



# Danish Defence Acquisition and Logistics Organization



# Danish Defence Acquisition and Logistics Organization

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Framework Agreement

No. 460000[...X...]

## **Standard Terms Goods**

Regarding supply of

Flexible parts for the Rifle Family Colt Canada C7, C8 and SIG MCX.

**between**

the Danish Defence Acquisition and Logistics Organization

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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The Parties have this date entered into the following Agreement.

### 1. DEFINITIONS

**"Agreement"** shall mean this framework agreement with its Appendices and any subsequent amendments.

**"Buyer"** shall mean DALO or any other authority under the Danish Ministry of Defence using the Agreement, cf. clause 2.

**"Commencement"** shall mean the date of the latest signature of the Agreement.

**"Day"** shall mean a calendar day.

**"Defect"** shall mean the non-performance of a Delivery Item, i.e. when the Delivery Item does not conform to the Purchase Order, the provisions of the Agreement (including being Fit for Purpose), applicable industry standards and/or good workmanship. Defect includes System Defect(s), if any.

**"Defects Liability Period"** shall mean a period in which the Supplier warrants that the Deliverables and Delivery Items conform to all quality standards specified in the Agreement.

**"Deliverables"** shall mean the products described in Appendix A.X and C.X.

**"Delivery"** shall mean the physical handing over the Delivery Item from the Supplier to the Buyer.

**"Delivery Item(s)"** shall mean the Deliverables ordered by the Buyer pursuant to a specific Purchase Order.

**"Fit for Purpose"** shall mean that materials and assembly quality are of good quality as generally accepted within the industry and sufficiently durable to render the Deliverables



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fit for the purpose specified in clause 2 without giving rise to the need for repair or changes within the Defects Liability Period.

**"Liquidated Damages"** shall mean a fixed and agreed amount to be paid by the Supplier to the Buyer in case of Delay, regardless of whether or not the Buyer can prove a loss resulting from the Delay

**"Order Confirmation"** shall mean the Supplier's written confirmation that the Delivery Item stated in the Buyer's Purchase Order shall be delivered.

**"Party"** shall mean DALO or the Supplier, jointly the "Parties".

**"Purchase Order"** shall mean the Buyer's written order for Delivery Item(s) with the Supplier.

**"Subcontractor"** shall mean any person named in a Purchase Order as a subcontractor or any person used by the Supplier for the performance of a Purchase Order.

**"System Defect"** shall mean a Defect latent in all or almost all (at least 75 %) of the Delivery Items already delivered.

**"System Defects Liability Period"** shall mean a period in which the Supplier warrants that the Delivery Items are free from System Defects as specified in the Agreement.

**"Warranty"** shall mean a guarantee from the Supplier whereby the Supplier undertakes to repair or replace the Delivery Items, when the Delivery Items do not conform to all the requirements of the Agreement.

**"Working Day"** shall mean any day excluding Saturdays, Sundays, Danish public holidays, the Day of Christmas Eve, the Day of New Year's Eve, and Constitution Day (5th of June).



## 2. PURPOSE OF AND PARTIES TO THE AGREEMENT

The Agreement concerns the delivery of Flexible parts for the Rifle Family Colt Canada C7, C8 and SIG MCX, lot.no. X.

The Agreement covers the Deliverables described in Appendix A.X and C.X and any subsequent amendments thereof.

The Danish Defence operates in various environments across the globe, which means that the Danish Defence uses a variety of different weapon systems including the Rifle family. The various environments and different needs from the operators demands for flexible parts to personalize and modularize the individual weapons to these environments and/or operator.

The Agreement is entered into by DALO. However, all authorities under the Danish Ministry of Defence, including all units of the Danish Defence subject to the commands of the Chief of Defence shall be entitled to use the Agreement for the purchase of products included in the Deliverables on the terms and conditions of the Agreement.

Any such authority using the Agreement by issuing a Purchase Order shall then be the Buyer within the meaning of the Agreement with respect to the specific Purchase Order. When DALO undertakes the purchasing itself by issuing a Purchase Order, the Buyer shall be DALO.

Where "DALO" is stated in the Agreement, this shall mean that only DALO shall be entitled to enforce the relevant provision of the Agreement, even though the Agreement is used by other authorities under the Ministry of Defence.



