

**Standard Terms and Conditions of Purchase, version 3.0, 1. November 2019.**

**Definitions**

<b>Acceptance Test</b>	Testing process and terms resulting in the approval of a deliverable.
<b>Deliverables</b>	Delivery of Goods and/or Services from the Supplier to DTU.
<b>DTU</b>	Technical University of Denmark, Anker Engelunds Vej 1, Building 101A, DK-2800 Kongens Lyngby, Company reg. (CVR) no. 30 06 09 46.
<b>Goods</b>	The physical goods as further described and specified in a Purchase Order and/or in an Order Confirmation.
<b>Order Confirmation</b>	The Supplier's written or electronic confirmation concerning Delivery of Goods and/or Services to DTU.
<b>Party/Parties</b>	DTU and the Supplier – collectively referred to as the Parties.
<b>Purchase Order</b>	An order for Goods and/or Services generated via DTU's eCommerce system.
<b>Services</b>	The services as further described and specified in a Purchase Order and/or in an Order Confirmation.
<b>Supplier</b>	The company or the business which supplies Goods and/or Services to DTU pursuant to these Terms and Conditions of Purchase.

**1. Validity and acceptance**

Unless otherwise stated in the Purchase Order or in a written agreement between DTU and the Supplier, these Standard Terms and Conditions of Purchase apply to the Deliverable(s) concerned.

By confirming and executing a given Purchase Order, the Supplier accepts and agrees to these Terms and Conditions of Purchase, but see above.

Ordering and/or receipt of Goods and/or Services cannot at any time be equated with implied acceptance by DTU of the Supplier's general terms of sale and delivery or any other standard terms.

**2. Delivery**

Delivery of Goods must be made in accordance with DDP (INCOTERMS 2010). The address, date and time of delivery will appear from the Purchase Order and/or

the Order Confirmation. The Supplier is responsible for obtaining this information.

If it appears from the Purchase Order that delivery is not deemed to be duly made until DTU has approved the Deliverable, including the results of an Acceptance Test or similar in writing, the date of such approval is to be considered as the date when DTU has taken over the Deliverable in full, in part or conditionally.

All deliveries of Goods, including consumables and technical equipment, must be accompanied by a delivery note stating the product name, quantity, item name, Supplier's product number, DTU's order number, name of recipient and place of delivery. The EAN number must also be stated, see section 6 ("Invoicing") below.

Delivery of Services must take place at the address specified by DTU on the date and at the time or in the period specified as the time of delivery in the Purchase Order.

If the description of the Services implies that the Supplier is to deliver one or more results, delivery has not been made until such time as DTU has approved the result(s) in writing.

Delivery of Services must be accompanied by a statement of hours/work sheet specifying the hours spent, transport, etc.

If the Deliverable has been described in one or more deliverable documents prepared by DTU and/or the Supplier, such document(s) will form part of the overall contractual basis between the Parties in respect of the Deliverable.

Relevant documentation (e.g. certifications, approvals etc.) must accompany all Deliverables unless otherwise agreed in writing.

Documentation must be professionally prepared in Danish or English and generally meet the highest standards of documentation for deliverables in the same category as those concerned.

If DTU orders Deliverables based on material prepared by the Supplier, including its product catalogue, technical product descriptions enclosed with an offer or available at the premises of the Supplier, its sub-suppliers, etc., DTU is entitled to assume that the Deliverables are of the same quality as usual, unless DTU has been explicitly informed that this is not the case.

**3. Warranty, complaints and obligation to remedy defects, etc.**

The Supplier represents and warrants that the Deliverable meets the requirements specified in the Purchase Order, the Order Confirmation and/or the deliverable document for two (2) years from the time of delivery.

During the warranty period or the time allowed for complaints, or another period as agreed between the Parties, the Supplier must provide remedial action or replacement delivery free of charge if the Supplier has

delivered non-conforming and/or defective Goods and/or Services.

The Supplier is required to commence remedial action or replacement delivery – at its own option – immediately upon receipt of DTU's complaint.

DTU will notify the Supplier without undue delay of such time when DTU will consider remedial action futile or replacement delivery as not having been duly made. The Supplier must provide replacement delivery promptly upon receipt of such notice.

