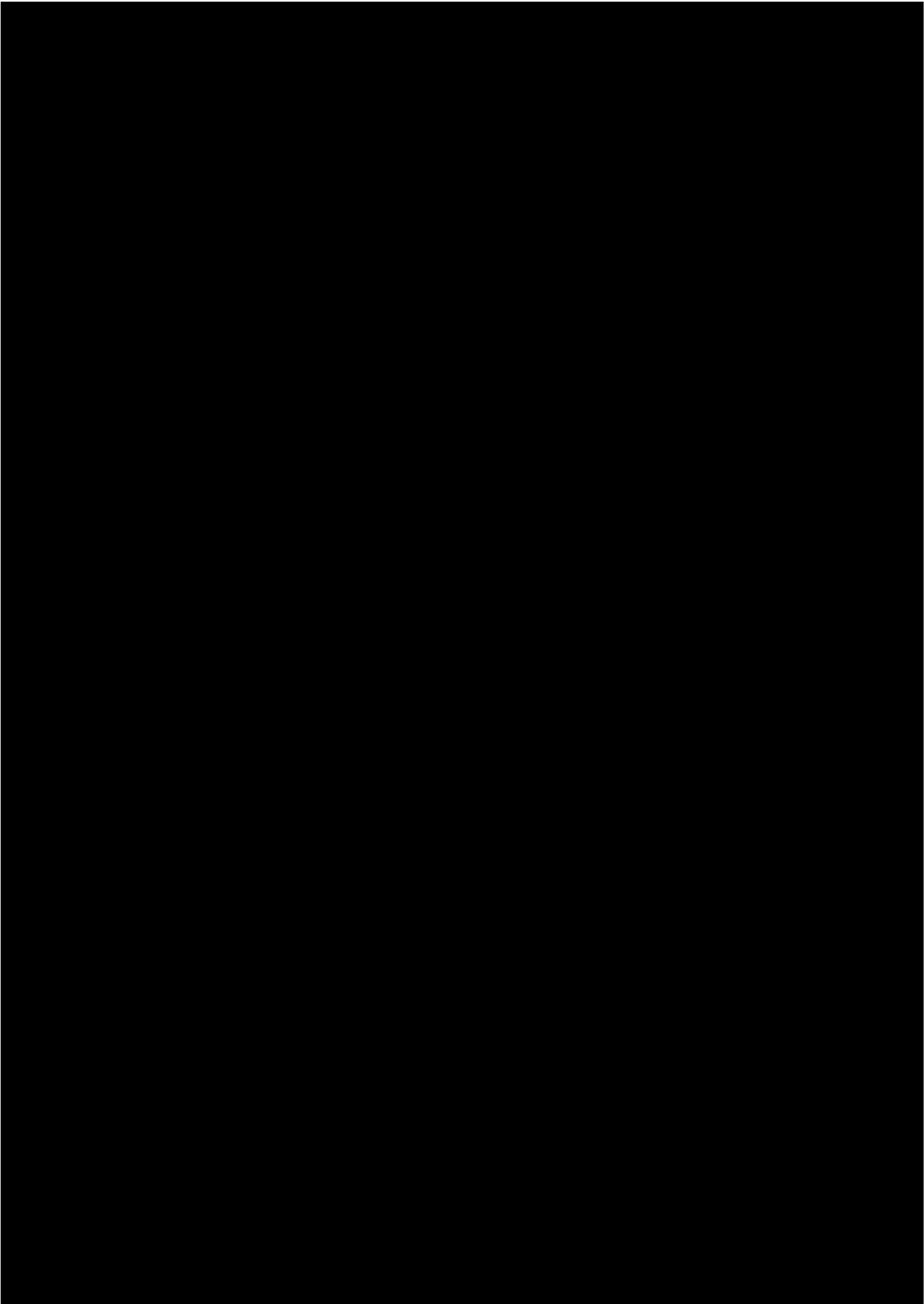


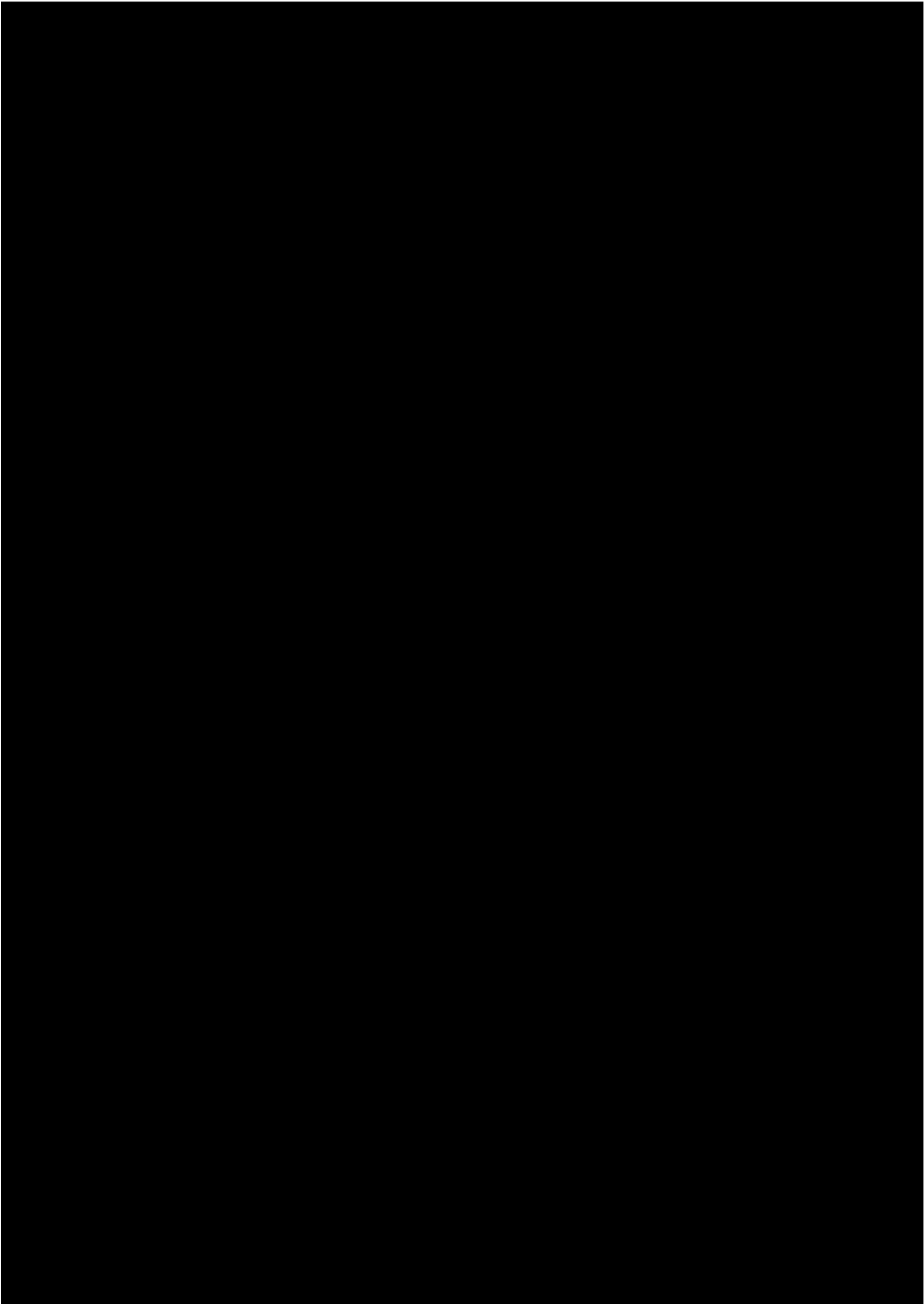


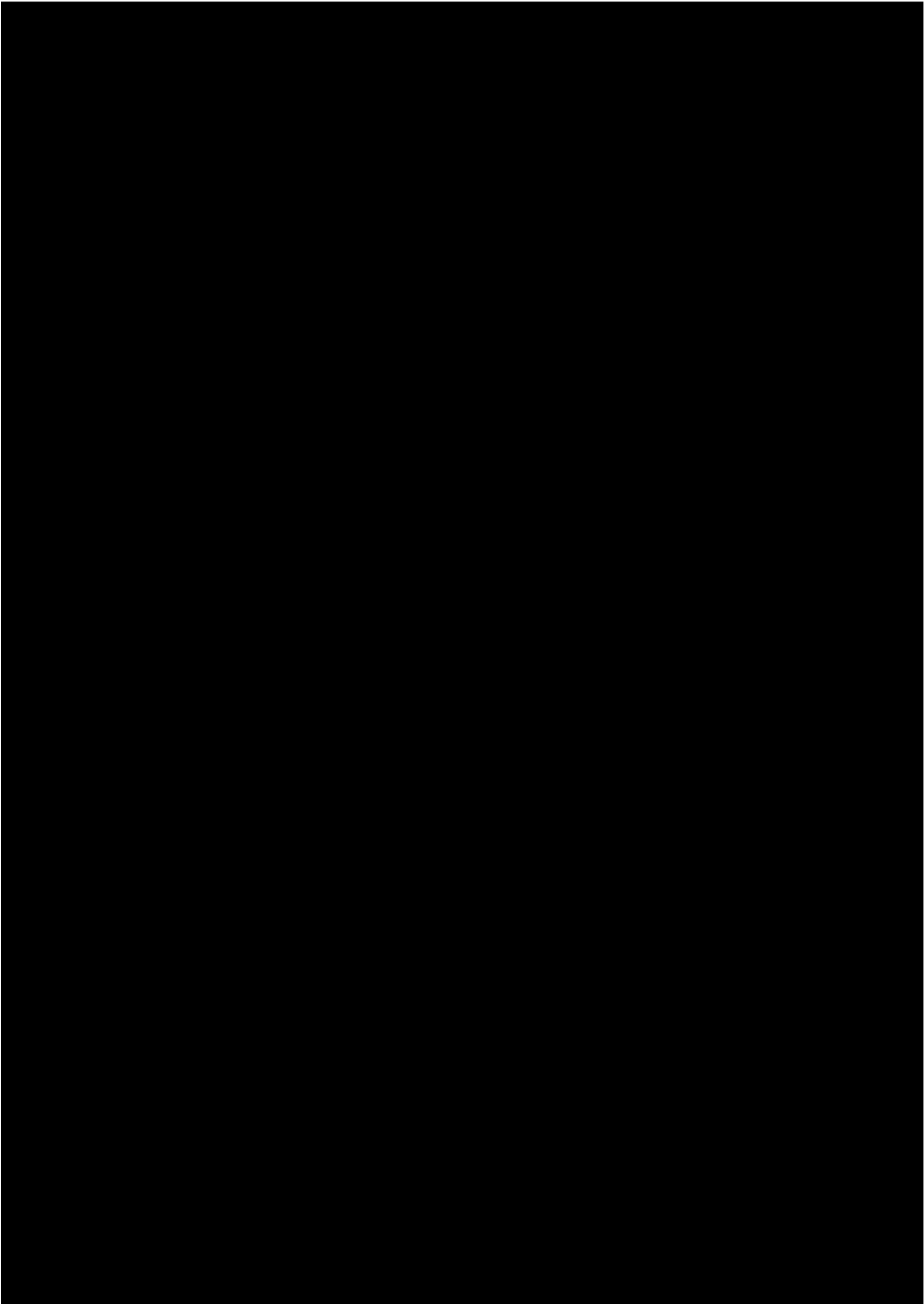


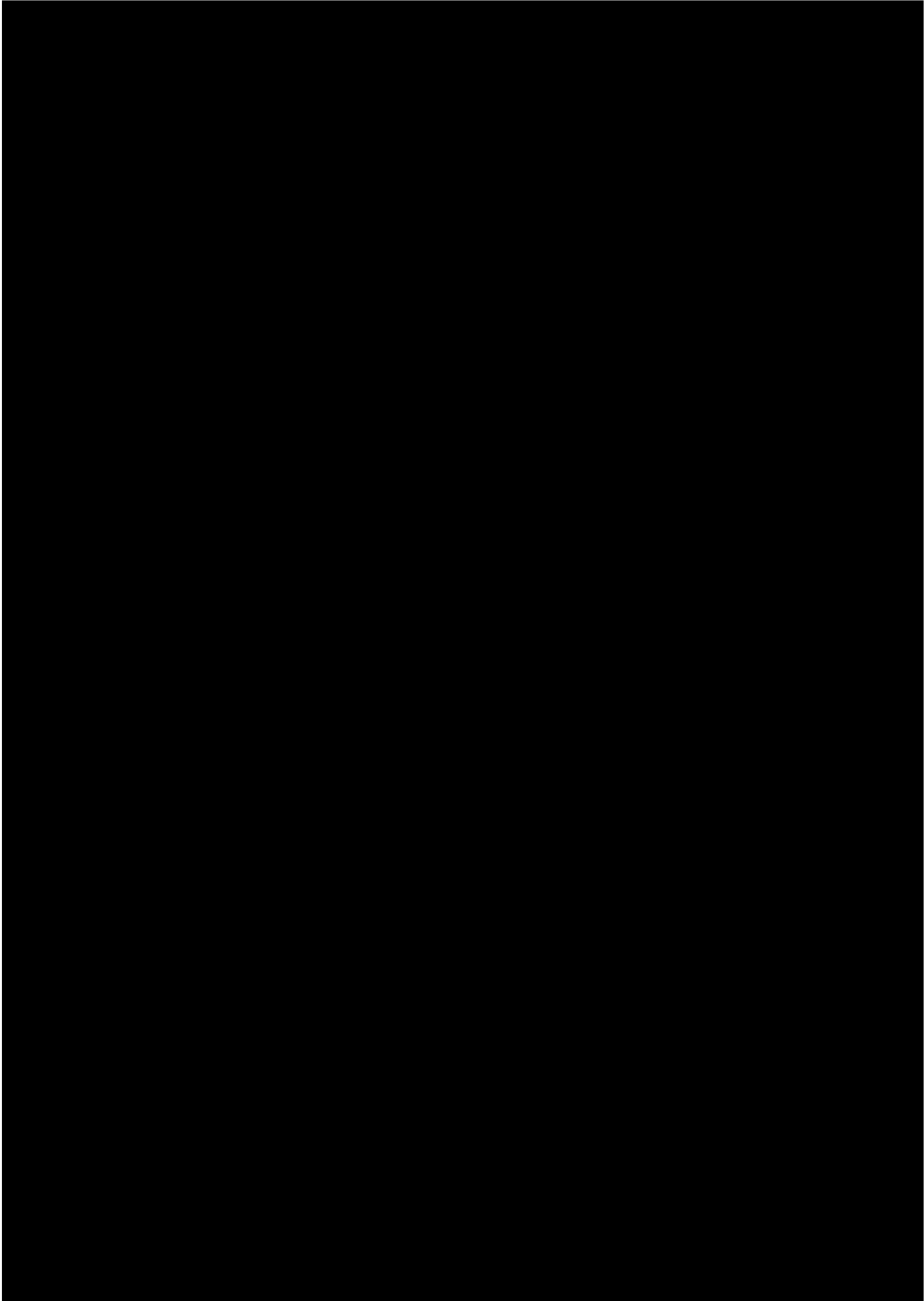


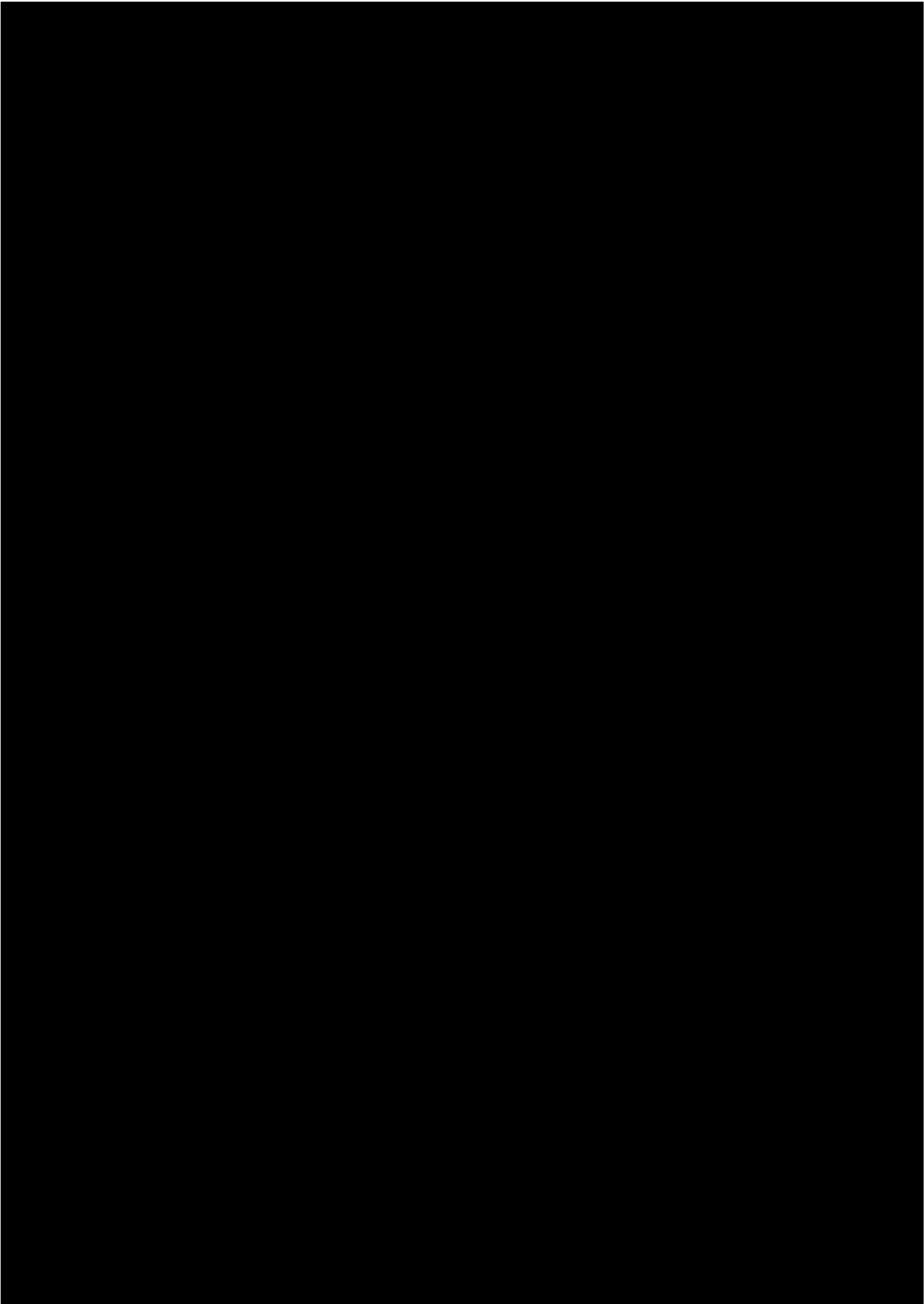


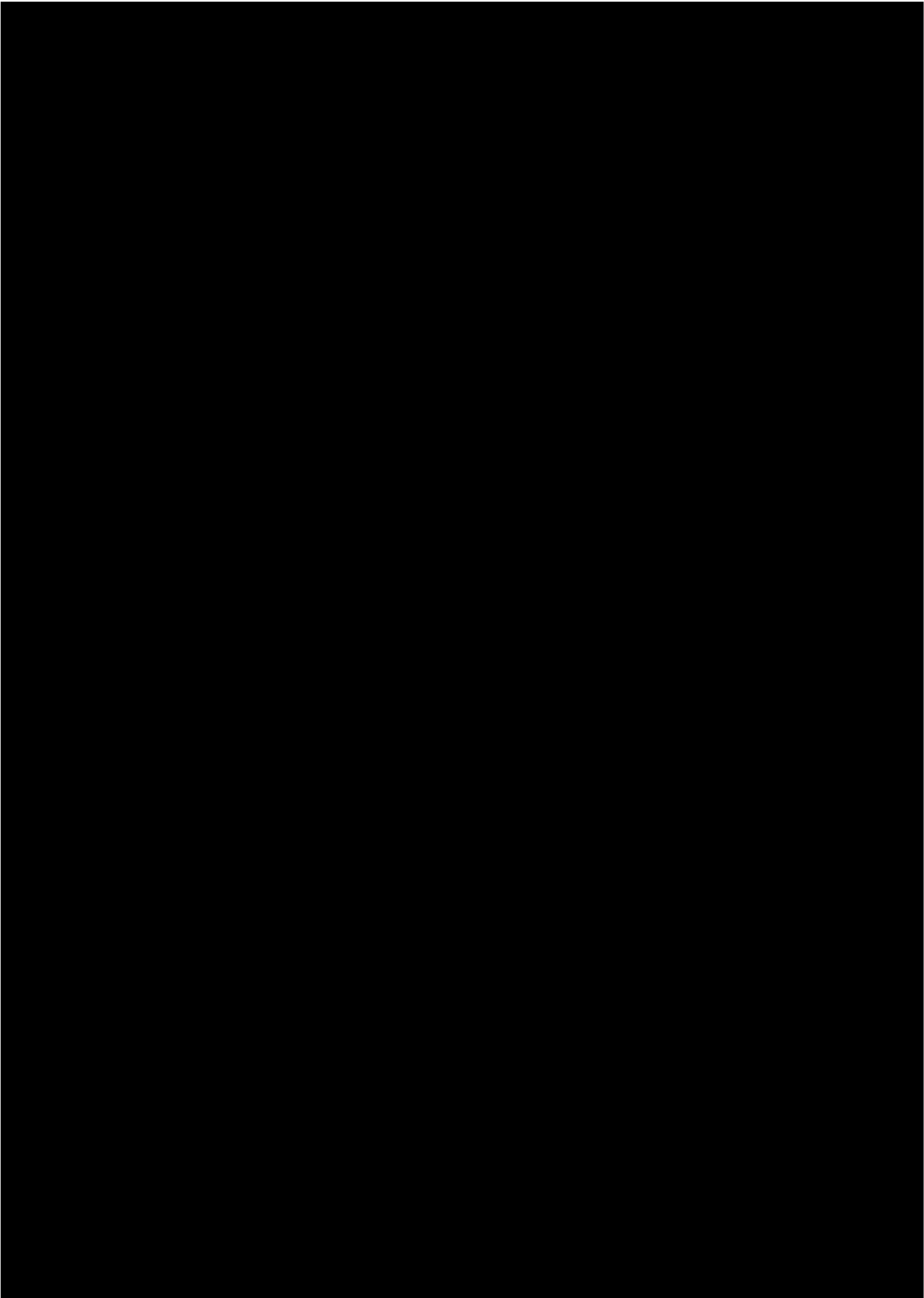


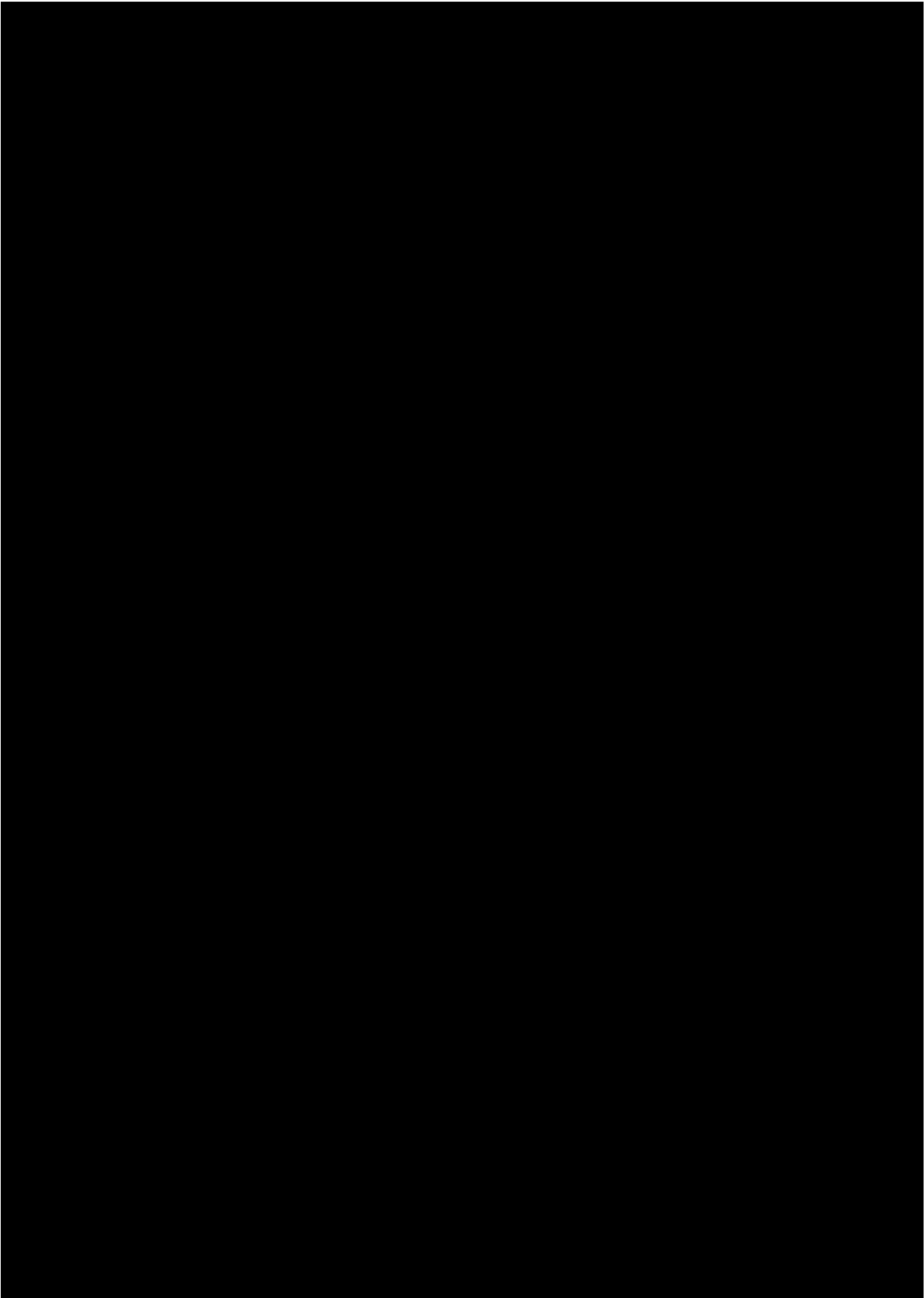


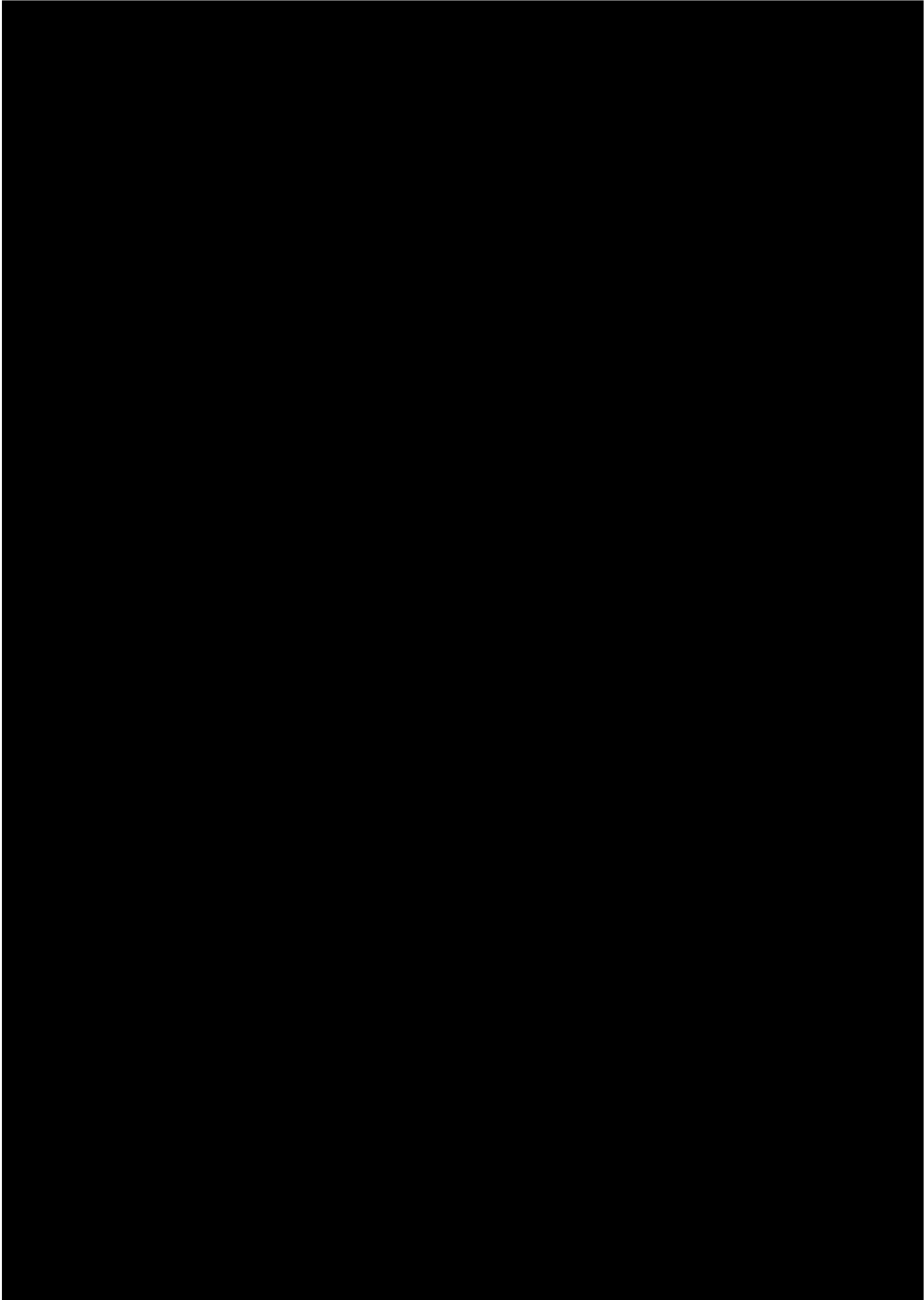


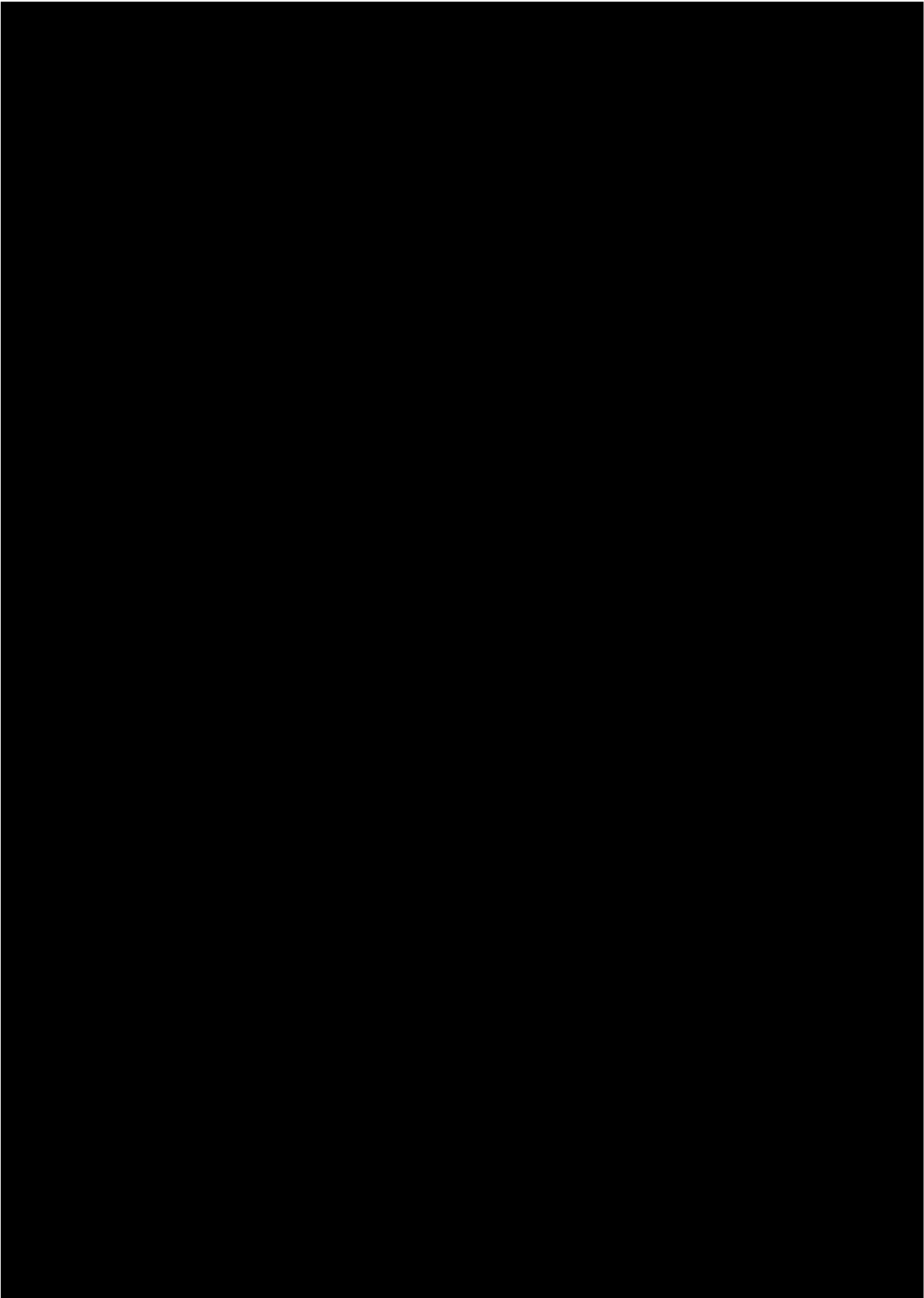


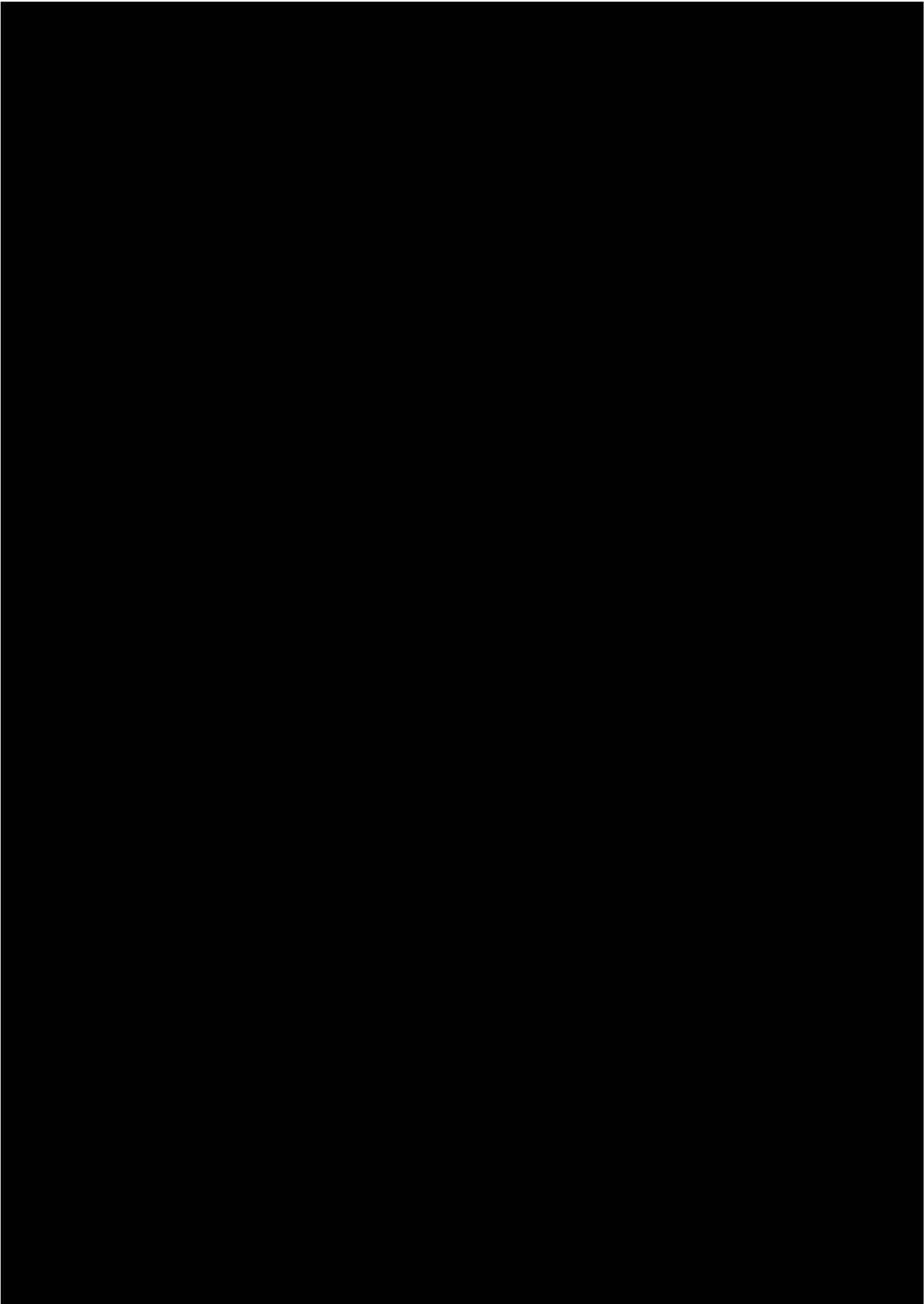


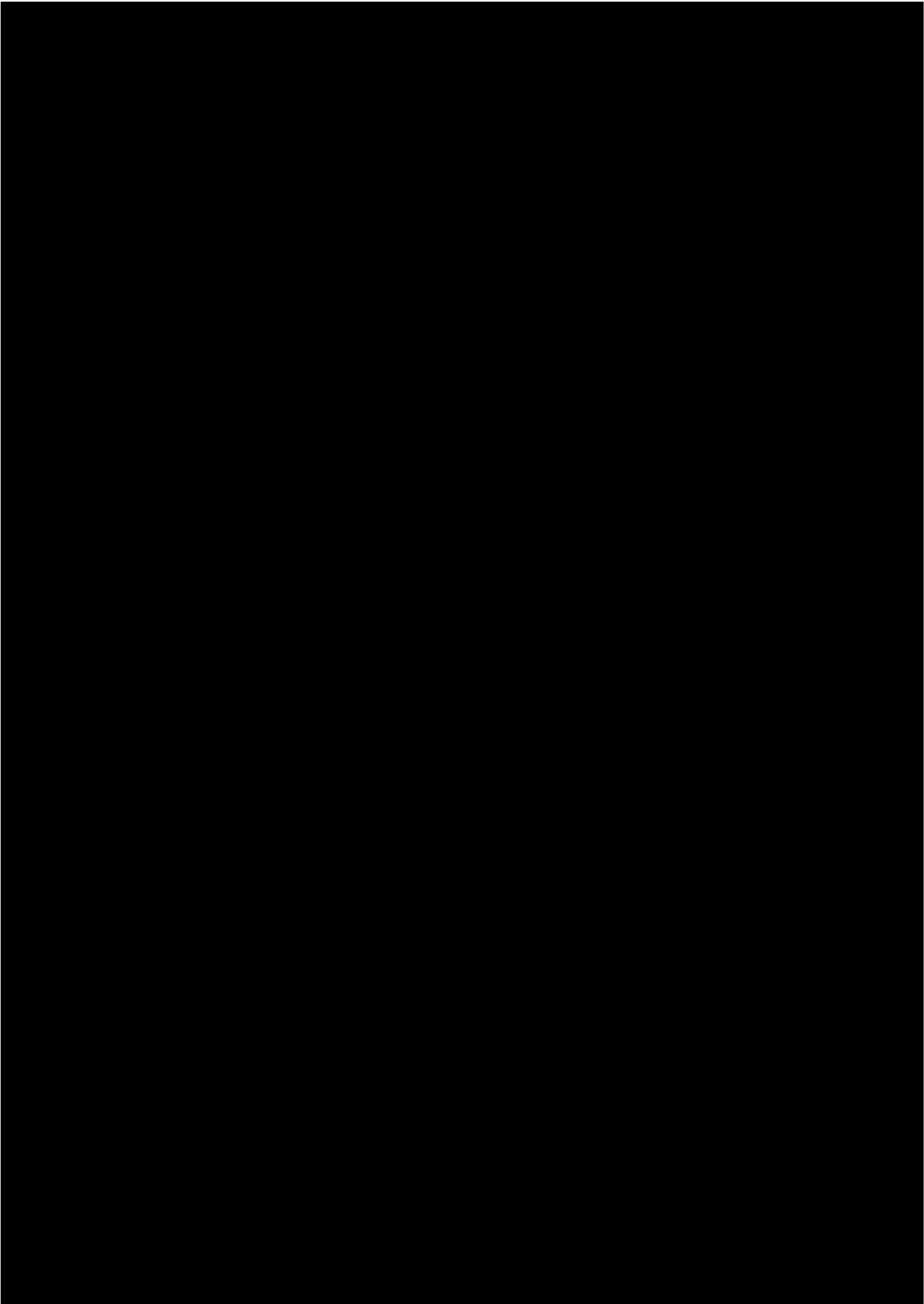


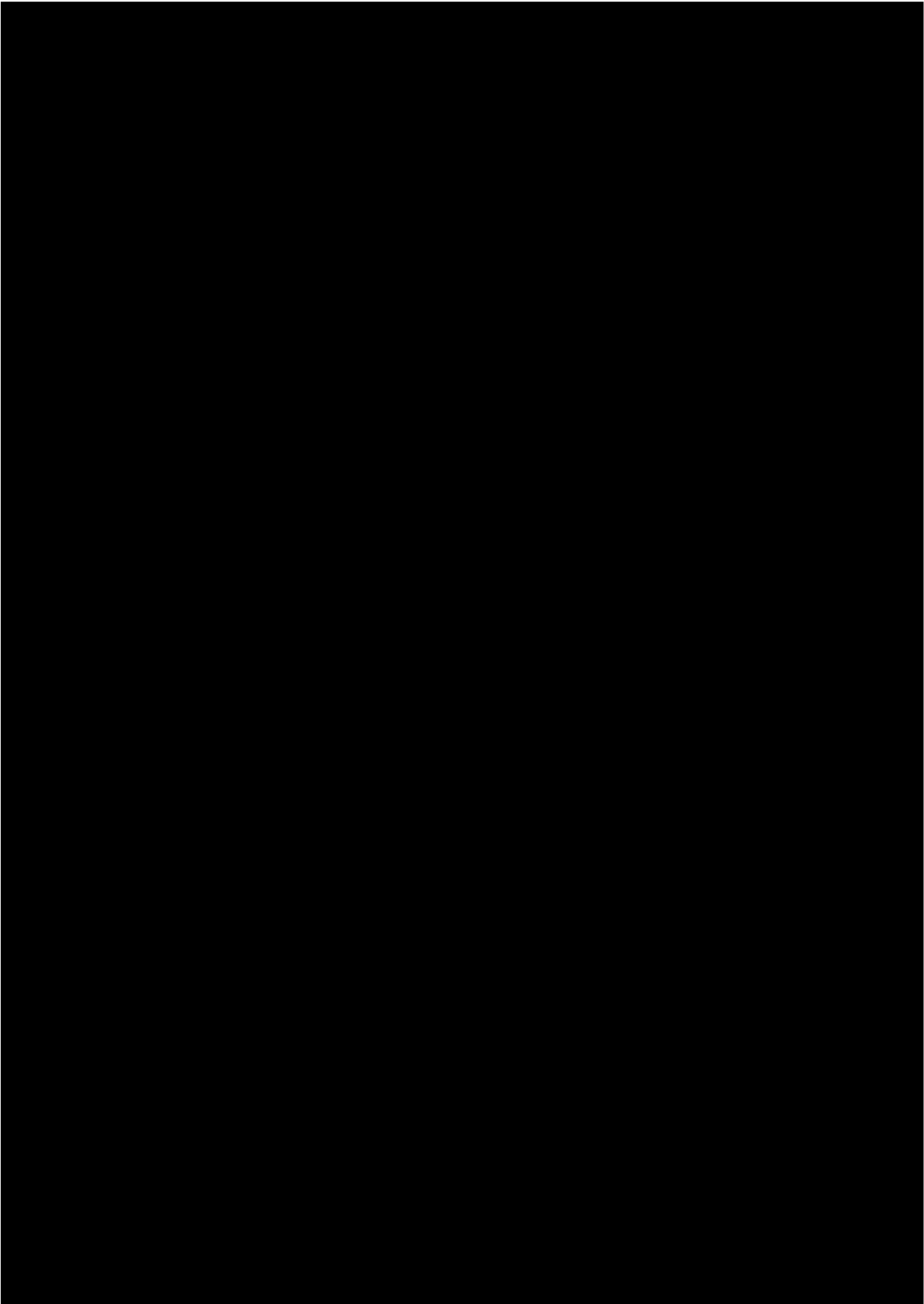


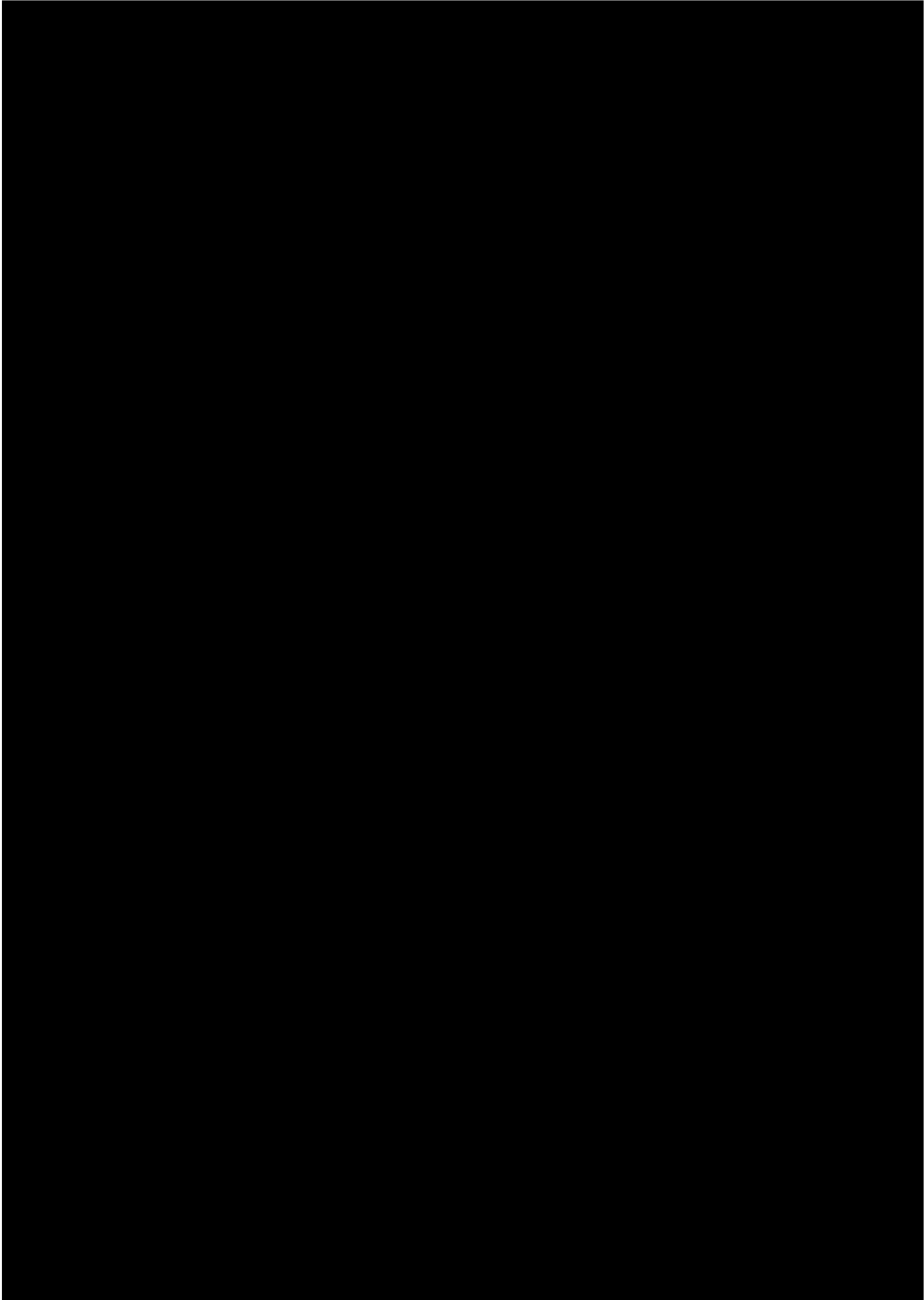


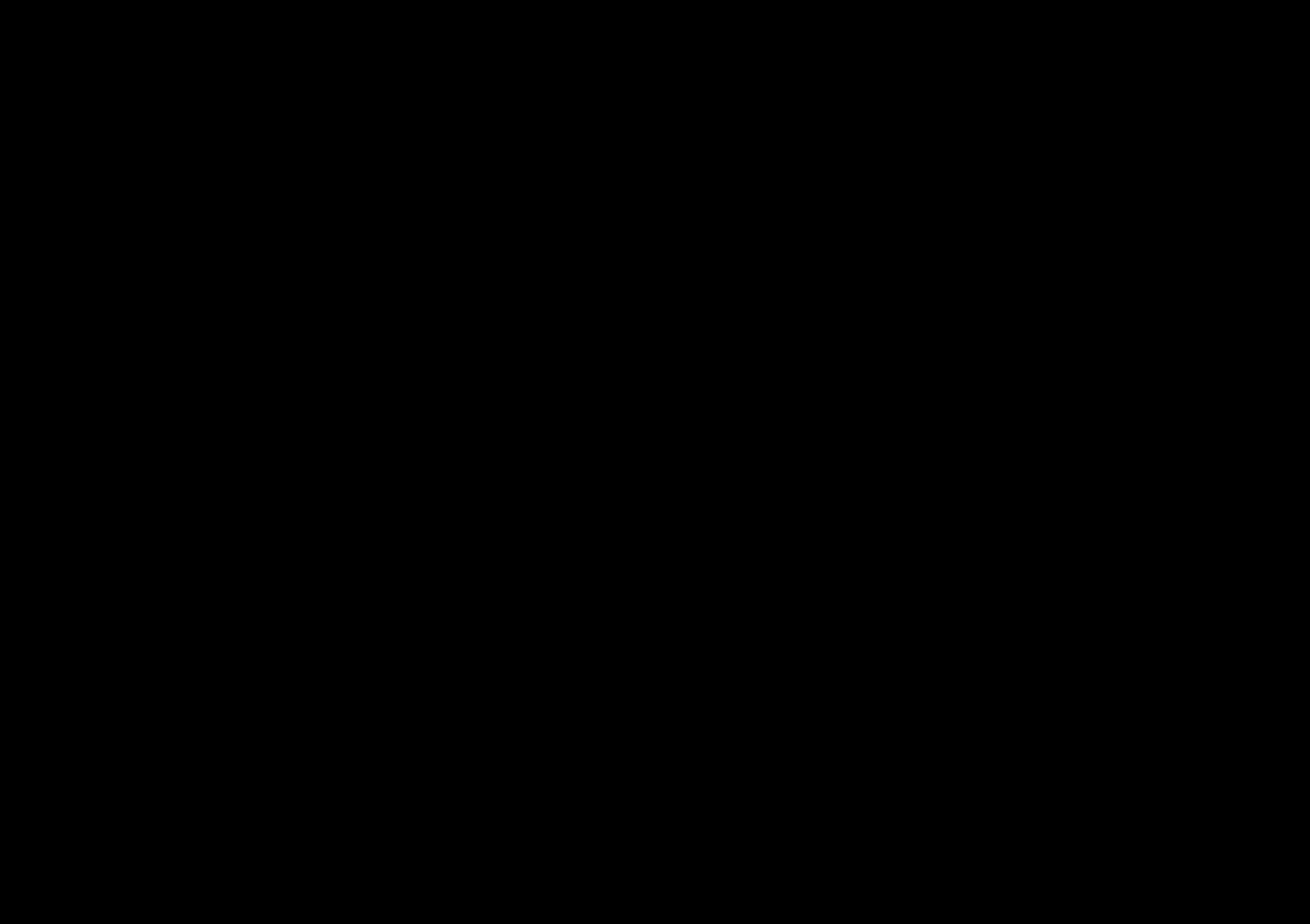


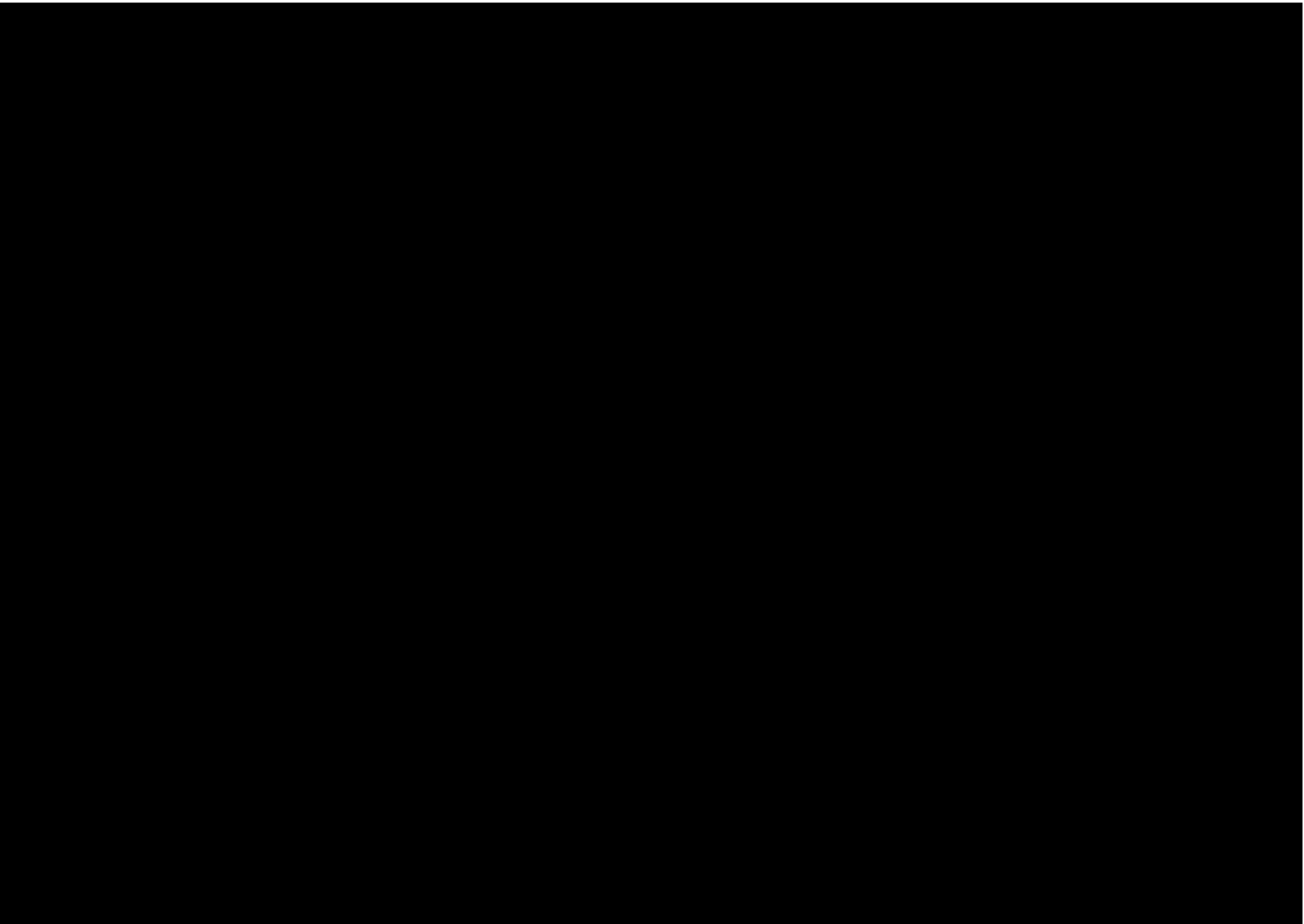


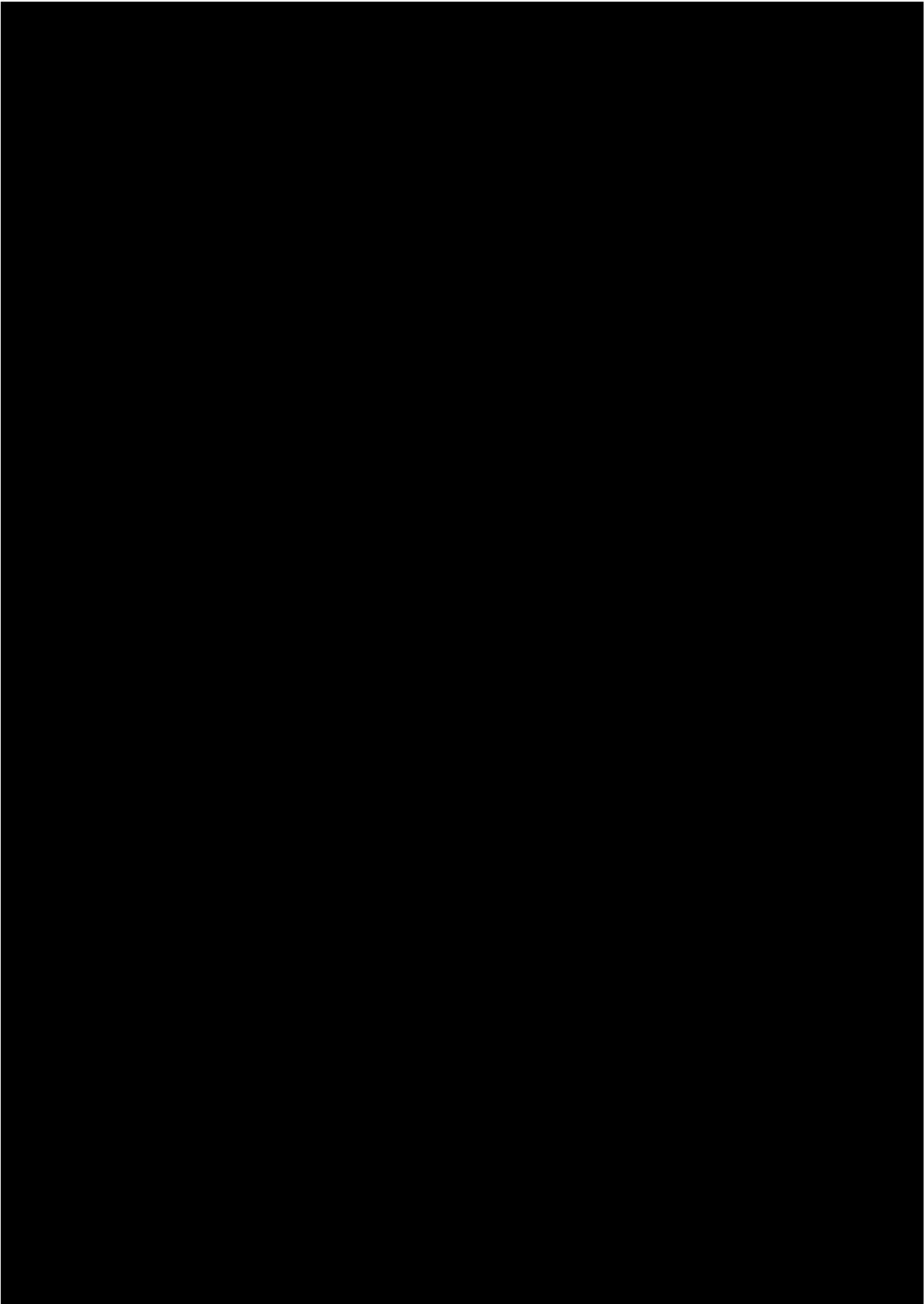


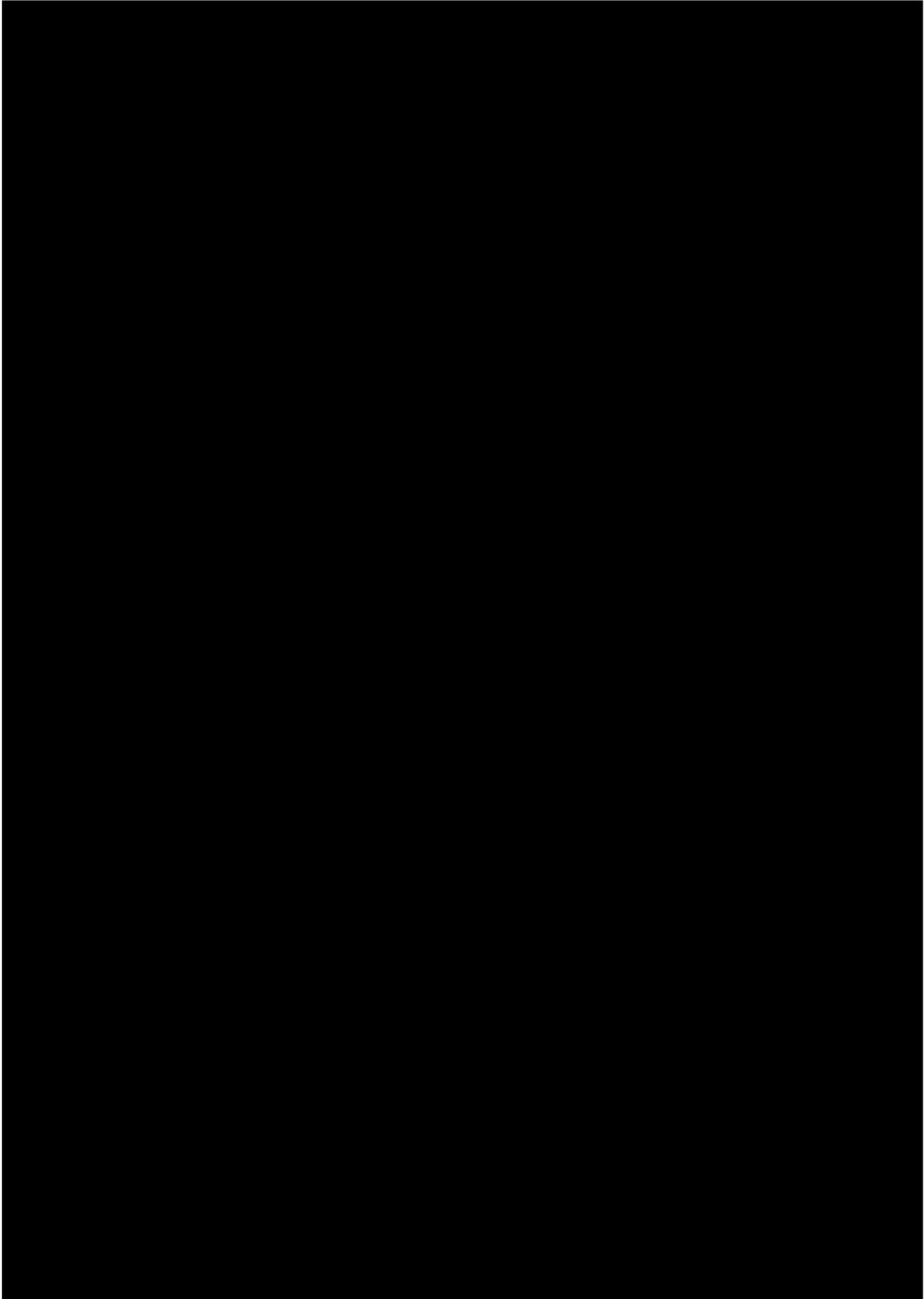


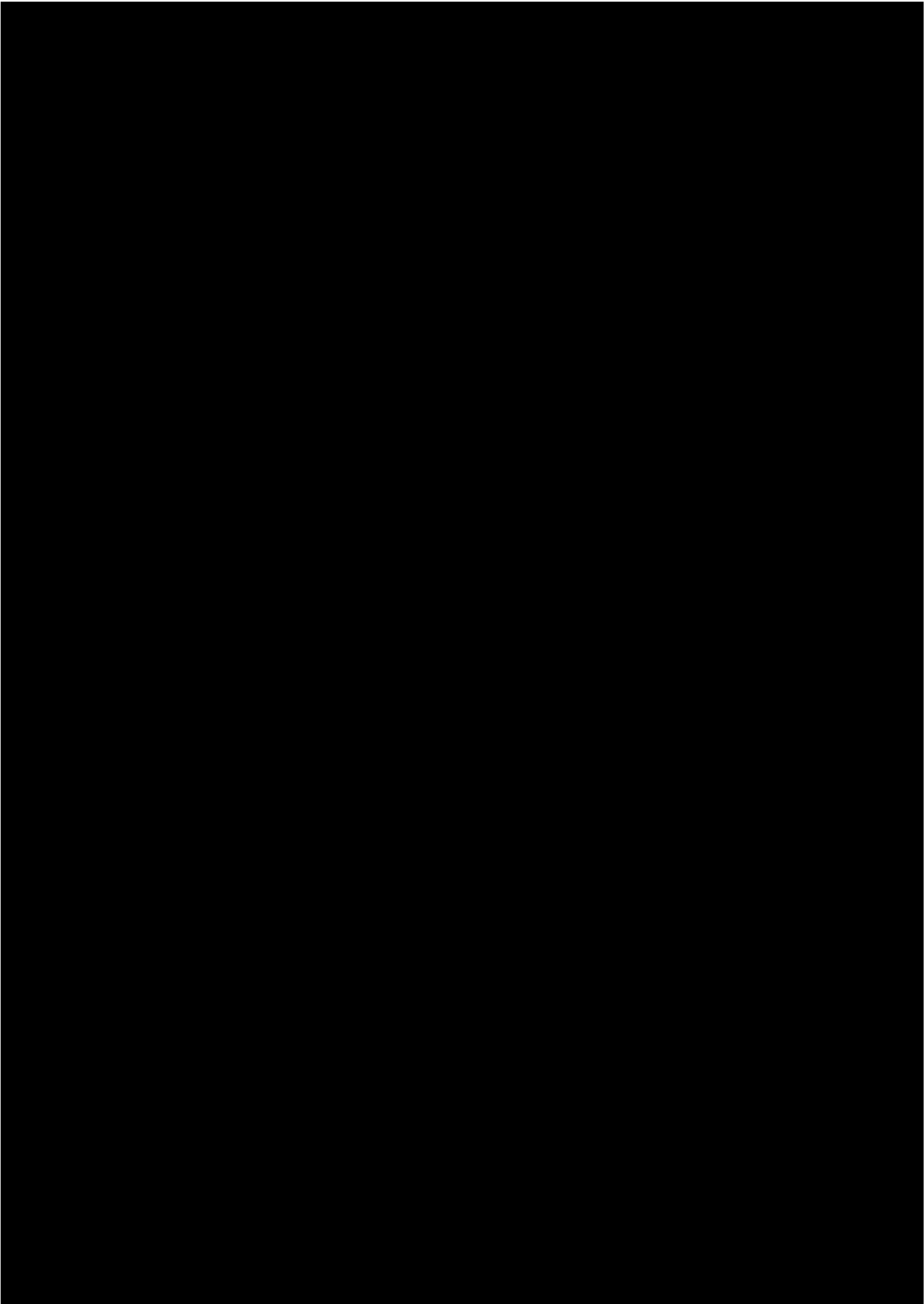


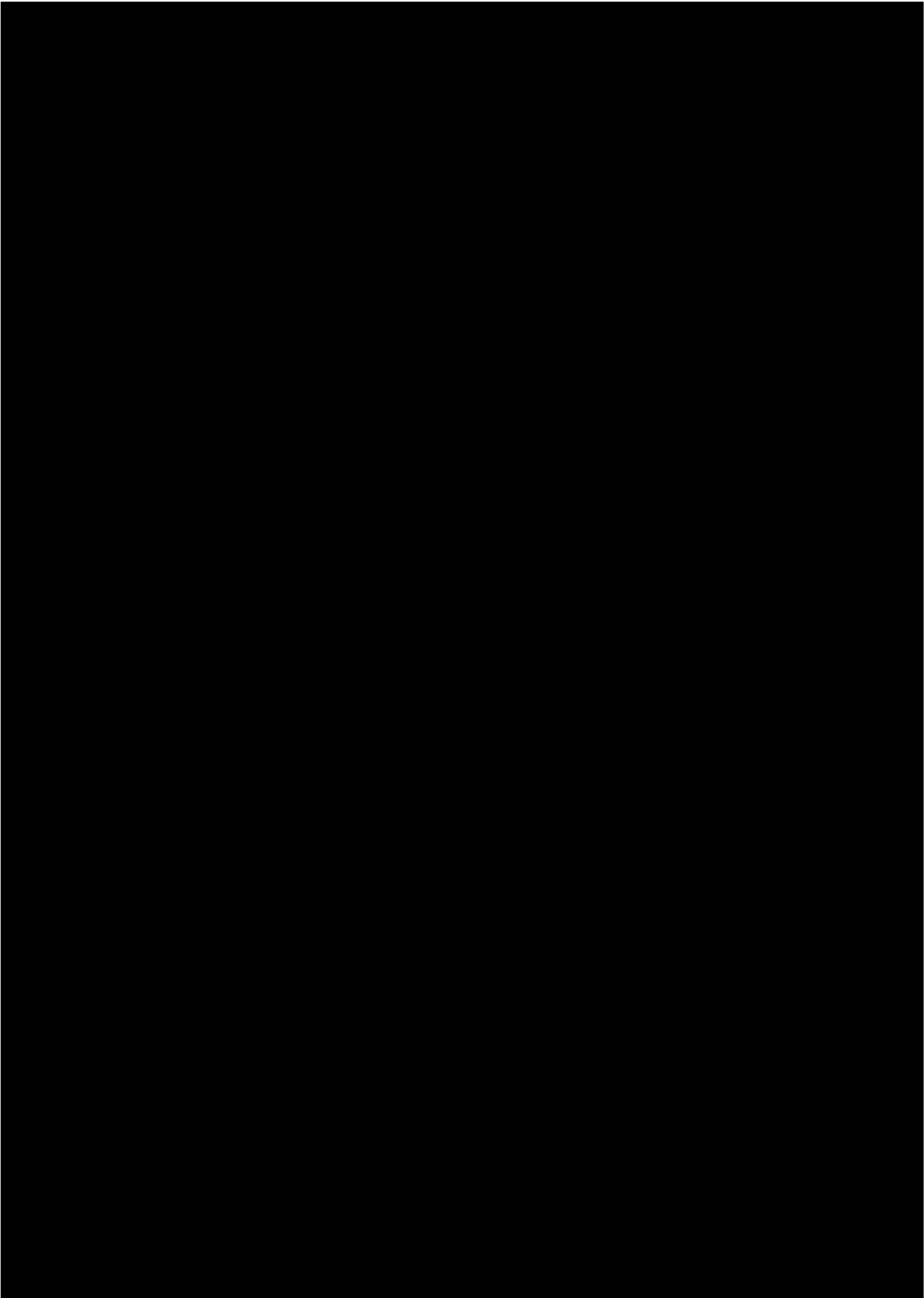


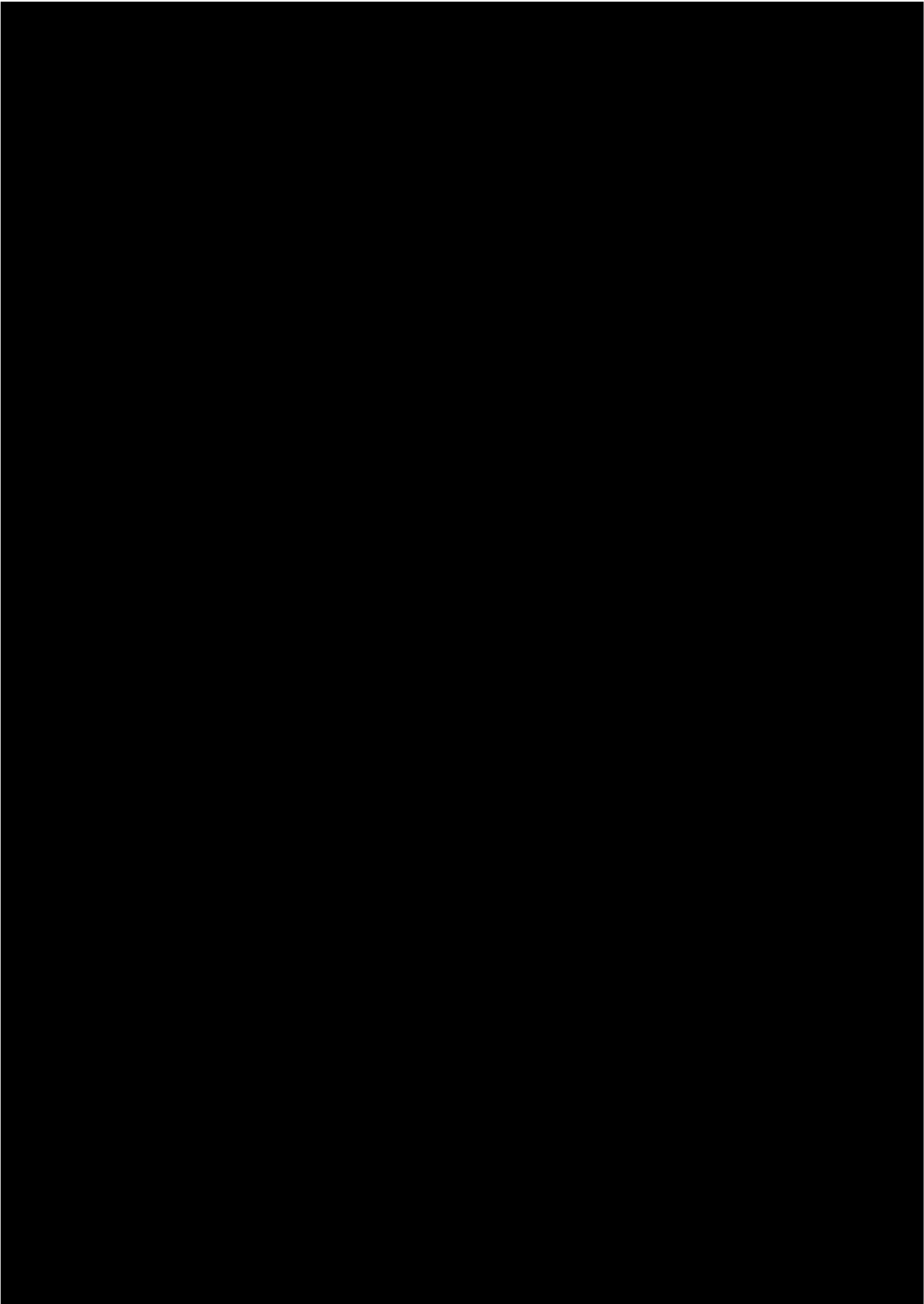


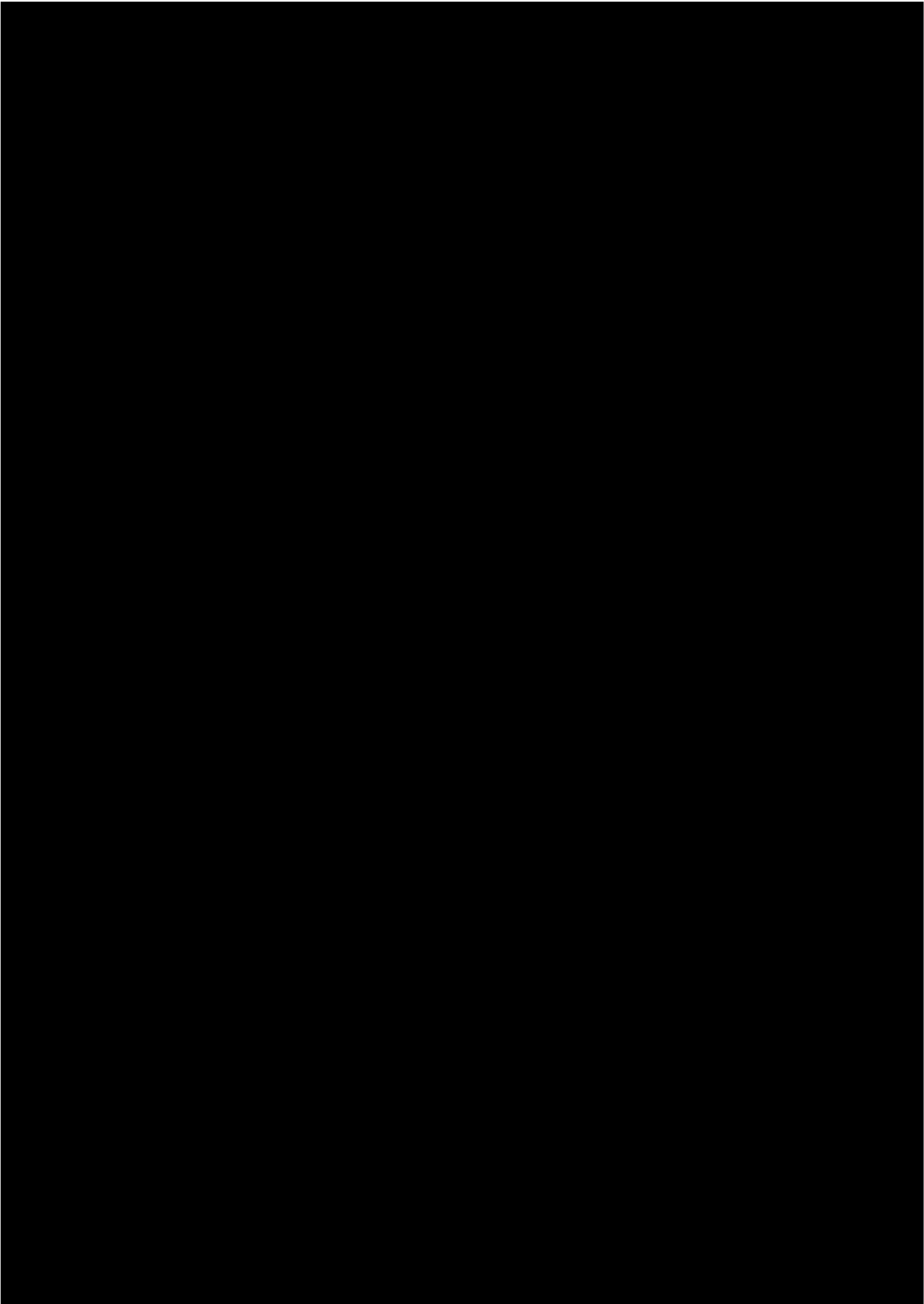


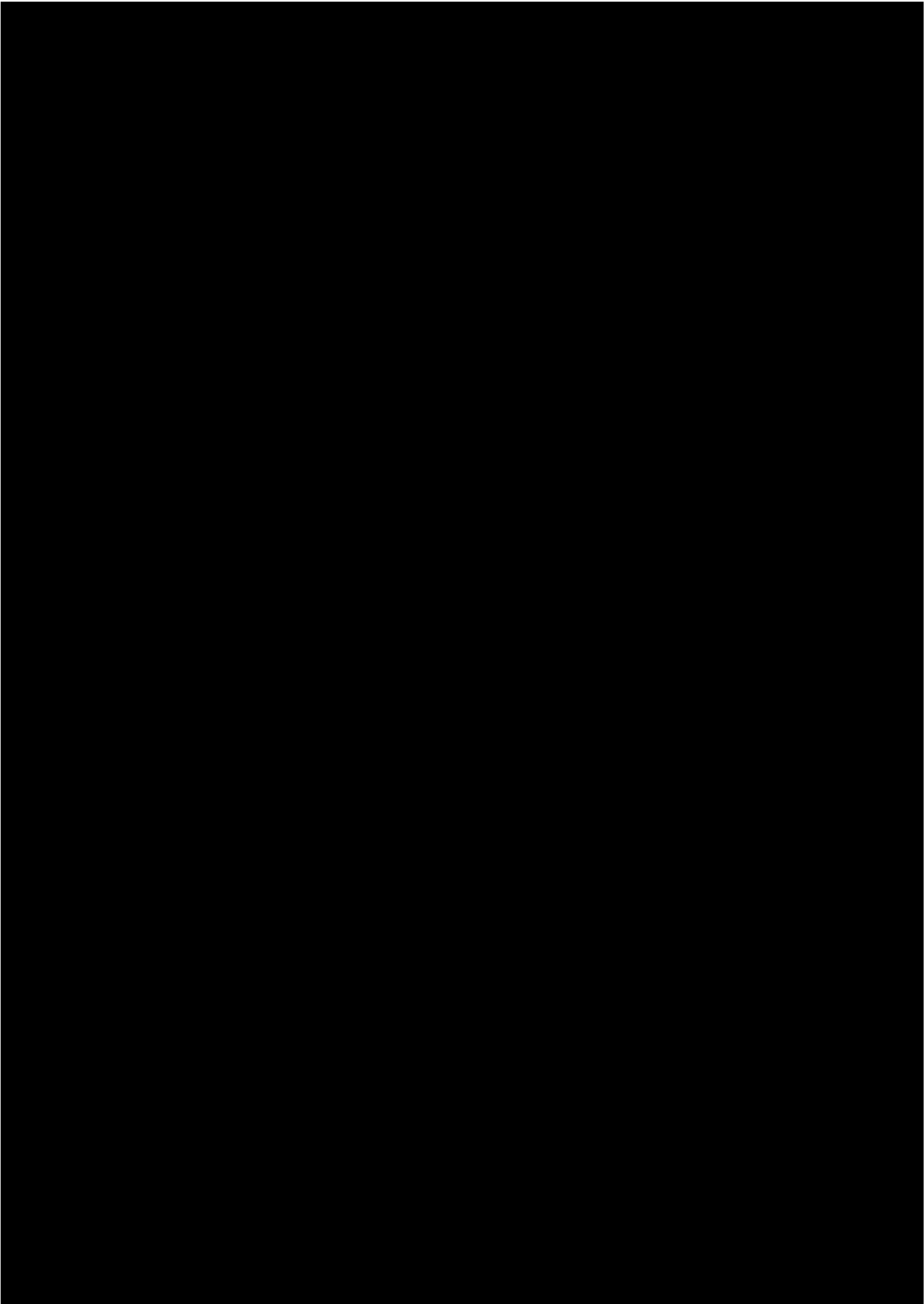


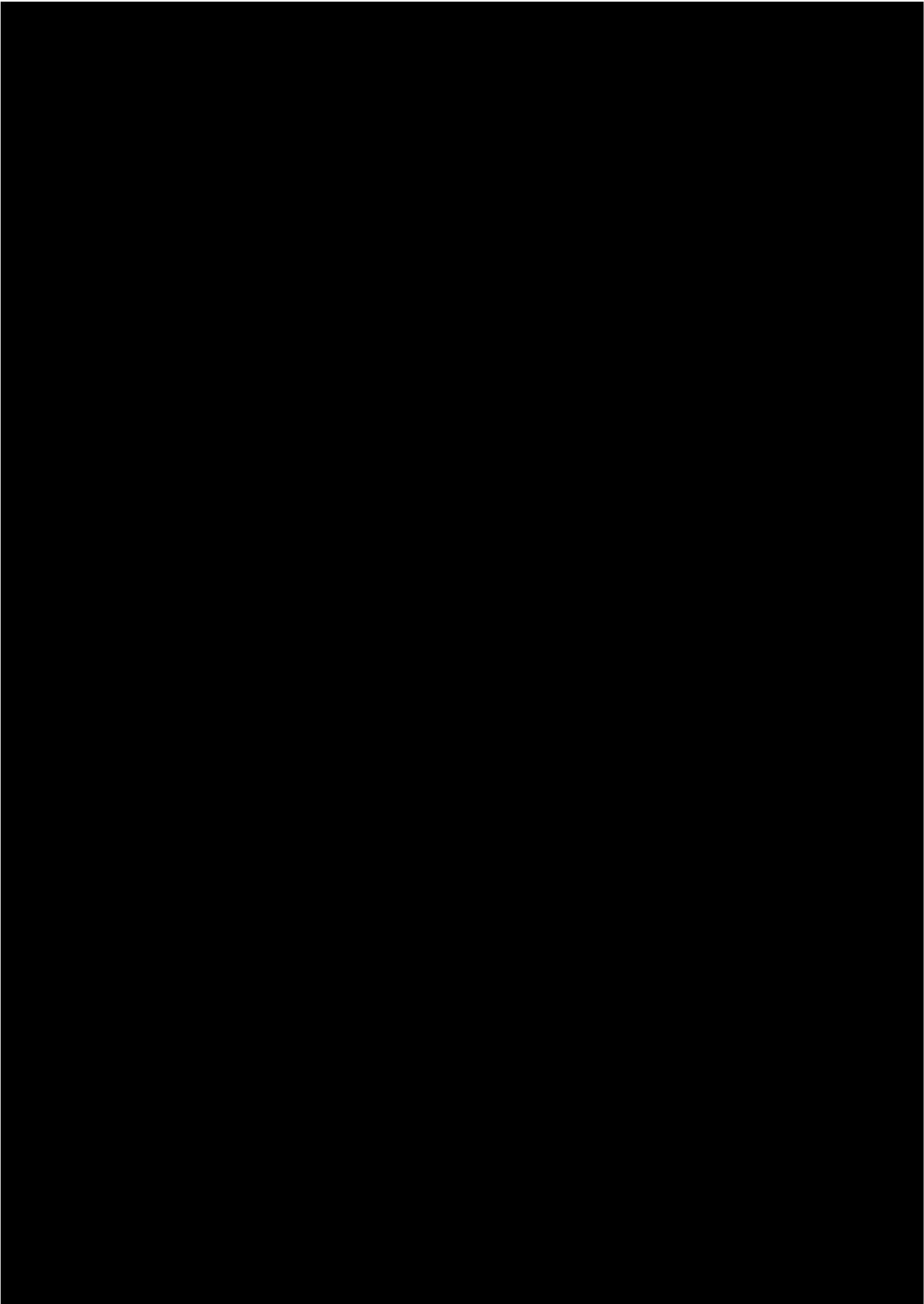


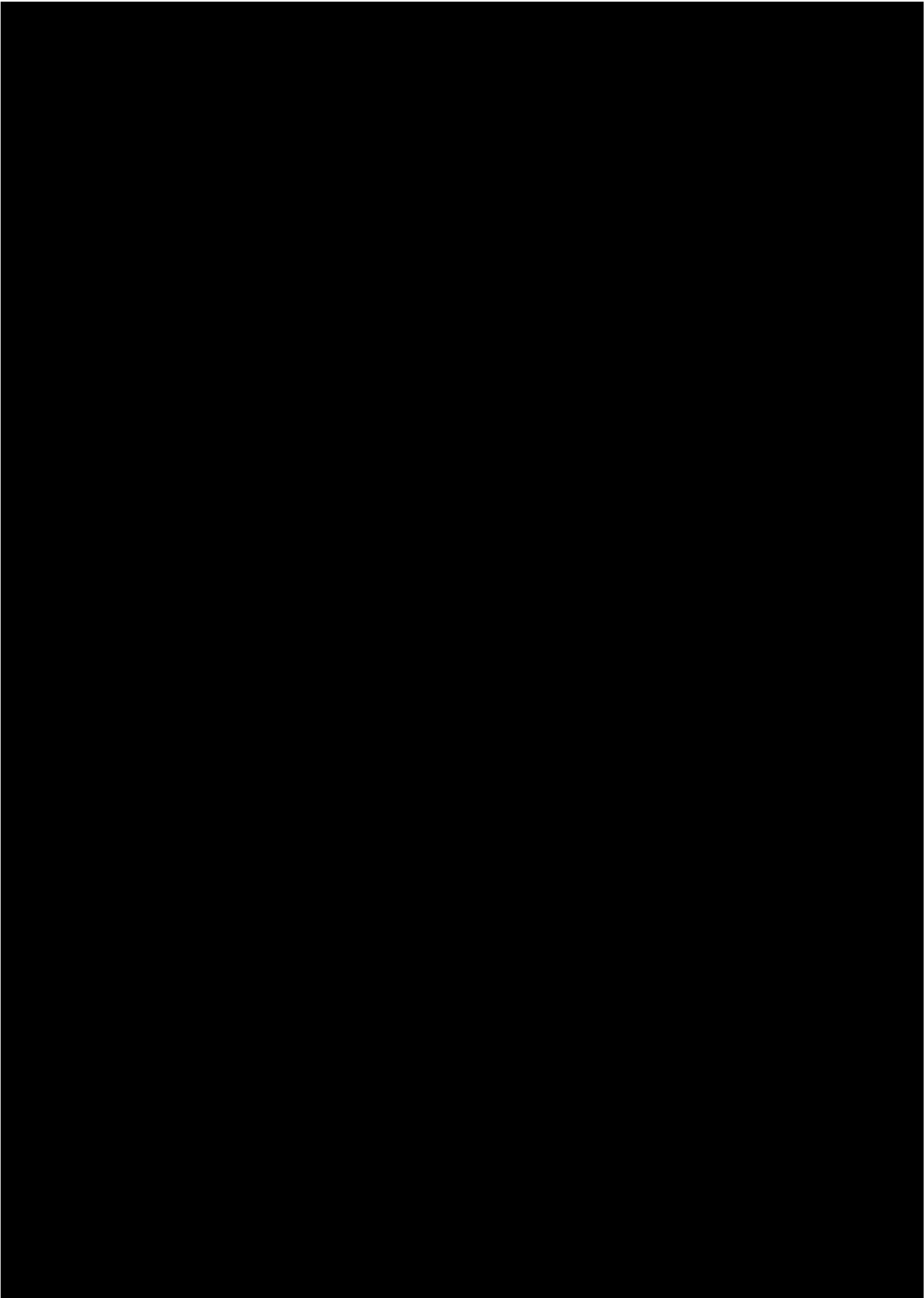


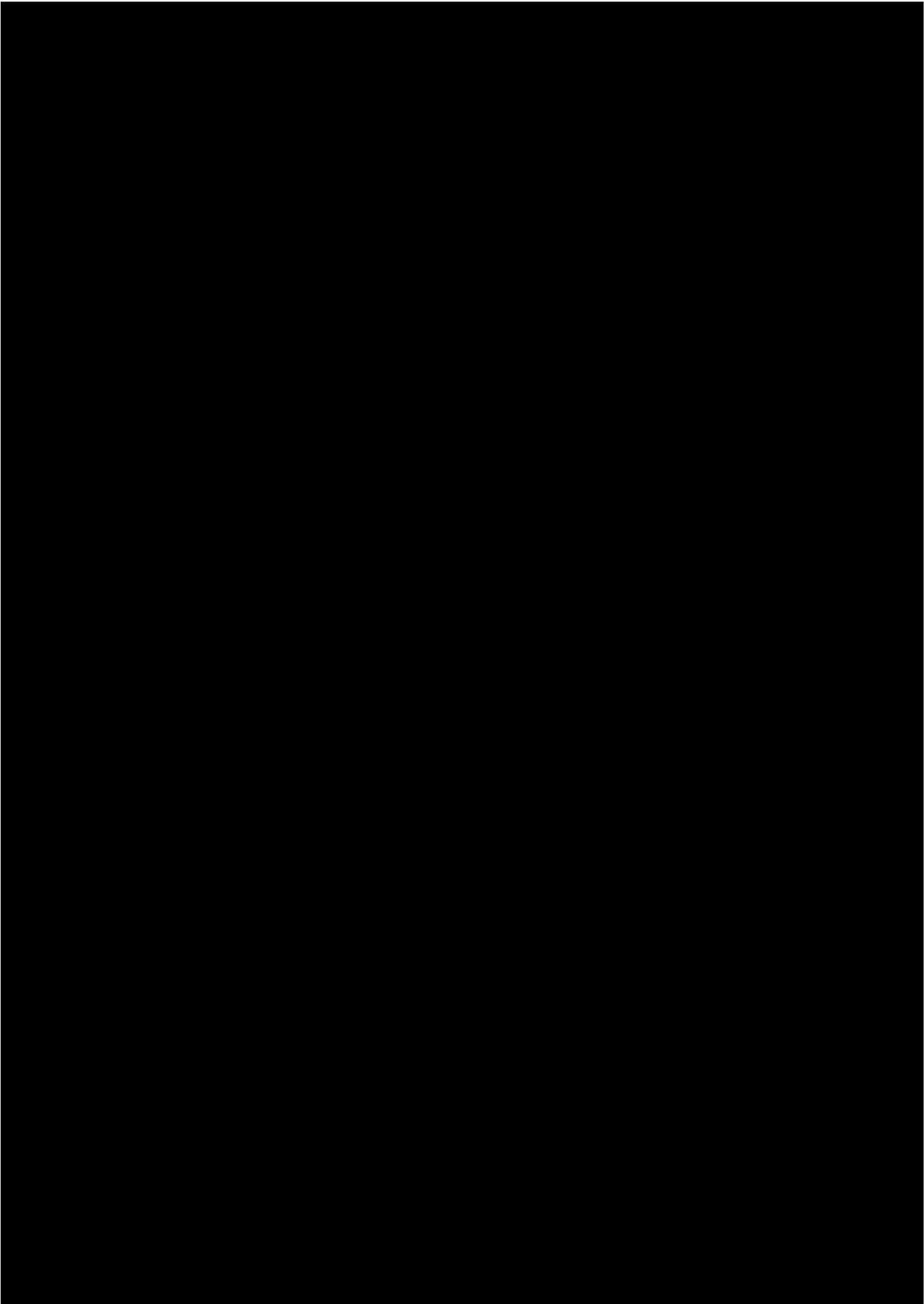


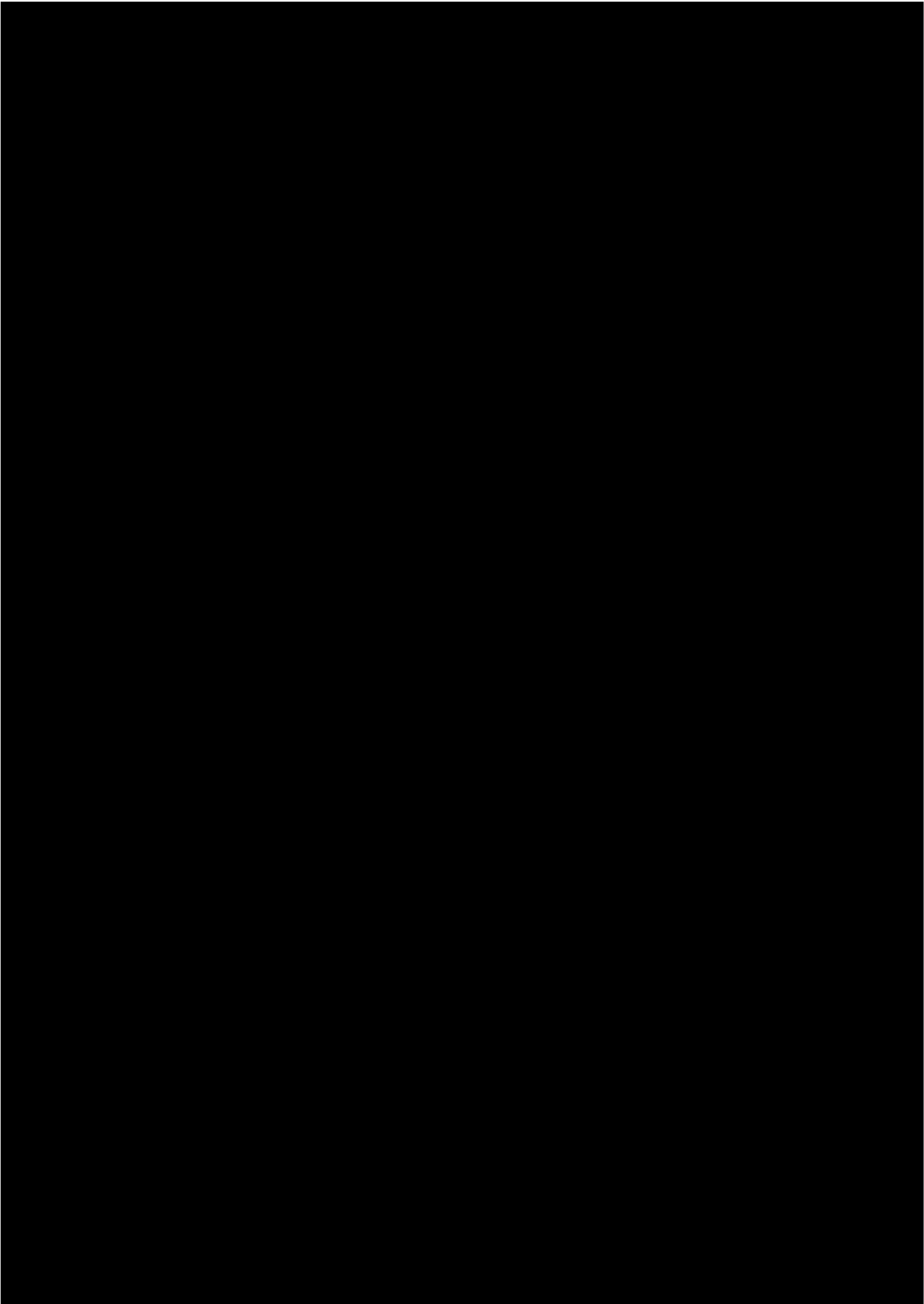


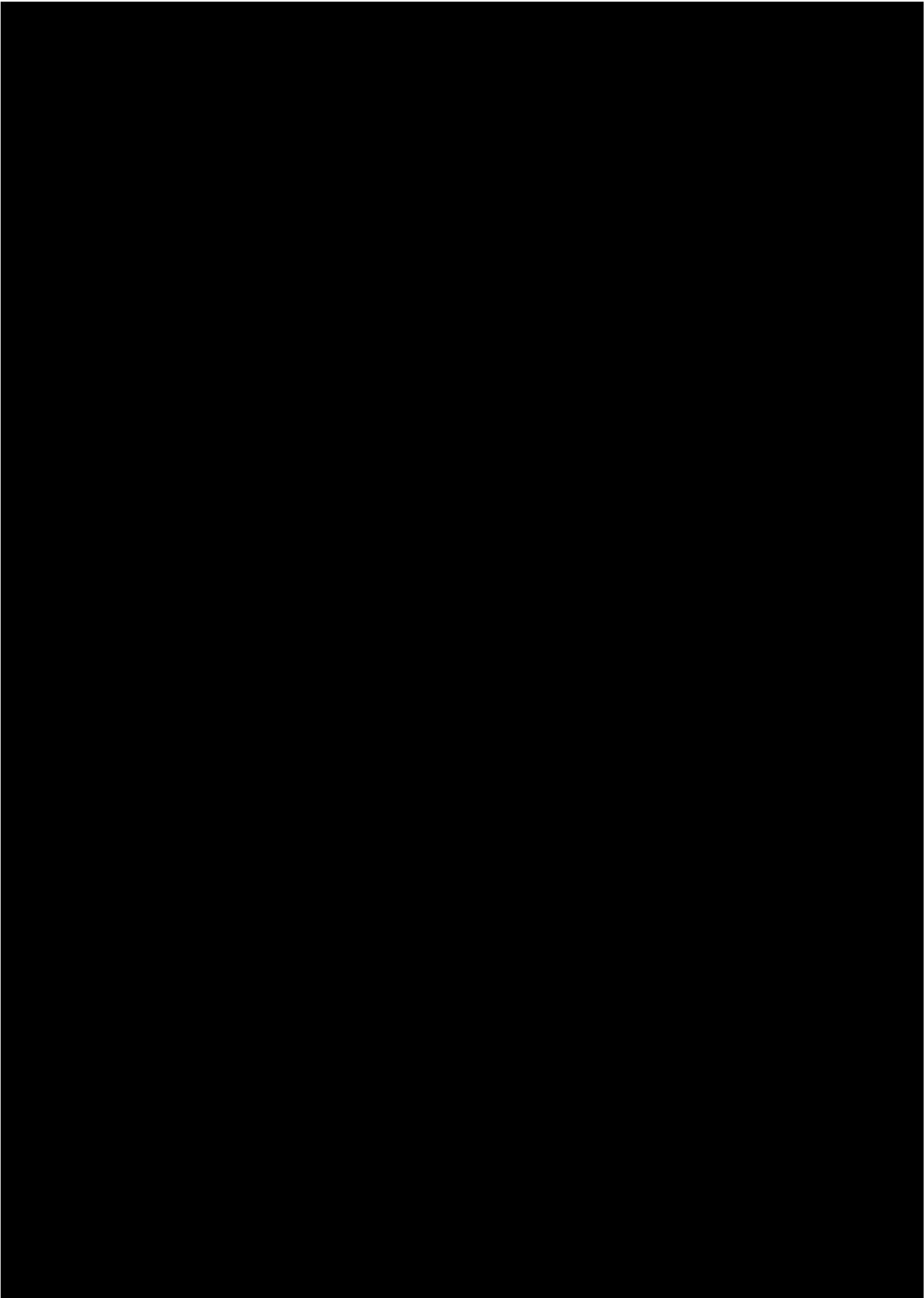


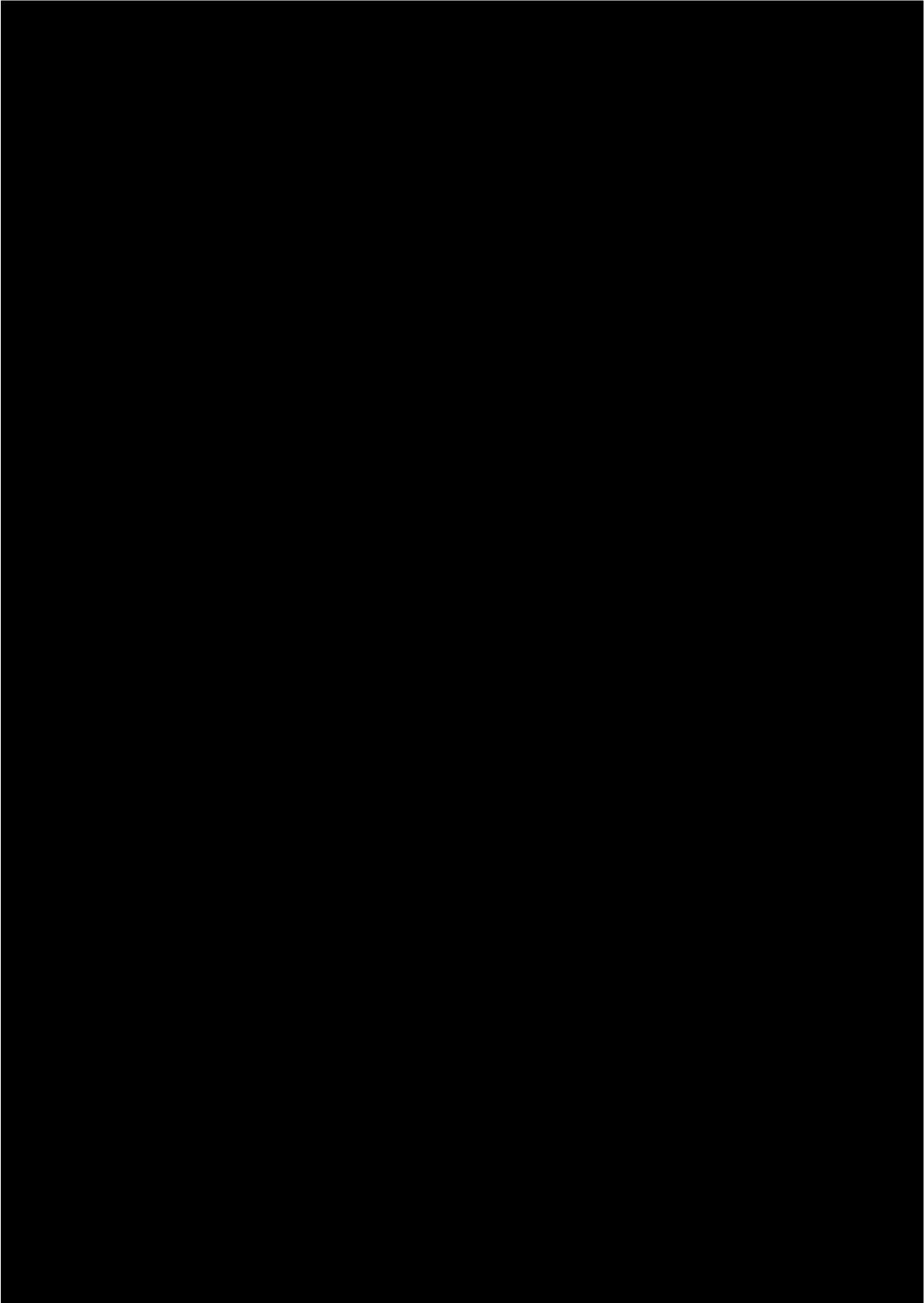


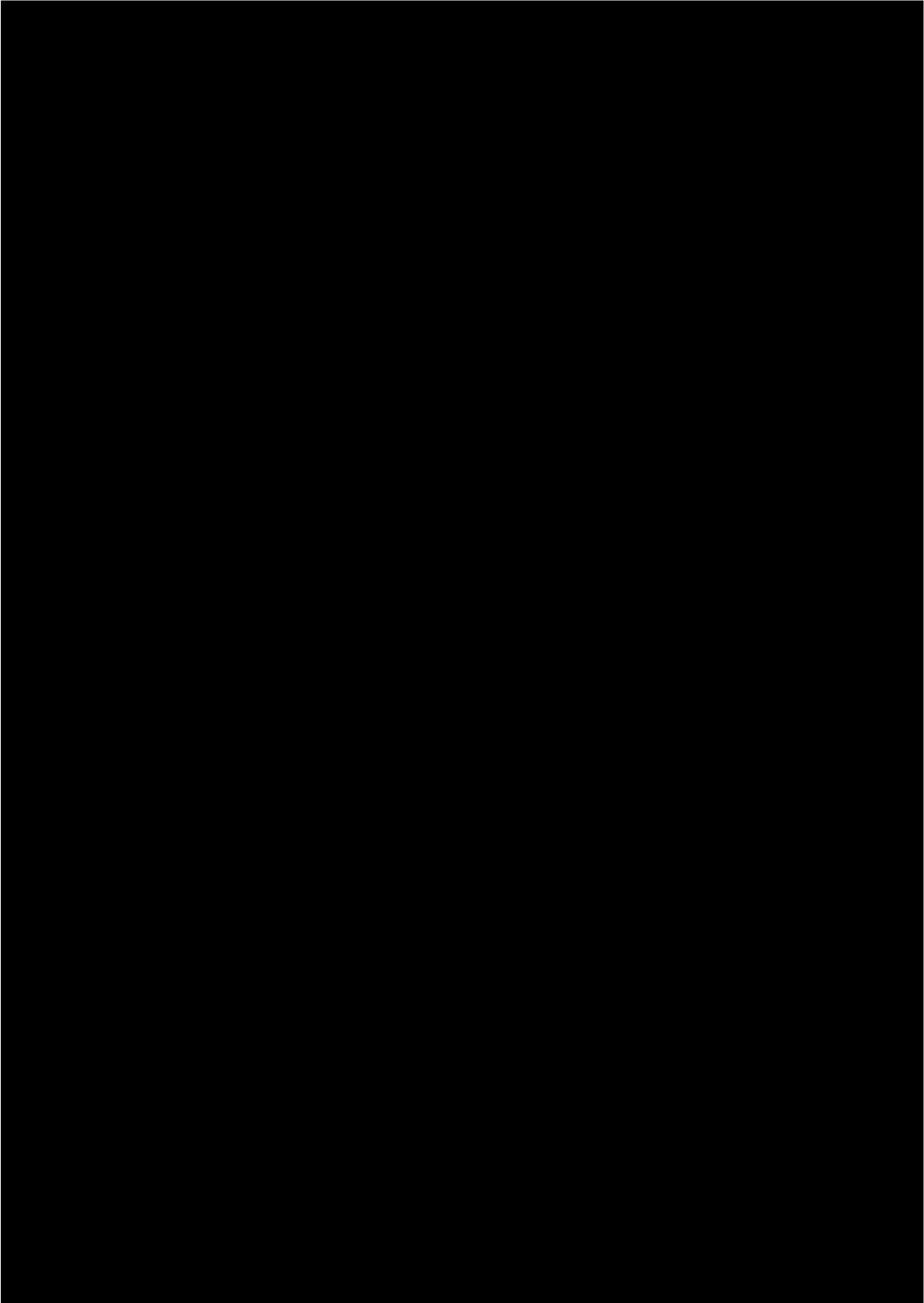


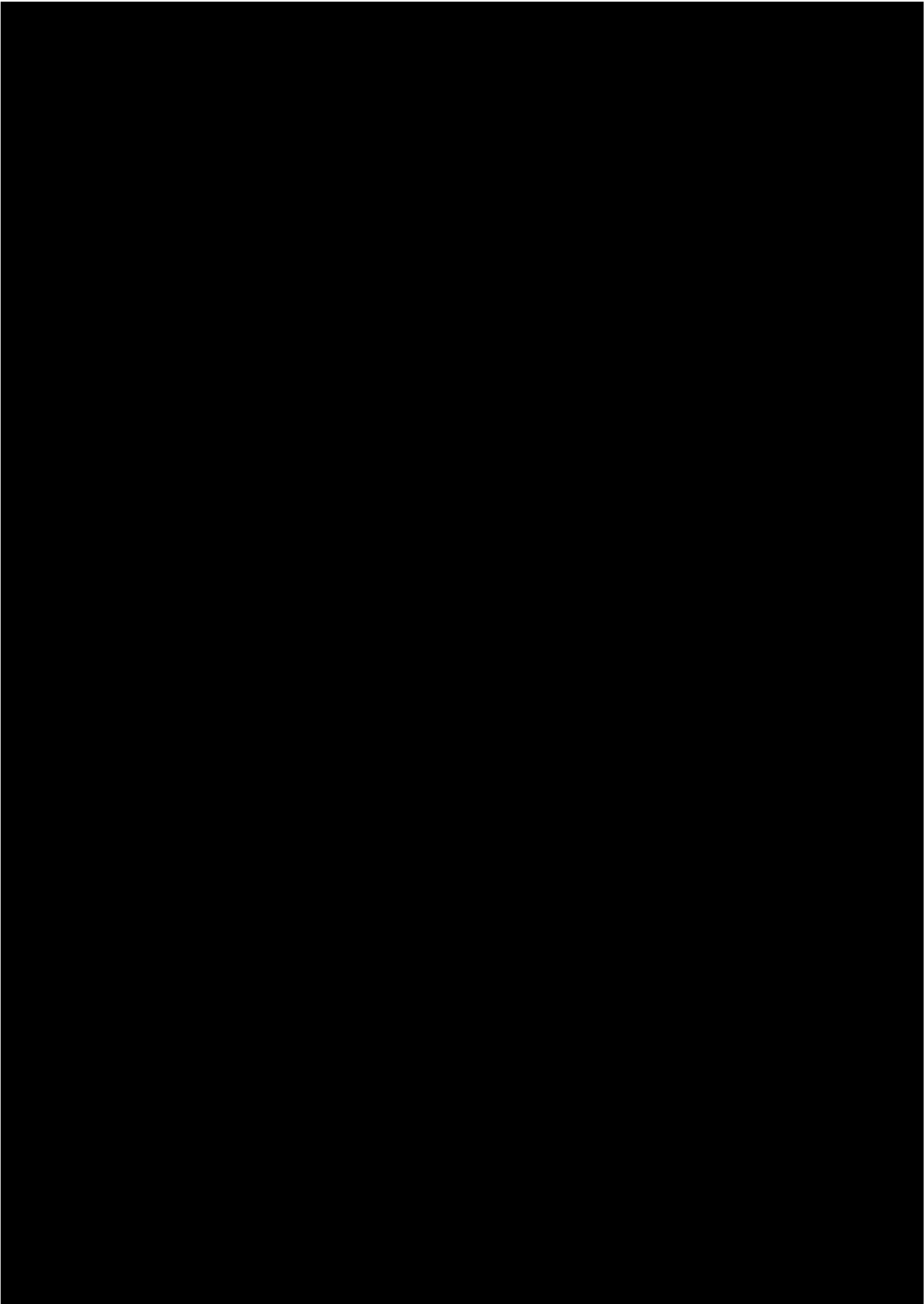


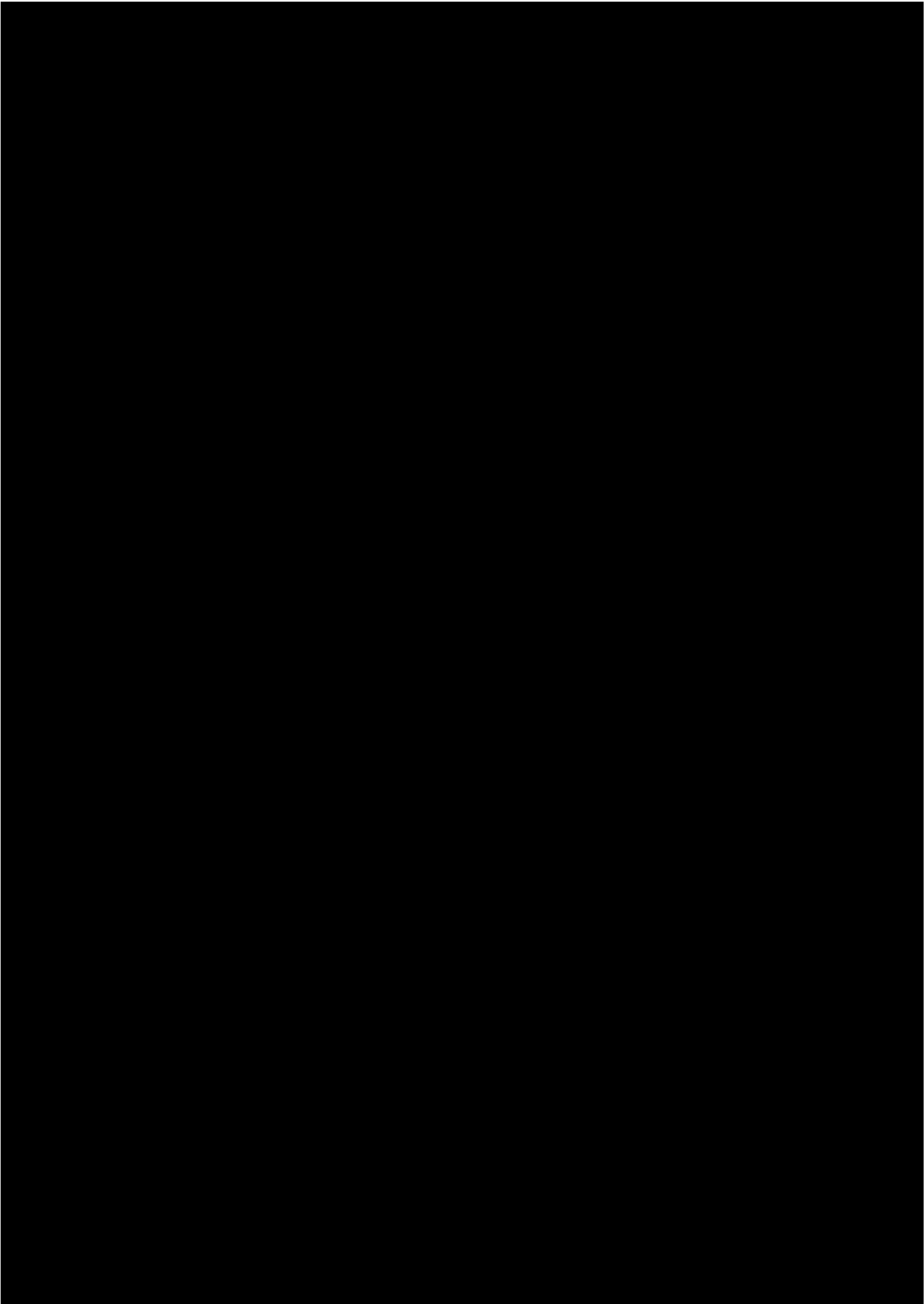


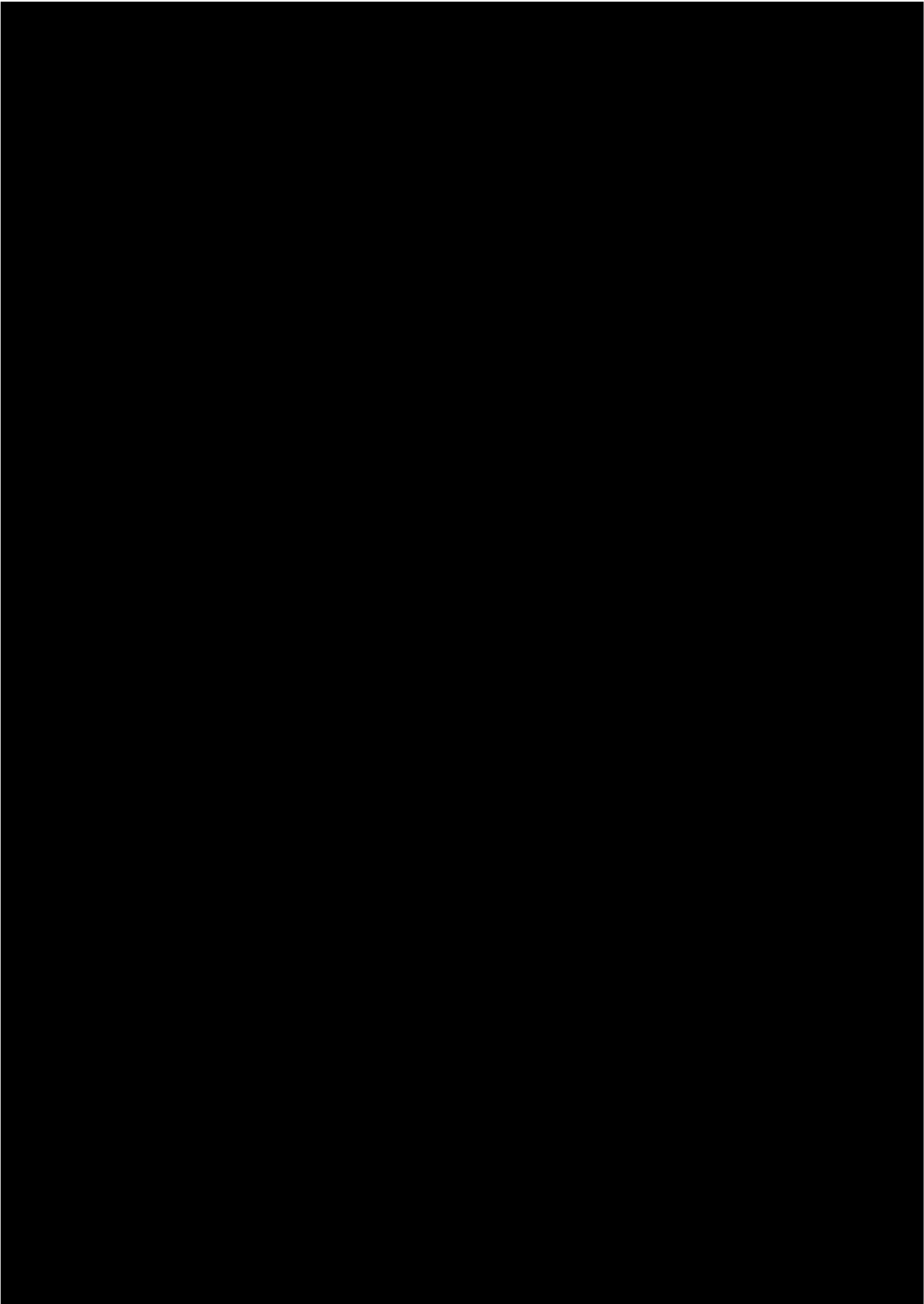


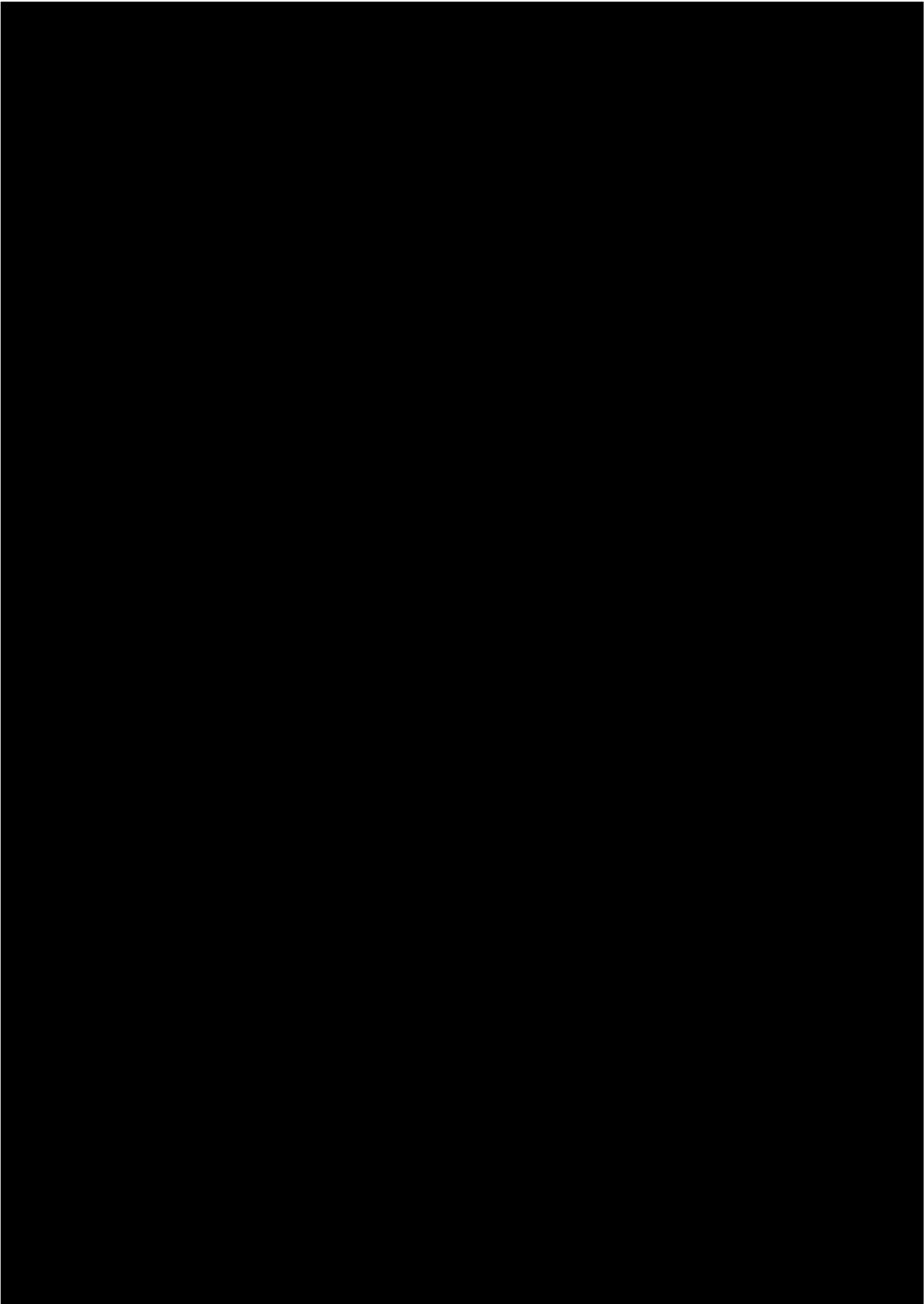


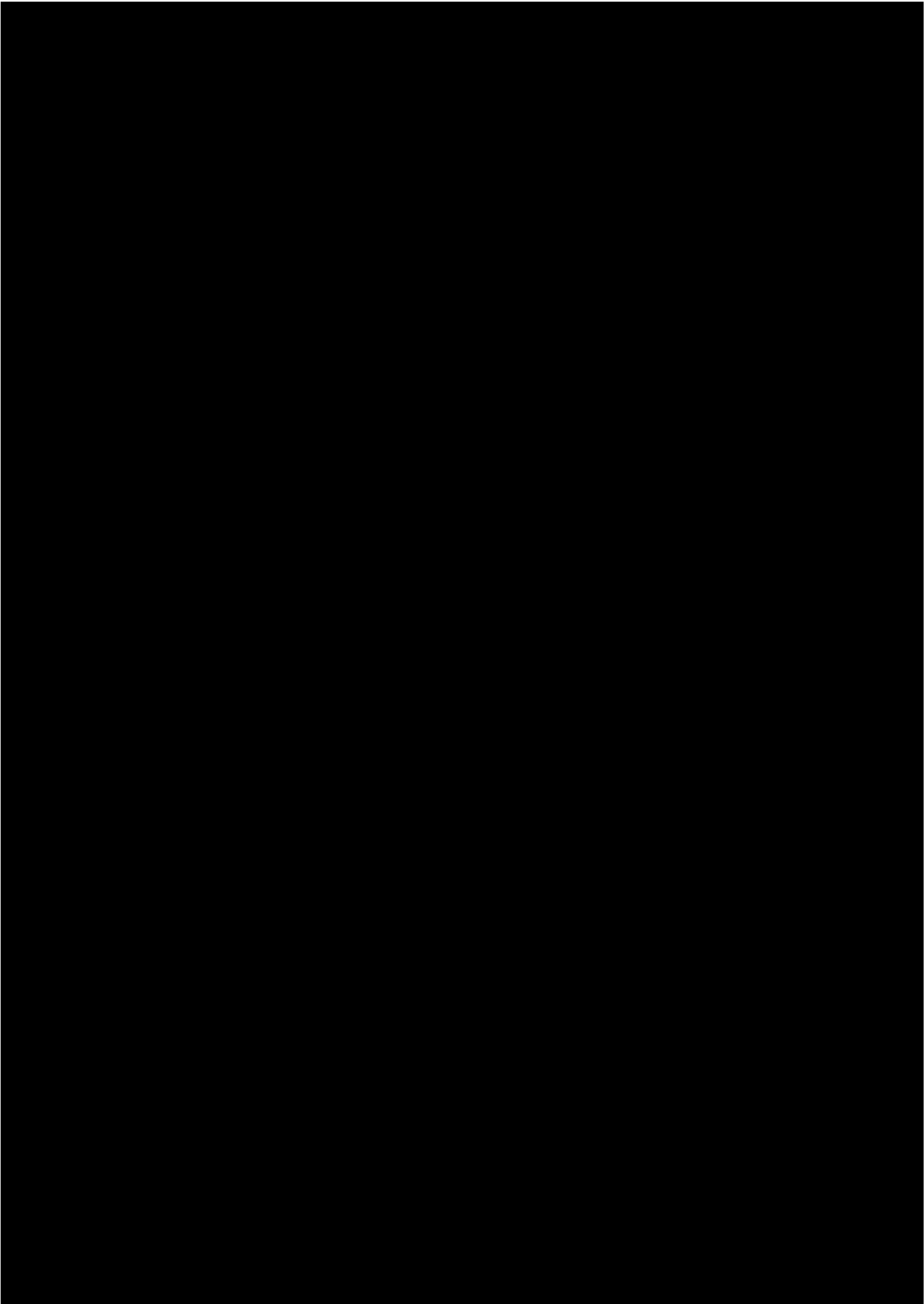


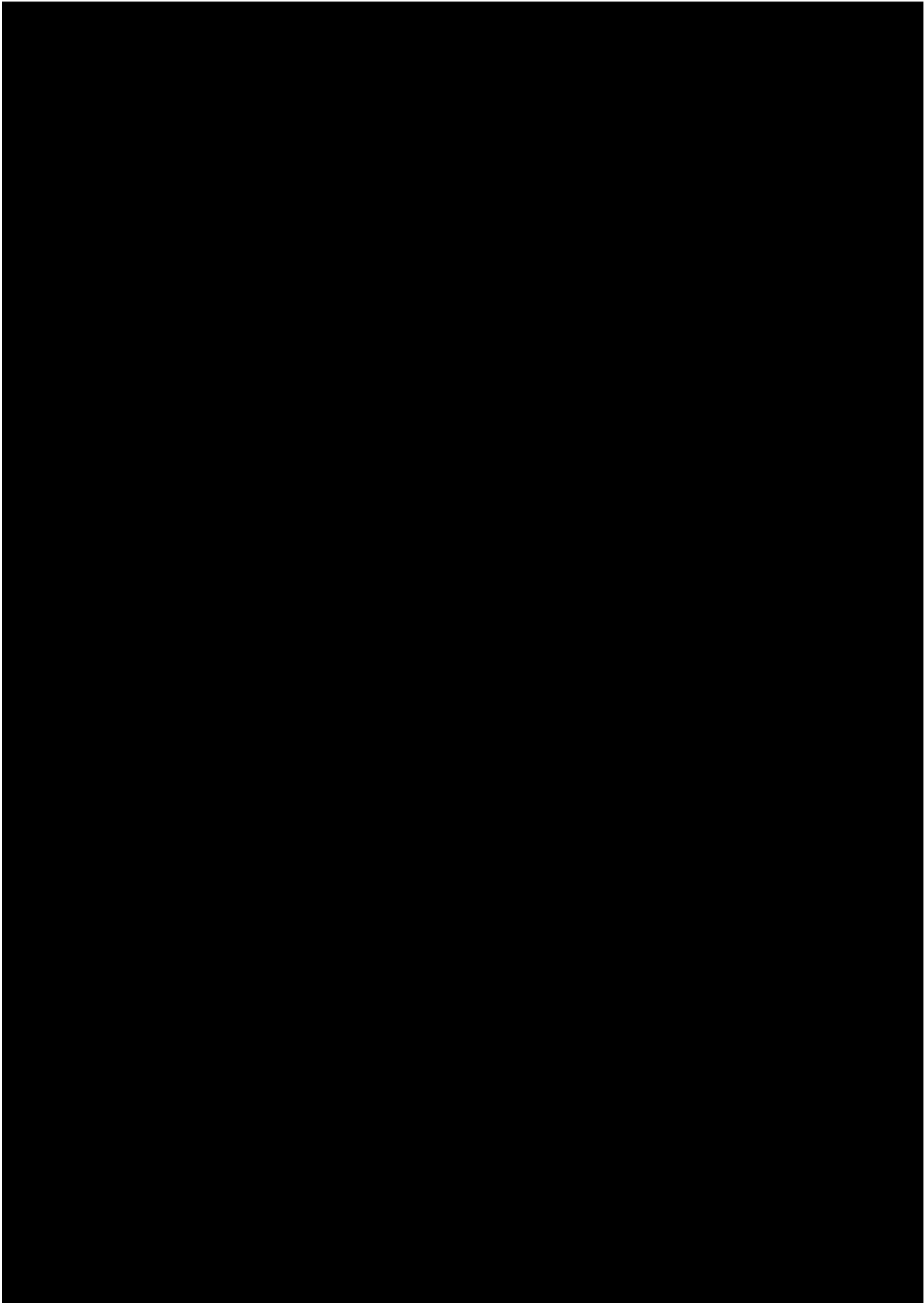


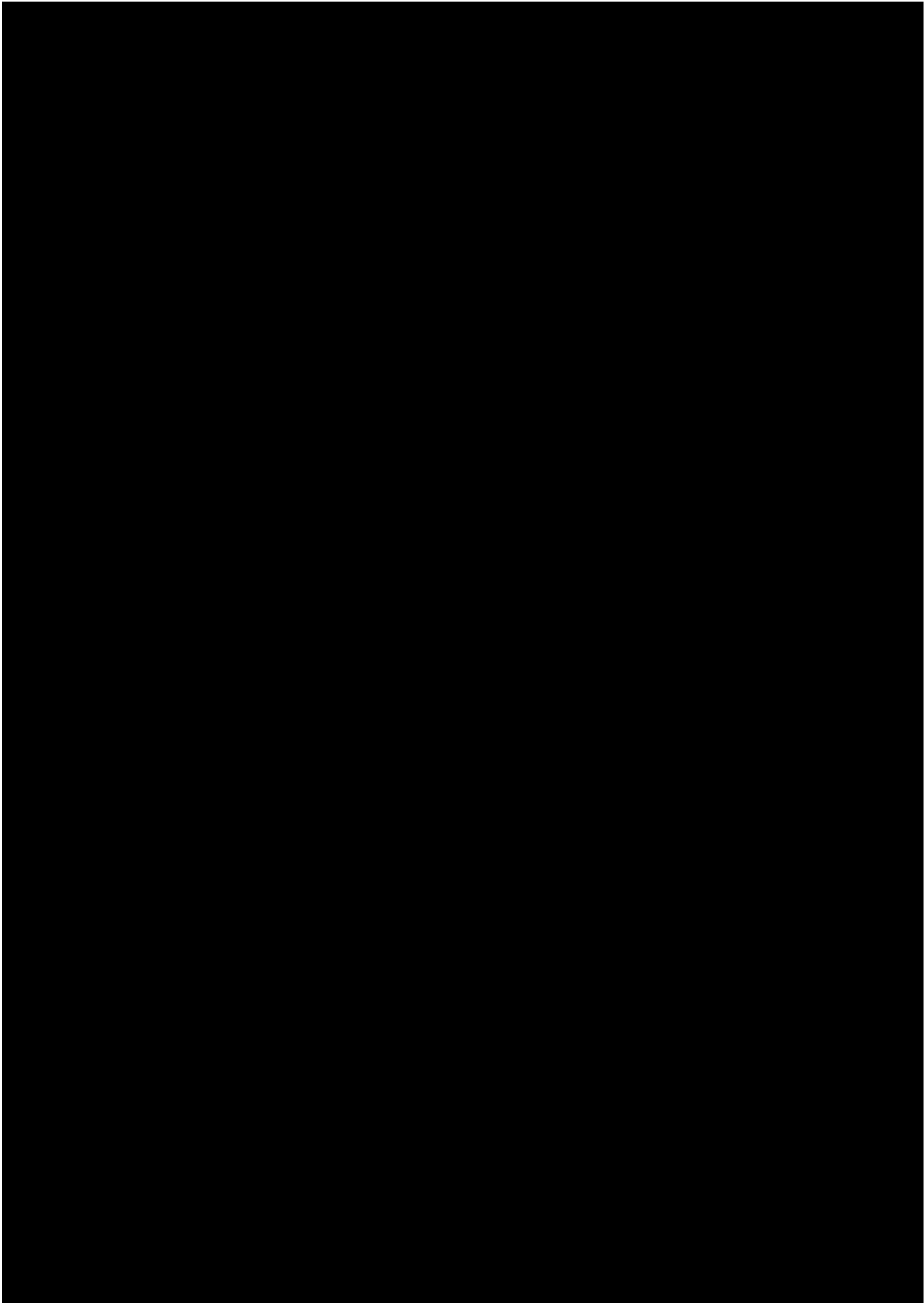


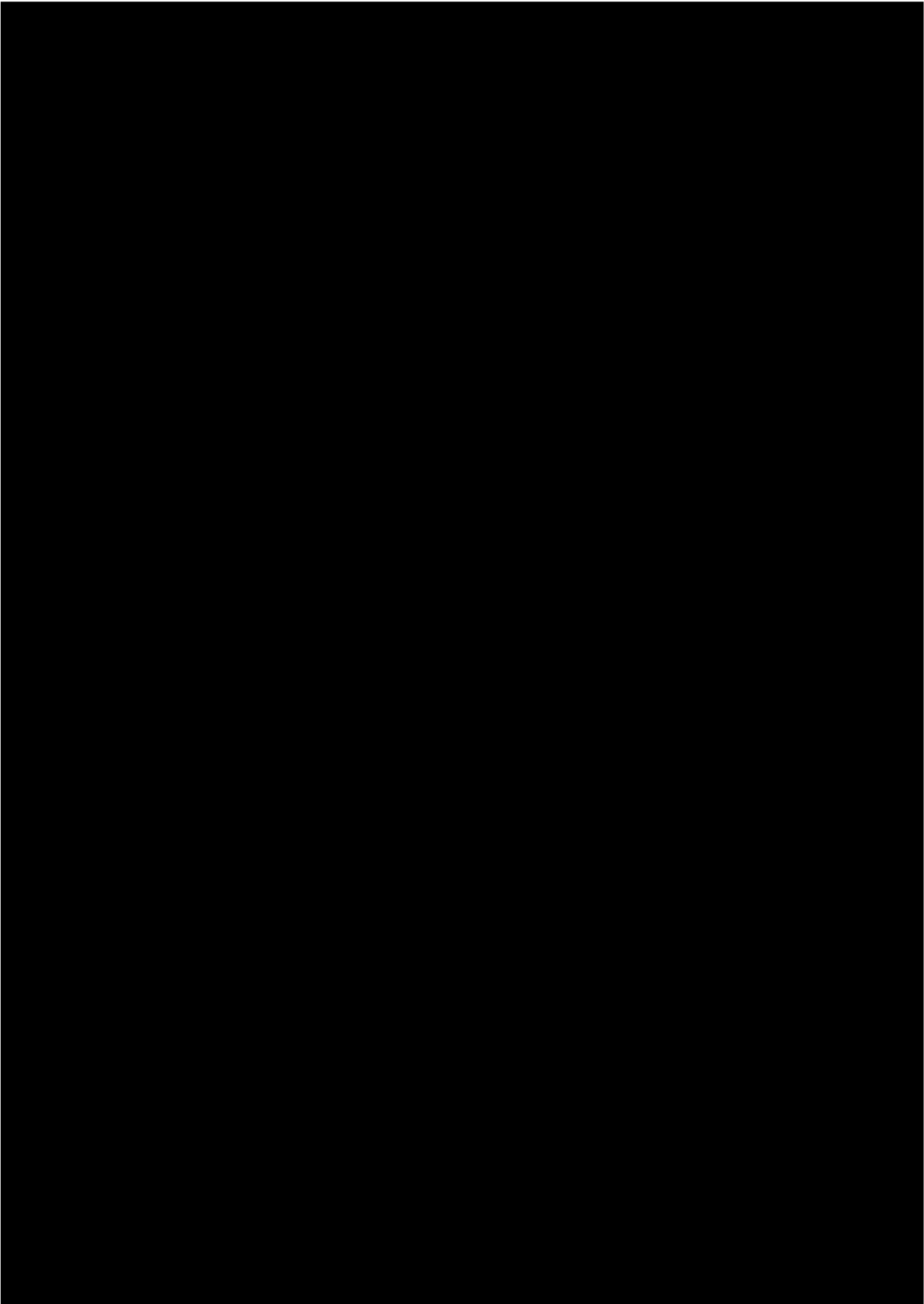


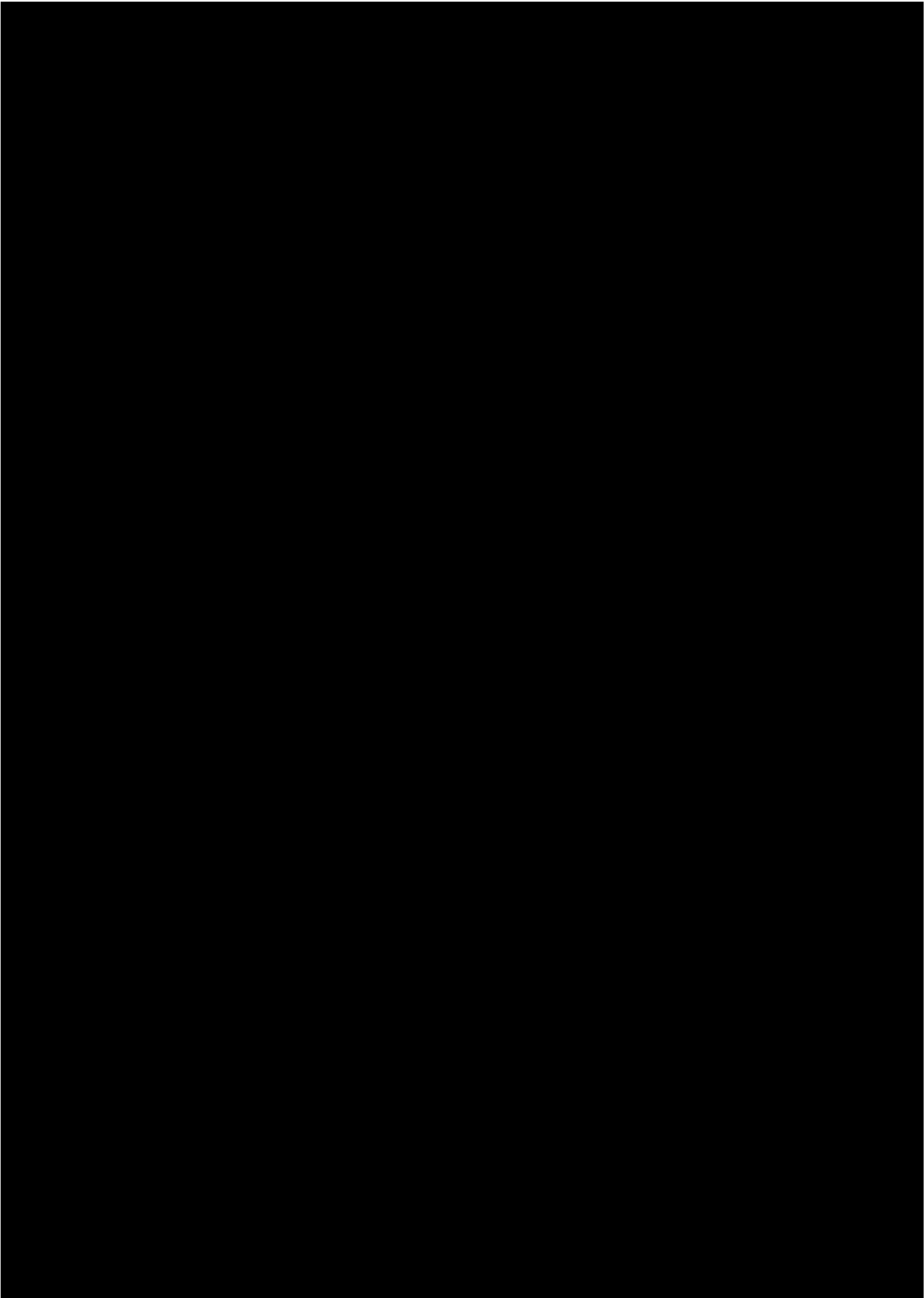


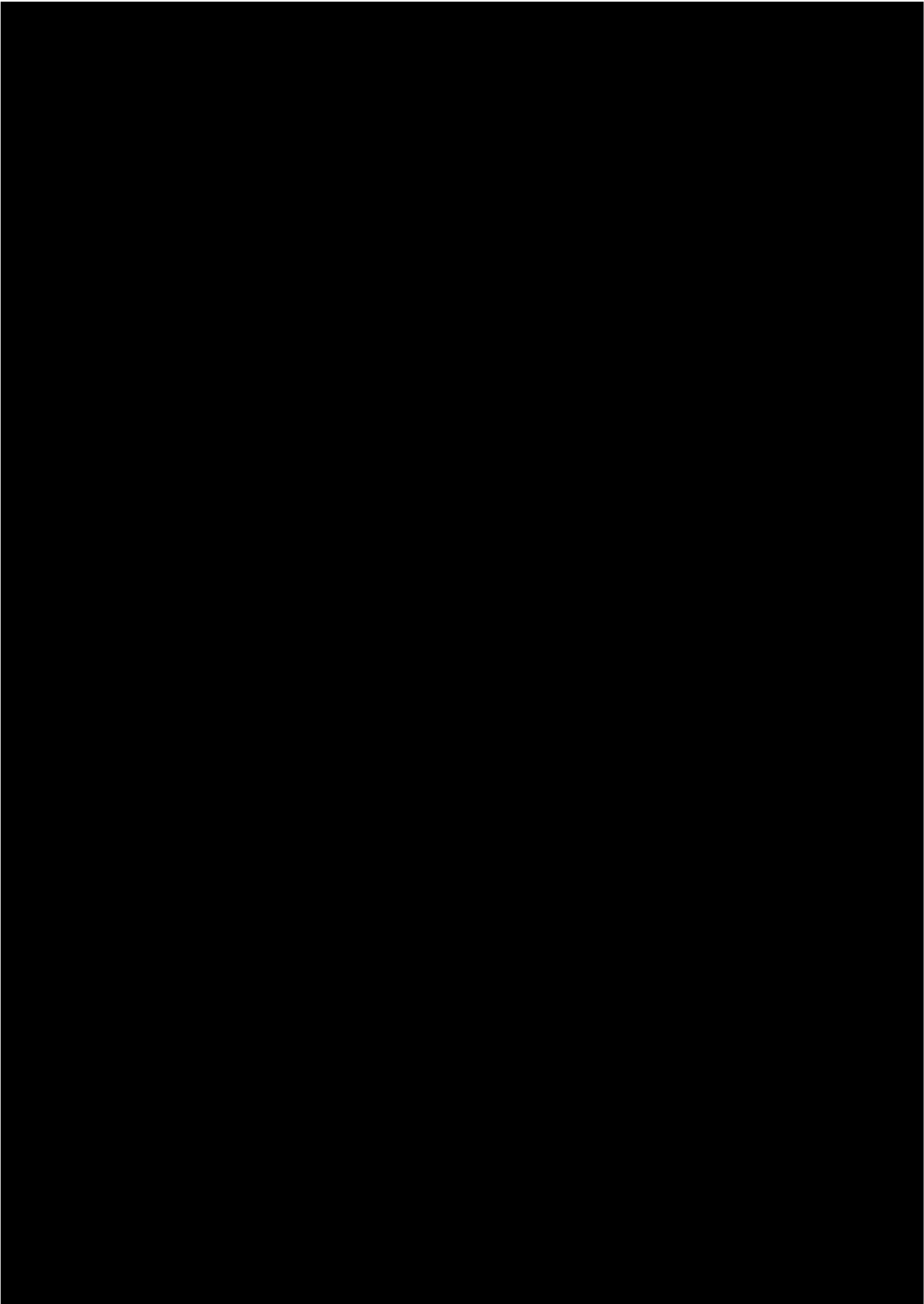


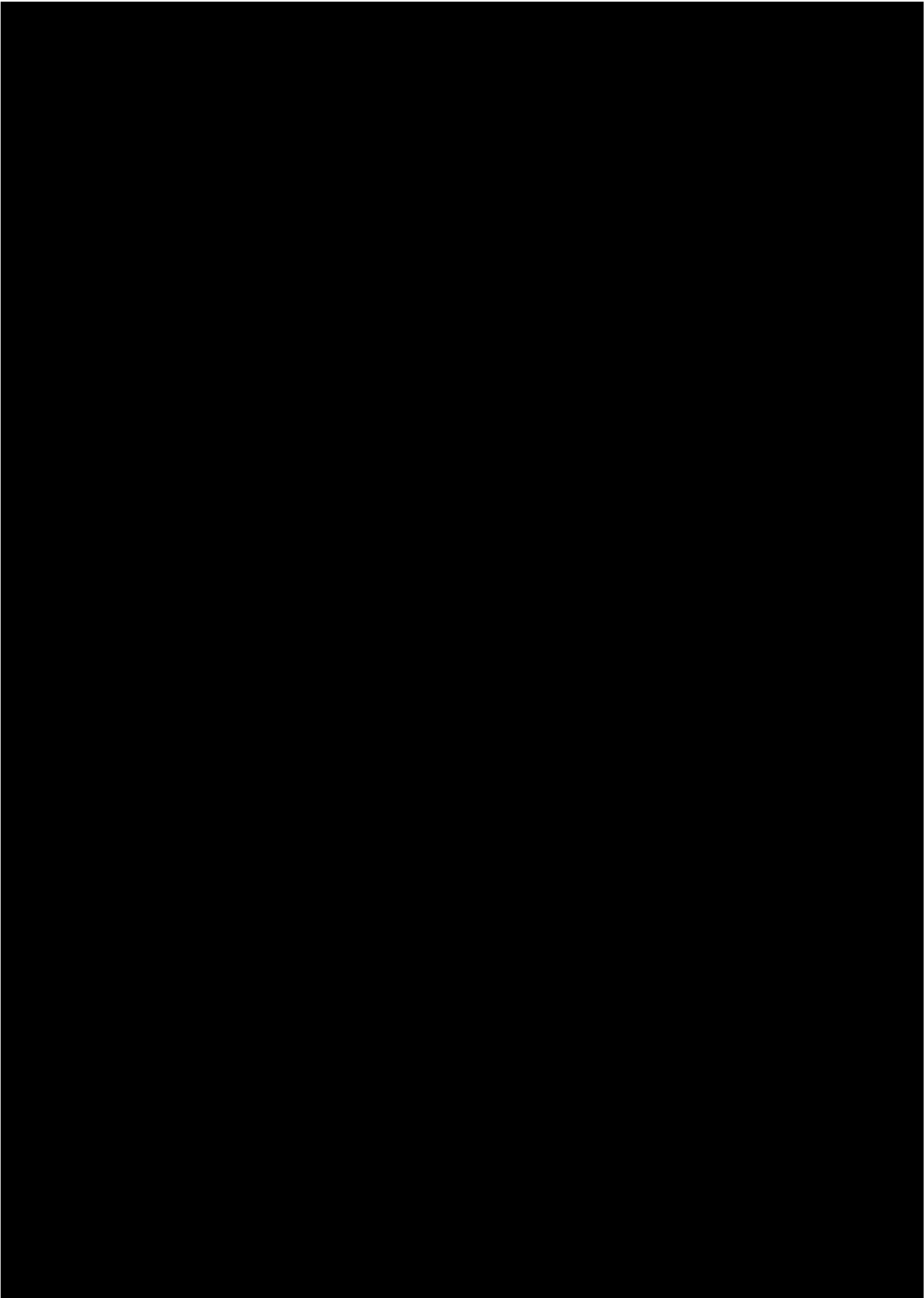


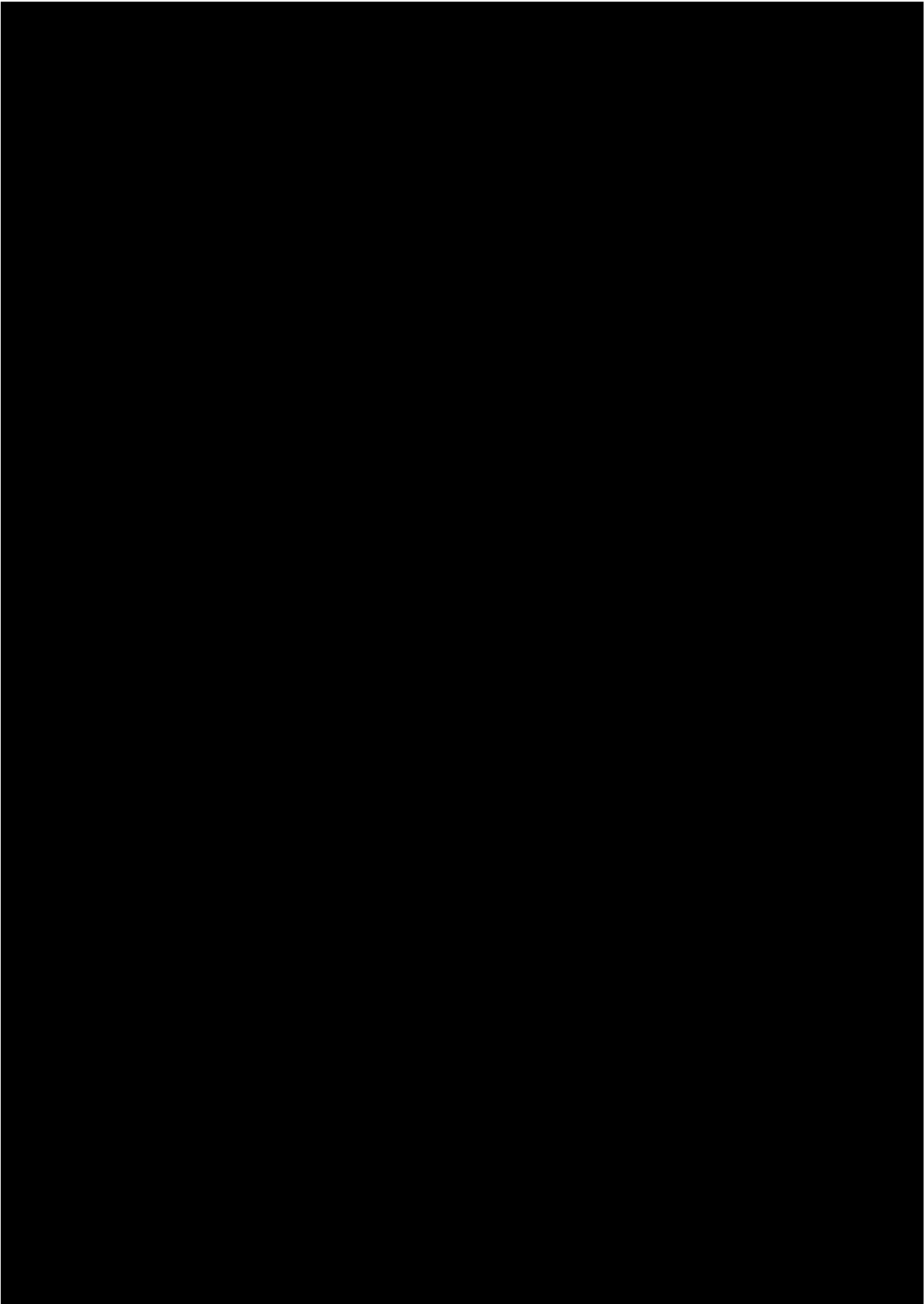


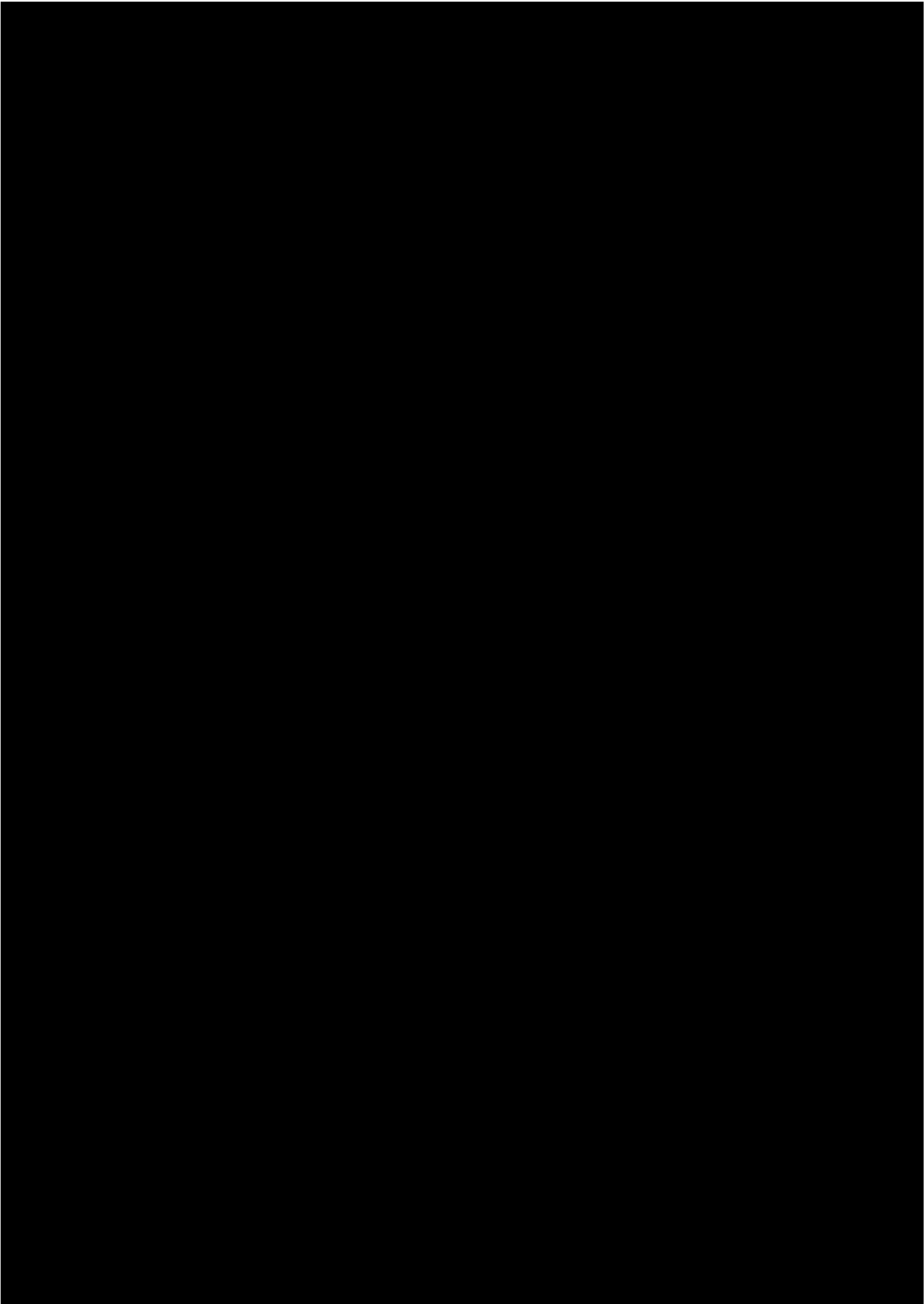


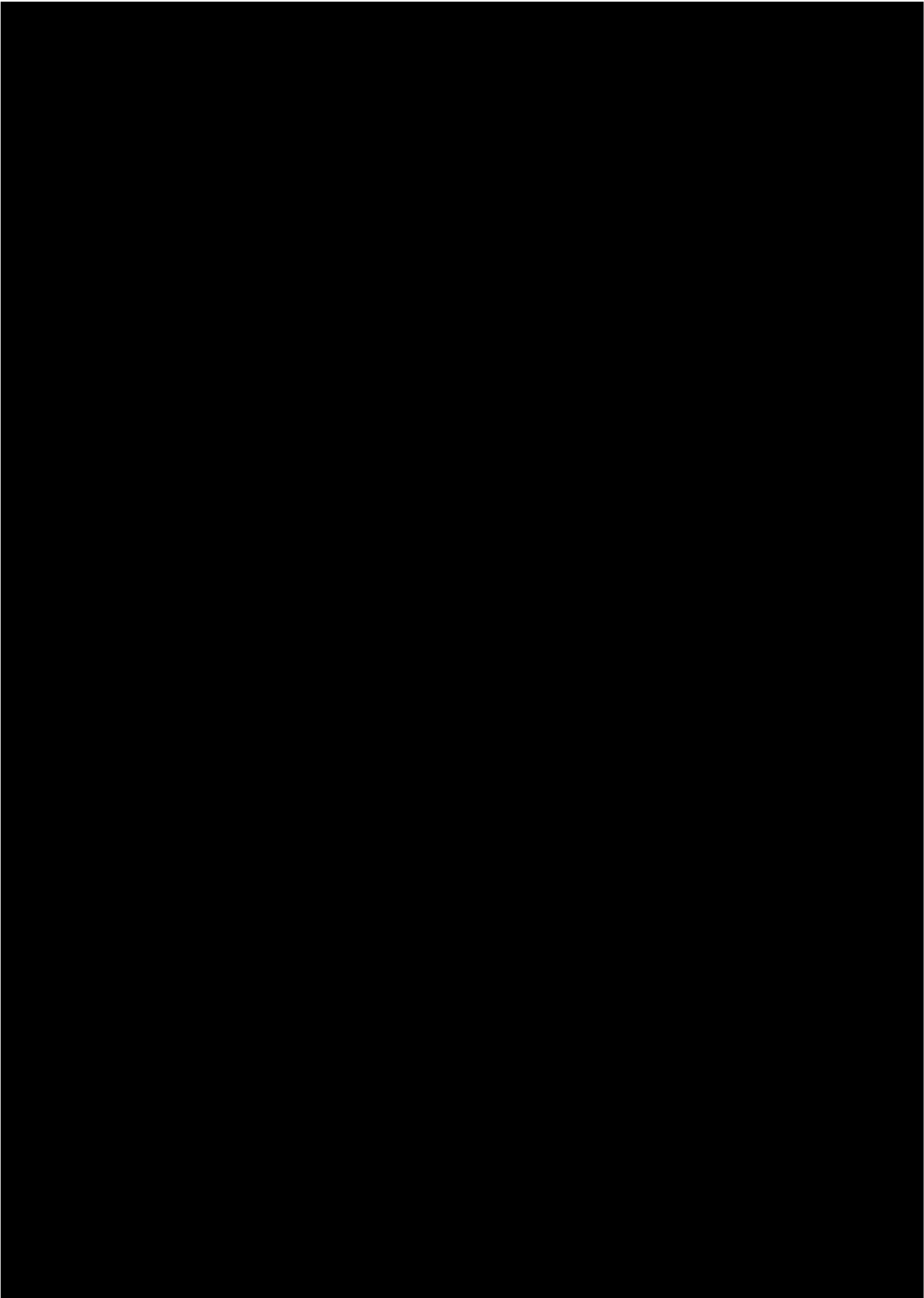


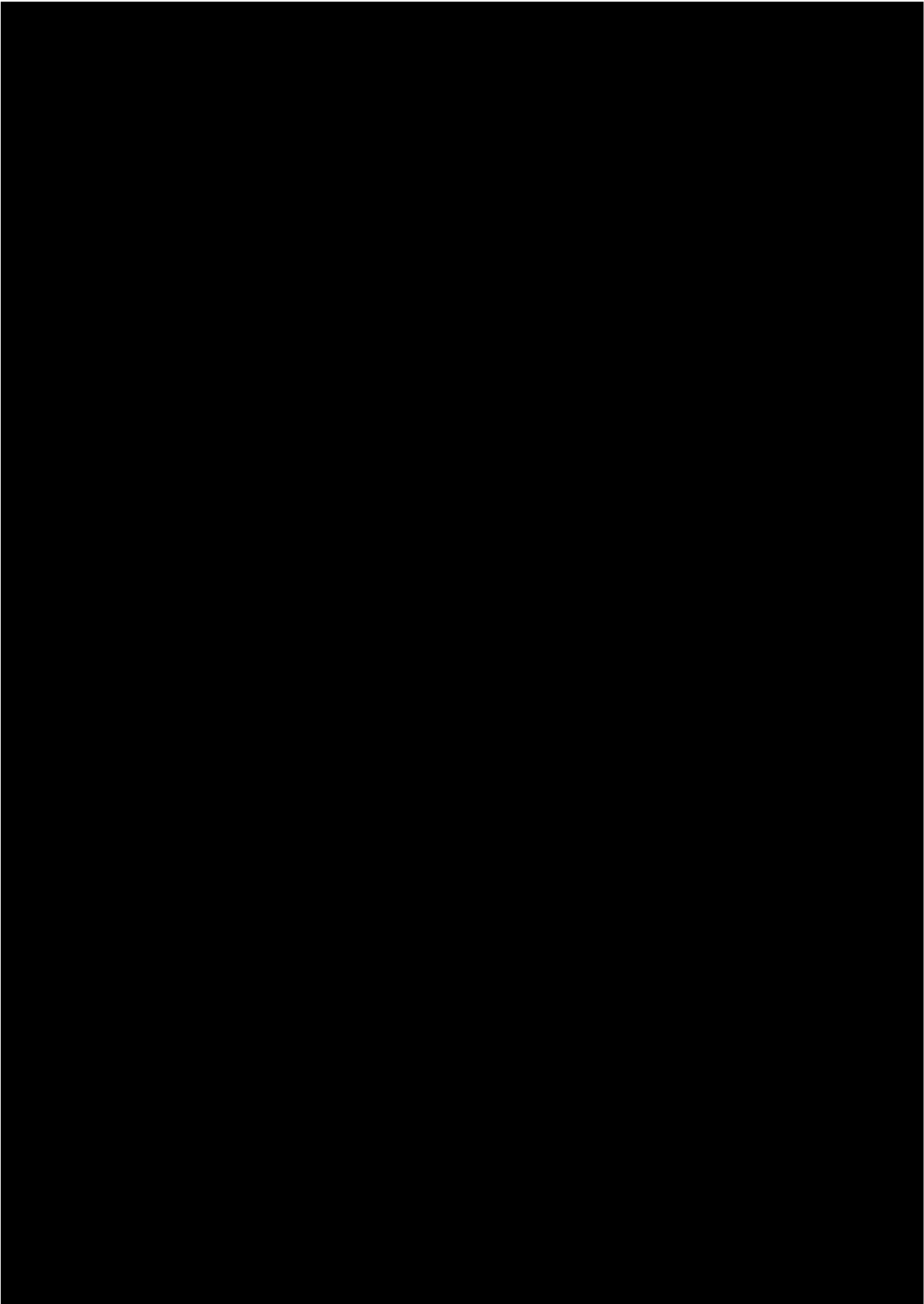


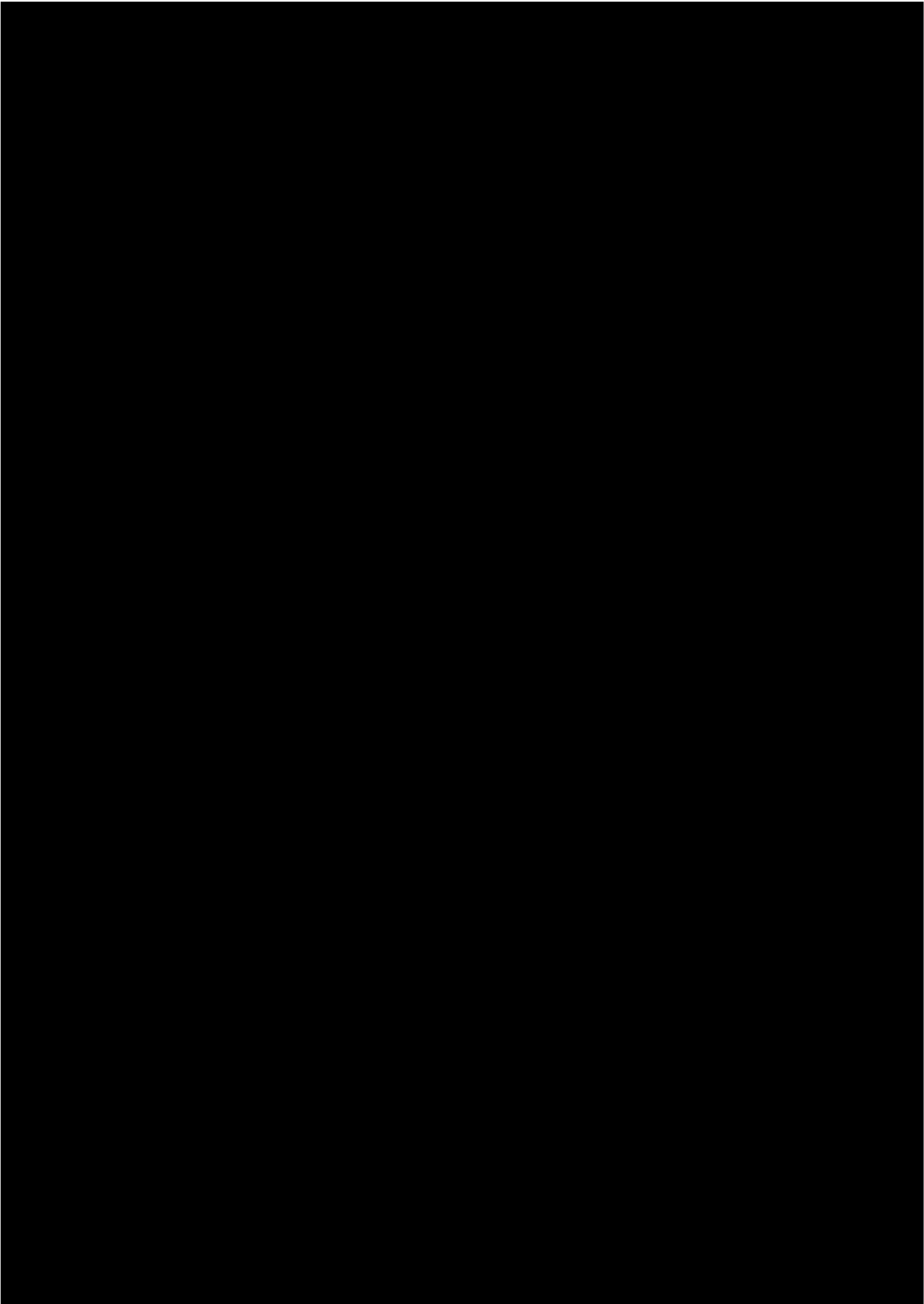


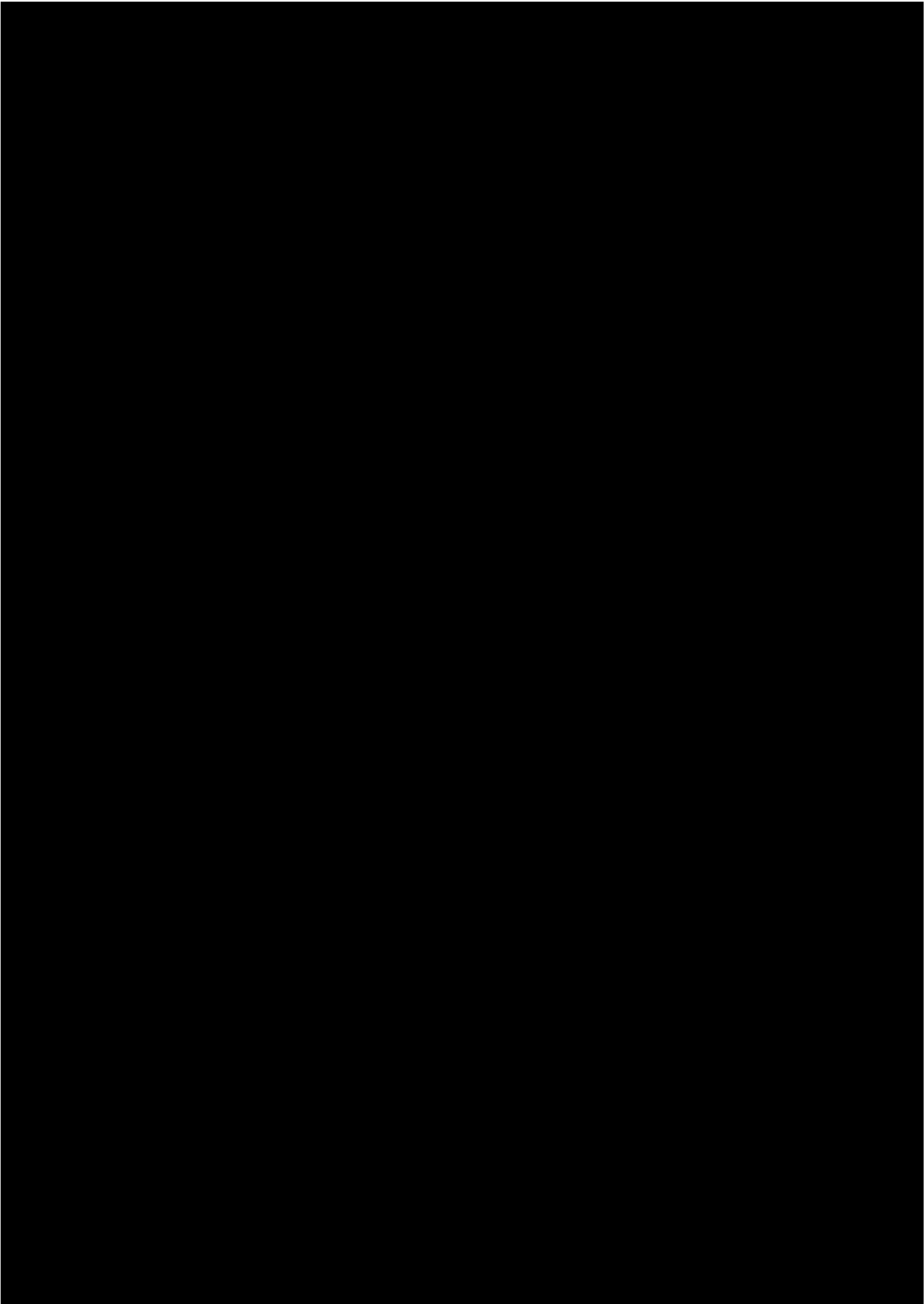


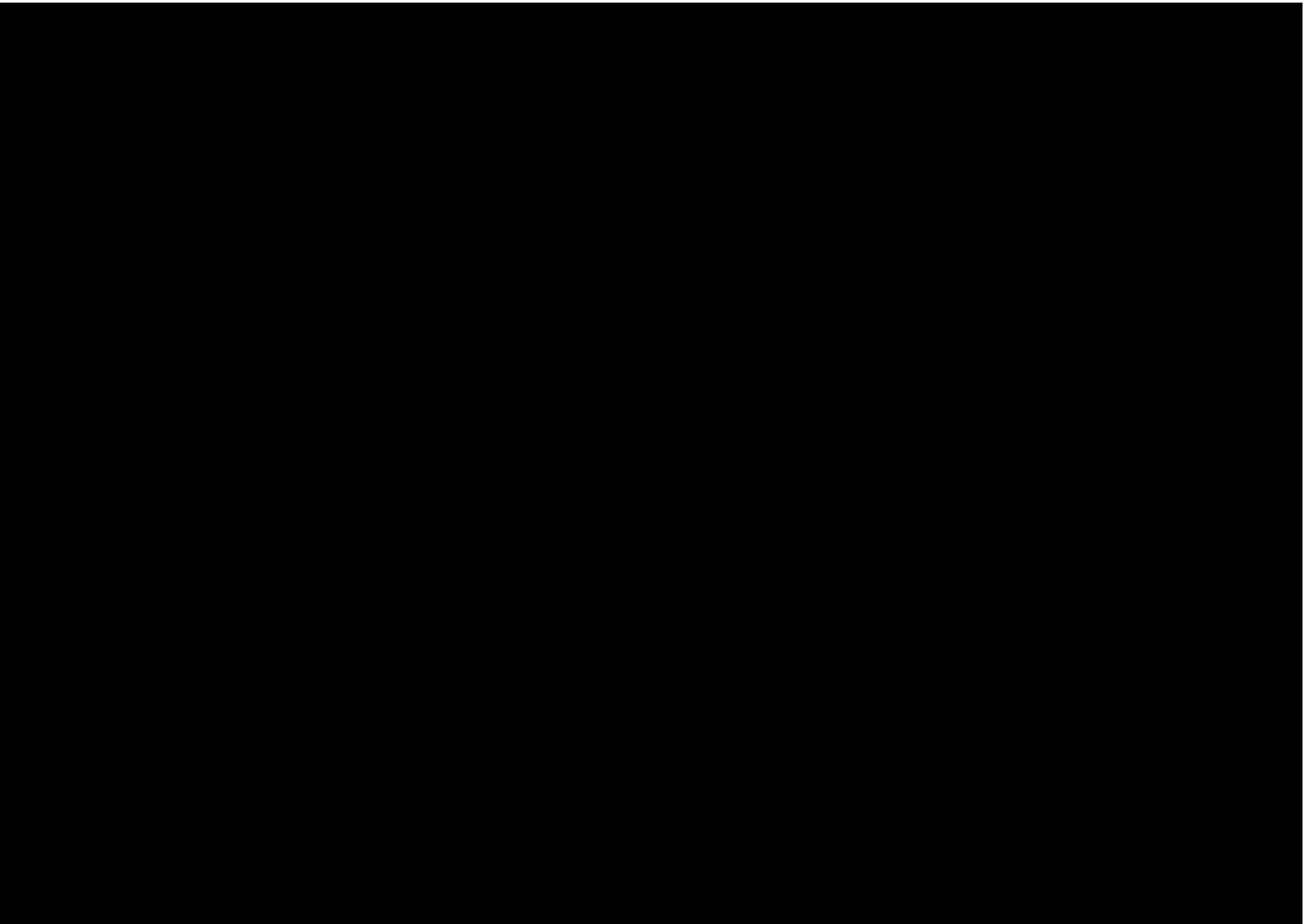


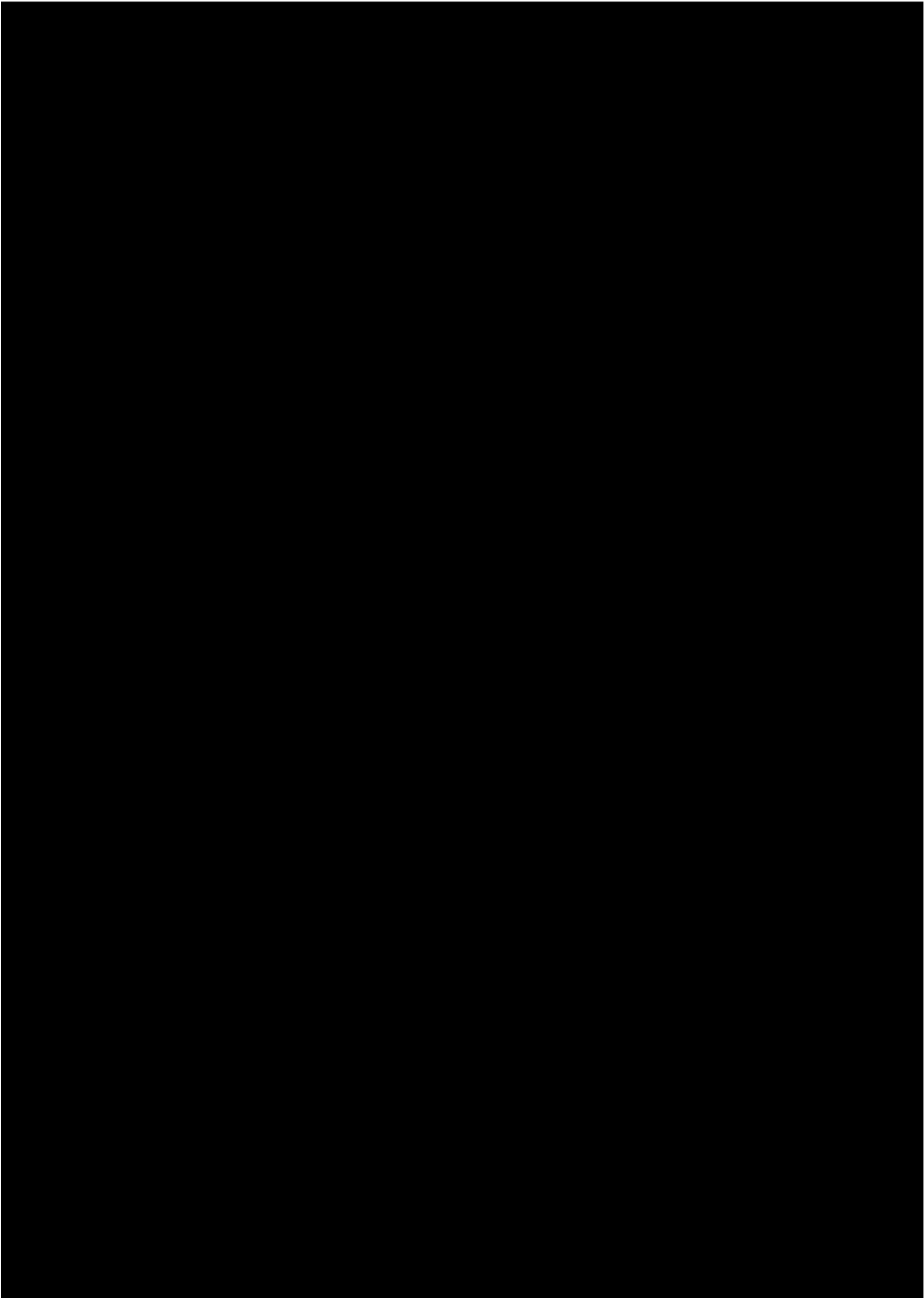


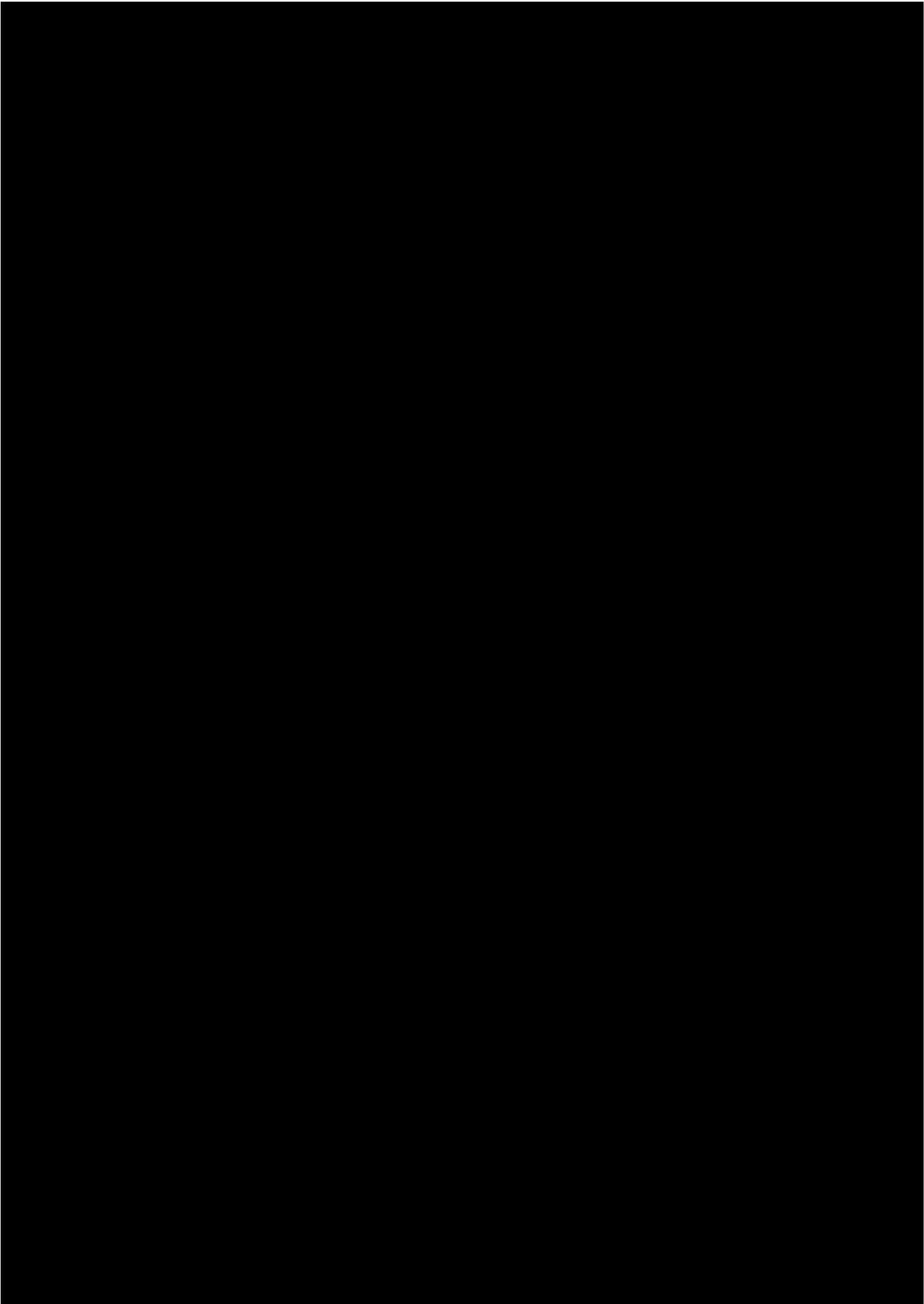


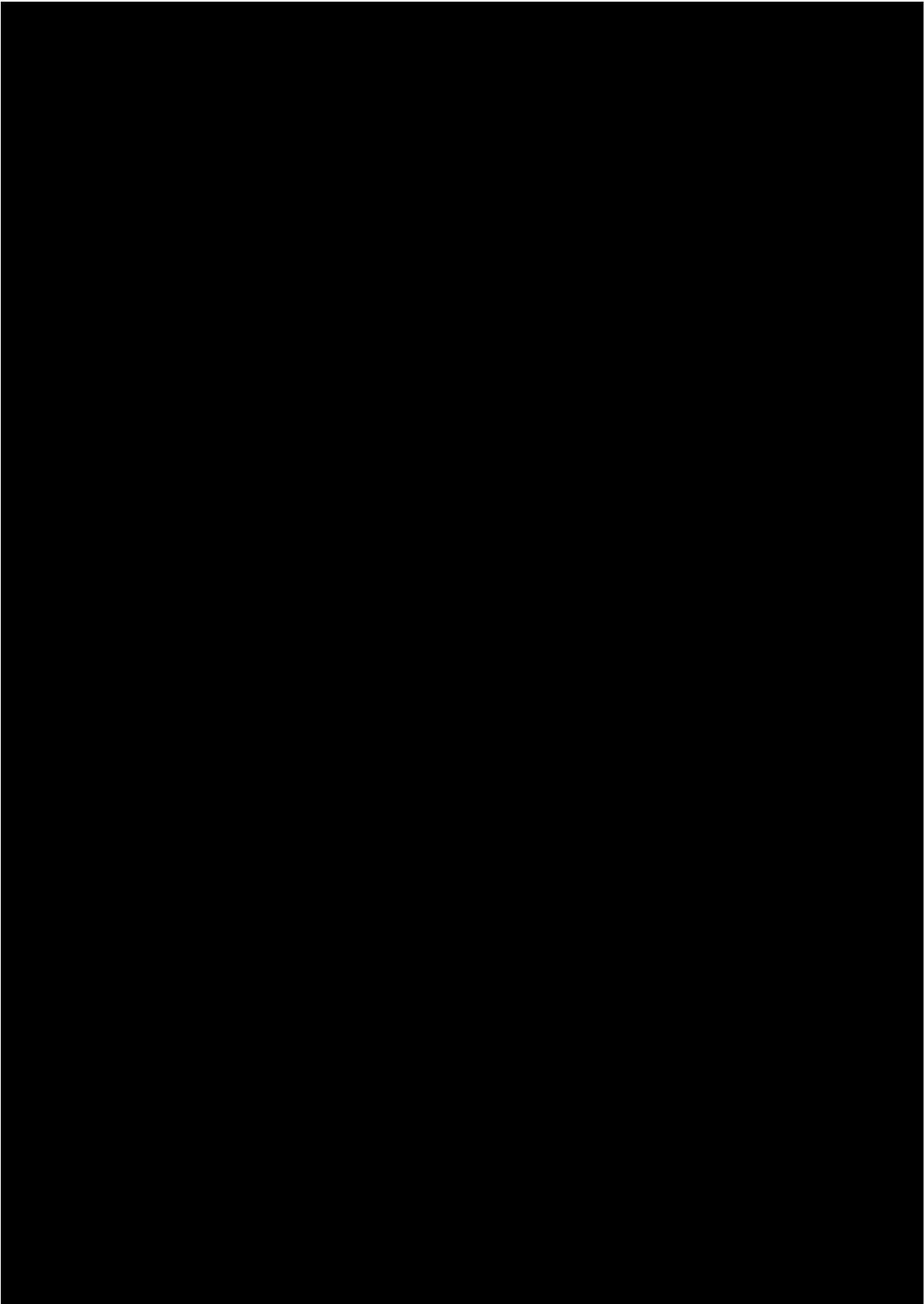


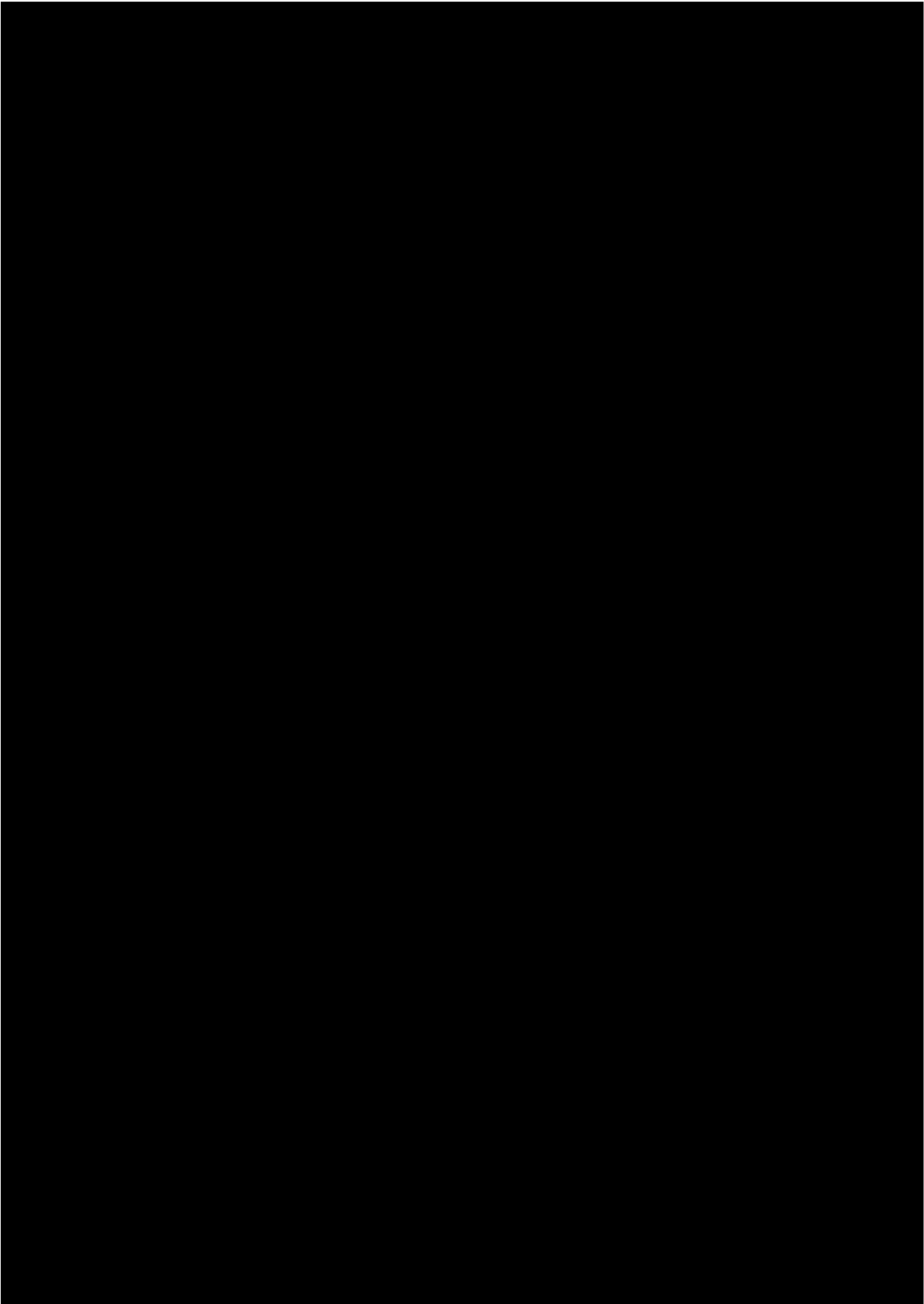


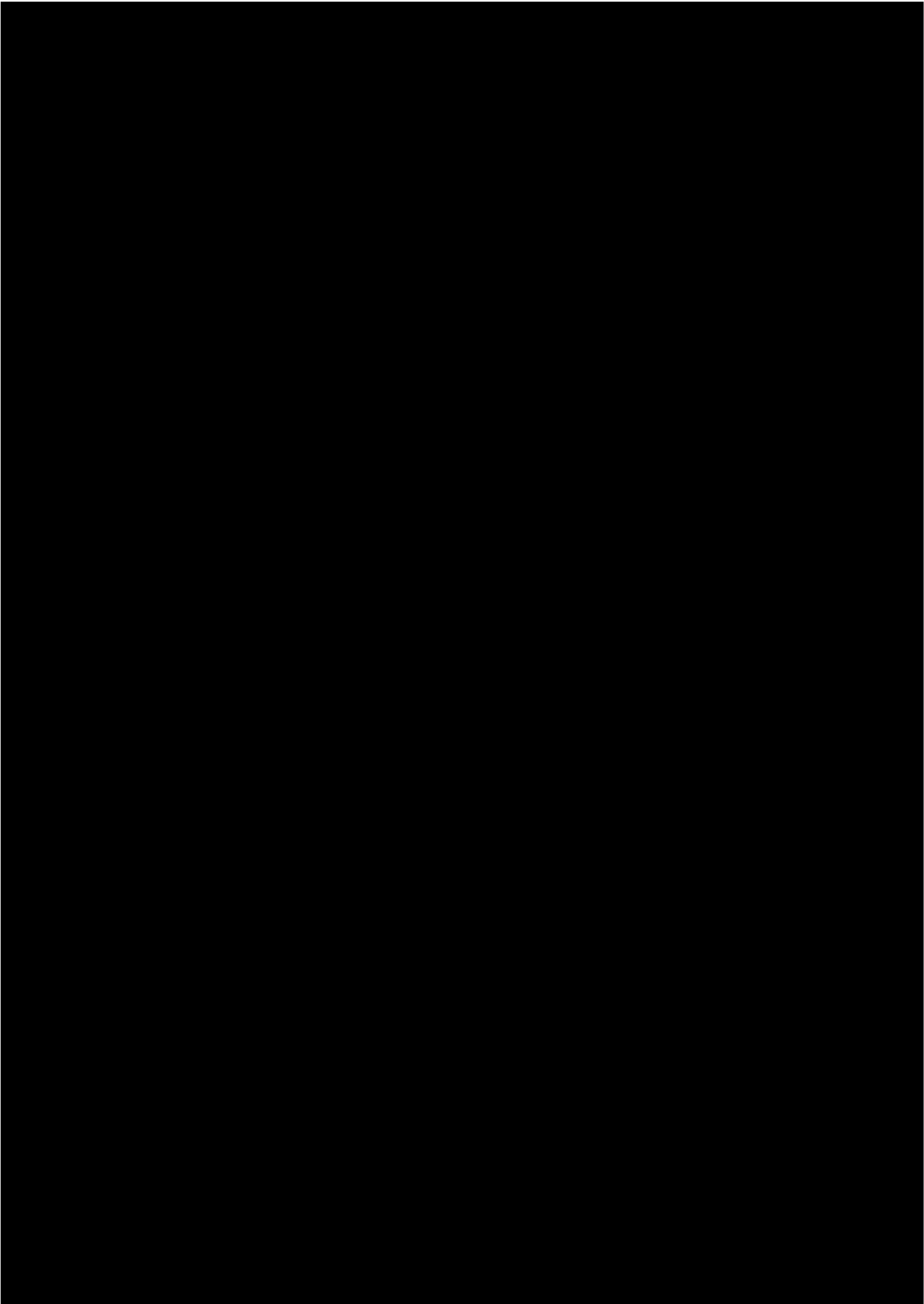


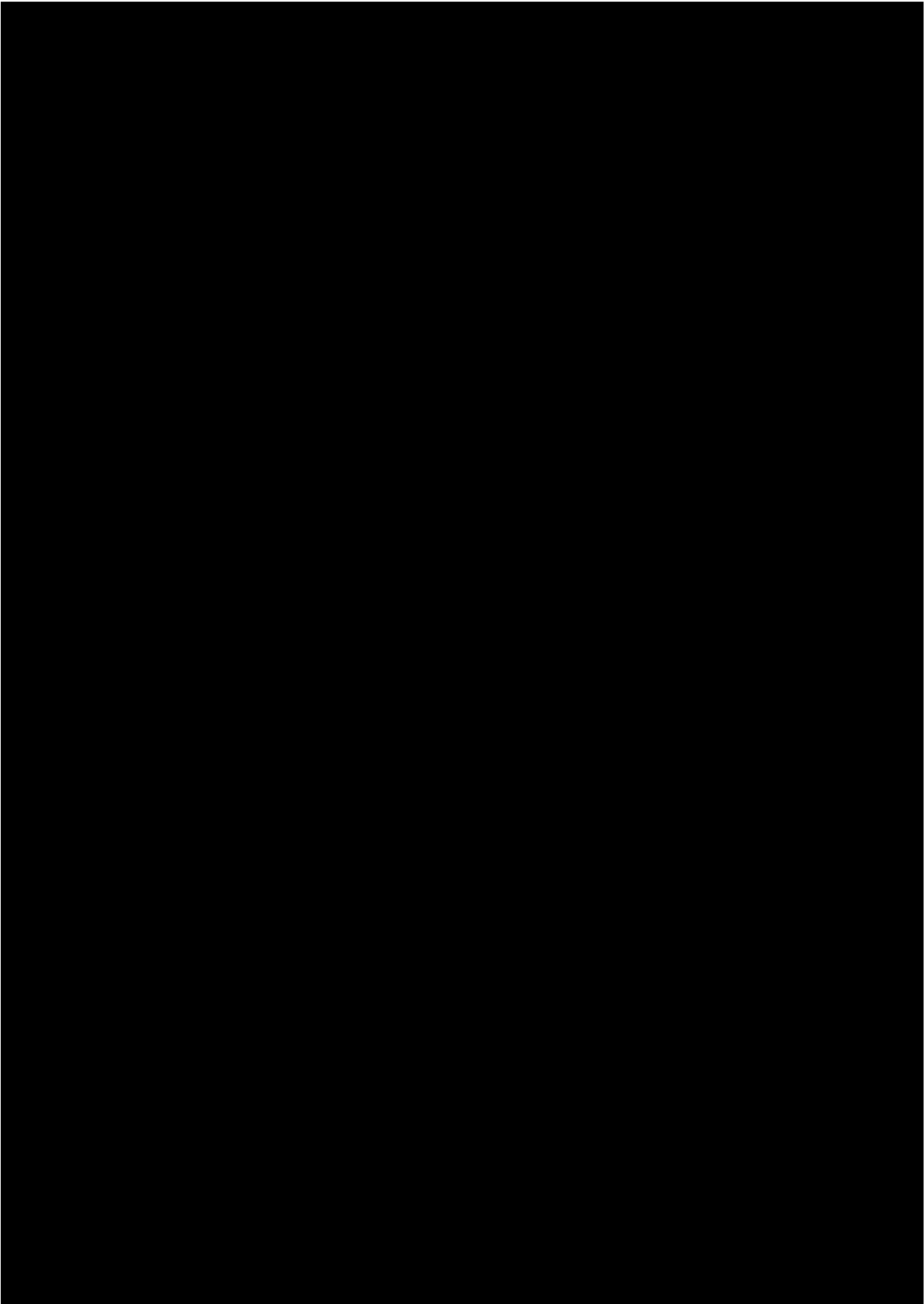


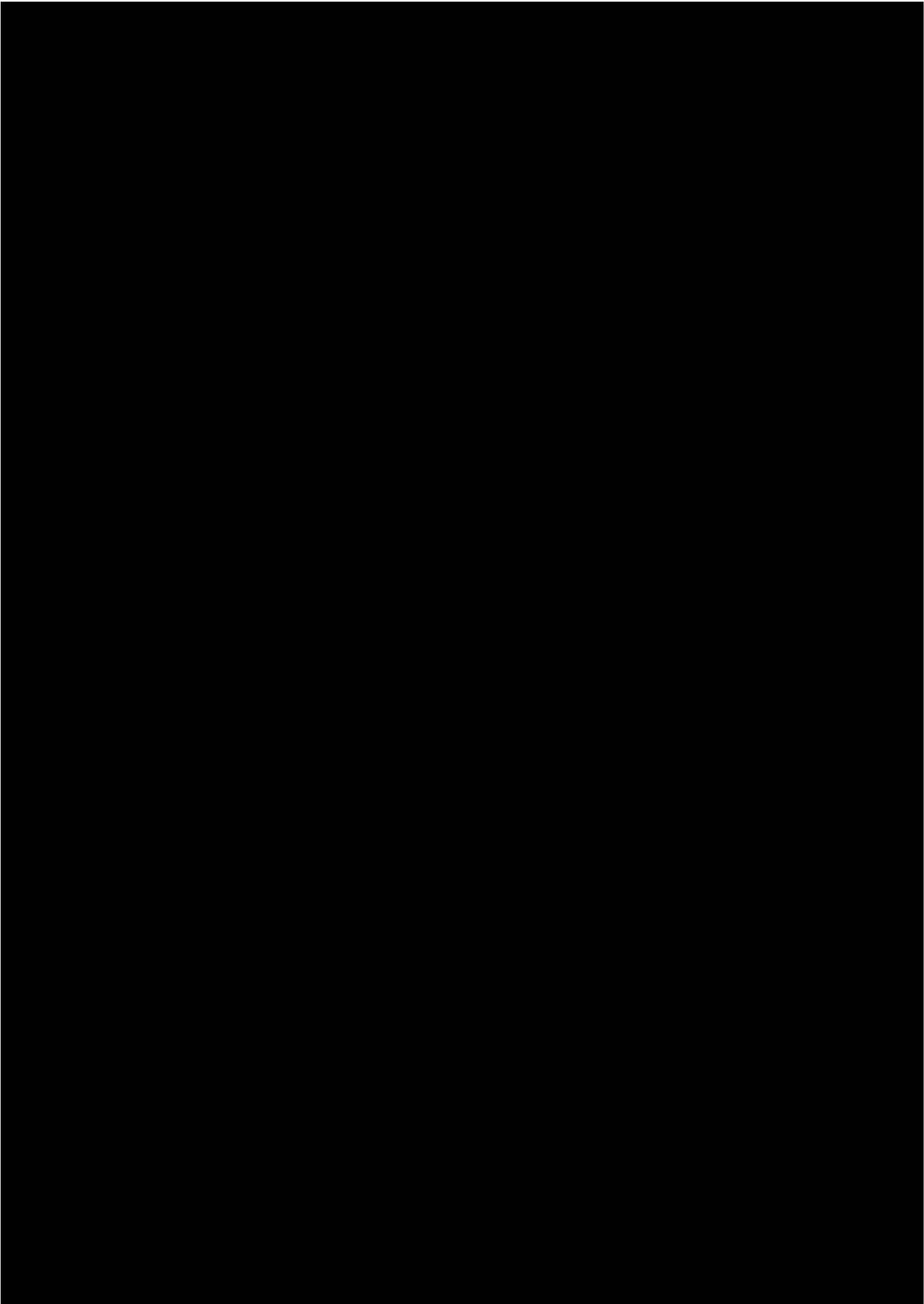


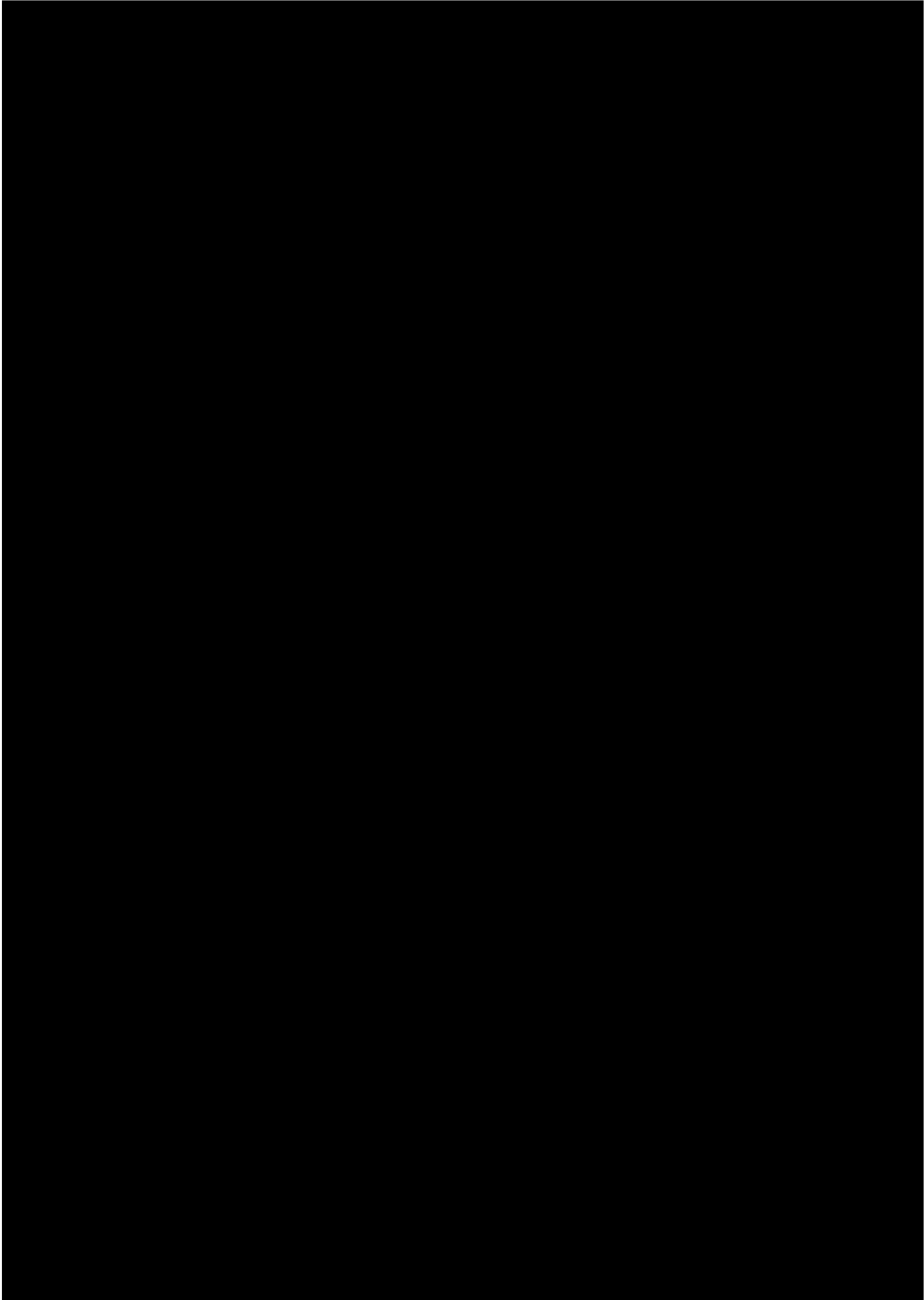


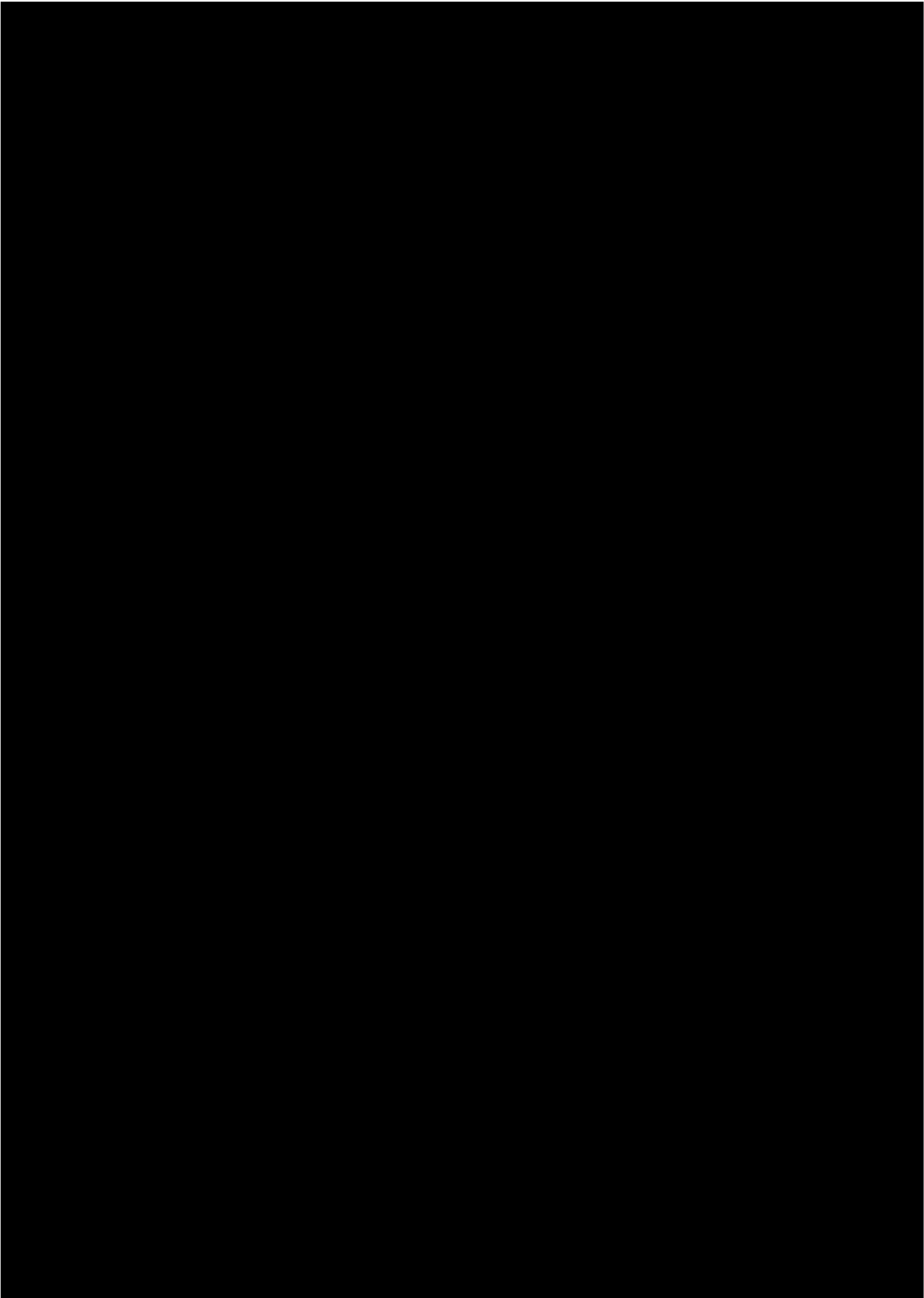


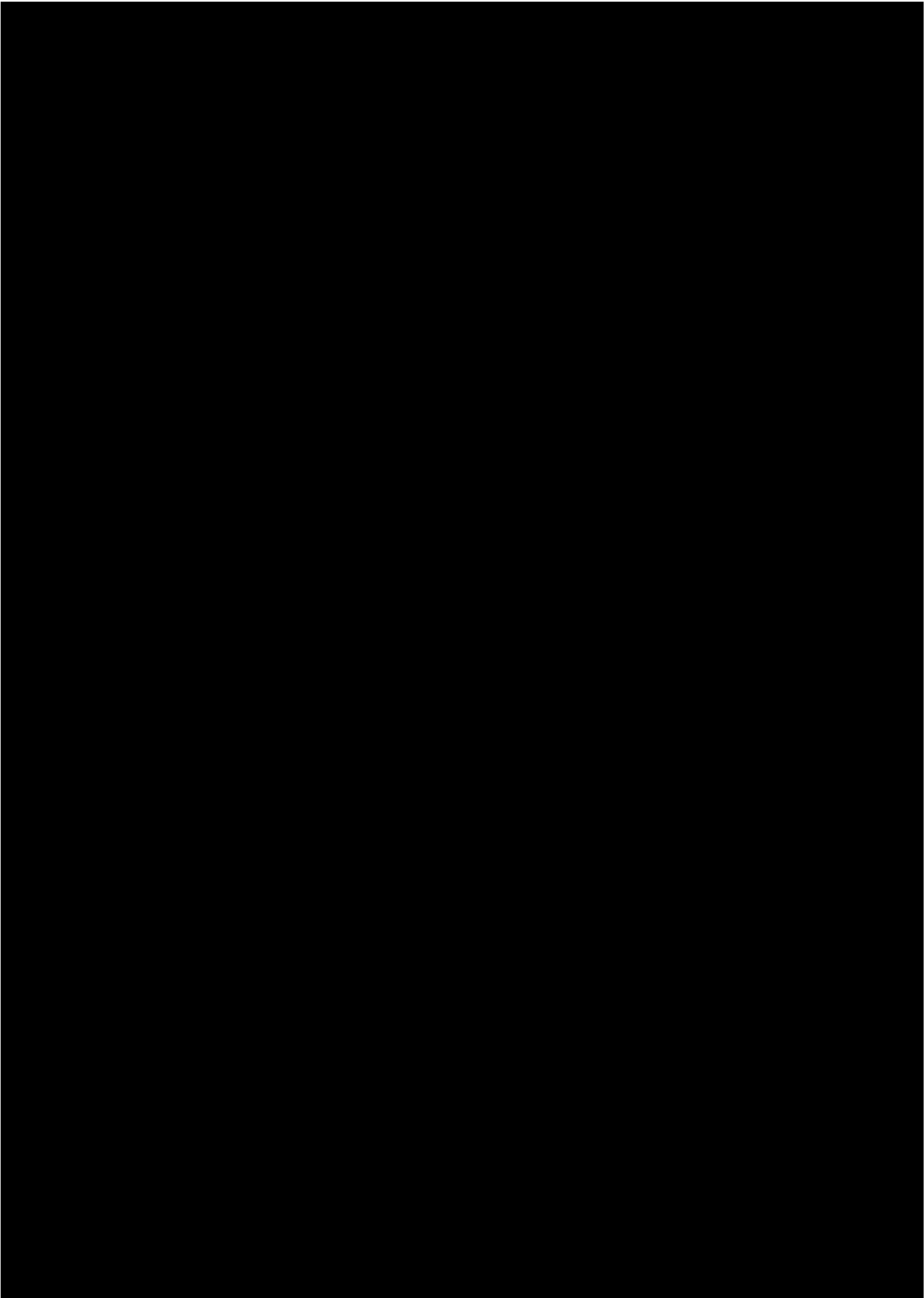


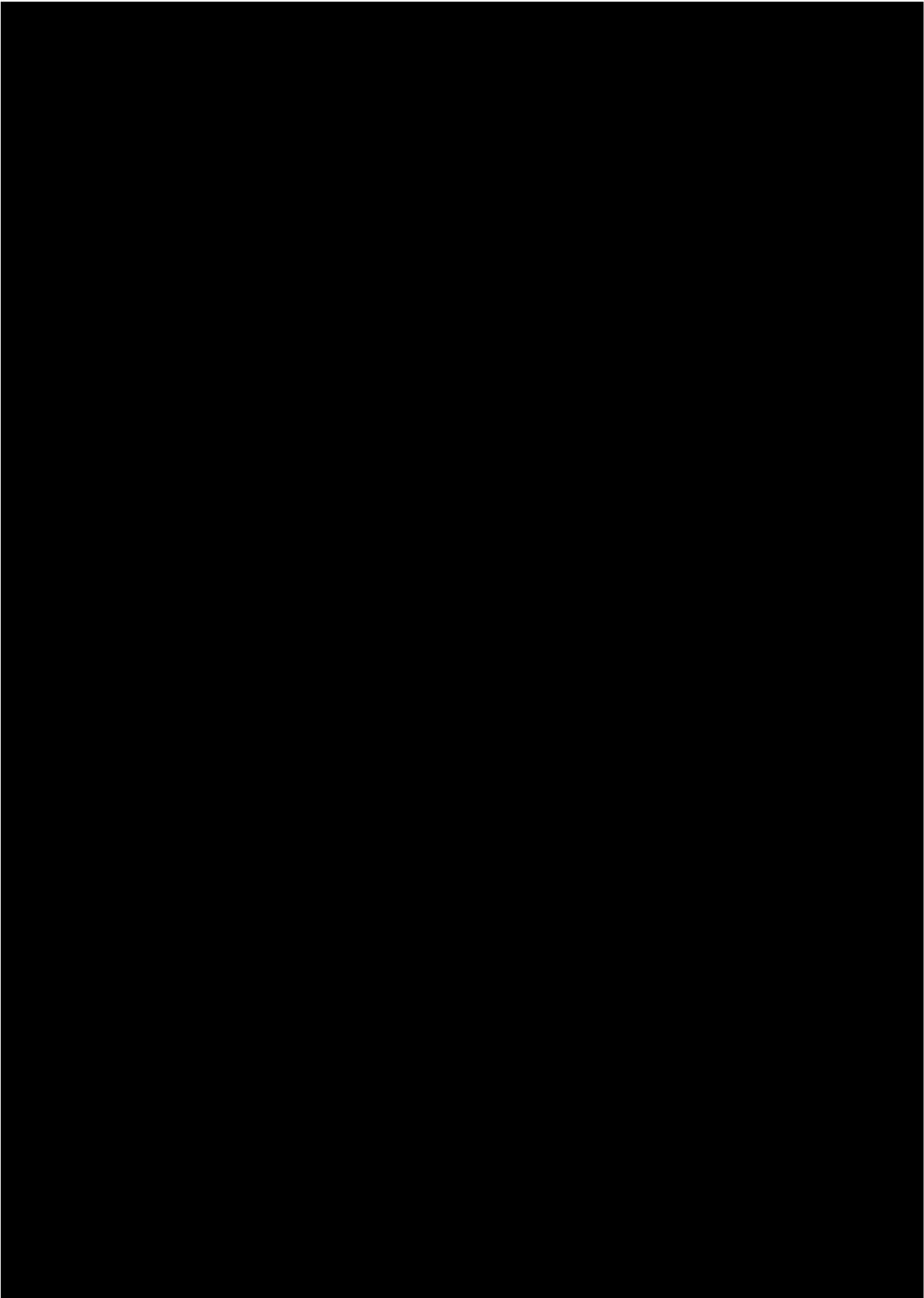


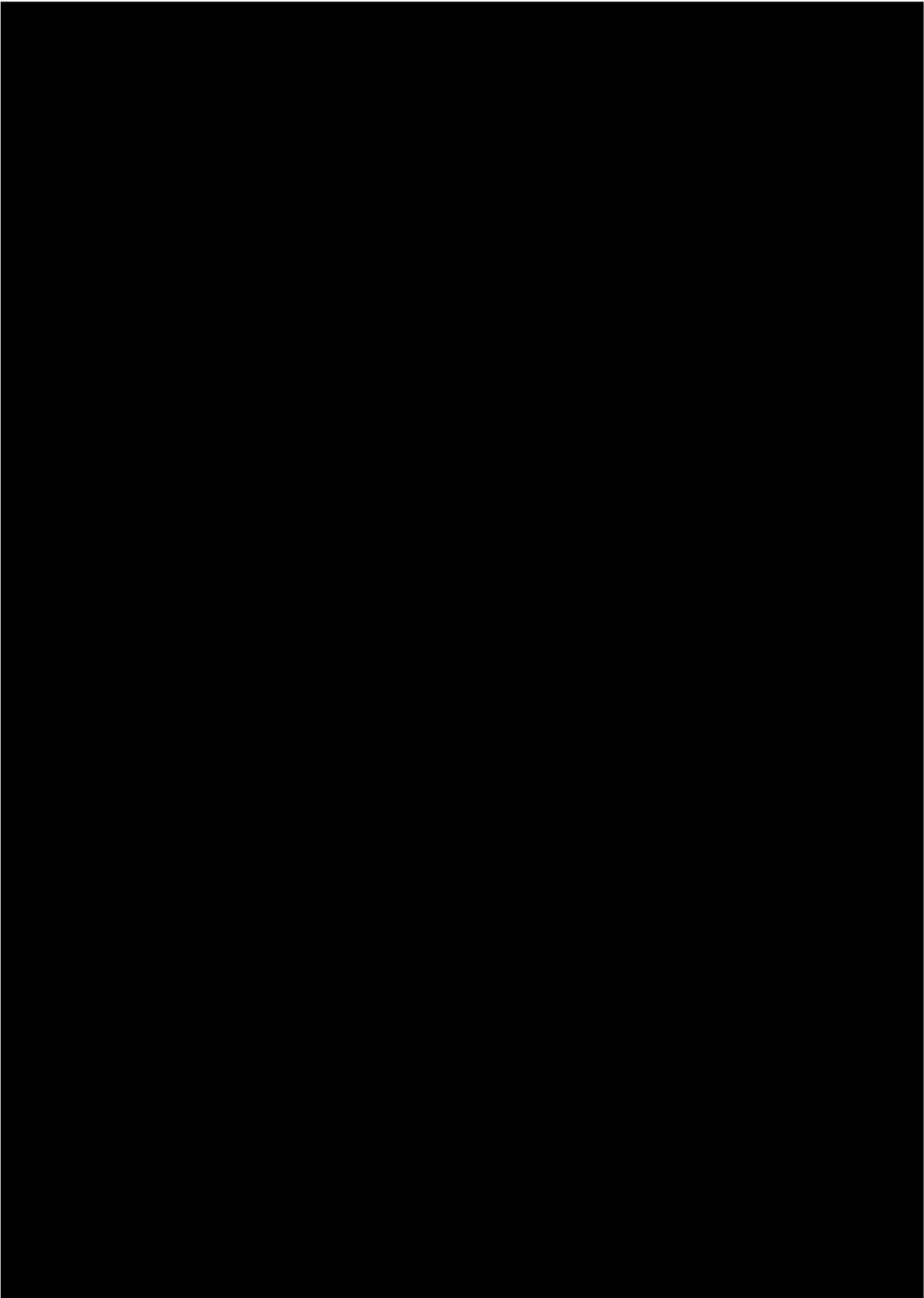


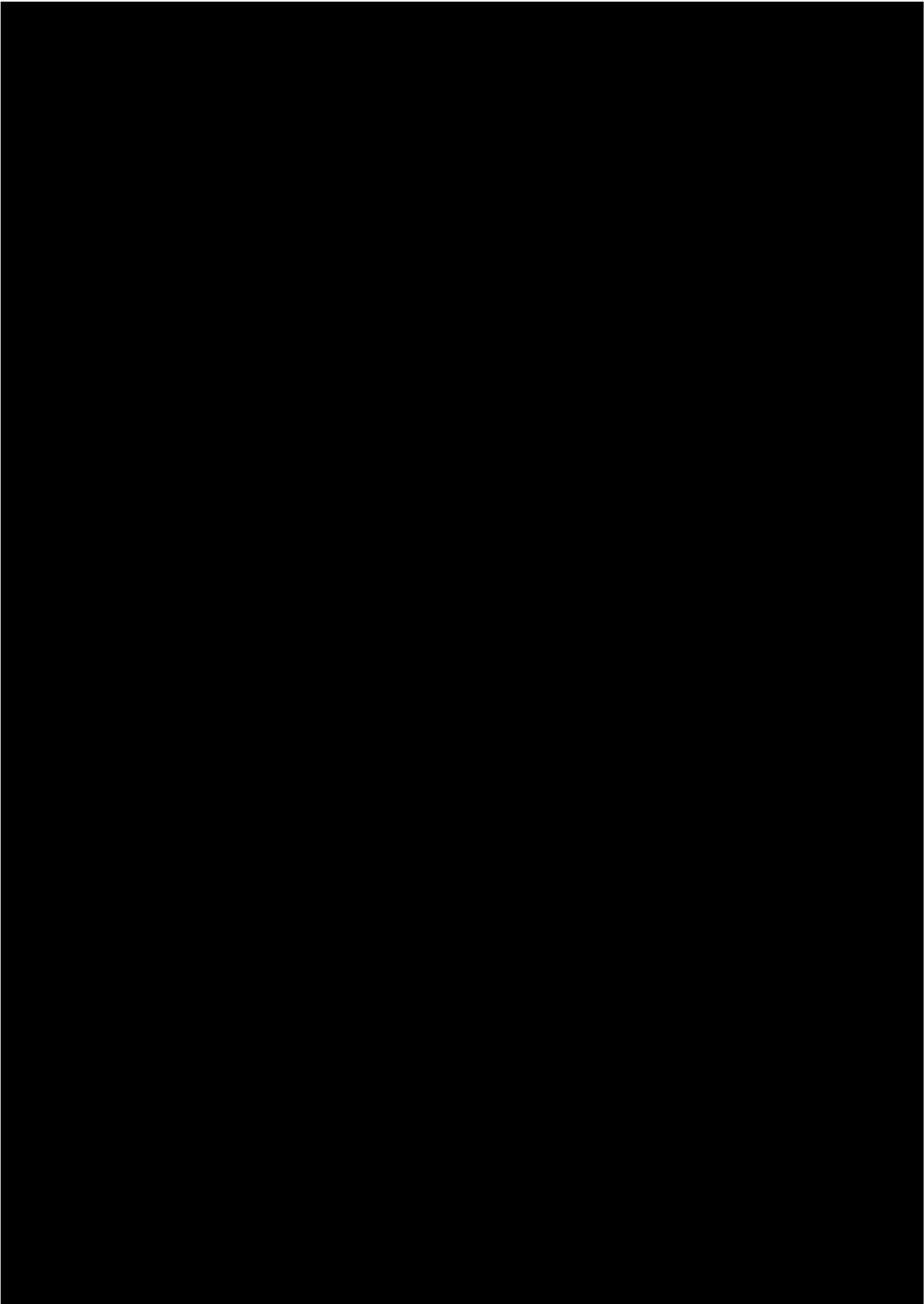


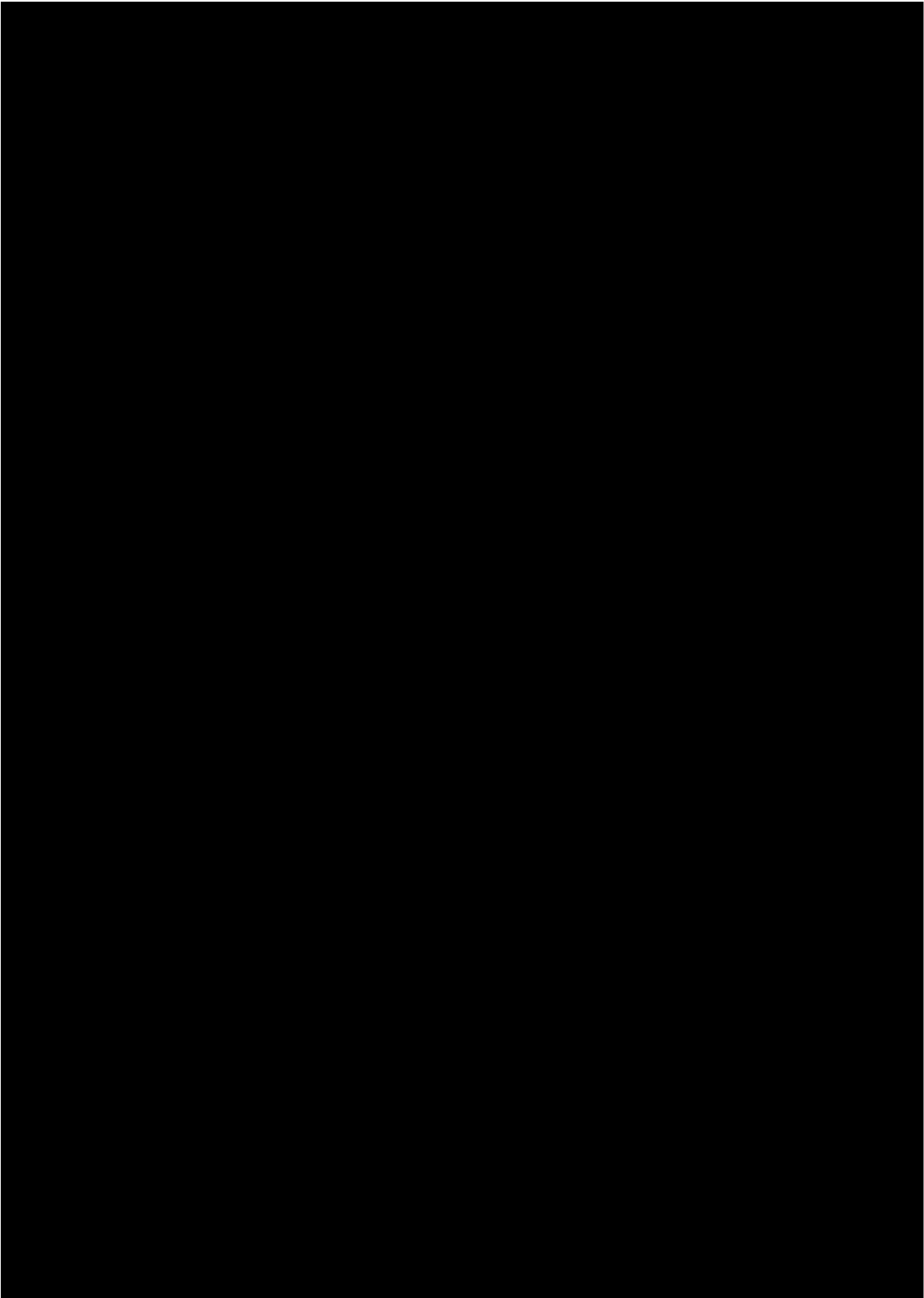


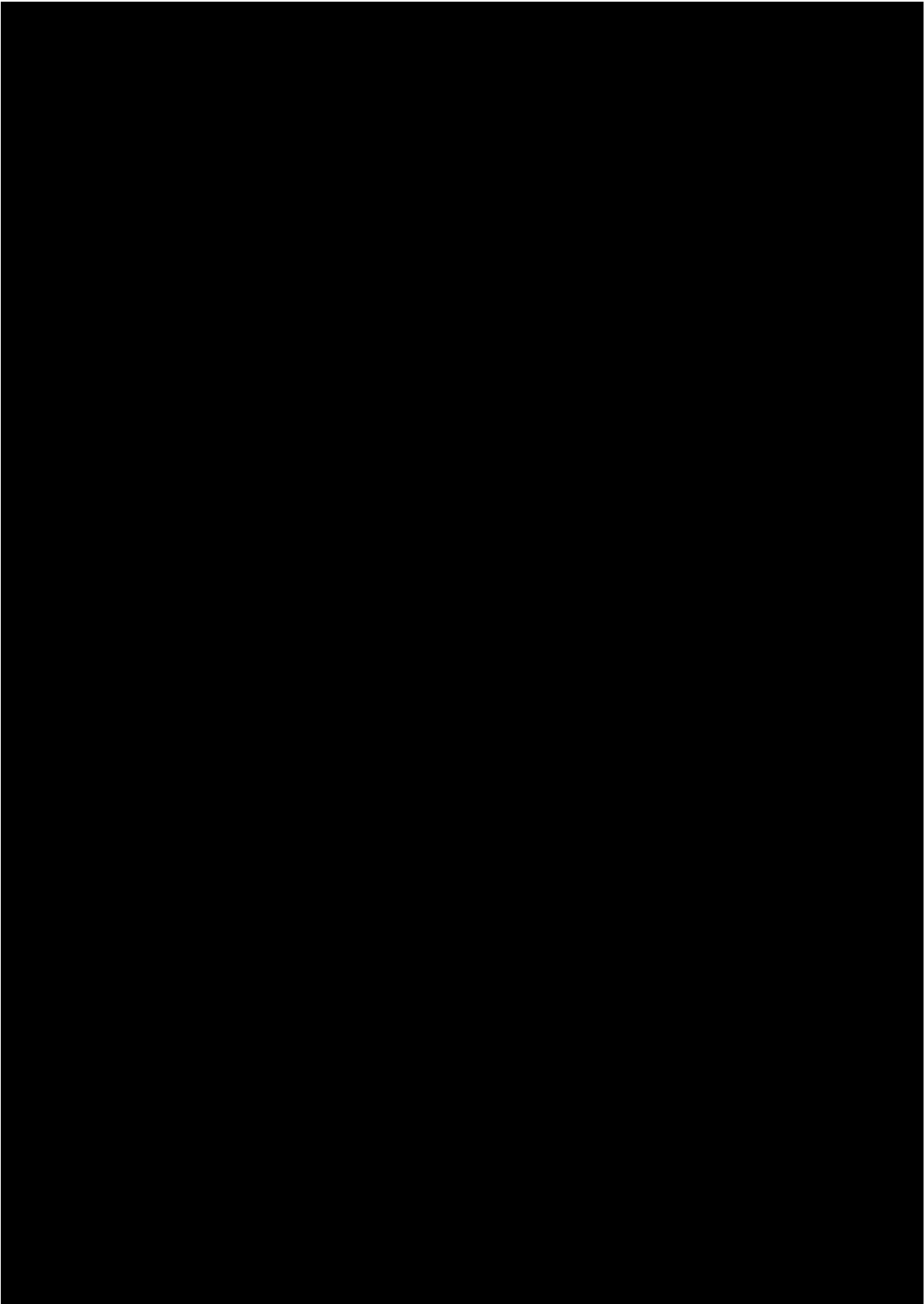


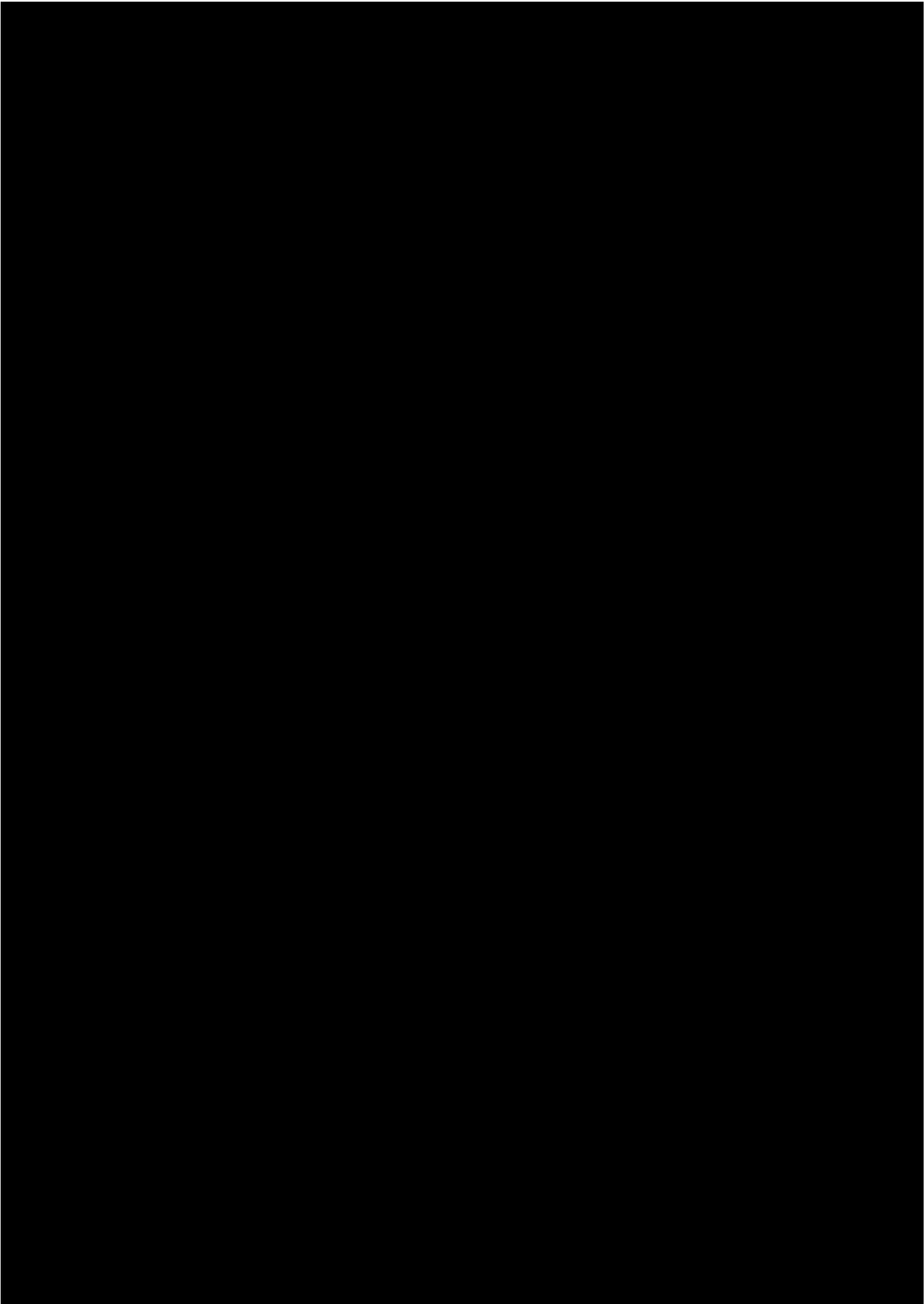


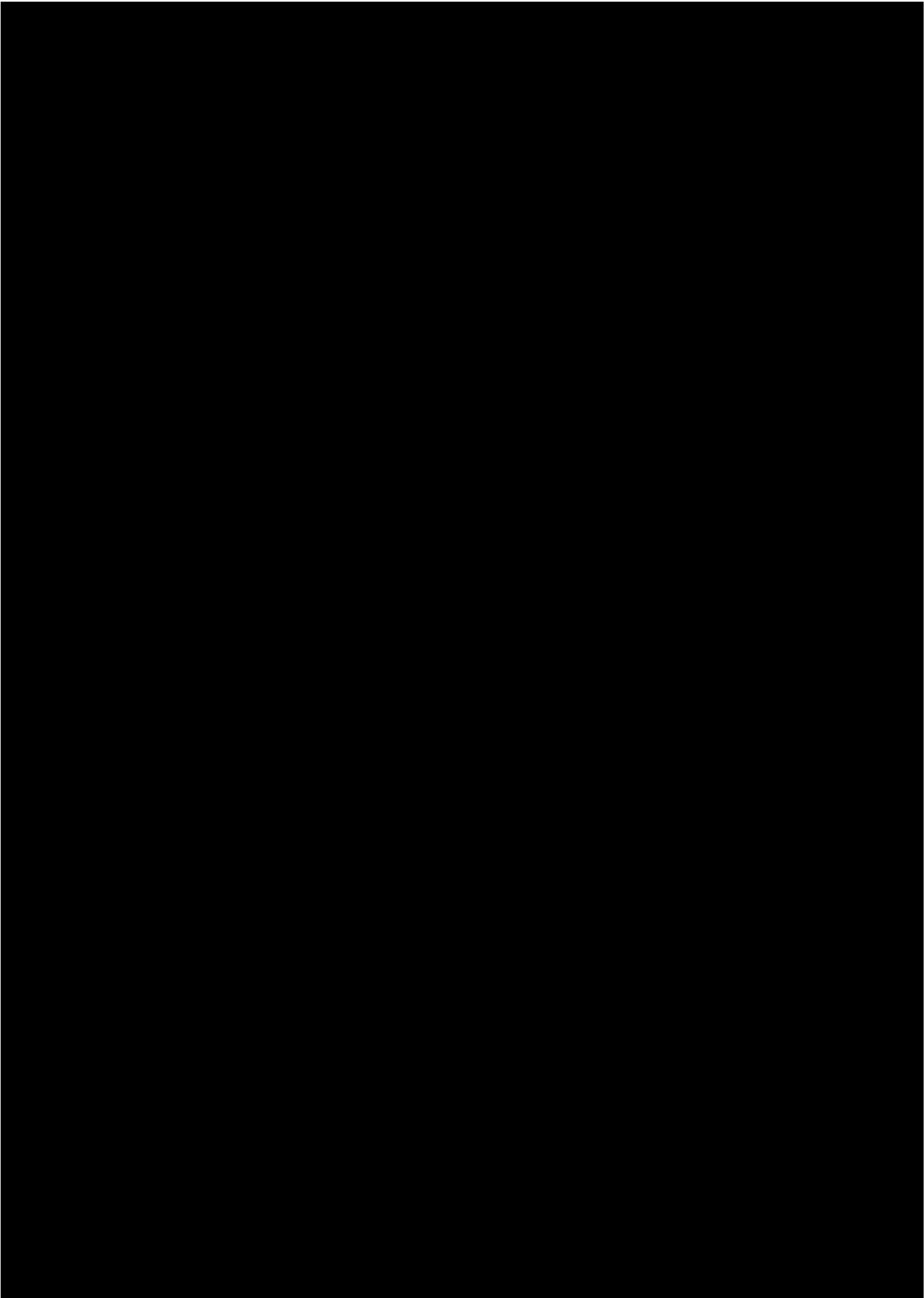


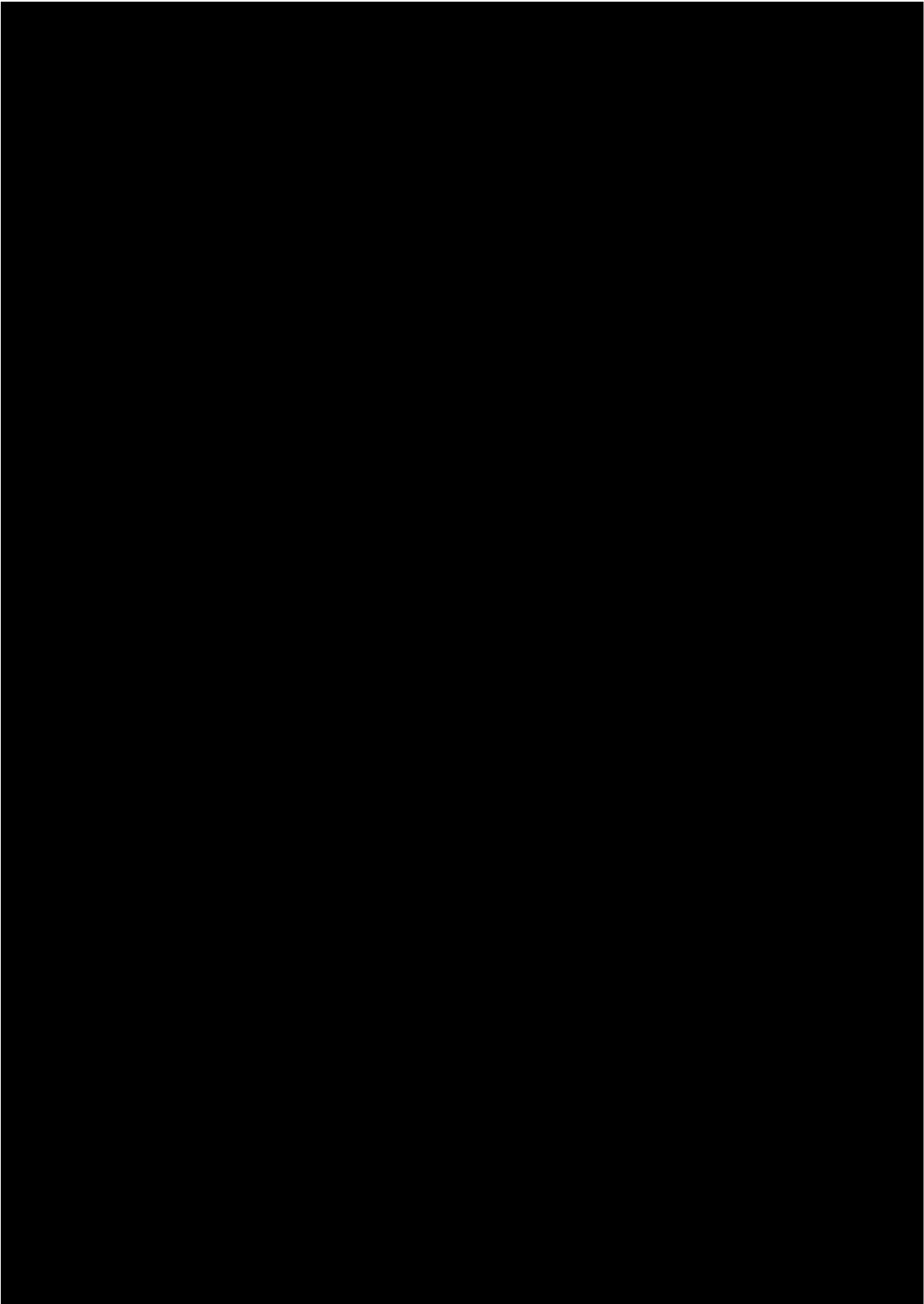


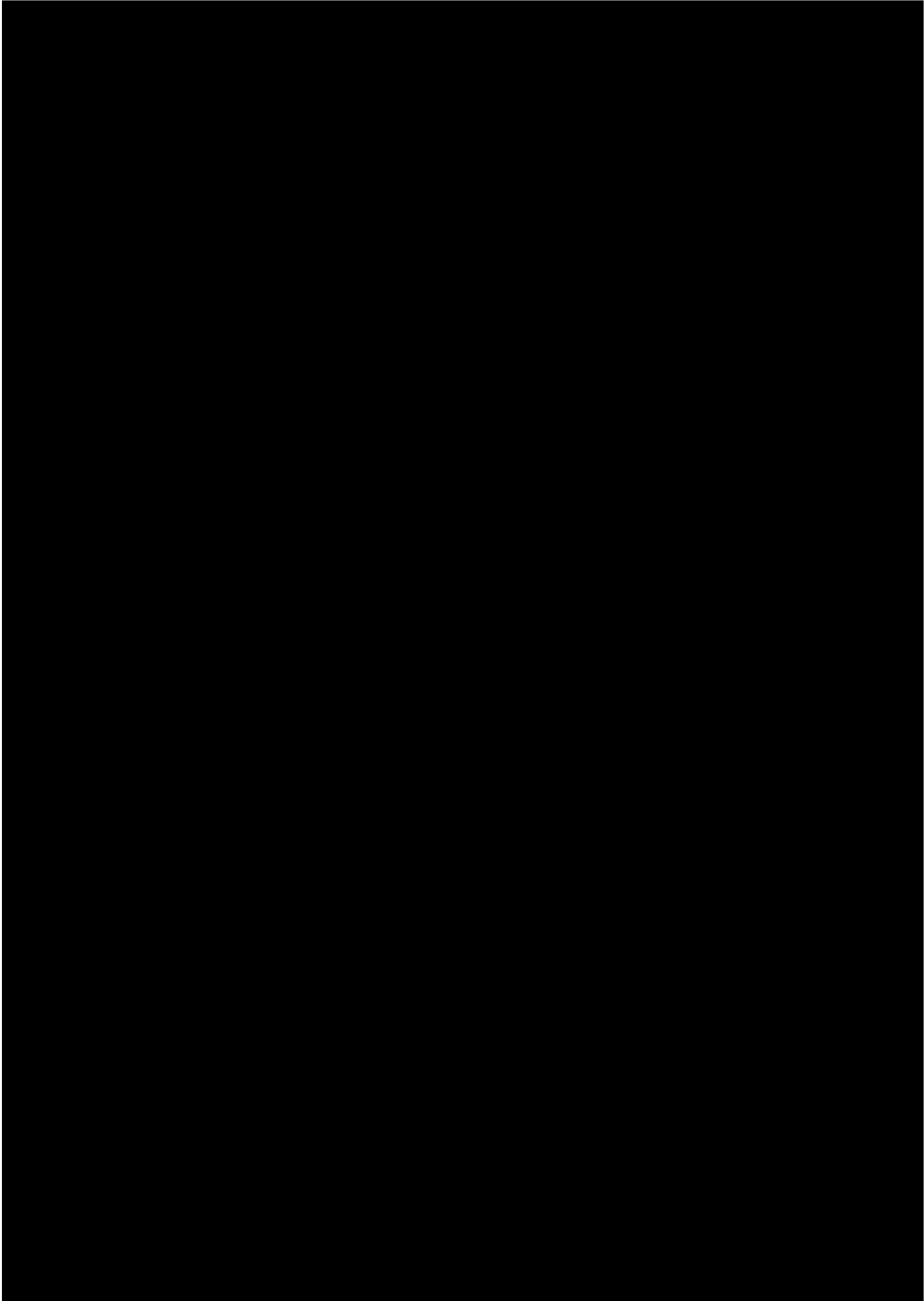


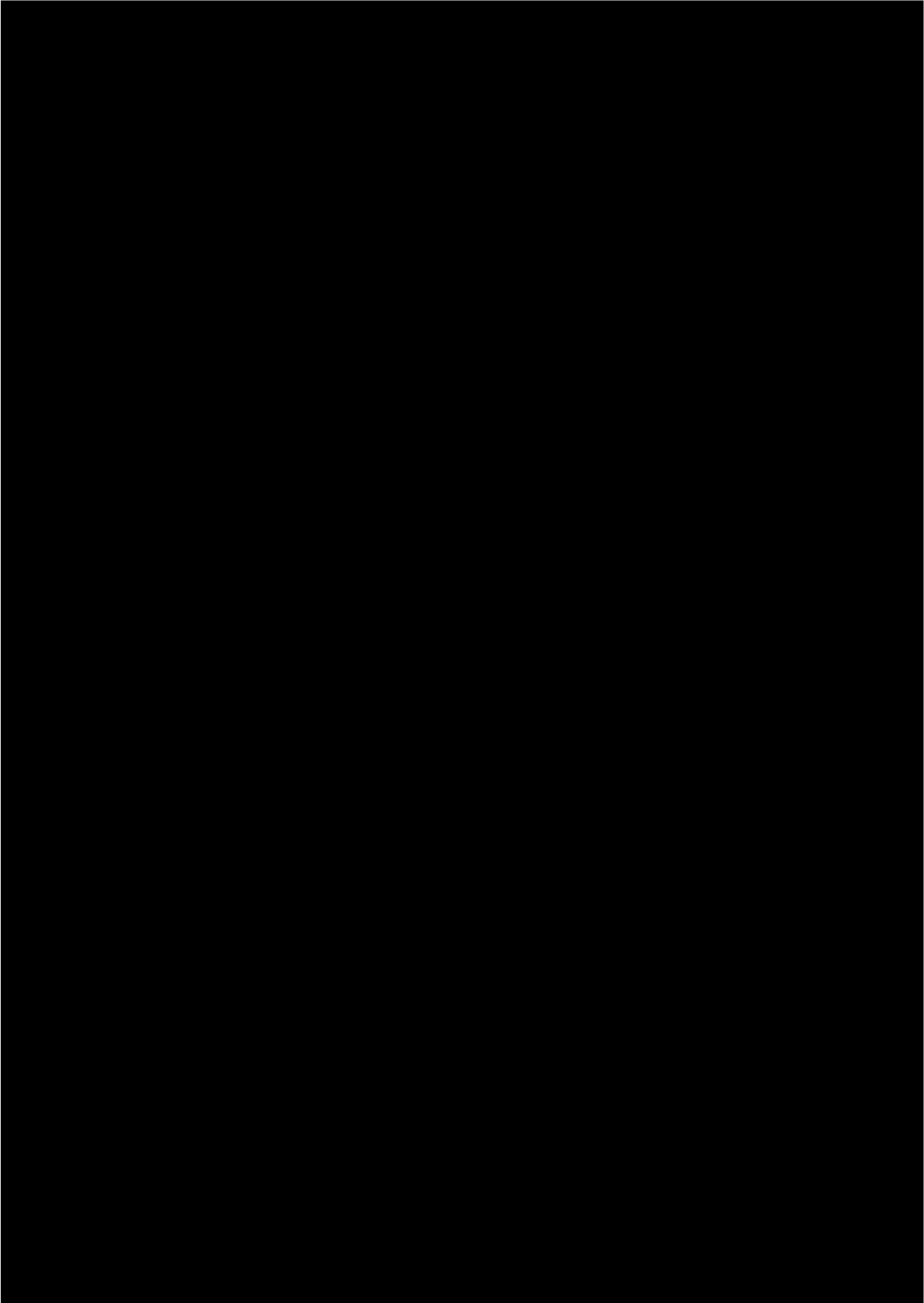