### **3. THE SUBJECT MATTER AND PURCHASING SCOPE**

#### **3.1 Requirements of the Deliverables**

The Supplier shall ensure that, during the term of the Agreement, the Deliverables conform in all respects to the requirements and descriptions set out in Appendix A.X and Appendix C.X and the Deliverables shall be Fit for Purpose.

The Deliverables shall comply with all relevant laws and regulations, including any government requirements applicable in Denmark at the time of Delivery. Such compliance shall include any requirements with respect to the legality and safety of the Deliverables.

Delivery shall take place after receiving a Purchase Order from the Buyer in accordance with the procedure set out in clause 5.

In the performance of the Agreement, the Supplier shall comply with the requirements and specifications regarding labour clause and Corporate Social Responsibility (CSR) set out in Appendix B and submit information in this respect in accordance with the requirements set out in the said Appendix B.

If the Supplier fails to comply with the requirements set out in Appendix B the Supplier shall pay penalty as set out in Appendix B.

#### **3.2 Purchasing Scope**

The Buyer intends to use the Agreement for current purchases of Deliverables, but the Buyer shall not be obliged to buy any minimum quantity of Deliverables.

It is DALO's intention to make the Supplier the main supplier of the Deliverables until expiry of the Agreement.

The Buyer shall however be entitled to purchase similar Deliverables from other suppliers.





#### **4. NATO CODIFICATION**

The Supplier shall comply with the provisions of Appendix D with respect to NATO codification of the items included in the Deliverables. Delivery Items shall not be delivered until codification has taken place.

#### **5. ORDERING PROCEDURE AND TERMS OF DELIVERY**

The Buyer may place an order for a Delivery Item by submitting a Purchase Order. The Purchase Order shall be sent to the Supplier by:

E-mail : [Insert]

The Supplier shall send an Order Confirmation to the Buyer no later than 14 (fourteen) Days after receipt of the Purchase Order. The Supplier may furthermore allow the Buyer to place orders for Deliverables through the Supplier's electronic ordering system.

The Delivery shall be **FCA INCOTERMS 2010:**

**[The Supplier's place of Business]**

The Delivery shall take place at the time stated in the Purchase Order, and in any event not later than 90 days after receipt of the Purchase Order. The Supplier must at the time of Delivery allow access for the Buyer's carrier to the Supplier's place of business at the arranged time.

##### **5.1 Delivery**

The Supplier undertakes to include documentation for the individual parts of the Delivery Items in each shipment. In order to ensure that the Delivery Items are delivered including acceptable documentation, the following requirements must be complied with.

With regards to packaging and labelling of the Delivery Items, the Supplier shall comply with the requirements in Appendix E.



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### 5.2 Delivery note

All deliveries of Delivery Items shall be accompanied by a delivery note containing - as a minimum - the following information:

- a) Purchase Order number,
- b) reference to the position number(s) on the Purchase Order of the products delivered,
- c) the material numbers of the products delivered,
- d) the quantity of products per position number,
- e) the quantity of all products covered by the delivery note, and
- f) the handling of Deliverables containing dangerous articles or other articles that require special handling, cf. clause 5.1, if applicable.

### 5.3 Cancellation of Delivery Items

The Buyer shall be entitled to cancel wholly or partly a Delivery Item prior to Delivery upon notice to the Supplier. The Supplier shall be entitled to compensation for the Supplier's documented costs related to the cancellation.

## 6. PRICES AND TERMS OF PAYMENT

The Supplier shall be entitled to the prices set out in Appendix C.X.1. The prices shall include all costs of packaging, administration, insurance, documentation, etc., to be paid by the Supplier.

All taxes, duties and government charges, that the Supplier is obligated to pay in accordance with FCA INCOTERMS 2010, or otherwise in connection with the Agreement, however exclusive of Danish VAT (in Danish: Moms), shall be included in the prices.

The prices set out in Appendix C.X.1 shall be subject to price adjustments in accordance with Appendix F.