The Supplier's obligation to provide remedial action or replacement delivery will remain until DTU has either approved the Deliverable or has had to cancel the purchase of the Goods and/or Services due to material breach, see section 8 ("Breach by the Supplier").

The Supplier will pay any and all costs relating to remedial action or replacement delivery.

If the Supplier fails to fulfil its obligations to provide remedial action or replacement delivery despite a written request from DTU to that effect, DTU is entitled, upon prior or simultaneous notice to the Supplier, to have the necessary work performed by a third party or to make covering purchases (*dækningskøb*) for the Supplier's account and risk.

#### 4. Prices

All prices are stated in Danish kroner (DKK), inclusive of all applicable taxes, customs duties and charges, but exclusive of VAT.

All prices are fixed during the delivery period unless otherwise explicitly agreed. If a special price and/or exchange rate adjustment has been agreed, the Supplier is responsible for producing adequate documentation thereof.

Unless otherwise agreed, the prices cover all costs incidental to the Deliverable, including delivery, service, repairs, support, etc.

#### 5. Payment terms

All DTU employees must provide their contact details as part of the Purchase Order. The Supplier is responsible for obtaining this information. If the information is incomplete, the invoice will not reach the intended recipient, with a resulting risk of the payment being delayed.

The payment date is thirty (30) calendar days from the Supplier's submission of a correct electronic invoice, see section 6 ("Invoicing") below.

The Supplier is not entitled to payment for Deliverables until they have been duly performed, including approved by DTU. DTU may opt to approve a Deliverable in full, in part or conditionally. Conditional approval is, for example, approval with reservations or made conditional upon supplementary Deliverables, remedial action and/or replacement delivery, etc. The Supplier may invoice DTU on the date of DTU's final approval of the Deliverable at the earliest.

If a Deliverable may be assumed by DTU to have been delivered only partially or to be suitable only for partial use, DTU may withhold all or a proportionate share of the payments.

On request, DTU must notify the Supplier of the extent to which partial acceptance, or partial use as the case may be, is possible, and the extent to which the Supplier is entitled to issue an invoice in that respect.

If a Deliverable is used in the daily operations of DTU and the utilisation rate is over 50%, DTU is required to pay a reasonable proportion of the price of the Deliverable to which the use relates. Such reasonable payment is determined by DTU at its sole discretion, including on the basis of the utility value for DTU of using the particular part of the Deliverable.

#### 6. Invoicing

##### Format

Invoices must be submitted electronically to DTU in OIOUBL format, see Danish Executive Order no. 354 of 26 March 2010 on information in and transport of OIOUBL electronic invoice, cf. Danish Consolidated Act no. 798 of 28 June 2007 on payments to public authorities etc.

Invoices submitted in hard copy will not be processed or paid.

The requirement for electronic invoicing in OIOUBL format does not apply to foreign, Greenland and Faroese Suppliers. If the Supplier has a Danish company registration (CVR) number, the Supplier will, however, be subject to the legislation in force from time to time.

If, for reasons attributable to the Supplier, DTU is unable to pay by electronic transfer, DTU will not be held liable for any default or be liable to pay default interest, compensation, reminder fees and/or be subject to any remedies for breach.

##### Accounting

The Project Accounting Center of DTU's Office for Finance and Accounting supports DTU's departments and centres, except for Campus Service, which is supported by its own administration, regarding all accounting-related enquiries, including:

- Entry and approval of invoices/credit notes
- Reminders and payment
- Payment dates
- Statements of account, etc.

Credit notes must contain information about the invoice number settled in whole or in part by the credit note.

##### EAN number

All accounting-related enquiries, including enquiries concerning invoices, credit notes, reminders, statements of account, order confirmations etc., must state the EAN number.

The Supplier may make up and break down vouchers according to debtor/customer account if this results in a break-down of vouchers according to EAN number.

Enquiries must be made by e-mail to the contact person for the EAN number. The list of contact persons for EAN numbers is available at DTU's website (<http://www.dtu.dk/om-dtu/kontakt-og-besoeg/for-leverandoerer/samhandel-med-dtu#ean-numre>).

