

General Terms and Conditions of Purchase 03/2015

For the purchase and delivery of goods
For the purchase and delivery of technical equipment
For the purchase and performance of services

1. General

1.1 Unless specified otherwise in DTU's purchase order or otherwise agreed in writing between the Buyer and the Supplier, the following general terms and conditions of purchase shall apply to goods and services supplied to DTU. By confirming or executing the order, the Supplier accepts DTU's terms and conditions of purchase.

1.2 Any of the Supplier's general terms of sale that are not in conformity with DTU's terms and conditions of purchase shall be disregarded even if they are not explicitly rejected by DTU. The receipt of goods cannot be interpreted as tacit acceptance on the part of DTU of deviating terms of delivery or the Supplier's general terms of sale.

1.3 If the Buyer has specified conditions of his own in the purchase order or other annex to the supply agreement, such conditions shall take precedence over any conditions specified by the Supplier.

1.4 In the following 'Buyer' shall mean the Technical University of Denmark or its representative.

1.5 'Supplier' shall mean the party with whom the Buyer enters into an agreement to purchase.

1.6 'Service' shall mean the performance of work by the Supplier or his representative. If a Service includes components, spare parts etc. as well as the performance of work, they shall be covered by the standard terms and conditions for the supply of consumer goods or technical equipment.

1.7 The Supplier and his services shall comply with current Danish legislation.

1.8 The Supplier, his staff and any subcontractors and their staff shall maintain confidentiality with regard to information concerning the affairs of the Buyer or other parties of which they gain knowledge in connection with performance of this contract.

1.9 Drawings, sketches, technical information, tools, prototypes, material and models with which the Buyer has provided the Supplier shall be treated confidentially, may only be used for supplying the Buyer and shall be returned as soon as the goods or services have been delivered.

1.10 The Supplier may not issue public announcements regarding the agreement or publish anything about the contents of the agreement without the Buyer's prior consent in writing. Nor may the Supplier use the Buyer's name or use of a product for marketing, in an advertising context or as a reference without the Buyer's prior consent in writing.

2. Delivery and labeling

2.1 Delivery shall be made to the address specified by DTU. The delivery date specified in DTU's purchase order/supply agreement shall be complied with exactly.

2.2 Apparatus shall be delivered with labeling in accordance with international standards unless otherwise agreed.

2.3 All consignments of consumer goods and technical equipment shall be accompanied by a delivery note showing the product designation, quantity, unit, Supplier's product code, Buyer's order number, consignee and place of delivery. Invoices shall be sent to DTU electronically.

2.4 Services shall be accompanied by a statement of hours/work sheet specifying hours worked, carriage, any consignments of goods with product designation and quantity, name of recipient, place of performance, Buyers' order number, EAN code, name of ordering party and personal reference number.

2.5 All equipment shall be delivered in proper packaging and manageable form to the delivery address or in accordance with DTU's instructions. The costs involved shall be included in the price.

3. Quality and quantity of goods

3.1 The goods/Service shall be supplied in the quantity and scope specified in the Buyer's purchase order/supply agreement and executed in the quality specified by the Buyer, or alternatively in accordance with custom and practice in the area and the standard of workmanship that the Buyer can justifiably expect.

3.2 Apparatus and other technical equipment shall be supplied in a design that is reliable and sturdy, both electrically and mechanically. The quality of workmanship in the case of apparatus shall be in accordance with the normal standard of the Supplier's/manufacture's apparatus.

3.3 The Supplier shall comply with the standards, statutes and other official requirements that apply to the products included in the order. Special safety issues relating to all or part of the order shall be drawn to the attention of DTU in writing. DTU shall be entitled to have such products specially labeled.

3.4 In so far as the Supplier refers in a quote or other sales material to certificates of approval relating to apparatus quoted for, the Supplier shall submit such certificates to DTU on request.

3.5 Special safety issues relating to all or part of the order shall be drawn to the attention of the Buyer in writing. The Buyer shall be entitled to have such goods specially labeled.