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### 6.1 Invoicing

#### 6.1.1 Domestic Suppliers

Domestic Suppliers shall submit invoices in accordance with the Danish Public Payments (Consolidation) Act No. 798 dated 28 June 2007 (*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 with reference to purchase order number 45xxxxxxx, Agreement No. 460000[...x...] electronic invoicing address (EAN location number), and reference person (staff number) to the contact person from the Buyer assigned to this purchase order. Agreement No. 460000[...x...], shall also be stated in the electronic invoice. Further information is available at:

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

The Danish Defence Accounting Agency will not accept invoices submitted from a Scanning Bureau. However invoices submitted via [www.virk.dk](http://www.virk.dk) will be accepted.

#### 6.1.2 Foreign Suppliers

Foreign Suppliers shall submit invoices in PDF format as an enclosed email referring to purchase order number 45xxxxxxx, Agreement No. 460000[...X...] and reference person (staff number) to the contact person from the Buyer assigned to this purchase order. Invoices shall be submitted to both [FRS-KTP-KRE-INVOICE@MIL.DK](mailto:FRS-KTP-KRE-INVOICE@MIL.DK) and [FMI-KTP-FDD-IMPORT@mil.dk](mailto:FMI-KTP-FDD-IMPORT@mil.dk).

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



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

### 6.1.3 All Suppliers (both domestic and foreign)

In order to be authorized for payment, invoices must in addition to the above contain the following information:

1. Name, address and business registration number (CVR number) of the Supplier or, with respect to suppliers abroad, similar business registration number.
2. Name and address of the Buyer
3. The Supplier's contact person (name and telephone number). Invoice date (date of issue)
4. Invoice number
5. Terms of payment
6. Date of payment
7. Payment details, bank account number, SWIFT code and IBAN No., as applicable.
8. Price, exclusive of VAT
9. Total invoice amount

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.

Payment from the Buyer in accordance with the stipulations of the Agreement shall not in any way constitute acceptance by the Buyer of the Deliverables or of timely receipt of the Deliverables, etc.

Invoicing shall not take place sooner than Delivery, and shall be subject to non-defective delivery.

The terms of payment are 30 (thirty) Days after the Supplier has electronically forwarded a satisfactory invoice.



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The Buyer shall not be liable for non-payment if the Buyer is unable to make electronic payment due to circumstances on the part of the Supplier.

### **7 SUBMISSION OF REPORTS**

Upon DALO's request, the Supplier shall submit a statement of total purchases under the Agreement in the preceding calendar years. The statement shall identify the Deliverables purchased, the quantities of each Deliverable, the price per unit of each Deliverable and the total value of the purchases.

The information shall be submitted in a common spreadsheet application format (such as Excel or equivalent).

The documentation or statement shall be submitted no later than 21 (twenty-one) Days after DALO's formal request.

The Supplier shall provide and maintain a quality management system according to Special Appendix 1.

### **8 THE SUPPLIER'S ORGANIZATION AND SUBCONTRACTORS**

The Supplier shall maintain the organization, the know-how embedded therein, and any other facilities and resources required to perform the Agreement.

The Supplier's use of subcontractors, including independent contractors, shall not limit the Supplier's liability in any event. DALO shall have the right to demand information concerning the use of subcontractors.



### **8.1 Information regarding Subcontractors**

Upon DALO's request, the Supplier shall – within reasonable time – give DALO information regarding the use of Subcontractors under the Agreement. 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) Approximated amount of the work to be subcontracted
- (d) Codification of the sub-deliverables coming from the Subcontractor as described in Appendix D.

## **9 WARRANTY**

The Warranty under this clause shall be valid in the Defects Liability Period and with respect to System Defects in the System Defects Liability Period.

The Supplier represents and warrants that any Delivery Item is delivered in accordance with the Agreement and thus conforms to all requirements stated therein, including the Fit for Purpose obligation, applicable industry standards and good workmanship.

All costs in connection with Warranty claims shall be borne exclusively by the Supplier.

The Supplier represents and warrants that qualified and appropriate resources shall at all times be available so as not to impede the performance of any Purchase Order by normal absence (holiday, seminars, illness, etc.) and staff departures.

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



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- (1) if the Delivery Items 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 Delivery Items or any part thereof have been repaired or modified otherwise than by the Supplier in any way which have impaired its or their safety or operation or efficiency; and/or
- (3) if the Delivery Items or any part thereof have been subjected to any abnormal condition or to misuse or have suffered any accident or combat damage; and/or
- (4) if any Delivery Items supplied by the Supplier have been replaced by a part not approved by the Supplier.

