

## **DALO**

### **Terms and Conditions for Trade**

#### **- with liquidated damages**

#### **1. Introduction**

These Conditions regulate the delivery from the Supplier to the Buyer of the Deliverables described in the Purchase Order and any annexes.

Any terms, requirements, etc. from the Supplier are not valid between the parties unless the Buyer has explicitly derogated from these Conditions by way of a written amendment.

These Conditions, including any amendments thereto, and the Purchase Order shall be construed as mutually explanatory. In case of inconsistency between the wording of these Conditions and the wording of the Purchase Order, the Purchase Order shall be given priority.

#### **2. Definitions**

"*Agreement*" means the Purchase Order and these Terms and Conditions collectively.

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

"*Certificate of Conformity*" means a document issued by the Supplier to the Buyer stating that the Deliverables are in conformity with the requirements of the Agreement.

"*Conditions*" means these Terms and Conditions for trade with the Buyer.

"*Day*" means a calendar day.

"*Defect*" means the non-performance of the Deliverables, i.e. when the Deliverables do not conform to the provisions of the Agreement, applicable industry standards and/or good workmanship or do not fulfill the Buyer's needs, where the Supplier is aware of these.

"*Defects Liability Period*" means a period in which the Supplier warrants that the Deliverables conform to all the requirements and provisions of the Agreement.

"*Delay*" means the non-performance of the Supplier with regard to Delivery in accordance with the Delivery Time, or when a substantial part of the Deliverables is not delivered in the agreed quality, and this is not due to force majeure or to circumstances for which the Buyer is responsible.

"*Deliverables*" means all products and services that the Supplier shall deliver according to the Purchase Order or the requirement specification (if any) and these Conditions, including ancillary products and services, e.g. documentation etc.

"*Delivery*" means the physical handing over of the Deliverables from the Supplier to the Buyer. If a Purchase Order consists of two or more Partial Deliveries, then Delivery shall mean the Day on which all Partial Deliveries have been completed.

"*Delivery Time*" means the time for Delivery stated in the Purchase Order.

"*Partial Delivery*" means a delivery of only a part of the Deliverables.

"*Price*" means the total price for the Deliverables (including all related costs) in accordance with the Agreement and as specified in the Purchase Order.

"*Purchase Order*" means the order which the Buyer has submitted to the Supplier describing the Deliverables and the specific terms of the delivery not covered by these Conditions.

"*Supplier*" means the supplier of the Deliverables.

"*Warranty*" means a guarantee from the Supplier, whereby the Supplier undertakes to repair or replace the Deliverables, when the Deliverables do not conform to all the requirements and provisions of the Agreement. The meaning of the word "Warranty" shall be fully interchangeable with the word "guarantee".

#### **3. The Supplier's acceptance of the Agreement**

The Supplier shall accept the terms of the Purchase Order and these Conditions in their entirety, either by:

- (1) written confirmation of the Purchase Order within 14 (fourteen) Days from the receipt, or
- (2) signing the Purchase Order.

If the Supplier has made any changes to the Purchase Order, these are not agreed unless a new Purchase Order is issued by the Buyer or an amendment is made to the original Purchase Order by the Buyer.

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

## **4. The Supplier's obligations**

### **4.1 Generally**

The Supplier shall deliver all the Deliverables specified in the Agreement on the Delivery Time.

Partial Deliveries shall not be made unless explicitly approved by the Buyer.

The Deliverables shall fulfil all requirements in the Purchase Order including annexes, including but not limited to production method, materials, form, function, etc.

If the Purchase Order including annexes does not stipulate a specific standard of design, development, or production, the Supplier shall apply best industry practice relevant to the Deliverables.

The Deliverables shall furthermore be in compliance with all applicable regulations and standards, including those related to environmental and work safety matters.

### **4.2 Documentation and CoC**

If requested by the Buyer, the Supplier shall document that all Deliverables comply in full with all requirements in applicable law and regulations.

