

DALO

Standard terms and conditions for consultancy services

Version 8.0

1. Introduction

These Conditions regulate the Consultant's delivery of the services set out in the Purchase Order.

The Consultant's standard terms and conditions, requirements etc., if any, shall not apply between the Parties unless the Buyer has consented in writing.

In case of any discrepancy between the wording of these Conditions and the wording of the Purchase Order, the Purchase Order shall take precedence.

2. Definitions

"*Agreement*" means the Purchase Order, these Conditions and the Buyer's CSR webpage as an integrated whole.

"*Conditions*" means these terms and conditions (this document).

"*Purchase Order*" means the order and any appendices hereto submitted by the Buyer to the Consultant relating to the Services and the conditions for delivery of the Services. The Services and the conditions for delivery of the Services may be specified in a so-called "Scope of Work" document (with sub-appendices, if applicable). The Scope of Work document is an integral part of the Purchase Order.

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

"*Buyer*" means the Danish Ministry of Defence Acquisition and Logistics Organisation (DALO).

"*Buyer's CSR webpage*" means the requirements concerning labour clause, corporate social responsibility (CSR) and international sanctions as described on <https://www.fmi.dk/en/sus/corporate-social-responsibility/csr-in-current-agreements/csr-requirements-in-dalo/>

"*Key Personnel*" means the Consultant's personnel as specified in the Purchase Order.

"*Product*" means any document to be produced by the Consultant as part of the Services and as described in the Purchase Order.

"*Services*" means all services (including Products, if any) that the Consultant is to deliver in accordance with the Agreement and as specified in the Purchase Order.

3. The Consultant's acceptance of the Agreement

The Agreement is concluded:

- when the Consultant submits a confirmation to the Buyer no later than 14 (fourteen) calendar days after receipt of the Purchase Order and the Terms and Conditions; or
- when the Consultant has submitted an offer to the Buyer on the basis of the Terms and Conditions, which the Buyer accepts by issuing a Purchase Order.

If the Services relate to a public procurement procedure under a division of the Danish Ministry of Defence, irrespective of which, the Consultant is aware that the Consultant may not be able to participate in the public procurement procedure as a bidder due to a conflict of interests. If the Consultant intends to participate in the public procurement procedure, the Consultant is obliged to inform the Buyer 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. To the extent that the Purchase Order does not stipulate a specific standard for the performance of the Services, the Consultant shall perform the Services in accordance with the best practice standards that apply to the industry concerned.

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

In addition, the Services shall on delivery be in compliance with all applicable regulations and standards, including those related to environment and work safety.

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 shall exercise the necessary flexibility that is considered reasonable and customary for the performance of the Services.

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

The Consultant shall 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 at the time and within the time frame(s) set out in the Purchase Order.

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

4.4 The Consultant's duty to notify

If, during the performance of the Services, the Consultant becomes aware that the Services (as defined in the Purchase Order) 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 immediately notify the Buyer thereof.

4.5 Warranty

The Consultant represents and warrants that all Services are without any Defects and in accordance with the Agreement, including all applicable industry standards and good workmanship.

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

The Consultant represents and warrants that all personnel performing Services for the Buyer shall at all times be duly qualified and not be subject to any conflict of interest.

The Consultant represents and warrants that before signing the Agreement the Buyer has been informed of any cyber-attacks to which the Consultant may have been subject in the previous 2 (two) years.

The Consultant represents and warrants that in the event the Consultant becomes subject to any cyber-attacks after signing the Agreement, the Consultant shall inform the Buyer thereof within 5 (five) calendar days from the occurrence of the attack/from the Consultant becomes aware of the attack.

4.6 Applicable law etc.

In the performance of its obligations under the Agreement, the Consultant shall comply with all the laws that apply to the performance of the Consultant's business no matter where this business is carried out.

In the performance of its obligations under the Agreement, the Supplier, and any subcontractors contributing

to the performance of the Agreement, shall comply with the requirements concerning labour clause, corporate social responsibility (CSR) and international sanctions, as described on the Buyer's CSR webpage.

