



General Purchase Conditions

The Armed Forces of Norway

1 Area of Application and Precedence of Documents

Form 5052 contains the general Purchase Conditions for the Armed Forces of Norway. Unless otherwise stipulated through special conditions, the General Purchase Conditions shall be an integral part of the Agreement.

In the event that the documents of the Agreement contain mutually contradictory provisions, the following document precedence shall apply.

1. Special Contract Conditions
2. Form 5052
3. Functional requirements
4. Other requirements and technical specifications, including blue prints/drawings furnished by the Armed Forces.
5. Contractor's technical solution

This agreement replaces all previous documents related to entering into this agreement, including invitation to tender, offer, terms of sale as well as other correspondence.

2 Contractor's Obligation Concerning Deliveries

2.1 General

The Contractor shall meet all obligations in the Agreement, to include agreed delivery at agreed time.

The delivery shall always be suitable for its intended purpose, provided that the Contractor knew or ought to have known of this purpose when the Agreement was entered into.

2.2 Legal Requirements

The Contractor is responsible for ensuring that the delivery fulfils all legal requirements applicable at the time when the agreement is entered into. In addition, the Contractor is responsible for ensuring that the delivery fulfils all legal requirements that the Contractor knew or ought to have known would apply at the time of delivery.

And, as soon as he gains knowledge of, or ought to have had knowledge of changes in legal requirements, the Contractor has a duty to notify the Armed Forces of all such changes that affect the delivery and are not included the above (first paragraph). If additional costs are incurred through the Contractor's failure to comply with this duty to notify, the Contractor shall cover these costs.

3 Implementing the Delivery

3.1 Accepting the Delivery

Before presenting deliveries for the Armed Forces, the Contractor shall verify that the delivery is in accordance with the requirements of the agreement.

When the Contractor is ready to make delivery, he shall complete and forward Form 5357 Certificate of Conformity, to the Armed Forces. In the event that the Armed Forces have appointed a separate Quality Assurance Representative, the completed form shall be forwarded to this representative.

Upon receipt of completed Form 5357, the Armed Forces shall execute its acceptance procedure without undue delay.

3.2 The Armed Forces' rights when the Contractor wishes to deliver earlier than the agreed time

The Contractor cannot complete a delivery prior to the agreed upon time of delivery without obtaining a written approval of the Armed Forces. Such an approval does not affect the contracting parties' remaining rights and duties according to this agreement

3.3 The Armed Forces right to demand delayed delivery

In the event that the Armed Forces realize or has reason to assume that the Armed Forces is unable to receive the delivery at the agreed time, the Armed Forces shall issue a written notification to the Contractor.

The Armed Forces has the right to require the Contractor to store a delivery for a period of up to three months from the agreed time of delivery, or the time the Contractor would have been able to deliver, if the latter event occurs after the agreed time of delivery. The Armed Forces assumes responsibility for the costs and risks associated with such storage. A new time of delivery shall be agreed by making a change in the Agreement, ref article 13.

Provided that the Contractor would have been able to deliver in accordance with the Agreement, the Armed Forces shall pay the Contractor as if the delivery had been made in accordance with the Agreement. Otherwise the Armed Forces' obligation to make payment occurs at the point in time when the Contractor could have met his obligations, provided that this event occurs after the agreed time of delivery.

As soon as the Contractor has received payment, the Contractor shall clearly mark the delivery "Property of The Armed Forces". In order to allow identification of the delivery, it shall be stored separate from other deliveries, materiel and equipment etc.

3.4 The Armed Forces' Right to Reject Defective Deliveries

In case of defective deliveries, ref. article 7, the Armed Forces can reject the defective part of the delivery, as well those parts of the delivery that are affected by defects. The rejection shall be made in writing. Rejected deliveries shall be regarded as not having been delivered.

If the Armed Forces choose to receive a defective delivery, the rule of article 7 will come into effect.

4 Price

The agreed price excludes value added tax, but includes packing, customs, taxes and other fees.

