



Acquisition Contract

No. 460000[XXXX]

concerning

the acquisition of two Solid State Microwave High Power Amplifier modules including dedicated or integrated cooling system, technical manuals, mounting hardware (if necessary) and configuration Software (if applicable).

between

the Danish Defence Acquisition and Logistics Organisation
Lautrupbjerg 1 - 5
DK-2750 Ballerup
Denmark
CVR (VAT no.) 16 28 71 80
(in the following referred to as DALO)

and

[Company name]
[Legal identification code]
[Address]
[Postal code and city]
[Country]

(in the following referred to as the Supplier)



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RECITALS

Today, the Parties have entered into the following Contract,

Whereas

The Danish Defence Acquisition and Logistics Organization (DALO) want to purchase 2 Solid State Microwave High Power Amplifier modules including cooling system, technical manuals, mounting hardware (if necessary) and configuration software (if applicable). The HPA modules are to be integrated into specialized test equipment. The two DC powered Solid State microwave High Power Amplifier modules (HPA) are covering the frequency range 8 - 11 GHz.

Whereas the Supplier acknowledges and agrees that:

- (a) the specification of the requirements for the Deliverables of the Contract is the result of a resource intensive approval and procurement process carried out by DALO in accordance with the Danish Act no. 1564/2015, as amended, on Public Procurement (in Danish: "Udbudsloven")
- (b) DALO has relied on the Supplier's representations about time and quality as stated in the offer and the Contract, and
- (c) DALO has therefore determined that the Contract gives DALO value for money on the basis that full acceptance of all Deliverables is achieved without Delay and at the agreed standard and quality.

1. DEFINITIONS

"Annex" means any enclosures expressly mentioned in the Contract as an Annex.

"Certificate of Conformity" means a document, signed by the Supplier which states that the Deliverables conform to the Contract requirements.

"Contract" means this contract, including its Annexes, collectively.

"Day" means a calendar day.

"Defect" means the non-conformance of the Deliverables, i.e. when the Deliverables do not conform with the Contract including being Fit for Purpose and/or applicable industry standards and/or good workmanship and/or do not fulfill DALO's needs, where the Supplier is aware of these.

"Defects Liability Period" means a period in which the Supplier warrants that the Deliverables conform to all the requirements and provisions of the Contract.

"Delay" means the non-performance of the Supplier with regard to Delivery in accordance with the Delivery Time, or when a substantial part of the Deliverables is not delivered in the agreed quality and this is not due to force majeure or to circumstances for which DALO is responsible.

"Deliverables" means all products and services that the Supplier shall deliver according to the Contract, including ancillary products and services, e.g. documentation etc.

"Delivery" means the physical handing over of the Deliverables from the Supplier to DALO and, if applicable, the completion of the Site Acceptance Test (SAT) and DALO's signing of the Certificate of Conformity (CoC).

"Delivery Time" means the time for Delivery stated in clause 2.13.

"Fit for Purpose" shall mean that all the Deliverables are in the condition set out in the Contract, cf. also Annex A, thereby ensuring that DALO's purpose of acquiring the Deliverables, at the time entering into the Contract, can be achieved, cf. the recital, and fitted into the existing structure of the Danish Defence, cf. clause 2.1.

"Other Items" means all items that are not considered Spare Parts, i.e. special tools, test equipment and consumables (consumables are parts which are used up or worn out during usage of the Deliverables).

"Partial Delivery" means a delivery of only a part of the Deliverables, when the Partial Delivery is accepted by DALO.

"Price" means the total price for the Deliverables in accordance with the Contract and as specified in clause 5.

"Site Acceptance Test" (SAT) means a test to be performed by the Supplier at DALO's location, or at such location as may be pointed out by DALO, in the presence of DALO's representatives, in order to demonstrate that the Deliverables conform to all requirements and obligations of the Contract. The Site Acceptance Test shall be carried out

when the Deliverables have been installed and incorporated into DALO's existing equipment and systems in accordance with the Contract

"Spare Parts" mean the spare parts included in Annex E that together with the Other Items make up the list of supplies that DALO can acquire under the Contract.

