

# General Conditions for Purchase of Goods and Services

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# General Conditions for Purchase of Goods and Services

## PART I GENERAL PROVISIONS

These General Conditions for Purchase of Goods and Services apply in respect of an agreement between Company and Contractor, which may e.g. be in the form of a purchase order or a work statement (the "Agreement"). These Terms and Conditions are binding between Company and Contractor and supersede and replace any Contractor terms and conditions or previous agreements for the Goods and Services in scope. Contractor's general terms and conditions of sale shall not apply. In the event any special terms are agreed between the parties, those special terms shall take precedence over the terms contained in these Terms and Conditions. Where these Terms and Conditions are attached to or incorporated into a purchase order or work statement issued under an existing contract, the terms and conditions of that existing contract shall prevail.

### Article 1 Definitions

Form of Agreement means the document that is signed by the parties and that confirm the Contract.

Work means all work which the Contractor shall perform or cause to be performed under the Contract.

Delivery means what has been agreed delivered in accordance with the Contract.

Goods means the goods to be provided by Contractor to Company in accordance with the Agreement;

Variation to the Work means a variation to the Work, Scope of Work, Contract Schedule, Specifications, Drawings and Company Provided Items made in accordance with the provisions of this Contract.

Compensation means the sum payable to the Contractor, as that sum is increased or decreased in accordance with the provisions of the Contract.

Contract means the Form of Agreement, these Conditions of Contract and all Annexes, Appendices and Exhibits listed in the Form of Agreement

Contractor ref definition in Form of Agreement

Company means OKEA AS on behalf of Company Group in licence no. 93.

Parties means both Company and Contractor

Subcontractor means a Third Party which has entered into an agreement with the Contractor for the

supply of goods or services in connection with the Work.

### Article 2 The parties' representatives

Each party shall appoint a representative who is authorised to act on its behalf in all matters which concern the Contract, and appoint a deputy to act in his/her stead. All communication regarding the Contract should be addressed to the parties representative.

## PART II CONTRACTOR'S OBLIGATIONS – MAIN PROVISIONS

The Contractor shall perform the Work with the degree of professional skill that can be expected by reputable contractors within the same or similar business. The Work shall be in accordance with the requirements of the Contract, and shall comply with all requirements regarding amount, quality, characteristics and packing as provided for in the contract. The Delivery/Work must be suitable for the intended purpose and be free of legal deficiencies of all kind.

The Contractor shall keep informed about and comply with all applicable laws and regulations. The Work/Delivery shall be carried out professionally, documented and/or controlled by qualified and authorized personnel where this is required.

The Contractor shall, in due time, obtain and maintain such approvals and permits as are necessary for the performance of the work and shall, at Company request, provide documentation on necessary permits.

In the event of changes in laws, statues and public regulations that effects the Work, and is effective

before agreed delivery, Contractor is obliged to carry out Variation work in accordance with the guidelines in this Contract.

The Contractor shall not enter into Subcontracts for parts of the Work without obtaining the Company's prior written consent, which will not be unreasonable withheld.

The Company reserves the right to approve all personnel who will be performing work under the Contract. The same applies when approved personnel are being replaced.

At its own expense, the Contractor shall replace personnel who conduct themselves in an improper manner or who have proved unsuitable for their tasks.

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### **Article 3 Safety, occupational health and the working environment**

Contractor must comply with all statutory requirements for HSE, as well as Company's specific HSE requirements. The Contractor is obliged to inform personnel covered by the Contract of Customer's current requirements and guidelines, and ensure that they are complied with. The Company's specific HSE requirements applicable to fulfillment of the Contract are set out in the Purchase Order.

### **PART III PROGRESS**

#### **Article 4 Progress schedule – delays**

The Contractor shall perform the Work in accordance with the Purchase Order.

Should the Contractor have cause to believe that the Work cannot be carried out in accordance with the progress schedule, it shall notify Company immediately, specifying the cause of the delay, assumed effects on the progress schedule and the Work, and any measures the Contractor considers appropriate in order to avoid, recover or limit the delay.

