



DRAFT

Acquisition Contract

No.530000[XXXX]

concerning

the acquisition of [...]

between

the Danish Ministry of 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)

A Contract with annexes will be made for each individual tender under the DPS. This draft contains the conditions that usually will apply in such an individual tender. Please notice however, that the draft can be adjusted in an individual tender due to volume and value as well as complexity. Please notice that there are 2 different types of Annex C concerning “Labour clause, corporate social responsibility (CSR) requirements and requirements concerning international sanctions”. The one Annex C applies when there is follow-up actions and the other one applies when there is no follow-up actions. It will be clearly stated in the contract which type of Annex C that applies to the individual tender.

LIST OF ANNEXES

- Annex A: DALO’s requirements concerning the Deliverables
- Annex B: The Supplier’s offer
- Annex C: Labour clause, corporate social responsibility (CSR) requirements and requirements concerning international sanctions (with follow-up actions)
- Annex C.1: CSR follow-up actions
- Annex C: Labour clause, corporate social responsibility (CSR) requirements and requirements concerning international sanctions (without follow-up actions)
- Annex D: Standards of packaging and labeling for transportation
- Annex E: Prices

1. Introduction

The Contract regulates the Supplier's delivery of the Deliverables, cf. Annex A and Annex B.

2. Definitions

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

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

"Day" means a calendar day.

"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.

"Delivery Time" means the time for Delivery stated in the Contract or Annex A.

"Fit for Purpose" shall mean that all the Deliverables are in the condition set out in the Contract, cf. also **Fejl! Henvisningskilde ikke fundet.**, thereby ensuring that DALO's purpose of acquiring the Deliverables, at the time entering into the Contract, can be achieved.

"Price" means the total price for the Deliverables in accordance with the Contract and as stated in Annex E.

3. The Supplier's obligations

3.1 Generally

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

The Supplier shall ensure and warrant that any Deliverables provided under the Contract are Fit for Purpose as specified in the Contract and Annex A. 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.

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

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

3.2 Documentation and CoC

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

The Supplier shall at DALO'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 documentaion of the quality of the Deliverables.

If requested by DALO, 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 DALO's export, import, use and maintenance of the Deliverables while complying with applicable law, including applicable EU law.

All documentation shall be delivered to DALO 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.

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

3.3 Warranty and warranty period

In the warranty period, the Supplier warrants that the Deliverables conform to all requirements in the Contract, 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.

3.4 Confidentiality

The Supplier shall treat all information related to the Contract 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 Contract.

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

3.5 Insurance

The Supplier shall take out and maintain product liability insurance and general liability insurance at a level ensuring coverage for personal injury and property damage caused by the Deliverables provided under the Contract or the use of the Deliverables provided under the Contract in accordance with good industry standard.

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

4. Delivery

The Deliverables shall be delivered pursuant to:
DDP INCOTERMS 2020:

Flyvestation Karup SHD IT
Herningvej 307470 Karup J
Denmark
Att. Dennis Christian Laursen
Vagttelefon 728 16838

and the Supplier shall obtain all permits and end-user certificates necessary for delivering the Deliverables to DALO.

5. Packaging and delivery note

5.1 Packaging and labeling

The Supplier shall pack and label the Deliverables in accordance with the specific provisions stated in Annex D.

If the Deliverables have not been packed in accordance with Annex D, DALO shall be entitled to reimbursement of DALO's cost in connection with re-packaging.

5.2 Delivery note

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

- (i) sender and recipient;
- (ii) date of dispatch;
- (iii) short description of the Deliverables, including material number and serial number
- (iv) price per unit and total price; and
- (v) Fabrik lager 5370-0030.

6. 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 the Contract.

7. Payment

7.1 Payment terms

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

7.2 Invoices

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

7.2.1 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 contract number 530000xxxx, invoice addressee, electronic billing address (EAN number), and DALO's contact person assigned to the Contract. Further information is available at:

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

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

7.2.2 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 contract number 530000xxxx, electronic billing address (EAN number), and information about DALO's contact person assigned to the Contract. 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.

If foreign suppliers have a Danish CVR No. the terms according to clause 8.2.1 (domestic suppliers) become effective.

7.2.3 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.

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

8. Defects

There is a defect if the Deliverables do not fulfil the requirements stated in the Contract.

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

9. Delay

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

If the Supplier is in Delay of Delivery according to the Contract, the Supplier shall pay Liquidated Damages to DALO equivalent to 1 (one) % of the Price per commenced 7-Day period in which the Delay continues, however in no instance Liquidated Damages of less than DKK 1.000 (one thousand) per 7-Day period.