The CSR Requirements which appear on the Buyer's CSR website on conclusion of the Agreement, is thus included as an integral part of the Agreement.

Buyer's CSR webpage:

<https://www.fmi.dk/en/sus/corporate-social-responsibility/csr-in-current-agreements/csr-requirements-in-dalo/>

4.6.1 Personal data

If the Consultant's performance of the Services involves the processing of personal data, the Consultant shall ensure compliance with applicable law regarding the processing of personal data, 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 and free movement of personal data and repealing Directive 95/46/EC (general data protection regulation) and Act no. 502 of 23 May 2018 on supplementary provisions on the regulation of the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Danish Data Protection Act).

If the Consultant provides personal data to the Buyer, the Consultant shall sign a Declaration on notification of processing of personal data.

If the Services involve the processing of personal data on behalf of the Buyer, the Parties shall enter into a data processing agreement. The Consultant's obligations as a data processor shall be set out in the data processing agreement. The Consultant shall not commence the processing of personal data until the data processing agreement has been entered into.

4.7 Services performed at the Buyer's location

Where the Consultant is required to perform the Services at the Buyer's location or a location designated by the Buyer, the Consultant shall comply with the instructions issued by the Buyer at the location in question.

It is the Consultant's responsibility to obtain any permissions or security clearances required for access to the location in question.

4.8 Confidentiality and security classification

The Consultant shall treat all information related to the Agreement as commercially confidential and shall not publish or in any other way pass on information to the public or to any third parties with the exception of information disclosed to subcontractors for the purpose of performing the Agreement.

In addition, the Consultant shall process classified information in accordance with the applicable rules.

"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 processing of classified information shall be subject to the version applicable at any time of the Danish Defence Security Provisions, Defence Command Provisions 358-1 which are available at the Danish Defence Intelligence Service's (DDIS) website, www.fe-ddis.dk and the provisions 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), which is available at www.retsinformation.dk.

If the work is performed in another country than Denmark, the Consultant and the Consultant's subcontractors, if any, 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 Consultant to disclose classified information to any of its subcontractors, the Consultant shall impose on such subcontractors an obligation to comply with the provisions of this clause 4.8.

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

Any breach by the Consultant or any subcontractors of this clause 4.8, including breach of the security regulations referred to, shall be deemed to be a material breach of the Agreement, see clause 9.1.

In addition, the Consultant may risk criminal liability.

4.9 Insurance

The Consultant shall be adequately covered by an appropriate insurance which takes into account the Consultant's potential liabilities under the Agreement.

At the Buyer's request, the Consultant shall provide documentation that the insurance requirement is complied with.

4.10 The Consultant's organisation and personnel

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

The Consultant shall ensure that qualified personnel are available at all times for the performance of the Services.

4.11 Replacement of the Consultant's personnel

The Consultant is entitled to replace the personnel performing the Services. However, the Consultant shall not replace any Key Personnel without the Buyer's prior written approval. The Buyer's refusal of consent must be objectively justified.

Any replacement of personnel shall in no circumstances affect the quality of the Services, delay the performance of the Services or entail additional costs to the Buyer.

The Consultant is obliged to ensure that any new personnel have the same level of qualifications, experience and knowledge as the replaced personnel.

The Consultant is obliged to ensure that new personnel obtain the same level of knowledge regarding the performance of Services in progress as the replaced personnel.

With reasonable notice, the Buyer is entitled to demand that the Consultant replaces personnel who performs the Service, if objectively justifiable.

5. Right to demand changes

The Buyer shall be entitled to demand that changes be made to the content, extent or time of performance/delivery of the Services where such changes are inseparably linked to the Services.

Both the Buyer and the Consultant shall be entitled to demand that, where required by law or public regulation, changes be made to the Services that could not have been foreseen at the time of conclusion of the Agreement.

Any demand for changes shall be submitted in writing and within reasonable time before the changes take effect. Changes may only be made to the extent permitted by the public procurement rules in force at the time of the change.

If the changes lead to an increase or a decrease in the Consultant's costs, the payment to the Consultant, see clause 6.1, shall be adjusted accordingly.