The above mentioned exclusions shall only apply if 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 Delivery Items.

### **9.1 Commencement and duration**

The Defects Liability Period and the System Defects Liability Period commences after the Delivery of each Delivery Item.

The Defects Liability Period and the System Defects Liability Period for a Delivery Item commences at Delivery. However, the commencement of the Defects Liability Period and the Systems Defects Liability Period is conditioned upon all related documentation – if any – to such Delivery Items being delivered to DALO.

All Defects/System Defects which have occurred in the Defects Liability Period/System Defects Liability Period shall be covered by the Warranty. During the Defects Liability



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Period/System Defects Liability Period, the Supplier shall remedy or replace all Defects without costs to the Buyer.

### 9.1.1 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 requirements in the Agreement.

The Defects Liability Period shall be extended in case of Delivery of defective Delivery Items (both Defects and System Defects), so that a new Defects Liability Period (but not a new System Defects Liability Period) begins for the Delivery Items in question when they have been delivered without Defects.

### 9.1.2 System Defects Liability Period

The System Defects Liability Period shall cover a period of 36 (thirty-six) months.

System Defects shall include, but are not limited to, design Defects, production method Defects, Defects in materials used, software Defects, Defects in general documentation (such as instructions of use, assembly instructions, or installation guides) causing constant or frequent Defects in a given item.

The Supplier shall notify the Buyer if the Supplier becomes aware of any System Defect in similar items delivered by the Supplier to other customers.

In the event of a System Defect, the Supplier shall replace or modify, free of charge, all the Delivery Items according to the Agreement in order to eliminate the cause of the (System) Defect in question in all the Deliverables without deviating from the specifications.





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### **10 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 the Buyer the full use of the Delivery Items, the Supplier shall – as an integral part of the Delivery Items – grant all rights of use without any restrictions, including restrictions derived from patent law, design law, copyright law or trademark law including Special Appendix 3.

The Supplier furthermore represents and warrants that the Deliverables and the Buyer'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 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 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 the Buyer informed of the process.

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



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lated commercial negotiations. In this case, the Supplier must assist the Buyer, free of charge, to the extent necessary in such proceedings.

The Buyer shall be held harmless for the cost of any legal services necessary and fair to defend the Buyer's position, any court fees, and fees of independent experts retained by the Buyer 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 the Buyer 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 the Buyer for any loss in this connection.

### **11 DELAY AND LIQUIDATED DAMAGES**

#### **11.1 The Supplier's delay**

Where the Supplier fails to provide timely Delivery, and this is not due to circumstances on the part of the Buyer or force majeure, such delay shall constitute delay in Delivery. This applies if the entire Delivery Item or only part thereof is delayed (partial delay/back order).

Where a delay occurs or is expected to occur, the Supplier shall promptly take effective steps to remedy or to reduce such delay.

The Supplier shall furthermore promptly notify the Buyer in writing that delay has occurred or is expected to occur and state the cause of such delay and its expected duration. In the notification, the Supplier shall indicate the steps to be taken by the Supplier to remedy or reduce the delay.

In the event of delay of the Delivery Item, the Supplier shall pay to the Buyer a daily Liquidated Damage. The Liquidated Damages shall be calculated per Day on the basis of the price of the Delivery Items delayed.



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The Liquidated Damages shall be at a rate of 750 (seven-hundred-and-fifty) DKK per Day. The Liquidated Damages amount of each delay of a Delivery Item shall not exceed 10 % of the price of the Delivery Items delayed.

Notwithstanding the above, the Liquidated Damages for each delay shall never be less than 3000 (three thousand) DKK or amount equal to 3000 (three thousand) DKK, which covers the internal administration costs of DALO.

If the Supplier has not received a written notice of payment of Liquidated Damages from the Buyer within 12 (twelve) months after the Liquidated Damage has fallen due, or if the Buyer has failed within the same time-limit to set off the amount of the Liquidated Damages against payments to be made by the Buyer to the Supplier, then the Buyer shall forfeit the right to the accrued Liquidated Damages.

The Buyer shall not be entitled to any damages for delay besides the above Liquidated Damages for the delay.