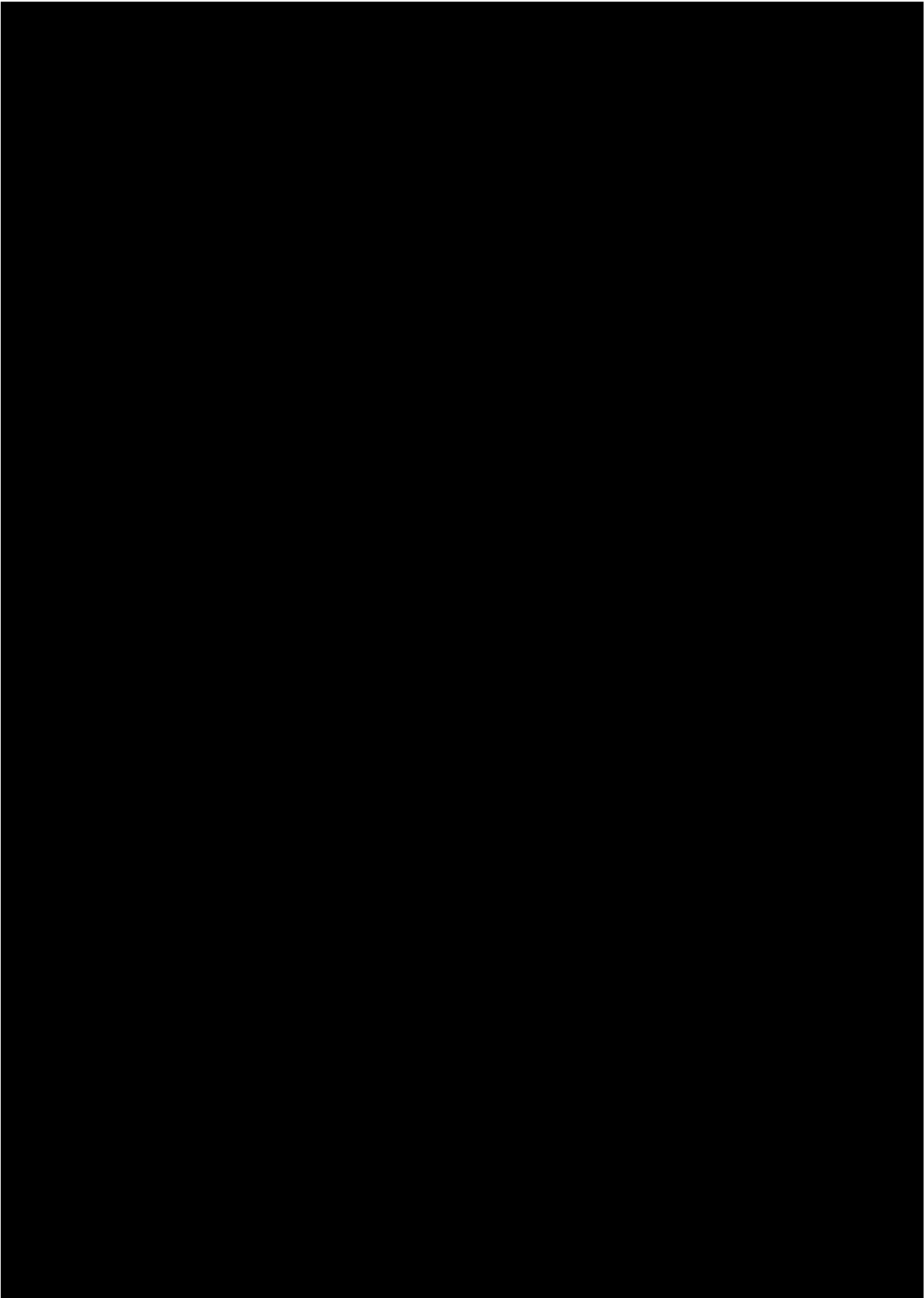


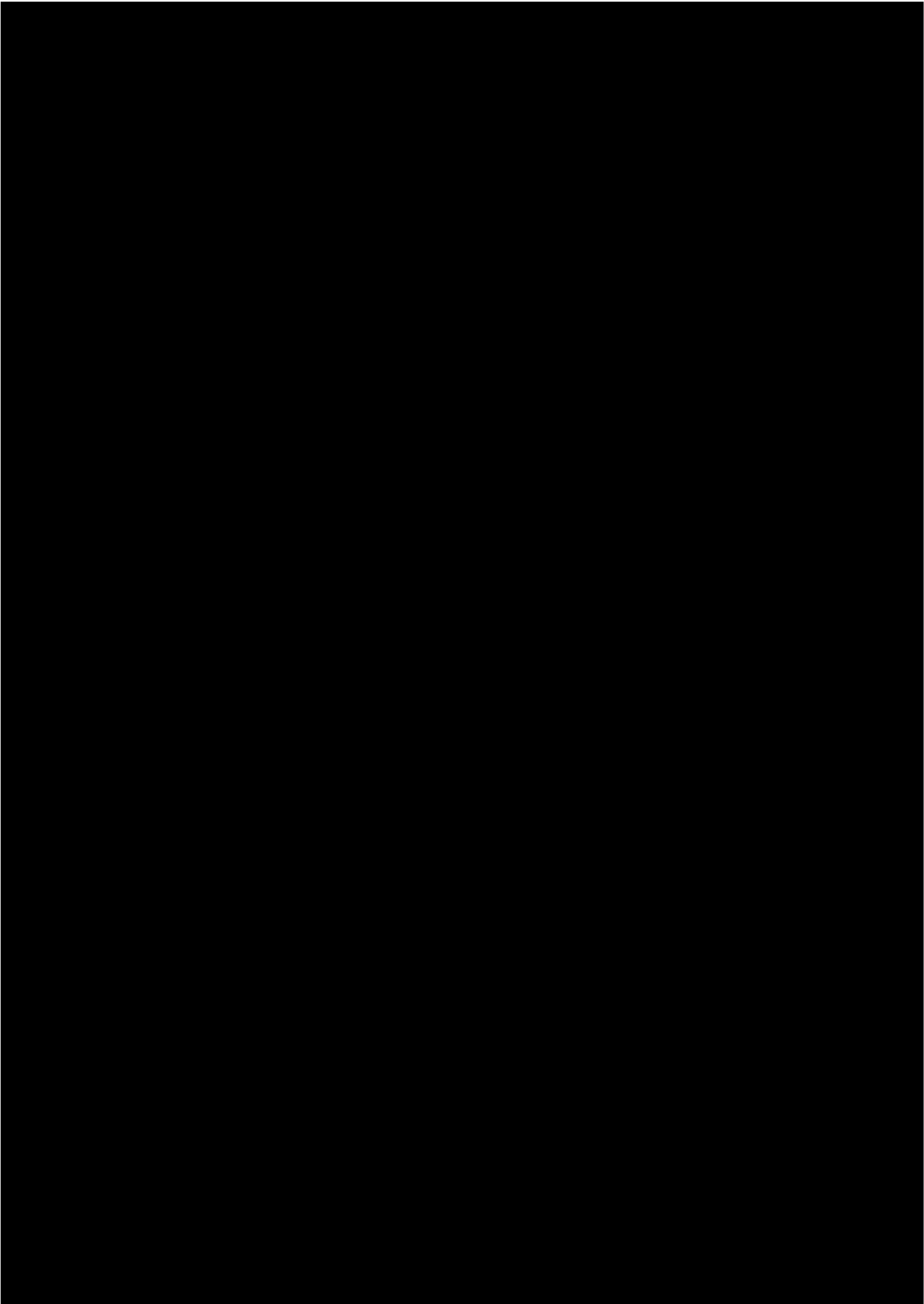


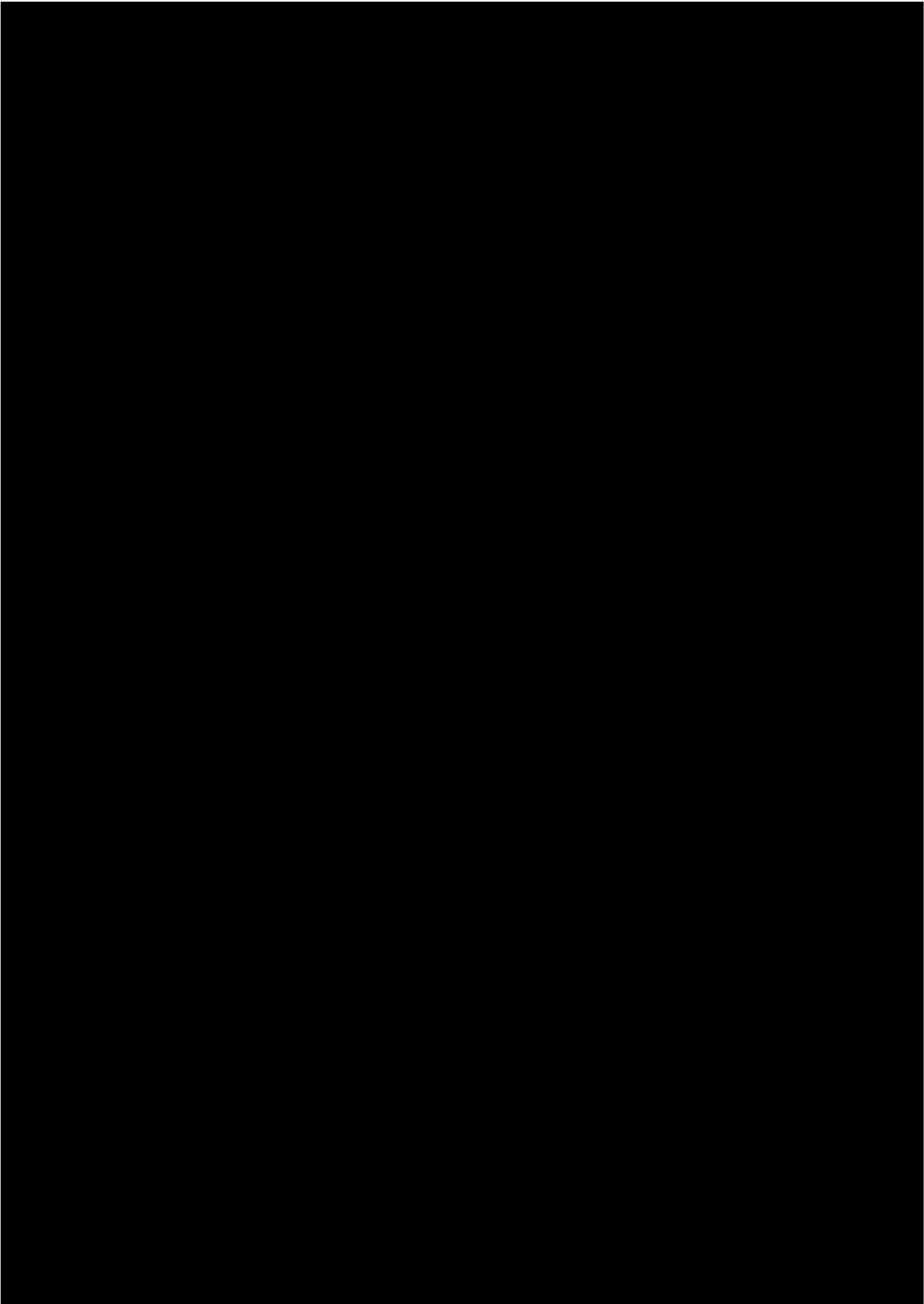


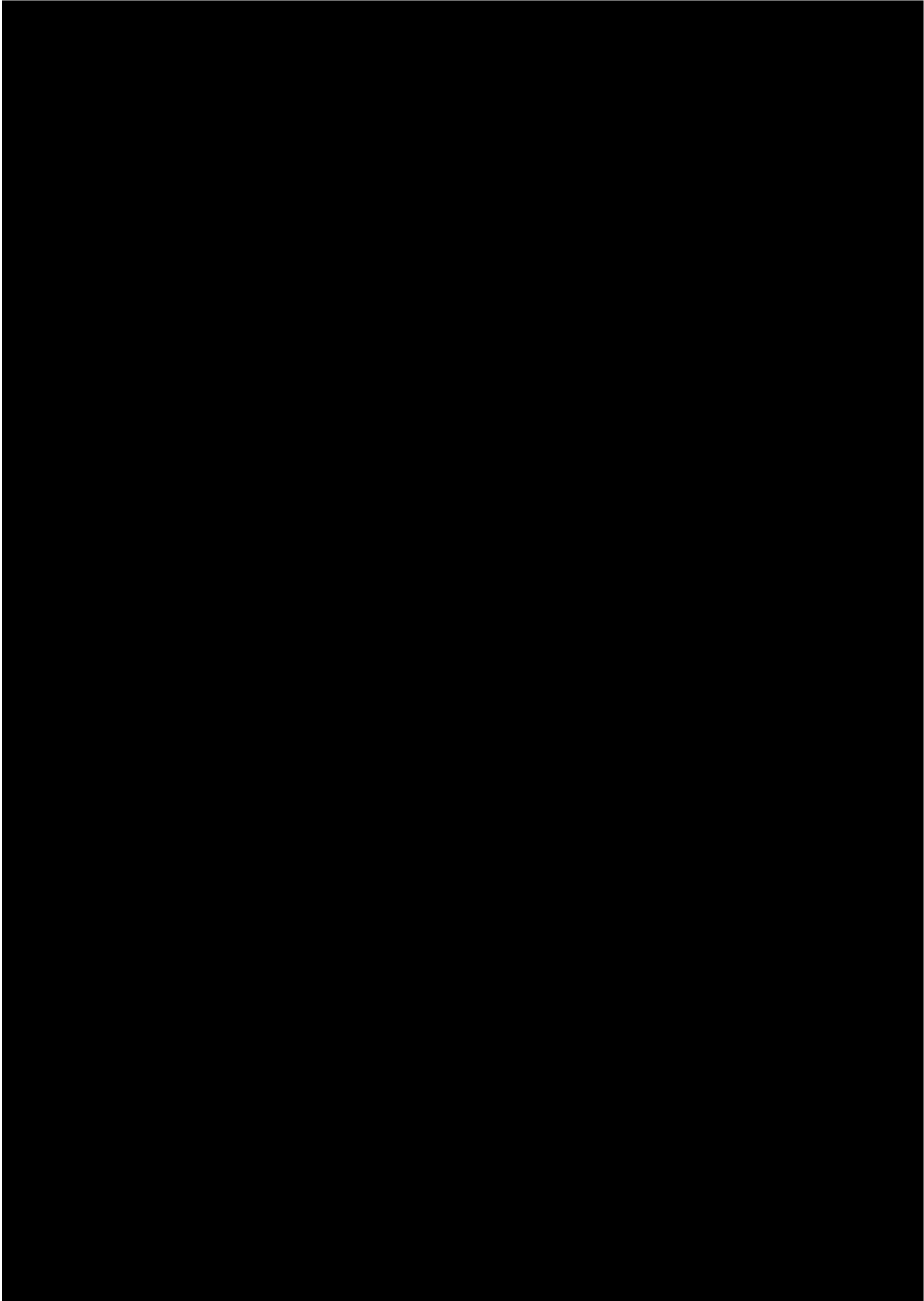


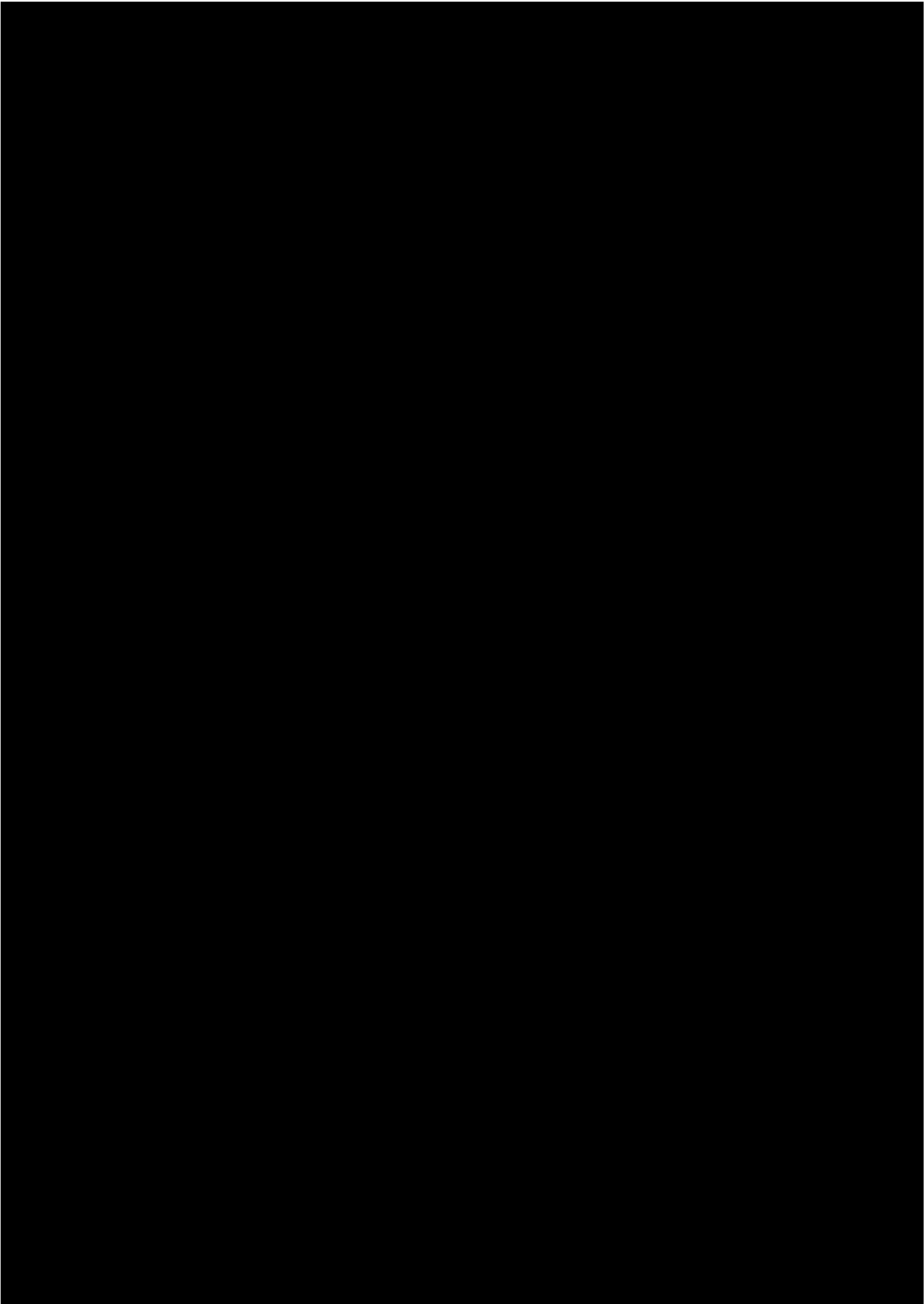


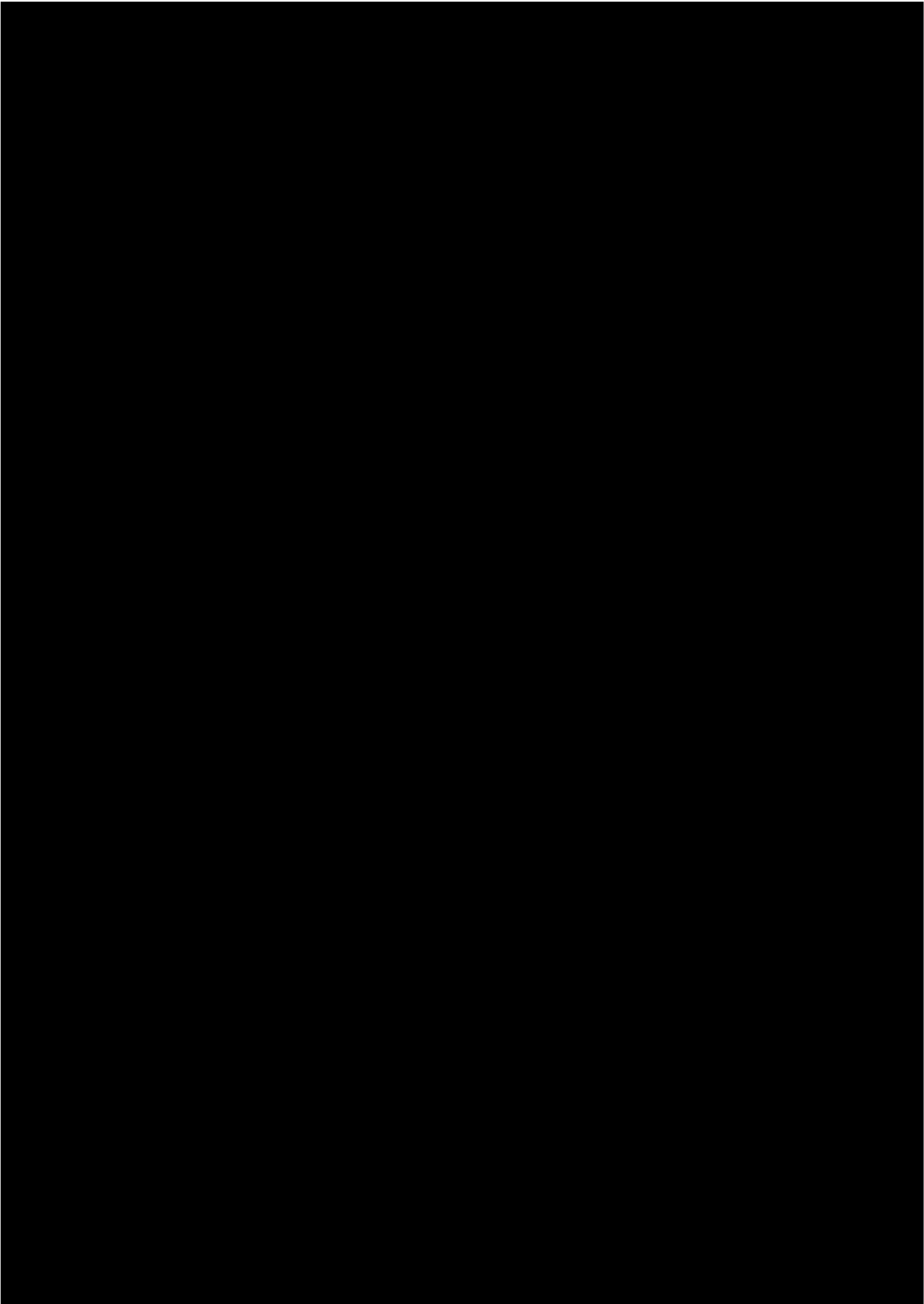


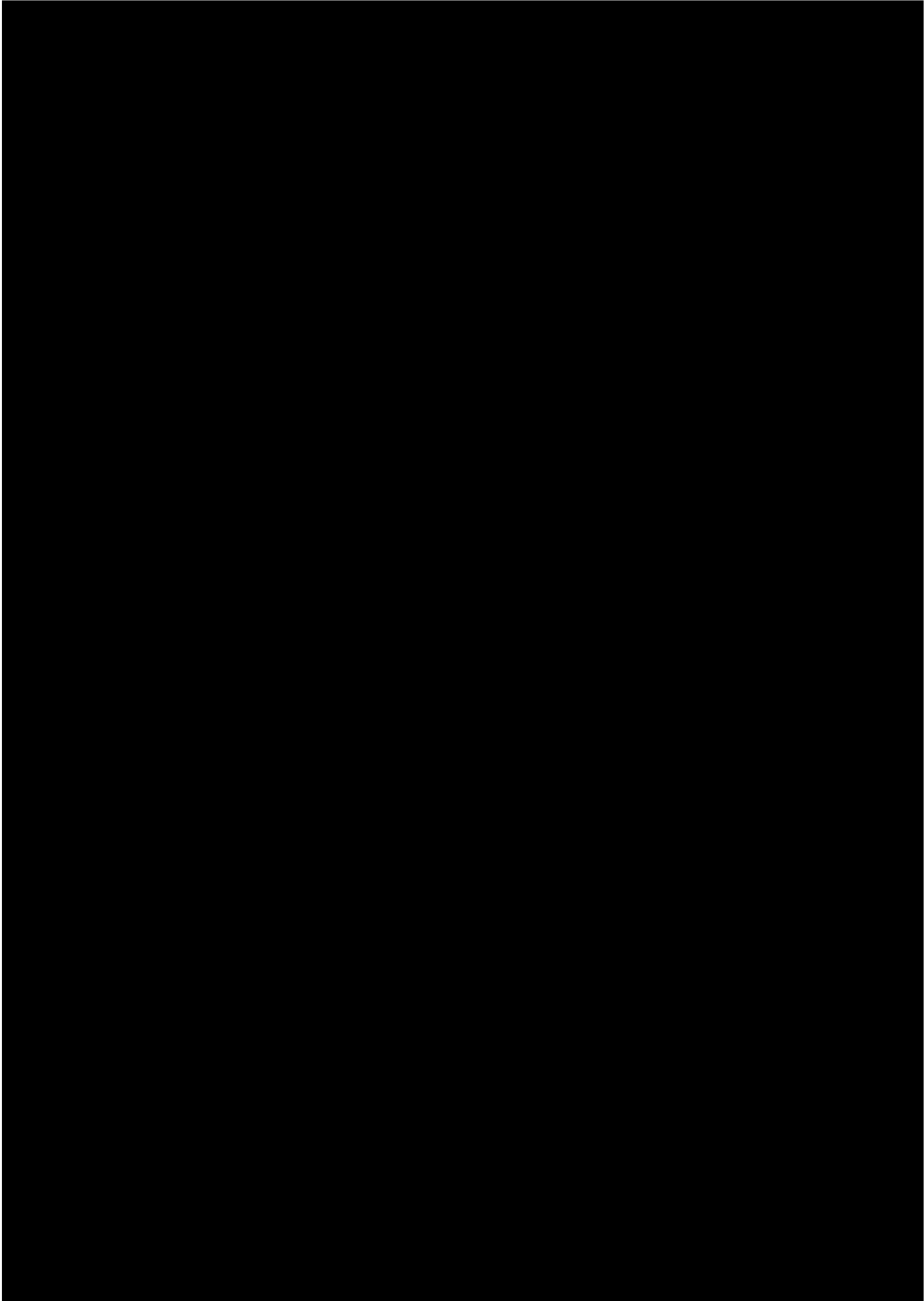


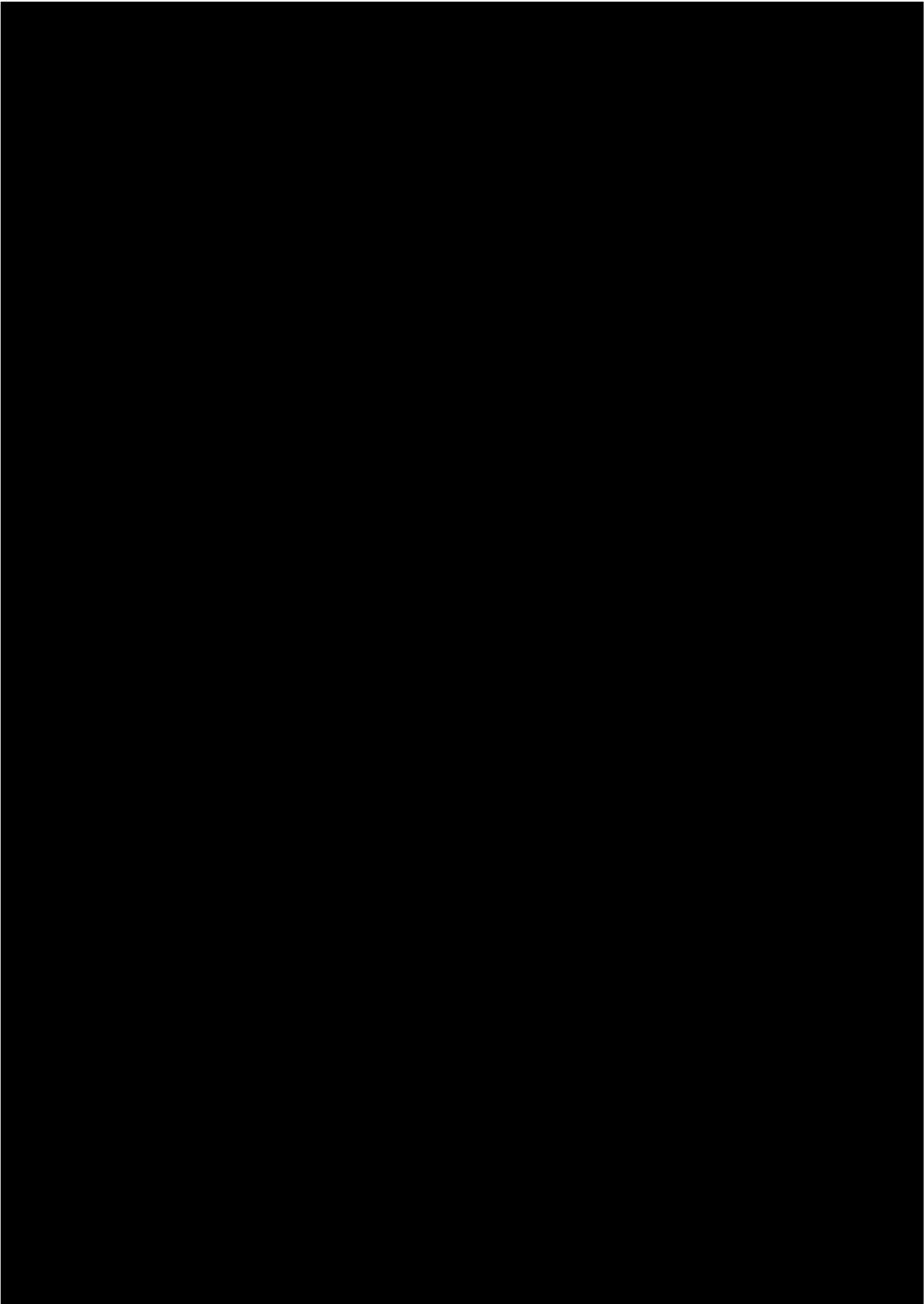


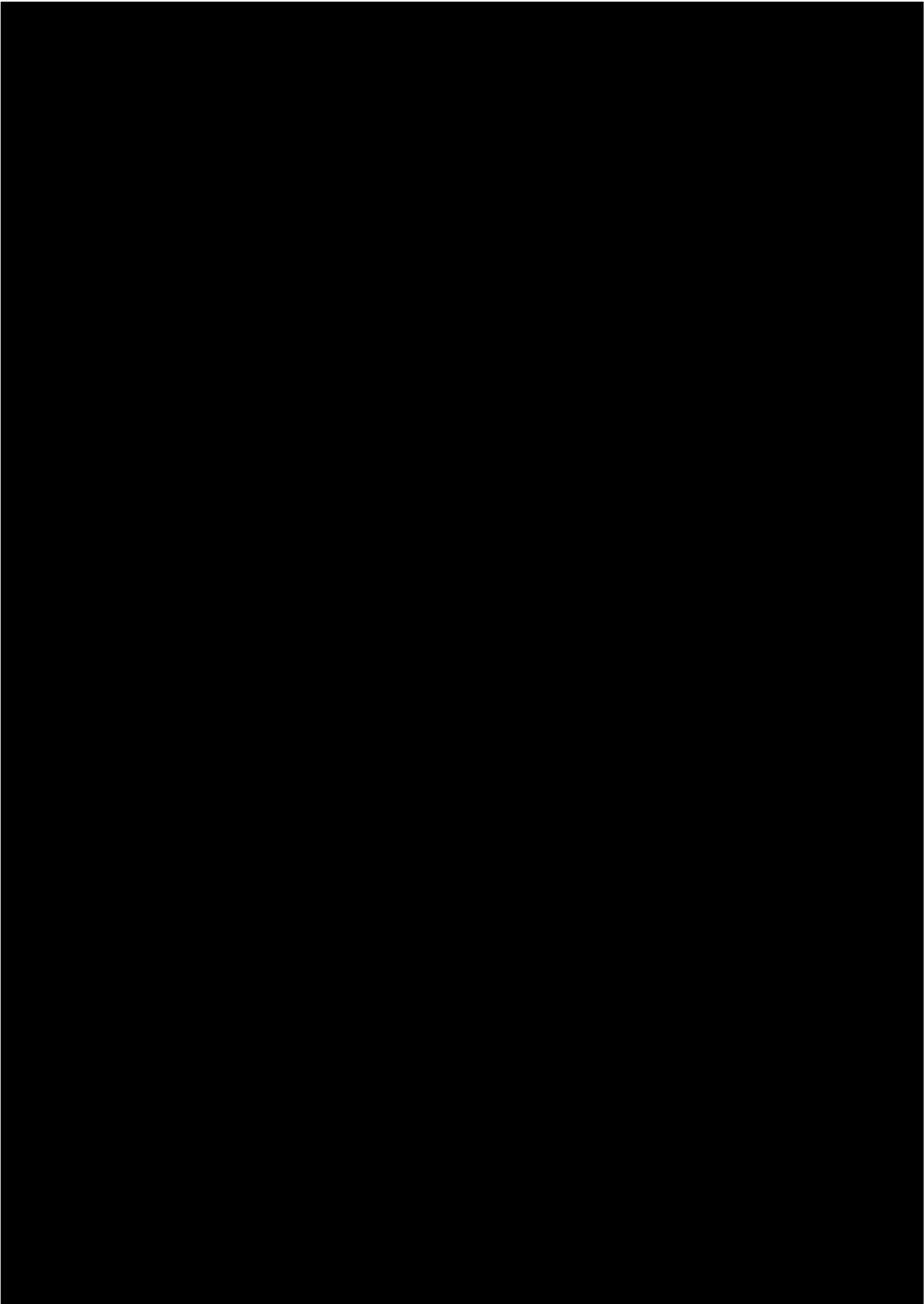


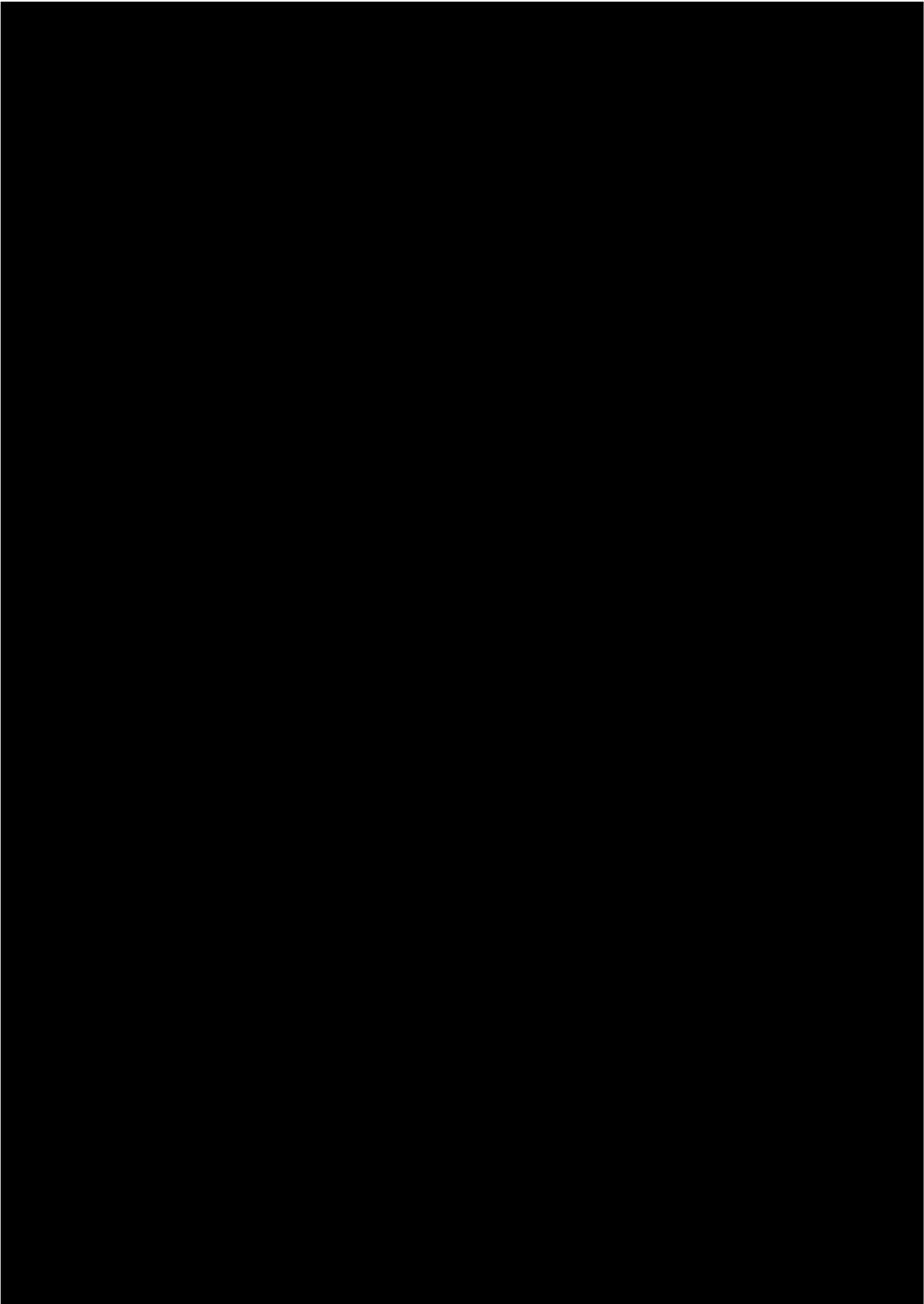


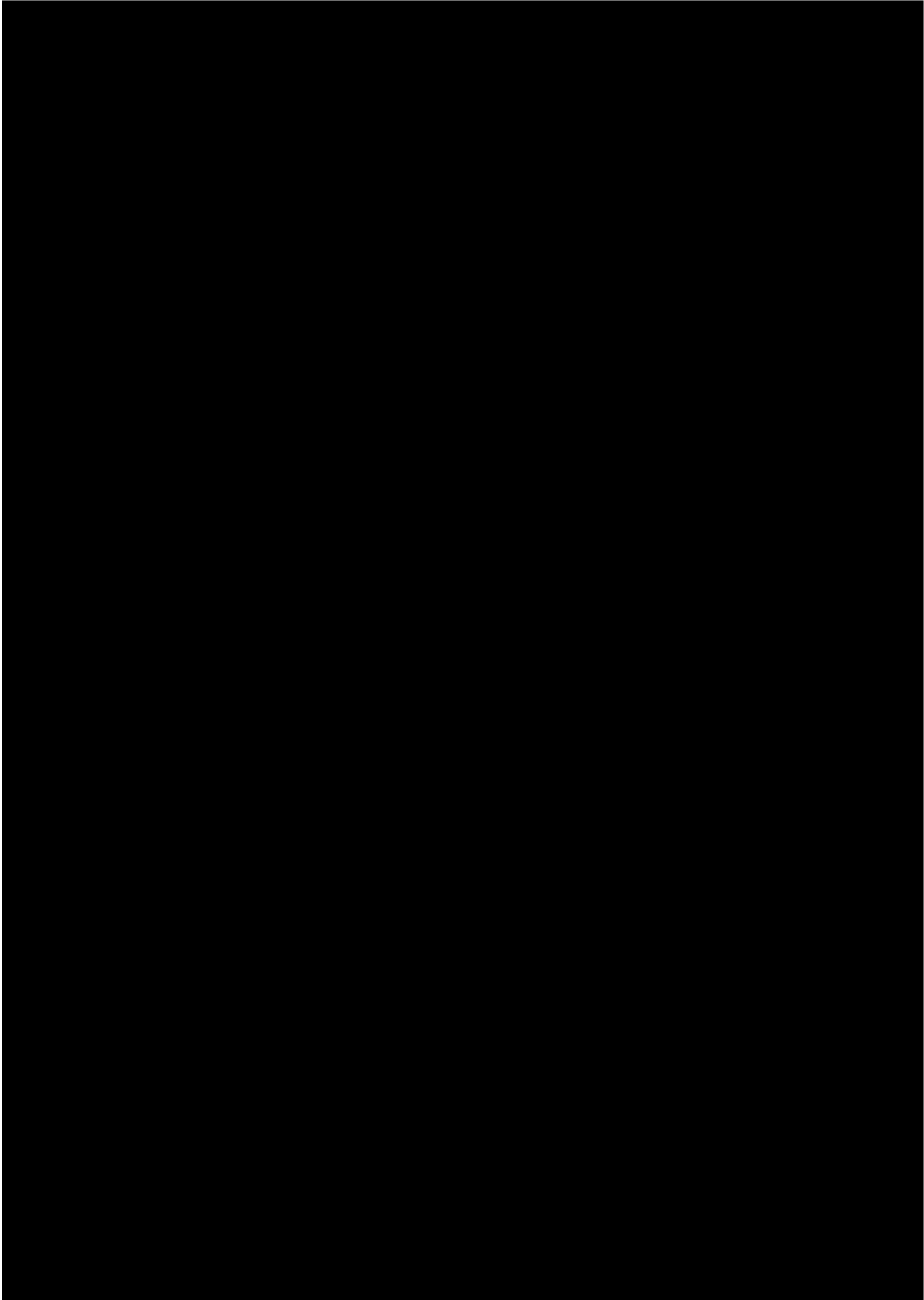


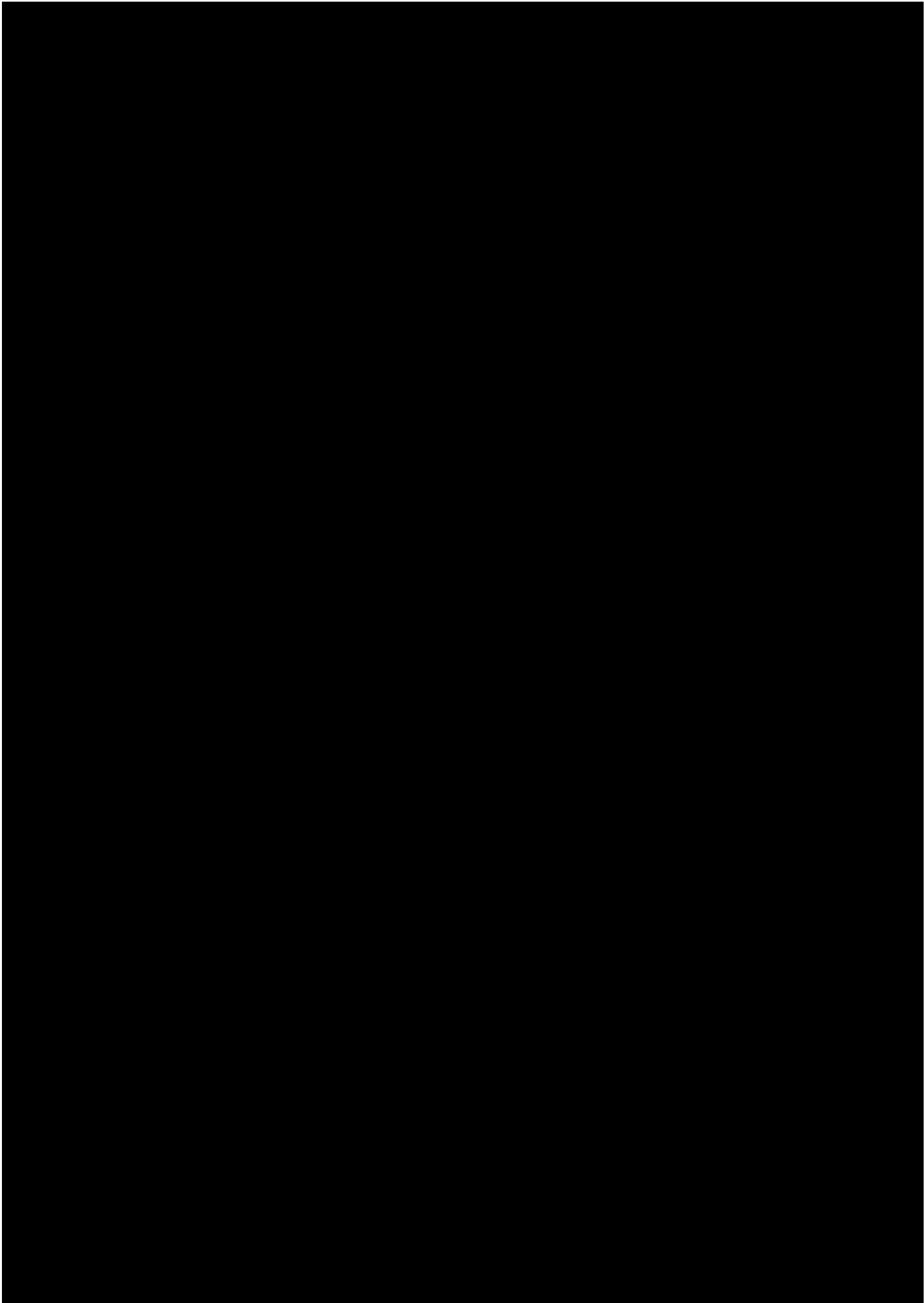


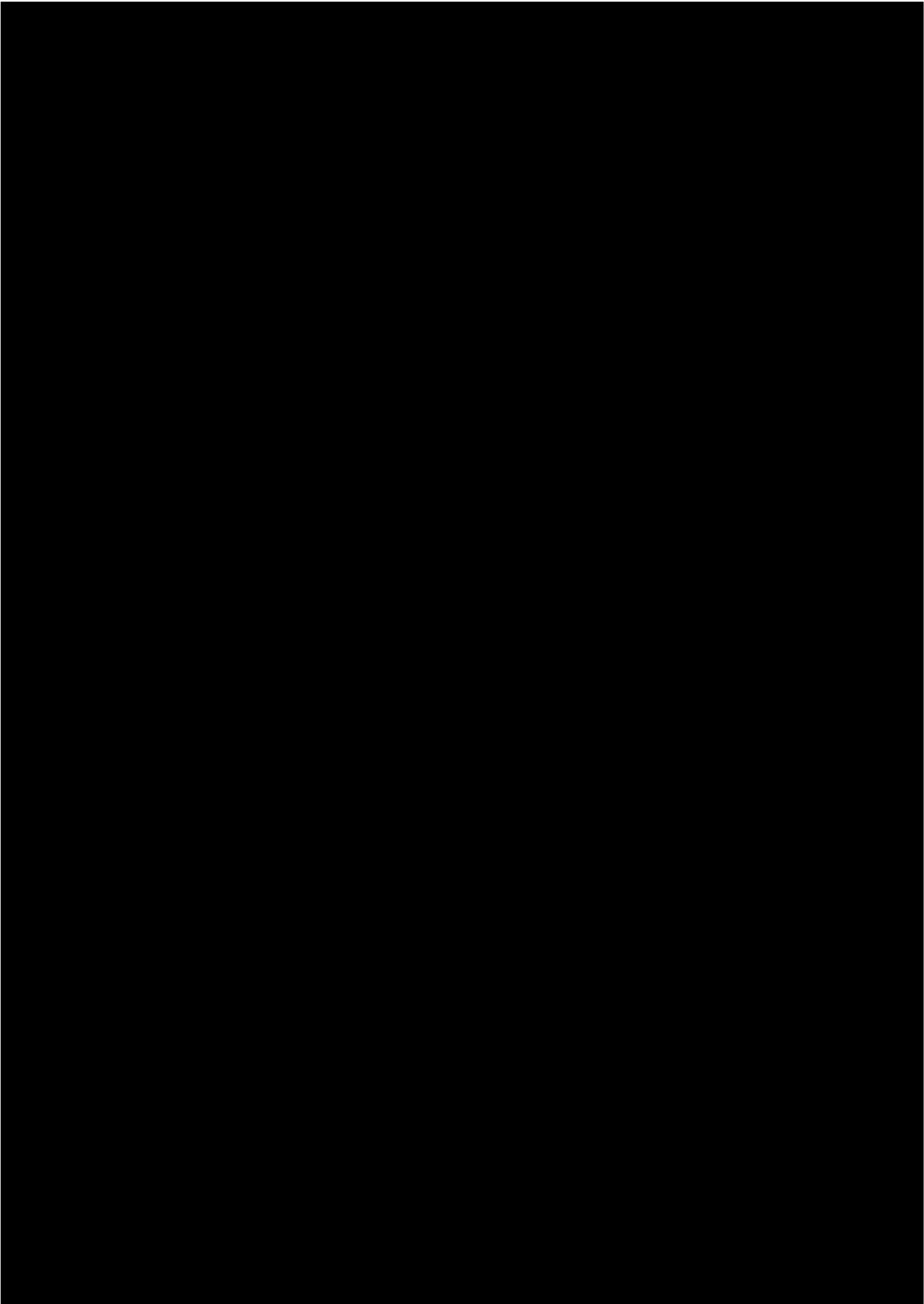


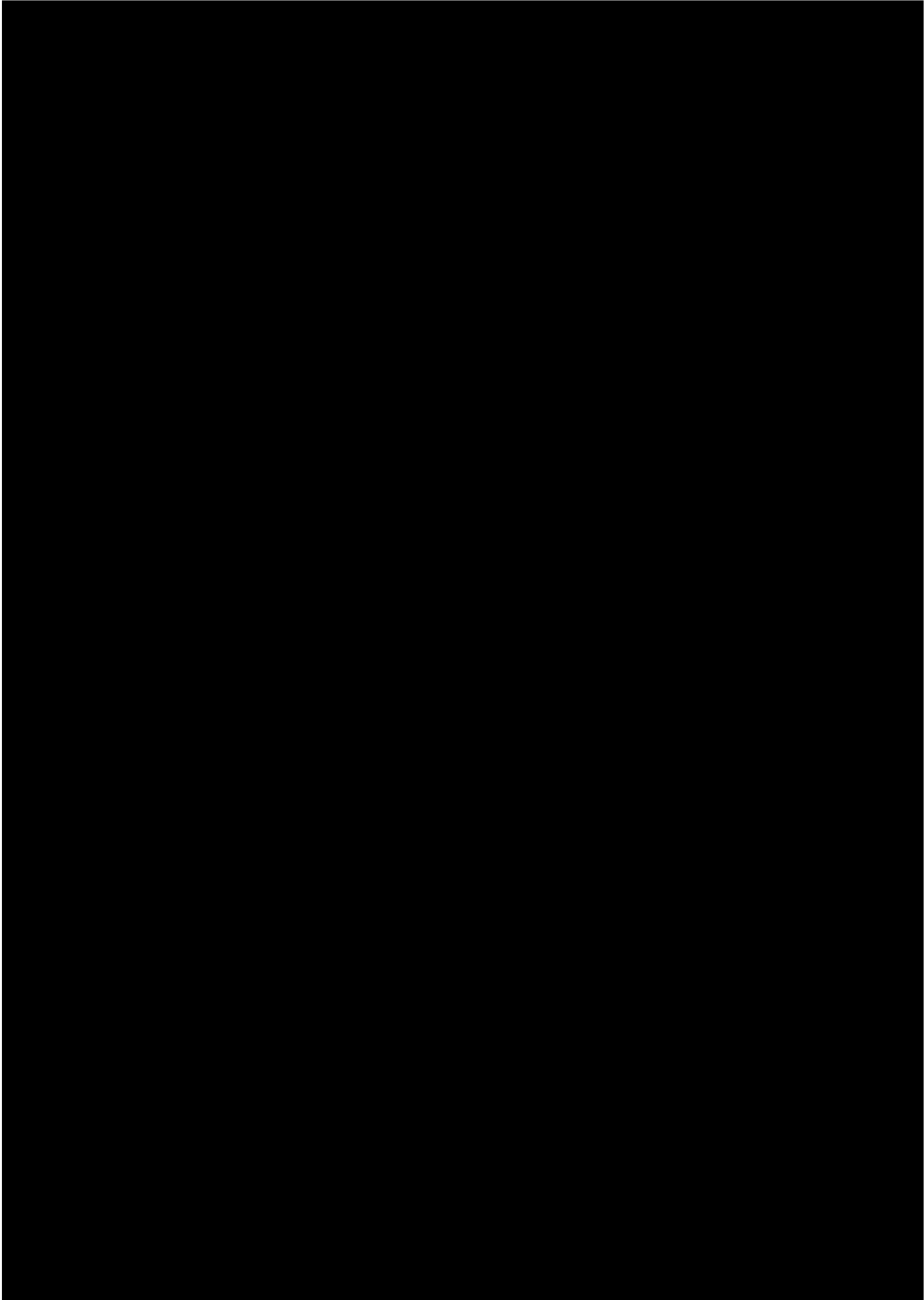


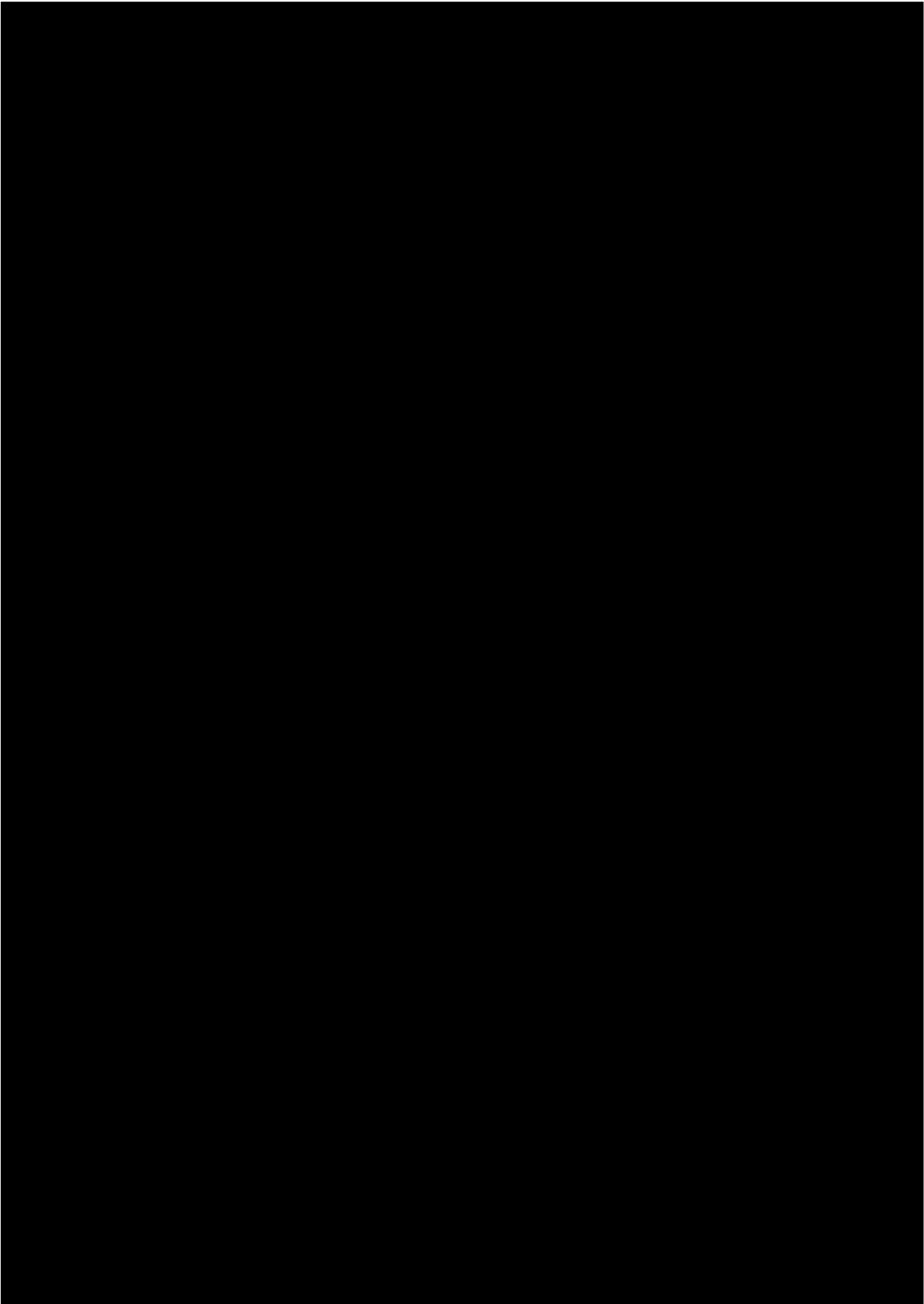


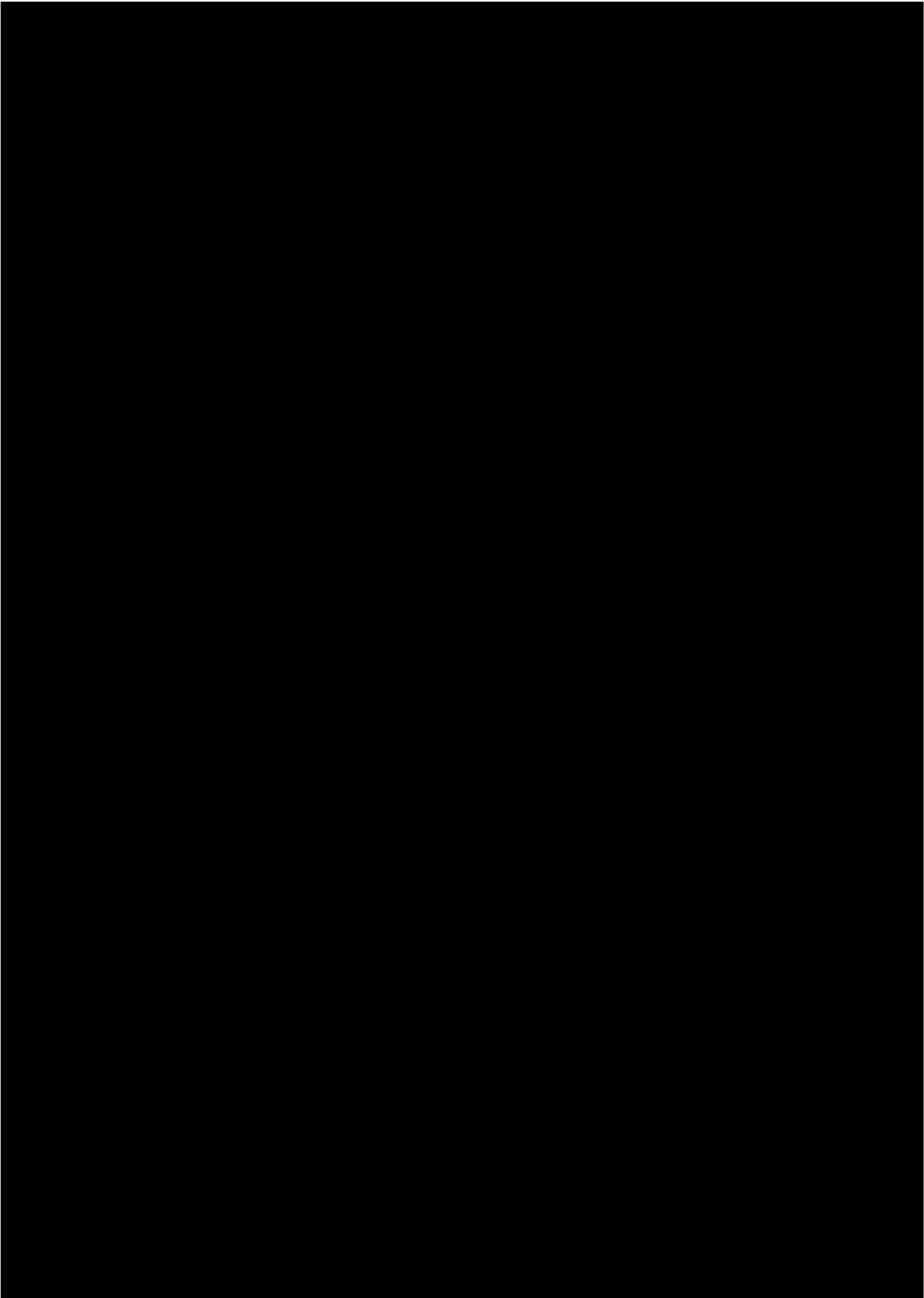


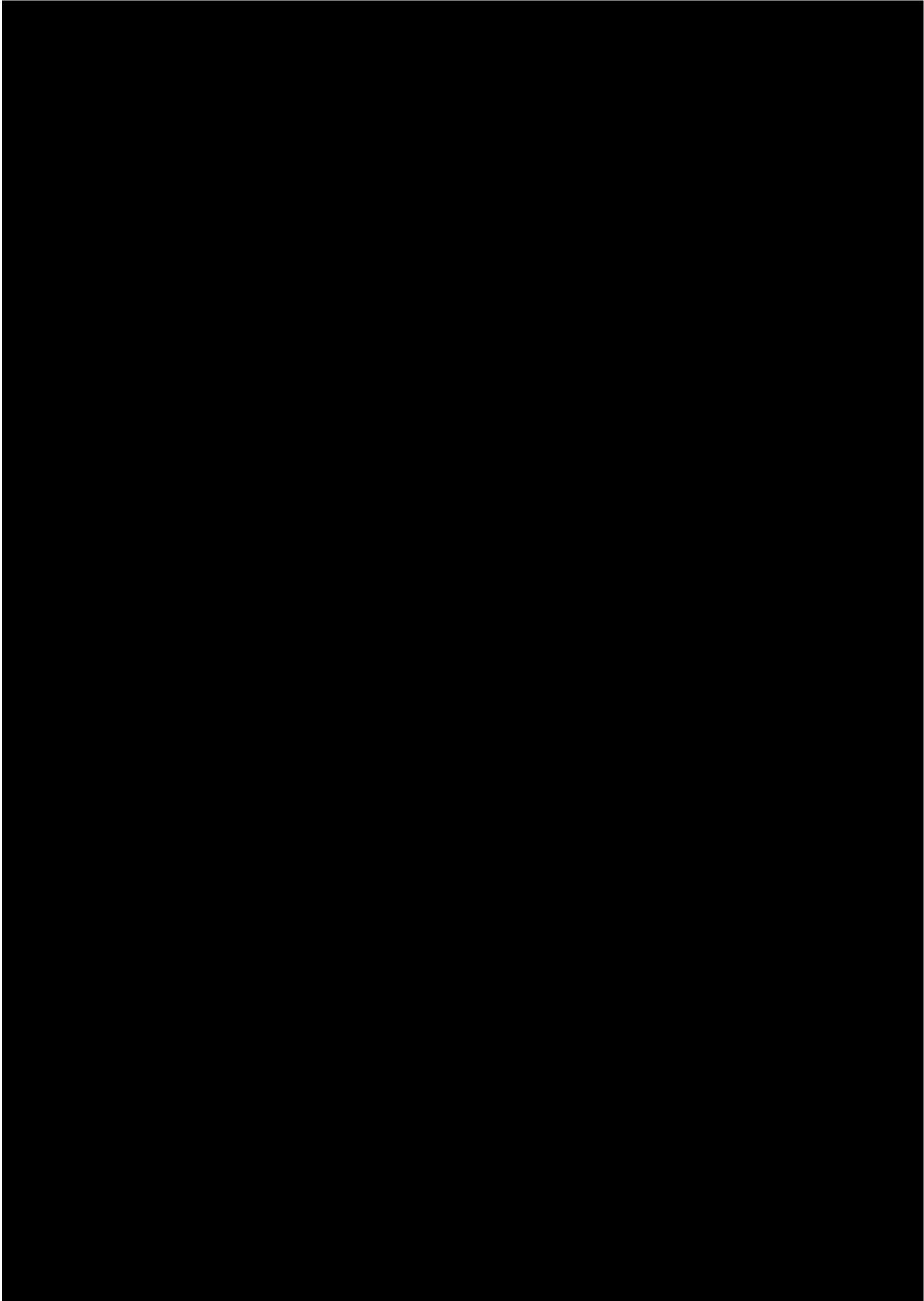


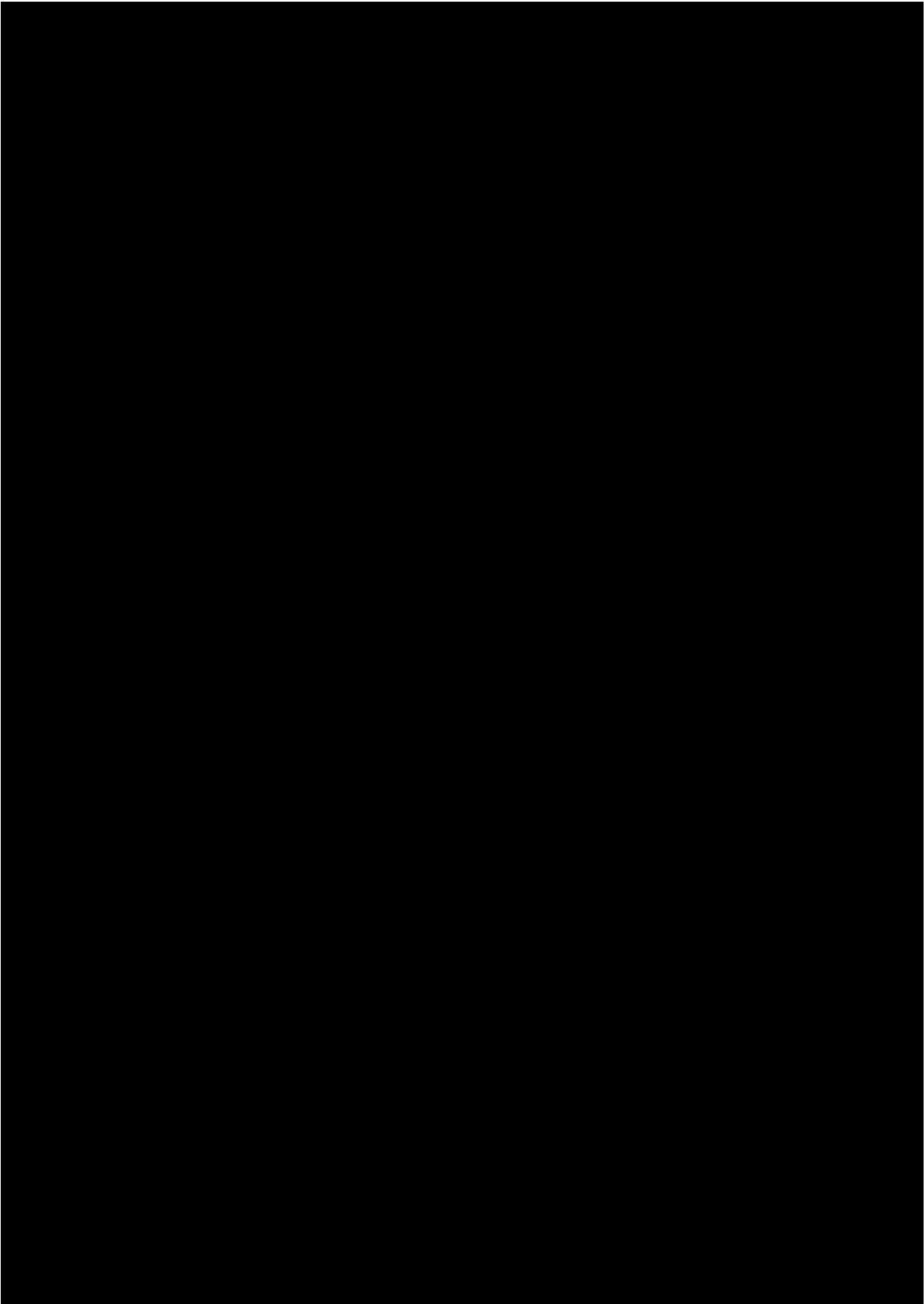


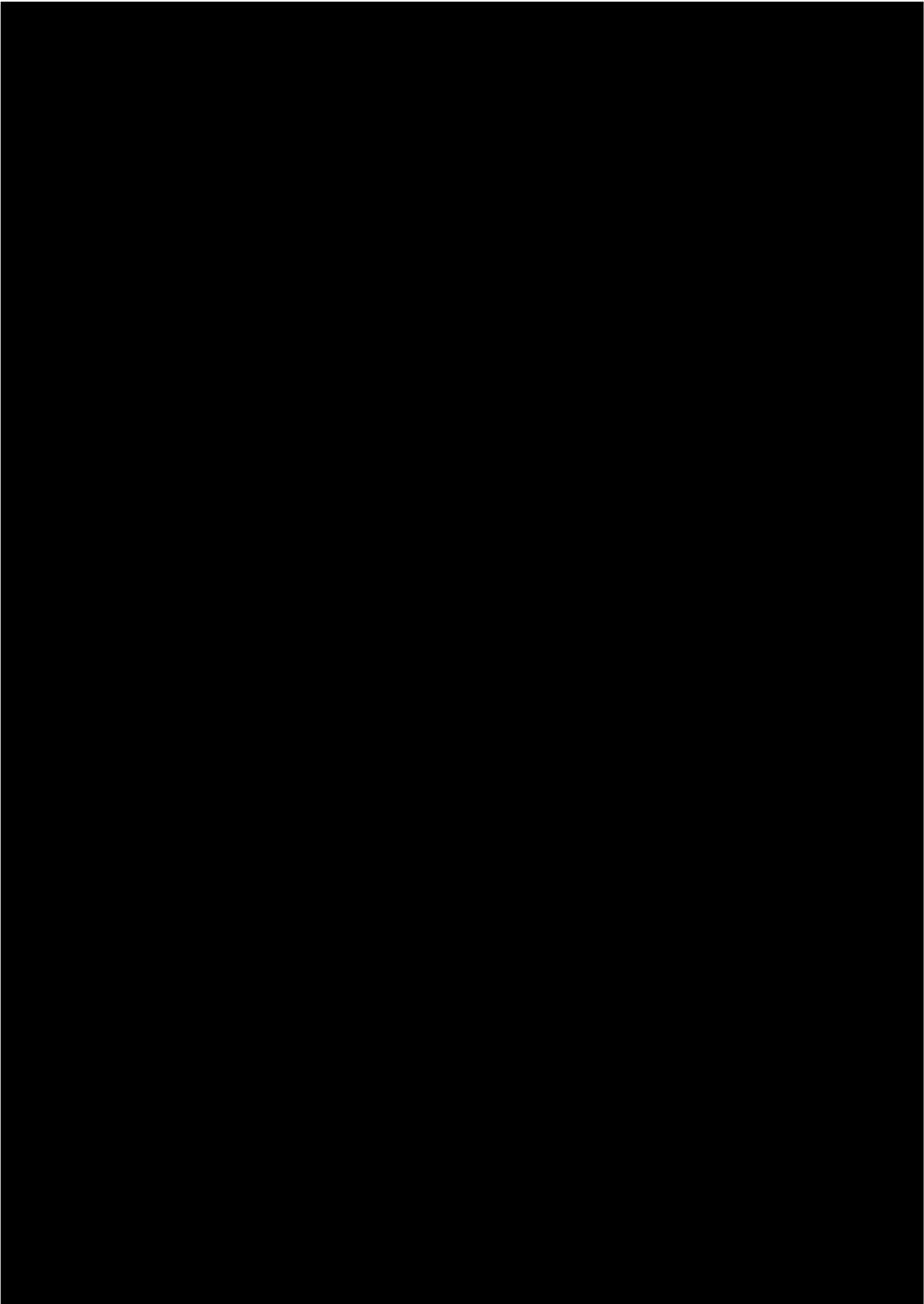


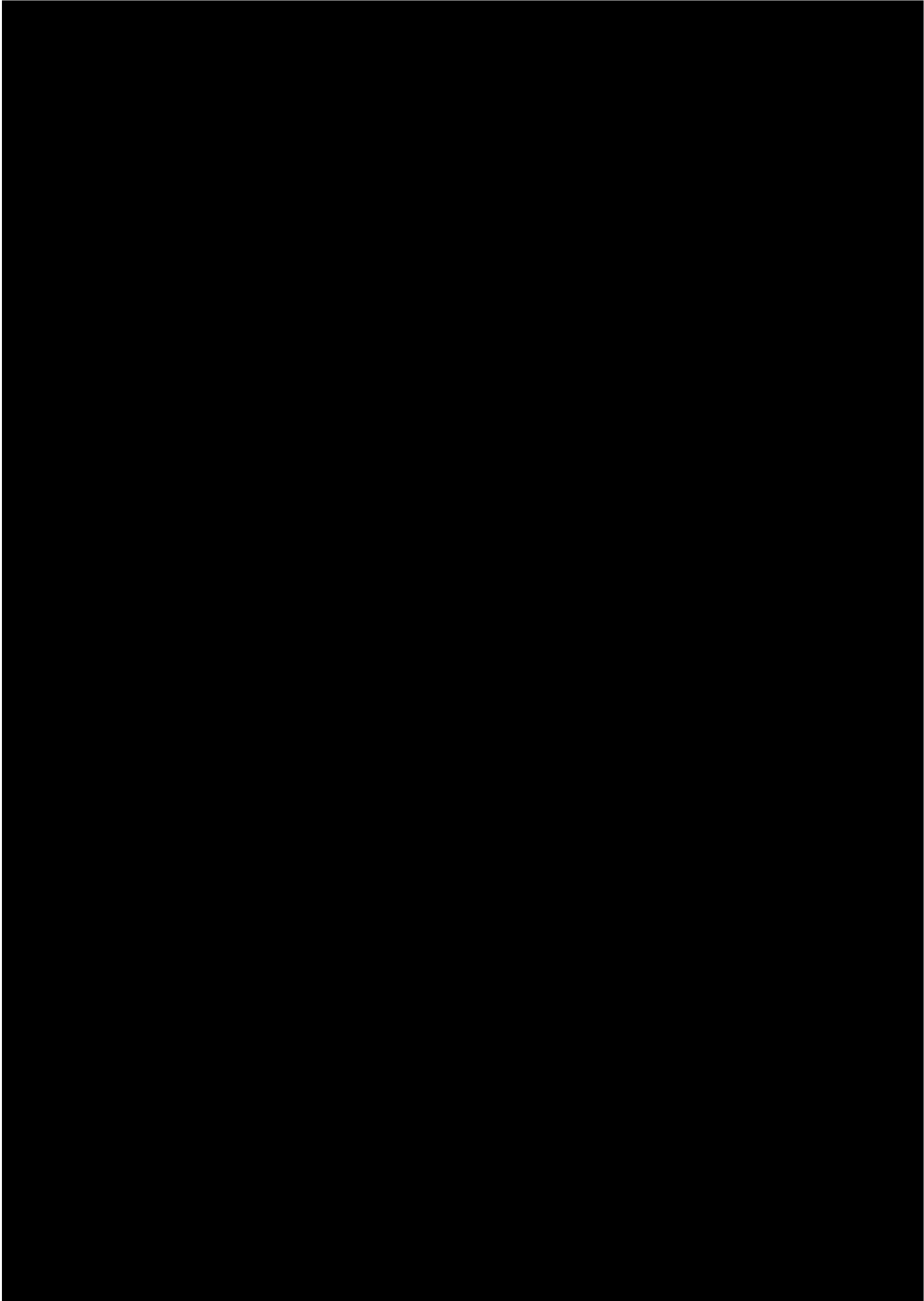


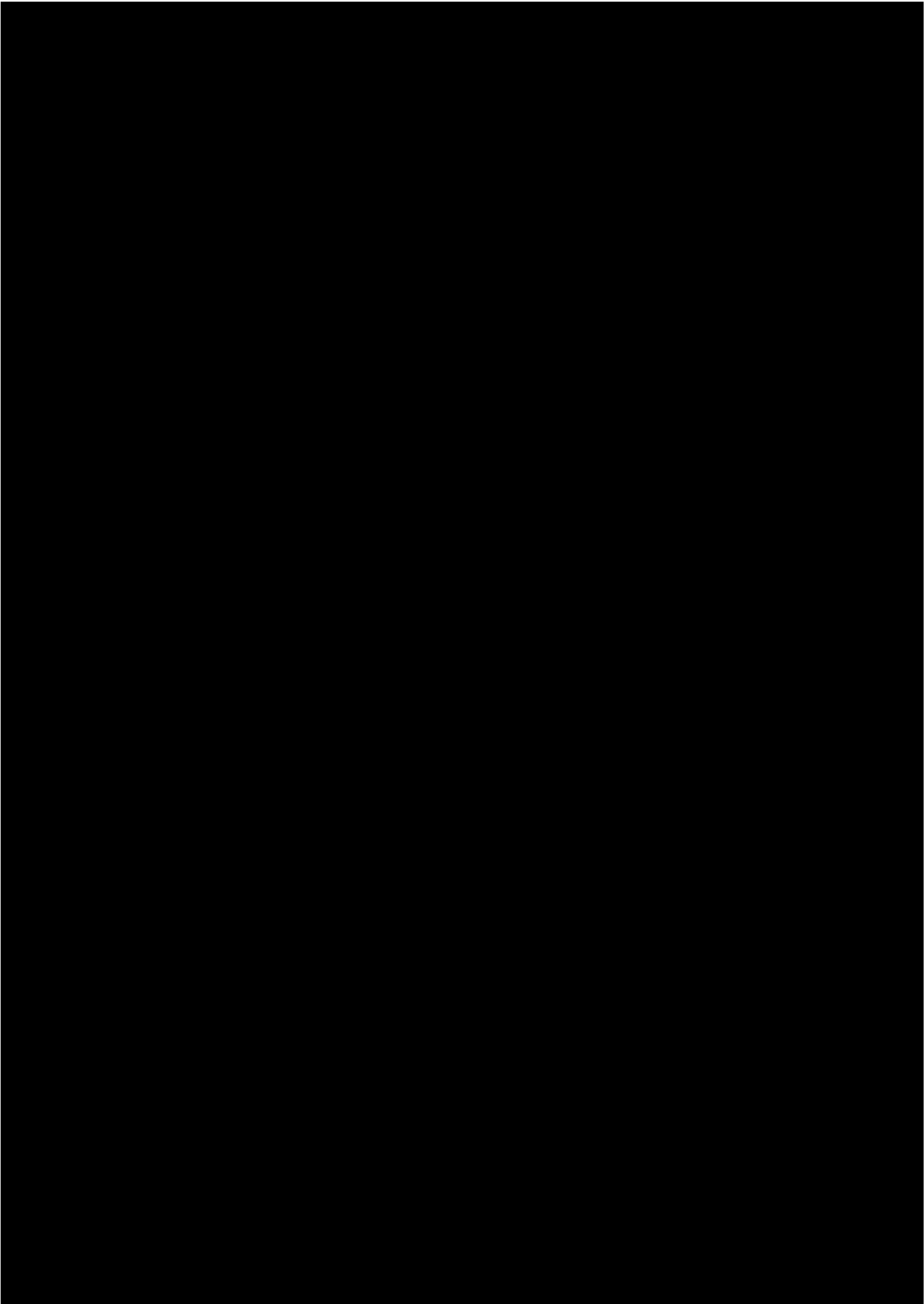


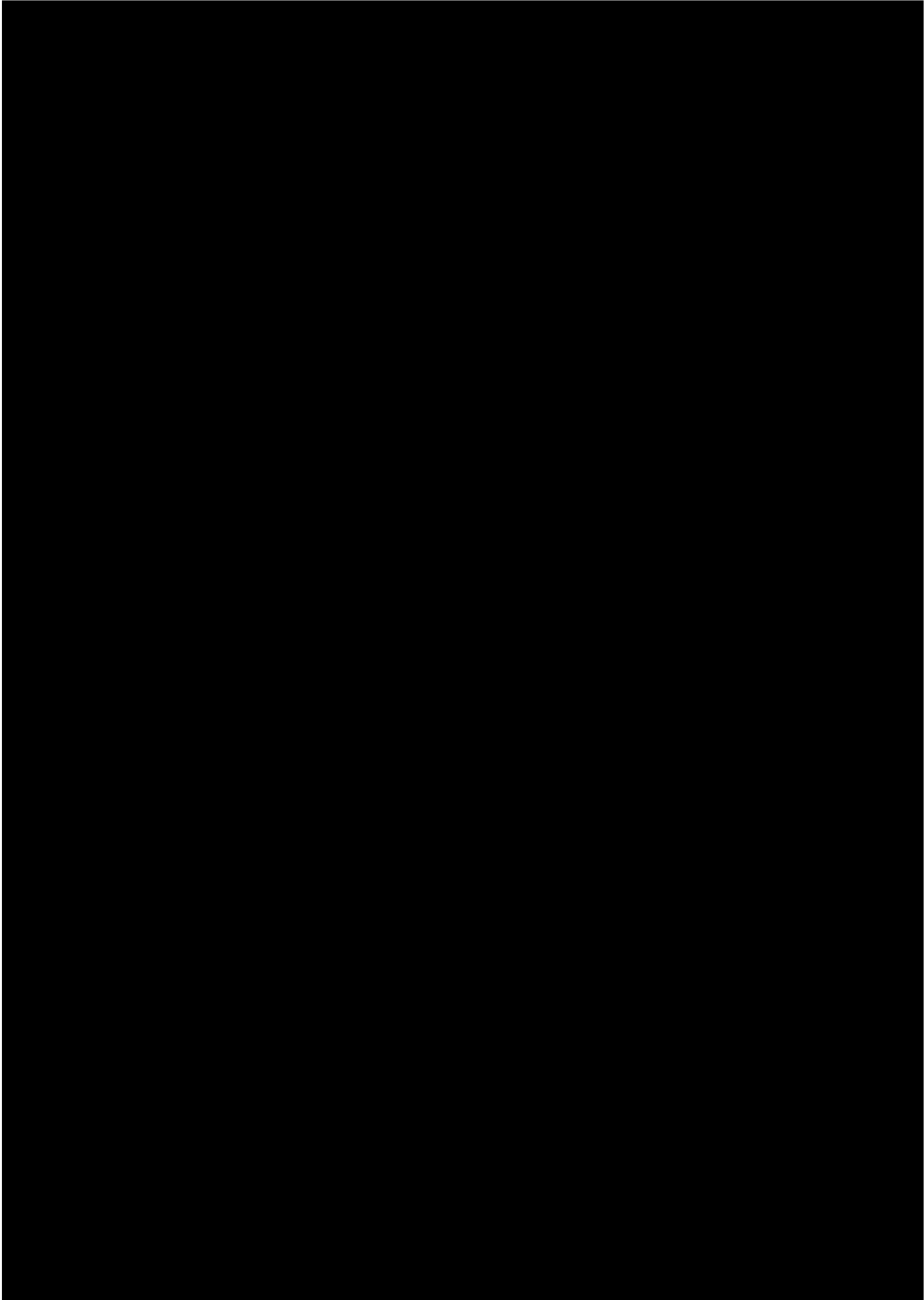


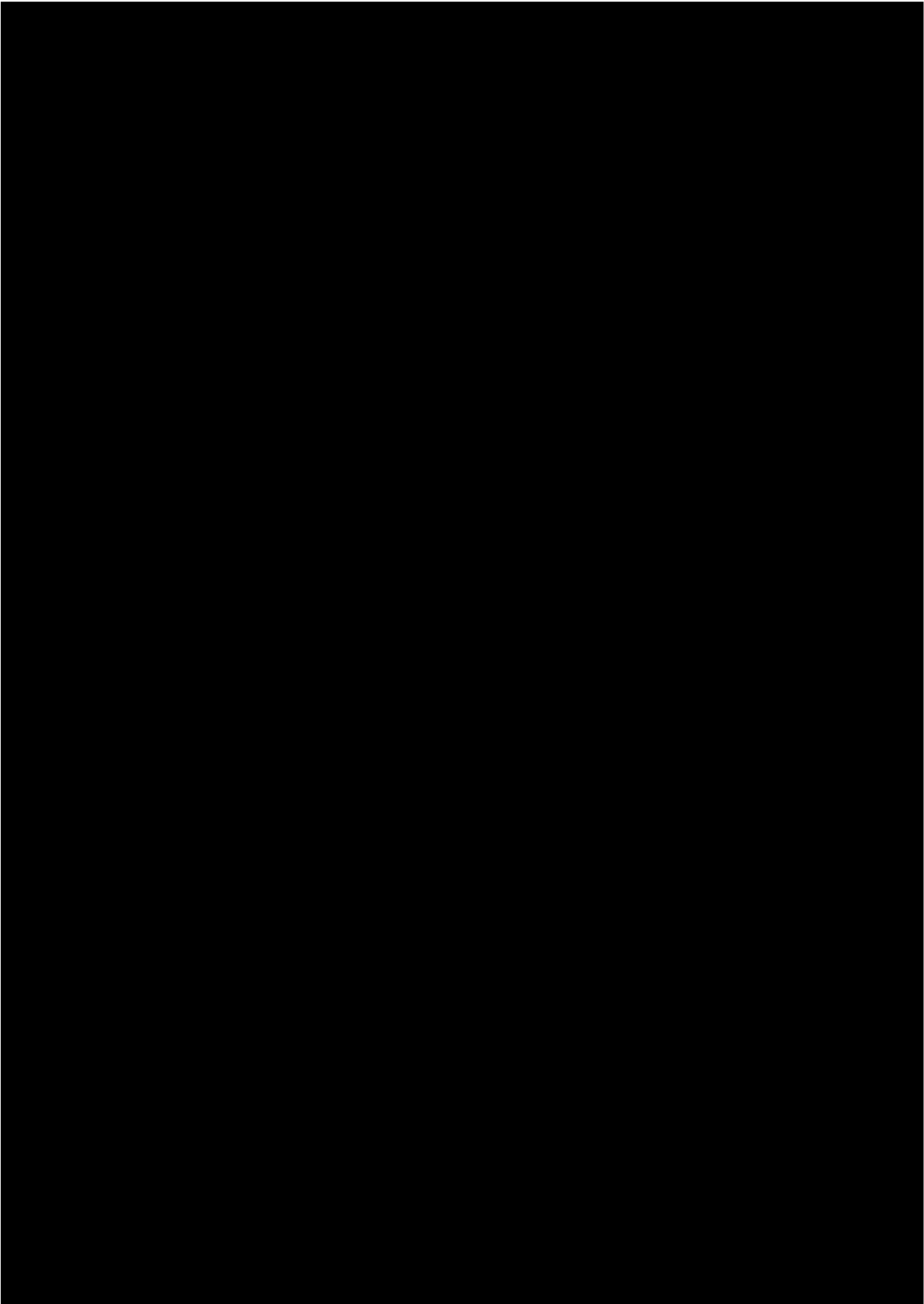


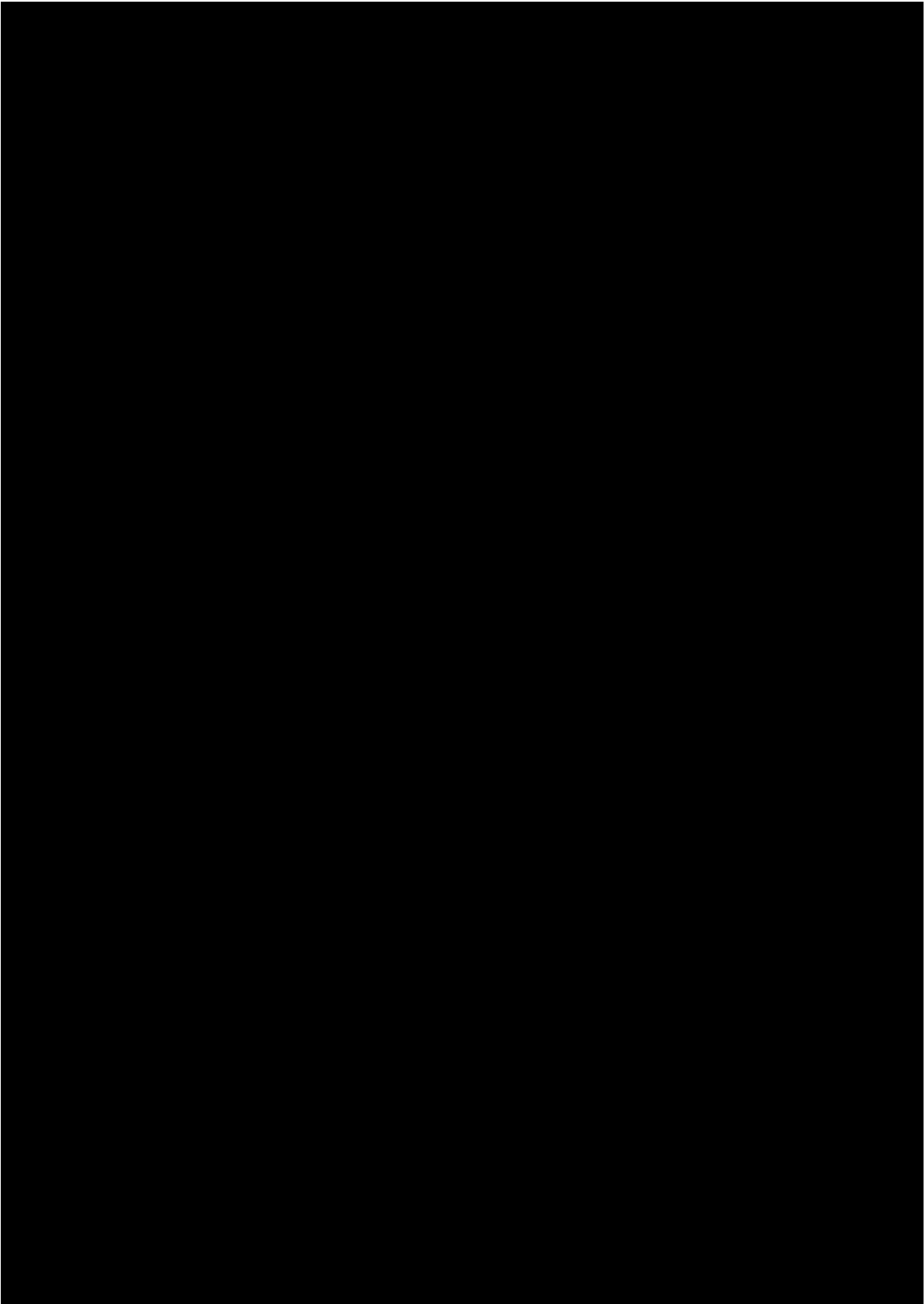












IN THE SOUTHWARK CROWN COURT  
IN THE MATTER OF REFERRALS FROM THE CCRC

BETWEEN:

REGINA

*Respondent*

- v -

KAMRAN ASHRAF  
JASWINDER BARANG  
JULIE CLEIFE  
VIPINCHANDRA PATEL  
SUSAN RUDKIN  
CHRISTOPHER TROUSDALE

*Appellants*

4.2

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RESPONDENT'S NOTE FOR HEARING  
11<sup>TH</sup> DECEMBER 2020

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1. This note is intended to assist the Court in relation to the conduct of the appeals of the six Appellants referred to the Crown Court by the Criminal Cases Review Commission ("CCRC") on 13 July 2020 ("the six Appellants"). As the Court is aware, none of these six appeals is opposed.
2. The Court will be aware that the Court of Appeal Criminal Division ("CACD") is currently considering a total 41 further convictions upon the CCRC's referral. Those appeals are listed to be heard in March 2021. Given concerns in relation to an ongoing Metropolitan Police investigation into two employees of Fujitsu, (who built and maintained the Horizon system), the CACD has been careful to regulate what information is stated in open Court. In light of the CACD's concerns, this note is confined to case-specific matters directly relevant to the Respondent's position in the appeals of the six Appellants, and does not propose to address matters that are presently under consideration within the appeals before the CACD<sup>1</sup>.

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<sup>1</sup> In the interests of open justice, at the hearing on 18 November 2020 the Court of Appeal invited the Respondent to read paragraphs 6, 7 and 8 of the composite CCRC Statement of Reasons (as appended to each of the referrals to the Crown Court) and deemed the entirety of the Statement of Reasons to have been read into the record so that it could be reported