The Supplier shall issue a Certificate of Conformity (CoC), unless otherwise stated in the Purchase Order.

The CoC shall include - but is not limited to - tests performed, including test results and applicable tolerances, documentation for inspections performed by the Supplier during production, drawings, specifications, etc. that proves the quality of the Deliverables.

If requested by the Buyer, the Deliverables shall be accompanied by the requisite product certificates, instructions for assembly, operating, safety and maintenance and any other information ensuring that the Buyer will be able to export, import, and use and maintain the Deliverables while complying with applicable law, including EU law applicable in Denmark.

All such documentation shall be submitted to the Buyer to [FMI-KTP-TECHDOC@MIL.DK](mailto:FMI-KTP-TECHDOC@MIL.DK) in accordance with the International Specification for Technical Publications S1000D (version 2.2 or later) or in another electronic version, for instance PDF format.

Format of drawings shall be in AutoCAD (.dwg), pictures in JPEG, videos in MPEG and documents in Word-format or PDF. AutoCAD files shall include information about pen setup (colour and line width) and only standard AutoCAD and Windows True Type fonts must be used.

The language of the documentation shall be English (Simplified Technical English is preferred) unless Danish or otherwise is agreed upon by the Parties.

The Buyer shall be entitled to copy instructions, manuals and certificates etc. for internal use. Copying can be done by a third party.

### **4.3 Inspections**

The Buyer reserves the right to inspect and monitor the preparation and production of the Deliverables which may include inspection of documentation from the Supplier, any subcontractors and/or third parties, wherever work related to the Agreement is performed.

The Buyer's use of its rights under this clause does not constitute approval of the Deliverables in any way and does not bar the Buyer from exercising its rights under the Agreement in case of Defects or Delays.

### **4.4 Spare parts**

If the Deliverables require spare parts from time to time, the Supplier guarantees that such spare parts can be purchased - although not necessarily from the Supplier - during the expected lifetime of the Deliverables.

### **4.5 Warranty. Defects Liability Period.**

The Warranty shall be valid in the Defects Liability Period.

The Defects Liability Period shall cover a period of 12 (twelve) months and commences after the Delivery of each Deliverable.

In the Defects Liability Period, the Supplier represents and warrants that the Deliverables conform to all requirements in the Agreement, including all applicable industry standards and good workmanship.

If the Supplier has offered a longer Defects Liability Period (warranty) on specific items, this shall apply. However, for the Defects Liability Period the Supplier's warranty must as a minimum comply with the requirements in the Agreement.

The Defects Liability Period shall be extended in case of Delivery of defective Deliverables, so that a new Defects Liability Period begins for the part of the Deliverables in question when they have been delivered without Defects.

In the Defects Liability Period the Supplier must remedy all Defects without cost to the Buyer.

Any malfunction of the Deliverables occurring during the Defects Liability Period shall automatically be considered a Defect, unless the Supplier can prove that the malfunction is a result of use in violation with

normal procedure, documentation or instructions, normal wear and tear, or risks that lie with the Buyer.

#### **4.6 Compliance with applicable law**

During the performance of the obligations under the Agreement, the Supplier shall comply with all applicable laws governing the execution of the Supplier'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 Deliverables or any work in the performance of the Agreement do not meet the requirements set out in this clause 4.6 and/or the Supplier fails to take appropriate remedial steps in this connection and/or the Supplier fails to deliver the documentation required in due time.

##### 4.6.1 Corporate Social Responsibility (CSR)

In the performance of the Agreement the Supplier 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 Supplier may i.a. not make use of forced and child labour in contravention of these conventions.

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

With respect to these obligations the Supplier 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 Supplier.

If the Supplier becomes aware of non-compliance in regard to the CSR requirements, or if proceedings are brought against the Supplier for such violation related to the CSR requirements, the Supplier 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 Supplier 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 Supplier 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 Supplier to fulfil the CSR requirements and to reduce the risk of non-compliance.