All questions concerning delivery, back orders, EAN numbers, delivery address and credit notes not received must be sent to the buyer.

#### Contents

Invoices must contain all the particulars listed below, and the subject field of the e-mail must state the [name of the Supplier](#), [invoice number](#) and [scanning](#).

In order to be considered accurate and complete, an electronic invoice – regardless of format – must contain at least the following information:

- EAN location number – location of DTU's ordering unit
- Personal reference – e-mail address of DTU's purchaser
- Order number – if given by DTU's ordering unit or generated automatically in case of e-Ordering
- Payment details – as described below
- Delivery address
- Product and service numbers
- Explanatory descriptions, gross and net prices and discounts
- Services provided itemised by person, number of hours and hourly rates
- Name of contact person at the Supplier

Invoices stipulating payment to be made to a foreign bank must also state the following payment information:

- Account holder
- Address of account holder
- Name of bank
- Account no.
- SWIFT (e.g. MIDLGB22)
- IBAN
- ABA/Routing number/swift (to the USA)
- Transit + branch (Canada)
- BSB code (Australia)
- Currency

#### Currency

DTU can make payment in the following currencies, but always transfers DKK currency to Danish bank accounts: AUD-CAD-CHF-DKK-EUR-GBP-JPY-NOK-NZD-SEK-USD.

#### Invoices from foreign Suppliers

Foreign, Greenland and Faroese Suppliers must submit invoices in PDF format to [kreditor@adm.dtu.dk](mailto:kreditor@adm.dtu.dk). The individual invoice with any vouchers must be sent in one PDF file, but several invoices (PDF files) may be submitted in the same e-mail.

#### 7. Security

Being a public educational institution (public authority/public law body), DTU cannot lawfully agree on advance payment unless the Supplier has provided an irrevocable bank guarantee payable on demand for the full amount which the advance payment concerns.

DTU will release the security immediately upon approval of the Deliverable.

#### 8. Breach by the Supplier

##### Delay

A delay will exist if the agreed time of delivery or an agreed milestone, such as dates of installation, testing etc., is exceeded.

Any delay will be considered as material.

If the Supplier can foresee a delay of delivery, the Supplier must immediately notify DTU in writing giving the reason for the delay and its expected duration, consequences, etc.

If delivery is not made on time, DTU is entitled to payment of a penalty, unless the delay is due to matters attributable to DTU or force majeure. The agreed penalty will equal 0,5 % for each week of delay, calculated as the part of the purchase price which covers the part of the Deliverable which cannot be put into use as assumed or which has not yet been delivered. The penalty for delay may not exceed 12,5 % of the value of the delayed part.

In addition to said terms, the remedies for breach set out below are available to DTU.

##### Errors and defects

The Supplier is liable for errors and defects under the general rules of Danish law.

The Supplier must remedy any defects or provide replacement delivery in accordance with the terms and conditions set out in section 3 ("Warranty, complaints and obligation to remedy defects, etc.") above.

Remedial action or replacement delivery will not deprive DTU of its right to claim compensation.

In addition to said terms, the remedies for breach set out below are available to DTU.

##### DTU's remedies

As soon as it may be deemed impossible that the Supplier will be able to deliver on time, DTU may cancel the late Deliverable and claim compensation.

DTU may reject a Deliverable and cancel its purchase of the Deliverable as well as claim compensation if the Deliverable, in DTU's opinion, has defects of a nature that makes remedial action difficult or problematic to provide, including in terms of time.

As part of the cancellation of the purchase of the Deliverable, DTU is entitled to make covering purchases (*dækningskøb*) for the Supplier's account and risk.

#### 9. Breach by DTU Reception

If DTU is unable to take receipt of the Deliverable in full or in part at the agreed date of delivery, DTU will bear the documented costs and risks relating thereto, subject, however, to the prior approval of DTU.

DTU must notify the Supplier of the delay in writing as soon as it may be deemed impossible that DTU will be

able to take receipt of the Deliverable at the agreed time. A new delivery date must be agreed immediately thereafter.