## BACKGROUND

3. Each of the six Appellants were convicted upon their pleas of guilty in the Magistrates' Court following prosecution by the Post Office (which, at the time of most of these prosecutions, was a wholly owned subsidiary of Royal Mail Group).
4. The convictions of the six Appellants, in chronological order, are as follows:
  - 4.1 **Kamran Ashraf** pleaded guilty to an offence of theft on 8 January 2004 before the South Western Magistrates' Court. He was committed for sentence to the Kingston Crown Court where he was sentenced to 9 months imprisonment and made subject to a compensation order in the sum of £25,000 to Royal Mail;
  - 4.2 **Christopher Trousdale** pleaded guilty to 3 charges of false accounting on 8 March 2004 before the Scarborough Magistrates' Court, and was sentenced to a Community Punishment Order with a probation order and a fine;
  - 4.3 **Susan Rudkin** pleaded guilty to an offence of theft on 23 March 2009 before the Burton-On-Trent Magistrates' Court. She was committed for sentence to the Stafford Crown Court where she was sentenced to 12 months imprisonment suspended for 2 years with conditions of 300 hours of unpaid work and an electronically-monitored curfew for 6 months. Additionally, in her case a confiscation order was made in the sum of £43,894.15, payable within 6 months and with a default term of 15 months' imprisonment;
  - 4.4 **Julie Cleife** pleaded guilty to an offence of fraud on 26 October 2010 before the Basingstoke Magistrates' Court. She was committed for sentence to the Winchester Crown Court where she was sentenced to 100 hours of community service;
  - 4.5 **Vipinchandra Patel** pleaded guilty to an offence of fraud<sup>2</sup> on 6 June 2011 before the Oxford Magistrates' Court, and was sentenced to 18 weeks imprisonment suspended for 12 months with a condition of 2 months curfew; and

4.2

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<sup>2</sup> The offence identified in the table on page 2 of the Statement of Reasons for Mr Patel identifies the offence as false accounting, but paragraph 9 of the Statement of Reasons identifies the offence to which Mr Patel pleaded guilty as being one of fraud. The Respondent's records indicate that Mr Patel pleaded guilty to an offence of fraud.

- 4.6 **Jaswinder Barang** pleaded guilty to an offence of fraud on 3 September 2012 before the Luton Magistrates' Court, and was sentenced to 4 weeks imprisonment suspended for 12 months, with a Supervision Order as an attached condition.
5. Between March 2015 and March 2020, the CCRC received applications from 61 individuals, including these six Appellants, who were formerly sub-postmasters (or other members of staff) of Post Office branches. The applicants had all been either convicted of, or had pleaded guilty to, theft, fraud or false accounting in respect of Post Office monies. The applicants submitted that there was new evidence concerning failings in the Post Office's Horizon computer system such that faults with Horizon could have caused shortfalls in branch accounts for which the individual was then prosecuted.