The Supplier 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 Supplier 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

This Labour Clause does not apply to agreements concerning the purchase of Deliverables that are part of the Supplier's ordinary production or stocks, *off-the-shelf goods*, unless the product is manufactured in a custom-made production for the Buyer.

For work performed in Denmark in the performance of the Agreement the Supplier shall ensure that workers employed by the Supplier 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 Supplier shall ensure that workers employed by the Supplier 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 Supplier 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 Supplier, 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 Supplier stating the reason.

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

The Supplier 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 Supplier 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 Supplier's compliance with this labour clause. If it is necessary to submit non-anonymized documentation in order for DALO to assess the Supplier's compliance with this labour clause, the Supplier 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 Supplier 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 Supplier (the Price) in order to ensure that this Labour Clause and the labour conditions are met.

#### **4.7 Confidentiality and security classification**

The Supplier 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 sub-contractors for the sole purpose of carrying out this Agreement.

Furthermore, the Supplier 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 Danish Defence Security Provisions, Defence Command Provisions 358-1, also available at the website of the Danish Defence Intelligence Service, [www.fe-ddis.dk](http://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](http://www.retsinformation.dk)).

If the work is performed in another country than Denmark, the Supplier 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 Supplier to disclose classified information to its subcontractors, the Supplier shall require the subcontractors to comply with the conditions in this clause 4.7.

The Supplier 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 Supplier 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 11.1.

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

#### **5. Terms of delivery**

The terms of delivery shall be:

FCA, Supplier's facility, Incoterms® 2010, unless otherwise is agreed in connection with the offer, and the Supplier shall obtain all export and import licenses, approvals and end-user certificates necessary for the Delivery of the Deliverables to the Buyer.

The address of the Supplier's facility is specified in the Purchase Order.

## 6. Packaging and Delivery Note

### 6.1 Packaging

The Supplier is responsible for ensuring that the Deliverables are properly packed, taking into account the mode of transportation and the distance of the transportation.

If the Deliverables contain dangerous articles or other articles that require special handling, information regarding the handling must be submitted with the Deliverables and stated in the delivery note.

If the package contains dangerous goods, the individual items, parcels and packages must be packed using the proper UN approved, certified packaging in accordance with the regulations for the respective mode of transportation (IATA, ICAO, ADR, RID and IMDG).

The Deliverables shall be packed on standard euro pallets (1/1, 1/2 or 1/4), unless the nature of the Deliverables makes this impossible in which case the packaging shall be agreed upon by the Buyer via [FMI-KTP-SC-PACK@MIL.DK](mailto:FMI-KTP-SC-PACK@MIL.DK). Furthermore, the Deliverables shall be packed so that repacking is not necessary. Boxes etc. shall not protrude the ground profile of the pallet. The height of the pallet shall not exceed 120 cm. and the maximum weight allowed is 800 kg. Deliveries of e.g. small packages, one small box etc. (maximum 12 kg.), can however without prior agreement with the Buyer take place without using a pallet.

The following information shall appear on each euro pallet/box/unit in the form of a bar code (GS1-128) and also be repeated under the bar code in alpha-numerical text:

- Purchase Order Number/Agreement Number (AI: 400)
- Nato Stock Number (AI: 7001)
- Supplier Part Number (AI:01/02)
- Batch/LOT Number (if relevant) (AI: 10)
- Serial Number (if relevant) (AI:21)

If used, the Serial Number shall be labelled on each separate unit and be stated in both the invoice and delivery note.

Each bar code shall have a minimum height of 6 mm and lines with a thickness of 3 points.

The euro pallets/boxes/units shall be labelled with the Purchase Order Number/Agreement Number, NATO Stock Number and date of packing.

The label shall have a minimum size of 10x15 cm. and shall be placed on both the short and the long side of the euro pallet.

Each box shall be labelled individually with a bar code. The bar codes shall be placed identically on each box

and shall be visible when the boxes are loaded on the euro pallet.

