



# DALO

## Terms and Conditions for Services - with Liquidated Damages

### 1. Introduction

These Conditions regulate the delivery from the Supplier to the Buyer of the Services and Spare Parts 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 any inconsistency between these Conditions and the Purchase Order, the latter 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 Organization (DALO).

*"Certificate of Conformity"* means a document from the Supplier to the Buyer stating that Spare Parts are in conformity with the requirements of the Agreement.

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

*"Day"* means a calendar day.

*"Defect"* means when the Services are not performed in accordance with the Agreement or when Spare Parts do not conform with the Agreement and/or applicable industry standards and/or good workmanship or when Services or Spare Parts 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 are 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 Services and Spare Parts 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"* shall mean performance/delivery of the Services/Spare Parts from the Supplier to the Buyer.

*"Delivery Time"* means the time, the timeframe or interval(s)/time schedule for Delivery stated in the Purchase Order, cf. clause 4.3.

*"Location of the Danish Defence"* means all locations belonging to the Danish Defence and/or the authorities within the Danish Ministry of Defence.

*"Price"* means the price(s) for the Services and/or Spare Parts (including all related costs) stated in the Purchase Order. The Prices can be stated either as a fixed price covering all Services and/or Spare Parts to be delivered in accordance with the Agreement or as unit prices (e.g. hourly rate(s), inspection fees, prices for individual Spare Parts, etc.).

*"Purchase Order"* means the order which the Buyer has submitted to the Supplier describing the Services and, if applicable Spare Parts, to be delivered as well as the specific terms of the delivery not covered by these Conditions.

*"Services"* means all services that the Supplier shall perform according to the Agreement.

*"Spare Parts"* means any supplies that the Supplier provides in connection with the performance of the Services, either because these supplies are requested in the Purchase Order or because they are necessary for performing the Services in question.

*"Supplier"* means the supplier of the Services and Spare Parts.

*"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".

*"Work and Services Report"* means a written report from the Supplier describing the Services that has been performed and, if applicable, the Spare Parts delivered.

### 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 Services shall in content and function fulfill all requirements in the Agreement.

If the Purchase Order does not stipulate a specific standard of performance, the Supplier shall apply best industry practice relevant to the Services.

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

Any Spare Parts shall fulfill all requirements in the Purchase Order, including but not limited to production method, materials, form, function, etc. If the Purchase Order does not stipulate a specific standard of design, development, or production, the Supplier shall apply best industry practice relevant to the Spare Parts.

The Services and Spare Parts 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 Supply of Spare Parts**

The Supplier shall supply the Spare Parts that are necessary in order to perform the Services covered by the Purchase Order, also if these are not specifically requested in the Purchase Order, and any additional Spare Parts that are requested in the Purchase Order.

If it is stated in the Purchase Order that the Supplier shall supply additional Spare Parts not used in the performance of the Services, such Spare Parts shall be delivered by the Supplier no later than when the Services are performed unless otherwise agreed in the Purchase Order. The terms of delivery shall be: DDP [The place mentioned in the Purchase order, or if no such place is mentioned, the place where the Services shall be performed] Incoterms© 2010, and the Supplier shall obtain any export or import licenses, approvals or end-user certificates for Delivery of the Spare Parts.

##### **4.3 Time of performance**

The Supplier shall perform the Services, and deliver any Spare Parts,

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

If no specific time or timeframe is specified in the Purchase Order, 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 Supplier a reasonable notice.

If the Services are to be repeated, they shall be performed at the interval(s) or time schedule specified in the Purchase Order. If no interval(s) or time schedule is specified, the Services shall be performed in accordance with a time schedule submitted by the Supplier and accepted by the Buyer.

The place of Delivery is stated in the Purchase Order.

##### **4.4 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).

##### **4.5 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.

The Supplier shall ensure that any subcontractors used undertake to comply with the above mentioned conditions.

##### **4.6 Duty to notify the Buyer**

If Services are to be performed on one or more items provided by the Buyer (e.g. maintenance, repair etc.) and it during the performance of the Services becomes ascertainable that these can no longer be used according to their purpose, the Supplier shall ask the Buyer for instructions on how to proceed, which can result in additional Purchase Orders.

