

DALO

Terms and Conditions for Consultancy Services

1. Introduction

These Conditions regulate the delivery from the Consultant to the Buyer of the Services described in the Purchase Order and the Scope of Work.

Any terms and conditions from the Consultant are not valid between the parties unless the Buyer has explicitly derogated from these Conditions by way of a written amendment.

These Conditions, the Purchase Order, and the Scope of Work including any amendments, Declaration concerning notification of processing of personal data and the Data Processing Agreement (if relevant) shall be construed as mutually explanatory.

The following order has been agreed upon in case of any discrepancies between the individual documents:

1. The Scope of Work, Declaration concerning notification of processing of personal data and the Data Processing Agreement (if relevant)
2. The Purchase Order
3. These Conditions

2. Definitions

"Agreement" means the Purchase Order, the Scope of Work, these Conditions and Declaration concerning notification of processing of personal data collectively.

"Buyer" means The Danish Defence Acquisition and Logistics Organisation (DALO).

"Conditions" means these Terms and Conditions for consultancy Services.

"Consultant" means the consultant to whom the Purchase Order has been issued.

"Data Processing Agreement" means the agreement to be entered into if the Consultant in connection with the performance of the Services shall process personal data on behalf of the Buyer,

"Day" means a calendar day.

"Declaration concerning notification of processing of personal data" means the signed consent to the processing of personal data,

"Defect" means when the Services are not performed in accordance with the Agreement, or when the Services do not satisfy the Buyer's reasonable expectations.

"Delay" means when the Consultant fails to perform the Services at the agreed time, cf. clause 4.3, and this is not due to force majeure or to circumstances for which the Buyer is responsible.

"Deliverables" means any documents to be produced by the Consultant as part of the Services, as described in the Scope of Work.

"Key Personnel" means the Consultant's personnel identified in the Scope of Work.

"Price" means the price(s) for the Services stated in the Scope of Work. The Price can be stated either as a fixed price covering all Services to be performed in accordance with the Agreement or as unit prices (e.g. hourly rate(s), inspection fees etc.).

"Purchase Order" means the order which the Buyer has submitted to the Consultant regarding the Services described in the Scope of Work.

"Scope of Work" shall mean a signed contract with any amendments between the Buyer and the Consultant specifying the Services to be performed by the Consultant.

"Services" means all services (including any Deliverables, if relevant) that the Consultant shall perform according to the Agreement.

3. The Consultant's acceptance of the Agreement

The Consultant has accepted the terms of these Conditions by signing the Scope of Work.

These Conditions cannot be derogated in any way unless expressly permitted by the Buyer in a written amendment to the Scope of Work.

If the Consultant's performance of the Services is related to a public procurement process to be carried out by any division of the Danish Ministry of Defence, the Consultant is aware that it may not be able to participate in the public procurement process as a bidder due to conflict of interests. If the Consultant intends to participate in the public procurement process, the Consultant is obliged to inform the Buyer thereof in advance of any such participation.

4. The Consultant's obligations

4.1 Quality

The Services shall in content and function fulfil all requirements in the Agreement. If the Scope of Work does not stipulate a specific standard of performance, the Consultant shall apply best industry practice relevant to the Services.

The Services shall furthermore be performed by qualified and trained personnel.

The Services shall furthermore be in compliance with all applicable regulations and standards, including those related to environmental and work safety matters, at the time of delivery.

4.2 Performance of the Services

The Consultant shall cooperate with a positive, professional and responsible attitude and make the required efforts in order to achieve the best possible result. The Consultant must exercise the necessary flexibility that is considered reasonable and customary for the performance of the specific Services.

The Consultant has the proactive duty to take the necessary initiatives when performing the specific Services. The Buyer shall always be entitled to monitor and give instructions regarding all matters related to the Consultant's performance of the Services.

The Consultant must on a daily basis store and keep appropriate backup of all documents prepared by the Consultant in connection with the Agreement.

4.3 Time of performance

The Consultant shall perform the Services,

- 1) at the time or,
- 2) within the timeframe or,
- 3) in accordance with the interval(s)/time schedule as specified in the Scope of Work.

If no specific time, timeframe or interval(s)/time schedule is/are specified in the Scope of Work, the Services shall be performed on the date(s) instructed by the Buyer following the commencement of the Agreement, provided that the Buyer allows the Consultant a reasonable notice.

4.4 Duty to Notify the Buyer

If the Consultant during the performance of the Services becomes aware that the Services (as defined in the Scope of Work) no longer serve the intended purpose, or that certain adjustments of the Services would be beneficial in order to fulfil the intended purpose, the Consultant shall without delay notify the Buyer.