6. Separately, in March 2017, a Group Litigation Order was made arising out of civil claims for damages brought by 589 former sub-postmasters and others. The High Court litigation involved issues over the sub-postmasters' contracts and alleged deficiencies with Horizon. In 2019, the High Court gave two judgments: in March 2019, the "Common Issues" judgment<sup>3</sup> and in December 2019 the "Horizon Issues" judgment.<sup>4</sup> Within the Horizon Issues Judgment, Mr Justice Fraser made findings that there were a number of bugs, errors or defects which had the potential to cause discrepancies and unexplained shortfalls in branch accounts.
7. In June<sup>5</sup> and July 2020<sup>6</sup>, the CCRC referred 41 Appellants to the CACD. In its Respondent's Notices, Post Office Ltd ("POL") indicated that it did not oppose the appeals in 38 of the 41 referrals. At a Directions Hearing on 18 November 2020, the CACD directed that the substantive appeals will be heard in the week of 22 March 2021. The CCRC has referred an additional case to the CACD in the last week.

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<sup>3</sup> Alan Bates & Others v Post Office Ltd (Judgment (No 3) "Common Issues" [2019] EWHC 606 (QB).

<sup>4</sup> Alan Bates & Others v Post Office Ltd (Judgment (No 6) "Horizon Issues" [2019] EWHC 606 (QB).

<sup>5</sup> 3 June 2020 in respect of 34 appellants

<sup>6</sup> 30 July 2020 in respect of 7 appellants

8. On 13 July 2020, the CCRC referred each of the six Appellants to the Southwark Crown Court under s.11 of the Criminal Appeal Act 1995. The Statements of Reasons for each Appellant identified that, in view of the findings of Mr Justice Fraser in the High Court group litigation, there is a real possibility that the Crown Court will set aside their pleas of guilty and will stay any further proceedings against them as an abuse of process.

4.2

## LEGAL FRAMEWORK

9. The law relating to CCRC referrals of appeals to the Crown Court is set out in *Blackstones 2021* at D29.4 and *Archbold 2021* at 2-107.
10. Section 11 of the Criminal Appeal Act 1995 states:
- (1) *Where a person has been convicted of an offence by a magistrates' court in England and Wales, the Commission –*
    - (a) *may at any time refer the conviction to the Crown Court, and*
    - (b) *(whether or not they refer the conviction) may at any time refer to the Crown Court any sentence imposed on, or in subsequent proceedings relating to, the conviction.*
  - (2) *A reference under subsection (1) of a person's conviction shall be treated for all purposes as an appeal by the person under section 108(1) of the Magistrates' Courts Act 1980 against the conviction (whether or not he pleaded guilty).*