"System Defects" N/A

"Warranty" means a guarantee from the Supplier whereby the Supplier undertakes to repair or replace the Deliverables, when the Deliverables do not conform to all the requirements of the Contract. The meaning of the word "Warranty" shall be fully interchangeable with the word "guarantee".

2. SUPPLIER'S OBLIGATIONS

2.1 Generally

The Supplier shall deliver all the Deliverables specified in the Contract on the Delivery Time.

Partial Deliveries shall not be made unless explicitly approved by DALO in a written amendment to the Contract.

The Supplier shall ensure and warrant that any Deliverables provided under the Contract are Fit for Purpose as specified in the Contract, including the recitals. At all times during the Defects Liability Period, the Deliverables shall be of such quality and in such condition as to fulfil all the specific requirements of the Contract.

The Supplier warrants that the design, materials used, and the workmanship applied when producing the Deliverables conform with all the provisions of the Contract and that the Deliverables meet the requirements, including the provisions and specific requirements set out in Annex A.

If the Contract does not stipulate a specific standard of design, development, or production, the Supplier shall apply best industry practice relevant to the Deliverables.

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

The Contract as well as any other document related to the Contract shall be drawn up in English.

2.2 Export Procedures and End-user Certificates

If the Supplier's delivery of the Deliverables is conditioned upon an end-user certificate being issued from the country of origin and/or the Supplier's country, the Supplier shall make all arrangements necessary to ensure that an end-user certificate with the same conditions or better than those submitted in Annex G will be issued, legalized and signed by the relevant authorities.

Upon the request from the Supplier, DALO will give the Supplier reasonable assistance (e.g. sign documents and confirm applications for approval, etc.) required to facilitate the Supplier's obtaining of an export license or other approval and end-user certificates.

However, this shall not in any way limit the full responsibility that rests with the Supplier to take all reasonable steps to ensure the provision of any export license, end-user certificate or approval required for the Deliverables.

2.3 Spare parts and Other Items. N/A

2.3.1 Initial package of Spare Parts. N/A

2.3.2 Purchase orders for Spare Parts and Other Items. N/A

2.4 Training. N/A

2.5 Certificates and documentation

A Certificate of Conformity (CoC) shall on request accompany each Delivery. The CoC shall be in accordance with the template in Annex H.

The Deliverables shall also be accompanied by the requisite product certificates, documentation, instructions for assembly, operating, safety and maintenance and any other

information ensuring that DALO will be able to import, export, and use and repair all parts of the Deliverables while complying with applicable law, including EU law applicable in Denmark.

All such documentation, except CoC, shall be submitted to DALO to FMI-KTP-TECHDOC@MIL.DK. Documentation shall be in accordance with the International Specification for Technical Publications (SPEC1000D) or in another electronic version, for instance PDF format

Format of drawings shall be in AutoCAD (.dwg), pictures in JPEG, videos in MPEG and documents in Word-format or PDF. AutoCAD files shall include information about pen set-up (colour and line width) and only standard AutoCAD and Windows True Type fonts must be used.

The language of the documentation shall be in English (Simplified Technical English is preferred) unless Danish is agreed upon by the Parties.

2.6 Quality requirements

DALO's requirements for quality management and acceptance testing are described in Annex L.

2.7 NATO Codification

The Supplier shall submit to the national codification authority of the producing country any engineering drawings, specifications and related documentation conveying item identification data, and submit any further documentation required by such authority, including draft item identification if so required (in accordance with the guidelines regarding preparation of item identification issued by such authority) in order to obtain new item identification numbers.

In this respect, the Supplier shall fulfill all the requirements stated in Annex C.

All technical data and related draft item identifications, including NATO codification identification numbers, shall be submitted to the national codification authority as soon as possible and no later than 1 (one) month after the Commencement.

The Supplier acknowledges that DALO is effectively deprived of the opportunity to use the Deliverables in accordance with the main objectives as described in the recital, if the codification information is not received as agreed, and it is therefore expressly agreed and understood that any delay in delivery of this documentation shall be regarded as a Delay in the delivery of all the Deliverables and shall entitle DALO to make use of all rights and remedies stated in the Contract.