3.6 The Supplier shall provide documentation for both hardware and software on delivery of apparatus and technical equipment at the latest. The documentation shall be of sufficient scope and sufficiently informative in nature for DTU to be able to install, test and start using the equipment. The Supplier shall, by agreement with DTU, instruct DTU's staff in use and care of the apparatus.

3.7 In the case of Services to do with servicing, repairs etc. the Supplier shall draw up a servicing/repair report specifying the servicing/repairs carried out, the spare parts replaced, the faults found and how those faults were remedied.

4. Delivery of goods and technical services, performance time for Services

4.1 Delivery shall take place when the goods or services are placed at the Buyer's disposal – which means in working order in the case of technical equipment and on completion in the case of services, cf. 4.4 and 4.5 – in the location specified by the Buyer.

4.2 The delivery term for consumer goods and technical equipment is 'DDP, (Incoterms 2010)'.

4.3 On receipt of consignments of consumer goods, the Buyer shall have five working days to check whether the consignment is in accordance with the contractual requirements, including quantity and quality. In the event of damaged packaging or missing parcels, the consignee shall complain to the carrier immediately and endorse the bill of carriage, delivery note or invoice to this effect. The Supplier shall be informed at the same time.

Sections 4.4 – 4.6 shall apply to technical equipment in addition to sections 4.1 – 4.2:

4.4 If the consignment includes equipment that has to be tested, delivery shall take place when testing has been completed and the consignment found to be in order, as documented by the Buyer's approval in writing.

Sections 4.5 – 4.6 shall apply to Services in addition to sections 4.1 – 4.2:

4.5 If the goods or Services include installation and/or assembly and/or programming, the Supplier shall inform the Buyer in writing when the work is complete. The Buyer shall either approve the execution of the work or call a handover procedure, which the Supplier shall attend, within 10 working days.

4.6 If the Supplier does not attend the handover procedure, he must accept the Buyer's conclusions and assessments as valid. The goods/Services shall be regarded as delivered and risk as having passed to the Buyer once the handover procedure has taken place unless it reveals material defects in the goods/Services.

4.7 If material defects are revealed, a new handover procedure shall be held once the Supplier has informed the Buyer in writing that the defects have been rectified.

4.8 Even if the handover procedure reveals defects that are not regarded as material individually, the defects shall be regarded as material in total unless they are rectified within 10 working days of the handover procedure being held. Failing this, the equipment shall not be regarded as delivered until the defects have been rectified and reported as dealt with.

4.9 If the Buyer starts to use all or parts of the consignment before the handover date, responsibility for the consignment or the parts used shall pass to the Buyer. In this case the period for rectifying defects shall also be calculated from the first use date.

5. Instructions/user manual

5.1 The Supplier shall, by agreement with the Buyer, instruct the Buyer's staff to the extent that such instruction is necessary for the Buyer.

Section 5.2 and 5.3 shall apply to technical equipment in addition to section 5.1:

5.2 The Supplier shall send at least two sets of short instructions for use/operating instructions in Danish and/or English for day-to-day use at the same time as the equipment is delivered. The brief guide shall be drawn up with a view to

1. getting defect-free equipment to function as intended
2. safeguarding against incorrect use that could damage the equipment and ensuring correct cleaning and disinfection etc.
3. showing the greatest possible consideration for users and third parties

5.3 Danish and/or English instructions for use/operating instructions shall also be included if they are more comprehensive or detailed than the aforementioned guide.

A set of technical manuals and diagrams in Danish, English or one of the Scandinavian languages shall be included in the delivery.

6. Warranty, complaints and obligation to remedy defects

6.1 The Supplier guarantees that the goods satisfy the requirements specified in DTU's purchase order.

6.2 The time limit for complaints shall be a period of two years, calculated from the delivery date.

6.3 The Supplier shall remedy faults and defects or provide replacement delivery free of charge in accordance with the provisions of the Danish Sale of Goods Act for at least two years from delivery/approved handover procedure/performance of the Service. If the goods are building materials, i.e. materials that by their nature are normally intended to form part of building structures, the warranty period shall run from the delivery date until five years from handover of the building, but no more than six years from the delivery date.