### **11.2 The Buyer's delay**

In the event of delayed payment from the Buyer to the Supplier, the Supplier shall be entitled to interest at the default interest rate applicable to delayed payments (in Danish: "Morarente") fixed in section 5 (1) in the Danish Interest (Consolidation) Act No. 459 of 13/05/2014 ("Renteloven").

## **12 DEFECTS**

The Supplier shall be notified within reasonable time of any Defects found. Reasonable time shall never be less than 14 (fourteen) Days.

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



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The Supplier shall be entitled to remedy the Defect (repair) 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 in the Buyer's notification of the Defect(s) found, or the remedial action fails to remedy the Defect, the Supplier shall deliver new Delivery Items (redelivery) in replacement of the defective Delivery Items at the Supplier's cost.

If redelivery cannot take place without undue delay or costs to the Buyer, or does not lead to the Delivery Items 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 Delivery Items as is deemed fair and reasonable taking into account the nature and number of the Defects in question, including the ability to fulfil the Fit for Purpose obligation.

If Defects are characterized as a System Defect, the Supplier shall replace or modify, free of charge, all the Delivery Items previously delivered according to the Agreement in order to eliminate the cause of the Defect in question in all the Delivery Items without deviating from the specifications. If the Supplier can document that the System Defect in question is limited to a specific product type produced within the same batch or batches, the replacement or modification of the Delivery Items may be limited to those Delivery Items produced within the same batch or batches.

In case of a System Defect DALO is furthermore entitled to claim an appropriate price reduction in accordance with the above-mentioned principles.

If Defects are remedied by replacing an item or part of an item, a new Defects Liability Period for such replaced items shall begin, cf. clause 9.1.

The Buyer's rights under this clause shall be without prejudice to the Buyer's use of any other remedies of breach.



## **13 DAMAGES AND LIABILITY CAP**

### **13.1 Damages**

The Buyer shall be entitled to claim damages in accordance with the general rules of Danish law for any loss or damage suffered due to the Supplier's non-performance of its obligations under the Agreement. However, Liquidated Damages paid in accordance with clause 11.1 shall be the sole economical remedy for delay.

### **13.2 Liability Cap**

The Supplier's total liability under this Agreement shall be limited to the estimated value of the specific lot. This liability cap shall not include Liquidated Damages paid according to clause 11.1 or penalty paid according to clause 3.1, and shall not apply in case of willful misconduct or gross negligence.

The liability cap shall equally apply to the total liability of all Buyers under this Agreement.

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

## **14 TERMINATION**

### **14.1 Termination for Cause**

Where breach has occurred or is expected to occur, the Party in breach shall promptly notify the other Party in writing of the breach, the cause of the breach, and when the breach is expected to be remedied. The Supplier shall furthermore promptly notify DALO in writing in the event of any breach of the Buyer's obligations caused by any other party than DALO.



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### 14.1.1 Buyer's termination of a Purchase Order

The Buyer shall be entitled to promptly terminate a Purchase Order, in whole or in part, if the Supplier is in material breach of such Purchase Order. The following breaches shall always be deemed to constitute material breach of the Purchase Order (the list is not exhaustive):

- a) If the maximum Liquidated Damages as set out in clause 11 has been reached.
- b) If Delivery of a Delivery Item is materially delayed.
- c) If the Supplier has committed several breaches which, separately, are not material, but which as a whole are material to the Buyer.
- d) If a Delivery Item is subject to a Defect and the Supplier has failed to remedy the Defect by repair or redelivery
- e) If the Supplier is in breach of the warranty obligations, cf. clause 9.
- f) If the nature of a Defect deprives the Buyer of the intended use of the Delivery Items.
- g) If a Buyer is met with a legitimate claim from a third party due to violation of third party rights by the Buyer's acquisition or use of the Delivery Item, and the Supplier is unable to cease the violation.
- h) If the Agreement has been terminated by DALO, cf. clause 14.1.3

With respect to delivered Delivery Items covered by the termination, the Buyer shall return the items in the condition in which they are found at the premises of the Buyer. The Supplier shall collect such items or, alternatively pay for transportation. Delivery Items already taken into operational use by the Buyer shall not be covered by the termination.