5 Payment

5.1 Payment Conditions

The Armed Forces shall make payment within 30 days of receipt of delivery, invoice and other vouchers. Payment does not entail acceptance of the delivery.

5.2 Delinquent payment

If the Armed Forces fail to make payment on time, the Armed Forces shall pay default interest in accordance with applicable Norwegian law (Lov om renter ved forsinket betaling m.m. av 17. desember 1976 nr. 100).

6 Armed Forces' Rights Concerning Late Deliveries

6.1 Delay

A delay occurs when the Contractor fails to comply with his obligations in accordance with the Agreement at the agreed date and this (delay) is not attributed to factors subject to the Armed Forces' control, or risks that the Armed Forces have accepted, including Force Majeure (ref. article 8).

6.2 Contractor's Duty to Notify and Limit Delays

If the Contractor realises or has reason to assume that a delay will occur, he shall notify the Armed Forces in writing. The notification shall provide the estimated duration of, and reason for the delay.

The Contractor is obligated to do everything in his power to limit the delay. The Contractor shall also keep the Armed Forces updated on what measures the Contractor is implementing to limit the delay.

In the event that the Contractor believes that the reason for his failure to comply with his obligations by the agreed date is attributed to factors subject to the Armed Forces' control or risks that the Armed Forces have assumed, including Force Majeure, the Contractor shall document this without undue delay.

The Contractor's duty to notify and obligation to limit the delay also applies when the reason for failure to comply with the obligations by the agreed date is attributed to factors subject to the Armed Forces' control or risks that the Armed Forces have assumed, including Force Majeure.

6.3 The Armed Forces' Right to Maintain Agreements when Delays Occur

The Armed Forces have the right to adhere to the Agreement and demand its completion.

6.4 The Armed Forces' Right to Impose Penalties when Delays Occur

When delays occur, the Armed Forces can demand penalties from the Contractor. The penalty shall be paid regardless of whether the Armed Forces actually have incurred additional costs as a result of the delay.

The penalty is a daily fine calculated per delayed working day and shall amount to 1-one- per mille of the price of that part of the delivery that has been delayed, and, if applicable, of the price of those parts of the delivery that cannot be put to use as intended due to the delay. Price is in this case defined as the basis price plus agreed changes, including adjustment for price- and currency escalation.

The penalty is limited to 10 percent of the price of that part of the delivery that is delayed, and, if applicable, of the price of those parts of the delivery that cannot be put to use as intended due to the delay.

6.5 The Armed Forces' Right to Cancel Due to Delays

The Armed Forces can cancel parts of, or the entire Agreement if a delay represents a fundamental breach of agreement for the part of the Agreement that is to be cancelled.

When entitled to maximum penalties, the Armed Forces may still cancel the agreement for that part of the delivery that is delayed, and potentially also those parts of the delivery that cannot be put to use as intended as a result of the delay. .

6.6 The Armed Forces' Right to Compensation when Delays Occur

The Armed Forces are entitled to compensation for direct losses incurred as a result of the delay.

If a delay is caused by the Contractor's negligence, the Armed Forces are also entitled to compensation for indirect losses incurred as a result of the delay.

Accrued penalties will not be deducted from awarded compensation.

7 Defects

7.1 Defects

A defect exists if the delivery fails to comply with stipulated Agreement requirements and this cannot be attributed to factors subject to the Armed Forces' control or factors of which the Armed Forces have assumed risks, including Force Majeure.

Corresponding conditions apply for the Contractor's other obligations pursuant to the agreement.

7.2 Armed Forces' Duty to File Complaints of Defects

Within reasonable time after discovering a defect, or when they ought to have discovered a defect, the Armed Forces are obligated to provide the Contractor with notification of the defect.

Regardless, the Armed Forces must file complaints within two years of time of delivery. For deliveries that, subject to normal use, are intended to last considerably longer, the deadline for filing complaints is five years.