If Partial Delivery has taken place, the Liquidated Damages shall be calculated proportionally for the missing quantity of the Deliverables. However, if Partial Delivery results in the inapplicability of already delivered Deliverables, Liquidated Damages shall be calculated on the basis of the value of all affected Deliverables.

Liquidated Damages may be set off and deducted in payments to be made from DALO to the Supplier.

The Supplier shall submit a revised detailed work plan showing planned escalation measures to reduce the Delay and revised dates for the Delivery of the Deliverables.

The Liquidated Damages shall not exceed a maximum of 8 (eight) % of the Contract Price. Whether or not such maximum of the Liquidated Damages has been reached, DALO shall not be barred from considering the Delay a material breach of the Contract, which shall entitle DALO to the remedies set out in clause 11.

Whether the delay is material depends on the Contract 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, DALO may choose to only terminate the Contract for the part of the Deliverables that are in delay.

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

10. Termination

10.1 Breach by the Supplier

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

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

- a) If the maximum Liquidated Damages as set out in clause 10 **Fejl! Henvisningskilde ikke fundet.** has been reached.
- b) If Delivery of the Deliverables is materially delayed.
- c) If the Supplier has committed several breaches which, separately, are not material, but which as a whole are material to DALO.
- d) If the Deliverables are subject to a Defect and the Supplier has failed to remedy the Defect by repair or redelivery.
- e) If the nature of a Defect deprives DALO of the intended use of the Deliverables.
- f) If DALO is met with a legitimate claim from a third party due to violation of third party rights by DALO's acquisition or use of the Delivery Item, and the Supplier is unable to cease the violation.

If DALO considers that the Supplier is in material breach of the Contract, DALO shall notify the Supplier in writing.

If the Supplier has not remedied the breach within 14 (fourteen) calendar days, DALO shall be entitled to terminate the Contract and claim damages for loss, if any, see clause 11.1.

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

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 Agreement ineffective (in Danish: "uden virkning"). DALO shall then be entitled to terminate 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 general rules of Danish law, cf. however clause 12.2.

Furthermore, the reservation for termination 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.

The Parties have agreed that indirect losses shall not be compensated and any claim for damage/compensation by the Supplier shall not exceed the beneficial value of DALO's use of the Delivery Items until their return.

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.

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.

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

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 Agreement

If the Supplier or any Subcontractor(s) throughout the duration of the Agreement 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 11.3.1 apply correspondingly.

10.4 Breach by the DALO

If DALO'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 Contract.

11. Damages and limitation of liability

11.1 Damages

Notwithstanding any other provisions of the Contract, DALO shall be entitled to claim damages for losses caused by the Supplier's breach of its obligations under the Contract. However, Liquidated Damages paid in accordance with clause 10 **Fejl! Henvisningskilde ikke fundet.** shall be the sole economical remedy for delay.

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

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

11.2 Limitation of liability

Neither the Supplier nor the DALO 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. This liability cap shall not include Liquidated Damages paid according to clause 9.

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.

12. Miscellaneous

12.1 Assignment and use of subcontractors

The Supplier shall not be entitled to assign its rights and/or obligations under the Contract to any third party, including but not limited to other companies within the same company group, without DALO's prior written consent. DALO will not refuse such consent without objective justification.

The Supplier is entitled to use subcontractors for the performance of the Contract.

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

The Supplier shall ensure that subcontractors undertake to comply with obligations equivalent to those undertaken by the Supplier under the Contract, hereunder obligations concerning CSR.

12.2 Intellectual property rights

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

The Supplier warrants that the Deliverables and DALO's import and use do not infringe any third party rights of any nature, nor give rise to any additional payment claims etc.

12.3 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.

12.4 Applicable law and venue

Any disputes arising out of or in connection with the Contract 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 Contract, shall be settled by the Danish ordinary courts of justice.

14 Authorising signatures

The Contract 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.

An electronically stored version of the signed original Contract (e.g. PDF) shall have the same validity as the original signed copy.

DALO and the Supplier agree by their signature to the Contract that clause 10.2 above shall constitute a separate agreement between DALO and the Supplier, which shall be valid whether or not the Contract should be found ineffective.

For and on behalf of DALO:

For and on behalf of the Supplier:

Date:

Date:

Signature

Signature

Name in block capitals

Name in block capitals

Witness to the signature

Witness to the signature

Date:

Date:

Signature

Signature

Name in block capitals

Name in block capitals