6. Prices and payment

6.1 Prices

All prices are exclusive of VAT, but inclusive of all other taxes, duties and government charges imposed or levied applicable at the time of conclusion of the Agreement.

6.2 Payment

6.2.1 Fixed price

If the price is quoted as a fixed price, this price shall cover the performance of all the Services.

6.2.2 Payment on the basis of time spent

If the Price of the Services is to be settled on the basis of time spent, the Consultant shall be entitled to the hourly rates stated in the Purchase Order.

The information provided in the Purchase Order regarding the expected number of hours to be spent by the Consultant for the performance of the Services shall be binding on the Consultant, unless the Services turn 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 conclusion of the Agreement.

If, due to circumstances that the Consultant could not or should not have taken into account at the time of conclusion of the Agreement, the Consultant is unable to deliver the Services within the number of hours or within the time-limit stated in the Purchase Order, the Consultant shall without undue delay give notice thereof to the Buyer when it has been ascertained that the Services cannot be performed as set out in the Purchase Order. In addition, the Consultant shall submit an account specifying when and how the Services can be completed as soon as possible in accordance with the requirements in the Purchase Order. If the Buyer has not approved the account in writing, the Consultant shall in no circumstances be entitled to payment for hours spent beyond the number of hours stated in the original version of the Purchase Order. Nor shall the Consultant be entitled to an extension of the time-limit for delivery.

If the Consultant notifies the Buyer that the Services cannot be performed within the number of hours stated or within the time-limit stated, the Buyer shall be entitled to inform the Consultant that the Services are cancelled 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 Services not to be delivered. The Buyer shall be entitled to receive Products, if any, (completed or not completed) for which the Consultant has received payment.

6.3 Payment terms

The Buyer shall pay all invoices not later than 30 (thirty) calendar days after the Consultant's electronic submission of an invoice, provided that the invoice in question contains all the information set out below.

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 exercising any provisions under the Agreement.

6.4 Payment for costs and travel

The Services shall be performed mainly at the location stated in the Purchase Order.

If, at the Buyer's request, the Consultant is to perform some of the Services at a location more than 70 (seventy) kilometers from the location stated in the Purchase Order, the Consultant shall be entitled to reimbursement for any costs of travel, food, and accommodation in addition to the prices stated in the Purchase Order. Furthermore, the Consultant shall be entitled to payment for travelling time, i.e. for the additional time spent on transport.

In no other circumstances than as stated above shall the Consultant be entitled to reimbursement of costs of travel, food and accommodation, nor for travelling time, unless otherwise stated in the Purchase Order.

Costs of travel shall be calculated in accordance with the Tax Assessment Act No. 806 of 8 August 2019 (in Danish: "ligningsloven"), sections 9 (4) and 9A, as amended, with the exception, that the Consultant shall at any time only be compensated the fixed rate for driving above 20,000 km, see section 4, para. (2) of the latest Danish 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 befordring mellem hjem og arbejdsplads og udbetaling af skattefri godtgørelse for erhvervmæssig befordring").

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 Purchase Order for the actual travel time spent.

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

6.5 Invoices

Invoices may be issued by the Consultant when the Consultant has delivered the Services in accordance with the Agreement.

6.5.1 Consultants with a Danish CVR-number

In accordance with executive order No. 206 dated 11 marts 2011 on electronic invoicing of public authorities, suppliers with a Danish CVR-number shall submit invoices electronically and in accordance with the applicable e-invoicing requirements.

See the website of the Ministry of Industry, Business and Economic Affairs (www.oem.dk) regarding the correct completion of e-invoices. Additional requirements for e-invoices may be found at [www.virk.dk](http://oioubl.info/classes/da/index.html) and <http://oioubl.info/classes/da/index.html>.

The Consultant shall submit the invoice in OIOUBL format or in PEPPOL format to the contract manager, stating Purchase Order number, invoice addressee, electronic billing address (EAN number), and the Buyer's contact person / staff number. Further information is available at:

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

If the invoice is submitted via a scanning bureau, the compliance of the invoice with applicable e-invoicing requirements shall remain the responsibility of the Consultant. Forsvarsministeriets Regnskabsstyrelse (Danish Defence Accounting Agency) will reject invoices that do not comply with applicable e-invoicing requirements.