4.5 Warranty

The Consultant represents and warrants that any Service is performed without any Defect and in

accordance with the Agreement, including all applicable industry standards and good workmanship.

The Consultant represents and warrants that qualified and appropriate resources shall at all times be available so as not to impede the performance of the Services by normal absence (holiday, seminars, illness, etc.) and personnel substitution.

The Consultant represents and warrants that any personnel performing Services for the Buyer shall at all times be duly qualified and in no event be subject to conflict of interest.

The Consultant represents and warrants that before signing the Agreement the Buyer has been provided with information regarding any cyber-attack the Consultant has been exposed to in the previous 2 (two) years.

The Consultant represents and warrants that in the event the Consultant is exposed to cyber-attack after signing the Agreement the consultant shall provide information hereon to the Buyer within 5 (five) Days from the occurrence of the attack/the Consultants awareness of the attack.

4.6 Compliance with applicable law

During the performance of the obligations under the Agreement, the Consultant shall comply with all applicable laws governing the execution of the Consultant's business no matter where this business is carried out, including regulation of human rights, anti-corruption, environment and personal data.

Non-compliance shall be deemed to exist i.a. if the Services or any work in the performance of the Agreement do not meet the requirements set out in this clause 4.6 and/or the Consultant fails to take appropriate remedial steps in this connection and/or the Consultant fails to deliver the documentation required in due time.

4.6.1 Corporate Social Responsibility (CSR)

In the performance of the Agreement the Consultant shall respect CSR by observing the principles of the UN Global Compact initiative and the provisions of ILO conventions Nos. 1, 26, 29, 30, 87, 98, 105, 131, 135, 138, 155 and 182. The Consultant may i.a. not make use of forced and child labour in contravention of these conventions.

Furthermore, the Consultant shall work against corruption and any other illegitimate influence in all its forms.

With respect to these obligations the Consultant is responsible for acts or defaults of any subcontractors, who contribute to the performance of the Agreement, as if they were the acts or defaults of the Consultant.

If the Consultant becomes aware of non-compliance in regard to the CSR requirements, or if proceedings are brought against the Consultant for such violation related to the CSR requirements, the Consultant must immediately, on its own initiative, inform the Buyer.

The Buyer is at any time entitled to request relevant documentation of compliance with the CSR requirements. However, as a general rule, the Buyer will not request documentation that the Consultant complies with the CSR requirements in the performance of the Agreement unless prompted by special circumstances, such as a suspicion based on actual observations and/or indications.

Relevant documentation shall as a minimum include a written statement and documentation of the production processes and / or methods used in manufacturing or delivering the Deliverables and of the materials used in the Deliverables.

The Consultant shall further state whether its own actions, including its choice of subcontractors or components, may have an impact on the compliance with the CSR requirements.

The written statement shall also describe any specific actions or measures taken by the Consultant to fulfil the CSR requirements and to reduce the risk of non-compliance.

The Consultant shall provide such documentation within 14 (fourteen) Days. In case of subcontractors the same relevant documentation must be submitted within reasonable time, however no later than 42 (forty-two) Days. In special circumstances the time limit can be extended by DALO upon a written and signed request from the Consultant stating the reasons.

On the basis of the written statement and documentation, etc., and taking all relevant circumstances into consideration, DALO will make an assessment of the individual incident.

4.6.2 ILO Convention No. 94 - Labour Clause

For work performed in Denmark in the performance of the Agreement the Consultant shall ensure that workers employed by the Consultant and any subcontractors who contribute to the performance of the Agreement are secured pay, including special allowances, hours of work and other working conditions which are no less favourable than those established for work of the same character under a collective agreement entered into by the most representative organizations of workers and employers in Denmark in the trade or industry concerned being in force throughout the territory of Denmark.

For work performed outside of Denmark in the performance of the Agreement the Consultant shall

ensure that workers employed by the Consultant and any Subcontractors who contribute to the performance of the Agreement are secured pay, including special allowances, hours of work and other working conditions which are no less favourable than those established in accordance with applicable national regulations and legislation including international obligations for work of the same character performed in that country.

The Consultant and any subcontractors shall ensure that the workers are informed of the provisions of this Labour Clause.

The Buyer is at any time entitled to request relevant documentation of compliance with the conditions of pay and work for the workers as stipulated in this Labour Clause.

The Buyer may thus require that the Consultant, after written notice to that effect, within 14 (fourteen) Days provides relevant documentation, such as pay-slips, time sheets, payroll accounts and employment contracts establishing the basis for the conditions of work and calculation the payments.