#### **Payments**

If DTU fails to pay the purchase price or parts thereof when due, interest may accrue as from the due date in pursuance of the Danish Interest Act in force at the time in question.

#### **10. Changes**

Both DTU and the Supplier may propose changes in respect of the Deliverable.

Change requests must be prepared and confirmed in writing. All change requests must contain an overview of the consequences to the Supplier, including in terms of time, quality and price.

The Supplier will not receive remuneration for its preparation of change requests unless so agreed in writing in advance.

DTU is entitled to access to the technical and pricing basis for the Supplier's change requests.

Any and all changes must be agreed in writing and accepted by both Parties.

#### **11. Liability and limitations of liability**

##### **Product liability**

The Supplier is liable for any personal injury, damage to property or other damage caused by the Goods and/or Services in accordance with the provisions on product liability.

If a third party raises a product liability claim against the Supplier, DTU must notify the Supplier thereof without undue delay.

The Supplier is required to let itself be summoned to the court or arbitral tribunal which examines claims raised against DTU, where the claim is based on damage alleged to have been caused by the Deliverable.

To the extent that DTU incurs product liability in respect of a Deliverable under Danish or foreign law, the Supplier must hold DTU harmless from any claim, including legal costs.

##### **Liability in damages**

The Parties are liable in damages under the general rules of Danish law.

However, neither Party will be liable for any business interruption, consequential loss or other indirect loss, unless the Party acted intentionally or with gross negligence.

DTU's total liability in damages cannot exceed DKK 100,000.00.

#### **12. Insurance**

The Supplier must take out professional liability and general- and product liability insurance on usual terms covering the Supplier's liability in respect of the Deliverable.

Valid policies must be presented to DTU on demand.

#### **13. Rights**

The Supplier warrants that the Deliverables will not infringe any third-party rights of any kind, including title, patents and copyrights.

The Supplier must hold DTU harmless from any claim, including legal costs, which may be raised against DTU as a result of any infringement.

All of DTU's rights, including the title to and any intellectual property rights in DTU's material, including documentation, drawings and plans, designs, patterns, specifications, tools, models and other data and tools, will remain the property of DTU, whether or not they are handed over by DTU to the Supplier and/or sub-suppliers.

The Supplier and its sub-suppliers are not entitled to use, copy or disclose, etc. DTU's material, including documentation, for any other purpose than for providing the Deliverable.

At DTU's request, the Supplier must immediately or without undue delay destroy material, including documentation, handed over by DTU, or return it to DTU without undue delay.

All rights, including the title to and any intellectual property rights in all material, including documentation, drawings and plans, designs, patterns, specifications, tools, models and other data and tools prepared and/or created by the Supplier for DTU, will accrue to DTU.

If the Supplier uses sub-suppliers, the Supplier must ensure that DTU receives the same rights as if the Supplier had not used sub-suppliers.

#### **14. Force majeure**

Neither the Supplier nor DTU will be liable towards the other Party in the event that Delivery is prevented due to force majeure. Force majeure means extraordinary circumstances/events which are outside the control of the relevant Party and which the Party could not/ought not have taken into consideration and could not/ought not have prevented or overcome, including, but not limited to, war, terrorism, unusual natural events, fire, strikes, lockouts or import or export bans.

The circumstances of a sub-supplier will only be deemed to constitute force majeure if such circumstances could not/ought not have been prevented or overcome by the Supplier.

Delivery delayed by force majeure may only be postponed by the number of Weekdays during which the force majeure event persists.

In the event of a delay, the Party causing the delay must promptly take effective measures to overcome the delay or limit its effects. At the same time, the other Party must be notified in writing about the cause and the expected duration of the delay and satisfactory documentation thereof must be provided.

Each Party will pay its own expenses/bear its own losses resulting from a force majeure event.

Either Party may cancel any outstanding Purchase Order in full or in part if it is deemed impossible that the Supplier will be able to make delivery at the agreed time or if it is deemed reasonably unlikely due to force majeure of a duration exceeding 30 days.

#### **15. Assignment and sub-suppliers**

The Supplier may only put another party in its place in full or in part, including use of sub-suppliers, with DTU's written consent.