### **PART IV VARIATIONS AND CANCELLATION**

#### **Article 5 Right to Variations to the Work**

The Company is entitled to order such changes to the Work as it finds desirable.

A change may involve an increase or reduction of scope, a change in the character, nature or performance of all or parts of the Work, as well as changes to the progress schedule.

Nevertheless, Company has no right to order variation work which cumulatively exceeds that which the parties could reasonably have expected when the Contract was entered into.

If the Company issues a change order, the Contractor shall submit an estimate to Company without undue delay, unless the parties have agreed otherwise. The estimate shall include: a description of the relevant change work in question, a detailed schedule for the change work, showing all required resources and significant milestones, the effect on the Compensation, the effect on the progress schedule.

Changes to the Work that are necessitated by circumstances for which Contractor is responsible, shall not entail any changes in the Compensation or progress schedule in favour of the Contractor.

On receipt of a change order, the Contractor shall implement it without undue delay, even if the change order's effect on Compensation, on the progress schedule and other terms and conditions of the Contract has yet to be determined.

#### **Article 6 Cancellation**

The Company may cancel Work under the Contract by giving notice to Contractor, after which all Work shall cease.

Following such cancellation, the Company shall pay: the balance due to the Contractor for that part of the Work which has already been performed, and all necessary cancellation charges and administration costs incurred by the Contractor in connection with the cancellation.

The Contractor shall hand over copies of all plans, drawings, specifications and other documents that the Company is entitled to use under the Contract.

#### **Article 7 The Company's right to temporarily suspend the Work**

Company may temporarily suspend the performance of the Work, or parts thereof, by giving reasonable notice to Contractor.

The notice shall specify which part of the Work shall be suspended, the effective date of the suspension, and the expected date for resumption of the Work.

Following such suspension of the Work, Company shall pay relevant, documented costs incurred in connection with the suspension.

Contractor shall resume the Work after notification by Company.

### **PART V DELIVERY AND PAYMENT**

#### **Article 8 Delivery and completion of the Work**

At the Contractor's request, the Company shall issue a Completion Certificate for the delivery of the Work when the Work, with the exception of Guarantee work, has been carried out in accordance with the Contract, or when the Company has otherwise approved the Work. In the event a Completion Certificate is issued, both start and duration of the Guarantee Period shall be stated in such Completion Certificate.

Delivery of Goods shall be properly packed, marked and free delivered to Company base (DDP) in accordance with the latest revision of INCOTERMS.

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### **Article 9 Payment, invoicing and audit**

Company shall pay the Contract Price to Contractor within the time limits and in accordance with the terms and conditions set out in the Purchase Order.

The Company is entitled to conduct audits at the Contractor's premises of all payments made for reimbursable work. During office hours, the Company shall have access to all time sheets, minute books and other documents, including Subcontractors' original in-voices and all enclosed documentation relating to such reimbursable work, as well as all ledgers in which such accounting items have been entered.

The Company is entitled to conduct audits throughout the Contract period and for up to two years after the year in which the Contract expires or is terminated.

Payment shall not affect the Company's audit rights. Should any errors be found, the accounts shall be resettled, regardless of whether this is in the Contractor's favor or disfavor.

### **Article 10 Title to outcome**

Title to the outcome of the Work shall pass to Company progressively as the Work is performed.

If they have been paid for by the Company, the equipment and materials purchased or produced in connection with the Work are the property of the Company. The Contractor shall label such equipment and materials "Property of OKEA AS" and ensure that it is maintained. The Company's equipment and materials shall not be used for other work without the written approval of the Company.

Within three months of completing the Work, the Contractor shall return any Company's equipment and materials, unless otherwise agreed by the parties.

### **Article 11 Contractor Guarantee**

The Contractor guarantees the performance of the Work and any materials used in connection with the Work, and that the Work and materials are suitable for their intended purposes and uses as stated in the Contract.

The Guarantee Period will commence when the Completion Certificate is issued, or in the event a Completion Certificate is not issued, from the due

date of the final invoice and expires two years thereafter.