6.4 The Supplier shall start remedying defects within two working days of receiving a complaint from the Buyer.

6.5 The Supplier shall defray all costs in connection with remedying defects.

6.6 If the Supplier fails to fulfill his obligations despite being requested in writing to do so, cf. above sections, the Buyer shall be entitled to have the necessary work done at the Supplier's expense after giving the Supplier advance or simultaneous notice.

Sections 6.7 – 6.10 shall apply to technical equipment in addition to sections 6.1 – 6.6:

6.7 If, within the two-year warranty period, any of the goods prove to be faulty/defective in use owing to defects in materials or workmanship, or if they do not work in accordance with the specifications, the Supplier shall remedy such defects of materials, workmanship or design immediately at no cost to the Buyer. This may be done either by replacing components, units or defective parts, or by carrying out the necessary repairs on the equipment or its units.

6.8 In so far as the equipment or parts of it prove to be defective owing to design errors, the Supplier's obligation under section 6.3 shall be extended to cover the period in which the equipment is of utility value to the Buyer – but no more than seven years from delivery/approved handover procedure.

6.9 If part of the equipment has to be replaced in the warranty period, a new two-year warranty period shall commence on the replacement date for the replaced part. If an essential part of the equipment is replaced in the warranty period, a new two-year warranty period shall commence on the replacement date for the equipment in its entirety.

6.10 The Supplier shall have access to all the essential spare parts that are necessary for operation of the supplied equipment for as long as it is of utility value to the Buyer – but no more than 10 years.

7. Price

7.1 The price shall be fixed in Danish kroner, including all current duties and levies but excluding VAT, unless specified otherwise in DTU's purchase order/supply agreement. All prices shall be fixed for the delivery period. Prices may not be adjusted irrespective of any increases in the Supplier's costs or exchange rates.

7.2 In so far as the purchase order contains special provisions concerning price or currency adjustment, the Supplier shall provide satisfactory documentation for the adjustment.

7.3 In so far as DTU can prove with reasonable probability that the market price is lower than the price agreed in this contract with annexes, the Supplier *shall adjust the price* of the individual products and services to bring it into line with the current market price. Allowance shall be made for the nature and scope of the products and services and the risk and term of the contract when fixing the market price.

7.4 The prices shall cover all the costs connected with the goods, including delivery, service and support etc.

8. Terms of payment

8.1 All the Buyer's staff shall provide information on the ordering party when placing an order. Suppliers must therefore always be sure to obtain this information whenever they receive an order from DTU. Otherwise the invoice will not reach the right recipient.

8.2 The general terms of payment are 30 days calculated from the date on which the Buyer receives a correct electronic invoice, cf. section 9 [Invoicing].

8.3 If the Buyer pays promptly within 14 days of receiving a correct electronic invoice, cf. section 9, he shall be entitled to deduct a cash discount of 2% of the invoice amount ex. VAT.

8.4 If the Supplier's circumstances mean that the Buyer cannot pay by electronic transfer, the Buyer may not be held liable for non-payment, resulting in default interest and/or remedies for breach of contract.

8.5 In the case of apparatus and/or other technical equipment covered by DTU's functionality and/or operation testing the Supplier shall not be entitled to send an invoice until all the tests have been completed without any defects being found. In some cases the Buyer can opt to issue conditional approval of one or more tests and permit the Supplier to invoice a proportion of the purchase price. At least 10% of the purchase price must always be withheld until all the defects identified have been remedied.

8.6 Invoicing and payment shall be conditional upon the Service performed being defect-free. If there are defects in the Supplier's Services, a proportion of the amount can be withheld until the defect has been remedied. DTU may also pay invoices in full or in part by offsetting against a payable penalty or other claim, if any. The rest of the invoice amount shall be paid provided that the order is not unusable.

9. Invoicing

9.1 Invoices shall be sent to the Buyer electronically in OIOUBL format in accordance with executive order No. 354 of 26th March 2010 on information in and transport of OIOUBL electronic invoicing, e.g. consolidated act No. 798 of 28th June 2007 on payment to public authorities. Paper invoices will not be processed and paid.