No items provided by the Buyer can be discarded without the Buyers' prior written approval. If the Buyer

chooses to discard an item, the Supplier shall on request fill in a scrap certificate.

#### **4.7 Documentation and CoC**

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

The Supplier shall issue a Certificate of Conformity (CoC) for one or more of the Spare Parts, 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, standards, etc. that proves the quality of the Spare Parts.

If requested by the Buyer, the Spare Parts shall also be accompanied by the requisite product certificates, documentation, 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 all parts of the Spare Parts 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 format. 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 in 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.

#### **4.8 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.

If the Services and/or Spare Parts are performed/delivered in successive installments in accordance with the Agreement, a Defects Liability Period pertaining to the Services/Spare Parts in question commences separately for each installment.

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 Services and/or Spare Parts, this shall apply. However, for the Defects Liability Period the Supplier's warranty must as a minimum comply with the requirements in the Agreement.

In case of any remedial action, including repetition of the Services or re-delivery of Spare Parts, a new Defects Liability Period begins for the part of the Deliverables in question when the Services and/or Spare Parts have been performed/delivered in a state fully compliant with the Agreement.

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.

#### **4.9 Work and Services Report. Inspection.**

Following the performance of the Services and the delivery of any Spare Parts, the Supplier shall submit a Work and Services report to the Buyer, unless the Buyer has waived this right in the Purchase Order. The report shall be submitted by e-mail to the issuer of the Purchase Order unless agreed otherwise with the Buyer.

The Buyer is entitled, but not required, to inspect the work performed by the Supplier at any time.

The receipt of the Work and Services Report by the Buyer, and any signing of the report, does not constitute approval of the Services performed or Spare Parts delivered and does not in any way bar the Buyer from exercising its rights and remedies according to the Agreement.

#### **4.10 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 and environment.

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 4.10 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.

#### 4.10.1 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 fulfill 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.

#### 4.10.2 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 redact any personal information such as information concerning racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, or data concerning health or sexual orientation from the supplied information in order to comply with applicable rules and legislation on personal data protection (currently the Act on Processing of Personal Data; *in Danish: Persondataloven* 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, and repealing Directive 95/46/EC (General Data Protection Regulation)).

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.

#### **4.11 Services Performed at the Location of the Danish Defence**

When Services are performed at the Location of the Danish Defence or other locations as the case may be, the Supplier shall observe any instructions issued by the person in charge at the facility.

It is the responsibility of the Supplier to timely obtain any permissions or security clearances that may be needed in order to access facilities.

#### **4.12 Secrecy and security classification**

The Supplier shall treat as 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, access to and treatment of classified matters and documents, if applicable to this Agreement or its performance, shall be governed by the NATO security regulations laid down in NATO document C-M (2002) 49 (or any later revisions which have replaced said document). The Supplier and any subcontractor are required to comply with NATO Security Regulations 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 matters or documents to any of its subcontractors, the Supplier shall require the subcontractor to comply with the conditions in this clause 4.12.

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 subcontractor to comply with the security regulations referred to in this clause shall be deemed to be a material breach of the Agreement, cf. clause 10.1.

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

#### **4.13 Insurance**

The Supplier shall maintain customary insurances, including professional liability insurance, and product liability insurance covering the Supplier to an extent corresponding to the Agreement.

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

#### **5. Right to demand changes**

The Buyer can demand that changes be made in the nature, extent or time of performance/delivery of the Services and/or the Spare Parts covered by the Agreement when such changes are naturally linked to the Services and/or Spare Parts described in the Purchase Order.

Both the Buyer and the Supplier can demand that changes are made to the Services and/or Spare Parts necessitated by requirements in law or public regulation that was unforeseeable at the time of the Supplier's acceptance of the Purchase Order.

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 in force at the time of the change.

If the changes lead to an increase or a decrease in the Supplier's cost, the payment to the Supplier, cf. clause 6, shall be adjusted accordingly.

