
CONTRACT

August 2012

concerning the purchase of one (1) flashing solar simulator

between

Aalborg University
Department of Energy Technology
Pontoppidanstræde 101
9220 Aalborg Øst, Denmark
Denmark
(the "Customer")

and

[...]
(the "Supplier")

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1. Definitions

In this Contract, the below terms and expressions have the following meanings:

- 1.1 *Acceptance Date*: The day on which the Customer has finalised its assessment of the delivered Products and informs the Supplier that the delivery is accepted.
- 1.2 *Business Day*: Monday to Friday, except for national holidays, 24 December, 31 December and 5 June.
- 1.3 *Contract*: This written contract between the Parties, including all amendments, appendices and supplements. However, in the event of any discrepancy between the written contract and any appendix or other document other than supplements and amendments subsequently agreed, cf. Clause 2 below, the written contract shall prevail.
- 1.4 *Products*: The goods or products and related documentation as specified the Tender to be delivered under this Contract.
- 1.5 *Product Price*: The total sum payable by the Customer for the Products under the Contract.

2. General conditions

- 2.1 Any amendment to or modification of the Contract will not be binding on the Customer in the absence of a written agreement signed by both Parties.
- 2.2 The Supplier's general terms and conditions of sale and delivery, if any, shall not apply to the contractual relationship between the Parties.

3. Supplier's delivery obligations

- 3.1 The Supplier must deliver the Products as specified in the Tender and assumes all other obligations under the Contract.
- 3.2 The Products must possess the properties and fulfil the requirements that appear from this Contract.
- 3.3 During the warranty period, the Supplier must provide warranty services at no charge.

4. Documentation

- 4.1 Installation, operating and maintenance manuals must be provided at delivery according to usual detailing in the business in electronic and paper versions.
- 4.2 The Supplier undertakes to deliver brochures, data sheets, spare parts lists, and manuals in English. Documentation in other languages is subject to separate agreement.

5. Terms of delivery

- 5.1 The Supplier must deliver the Products subject to DDP (INCOTERMS 2012) in relation to costs including but not limited to costs for packaging, carriage charges, export and import taxes and duty and insurance, however full and final delivery shall not be deemed to have taken place until the Acceptance Date.
 - 5.1.1 The Supplier must deliver one of the Products to:

Aalborg University
Department of Energy Technology
Pontoppidanstræde 101
9220 Aalborg Øst, Denmark
Denmark
 - 5.1.2 Related services, including installation, assembling and training must be delivered and performed at the above address.
- 5.2 Delivery notes must be placed on the outside of each package. Each individual major hardware component shall be identified and numbered.
- 5.3 The Supplier is responsible for the proper packaging of the Products for domestic and/or overseas transport taking due account of the nature, properties and composition of the Products being supplied. All packaging costs are included in the Product Price.
- 5.4 The Customer will register all receipts of deliveries on Business Days from 8 am to 2 pm (CET).
- 5.5 Risk and ownership
 - 5.5.1 The Supplier bears the risk of the Product until the Acceptance Date.

5.5.2 Rights of ownership, rights of use and other rights will pass to the Customer on the Acceptance Date.

6. Delivery

6.1 The Supplier must physically deliver the Products no later than [] weeks after the final contract award. The Supplier must notify the Customer of the delivery at least two Business Days prior to delivery.

6.2 The Supplier shall be responsible for delivery of all equipment. Furthermore the Supplier shall ensure that all packaging material and other waste are removed from the delivery site.

6.3 The Supplier shall undertake installation and all necessary adjustments of the equipment.

6.4 Once the Products have been physically delivered the Customer must conduct a more thorough inspection of the Products in order to ensure that they are free from any defects and are in full accordance with what is set out in Tender. This inspection must be finalised no later than three weeks after physical delivery, except in situations where the tests are not passed by the Products. The testing shall include, but not be limited to, controlling if the Products meet all specifications.

6.5 The Acceptance Date shall be deemed to have been reached when the Customer upon finalisation of the inspection informs the Supplier that the delivery is accepted.

6.6 In the event that the Product(s) is/are not in accordance with the Contract due to a default by the Supplier, notice thereof shall also be given to the Supplier within three weeks from physical delivery. The Supplier must then without undue delay remedy the defect(s), and when the Supplier informs the Customer that the Product(s) is/are now free from defects a new inspection period of three weeks shall begin.

6.7 Subject to a written notice to the Supplier of at least five Business Days, the Customer is entitled to postpone the physical delivery date up to twenty Business Days, without incurring additional costs. In the event that the Customer postpones delivery, the Supplier will be entitled to require that all subsequent deadlines be postponed by a corresponding number of Business Days. Payments will be postponed accordingly.