6.5.2 Consultants without a Danish CVR-number

Consultants without a Danish business registration (CVR) number are required to submit invoices in PEPPOL format or in PDF format to the contract manager, stating Purchase Order number, electronic billing address (EAN number), and information about the Buyer's contact person / staff number. Invoices submitted in PDF format shall be submitted to both FRS-KTP-KRE-INVOICE@MIL.DK and FMI-KTP-SC-IMPORT@MIL.DK. Invoices submitted in PEPPOL format shall be submitted to FMI-KTP-SC-IMPORT@MIL.DK.

If possible, the invoice may be submitted electronically in OIOUBL format.

6.5.3 Generally

If an invoice does not comply with the requirements above, the invoice will be rejected and returned as incorrect and no payment will take place. In addition, the Consultant is not entitled to demand interest until a correct invoice has been received and the time of payment for the invoice has been exceeded.

Additional information or inquiries regarding payment, e.g. credit notes, reminders etc., may be submitted by e-mail to FRS-KTP-KRE@mil.dk.

7. Defects

7.1 General

There is a defect if the Services do not fulfil the requirements stated in the Agreement.

In case of a defect, the Parties shall have the rights and obligations following from the general rules of Danish law.

8. Delay

The Consultant shall immediately notify the Buyer of any delay or expected delay, and take measures to reduce the delay.

If the Consultant is in delay, the Consultant shall pay a penalty to the Buyer if so stated in the Purchase Order.

The penalty shall be calculated at 1 % (one per cent) of the price of the delayed Services per calendar day, but not less than DKK 500 per calendar day.

If the delay results in already performed Services becoming unfit for use, the penalty shall be calculated on the basis of the value of all affected Services performed.

The total penalty shall not exceed 8 % (eight per cent) of the total price/the total estimated price stated in the Purchase Order ("Quotation in total" in the Scope of Work if the Scope of Work is used). Irrespective of whether this maximum has been reached, the Buyer shall be entitled to terminate the Agreement if the delay is material, see clause 9.1, and to claim damages if the conditions in this respect are fulfilled, see clause 10.1.

The penalty shall be payable upon request from the Buyer. The Buyer shall be entitled to set off any penalty amount against any amounts owed to the Consultant.

The Buyer shall not be entitled to claim damages for delay in addition to the penalty.

9. Termination

9.1 Breach by the Consultant

The Buyer shall be entitled to terminate the Agreement, in whole or in part, on the conditions stipulated in this clause if the Consultant is in material breach of its obligations under the Agreement. This shall apply notwithstanding any other provisions of the Agreement.

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

- (1) The existence of a material defect, including the existence of several non-material defects that, combined, may be deemed to constitute a material defect.
- (2) Repeated and/or serious breach of the requirements concerning applicable law, the labour clause, CSR requirements and/or international sanctions, see clause 4.6.
- (3) Material delay, including the Consultant's notification of an anticipated material delay, see clause 8.
- (4) If the maximum amount of penalty has been reached, see clause **Fejl! Henvisningskilde ikke fundet..**

If the Buyer deems a material breach to have occurred, the Buyer shall notify the Consultant in writing.

If the Consultant has not remedied the breach within reasonable time (which in no circumstances shall be more than 14 (fourteen) calendar days), the Buyer shall be entitled to terminate the Agreement and claim damages for any loss or damage, see clause 10.

In case of termination for breach, the Consultant shall only be entitled to payment for the Services that are not defective and shall not be entitled to damages or compensation for the part of the Services not to be delivered. The Buyer shall be entitled to receive Products, if any, (completed or not completed) relating to the Services for which the Consultant has received payment.

However, with regard to performed Services that become unfit for the Buyer's use as a consequence of the termination, the Consultant shall reimburse all payments made by the Buyer without any reduction, irrespective of whether the performed Services are delivered without any defects.