In case of subcontractors the same relevant documentation must be provided within reasonable time, however no later than 42 (forty-two) Days. In special circumstances the time limit can be extended by the Buyer upon a written and signed request from the Consultant stating the reason.

If the Consultant does not provide the requested documentation within the stipulated time limits the Buyer is entitled to withhold amounts from its payments to the Consultant until the Consultant has provided the required documentation.

The Consultant shall in all cases observe the applicable rules and legislation on personal data protection (currently the Act on Processing of Personal Data (in Danish: databeskyttelsesloven) and Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data). In this respect the Consultant is entitled to redact or anonymize any personal information as defined in Article 4, paragraph 1, and Article 9 in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, such as information concerning name, pay, e-mail address, racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sexual orientation, from the supplied information to the extent it is still possible for DALO to assess the Consultant's compliance with this labour clause. If it is necessary to submit non-anonymized documentation in order for DALO to assess the Consultant's compliance with this labour clause, the Consultant must ensure that the necessary legal basis

for processing has been ensured in due time for the submission of the documentation within the time limit set out above, including the possible consent from the individual worker, cf. applicable rules and legislation on personal data protection.

If the Consultant fails to comply with its obligations pursuant to this Labour Clause, and if such non-compliance results in a legitimate claim for additional pay to the workers, the Buyer is entitled to withhold amount covering such additional payments from its payments to the Consultant (the Price) in order to ensure that this Labour Clause and the labour conditions are met.

4.6.3 Personal Data

If the Consultant's performance of the Services under this Agreement involves processing of personal data, the Consultant shall ensure compliance with the personal data regulation in force at any time, currently Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and Act No. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Data Protection Act; in Danish: Databeskyttelsesloven).

If the Consultant submits personal data to the Buyer, the Consultant must have signed Declaration concerning notification of processing of personal data.

If the Services performed by the Consultant entails processing of personal data on behalf of the Buyer, the parties shall enter into a Data Processing Agreement. The Data Processing Agreement states the obligations of the Consultant as a data controller. The Consultant must not begin the processing of personal data before the Data Processing Agreement has been entered into.

4.7 Services Performed at the facility of the Danish Defence

When Services are performed at properties or facilities that belong to any division of the Danish Ministry of Defence or any other locations designated by the Buyer, as the case may be, the Consultant shall observe any instructions issued by the person in charge at the facility.

It is the responsibility of the Consultant in due time to apply for any permissions or security clearances that may be needed in order to access facilities.

4.8 Confidentiality and security classification

The Consultant shall treat as commercially confidential all information received in connection with this Agreement and is not entitled to publish or in any other way disseminate the information received to the public

or any third parties with the exception of information submitted to subcontractors for the sole purpose of carrying out this Agreement.

Furthermore, the Consultant shall treat classified information in accordance with the applicable rules and regulations.

"Classified information" means all forms of classified information, equipment, documentation, documents, material, objects, files, audio files, or other, whether in physical form or stored on a medium.

Access to and treatment of classified information shall be governed by the version in force at any time of the Danish Defence Security Provisions, Defence Command Provisions 358-1, also available at the website of the Danish Defence Intelligence Service, www.fe-ddis.dk, and the provisions set out in the Security Circular (Circular no. 10338/2014 on security protection of information of common interest to NATO or EU member states, other classified information as well as information of security protective interest in general) (available at www.retsinformation.dk).

If the work is performed in another country than Denmark, the Consultant and any subcontractors are required to comply with NATO security provisions as implemented by the National Security Authority of the country in which the work is performed.

If it is necessary for the Consultant to disclose classified information to its subcontractors, the Consultant shall require the subcontractors to comply with the conditions in this clause 4.8.

The Consultant shall comply with all instructions relating to security obligations, in particular those relating to supervision of personnel, security procedures, safety of material and actual or presumed sabotage.

Failure by the Consultant or any subcontractors to comply with the security provisions referred to in this clause shall be deemed to be a material breach of the Agreement, cf. clause 9.1.

In addition, the Consultant may be liable to criminal proceedings.

4.9 Insurance

The Consultant's performance of Services shall be adequately covered by an appropriate insurance taking into account the Consultant's potential liabilities under the Agreement.

The Consultant shall on the Buyer's request provide documentation that the insurance requirement has been complied with.

4.10 The Consultant's organization and Key Personnel

The Consultant shall maintain the organisation, the know-how embedded therein, and any other facilities and resources, including qualified Key Personnel, required to perform the Agreement.

The Consultant shall always ensure that qualified personnel are available for the performance of the Services.