Defective parts that have been repaired due to a defect, receive a new complaints period starting with the repair date. For parts that could not be put to intended use due to the defect, the complaints period is extended equivalent to the time elapsed between the time of the Contractor notification and the time of repair of the defect.

7.3 The Armed Forces' right to have defects repaired

The Armed Forces are entitled to have defects repaired or replaced. A replacement delivery however, can only be demanded when substantial defects occur. The Contractor is liable for all expenses and risks associated with repairs.

If the Contractor fails to make repairs within reasonable time, the Armed Forces can have the defect repaired at the Contractor's expense and risk.

If the Contractor wishes to carry out repairs at his own facilities, he shall collect the delivered goods from the Armed Forces at his own expense. In addition, the Contractor is liable for the delivery from its collection time until it has been returned to the same address. If the Armed Forces have distributed the delivery to individual (geographically separate) units, the Armed Forces shall gather these at a regional main warehouse for Contractor collection. If the Contractor wishes to carry out repairs on the premises of the Armed Forces, the Contractor himself is liable for all the associated expenses. The Armed Forces has, on a justifiable basis, the right to deny the Contractor from carrying out the repair on the premises of the Armed Forces. In this case, repair is to be carried out on the premises of Contractor as mentioned above.

7.4 The Contractor's right to make repairs.

The Contractor can demand to have defects repaired or replaced when this can be done without significant inconvenience to the Armed Forces and without jeopardizing the Armed Forces' right to have their expenses reimbursed by the Contractor. Regardless, in cases of significant defects, the Armed Forces can demand replacement deliveries. In cases where the Armed Forces have arranged to have defects repaired because it would be considered unreasonable to demand that the Armed Forces awaited the Contractor's repair, the Contractor cannot claim that he has not had opportunity to make the repair. Correspondingly, article 7.3, sub-paragraph two and three apply for Contractor repairs.

7.5 The Armed Forces' right to demand price reductions due to defects

Whenever a repair is not feasible, or the Contractor does not insist on making repairs in accordance with article 7.4., or a repair has not been made within reasonable time, the Armed Forces can demand price reductions. The price reduction is calculated in such a manner that the ratio between reduced price and agreed price corresponds to ratio between the value of the defective delivery and agreed state at the time of delivery.

7.6 The Armed Forces' right to cancel due to defects.

Whenever a repair is not feasible, the Contractor does not insist on making a repair in accordance with article 7.4., or a repair has not been made within reasonable time, the Armed Forces can completely or partially cancel an agreement if that part of the agreement that is cancelled has been significantly breached.

7.7 The Armed Forces' right to demand compensation due to defects

The Armed Forces is entitled to compensation for direct losses suffered as a result of the defect.

In addition the Armed Forces is entitled to compensation for indirect losses suffered as a result of the defect if the defect is caused by Contractor negligence.

8 Force Majeure (Exemptions)

Force Majeure is defined as an obstacle caused by extraordinary events beyond the control of the parties which makes it impossible for the parties to fulfil their agreed obligations, provided that the party shouldn't have avoided or overcome the obstacle or its effect, or the party did not foresee or should have foreseen the obstacle when the agreement was entered into. Such situations may be war, rebellion, national unrest, natural disasters or other circumstances of similar severe nature.

Obligations that cannot be fulfilled due to Force Majeure are suspended. The other party's reciprocal services are suspended during the same period.

In connection with Force Majeure, the parties have a mutual obligation to keep each other informed regarding all conditions that ought to be considered relevant to the other party. Such information shall be passed on without undue delay.

