

DALO

Standard terms and conditions for services

Version 8.0

1. Introduction

These Conditions regulate the Supplier's delivery of the Services set out in the Purchase Order.

The Supplier'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.

"*Purchase Order*" means the order and any appendices hereto submitted by the Buyer to the Supplier, specifying the Services and any special conditions that are not included in the Conditions.

"*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/>

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

"*Service*" means the service(s) to be delivered by the Supplier pursuant to the Purchase Order.

Unless otherwise expressly stated in the Purchase Order, the Services shall also comprise spare parts, materials and other movables that are included as a natural and necessary part of the Services.

3. Conclusion of the Agreement

The Agreement is concluded:

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

If the Supplier has made changes to the Purchase Order, such changes shall not be deemed to have been

accepted unless a new Purchase Order is issued by the Buyer.

4. The Supplier's obligations

4.1 General

The Services shall be performed in accordance with the Agreement and shall in this context fulfil all the requirements stated in the Purchase Order.

The Services shall be performed in accordance with the quality standards applicable to the line of business in question and good workmanship. The Services shall furthermore be performed by qualified and trained personnel. In addition, the Services shall be in compliance with all regulations and standards applicable to the Service, including those related to environmental and work safety matters.

At the Buyer's request, the Supplier shall provide evidence that the Services are in full compliance with the regulations and standards that apply to the performance of the Services.

In the performance of its obligations under the Agreement, the Supplier shall comply with the rules that apply to the performance of the Supplier'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/>

4.2 Time of performance

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

To the extent that the Purchase Order does not provide sufficient guidance in this respect, the Supplier shall perform the Services in accordance with the Buyer's directions, provided that the Supplier is given reasonable time for the performance of the Services.

4.3 Warranty

In the warranty period, the Supplier warrants that the Services are performed in accordance with the provisions of the Agreement, including all applicable industry standards and good workmanship.

The warranty period shall be 12 (twelve) months after the delivery of the Services is completed, unless the Supplier has offered a longer warranty period.

4.4 Work report

When the Supplier has performed the Services, the Supplier shall submit a work report to the Buyer unless otherwise agreed.

4.5 Services performed at the Buyer's location

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

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

4.6 Confidentiality

The Supplier shall treat all information related to the Agreement as commercially confidential and is not entitled to 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 Supplier shall process classified information in accordance with the applicable rules.

4.7 Insurance

The Supplier shall maintain customary insurance, including a professional liability insurance and product liability insurance, covering the Supplier to a degree that is consistent with the provisions of the Agreement.

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

5. Right to demand changes

The Buyer is entitled to change the content and scope of, or the time for, the performance of the Services where the change is inseparably linked to the Services.

Both the Buyer and the Supplier is entitled to demand changes to the Services where required by law or public regulation where such changes could not have been foreseen at the time of the Supplier's acceptance of the Purchase Order.

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 per-

mitted by the public procurement rules in force at the time of the change.

Where the changes cause an increase or a reduction of the Supplier's expenses, the price, see clause 6, shall be adjusted proportionately.

6. Price

The price for the delivery of the Services is stated in the Purchase Order.

The prices are exclusive of VAT, but inclusive of all other costs that the Supplier is obliged to pay.

7. Payment

7.1.1 Price stated as a fixed price

If the price in the Purchase Order is stated as a fixed price, the price shall cover all the Supplier's obligations under the Agreement.

7.1.2 Price(s) stated as unit price(s)

Where the price in the Purchase Order is stated as one or more unit prices, the Supplier may demand payment for work performed in accordance with hours spent as stated in the work report, see clause 4.4.

7.2 Payment terms

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

Any payment made by the Buyer shall not limit the Buyer's right to claim defects or delays or to otherwise exercise any of its remedies under the general rules of Danish law.

7.3 Invoices

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

7.3.1 Suppliers 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 and <http://oioubl.info/classes/da/index.html>.

The Supplier shall submit the invoice in OIOUBL format or in PEPOL 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 Supplier. Forsvarsministeriets Regnskabsstyrelse (Danish Defence Accounting Agency) will reject invoices that do not comply with applicable e-invoicing requirements.

