



DALO

Terms and Conditions for Trade - with penalty

1. Introduction

These Conditions regulate the delivery from the Seller to the Buyer of the Deliverables described in the Purchase Order.

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

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

2. Definitions

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

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

"*Conditions*" means these Terms and Conditions for trade with the Danish Defence Acquisition and Logistics Organization.

"*Day*" means a calendar day.

"*Defect*" means the non-performance of the Deliverables, i.e. when the Deliverables do not conform to the provisions of the Agreement, applicable industry standards and/or good workmanship.

"*Defects Liability Period*" means a period of 24 (twenty-four) months from Delivery.

"*Delay*" means the non-performance of the Seller 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 products and services that the Seller shall deliver according to the Purchase Order, the requirement specification (if any) and these Conditions, including ancillary products and services, e.g. documentation etc.

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

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

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

"*Price*" means the total price specified in the Purchase Order.

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

"*Seller*" means the seller of the Deliverables.

"*Warranty*" means a guarantee from the Seller whereby the Seller undertakes to repair or replace the Deliverables at no extra cost to the Buyer, when the Deliverables do not conform with the Agreement. The meaning of the word "Warranty" shall be fully interchangeable with the word "guarantee".

3. Seller's acceptance of the Agreement

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

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

If the Seller has made any changes to the Purchase Order, these are not valid 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. Seller's obligations

4.1 Generally

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

Partial Deliveries shall not be made unless explicitly approved by the Buyer in a written amendment to these Conditions.

The Deliverables 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

Seller shall apply best industry practice relevant to the Deliverables.

The Deliverables shall furthermore be in compliance with all applicable regulations and standards, including those related to environmental and worksafety matters, at the time of Delivery.

4.2 Documentation

A Certificate of Conformity (CoC) shall accompany each delivery of Deliverables.

The CoC includes documentation on performed tests, results, and any necessary information on the individual delivery. This also includes attachments in the form of product certificates, documentation, instructions for assembly, operating, safety and maintenance and any other information ensuring that the Buyer will be able to use and repair all parts of the Deliverables.

4.3 Inspections

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

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

4.4 Spare parts

If the Deliverables require spare parts from time to time, the Seller guarantees that such spare parts can be purchased - although not necessarily from the Seller - for a period of min. 10 (ten) years from Delivery.

4.5 Warranty. Defects Liability Period.

The Warranty shall be valid in the Defects Liability Period.

If the Seller's standard Warranty period exceeds the Defects Liability Period (24 months) or the Seller has offered a longer Warranty period, this longer Warranty period applies. However for the first 24 months the Seller's Warranty must as a minimum comply with the Agreement.

The Seller represents and warrants that the Deliverables conform to all requirements in the Agreement, including all applicable standards and good workmanship.

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

All costs connected with warranty claims shall be borne by the Seller.

Any malfunction of the Deliverables occurring during the Defects Liability Period shall automatically be considered a Defect, unless the Seller can prove that the malfunction is a result of use in violation with normal procedure, documentation or instructions, normal wear and tear, or risks that lie with the Buyer.

4.6 Compliance with applicable law

During the performance of the obligations under the Agreement, the Seller shall comply with all applicable laws governing the execution of the Seller's business no matter where this business is carried out, including regulation of human rights, anti-corruption and environment.

The Seller and any subcontractors shall observe the provisions of ILO conventions nos. 29, 105, 138 and 182. They may i.a. not make use of forced and child labor in contravention of these conventions.

In case of suspicion regarding non-compliance with human rights, anti-corruption, environment and/or the provisions of ILO conventions nos. 29, 105, 138 and/or 182 the Seller shall promptly, at the Buyer's request, submit a written statement with relevant documentation.

If the Seller becomes aware of having violated the aforementioned requirements during the performance of the Agreement, or if proceedings are brought against the Seller for such violations (no matter in which country), the Seller must immediately inform the Buyer.

4.7 Secrecy and security classification

The Seller 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 party 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 revision which have replaced the said document).

The Seller 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 Seller to disclose classified matters or documents to any of its subcontractors, the

Seller shall require the subcontractor to comply with the conditions in this clause. The Seller 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 Seller 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 11.1. In addition, the Seller may be liable to criminal proceedings.

5. Terms of delivery

The terms of delivery shall be:

FCA, Seller's facility, Incoterms® 2010, unless otherwise stated in the Purchase Order.

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

6. Packaging and Delivery Note

6.1 Packaging

The Seller 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 notice thereof 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 IATA/ICAO regulations.

The Deliverables shall be packed on euro pallets (80x120cm), unless the nature of the Deliverables makes this impossible in which case the packaging shall be agreed upon by the Buyer. Any boxes etc. shall not protrude the ground profile of the pallet. The height of the pallet must not exceed 120 cm.