The Supplier shall provide updated information regarding all modifications or design changes made to the Deliverables or Spare Parts until 2 (two) years after Delivery.

2.8 Inspections

In accordance with Annex L DALO or DALOs representative in accordance with STANAG 4107 reserves the right to inspect and monitor the preparation and production of the Deliverables which may include documentation from first, second and/or third party, wherever work related to the Contract is performed.

DALO's use of its rights under this clause does not constitute approval of the Deliverables in any way and does not exclude DALO from exercising its rights under the Contract in case of Defects or Delays.

2.9 Service Bulletins

The Supplier shall deliver all service bulletins pertaining to the Deliverable at no extra cost to DALO until 2 (two) years after Delivery.

The format of such bulletins shall be agreed with DALO.

2.10 Compliance with applicable law

The Supplier shall comply with all applicable laws governing the execution of the Contract no matter where the Supplier's business is carried out, including the Danish Working Environment Act (lovbkg. nr. 674 af 25. maj 2020 om arbejdsmiljø).

The Supplier shall also comply with the requirements and specifications regarding labour clause and corporate social responsibility (CSR) set out in Annex J.

2.11 Testing. N/A

2.12 Information regarding subcontractors

Upon DALO's request, the Supplier shall prior to subcontracting any work under the Contract – within reasonable time – give DALO information regarding the use of Subcontractors under the Contract. Such information includes the following about each of the Subcontractor(s):

- (a) Name, legal identification code and address
- (b) Contact information (telephone number/e-mail) and legal representative
- (c) Full particulars and approximated amount of the work to be subcontracted
- (d) Names of key personnel at the Subcontractor's facilities involved in the subcontracted work, including their security status, cf. clause 2.11
- (e) Codification of the sub-deliverables coming from the Subcontractor as described in Annex C.

The Supplier is responsible for all Subcontractors, their workmanship, timely Delivery and other matters of relevance to the performance of the Contract as if they were the acts or defaults of the Supplier.

2.13 Delivery Time

The Supplier shall deliver the Deliverables as stated in Annex B.

The Supplier shall not make deliveries ahead of the Delivery Time unless specifically approved in advance and in writing by DALO.

3. TERMS OF DELIVERY

The terms of delivery shall be:

FCA, Supplier's facility, Incoterms® 2010.

(The address of Supplier's facility is specified in the Supplier's offer and shall be inserted here).

4. PACKAGING AND LABELING

The Supplier shall pack and label the Deliverables in accordance with the specific provisions stated in Annex K. If the Deliverables have not been packed in accordance with Annex K, DALO shall be entitled to reimbursement of DALO's cost in connection with re-packaging.

5. PRICE

The Supplier undertakes to fulfil all obligations under the Contract at the fixed amount of

EURO

which shall constitute the Price. All taxes, duties and government charges imposed or levied in connection with the Contract, however exclusive of Danish VAT (in Danish: Moms), shall be paid by the Supplier and shall be considered included in the Price.

The Supplier shall submit all invoices inclusive of all taxes, duties and levies and shall specify in the invoice how the VAT is calculated.

6. PAYMENT

6.1 Payment conditions

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

Payment from DALO in accordance with the provisions of the Contract shall not in any way constitute approval by DALO of the quality or timely receipt of the Deliverables.

6.2 Invoicing

6.2.1 Domestic Suppliers and foreign Suppliers with a Danish CVR no.

Domestic Suppliers and foreign Suppliers with a Danish CVR no. shall submit invoices in accordance with the Danish Public Payments Consolidated Act No. 798 dated 28 June 2007, as amended, (lovbkg. nr. 798 af 28. juni 2007 om offentlige betalinger m.v.) concerning electronic invoicing to:

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

The invoice shall be submitted in OIOUBL format or in PEPPOL format with reference to purchase order number 48/53-0000[xxxx], contract number 460000[XXXX], electronic invoicing address (EAN location number), and reference person / staff number to the contact person from DALO assigned to the Contract. Further information is available at:

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

<https://peppol.eu/downloads/post-award/>

The Danish Defence Accounting Agency will not accept invoices submitted from a scanning bureau. However, invoices submitted via www.virk.dk will be accepted.