4.11 Replacement of the Consultant's personnel

Unless it is specifically requested in the Scope of Work that the Services are performed by certain Key Personnel, the Consultant shall be entitled to replace personnel in the Consultant's organization provided that qualified personnel are available for the performance of the Services.

The replacement of Key Personnel specifically requested in the Scope of Work shall not take place without prior written approval from the Buyer. The replacement of Key Personnel not specifically requested in the Scope of Work shall not take place without prior written notice to the Buyer.

If the Consultant deems it necessary to replace Key Personnel, it shall not in any event affect the quality of the Services or delay the performance of Services.

The Consultant is obligated to replace Key Personnel in case of long-term absence, e.g. due to illness or other reasons.

Any replacement shall in no event entail additional cost to the Buyer. Any cost related to a replacement of personnel is solely the Consultant's responsibility. The Consultant is obligated to ensure, that any new Key Person has the same level of qualifications, experience and knowledge as the Key Person replaced.

If the replaced Key Person is currently performing a Service in accordance with the Scope of Work, it is the Consultant's responsibility that the new Key Person obtains the same level of knowledge regarding the performance of the current Service as the replaced Key Person without cost to the Buyer.

With reasonable notice, the Buyer shall be entitled to require the Consultant to replace a Key Person (or other person) performing a specific Service.

5. Right to demand changes

The Buyer may demand that changes be made in the nature, extent or time of performance/delivery of the Services, when such changes are naturally linked to the Services described in the Scope of Work.

Both the Buyer and the Consultant may demand that changes are made to the Services necessitated by

requirements in law or public regulation that was unforeseeable at the time of the Consultant's acceptance of the Scope of Work.

Demand for changes shall be forwarded in writing in reasonable time before the changes are to take effect. Changes can only be made to the extent permitted by the rules on public tenders and procurement legislation in force at the time of the change.

If the changes lead to an increase or a decrease in the Consultant's cost, the payment to the Consultant, cf. clause 6.1, is adjusted accordingly.

6. Prices and Payment

6.1 Prices

All Prices are quoted exclusive of VAT, but inclusive of all other taxes, duties and government charges imposed or levied applicable at the time of the Consultant's acceptance of the Scope of Work.

6.2 Payment

If the Price is quoted in the Scope of Work as a fixed Price, this Price shall cover all Services to be performed by the Consultant, as specified in the Scope of Work.

If the Price of the Services is to be settled on the basis of time spent, the Consultant shall be entitled to the Prices per hour stated in the Scope of Work.

The information provided in the Scope of Work regarding the expected number of hours to be spent by the Consultant for the performance of the Service shall be binding on the Consultant, unless the Service turns out to be more extensive than expected by the Consultant and this is due to circumstances which the Consultant could not or should not have taken into account at the time of signing the Scope of Work.

If, due to circumstances which the Consultant could not or should not have taken into account at the time of signing the Scope of Work, the Consultant is unable to deliver the Service within the number of hours or within the time limit stated, the Consultant shall without undue delay give notice thereof to the Buyer once it is established that the Service cannot be performed as set out in the Scope of Work. Furthermore, the Consultant shall submit to the Buyer an updated Scope of Work specifying when and how the Services could be completed as soon as possible in accordance with the requirements in the original Scope of Work.

If the Buyer has not approved an updated Scope of Work in writing, the Consultant shall in no event be entitled to payment for hours spent beyond the number stated in the original Scope of Work, nor shall the Consultant be entitled to an extension of the time limit for delivery.

If the Consultant submits notification to the Buyer that the Service cannot be performed within the stated

number of hours or within the time limit stated, the Buyer shall be entitled to inform the Consultant that the Service is to be terminated or reduced.

In this case, the Consultant shall only be entitled to payment for the Services that have been performed but shall not be entitled to damages or compensation for the part of the Service which shall not be delivered. The Buyer shall be entitled to receive any Deliverables (completed or not completed) for which the Consultant has received payment.

6.3 Payment conditions

The Buyer shall pay all invoices no later than 30 (thirty) Days after the Consultant has electronically forwarded the invoice, provided that it has been accepted and contains all relevant information. Any cash discount will be calculated on the day of payment.

Payment from the Buyer in accordance with the provisions of the Agreement shall not in any way constitute approval by the Buyer of the quality or timely receipt of the Services or in any other way prevent the Buyer from using the provisions under the Agreement.