9 Quality assurance

The Contractor shall have a quality assurance system designed for the earliest detection possible of existing defects, potential defects as well as other conditions that may result in inadequate quality of Contractor performance

The Armed Forces are entitled to inspect all aspects of the Contractor's fulfilment of his obligations, such as development, construction/design and production during all stages of the Agreement. The same applies for all documents or recordings/transcriptions. The Armed Forces shall notify the Contractor in reasonable time before conducting inspections

The Armed Forces' right to perform audits according to paragraph 2 is independent of the location where the Contractor carries out his agreed obligations. If the Contractor performs some of his agreed obligations abroad, the Armed Forces are entitled to delegate the quality assurance function to the military authorities of that country

Quality assurance performed by the Armed Forces does not exempt the Contractor from the obligations he has assumed in the agreement. Failure to conduct quality assurance does not limit the rights of the Armed Forces in accordance with the agreement.

10 Immaterial rights

10.1 Breach of third party immaterial rights

The Contractor shall not infringe on patents or other immaterial rights in connection with fulfilment of the agreement. The Contractor shall indemnify the Armed Forces from any claim that may arise as a consequence of patent infringement or other immaterial rights in connection with the fulfilment of the agreement.

The Armed Forces shall indemnify the Contractor from any claim resulting from the use of drawings, specifications or licences provided by the Armed Forces.

The parties shall have a reciprocal duty to notify each other of claims regarding patent infringement or other immaterial rights concerning production or use of the delivery.

10.2 Patents and secure information

If the Contractor wishes to file a patent application containing secure information, the Contractor shall present the application to the Armed Forces for written approval prior to submitting the patent application. The Armed Forces can deny such approval without justification.

10.3 Use of documentation

The Armed Forces has the right to utilize documentation provided in conjunction with the delivery for the purposes of training, use, codification, maintenance and repair. The Armed Forces is entitled to copy documentation for its own use.

11 Government furnished materiel

11.1 Property rights of material the Armed Forces have handed over to Contractor

The Armed Forces retains ownership rights and all other rights to government furnished material in connection with the implementation of the Agreement. This also applies for possible scraps and surplus materiel that originates from this materiel.

11.2 Marking of Armed Forces Property

The Contractor shall clearly mark all government furnished material in his possession by "Property of the Norwegian Armed Forces". In order to allow identification of Armed Forces property, it shall be stored separate from other deliveries, materiel and equipment etc.

12 Advertisement

The Contractor must obtain advance approval from the Armed Forces if, for advertising purposes or for other reasons, he wishes to disclose information about agreement to the public. The Armed Forces can deny such approval without justification.

13 Changes

13.1 Changes to the Agreement

The agreement can only be modified through both parties' signature of an Agreement of Change (Form 5156). The Contractor cannot claim that statements, actions or omissions by the Armed Forces, including minutes of meetings and correspondence, constitute a de facto amendment of the agreement

14 Termination

The Armed Forces may terminate the entire, or parts of the agreement. The termination shall indicate the date of termination of the agreement, as well as a description of what the contractor needs to do in connection with the termination.

Regarding terminations the Armed Forces shall cover the following:

- Pay agreed price for implemented deliveries
- Pay a proportional share of agreed price for work associated with deliveries that haven't been implemented.
- In addition, the Armed Forces shall cover documented termination expenses and losses incurred by the Contractor, including a proportional share of the expected profit arising from work that hasn't been done, adjusted for the reduced commercial risk resulting from the termination.

In connection with the termination, the Contractor shall implement all reasonable measures to limit costs and losses resulting from the termination, including seeking new contracts. In the opposite event, the compensation of Contractor' costs and losses shall be reduced correspondingly. The total amount payable to the Contractor concerning the termination, including all executed payments, shall be determined through negotiations. Under no circumstances shall the total compensation exceed the agreed total price of the agreement.

Work in progress that has not been delivered, but is included in the settlement shall be transferred to the Armed Forces when final settlement is decided.

15 Governing Law and an legal venue

This Agreement is governed by Norwegian law.

In the event of disputes concerning the Agreement, attempts shall be made to settle the dispute through negotiations. If negotiations fail to succeed, the dispute shall be settled in ordinary court of law, using Oslo Tingrett as legal venue. The fact that a dispute is brought to court for settlement does not exempt the parties from fulfilling their obligations according to the Agreement.