9.2 Section 9.1 does not apply to foreign suppliers. All invoices from foreign suppliers must be sent to: kreditor@adm.dtu.dk with copy to the requisitioner. Invoices from foreign suppliers must contain all information specified in point 9.3.

9.3 To be correct, an electronic invoice sent to the Buyer must contain at least the following information:

- EAN location number (ordering unit's local EAN number)
- Personal reference (Ordering party's name, FAO: name)
- Order number (if given by the unit or generated automatically in the case of eOrdering)
- Product codes and explanatory product descriptions plus net prices (price less discount rate)
- Services supplied itemized by person, number of hours and hourly rates
- Contact at Supplier

9.4 All inquiries regarding accountancy such as reminders, bank statement, order confirmations etc. must include EAN number. It is important that all appendices must be divided accordingly so each document relates to an EAN number. Appendices can be divided per debtor/customer number but only if the division still results in each appendix still referring to an EAN number.

10. Security

The following shall apply to technical equipment and Services:

10.1 In the case of purchases in excess of DKK 250,000 the Buyer can require the Supplier to provide security for performance of the contract. The guarantee, representing 10% of the purchase price inc. VAT, shall be released on expiry of the warranty period, cf. section 6.1, provided that there are no outstanding defects. The guarantee can be a bank or insurance guarantee worded to the effect that the Buyer can require the guarantee amount to be paid on request and without legal action if the Supplier has failed to fulfill his obligations in the Buyer's opinion. The guarantee must not have a time limit, but must remain in force until the guarantor is notified by the Buyer that the obligation no longer exists.

10.2 The Buyer may not agree payment in advance in accordance with the 2011 Budget Guidelines from the Danish Ministry of Finance unless special authority has been put in place, including by EU regulation, for such prepayment.

10.3 In special cases where this authority is in place and the Parties have agreed payment in advance, the Supplier shall provide full security for the prepayment on sending the invoice at the latest. The security can be a bank or insurance guarantee worded to the effect that the Buyer can require the guarantee amount to be paid on request and without legal action on written application to the guarantor if the Supplier has failed to fulfill his obligations in the Buyer's opinion. The security must not have a time limit, but must remain in force until the guarantor is notified in writing by the Buyer that the security can be released.

10.4 The Buyer shall release the security at the Supplier's written request immediately following an approved handover procedure with no faults or defects.

10.5 The security mentioned in sections 10.1 and 10.2 shall not imply any restriction of the Buyer's right to enforce remedies for breach of contract, including claiming compensation for losses.

11. Breach of contract on the part of the Supplier

11.1 Delay

11.1.1 If the Supplier can foresee a delay in delivery or performance of the Service, he shall immediately notify the Buyer in writing, giving the reason for the delay and its expected duration/scope.

11.1.2 As soon as it must be regarded as impossible for the Supplier to be able to deliver the goods or perform the Service on time and a new delivery date has not been agreed, the Buyer may cancel the purchase in accordance with the relevant provisions of the Danish Sale of Goods Act.

11.1.3 The Buyer regards any delay as material. In so far as the Supplier does not deliver the goods or perform the Service on the agreed date, the Buyer shall be entitled to cancel the order in question in full or in part, irrespective of the length of the delay.

11.2 Defects

11.2.1 The Supplier shall be liable for errors and omissions under general Danish law concerning trade purchases.

Sections 11.2.2 – 11.2.3 shall apply to technical equipment in addition to section 11.2.1:

11.2.2 Irrespective of the provisions in section 6 concerning the obligation to remedy defects, the Buyer shall be entitled to reject the goods and cancel the contract if the goods turn out to have material defects that are not remedied in accordance with section 6 concerning the obligation to remedy defects.

11.2.3 Irrespective of the provision in section 6 on the obligation to remedy defects, the Buyer shall be entitled to require the Supplier to cover all the documented losses incurred by the Buyer as a result of the goods proving to be defective.

11.3 Covering purchases

11.3.1 If the purchase/order is cancelled, the Buyer shall be entitled to make covering purchases in accordance with the provisions of the Danish Sale of Goods Act. In the case of Services the Buyer shall be entitled to have the Service performed by another supplier in the same way.