6.4 Payment for cost and travel

The Service is to be performed mainly at the premises stated in the Scope of Work. If the Consultant upon the Buyer's request shall perform a specific Service at a location more than 70 (seventy) kilometres from the premises stated in the Scope of Work, the Consultant shall be entitled to reimbursement for costs of travel, food, and accommodation in addition to the Prices stated in the Scope of Work. Costs of travel shall be calculated in accordance with the Tax Assessment Consolidated Act No. 806 of 8/8/2019, as amended, (in Danish: "Ligningsloven") section 9 (4) and 9A, with the exception, that the Consultant shall at all times only be compensated the fixed rate for driving above 20.000 km, cf. § 4, no. 2 of the most recent Danish executive order on the Danish Tax Assessment Council's rates concerning the deduction for transport between home and workplace and payment of the tax-free allowance for commercial transport, as amended (in Danish: "Bekendtgørelse om Skatterådets satser vedrørende fradrag for befording mellem hjem og arbejdsplads og udbetaling af skattefri godtgørelse for erhvervsmæssig befording").

The Consultant shall in this event be entitled to payment for the travel time from departure from the premises stated in Scope of Work and until arrival at the location of the performance of the Service (and, in the same manner for the return journey), in addition to payment for performance of the Service and in addition to payment of costs of travel, food, and accommodation as stated above. Travel shall be made in a cost and time efficient manner.

Payment of travel time shall be 50 (fifty) % of the hourly rate stated in the Scope of Work for the actual travel time spent on the journey.

Documentation for cost of travel etc. must be submitted by e-mail, preferably in PDF-format (or equivalent).

The Consultant shall only be entitled to reimbursement costs under this clause, if the relevant costs have been incurred to the Consultant with the prior written approval from the Buyer.

6.5 Invoices

6.5.1 Consultant with a Danish CVR-number

Consultants with a Danish CVR-number shall submit invoices in accordance with the Danish Public Payments Consolidated Act No. 798 dated 28 June 2007, as amended, (lovbk. Nr. 798 af 28. juni 2007 om offentlige betalinger, som ændret) concerning electronic invoicing to:

EAN nr. 5798000201767
Forsvarsministeriets Regnskabsstyrelse
(Danish Defence Accounting Agency)
Arsenalvej 55 C
9800 Hjørring
Denmark

The invoice shall be submitted in OIOUBL format or in PEPPOL format with reference to Purchase Order number and Purchase Order date, and as a minimum with information about the Buyer's contact person (name and staff number), and information about the Consultant's contact person, the Consultant's bank address, SWIFT code and account number or IBAN number. If settlement on the basis of time spent, specification of total number of hours spent shall be stated. Further information is available at:

<http://oioubl.info/classes/da/index.html>
<https://peppol.eu/downloads/post-award/>

The Danish Defence Accounting Agency will not accept invoices submitted from a scanning bureau. (virk.dk can however be used).

6.5.2 Consultant without a Danish CVR-number

Consultants without a Danish CVR-number shall submit invoices in PEPPOL format or in PDF format with reference to Purchase Order number and Purchase Order date, and as a minimum with information about the Buyer's contact person (name and staff number), and information about the Consultant's contact person, the Consultant's bank address, SWIFT code and account number or IBAN number. If settlement on the basis of time spent, specification of total number of hours spent shall be stated.

Invoices sent in PDF format shall be submitted to both FRS-KTP-KRE-INVOICE@MIL.DK and FMI-KTP-SC-IMPORT@MIL.DK. Invoices sent in PEPPOL format shall be submitted to FMI-KTP-SC-IMPORT@MIL.DK.

If possible, Consultants without a Danish CVR-number can submit the invoice electronically in OIOUBL format.

6.5.3 Generally

Unless otherwise agreed in the Scope of Work (e.g. milestone payments), the Consultant is entitled to submit an invoice for performed Services on a monthly basis.

If an electronic invoice does not comply with the requirements above, the invoice will be rejected and returned as incorrect and no payment will take place. Likewise, no interest will be paid for the period until a correct electronic invoice has been submitted and the payment deadline has passed.

Payment from the Buyer in accordance with the stipulations of the Agreement shall not in any way constitute acceptance by the Buyer of the Service's conformity with the Agreement, including timely receipt.

7. Defects

7.1 Generally

The Buyer shall notify the Consultant of any Defect in the Services within reasonable time after the Buyer became aware of the Defect.

Reasonable time shall never be less than 14 Days.

The Consultant shall be entitled to remedy the Defect (if possible) by redelivery of the specific Service or the relevant parts thereof.

If redelivery cannot take place without undue delay or does not lead to the Services being free of Defects, the Buyer, without prejudice to any other right and remedy in the Agreement, shall be entitled to claim a price reduction, whereby the Buyer shall only pay the price for the part of the Service that is free of Defects.