The following information shall appear on the pallets in the form of a bar code (UCC/EAN 128) and also be repeated under the bar code in alpha-numerical text:

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

(if used the Serial Number must be labeled on the euro pallet and stated in both the invoice and delivery note).

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

If a euro pallet contains different articles, each package shall be separately labeled with a bar code. The bar code shall be placed identically on the packages and must be visible at all times when packages are loaded on the euro pallet.

The euro pallets shall be labeled with the Purchase Order number(s), material number and the date of packing.

The label shall have a minimum size of 10x15 cm and shall be placed on both the short and the long side of the pallet. If the euro pallet contains different articles each package must be labeled separately.

6.2 Delivery Note

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

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

7. Prices

All Prices are quoted exclusive of VAT, but inclusive of all other taxes, duties and government charges that the Seller is obligated to pay in accordance with clause cf. 5.

Any discounts shall be specified in the Purchase Order .

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

8. Payment

8.1 Payment conditions

The Buyer shall pay all invoices no later than 30 (thirty) Days after the Seller has electronically forwarded the invoice, provided that it has been accepted and contains all relevant information. Any cash discount will be calculated on the Day of payment.

Payment from the Buyer in accordance with the provisions of the Agreement shall not in any way constitute approval by the Buyer of the quality or timely receipt of the Deliverables or in any other way prevent the Buyer from using the provisions under the Agreement.

8.2 Invoices

Domestic Suppliers shall submit electronic invoice in OIOUBL format immediately after Delivery.

The Danish Defence Accounting Agency will not accept invoices submitted from a Scanning Bureau.

Invoices shall be submitted to

EAN nr. 5798000201767
Forsvarsministeriets Regnskabsstyrelse
(Danish Defence Accounting Agency)
Arsenalvej 55 C
9800 Hjørring
Denmark

Foreign Suppliers shall submit invoices in PDF format immediately after Delivery to:

EAN nr. 5798000201767
Forsvarsministeriets Regnskabsstyrelse
(Danish Defence Accounting Agency)
Arsenalvej 55 C
9800 Hjørring
Denmark

Foreign Suppliers shall use the following e-mail: FRS-KTP-KRE-INVOICE@MIL.DK and FMI-KTP-FDD-IMPORT@MIL.DK

If possible, foreign Suppliers can submit electronic invoice in OIOUBL format. Further information is available at <http://oioubl.info/classes/da/index.html>

Invoices shall as a minimum contain:

- (i) Reference to the Purchase Order Number and the Purchase Order date (if the Purchase Order is assigned to a contract number (46x), such contract number shall also be referred on the electronic invoice),
- (ii) Position number for each delivered product, including amount, price and serial number (if any)
- (iii) The Sellers bank address, SWIFT code and account number or IBAN number
- (iv) Reference to the Buyers contact person (name and staff number)

9. Defects

9.1 Generally

The Seller shall be notified within reasonable time of any Defects found.

Immediately hereafter, the Seller shall confirm the receipt of such notice and take necessary action to

mitigate the Buyer's loss or the disruption caused by the Defects.

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

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

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

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

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

9.2 Material Defects

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

10. Delay

10.1 The Seller's Delay and penalty

The Seller shall immediately notify the Buyer of any Delays, and inform the Buyer of the reason of the Delay and state a new Delivery Time.

If the Seller is in Delay, the Seller shall pay a penalty to the Buyer calculated as 1 % (one per cent) of the Price for each commenced 7 (seven) Day period.

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

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

The total penalty cannot exceed 8 % (eight per cent) of the Price. Whether or not this maximum has been reached, the Buyer can terminate the contract if the Delay is material, cf. clause 11.1, and - if the conditions are satisfied - claim damages, cf. clause 12.1. However, if the maximum penalty has been reached, this shall in all cases constitute a material breach.

If Partial Delivery has taken place the Buyer may terminate the Agreement only with regard to the Deliverables which are in Delay. However, if Partial Delivery results in the inapplicability of already delivered Deliverables, the Buyer may terminate the Agreement.

The penalty shall be paid upon request from the Buyer. The Buyer is entitled to set off any penalties against any of the Seller's claim(s) for payment.

10.2 The Buyer's Delay

In the event of delayed payment from the Buyer to the Seller, the Seller shall be entitled to claim interest at the default interest rate applicable to delayed payments (in Danish: "Morarente") fixed in section 5 (1) in the Danish Interest Act (in Danish "Renteloven").

11. Termination

11.1 The Seller's Non-Performance

The Buyer may terminate the Agreement in full or partly on the conditions stipulated in this clause if the Seller is in material breach of its obligations under the Agreement. This shall apply regardless of any other provision of the Agreement.