  - (3) *A reference under subsection (1) of a sentence imposed on, or in subsequent proceedings relating to, a person's conviction shall be treated for all purposes as an appeal by the person under section 108(1) of the Magistrates' Courts Act 1980 against—*
    - (a) *the sentence, and*
    - (b) *any other sentence imposed on, or in subsequent proceedings relating to, the conviction or any related conviction.*
  - (4) *On a reference under subsection (1) of a person's conviction the Commission may give notice to the Crown Court that any related conviction which is specified in the notice is to be treated as referred to the Crown Court under subsection (1).*

- (5) *For the purposes of this section convictions are related if they are convictions of the same person by the same court on the same day.*
- (6) *On a reference under this section the Crown Court may not award any punishment more severe than that awarded by the court whose decision is referred.*
- (7) *The Crown Court may grant bail to a person whose conviction or sentence has been referred under this section; and any time during which he is released on bail shall not count as part of any term of imprisonment or detention under his sentence.*

11. The effect of sections 11(2) and (4) is that the CCRC's referral means that an appeal is treated "for all purposes" as an appeal against conviction to the Crown Court under s.108(1) of the Magistrates Court Act 1980 (i.e. an appeal against conviction where the plea had not been guilty) irrespective of the fact of the guilty plea.

12. The CCRC's Statement of Reasons suggests that the Crown Court must decide whether to set aside the pleas of guilty as a preliminary question. In e-mail correspondence with the Respondent, the CCRC Case Review Manager indicated as follows:

*Our understanding is that the Crown Court will firstly need to address the issue of the plea before going on to any retrial / abuse of process submissions. As you know, our referrals to the Crown Court reasoned along the following lines: "The CCRC has... considered whether there is a real possibility (i) that the Crown Court would set aside her plea of guilty and if so (ii) that, if her case were to be re-tried before the Crown Court on appeal, a defence application for the proceedings to be stayed as an abuse of process would be successful."*

*However, we do not think that the applicant / appellant formally has to apply to have the guilty plea set aside, in view of the terms of our referral, which were explicitly on the basis that there was a real possibility that the Crown Court would vacate the plea and allow any subsequent appeal. We have also discussed here what has tended to happen in practice in the Crown Court proceedings, after our referral. There are two important caveats to note on this though:*