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

Payment from DALO in accordance with the Contract shall not in any way constitute acceptance by DALO of the equipment or of timely receipt of the Deliverables, etc.

6.2.2 Foreign Suppliers without a Danish CVR no.

Foreign Suppliers without a Danish CVR no. shall submit invoices in PEPPOL format or in PDF format referring to purchase order number 48/53-0000[xxxx], contract number 460000[XXXX], and reference person / staff number to the contact person from DALO

assigned to the Contract. Invoices sent in PDF format shall be submitted to both FRS-KTP-KRE-INVOICE@MIL.DK and FMI-KTP-SC-IMPORT@MIL.DK.

Invoices sent in PEPPOL format shall be submitted to FMI-KTP-FSC-IMPORT@MIL.DK.

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

If foreign Suppliers have a Danish CVR number the terms applicable to domestic Suppliers become effective, cf. clause 6.2.1.

If an electronic invoice does not comply with the requirements above, the invoice will be rejected and returned as incorrect and no payment will take place. Likewise, no interest will be paid for the period until a correct electronic invoice has been submitted.

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

6.3 Advance payment guarantee. N/A

7. WARRANTY

The Warranty under this clause shall be valid in the Defects Liability Period.

The Supplier represents and warrants that the Deliverables delivered according to the Contract conform to all requirements stated therein, including the Fit for Purpose obligation, all applicable industry standards and good workmanship.

All costs in connection with Warranty claims shall be borne exclusively by the Supplier. This shall also apply, if renewal of necessary training sessions is required.

The Supplier shall not be under any liability to DALO in pursuance of this clause in respect of fair wear and tear and / or in the following event namely:



- 1) if the Deliverables or any part thereof have not been operated, maintained, overhauled and stored in accordance with the applicable manuals and documentation (including service bulletins supplied by the Supplier); and / or
- 2) if the Deliverables or any part thereof have been repaired or modified otherwise than by the Supplier in any way which shall have impaired its or their safety or operation or efficiency; and / or
- 3) if the Deliverables or any part thereof have been subjected to any abnormal condition or to misuse or shall have suffered any accident or combat damage; and / or
- 4) if any part supplied by the Supplier have been replaced by a part not approved by the Supplier and not supplied by the Supplier.

Any of the above exclusions shall only apply if and to the extent that the event in question caused the non-compliance and / or non-functioning of a Deliverable or any part thereof.

The Warranty shall be valid and in force notwithstanding any prior inspection, control or acceptance of the Deliverables.

The Warranty shall also apply in cases where DALO has carried out certain remedial actions and / or work in order to rectify minor Defects in accordance with advice given by the Supplier, cf. clause 8.1, or DALO's maintenance procedures.

7.1 Commencement and duration

The Defects Liability Period commences after the Delivery of each item and the Delivery of the Initial Package of Spare Parts, if any. However, the commencement of the Defects Liability Period is conditioned upon all related documentation to such Deliverables being delivered to DALO in accordance with this Contract and all relevant tests - if any - have been passed.

7.1.1 Defects Liability Period

The Defects Liability Period shall cover a period of 12 (twelve) months.

If the Supplier has offered a longer Defects Liability Period (warranty) on specific items, this shall apply. However, for the Defects Liability Period the Supplier's warranty must as a minimum comply with the Contract requirements.

If a Defect makes the Deliverables unfit for purpose, the Defects Liability Period shall be renewed when the Deliverables have been redelivered in the quality specified in the Contract.

If the Defect does not affect the intended use of the Deliverables, and a part has been redelivered / repaired, the Defects Liability Period shall be extended only for the redelivered / repaired part of the Deliverables and only for a period of time equivalent to the time during which DALO had no use of the defective part of the Deliverables, e.g. the period covering repair, installation, transport, etc.