7.3.2 Suppliers without a Danish CVR-number

Suppliers 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.

7.3.3 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 Supplier 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.

8. Defects

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.

9. Delay

The Supplier shall immediately notify the Buyer of any delay or risk of delay and inform the Buyer of the cause of the delay and state a new time of delivery.

The Buyer shall be entitled to terminate the Agreement if the delay is material, see clause 10.1, and to claim damages if the conditions in this respect are fulfilled, see clause 11.1.

Whether the delay is material depends on the Agreement and the specific circumstances. If delivery has not taken place within a period of 4 (four) weeks after the

delivery time stipulated, the delay shall in any event be deemed material.

10. Termination

10.1 Breach by the Supplier

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

Material breach shall be deemed to exist in the following situations, the list is not exhaustive:

- (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) Material delay, including the Supplier's notification of an anticipated material delay, see clause **Fejl! Henvisningskilde ikke fundet.**
- (3) Repeated and/or serious breach of the requirements concerning applicable law, the labour clause, CSR requirements and/or international sanctions, see clause 4.1.

If the Buyer considers that the Supplier is in material breach of the Agreement, the Buyer shall notify the Supplier in writing.

If the Supplier has not remedied the breach within 14 (fourteen) calendar days, the Buyer shall be entitled to terminate the Agreement and claim damages for loss, if any, see clause 11.

If the Buyer terminates the Agreement, including termination in part, the Buyer shall be entitled to make replacement purchases from a third party at the expense of the Supplier.

Where the Agreement has been terminated, the Supplier shall immediately reimburse the full price, see clause 6, of the delivered Services, including the share of the price relating to the Services delivered by the Supplier at the time of termination, to the extent that such Services do not represent a value to the Buyer.

10.2 Breach by the Buyer

If the Buyer's payment is delayed, and if 3 (three) months have passed since the Supplier's written demand for payment, the Supplier shall be entitled to terminate the Agreement.

11. Damages and limitation of liability

11.1 Damages

Notwithstanding any other provisions of the Agreement, the Buyer shall be entitled to claim damages for losses caused by the Supplier's breach of its obligations under the Agreement.

The Buyer's claim for damages shall be without prejudice to the Buyer's other remedies of breach.

The general rules of Danish law shall apply to the assessment of the existence and scope of any liability in damages.

11.2 Limitation of liability

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

The Supplier's liability in damages is limited to the price.

With respect to property damage, the limitation of liability shall only apply to product liability that exceeds the insurance cover. The limitation of liability shall neither apply to personal injury nor the Supplier's non-compliance with the duty to maintain product liability insurance, see clause 4.7.

The limitation of liability shall not apply, however, if the Supplier has acted intentionally or grossly negligently.

12. Miscellaneous

12.1 The Buyer's ownership

All material delivered by the Buyer as well as models, drawings, tools etc. produced at the expense of the Buyer shall remain the property of the Buyer and shall at any time be marked as such.

The Supplier shall ensure that any Buyer property in the Supplier's possession is insured without any costs to the Buyer, and the property 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 Supplier, without undue delay and at the Supplier's expense, return the Buyer's property and/or destroy any documentation material in the Supplier's or subcontractors' possession.

12.2 Intellectual property rights

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

The Supplier warrants that the Buyer's purchase of the Services stated in the Purchase Order does not infringe any third party rights of any nature, nor gives rise to any additional payment claims etc.

12.3 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 the Buyer's prior written consent. The Buyer will not refuse such consent without objective justification.

Unless otherwise stated in the Purchase Order, the Supplier is entitled to use subcontractors for the performance of the Agreement.

Irrespective of the Supplier's use of subcontractors, the Supplier shall be liable to the Buyer for all obligations under the Agreement.

The Supplier shall ensure that subcontractors undertake to comply with obligations equivalent to those undertaken by the Supplier under the Agreement.

12.4 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.

It is specifically agreed that export restrictions of any nature shall not be regarded as a force majeure event, unless the Supplier provides evidence that appropriate measures have been timely taken to obtain and maintain all relevant export licences and other permits necessary for the delivery of the Services.

12.5 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.