1. *As you know, the CCRC isn't a party to the appeal, and so isn't necessarily looped into everything which happens in the run up to the CC appeal;*
2. *The way that Crown Courts approach CCRC referrals has tended to vary somewhat over the years and from region to region. There is perhaps not the same consistency of approach that you would expect at the Court of Appeal. That is understandable, given that a CCRC referral will be a rarity for any individual Crown Court.*

*Anyway, with those caveats in mind, our experience is that the Crown Court will list a preliminary hearing to gauge the prosecution's response to the referral. Generally if the prosecution say they will not oppose, that "listing" hearing becomes the vacation of plea hearing and consequently the end of the case. If the prosecution do decide to oppose (and that hasn't happened very often) a hearing for vacation of plea and retrial is usually listed. In that sense, it does make a difference whether or not the prosecution opposes.*

13. The CCRC subsequently indicated that their understanding arises from the decision in *R v F* (11 October 2002) (unreported). The case involved a CCRC referral of F's guilty plea, entered in the Juvenile Court, to the Crown Court. HHJ Openshaw QC (as he then was) stated that the plea should be set aside before any appeal was heard. He stated:

*"The mere fact of the referring of the case by the Commission does not alter the important constitutional principle that it is for the Court and not for the Commission to set aside convictions, including those convictions based on a guilty plea."*

However, the CCRC went on to observe:

*It might also be worth noting that, as decisions in Crown Court are not binding on subsequent Crown Court appeals, that also may go some way to explaining the differences in approach which we have witnessed over the years.*

14. In enacting the 1995 Act, Parliament did not exclude or amend s.79(3) of the Senior Courts Act 1981<sup>7</sup>, which provides:

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<sup>7</sup> The Supreme Court Act 1981 was renamed the Senior Courts Act 1981 by the Constitutional Reform Act 2005.

*The customary practice and procedure with respect to appeals to the Crown Court, and in particular any practice as to the extent to which an appeal is by way of rehearing of the case, shall continue to be observed.*

Accordingly, Parliament intended that the practice of dealing with appeals to the Crown Court from the Magistrates' Court by way of rehearing should apply to all appeals under s.108(1). Since s.11(2) provides that the Court should treat CCRC referrals as being appeals under s.108(1) "for all purposes", it would suggest that Parliament intended that a referred appeal should be by way of rehearing "whether or not he pleaded guilty", and so does not require any consideration of vacating plea.