In case Contractor performs guarantee work during the Guarantee Period, he guarantees those parts of the Work affected by the guarantee work. This guarantee applies for one year after the date of completion of the guarantee work, unless the remaining part of the Guarantee Period is longer. The length of the guarantee for such parts of the Work shall, however, under no circumstances extend beyond two years after the completion of the first guarantee work.

## **PART VI BREACH OF CONTRACT**

### **Article 12 Contractor's Delay**

Delay occurs when the Work has not been carried out according to Contract and in accordance with the Purchase Order.

If Work is delayed in relation to the liquidated damages milestones set forth in the Contract schedule, Contractor shall pay such liquidated damages to Company.

Daily Liquidated damages equals 0.35 per cent of the estimated Compensation specified in the Contract. However, liquidated damages shall never be less than NOK 2,000 per day, or the equivalent in other currency.

Contractor's cumulative liability for liquidated damages under this Contract is limited to 10 per cent of the estimated Contract price specified.

### **Article 13 Contractor's defect and Guarantee liabilities**

The Work shall be deemed defective when the results of the Work do not comply with the requirements of the Contract or when the Work is not performed in accordance with the requirements of the Contract.

In the event the Work is found defective, or a defect for which Contractor is responsible under the guarantee provisions stated herein is discovered during the guarantee period, Contractor shall be responsible for such defect under this Article.

Contractor is, however, liable for a defect only if Company has given notice of the defect, without undue delay after having discovered the defect, or after it ought to have discovered it.

If Contractor is responsible for a defect, it shall rectify the defect as soon as possible at its own cost.

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Contractor shall notify Company of the measures it intends to apply, and the time for rectification. Company shall notify Contractor of its views on the rectification plans without undue delay. Company shall not unreasonably prevent Contractor from performing the planned rectification.

If Contractor is unable to rectify a defect within a reasonable time after Company's notification, then Company shall be entitled to rectify the defect itself or to engage a Third Party to do so. In such case, Contractor shall pay the necessary costs of rectification, provided Company acts in a reasonable manner.

If Company refuses to allow Contractor to perform the rectification work, then Contractor shall pay to Company an amount equal to the costs which Contractor would have incurred by carrying out the rectification work himself.

### **Article 14 Termination due to Contractor's breach of contract**

Company is entitled to terminate this Contract with immediate effect by notifying Contractor when:

- a. Company is entitled to maximum liquidated damages set out under this contract,
- b. Contractor is in substantial breach of Contract
- c. Contractor becomes insolvent or suspends its payments

Upon termination of the Contract, the Company is entitled to take over from the Contractor materials, items supplied by the Company under the Contract, subcontracts, documents and other rights which are required to enable the Company to complete the Work on its own accord or with the assistance of others.

Upon termination of the Contract, the Company may also invoke one or more of the following claims:

- a) The Company may claim compensation for delay in the form of liquidated damages under this contract.
- b) The Company may claim compensation for defects and other breach of Contract under this contract.

## **PART VII FORCE MAJEURE**

### **Article 15 Effects of Force Majeure**

Neither of the parties shall be considered to be in breach of an obligation under the Contract if he is able to establish that fulfilment of the obligation has been prevented by Force Majeure.

The party invoking Force Majeure shall, as soon as possible, notify the other party of the Force Majeure situation.

In the case of Force Majeure, each party shall cover its own costs resulting from the Force Majeure situation.

If a Force Majeure situation lasts without interruption for sixty days or more, or it is evident that it will do so, each party shall be entitled to terminate the Contract by giving notice to the other party.

## **PART VIII LIABILITY AND INSURANCE**

### **Article 16 Discharge of liability - indemnification**

Contractor shall indemnify Company Group from and against any claim concerning:

- a. personal injury to or loss of life of any employee of Contractor Group,
- b. loss of or damage to any property of Contractor Group,
- c. Contractor Group's own consequential losses,

which may arise in connection with the Work, irrespective of any liability on the part of Company Group.

Company shall indemnify Contractor Group from and against any claim concerning:

- a. personal injury to or loss of life of any employee of Company Group,
- b. loss of or damage to any property of Company Group,
- c. Company Group's own consequential losses,

which may arise in connection with the Work, irrespective of any liability on the part of Contractor Group.