#### **6. Prices**

All Prices are quoted exclusive of VAT, but inclusive of all other taxes, duties and government charges that the Supplier is obligated to pay in accordance with clause cf. 4.2.

Any discounts shall be specified in the invoice.

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

## 7. Payment

The Supplier is entitled to payment for Services performed and Spare Parts used or delivered in connection with the performance of the Services by the Supplier as stated below, unless it follows from the Purchase Order that Spare Parts are included in the fixed price.

If Spare Parts are not included in a fixed price, the price for these cannot exceed the prices stated in the Purchase Order, or if no price is stated in the Purchase Order because the use or delivery of the Spare Parts in question was unforeseeable at the time of issuing the Purchase Order, the prices charged by the Supplier to other customers in comparable situations.

### Price Quoted as Fixed Price

If the Price is quoted in the Purchase Order as a fixed Price, this Price shall cover all Services to be performed and all Spare Parts to be delivered by the Supplier unless it is specifically stated in the Purchase Order that Spare Parts are not included in the fixed Price.

### Price(s) Quoted as Unit Prices

If the Price is quoted in the Purchase Order as one or more unit Prices, the Supplier can claim payment for the Services performed and the Spare Parts delivered in accordance with the usage described in the Work and Services Report, cf. clause 4.9.

If the Purchase Order includes a price cap, the payment claimed by the Supplier for the Services and the Spare Parts cannot exceed this cap.

### **7.1 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 Services and/or Spare Parts or in any other way prevent the Buyer from using its rights under the general rules of Danish law.

### **7.2 Invoices**

#### 7.2.1 Domestic Suppliers

Domestic Suppliers shall submit invoices in accordance with the Danish Public Payments (Consolidation) Act No. 798 dated 28 June 2007 (lovbkg. nr. 798 af 28. juni 2007 om offentlige betalinger m.v.) concerning electronic invoicing to:

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

The invoice shall be submitted in OIOUBL format with reference to purchase order number, electronic invoicing address, EAN location 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>

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

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

#### 7.2.2. Foreign Suppliers

Foreign Suppliers shall submit invoices 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 shall be attached to an email message addressed to [FRS-KTP-KRE-INVOICE@MIL.DK](mailto:FRS-KTP-KRE-INVOICE@MIL.DK) and [FMI-KTP-FDD-IMPORT@MIL.DK](mailto:FMI-KTP-FDD-IMPORT@MIL.DK).

If possible, the foreign Suppliers can submit the invoice electronically in OIOUBL format.

If foreign Suppliers have a Danish CVR number the terms applicable to domestic Suppliers become effective, cf. clause 7.2.1.

#### 7.2.3. All Suppliers (both domestic and foreign)

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](mailto:FRS-KTP-KRE@mil.dk).

## **8. Defects**

### **8.1 Generally**

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

The Supplier shall be notified within reasonable time of any Defect which appears in the Services performed or Spare Parts delivered.

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

The Supplier shall immediately after receipt of the notice above, or after he himself has discovered the Defect, remedy the Defect, repeat the Services or re-

deliver the Spare Parts without undue delay and at his own cost and risk, provided that this can be carried out without disproportionate expenses.

If remedial action, repetition of the Services, or redelivery of Spare Parts is:

- i) not performed, or
- ii) is performed, but does not lead to the Services and/or Spare Parts being free of Defects,

the Buyer shall be entitled to a price reduction whereby the Buyer shall only pay such price for the Services and/or Spare Parts as is deemed fair and reasonable taking into account the nature of the Defect(s).

## 8.2 Material Defects

If the Supplier fails to remedy the Defect, repeat the Services, or redeliver Spare Parts within the timeframe stipulated in accordance with clause 8.1, the Buyer can terminate the Agreement if the Defect is material, if the nature of the Defect(s) deprives the Buyer of the intended purpose or if the Defects are substantial in number.

## 9. Delay

### 9.1 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 of the delayed Services and/or Spare Parts in question per Day, however not less than DKK 500 (five hundred).