4.2

15. However, should the Court wish to adopt the approach suggested by the CCRC, the Respondent would submit that in the circumstances it would be appropriate for the pleas to be vacated and for the appeals to proceed in the ordinary course for an appeal against conviction in the Crown Court.

#### **RESPONDENT'S STANCE IN RELATION TO THE APPEALS**

16. On 2 October 2020, POL wrote to Southwark Crown Court and the six Appellants to indicate that it would not contest the appeal in each of their respective cases. POL stated that, having considered each individual's case, POL considered that the Full Code Test in the Code for Crown Prosecutors ('the Code') was not met.
17. On the same date, the Respondent wrote to each of the six Appellants confirming that their appeal would not be opposed and providing an explanation for that decision. In those letters, the Respondent stated that, as a consequence of the High Court judgments, it considered that in general terms the High Court findings established that POL did not routinely investigate or disclose the possibility that evidence from the Horizon system may have been unreliable.
18. In order to assist the Court, the Respondent's reasons for not opposing the appeals in respect of each of the six Appellants, as communicated directly to them in the letters mentioned above, is set out below:

**18.1 Kamran Ashraf:**

- In interview, Mr Ashraf admitted that he took money to pay staff wages and bills and thereafter pleaded guilty. In the group litigation Mr Ashraf gave a different account, namely that he had taken monies to repay the retail side of his business which had been lending money to the Post Office account to cover unexplained shortfalls.
- In order fairly to resolve any appeal, including consideration of whether any of the abuse of process issues raised by the CCRC might apply in his case, it would be necessary to determine which of the two explanations was correct. However, given the passage of time and data retention policies of both POL and Fujitsu, POL no longer has access to all of the relevant evidence in the case and is unable to access the Horizon transaction data to check whether there was in fact any Horizon-generated shortfall or not. Accordingly, POL has come to the view that there is not a realistic prospect of conviction in his particular case.

**18.2 Jasvinder Barang:**

- In interview in May 2012, Mrs Barang stated that she had accepted transaction corrections which had resulted in cash shortages and that she had taken money to cover unexplained losses in her branch. She made reference to problems with Horizon and accepted inflating the cash figures to balance the branch account. The reliability of Horizon therefore was essential to her criminal case.