### 6.2 Delivery Note

All deliveries of Deliverables shall be accompanied by a delivery note containing - as a minimum - the following information:

- (i) Purchase Order number,
- (ii) reference to the position number(s) on the Purchase Order of the products delivered,
- (iii) the material numbers of the products delivered,
- (iv) the quantity of products per position number, and
- (v) the quantity of all products covered by the delivery note.

## 7. Prices

All Prices are quoted exclusive of VAT, but inclusive of all other costs that the Supplier is obligated to pay in accordance with clause 5.

Any discounts shall be specified in the invoice.

In case the Supplier reduces its list prices prior to Delivery, the Price shall be reduced accordingly, and the Supplier shall only invoice the Buyer the reduced Price.

## 8. Payment

### 8.1 Payment conditions

The Buyer shall pay all invoices no later than 30 (thirty) Days after the Supplier 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 Deliverables or in any other way prevent the Buyer from using its rights under the the general rules of Danish law.

### 8.2 Invoices

#### 8.2.1 Suppliers with a Danish CVR-number

After Delivery, Suppliers 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, (lovbkg. nr. 798 af 28. juni 2007 om offentlige betalinger m.v., som ændret) concerning electronic invoicing to:

Forsvarsministeriets Regnskabsstyrelse (Danish Defence Accounting Agency)  
Arsenalvej 55  
9800 Hjørring  
Denmark

The invoice shall be submitted in OIOUBL format or in PEPPOL format with reference to purchase order number, electronic invoicing address (EAN number) and

reference person / staff number to the contact person from the Buyer assigned to the Agreement. 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).

#### 8.2.2 Suppliers without a Danish CVR-number

After Delivery, Suppliers without a Danish CVR-number shall submit invoices in PEPPOL format or in PDF format referring to purchase order number and reference person / staff number to the contact person from the Buyer assigned to the Agreement. Invoices sent in PDF 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, Suppliers without a Danish CVR-number can submit the invoice electronically in OIOUBL format.

#### 8.2.3 Generally

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.

Any other information or enquiries concerning payment, e.g. credit note, reminder etc., shall be submitted by email to FRS-KTP-KRE@mil.dk.

### **9. Defects**

#### **9.1 Generally**

The Supplier is responsible for Defects in the Defects Liability Period.

If the Buyer becomes aware of any Defects, the Supplier shall be notified within reasonable time.

Immediately hereafter, the Supplier shall confirm the receipt of such notice and take necessary action to mitigate the Buyer's loss or the disruption caused by the Defects.

The Supplier shall be entitled to remedy the Defect if this remedy can take place immediately after receipt of the above notification and without costs or undue delay to the Buyer.

If such remedial action cannot be made within the time frame stipulated, or the remedial action fails to remedy the Defect, the Supplier shall deliver new Deliverables in replacement of the defective Deliverables at the Supplier's own cost.

If redelivery cannot take place without undue delay or costs to the Buyer, or does not lead to the Deliverables being free of Defects, the Buyer shall be entitled to claim a price reduction, whereby the Buyer shall only pay such price for the defective Deliverables as is deemed fair and reasonable taking into account the nature and number of the Defects in question.

If the remedying of Defects is conditioned upon the Deliverables being moved or transferred, for instance back to the Supplier's location or the country of origin, all costs in this respect shall be borne exclusively by the Supplier.

In the event the Buyer requests the Supplier to deliver new Deliverables, and action to redeliver is not taken immediately thereafter, the Buyer shall be entitled to purchase similar Deliverables from, or to remedy or to have the Defect remedied with assistance of a third party, in both cases for the Supplier's account.

#### **9.2 Material Defects**

If the Defects are substantial in number, or the nature of the Defect(s) deprive the Buyer of the intended use of the Deliverables, this shall constitute a material breach of the Agreement, entitling the Buyer to remedies as set out in clause 11.

### **10. Delay**

#### **10.1 The Supplier's Delay and liquidated damages**

The Supplier shall immediately notify the Buyer of any Delay or expected Delay and inform the Buyer of the reason of the Delay and state a new Delivery Time.