### **Article 17 Insurance**

The Contractor shall, at its own cost and for the duration of the Contract Period, maintain insurance

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cover with respect to its liability under the Contract. The Contractor's insurance policy shall stipulate that Contractor's insurer shall waive any rights of recourse in relation to the Company and the Company Group for the duration of the Contract. The Contractor shall ensure that the insurance policy allows the Company to have direct contact with the insurer over claims which the Contractor shall cover under the Contract, and that the policy includes a clause to ensure that the Company will be notified by the insurer well before it terminates the policy or if the policy lapses for any other reason.

The certificate of insurance shall be presented to the Company on request.

### **PART IX PROPRIETARY RIGHTS, ETC.**

#### **Article 18 Rights to documents and computer programs**

Documents, computer programs, models, data, results, calculations, drawings, sketches, equipment, reports etc. which have been developed in connection with the Work, shall be the Company's property.

Computer programs, or improved versions of such programs, which are not part of the Work, but which have been provided by one of the parties for the purpose of carrying out the Work, shall be the property of that party. The Company is entitled to use the Contractor's computer programs as mentioned above in other activities in which the Company is involved, provided that payment for such use has been stipulated the Purchase Order. The Company may also assign this right of use to a Third Party in connection with such activities.

Improved versions of the Contractor's computer programs which are developed as part of the Work, shall be the Contractor's property, such however that the Company shall be entitled to use such improved software at any time in its own activities.

In cases where the Contractor provides personnel who largely perform the Work as hired personnel in the Company's organisation, all documents, models, computer programs, inventions and new technology resulting from the Work performed by such personnel shall be the Company's property and may only be used by the Contractor by agreement with the Company.

#### **Article 19 Confidentiality**

All information which the parties exchange or otherwise acquire during performance of the Work

shall be kept confidential and must not be disclosed to a Third Party without the other party's consent.

Nevertheless, each party may use or disclose such confidential information to Subcontractors and authorities to the extent that this is required for the performance and verification of the Work. In such cases the parties shall ensure that Subcontractors sign a written confidentiality agreement which includes the requirements specified here.

The Company is entitled to freely use information presented and handed over to the Company on an ongoing basis as the results of the Contractor's work.

The Contractor shall not publish information concerning the Work or the Contract without the Company's prior written approval.

Confidential information shall be handled securely. Documentation shall be stored in locked files, and electronically stored information shall be inaccessible to unauthorised personnel. All such confidential information and all material to which the Company has legal title, shall be kept separate from the Contractor's files and computer records to which its employees have unrestricted access. All material provided by the Company for the Contractor's use shall be returned once the Work is completed unless otherwise agreed.

The obligation to observe confidentiality shall extend beyond the Contract Period.

### **PART X OTHER PROVISIONS**

#### **Article 20 Assignment of Contract, etc.**

Company may assign its rights and obligations under the Contract to a Third Party provided that Company can prove that the assignee has the financial strength necessary to fulfil Company's obligations under the Contract. If so requested by Contractor, Company shall provide satisfactory security for the Third Party's fulfilment of the obligations.

Contractor may not assign or mortgage the Contract, any part of it or interest in it to a Third Party without Company's consent, which will not be unreasonably withheld. Such consent is not necessary in the case of assignment or mortgaging to a bank or other financial enterprise.

#### **Article 21 Norwegian law and the settlement of disputes**

This Contract shall be governed and construed in accordance with Norwegian law.

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Any disputes which may arise in connection with or as a result of the Contract, and which are not resolved amicably, shall be settled by court proceedings unless otherwise agreed between the parties. Any court proceedings shall be brought before Trondheim District Court.

Disputes shall be settled in accordance with Norwegian law.

### **Article 22 Termination without cause.**

Company may terminate the Agreement without cause by giving thirty (30) days prior written notice of termination to Contractor, and Company shall only be liable to pay for that part of the Goods and/or Services provided in compliance with the terms of the Agreement prior to such date that Contractor receives Company's written notice to terminate.