7.2 Cyber-attack

The Supplier represents and warrants that before signing the Contract DALO has been provided with information regarding any cyber-attacks the Supplier has been exposed to, where the firewall has been broken down or where the Supplier suspects that the attack was targeted on the Contract.

The Supplier represents and warrants that in the event the Supplier is exposed to cyber-attacks, where the firewall has been broken down or where the Supplier suspects that the attack was targeted on this Contract after signing the Contract the Supplier shall provide hereon information to DALO within 3 (three) Days from the occurrence of the attack / the Suppliers awareness of the attack.

The information given to DALO about the attack shall in detail describe the attack, including a list of the data, documents, pictures etc. that could have been compromised.

8. DEFECTS

8.1 Generally

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

Immediately hereafter, the Supplier shall confirm the receipt of such notice and take necessary action to mitigate DALO's loss or the disruption caused by the Defects.

The Supplier 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 DALO.

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

If redelivery cannot take place without undue delay or costs to DALO, or does not lead to the Deliverables being free of Defects, including being unable to fulfil the Fit for Purpose obligation, DALO shall be entitled to claim a price reduction, whereby DALO 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, including the affected Deliverables ability to fulfil the Fit for Purpose obligation. Thus, if a defective part is causing the Deliverables to be unable to fulfil the Fit for Purpose obligation, DALO shall be entitled to a price reduction not only equivalent to the price of the defective part, but equivalent to the cost of DALO's replacement of the affected Deliverables with leased material, etc.

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

In the event DALO requests the Supplier to deliver new Deliverables, and action to redeliver is not taken without undue delay thereafter, DALO 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 Supplier's account.

8.2 Material Defects

If the Defects are substantial in number, or the nature of the Defect(s) deprive DALO of the intended use of the Deliverables, this shall constitute a material breach of the Contract, entitling DALO to remedies as set out in clause 10.

9. DELAY

9.1 The Supplier's Delay.

The Supplier shall immediately notify DALO of any Delays and inform DALO about the reason of the Delay and state a new Delivery Time.

If the Supplier is in Delay, including Delay of the submission of documentation, cf. clause 2.5, or codification data, cf. clause 2.7, with the delivery of Spare Parts, cf. clause 2.3, or with the delivery of the Initial Spare Parts Package, cf. clause 2.3.1, the Supplier shall pay liquidated damages to DALO calculated as 1 % (one per cent) of the Price for each commenced seven day period.

In case of Delay concerning Spare Parts, the liquidated damages shall be calculated on the basis of the price of the Spare Parts in question.

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

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

The total liquidated damages cannot exceed 10 % (ten percent) of the Price.

DALO can terminate the Contract if the total liquidated damages have been reached, cf. clause 10.1, and - if the conditions are satisfied - claim damages, cf. clause 11.1.

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

The Liquidated damages shall be paid upon request from DALO. DALO is entitled to set off any liquidated damages against the Supplier's claim(s) for payment.

Furthermore, in case of Delay, the Supplier shall pay interest on any advance payment made to the Supplier, calculated with the applicable rate from time to time as stated in section 5 of the Danish Interest Act (in Danish "Renteloven") from the Delivery Date and until the Deliverables are delivered.

9.2 DALO's Delay

In the event of delayed payment from DALO to the Supplier, the Supplier shall be entitled to interest at the default interest rate applicable to delayed payments (in Danish: "Mora-rente") fixed in clause 5 (1) in the Danish Interest Act.

If the payment from DALO is delayed, and a period of 3 (three) months have lapsed after the Supplier's written notice of the delay, the Supplier may terminate the Contract.

The Supplier shall without undue delay notify DALO in writing of the termination.