7.2 Failure of the Consultant to Remedy Defects

If the Consultant fails to remedy the Defect, the Buyer may terminate the Agreement in accordance with clause 9.1.

8. Delay

8.1 The Consultant's Delay and liquidated damages

The Consultant shall immediately notify the Buyer of any Delay or expected Delay, as well as take any measures available to reduce the Delay.

If the Consultant is in Delay, the Consultant shall pay liquidated damages to the Buyer, if this has been stated

in the Scope of Work. The liquidated damages are to be calculated as 1 % (one per cent) of the Price of the delayed Services in question per Day, however not less than DKK 500 per Day.

If the Delay results in the inapplicability of already performed Services, liquidated damages shall be calculated on the basis of the value of all affected Services performed.

The total liquidated damages cannot exceed 8 % (eight per cent) of the total Price stated in the "Total fee quote" in clause 4 in the Scope of Work. Irrespective of whether or not this maximum has been reached, the Buyer may terminate the Agreement if the Delay is material, cf. clause 9.1, and - if the conditions are fulfilled - may claim damages, cf. clause 10.1.

If part of the Agreement has been carried out, the Buyer may choose to partly terminate the Agreement with regard to the Services which are delayed.

The liquidated damages shall be paid upon request from the Buyer. The Buyer is entitled to set off any liquidated damages against any of the Consultant's claim(s) for payment.

The Buyer shall not be entitled to any damages for Delay in addition to liquidated damages for Delay.

8.2 The Buyer's Delay

In case of delayed payment from the Buyer to the Consultant, the Consultant shall be entitled to claim interest at the default interest rate applicable to delayed payments (in Danish: "Morarente") fixed in section 5 (1) in the Danish Interest Act (in Danish "Renteloven").

9. Termination

9.1 The Consultant's non-performance

The Buyer may terminate the Agreement in full or partly on the conditions stipulated in this clause if the Consultant is in material breach of the Agreement. This shall apply regardless of any other provision of the Agreement.

Material breach includes, but is not limited to, the following situations:

1. The Consultant's anticipated non-performance of its obligations, including but not limited to bankruptcy, commencement of restructuring proceedings etc., unless the bankruptcy estate/reconstructor, without undue delay after receipt of an inquiry from the Buyer, announces that it wants to become a party to the Agreement.
2. The Consultant's non-material breach of the Agreement that in combination with one or more other non-material breaches constitutes a material breach of the Agreement.

3. Repeated and/or serious non-compliance with the requirements related to applicable law, CSR requirements and/or Labour Clause, cf. clause 4.6.
4. Failure to obey instructions regarding access to or conduct at facilities/locations of the Danish Ministry of Defence or any other facilities/locations designated by the Buyer, cf. clause 4.7.
5. Violation of any confidentiality and security classification obligations, cf. clause 4.8.
6. Material Defects, e.g. if the nature of the Defect(s) deprives the Buyer of the intended purpose of the Services or the Defects are substantial in number.
7. Material Delay, including the Consultant's notification of an anticipated material Delay, cf. clause 8.1.
8. If the maximum amount of liquidated damages has been reached, cf. clause 8.1.

If the Buyer deems that a material breach has occurred, the Buyer shall notify the Consultant in writing.

If the Consultant has not remedied the breach within reasonable time (which under no circumstances shall be more than 14 (fourteen) Days), the Buyer is entitled to terminate the Agreement and make claims for any loss or damages, cf. clause 10.

In case of termination, the Consultant shall only be entitled to payment for the Services that have been performed without any Defects but shall not be entitled to damages or compensation for the part of the Service which shall not be delivered. The Buyer shall be entitled to receive any Deliverables (completed or not completed) connected to the Services for which the Consultant has received payment.

However, with regard to performed Services that become unusable to the Buyer as a consequence of the termination, the Consultant shall refund all payments made by the Buyer without deduction, irrespective of whether the performed Services are delivered without any Defects.

9.2 The Buyer's non-performance

If payment from the Buyer is delayed, and a period of 3 (three) months have lapsed after the Consultant's written notice of the Delay, the Consultant may terminate the Agreement and claim interest in accordance with clause 8.2. The Consultant shall forthwith give the Buyer a written notice, if the Consultant decides to terminate the Agreement.

9.3 Termination due to violation of the public procurement rules

9.3.1 In case of annulment or declaration as ineffective

The Buyer shall be entitled to terminate the Agreement for convenience with a written notice of 1 (one) month, if the Buyer's decision to enter into the Agreement is

annulled (in Danish: "annulleret") by the Danish Complaints Board for Public Procurement or the courts.