Upon termination, the Supplier shall promptly reimburse the Buyer the payment of the Delivery Items covered by the termination without any deduction. The Supplier shall not be entitled to payment for terminated Purchase Orders.

In case of termination, the Buyer shall be entitled to purchase Delivery Items similar to the Delivery Items covered by the termination both with regard to quality and quantity from a third party for the Supplier's account.



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### 14.1.2 Supplier's termination of a Purchase Order

The Supplier shall not be entitled to terminate a Purchase Order, unless the Buyer fails to make timely payment hereof, and such failure has not been remedied upon notice in writing to the Buyer and DALO of not less than 60 (sixty) Days.

### 14.1.3 DALO's termination of the Agreement

DALO shall be entitled to terminate the Agreement with a notice of 14 (fourteen) Days, if the Supplier commits a material breach of the Agreement, unless the Supplier has remedied such breach within this period. This shall also apply if the breach is committed against another Buyer than DALO. The following breaches (the list is not exhaustive) shall always be deemed to constitute a material breach:

- a) If the Supplier fails to offer the Deliverables set out in Appendix A.X, C.X and C.X.1.
- b) If the Supplier has repeatedly committed material breach of a Purchase Order(s).
- c) In the event of repeated and/or serious non-compliance with the requirements related to the labour clause and/or CSR requirements, cf. clause 3.1 and Appendix B.
- d) In the event of the Supplier's bankruptcy, unless the Danish Consolidation Act no. 11 of 6 January 2014 on Bankruptcy as amended (in Danish "Konkursloven"), prevents this. In this case the bankruptcy estate must, within 2 (two) Working Days after receipt of an inquiry in writing from DALO, announce whether or not the bankruptcy estate wants to become a party to the Agreement.
- e) In the event of the Supplier's commencement of restructuring proceedings, unless the Danish Consolidation Act no. 11 of 6 January 2014 on Bankruptcy as amended (in Danish "Konkursloven"), prevents this. In this case, the reconstructor must, within 2 (two) Working Days after receipt of an inquiry in writing from DALO, announce whether or not the Supplier wants to remain a party to the Agreement.
- f) Violation of the Supplier's obligations concerning publication, cf. clause 16.

In the event of DALO's termination of the Agreement, the Buyer shall be entitled to return any Delivery Items which, in the Buyer's view, are unfit for use due to the termina-



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tion. If the items form part of a joint Purchase Order of which the Buyer has only received a part at the time of the termination of the Agreement, the Buyer shall be entitled to return such items. With respect to items returned by the Buyer, the Supplier shall reimburse the price paid for the Delivery Items in question without deduction.

### 14.1.4 Supplier's termination of the Agreement

If the payment from the Buyer 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 Agreement and claim interest in accordance with clause 11.2.

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

### **14.2 Termination due to violation of the public procurement rules**

DALO shall be entitled to terminate the Agreement and any outstanding Purchase Orders with a written notice of 1 (one) month, if DALO's decision to enter into the Agreement is annulled (in Danish: "annulleret") by the Danish Complaints Board for Public Procurement or the courts. This includes annulment due to § 185(2) of the Danish Act no. 1564 of 15 December 2015.

DALO shall be entitled to terminate the Agreement and any outstanding Purchase Orders, 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 Agreement and any outstanding Purchase Orders 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 13.2 and this clause 14.2.





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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 Agreement ineffective or DALO's decision to enter into the Agreement annulled (as the case may be), the Supplier shall not be entitled to raise any claim for damages against the Buyer.

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.

### **15 FORCE MAJEURE**

If a force majeure event occurs, the Parties' 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, and in any event no more than 5 (five) Working Days from the occurrence of the force majeure event.

To this effect, force majeure shall be defined as an event that is (a) outside the control of the Party in question, and of a certain qualified nature (war, hostilities, riots, nuclear or natural disasters, etc.), (b) unforeseeable or not reasonably foreseeable at the time of Order Confirmation for a Purchase Order and (c) 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 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.



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If the force majeure event continues beyond 120 (one-hundred-and-twenty) Days – not necessarily consecutive, but within the same 180 (one-hundred-and-eighty) Days – each Party shall be entitled to terminate the Agreement. In such instance, the Supplier shall be entitled to receive payment for Deliverables delivered until the force majeure event occurred, and DALO shall only be liable to pay an amount equivalent to the Delivery Items received.