The Supplier is entitled to use sub-suppliers named by the Supplier when the contract was entered into, but the Supplier will remain fully liable for the correct performance of the Deliverable, including for the sub-supplier's deliverables in the same way as for its own.

If the Supplier wishes to change sub-suppliers in relation to a specific Deliverable, this is subject to DTU's prior written consent. DTU may not unreasonably withhold its consent.

The Supplier may not discount or assign its outstanding account to a third party, whether in full or in part.

DTU may assign its rights and obligations under these Terms and Conditions of Purchase, without the Supplier's consent, to another public authority or public law body or similar which undertakes similar tasks as DTU.

Any other assignment is subject to the Supplier's consent, which consent may not be unreasonably withheld.

#### **17. Supply statistics**

At the request of DTU, the Supplier must provide DTU with statistics of DTU's past purchases. Such statistics must be submitted electronically in a format compatible with MS Excel to designated representatives of DTU.

At a minimum, statistics must contain historical supply data broken down by:

- Quantity (unit data)
- Product numbers
- Product names
- Services
- Prices
- Delivery addresses
- Invoice numbers
- Dates
- UNSPSC codes
- EAN numbers
- Name of buyers
- Delivery dates

Furthermore, DTU must, on request, be provided with information on any repairs and replacements of deliverables.

#### **18. Confidentiality**

The Supplier and its staff, as well as any sub-suppliers and their staff, must keep all information pertaining to the affairs of DTU or other parties which they learn in connection with the performance of the agreed Deliverable absolutely secret

#### **19. Publication, marketing and references**

Public announcements by the Supplier containing information about or relating to DTU are subject to prior written agreement with DTU.

The Supplier's use of DTU's name and/or DTU's logo, including for marketing purposes, is subject to prior written agreement with DTU.

However, the Supplier may without the prior consent of DTU include DTU in lists of references to a usual extent for use in the Supplier's participating in tender procedures of public authorities or private businesses.

#### **20. Regulatory requirements, standards and safety requirements**

For as long as the Terms and Conditions of Purchase apply between the Parties, the Supplier and its Deliverables must comply with Danish legislation in force at the time in question, including Danish regulatory requirements.

Equipment and apparatus must be delivered as approved and labelled in accordance with the national and international standards to the extent necessary for DTU to achieve the use specified by DTU or for which the equipment and apparatus are assumed to be suited.

Apparatus and equipment must comply with the safety requirements laid down in legislation or required by the authorities and must be labelled accordingly.

Non-compliance with these provisions will be deemed a material breach, entitling DTU to cancel its purchase of the Deliverable.

Any consequences for the Deliverable to DTU resulting from circumstances comprised herein must be notified to DTU promptly.

#### **21. Corporate social responsibility**

The Supplier must show corporate social responsibility and create value to both the business sector and society by dealing with any social, environmental and economic challenges in compliance with internationally recognised principles and in dialogue with its stakeholders. Accordingly, the Supplier must respect the fundamental requirements for human rights, labour rights, anti-corruption and the environment.

Among other things, corporate social responsibility implies that neither the Supplier nor any of its sub-suppliers may use child or adult labour in violation of applicable conventions. DTU reserves the right to request documentation to that effect in the event that DTU has grounds for suspecting violation.

The Supplier must ensure that the Deliverable in its entirety is performed in compliance with internationally recognised labour standards. In accordance with ILO's Labour Clauses (Public Contracts) Convention no 94, DTU aims to safeguard that the Supplier and any sub-suppliers ensure that workers are covered by conditions of wages, including special allowances, hours of work and other conditions of labour, which are not less favourable than those applicable under collective agreements, arbitration awards or national laws or regulations for work of the same character in the trade

or industry concerned in the district where the work is carried on.

The Supplier is under an obligation to ensure that employees performing the contract work in Denmark are employed under the wage and employment conditions set out above.

**22. Disputes, governing law and venue**

These Terms and Conditions of Purchase are governed by Danish law, with the exception of the Danish conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any dispute which may arise between the Parties and which cannot be settled amicably must be brought before the Court of Lyngby, Denmark.