Furthermore, the Buyer shall be entitled to terminate the Agreement, if the Danish Complaints Board for Public Procurement or the courts declare the Agreement ineffective (in Danish: "uden virkning"). The Buyer shall then be entitled to terminate the Agreement in whole or in part in accordance with the notice given in the decision.

The Consultant's claim for damages in these situations shall be settled in accordance with the principles of tort in Danish law, cf., however, clause 10.2.

Furthermore, the reservation for termination for convenience with a notice as stipulated above shall be taken into account when calculating the Consultant's loss.

If the Consultant knew - or ought to have known - the factual or legal grounds leading to the Danish Complaints Board for Public Procurement or the court's decision declaring the Agreement ineffective, the Consultant is not entitled to damages.

9.3.2 In case of compulsory grounds for exclusion

The Buyer shall be entitled to terminate the Agreement for convenience with a written notice of 1 (one) month, if the Buyer ascertains that the Consultant or any subcontractors at the time of award of the Agreement was subject to a compulsory ground for exclusion as stated in or equivalent to §§ 135 and 136 of the Public Procurement Act or throughout the duration of the Agreement becomes subject to a compulsory ground for exclusion in accordance with or equivalent to § 135, (1) or (2) of the Public Procurement Act, and the Consultant has not within an appropriate time limit set by the Buyer documented the Consultant's reliability satisfactory to the Buyer in accordance with or equivalent to § 138 of the Public Procurement Act.

The Buyer may demand any pending deliveries of Services under the Agreement that has not yet been made shall be suspended during the self-cleaning period. The Consultant is not entitled to any payment for suspended Services or to any damages/compensation for loss in connection with suspension or termination.

9.4 Termination for convenience in accordance with the Scope of Work

Furthermore, the Buyer may terminate the Agreement for any reason if this has been agreed in the Scope of Work.

10. Damages and Liability Cap

10.1 Damages

Without prejudice to any other remedy stated in the Agreement, the Buyer shall be entitled to claim

damages for any loss or damage suffered due to the Consultant's non-performance of its obligations under the Agreement to the extent said loss or damage is not covered by any liquidated damages paid in accordance with clause 8.1.

Damages will be claimed in accordance with the general rules of Danish law.

10.2 Liability Cap

Neither the Consultant nor the Buyer shall be liable for operating losses, consequential losses or other indirect losses.

Each party's total liability for damages shall be limited to the total amount of the total Price stated in the "Total fee quote" in clause 4 in the Scope of Work. This liability cap shall not include liquidated damages paid in accordance with clause 8.1 and shall not apply in case of willful misconduct or gross negligence.

11. Miscellaneous

11.1 The Buyer's rights of proprietary

All items delivered to the Consultant by the Buyer in relation to the Services provided under this Agreement as well as all objects, items, intellectual property rights, and other intangible assets produced for the Buyer by the Consultant in connection with the performance of this Agreement, shall be and remain the Buyer's property and shall at all times be marked as such.

When in the custody of the Consultant, the Consultant shall insure such objects and assets without any expense for the Buyer, and the objects and assets shall not be lent, sold, pledged, copied or in any other way imitated or assigned to a third party without the Buyer's prior written consent.

The Buyer can at any time request that the Consultant without undue delay and at the expense of the Consultant returns any such objects and assets, and/or deletes any copies the Consultant and its subcontractors might have.

11.2 Intellectual Property Rights

The Consultant shall retain all rights to the Consultant's intellectual capital, including but not limited to the Consultant's methodologies, ideas, knowhow, techniques, models, tools, skills, generic industry information, knowledge and experience.

In order to allow the Buyer the full use of the Deliverables, the Consultant shall - as an integral part of the Deliverables - grant all rights without any restrictions, including restrictions derived from patent law, design law, copyright law or trademark law.

The Consultant represents and warrants that the performance of the Services, and the Buyer's use of any Deliverables, shall not violate any third party rights of any kind, and that no third party has the right to

claim license fees, royalties or other payments from the Buyer.

If a third party should bring an action or submit a claim against the Buyer as a result of the Services performed in accordance with the Agreement, the Buyer shall notify the Consultant without undue delay after receiving a notice, claim or similar from such third party and shall allow the Consultant to take over any proceedings, including commercial negotiations, following the receipt of such notice, claim or similar. The Consultant shall keep the Buyer informed of the proceedings.