Notwithstanding the foregoing, if the force majeure event only extends to some and not all Delivery Items, the Buyer(s) in question shall be entitled, but not obliged, to claim Delivery of such Delivery Items.

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

### **16 PUBLICATION**

The Supplier shall not make any press statements or undertake any publicity, advertising or marketing campaigns, including - but not limited to - recruitment, referring to any part of the Agreement without the prior written consent from DALO.

### **17 NOTICES**

Unless otherwise stated in the Agreement, any notice between the Supplier and DALO shall be in writing and be sent by e-mail to:

The Supplier:

[TO BE INSERTED AFTER CONCLUSION OF TENDER]

DALO:

Technical matters: FMI-LA-WVB04@mil.dk

Other matters: FMI-KTP-ID-AFTALE@mil.dk



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The Supplier and DALO shall give notice, if relevant, of new contact persons or contact information.

### **18 AMENDMENTS TO THE AGREEMENT**

The Agreement shall not be amended in any other way than by amendments which shall be in writing and signed by both the Supplier and DALO in order to be legally valid. Such amendments shall be numbered consecutively and shall be issued in 2 (two) original copies, one of which shall rest with the Supplier and one with DALO.

This shall also apply, if the Supplier discontinues items within the framework stipulated in Appendix G.

However, changes regarding the Supplier's contact information (addresses, e-mail, point of contact), DALO's name, e-mail and point of contact and correction of obviously incorrect NATO Stock Number and changes to electronic procurement system 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.

### **19 ASSIGNMENT AND CHANGE-OF-CONTROL**

#### **19.1 The Supplier**

The Supplier shall not transfer any obligations or rights arising out of the Agreement 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 Agreement, the Supplier shall inform the Buyer 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



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Act no. 1089 of 14 September 2015 with amendments (in Danish: "Selskabsloven" med ændringer)/the Danish Consolidated Act no. 12 of 8 January 2018 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 Agreement 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 appropriate remedial action has been taken, DALO shall have the right to terminate the Agreement in its entirety with a written notice of 10 (ten) Days.

The DALO shall also be entitled to terminate the Agreement, 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.).

### **19.2 DALO and the Buyer**

DALO shall be entitled to transfer the obligations and rights of the Agreement to another state authority or public body wholly financed by the Danish State.

The Buyer shall be entitled to transfer a Purchase Order to another state authority or public body wholly financed by the Danish State.

## **20 PRECEDENCE AND INTERPRETATION**

The provisions of the Agreement shall supersede any other correspondence exchanged by the Supplier and DALO. The following order has been agreed upon in case of any discrepancies between the individual documents constituting the Agreement:



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- this framework agreement
- Appendix A.X
- Appendix B + D-G and Special Appendices 1-3
- Appendix C.X, C.X.1
- any Purchase Order(s)

However, the Deliverables shall be to the standards etc. stated in Appendix C.X, where these standards etc. exceed the requirements in Appendix A.

A failure or delay by either Party to exercise any right arising out of or in connection with the Agreement, whether express or implied, shall not constitute a waiver of that right, nor shall it preclude or restrict the further exercise of that right.

### **21 DURATION, OPTION FOR RENEWAL, AND EXPIRY OF THE AGREEMENT**

The Agreement shall become effective at Commencement. The Agreement shall expire without notice 4 years after Commencement.

Any Purchase Order outstanding at the time of expiry or termination of the Agreement shall be delivered, unless otherwise agreed.

### **22 GOVERNING LAW AND JURISDICTION**

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 of the Agreement, shall be settled by the Danish Courts.



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### 23 AUTHORISING SIGNATURES

The Agreement is drafted in two original copies, both of which shall be signed by the Supplier and DALO.

By their signatures to the Agreement, the signatories warrant that they have the authority to commit the Party to the Agreement on whose behalf the Agreement is signed.

DALO and the Supplier agree by their signature to the Agreement that clause 14.2 above shall constitute a separate agreement between DALO and the Supplier, which shall be valid whether or not the Agreement should be found ineffective.

For and on behalf of DALO:

For and on behalf of the Supplier:

Date:

Date:

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Signature

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Signature

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Name in block capitals

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Name in block capitals