11.4 Third-party rights

11.4.1 The Supplier guarantees that his Services do not infringe the rights of other parties, including property rights, patents and copyrights. The Supplier shall hold the Buyer harmless for any claims, including legal costs, that may be made against the Buyer as a result of possible infringements.

12. Product liability and liability to pay damages

12.1 The Supplier shall be liable in accordance with Danish product liability legislation, including EU rules of law on product liability, and general Danish law on damages to pay the Buyer damages for losses inflicted on the Buyer by the goods, Service or Supplier.

12.2 The Supplier shall hold the Buyer harmless for any claims, including legal costs, that may be made against the Buyer as a result of faults or defects in the goods/Service.

12.3 If a claim is made against the Buyer for reasons to do with the goods or Service, the Supplier shall allow himself to be sued simultaneously in the court or arbitration tribunal hearing the claim for damages made against the Buyer.

12.4 If a third party makes a product liability claim against Buyer or the Supplier, the party in question shall inform the other party in writing immediately.

12.5 The Supplier cannot disclaim liability under the above provisions by referring to his terms of sale, tender documents, order confirmations or the like.

12.6 The Supplier can be required to take out professional and manufacturer's liability insurance on the usual terms to cover his liability in connection with the goods/Services. A valid policy shall be submitted to the Buyer on request.

13. Force majeure

13.1 The Supplier shall be liable for failure to fulfill the supply agreement/purchase order unless such failure is due to circumstances for which the Buyer bears the responsibility or risk, or to force majeure.

13.2 Force majeure exists if correct fulfillment of the supply agreement/purchase order is impossible owing to extraordinary circumstances that the Supplier could not have averted and should not have foreseen such as war, unusual natural events, fire, strikes and lockouts. As far as strikes and lockouts are concerned, this shall be conditional upon such circumstances not just affecting the Supplier's business. The Supplier has a duty to maintain emergency preparedness to the greatest possible extent.

13.3 In the event of delay the Supplier shall immediately take effective steps with all the means available to overcome the delay or mitigate its effect. If any such delay occurs, or when such delays are anticipated, the Supplier shall immediately inform Buyer of the cause and expected duration, and supply satisfactory documentation.

13.4 The Buyer shall be exempt from liability on the same conditions as the Supplier, cf. 13.1.

13.5 Each party shall defray its own costs/bear its own losses resulting from force majeure.

13.6 In the event of force majeure the delivery date shall be postponed by a period equivalent to the unavoidable delay in calendar days, but no more than the number of working days lost, cf. section 13.7 however.

13.7 If performance of all or essential parts of the contract has been rendered impossible owing to force majeure for a continuous period of more than 60 days or for more than 100 days in a period of one year, the Buyer can opt to cancel the contract. In this eventuality section 13.5 shall apply.

14. Breach of contract on the part of the Buyer

14.1 In so far as the Buyer is unable to receive the goods or Service in full or in part on the agreed delivery or performance date, the Buyer shall bear all documented costs and risks in this respect.

14.2 The Buyer shall inform the Supplier of the delay in writing as soon as it is considered impossible for the Buyer to be able to receive the goods or Service on the agreed date. A new delivery date shall then be agreed without delay.

14.3 If the Buyer does not pay all or part of the purchase price on time, interest may be charged from the due date in accordance with the Danish Interest Act.

15. Assignment of obligations and outstanding accounts

15.1 The Supplier shall bear sole liability vis-à-vis the Buyer.

15.2 The Supplier may only put another party in his place fully or partially with the Buyer's written consent. The Supplier shall be entitled to use contractors named by him when the contract was entered into, but all liability for correct performance of the contract shall rest with the Supplier. If the Supplier wishes to change subcontractors during the term of the contract, the Buyer's approval must be obtained. The Buyer may not refuse his approval without good reason.

15.3 The Supplier may only discount or assign his outstanding account to a third party with the Buyer's written consent.

16. eCommerce

16.1 The Supplier shall supply eCatalogues/data to the Buyer's eCommerce system at the Buyer's request to enable the Buyer to generate electronic orders and send electronic orders directly to the Supplier via the Buyer's purchasing system using OIOUBL or email.