10. TERMINATION

10.1 The Supplier's non-performance

DALO may terminate the Contract in full or partly on the conditions stipulated in this clause if the Supplier is in material breach of its obligations under the Contract. Material breach includes, but is not limited to, the following situations:

- (1) The Supplier's lack of title to the Deliverables,
- (2) The Supplier's anticipated non-performance of its obligations, including but not limited to bankruptcy, commencement of restructuring proceedings etc., unless the Danish Consolidated Act no. 11 of 6 January 2014 on Bankruptcy, as amended (in Danish "Konkursloven"), prevents this. In this case, the bankruptcy estate/reconstructor must, within 2 (two) Working Days after receipt of an inquiry in writing from DALO, announce whether or not the bankruptcy estate/Supplier wants to become a party to the Contract,
- (3) Material Defect(s), cf. clause 8.2,
- (4) Material Delay, including the Supplier's notification of an anticipated material delay, cf. clause 9.1,

(5) Repeated and/or serious non-compliance with the requirements related to applicable law, CSR requirements and/or labour clause, cf. clause 2.10,

If DALO deems that a material breach has occurred, DALO shall notify the Supplier in writing without undue delay.

If the Supplier has not remedied the breach within 14 (fourteen) Days, DALO can choose to terminate the Contract and make claims for any loss or damages, cf. clause 11.

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

10.2 Termination due to violation of the public procurement rules

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

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

The Supplier's claim for damages in these situations shall be settled in accordance with the principles of tort in Danish law, cf. however clause 11.2.

Furthermore, the reservation for termination due to violation of the public procurement rules with a notice as stipulated above shall be taken into account when calculating the Supplier's loss. If the Supplier knew - or ought to have known - the factual or legal grounds leading to the Danish Complaints Board for Public Procurement or the court's decision declaring the Contract ineffective or DALO's decision to enter into the Contract

annulled (as the case may be), the Supplier shall not be entitled to raise any claim for damages against DALO.

10.3 Termination due to compulsory grounds for exclusion

10.3.1 Grounds for exclusion present at the time of award

Pursuant to § 185 (1), 2) of the Public Procurement Act, a contracting authority may terminate a contract where the supplier was subject to one of the grounds for exclusion under §§ 135-137 at the time of award of the contract with subsequent exclusion of the supplier from the procurement procedure. The Parties' agree that this also applies if the Contract is subject to the Defence and Security Directive.

If DALO ascertains that the Supplier or any Subcontractor(s) at the time of award of the Contract was subject to a compulsory ground for exclusion as stated in or equivalent to §§ 135 and 136 of the Public Procurement Act, DALO shall give the Supplier an appropriate time limit to document that the Supplier is reliable in accordance with or equivalent to § 138 of the Public Procurement Act.

If the Supplier has not provided documentation for the Supplier's reliability satisfactory to DALO within the time limit, DALO shall be entitled to terminate the Contract with a written notice of 1 (one) month.

Correspondingly, DALO shall give the Supplier an appropriate time limit to document that the Supplier is reliable in accordance with or equivalent to § 138 of the Public Procurement Act, if the compulsory ground for exclusion (a) concerns any Subcontractor(s) on which the Supplier is based in accordance with or equivalent to § 144 (5) of the Public Procurement Act, or (b) concerns any Subcontractor(s) where the Supplier on DALO's request has submitted a declaration stating that the Subcontractor(s) are not subject to grounds for exclusion in accordance with or equivalent to § 177 (5) of the Public Procurement Act.

If the reliability of the Subcontractor in question has not been documented satisfactory to DALO within the time limit, the Supplier shall replace the Subcontractor and give notice

to DALO with whom the Subcontractor is replaced by in accordance with or equivalent to §§ 177 (5) and 147 of the Public Procurement Act.

DALO may demand any pending Deliverables under the Contract that has not yet been made shall be suspended during the self-cleaning period. The Supplier is not entitled to any payment for suspended deliverables.

The Supplier is further not entitled to any damages/compensation for loss in connection with suspension or termination.

10.3.2 Grounds for exclusion emerged throughout the duration of the Contract

If the Supplier or any Subcontractor(s) throughout the duration of the Contract becomes subject to a compulsory ground for exclusion in accordance with or equivalent to §§ 135 (1) or (2) of the Public Procurement Act, the Supplier shall immediately give written notice to DALO.

Furthermore, the provisions set out in clause 10.3.1 apply correspondingly.

