

DALO

Standard terms and conditions for Trade

Version 8.0

1. Introduction

These conditions regulate the Supplier's delivery of the Deliverables, as 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 Deliverables 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/>

"*Deliverables*" means all products and services to be delivered by the Supplier pursuant to the Purchase Order, including any supplementary products and services, such as spare parts, documentation, etc.

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

"*Delivery*" means the transfer of the Deliverables from the Supplier to the Buyer. Where a Purchase Order consists of two or more partial deliveries, Delivery shall be the day when all partial deliveries have been delivered.

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 Generally

The Supplier shall deliver all the Deliverables specified in the Agreement at the time of Delivery.

The Deliverables shall be in compliance with the quality standards equivalent to the best industry practice relevant to the Deliverables.

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

Partial deliveries are not accepted unless the Buyer has expressly approved such partial deliveries.

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 conducted.

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 Documentation and CoC

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

The Supplier shall at the Buyer's request issue a Certificate of Conformity (CoC) for the Deliverables. The CoC shall as a minimum include documentation of tests performed, results achieved and test tolerances, documentation of the Supplier's inspections of the production, drawings, specifications, etc., to provide documentation of the quality of the Deliverables.

If requested by the Buyer, the Deliverables shall be accompanied with an original production certificate, installation instructions, user instructions, safety and maintenance instructions and other information that may be necessary for the Buyer's export, import, use and maintenance of the Deliverables while complying with applicable law, including applicable EU law.

All documentation shall be delivered to the Buyer at FMI-KTP-TECHDOC@MIL.DK in accordance with the S1000D specification (version 2.2 or newer) or in another electronic format, such as PDF format.

Format of drawings shall be AutoCAD (.dwg), pictures in JPEG, videos in MPEG and documents in Word format or PDF format. AutoCAD files shall include information on pen configuration and shall only contain standard AutoCad or Windows True Type fonts.

All documentation shall be delivered in English unless documentation in Danish or otherwise has been specifically agreed between the parties.

The Buyer reserves the right to copy guidelines, instructions, manuals and certificates etc. for internal use. Copying can be done by a third party.

4.3 Warranty and warranty period

In the warranty period, the Supplier warrants that the Deliverables conform to all requirements in the Agreement, including all applicable industry standards and good workmanship.

The warranty period shall be 12 (twelve) months from Delivery, unless the Supplier has offered a longer warranty period.

4.4 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.

4.5 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. Delivery

The Deliverables shall be delivered pursuant to: DAP Vojens, DK (INCOTERMS 2020), unless otherwise stated in the Purchase Order, and the Supplier shall obtain all permits and end-user certificates necessary for delivering the Deliverables to the Buyer.

6. Packaging and delivery note

6.1 Packaging

The Supplier shall ensure that the Deliverables are properly packed, taking into account the means of transport used by the Buyer and the transport distance.

If the Deliverables contain dangerous goods or other goods that require special handling, information regarding such handling shall be included in the Deliverables and be stated in the delivery note.

If the Deliverables contain dangerous goods, the individual items, parcels and packages shall be packed using the relevant UN approved and certified packaging in accordance with the regulations of the respective modes of transport (IATA, ICAO, ADR, RID and IMDG).

If the Agreement covers Delivery of products at one of the Buyer's main depots in Vojens or Hjørring, the packaging of the Deliverables shall, in addition to fulfilment of the above requirements, also fulfil the requirements stated in the remainder of this provision:

- The Deliverables shall be packed on standard euro pallets (1/1, 1/2 or 1/4) unless the nature of the Deliverables entails that this is not possible.
- If so, packaging shall be agreed with the Buyer at FMI-KTP-SC-PACK@MIL.DK.
- In addition, the Deliverables shall be packed so that re-packaging is not necessary. Boxes etc. shall not protrude from the ground profile of the pallet.
- The height of the pallet shall not exceed 120 cm, and its weight shall not exceed 800 kg.
- Delivery of, e.g., small packages, a single small box or similar (max. 12 kg) may, however, take place without the use of a pallet without separate agreement with the Buyer.

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

- Order no./Agreement no. (AI: 400)

- NATO stock number (AI: 7001)
- The Supplier's part number (AI:01/02)
- Batch/LOT number (if applicable) (AI: 10)
- Serial number, if applicable (AI:21)

If used, the serial number shall be labelled on the individual unit and stated in both the invoice and the delivery note.

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

The euro pallets/boxes/units shall be labelled with the order number/Agreement number, NATO stock number and the date of packaging.

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

Each box shall be marked individually with a bar code. The bar codes shall be placed in the same place on all boxes and shall be visible when the boxes are loaded on the euro pallet.

6.2 Delivery note

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

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

7. Prices

All prices are fixed. All prices are exclusive of VAT, but inclusive of all other costs that the Supplier is obliged to pay in accordance with clause 5.

Any discount shall be specified in the invoice.

8. Payment

8.1 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.

8.2 Invoices

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

8.2.1 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 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 Supplier. Forsvarsministeriets Regnskabsstyrelse (Danish Defence Accounting Agency) will reject invoices that do not comply with applicable e-invoicing requirements.

8.2.2 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.

8.2.3 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.

9. Defects

There is a defect if the Deliverables 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.

10. 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 11.1, and to claim damages if the conditions in this respect are fulfilled, see clause 12.1.

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.

In the case of Partial Deliveries, the Buyer may choose to only terminate the Agreement for the part of the Deliverables that are in delay.

If, however, the Partial Delivery results in the delivered Partial Deliveries to be inapplicable, the Buyer may terminate the Agreement.

11. Termination

11.1 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 **Fejl! Henvisningskilde ikke fundet..**

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 12.1.

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.

11.2 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.

12. Damages and limitation of liability

12.1 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.

12.2 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.

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

13. Miscellaneous

13.1 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.

13.2 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 Deliverables and the Buyer's import and use do not infringe any third party rights of any nature, nor give rise to any additional payment claims etc.

13.3 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 Deliverables.

13.4 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.

14. Penalty

In the event of delay, the Supplier shall pay a daily penalty to the Buyer. The penalty shall be calculated per calendar day and shall amount to 1 % (one per cent) of the price, but not less than DKK 500 (five hundred) per calendar day. If a delay causes already delivered Products not to fulfil the Buyer's needs and/or not to be usable, the penalty shall be calculated on the basis of the price of all the affected Products.

The total penalty shall not exceed 8 % (eight per cent) of the price to which the Supplier is entitled, but not

less than DKK 3,000 (three thousand). Irrespective of whether this maximum amount has been reached, the Buyer shall be entitled to terminate the Agreement if the delay is material. Whether or not the delay is material will depend on the Agreement and the specific circumstances. If the maximum amount has been reached, this shall in any event constitute material breach. If only part of the Agreement has been performed, the Buyer may choose to terminate the Agreement in part with respect to the Products that are in delay.

The penalty shall be payable upon demand from the Buyer. The Buyer shall be entitled to set off any penalty amounts against any amount(s) owed to the Supplier. The Buyer shall not be entitled to claim damages for delay in addition to the penalty.