If the Supplier is in Delay, the Supplier shall pay liquidated damages to the Buyer calculated as 1 % (one per cent) of the Price for each commenced 7 (seven) Day period, however not less than 1.000 (one thousand) DKK per commenced 7 (seven) Days.

If Partial Delivery has taken place the liquidated damages shall be calculated on the basis of the part of the Price that is related to the missing quantity of the Deliverables.

However, if Partial Delivery results in the inapplicability of already delivered Deliverables, liquidated damages shall be calculated on the basis of the value of all affected Deliverables.

The total liquidated damages cannot exceed 8 % (eight per cent) of the Price, however not less than 3.000 (three thousand) DKK for each Delay. Whether or not this maximum has been reached, the Buyer can terminate the Agreement if the Delay is material, cf. clause 11.1. Whether the Delay is material, depends on the Agreement and the specific circumstances. If the maximum liquidated damages has been reached, this shall in all cases constitute a material breach.

If Partial Delivery has taken place the Buyer may terminate the Agreement only with regard to the Deliverables which are in Delay.

However, if Partial Delivery results in the inapplicability of already delivered Partial Deliveries, the Buyer may terminate the Agreement.

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 Supplier's claim(s) for payment.

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

## 10.2 The Buyer's Delay

In the event of delayed payment from the Buyer to the Supplier, the Supplier 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").

## 11. Termination

### 11.1 The Supplier's non-performance

The Buyer may terminate the Agreement in full or partly on the conditions stipulated in this clause if the Supplier is in material breach of its obligations under 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 Supplier'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 announces whether or not it wants to become a party of the Agreement,
- (2) Material Defect(s), cf. clause 9.2,
- (3) Material Delay, including the Supplier's notification of an anticipated material Delay, cf. clause 10.1,
- (4) Repeated and/or serious non-compliance of the requirements related to applicable law and/or CSR requirements and/or Labour Clause, cf. clause 4.6,
- (5) Violation of any confidentiality and security classification obligations, cf. clause 4.7,
- (6) The Supplier's lack of title to the Deliverables.

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

If the Supplier has not remedied the breach within 14 (fourteen) Days, the Buyer can choose to terminate the Agreement and make claims for any loss or damages, cf. clause 12.1.

In case of termination, including termination of only a part of the Agreement, the Buyer shall be entitled to purchase Deliverables similar to those of the Agreement both with regard to quality and quantity from a third party for the Supplier's account.

### 11.2 The Buyer's non-performance

If the payment from the Buyer is delayed, and a period of 3 (three) months have lapsed after Supplier's written notice of the Delay, the Supplier may terminate the Agreement and claim interest in accordance with clause 10.2.

The Supplier shall without undue delay notify the Buyer in writing of the termination.

### 11.3 Termination due to violation of the public procurement rules

#### 11.3.1 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 for convenience 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 Supplier's claim for damages in these situations shall be settled in accordance with the principles of tort in Danish law, cf. however clause 12.2.

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

If the Supplier 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 Supplier is not entitled to damages.

#### 11.3.2 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 Supplier 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 Supplier has not within an appropriate time limit set by

the Buyer documented the Supplier's reliability satisfactory to the Buyer in accordance with or equivalent to § 138 of the Public Procurement Act.

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

## **12. Damages and Liability Cap**

### **12.1 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 the Supplier's non-performance of its obligations under the Agreement, cf. however clause 10.1.

The Buyer's right to claim damages shall be without prejudice to the Buyer's other remedies.

The general rules of Danish law apply to the evaluation of the existence and possible extent of a possible liability.

### **12.2 Liability Cap**

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

The Supplier's liability shall be limited to the Price.

In regards to property damage the liability cap shall only apply to product liability that exceeds the insurance coverage. The liability cap shall neither apply to personal injury nor in case of the Supplier's non-performance of its obligation to take out product liability insurance in accordance with clause 13.4.