Upon receipt of such notice from the Buyer, the Consultant shall within 1 (one) week inform the Buyer if the Consultant wishes to take over any proceedings, including commercial negotiations, always provided that, in case of legal proceedings, the Consultant uses a reputable and recognized attorney or law-firm to handle the proceedings. The Buyer shall free of charge render reasonable assistance to the Consultant. The Consultant shall pay all other costs, including legal assistance and any expert assistance necessary.

Should the Consultant not take over the proceedings, including commercial negotiations, within 1 (one) week, the Buyer shall be entitled to carry out the legal proceedings or related commercial negotiations. In this case, the Consultant must assist the Buyer, free of charge, to the extent necessary in such proceedings.

The Buyer shall be held harmless for the cost of any legal services necessary and fair to defend the Buyer's position, any court fees, and fees of independent experts retained by the Buyer or appointed by the court, etc.

If a claim from a third party is successful, i.e. if such third party is able to establish that the third party's rights in question have been infringed, the Consultant shall secure the Buyer's right to use of the Services, or end the infringement by changing or redelivering the Services as necessary, while still complying with the contractual requirements, and indemnify the Buyer for any loss in this connection.

11.3 Assignment of the Agreement and use of subcontractors

The Consultant shall not be entitled to assign its rights and/or obligations under the Agreement to any third party, including but not limited to other companies within the same company group, without prior written approval from the Buyer. Such approval shall not be unreasonably withheld.

The Consultant shall be entitled to engage subcontractors for the performance of the Agreement. However, the Consultant shall ensure that any subcontractors undertake to comply with obligations equivalent to those undertaken by the Consultant

towards the Buyer in relation to corporate social responsibility, confidentiality and security.

Subcontracting involving access for the subcontractor to classified information is subject to the Buyer's written approval. Approval shall be obtained before beginning negotiations with a view to subcontracting any part of the work which would involve classified information. Subcontractors located and incorporated in countries that are not members of NATO or EU and that have not signed a security agreement with Denmark may not be approved on grounds of confidentiality, security and other national security interests.

Unless otherwise stipulated the Consultant's use of subcontractors shall not limit the Consultant's liability in any event.

The Consultant must inform the Buyer of the name, contact details and legal representatives of any subcontractors prior to the performance of Services, in so far as known at this point in time.

11.4 Force Majeure

If a force majeure event occurs, the Consultant's and the Buyer's obligations towards each other shall be suspended for the time being, provided that the force majeure event is notified to the other party with supporting arguments and particulars describing the nature and extent of the force majeure event as soon as the party in question has become aware of a force majeure event.

To this effect, force majeure shall be defined as an event

- (1) outside the control of the parties, and of a certain qualified nature (war, hostilities, riots, nuclear or natural disasters, etc.),
- (2) unforeseeable or not reasonably foreseeable at the time of signing the Agreement, and furthermore,
- (3) ought not to be overcome, neither by reasonable investments of work nor money.

It is specifically agreed that any export restriction shall not be regarded as a force majeure event, unless the Consultant documents that appropriate measures have been timely taken to obtain and maintain all relevant export and licenses and other clearances necessary for the delivery, and upon the occurrence of such force majeure event, without undue delay, investigate whether substitute Services can be lawfully obtained from other sources. In case such delivery of substitute Services is possible, the Consultant shall deliver such without undue delay.

If the force majeure event continues beyond 120 (one hundred and twenty) Days – not necessarily consecutive, but within the same 180 (one hundred and eighty) Days – each party shall be entitled to terminate the Agreement.

In such instance, the Consultant shall be entitled to receive payment for Services delivered until the force majeure event occurred, and the Buyer shall only be liable to pay an amount equivalent to the Services performed.

Neither party shall make any claim against the other party based on a force majeure event.

11.5 Non-waiver and amendments

Any consent to or waiver of any provision or breach shall not constitute consent to or a waiver of such provision or breach in the future. Any specific consent or waiver shall be in writing and shall only affect the relevant breach.

No delay or failure by the Buyer in exercising any of its rights under the Agreement shall operate as a waiver of that right, nor for the future.

Additions or amendments to the Agreement shall only be valid if agreed upon in writing by both parties.

11.6 Law and venue

Any dispute arising out of or in connection with the Agreement shall be governed by Danish law, substantive as well as procedural, however excluding choice-of-law rules and the United Nations Convention on the International Sale of Goods (CISG).

Any dispute as mentioned above, including any disputes regarding the existence, validity or termination of the Agreement, shall be settled by the Danish ordinary courts of justice.



DANISH MINISTRY OF DEFENCE
ACQUISITION AND LOGISTICS ORGANISATION