**18.3 Julie Cleife:**

- At the time of the audit in June 2010, and in her subsequent interview, Mrs Cleife stated that there had been discrepancies in the branch accounts such that she had inflated the cash on hand figures in order to balance those accounts. During mitigation at her sentencing hearing, the Court was told that the problems with the accounts had worsened after Horizon had been installed. During the group litigation, Mrs Cleife explained that she was unaware that there could be another explanation

for the alleged shortfalls. The reliability of Horizon therefore was essential to her criminal case.

#### 18.4 **Vipinchandra Patel:**

- In 2010 and 2011, Mr Patel accepted falsifying branch trading statements to cover up for the fact that he had used POL money to pay bills and keep his business afloat. At that stage, he did not appear to suggest that problems with Horizon were the reason for his conduct. However, the CCRC's Statement of Reasons makes reference to Mr Patel encountering more pronounced shortages from 2008 such that the reliability of Horizon is likely to be in issue.
- In Mr Patel's case, POL has paid particular attention to the parts of the Code which enables the prosecution, in certain circumstances, to consider whether the public interest requires there to be a prosecution (paragraphs 4.4, 4.5 and 4.14 (a) to (g)). Having considered those public interest factors in relation to the particular facts of his case, POL has determined that the public interest test is not met.

4.2

#### 18.5 **Susan Rudkin:**

- In interview, Mrs Rudkin stated that the branch had been experiencing losses which she had initially tried to 'make good' with her own money but this left her unable to pay her business and household bills. She explained that she then used Post Office money to pay those bills intending to repay the sums taken and accepted inflating the cash figures in the branch accounts in order to conceal those losses. A number of calls from her branch to the helpdesk related to Horizon balancing issues. The reliability of Horizon therefore was essential to her criminal case.

#### 18.6 **Christopher Trousdale:**

- In interview, Mr Trousdale stated that he had been experiencing unexplained shortages of cash and so had falsified the branch accounts to cover up those shortages. He told the interviewers that he had

received a large number of error notices which he found confusing as he thought he had been following the proper procedures. The reliability of Horizon therefore was essential to his criminal case.

19. Subject to the procedural matters at paragraphs 11 to 15 above and for the reasons outlined above, the Respondent therefore intends to offer no evidence in relation to each of the six Appellants.

4.2

**SIMON BAKER**  
**JACQUELINE CAREY**  
2 Bedford Row

10 December 2020



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POST OFFICE  
HISTORICAL SHORTFALL SCHEME  
PANEL RECOMMENDATIONS – SHORTFALL ONLY TEST CASES