This liability cap shall not include liquidated damages paid according to clause 10.1 and shall not apply in case of wilful misconduct or gross negligence. This liability cap shall not include liquidated damages paid according to clause 10.1

## **13. Miscellaneous**

### **13.1 The Buyer's rights of property**

All items delivered by the Buyer as well as models, drawings, tools etc. manufactured at the Buyer's expense shall be and remain the Buyer's property and shall at all times be marked as such.

When in the custody of the Supplier, the Supplier shall insure such objects without any expense for the Buyer, and the objects 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 Supplier without undue delay and at the expense of the Supplier

returns any such objects and assets or/and deletes any copies the Supplier and its subcontractors might have.

### **13.2 Assignment and use of subcontractors**

The Supplier 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.

Unless otherwise stipulated the Supplier remains responsible for the performance of the Agreement, notwithstanding the use of any sub-contractors.

The Supplier shall ensure that subcontractors undertake to comply with obligations equivalent to those undertaken by the Supplier towards the Buyer in relation to corporate social responsibility and confidentiality.

The Supplier shall provide information regarding name, contact information and legal representative on any subcontractors used under this Agreement. The information shall be provided to the Buyer prior to commencement (if known).

### **13.3 Intellectual Property Rights**

The Supplier shall retain all rights to the Supplier's intellectual capital, including but not limited to the Supplier'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 Supplier shall - as an integral part of the Deliverables - grant all rights of use without any restrictions, including restrictions derived from patent law, design law, copyright law or trademark law.

The Supplier represents and warrants that the Deliverables and the Buyer's import and use do not infringe any third party rights of whatever nature, and that no third party has the right to claim license fees, royalties or other payments from the Buyer for the ownership, possession or use of the Deliverables, cf. however any limitations in regards to end-user certificates.

If a third party should bring an action or submit a claim against the Buyer as a result of the Buyer's ownership and / or use of the Deliverables, the Buyer shall notify the Supplier without undue delay after receiving a notice, claim or similar from such third party and shall allow the Supplier to take over any proceedings, including commercial negotiations, following the receipt of such notice, claim or similar. The Supplier shall keep the Buyer informed of the proceedings.



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

Should the Supplier 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 Supplier 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 Supplier shall secure the Buyer's right to use the Deliverables or end the infringement by changing or replacing the Deliverables as necessary, while still complying with the contractual requirements, and indemnify the Buyer for any loss in this connection.

### **13.4 Product liability**

The Supplier shall maintain product liability insurance with coverage in accordance with good industry standard covering personal injury and property damage caused by the Deliverables or the use of the Deliverables in accordance with any manuals and instructions from the Supplier.

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

### **13.5 Force Majeure**

If a force majeure event occurs, the Supplier'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 Supplier documents that appropriate measures have been timely taken to obtain and maintain all relevant export licenses and other clearances necessary for the Delivery, and upon the occurrence of such force majeure event, without undue delay, investigate whether substitute Deliverables can be lawfully obtained from other sources. In case such delivery of substitute Deliverables is possible, the Supplier shall deliver such without undue delay.

If the force majeure event continues beyond 60 (sixty) Days – not necessarily consecutive, but within the same 120 (one hundred and twenty) Days – each party shall be entitled to terminate the Agreement.

In such instance, the Supplier shall be entitled to receive payment for Deliverables delivered until the force majeure event occurred, and the Buyer shall only be liable to pay an amount equivalent to the Deliverables received and approved or the Deliverables under production in accordance with the Agreement (against the handing over of such Deliverables or not yet finished Deliverables).

Notwithstanding the foregoing, if the force majeure event only extends to parts of the Deliverables, but other parts can be delivered, the Buyer shall be entitled, but not obliged, to claim delivery of such parts on terms as stated in the Agreement.

The Supplier shall then be entitled to ask for a renewed assessment of the prices of the parts in question.

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

### **13.6 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 be agreed upon in writing.

### **13.7 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.

Trade with liquidated damages