If the Delay results in the inapplicability of already performed Services and/or delivered Spare Parts, the liquidated damages shall be calculated on the basis of the value of all affected Services performed and/or Spare Parts delivered.

The total liquidated damages cannot exceed 8 % (eight per cent) of the total payment that the Supplier have received or would have received from the Buyer if the Agreement was carried out as planned, 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 10.1. Whether the Delay is material, depends on the Agreement and the specific circumstances. If the maximum liquidated damages have been reached, this shall in all cases constitute a material breach.

If only part of the Agreement has been carried out, the Buyer may choose to terminate the Agreement only with regard to the Services and/or Spare Parts 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 Supplier's claim(s) for payment.

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

## 9.2 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 clause 5 (1) in the Danish Interest Act (in Danish "Renteloven").

## 10. Termination

### 10.1 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 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) The Supplier'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) Material Delay, including the Supplier's notification of an anticipated material Delay, cf. clause 9.1,
- (4) Repeated and/or serious non-compliance of the requirements related to applicable law, CSR requirements and/or Labour Clause, cf. clause 4.10,
- (5) Violation of any secrecy and security classification obligations, cf. clause 4.12.
- (6) Failure to obey instructions regarding access to or conduct at Location of the Danish Defence, cf. clause 4.11,
- (7) The Supplier's lack of remedying a material Defect, cf. clause 8.2,

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 11.

In case of termination, including termination of only a part of the Agreement, the Buyer shall be entitled to purchase Services and/or Spare Parts similar to those

of the Agreement both with regard to quality and quantity from a third party for the Supplier's account.

In case of termination, the Supplier shall with undue delay refund the Price paid by the Buyer, cf. clause 6, for the Services performed and/or Spare Parts delivered, including the Price for Services already performed, and that as a consequence of the termination do not represent a value to the Buyer. Any transportation costs in order to transport the Spare Parts back to the Supplier shall be paid by the Supplier.

Spare Parts which have been used by the Buyer and which are free of Defect(s) are not encompassed by the termination and the Buyer is obliged to pay for these.

### **10.2 The Buyer's non-performance**

If payment from the Buyer is delayed, and a period of 3 (three) months have lapsed after the Supplier's written notice of the Delay, the Supplier may terminate the Agreement and claim interest in accordance with clause 9.2. The Supplier shall forthwith give the Buyer a written notice, if the Supplier decides to terminate the Agreement.

### **10.3 Termination due to violation of the public procurement rules**

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. This includes annulment due to § 185(2) of the Danish Act no. 1564 of 15 December 2015 (in Danish: "Udbudsloven").

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 11.2.

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 shall not be entitled to raise any claim for damages against the Buyer.

## **11. Damages and Liability Cap**

### **11.1 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 Supplier's non-performance of its obligations under the Agreement, cf. however provisions in clause 9.1.

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.

### **11.2 Liability Cap**

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

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 12.4.

The Supplier's liability shall be limited to the Price. This liability cap shall not include liquidated damages paid according to clause 9.1 and shall not apply in case of willful misconduct or gross negligence.

## **12. Miscellaneous**

### **12.1 The Buyer's rights of proprietary**

All items delivered to the Supplier by the Buyer as well as all objects and items produced for the Buyer 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 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 Supplier without undue delay and at the expense of the Supplier returns any such objects and assets, and/or deletes any copies the Supplier and its subcontractor(s) might have.

### **12.2 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 Spare Parts 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 Spare Parts, 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 of 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.

### **12.3 The Supplier's 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 stated otherwise in the Purchase Order, the Supplier is allowed to use sub-contractors to carry out the agreement. However, the Buyer's written approval is needed if the performance of the Agreement requires particular expertise with regard to the Services to be performed or it entails sub-contractors receiving access to classified information. The Buyer will not withhold such an approval unreasonably.

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

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, secrecy and security.

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).

### **12.4 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.

### **12.5 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 Services performed and/or Spare Parts delivered until the force majeure event occurred, and Buyer shall only be liable to pay an amount equivalent to the Services and/or Spare Parts performed or delivered and approved.

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

#### **12.6 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.

#### **12.7 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.