16.2 Alternatively the Buyer can set up a PunchOut to the Supplier's own webshop by agreement with the Supplier. In this case the Supplier shall cover the costs of, for example, hosting, maintenance and updating product ranges and prices in the webshop.

16.3 Continuous updating of product ranges and prices in eCatalogues and the Supplier's own webshop shall always take place by agreement with and with the approval of the Buyer's category purchasing consultant so that a constant check is kept on whether the available product ranges and prices are in accordance with the terms of this contract.

17. Purchasing statistics

17.1 The Supplier shall provide statistics for the Buyer's purchasing history at the Buyer's request. Statistics shall be sent electronically in a format compatible with MS Excel to the Buyer's designated representatives.

17.2 As a minimum, statistics shall contain information on purchasing history broken down by:

- Quantity (unit information)
- Product number
- Product name
- Services
- Prices
- Delivery addresses
- EAN codes
- Ordering parties
- Delivery dates

17.3 The Buyer shall also be able to obtain information on the number of repairs or replacements, if any, carried out for the goods supplied on request.

18. References and marketing

18.1 The Supplier may only use Buyer and/Buyer's logo, including in a marketing context, by prior agreement in writing with Buyer.

18.2 The Supplier may also only publish information on this contract and its contents by prior agreement in writing with Buyer.

18.3 The Supplier may, however, include Buyer in its list of references for use in tendering procedures for public authorities or private enterprises without obtaining Buyer's consent.

19. Public orders

19.1 The Contractor must obey all directives, consolidated acts, statutory instruments, regulatory requirements and/or public orders which are concerned with this field of work and which are relevant during the term of this Agreement.

19.2 Any violation of such regulations will be considered a material breach of this Agreement.

19.3 DTU is subject to consolidated acts [forvaltningsloven, persondataloven og offentlighedsloven] concerning access to documents giving third parties right to certain information. DTU does not disclose any personal information without giving the person concerned access to comment on the matter. DTU is not bound by the declaration. Any financial matter can hinder access to documents and/or information. Some particular personal information is subject to legislative professional secrecy and can thus not be passed on all thought there can be an obligation to pass on such information to other public authorities.

19.4 The above statement will not have effect if legislative regulations and/or a third party has a request in favour of access to documents in whole or in part of this Agreement.

19.5 DTU refers to [offentlighedsloven] rules on access to documents and information.

19.6 DTU may, under this agreement, procure goods and/or services that may be used within the implementation of EU Horizon 2020 projects. The contractor is therefore subject to the provisions in Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11th December 2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and Council Regulation (EURATOM) No 1314/2013 of 16th December 2013 on the Research and Training Programme of the European Atomic Energy Community (2014-2018) complementing the Horizon 2020 Framework Programme for Research and Innovation. The provisions concern the European Commission, its representatives and the Court of Auditors' power to audit, control and scrutinize all grant beneficiaries, contractors and subcontractors who have received Union funds under Horizon 2020. This contract shall be governed by Danish law.

20. Disputes, applicable law and legal venue

20.1 This contract shall be governed by Danish law.

20.2 If a disagreement arises in connection with the contract entered into, the parties shall, in order to mitigate the adverse effects, institute constructive negotiations with a view to resolving the dispute with a positive, cooperative and responsible attitude. The negotiations may be moved to a higher level in the parties' organizations if a settlement cannot be reached between the representatives of the immediate parties to the contract. If the parties so agree, an impartial mediator may be called in to resolve the disagreement. The cost of the mediator shall be borne jointly by the parties.

20.3 If the parties are unable to find a solution, any dispute shall be settled by Lyngby District Court.

21. Penalties

21.1 In so far as delivery does not take place on time, Buyer can demand a penalty unless the delay is due to Buyer's circumstances or force majeure. The penalty shall be 1.0% of the purchase price for the part of the order that cannot be used as intended for each week or part week that the delay lasts.

DTU Group Procurement, March 2015