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

- (1) The Seller's lack of title to the Deliverables,
- (2) The Seller's anticipated non-performance of its obligations, including but not limited to bankruptcy, commencement of restructuring proceedings etc.,
- (3) Material Defect(s), cf. clause 9.2,
- (4) Material Delay, including the Seller's notification of an anticipated material Delay, cf. clause 10.1,
- (5) Non-compliance with applicable law, cf. clause 4.6, including failure to deliver a required written statement with relevant documentation in case of suspicion of violation of applicable law, cf. clause 4.6 and/or failure to inform the Buyer in case of proceedings brought against the Seller.
- (6) Violation of any secrecy and security classification obligations, cf. clause 4.7.

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

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

The Buyer may choose to terminate the Agreement only with regard to quantitatively insufficient Deliverables. In such case the Price shall be adjusted accordingly.

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

11.2 The Buyer's Non-Performance

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

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

11.3 Termination for convenience by the Buyer

The Buyer shall be entitled to terminate the Agreement for convenience with a written notice of 1 (one) month, if the Buyer's decision to enter into the Agreement is annulled (in Danish: "annulleret") by the Danish Complaints Board for Public Procurement or the courts.

Furthermore the Buyer shall be entitled to terminate the Agreement for convenience, if the Danish Complaints Board for Public Procurement or the courts declare the Agreement ineffective (in Danish: "uden virkning"). The Buyer shall then be entitled to terminate the Agreement in whole or in part in accordance with the notice given in the decision. In this instance, the Agreement shall cease to have effect from the time stipulated in the decision.

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

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

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

12. Damages and Liability Cap

12.1 Damages

Without prejudice to any other remedy stated in the Agreement, the Buyer shall be entitled to claim damages for any loss or damage suffered due to the Seller's non-performance of its obligations under

the Agreement to the extent said loss or damage is not covered by a penalty paid in accordance with clause 10.1.

Damages will be claimed in accordance with the general rules of Danish law.

12.2 Liability Cap

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

The liability shall be limited to the Price. This liability cap shall not include penalties paid according to clause 10.1 and shall not apply in case of willful misconduct or gross negligence.

13. Miscellaneous

13.1 The Buyer's rights of property

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

When in the custody of the Seller, the Seller shall insure such objects without any expense for the Buyer, and the objects shall not be lent, sold, pledged, copied or in any other way imitated or assigned to a third party without the Buyer's prior written consent.

The Buyer can at any time request that the Seller without undue delay and at the expense of the Seller returns any such objects.

13.2 Assignment

The Seller shall not be entitled to assign its right 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.

13.3 Intellectual Property Rights

The Seller shall deliver all rights of use (but not necessarily title) of whatever nature, whether being based in patent law, design law, copyright law, trademark law, marketing law etc. concerning the Deliverables so as to allow the Buyer the full use of the Deliverables without any restrictions.

The Seller represents and warrants that the Deliverables and the Buyer's import, use and possible subsequent export do not infringe any third party rights of whatever nature, and that no third party has the right to claim license fees, royalties or other payments from the Buyer for the ownership, possession or use of the Deliverables.

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 will notify the Seller accordingly, and the Seller shall hold the Buyer harmless for any such action or claim recognized by the relevant courts, including but not limited to damages, legal fees, court fees and fees of independent experts.

13.4 Product liability

The Seller shall maintain product liability insurance for personal injury and property damage caused by the Deliverables or the use of the Deliverables in accordance with any manuals and instructions from the Seller.

The level of the insurance shall be at least twice the liability cap, cf. clause 12.2.

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

The liability cap mentioned in clause 12.2 shall also apply to product liability that is not covered by the insurance, however only with regard to property damage. The liability cap shall not apply for personal injuries nor in case of the Seller's non-performance of its obligation to take out product liability insurance in accordance with this clause 13.4.

13.5 Force majeure

If a force majeure event occurs, the Seller'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) not easy to overcome, neither by reasonable investments of work nor money, etc.

It is specifically agreed that any export restriction shall not be regarded as a force majeure event, unless the Seller 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 Seller shall deliver such without undue delay.

If the force majeure event continues beyond 60 Days – not necessarily consecutive, but within the same 120 Days – each party shall be entitled to terminate the Agreement.

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

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

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

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

13.6 Non-waiver and amendments

Any consent to or waiver of any provision or breach shall not constitute consent to or a waiver of such provision or breach in the future. Any specific consent or waiver shall be in writing and shall only affect the relevant breach.

No delay or failure by the Buyer in exercising any of its rights under the Agreement shall operate as a waiver of that right.

Additions or amendments to the Agreement shall only be valid if agreed upon in writing by both parties.

13.7 Law and venue

Any dispute arising out of or in connection with the Agreement shall be governed by Danish law, substantive as well as procedural, however, excluding choice-of-law rules and the United Nations Convention on the International Sale of Goods (CISG).

Any dispute as mentioned above, including any disputes regarding the existence, validity or termination hereof, shall be settled by the Danish ordinary courts of justice.