9.2 Breach by the Buyer

If the Buyer's payment is delayed, and if 3 (three) months have passed since the Consultant's written notice of the delay, the Consultant shall be entitled to terminate the Agreement.

9.3 Termination due to breach of the public procurement rules

9.3.1 Annulment / Ineffectiveness

The Buyer shall be entitled to terminate the Agreement with a written notice of 1 (one) month if the Buyer's decision to award the Agreement to the Consultant 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 time-limit stipulated by the Danish Complaints Board for Public Procurement or the courts.

Any claim by the Consultant for compensation in connection with termination in accordance with this provision shall be decided pursuant to the general rules of Danish law, but see clause 10.2.

When determining the Consultant's loss, if any, the provisions of the Agreement regarding the right of termination shall be taken into account.

If the Consultant knew or should have known the factual or legal grounds causing the Agreement to be declared ineffective, the Consultant shall not be entitled to compensation.

9.3.2 Compulsory grounds for exclusion

The Buyer shall be entitled to terminate the Agreement with a written notice of 1 (one) month if the Buyer ascertains that the Consultant or the Consultant's subcontractors, if any, at the time of the award of the Agreement were subject to a compulsory ground for exclusion as stated in or corresponding to sections 135 and 136 of the Danish Public Procurement Act, or dur-

ing the term of the Agreement become subject to a compulsory ground for exclusion as stated in or corresponding to section 135, subsections (1) and (2) of the Danish Public Procurement Act, and if the Consultant has not within an appropriate time-limit provided evidence of its reliability to the Buyer's satisfaction as stated in or corresponding to section 138 of the Danish Public Procurement Act.

The Buyer may demand that delivery of Services under the Agreement that are in progress be suspended during the documentation period. The Consultant is not entitled to payment for Services that are suspended or to any damages in connection with the suspension or termination.

10. Damages and limitation of liability

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 penalty paid in accordance with clause **Fejl! Henvisningskilde ikke fundet..**

The general rules of Danish law shall apply to any claim for damages.

10.2 Limitation of liability

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

The total liability in damages of either Party shall not exceed the total amount of the total price/the total estimated price stated in the Purchase Order ("Quotation in total" in the Scope of Work if the Scope of Work is used). This limitation of liability shall not include any penalty paid in accordance with clause 8 and shall not apply if the Consultant has acted intentionally or grossly negligently.

11. Miscellaneous

11.1 The Buyer's ownership

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.

The Consultant shall ensure that any objects and assets in the Consultant's possession are insured without any costs to the Buyer, and the objects and assets shall not be lent, sold, pledged, copied or in any other way be imitated or transferred to a third party without the Buyer's prior written consent.

The Buyer may at any time demand that the Consultant, without undue delay and at the Consultant's expense, return such objects and assets and/or destroy any copies in the Consultant's or subcontractors' possession.

11.2 Intellectual property rights

The Consultant shall retain its intellectual property rights, including, but not limited to, the Consultant's methods, configurations, knowhow, technologies, models, tools, skills, generic industry information, knowledge and experience.

The Consultant warrants that the performance of the Services and the Buyer's use of any Products do not infringe any third party rights of any nature, nor give rise to any additional payment claims etc.

11.3 Assignment and use of subcontractors

The Supplier shall not without the Buyer's prior written consent 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. Such approval shall not be unreasonably withheld.

The Consultant is entitled to use subcontractors for the performance of the Agreement. The Consultant shall ensure, however, that subcontractors undertake to comply with obligations equivalent to those undertaken by the Consultant under the Agreement.

Any subcontracting agreements involving access for the subcontractor to classified information shall be 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 the EU and that have not signed a security agreement with Denmark cannot be approved on

grounds of secrecy, security and other national security interests.

The Consultant's use of subcontractors shall in no circumstances limit the Consultant's liability.

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

11.4 Force majeure

Any right by the Parties to rely on force majeure and their resulting rights and obligations in this respect shall be subject to the general rules of Danish law.

11.5 Non-waiver and amendments

The Buyer's 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 Applicable law and venue

Any disputes arising out of or in connection with the Agreement shall be governed by Danish law, substantive as well as procedural, however excluding the Danish 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.