11. DAMAGES AND LIABILITY CAP

11.1 Damages

Without prejudice to any other remedy stated in the Contract, DALO shall be entitled to claim damages for any loss or damage suffered due to the Supplier's non-performance of its obligations under the Contract. However, DALO shall not be entitled to any damages for Delay in addition to the liquidated damages paid in accordance with clause 9.1.

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

11.2 Indirect losses, liability Cap and insurance

11.2.1 Indirect losses and liability cap

The Parties' liability towards each other in connection with the performance or non-performance of the obligations following from the Contract shall be determined in accord-

ance with the general rules of Danish law. However, the Parties shall not be held liable for indirect losses, including in particular loss of profits, loss of trade, loss of savings, loss of income and loss of goodwill.

The Supplier's liability, however, shall be limited to a maximum of 100 (one-hundred) % of the Contract Price. The liability cap shall not include Liquidated Damages or product liability for personal injury.

With respect to property damage the liability cap shall apply to product liability that exceeds the insurance coverage. The liability cap shall neither apply to personal injury nor in case of the Supplier's non-performance of its obligation to take out product liability insurance in accordance with clause 11.2.2.

The Supplier's liability cap shall not apply in case of wilful misconduct or gross negligence.

11.2.2 Insurance

The Supplier shall take out and maintain product liability insurance and professional liability insurance at a level in accordance with good industry standard ensuring coverage 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 Supplier.

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

In regard to property damage the liability cap in clause 11.2.1 shall apply to product liability that exceeds the insurance coverage. The liability cap shall neither apply to personal injury nor in case of the Supplier's non-performance of its obligation to take out product liability insurance in accordance with this clause.

12. MISCELLANEOUS

12.1 DALO's right of property

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

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

DALO can at any time request that the Supplier without undue delay and at the expense of the Supplier returns any such objects as referred to in the above section.

12.2 Assignment and change-of-control clause

The Supplier shall not transfer any obligations or rights arising out of the Contract to any other party without the prior written approval of DALO.

If the ownership of the Supplier changes, in whole or in part, during the term of the Contract, the Supplier shall inform DALO thereof in writing.

If the Supplier or the owner(s) of the Supplier is a company with limited liability/has securities admitted to trading on a regulated market, this provision shall only apply if the change of ownership gives rise to a notification requirement under the Danish Companies Consolidated Act no. 763 of 23 July 2019 with amendments (in Danish: "Selskabsloven" med ændringer)/the Danish Consolidated Act no. 377 of 2 April 2020 regarding Capital Markets with amendments (in Danish: bekendtgørelse af lov om kapitalmarkeder "kapitalmarkedsloven" med ændringer) or would give rise to such a notification requirement if the Danish Companies Act/the Danish Act regarding Capital Markets did apply.

If the change of ownership of the Supplier in DALO's opinion might threaten the proper performance of the Contract in regard to safety and security approval, DALO shall be entitled to issue a written notice to the Supplier with a time limit of 30 (thirty) Days to remedy the issue. If DALO has not received documentation within the time limit that appro-

ropriate remedial action has been taken, DALO shall have the right to terminate the Contract in its entirety with a written notice of 10 (ten) Days.

DALO shall also be entitled to terminate the Contract, if the new owner or controlling party is a person or a company incompatible with the status as supplier of war material, cf. also the Danish War Material Act, Consolidated Act no. 1004 of 22 October 2012 (in Danish: Lov om krigsmateriel mv.).

12.3 Intellectual Property Rights (IPR)

The Supplier shall retain all rights to the Supplier's intellectual capital, including but not limited to the Supplier's methodologies, ideas, knowhow, techniques, models, tools, skills, generic industry information, knowledge and experience.

In order to allow DALO the full use of the Deliverables, the Supplier shall - as an integral part of the Deliverables – grant all rights of use without any restrictions, including restrictions derived from patent law, design law, copyright law or trademark law.

The Supplier furthermore represents and warrants that the Deliverables and DALO's import, use and possible subsequent export does 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 DALO for the ownership, possession or use of the Deliverables.

If a third party should bring an action or submit a claim against DALO as a result of DALO's ownership and / or use of the Deliverables, DALO shall notify the Supplier without undue delay after receiving a notice, claim or similar from such third party and shall allow the Supplier to take over any proceedings, including commercial negotiations following the receipt of such notice, claim or similar. The Supplier shall keep DALO informed of the process.

Upon receipt of such notice from DALO, the Supplier shall within 1 (one) week inform DALO if the Supplier wishes to take over any proceedings, including commercial negotiations, always provided that, in case of legal proceedings, the Supplier uses a reputable and recognized attorney or law-firm to handle the proceedings. DALO shall free of charge

render reasonable assistance to the Supplier. The Supplier shall pay all other costs, including legal assistance and any expert assistance necessary.

Should the Supplier not take over the proceedings, including commercial negotiations, within 1 (one) week, DALO shall be entitled to carry out the legal proceedings or related commercial negotiations. In this case, the Supplier must assist DALO, free of charge, to the extent necessary in such proceedings.

DALO shall be held harmless for the cost of any legal services necessary and fair to defend DALO's position, any court fees, and fees of independent experts retained by DALO or appointed by the court, etc.

If a claim from a third party is successful, i.e. if such third party is able to establish that the third party's rights in question have been infringed, the Supplier shall secure to DALO the right to the use of the Deliverables or end the infringement by changing or replacing the Deliverables as necessary, while still complying with the contractual requirements, and indemnify DALO for any loss in this connection.

12.4 Force Majeure

If a force majeure event occurs, the Supplier's and DALO'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 that is (i) outside the control of the Parties, and of a certain qualified nature; war, hostilities, riots, nuclear or natural disasters, etc., (ii) unforeseeable or not reasonably foreseeable during the time of tender and (iii) ought not to be overcome neither by reasonable investments of work nor money.

It is specifically agreed that any export restriction shall not be regarded as a force majeure event, unless the Supplier documents that appropriate measures have been timely taken to obtain and maintain all relevant export and licenses and other clearances

necessary for the Delivery, and upon the occurrence of such force majeure event, without undue delay, investigate whether substitute Deliverables can be lawfully obtained from other sources. In case such delivery of substitute Deliverables is possible, the Supplier shall deliver such without undue delay.

If the force majeure event continues beyond 60 (sixty) Days – not necessarily consecutive, but within the same 120 (one hundred and twenty) Days – each party shall be entitled to terminate the Contract.

In such instance, the Supplier shall be entitled to receive payment for Deliverables delivered until the force majeure event occurred.

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

The Supplier 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.

12.5 Industrial Cooperation Contract. N/A

12.6 Non-waiver and amendments

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

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

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

However, changes regarding the Supplier's contact information (addresses, e-mail, point of contact), DALO's name, e-mail, point of contact and correction of obviously incorrect NATO Stock Number can be made by e-mail between the Parties. Such changes shall be valid when both Parties have confirmed receipt of such an e-mail.

12.7 Precedence of documents

The provisions of the Contract shall supersede any other correspondence exchanged by the Supplier and DALO.

The acquisition contract including its Annexes forms the entire Contract. The following order has been agreed upon in case of any discrepancies between the individual documents:

- i. The wording of the acquisition contract
- ii. Annexes to the Contract, where Annex A takes precedence over Annex B, in case of interpretation
- iii. Documents created during execution of the activities under the Contract, e.g. manuals, documentation, etc.

12.8 Optional deliveries. N/A

12.9 Law and venue

Any dispute arising out of or in connection with the Contract 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.

13.9 Authorising signatures



The Contract is drafted in two original copies, both of which shall be signed by the Supplier and DALO. By their signatures to the Contract, the signatories warrant that they have the authority to commit the party to the Contract on whose behalf the Contract is signed.

For and on behalf of DALO:

For and on behalf of the Supplier:

Date:

Date:

Signature

Signature

Name in capital letters

Name in capital letters

Witness to the signature

Witness to the signature

Name in capital letters

Name in capital letters