7. Delayed delivery

- 7.1 If the Supplier fails to observe the agreed date of delivery or anticipates that the agreed date of delivery cannot be observed, the Supplier must immediately inform the Customer of the earliest possible, alternative date of delivery.
- 7.2 If the Supplier fails totally or partly to deliver on the delivery date, cf. Appendix 1, the Customer is entitled to liquidated damages in the amount of 0.5% of the Product Price per commenced week of delay, however, limited to a maximum of 10% of the Product Price. Payment of the said liquidated damages does not prevent the Customer from claiming damages in accordance with the general rules of Danish law for any loss suffered as a consequence of any such delay of delivery.
- 7.3 If delivery is delayed for more than three (3) months, the Customer has the right to terminate the Contract totally or partly provided that the Customer submits an advance written notice of its intent to terminate the Contract totally or partly at least ten (10) Business Days before such termination will take effect. During the said ten (10) Business Days' grace period, the Supplier will have the opportunity to effect delivery of the Products and thereby avoid the Customer's termination of the Contract.
- 7.4 In the event that the Product(s) is/are not in accordance with the Contract, and the Acceptance Date is therefore not met within three weeks from delivery, the Product(s) shall, for the purpose of this Clause, be deemed not to have been delivered. For the avoidance of doubt this shall mean that the Customer is entitled to liquidated damages as set out in Clause 7.2 counted from the date set out in Clause 6.1 and until the Acceptance Date is reached.

8. Prices

- 8.1 All prices are stated in [insert currency].
- 8.2 The Product Price is inclusive of all duties, taxes and expenses incurred by the Supplier, but exclusive of VAT.

9. Terms of payment

- 9.1 The Customer must make payments in accordance with the payment plan in Clause 10 and this Clause 9, provided that, at the time of invoicing, the Supplier has performed all activities which the Supplier by the time in question is required to have performed under this Contract.

- 9.2 A payment conditional upon the fulfilment of an obligation by the Supplier will not be due until any such obligation has been fulfilled according to the stipulation set out in the Contract.
- 9.3 Invoices must be issued by the Supplier in **insert currency**]. The **EAN number 5798000420816** must be stated on the invoice.
- 9.4 Terms of payment are invoice month plus 30 (thirty) days subject to the Customer's approval of the invoice.
- 9.5 The Supplier's right to payment may not be subject to pledging or assignment without the Customer's written acceptance.

10. Payment plan

- 10.1 The time of invoicing for the Product Price is as follows:
- 10.1.1 10 % of the Product Price may be invoiced when the Contract has been signed.
 - 10.1.2 40 % of the Product Price may be invoiced when the Product has been physically delivered in its entirety.
 - 10.1.3 50 % of the Product Price may be invoiced after installation (Acceptance Date) and training of the users.
- 10.2 The time of invoicing for repairs or maintenance not covered by the warranty or Service contract is at the date of the performance of the repairs or maintenance. If related repairs or maintenance are performed during several days, the date of invoicing is at the last day of the related repair or maintenance.

11. Spare parts

- 11.1 The Supplier undertakes and warrants that it will be able to repair, renovate and deliver standard spare parts for the Products for a period of seven (7) years after the Customer has officially been given notice of the Products being taken out of production provided that the spare parts in question are still available with the subcontractor(s), if any.

- 11.2 As to the Supplier's own production, the Supplier undertakes and warrants that it will be able to deliver spare parts for a minimum of ten (10) years after the Product(s) have been taken out of production.
- 11.3 If the Supplier fails to deliver spare parts as provided for in Clauses 11.1 and 11.2 above, the Supplier must indemnify the Customer for any and all losses and damages suffered as a consequence of any such non-delivery of spare parts. Alternatively, the Supplier is entitled to procure replacement delivery provided that such replacements are of the same quality and function as the non-delivered spare parts.

12. Warranty

- 12.1 The warranty period is 12 (twelve) months, running from the Acceptance Date and covering the delivered Products, goods, services and documentation.
- 12.2 New parts delivered during the warranty period for replacement of defective parts are subject to warranty until expiry of the original warranty period, but in no event for less than 6 (six) months counted from the date of replacement.
- 12.3 The Supplier warrants that during the warranty period, the Products fulfil all requirements stipulated in the Contract, including the requirements as to operability, quality and service levels set out in the Tender document and complies with applicable mandatory legislation and recognised professional standards. The same applies to delivered spare parts, documentation and other goods and services delivered under this Contract.
- 12.4 In case the Products or any part thereof are defective, the Supplier will be required at no extra cost and within the contractual deadlines to deliver such replacement or additional equipment, documentation and other goods and services as are necessary.
- 12.5 The cost of the warranty is included in the Product Price and the Supplier is not entitled to any additional payment for the warranty.
- 12.6 The Supplier is liable for the goods and services delivered by its sub-suppliers under the Contract in the same manner as for its own goods and services.
- 12.7 The Supplier is liable during the entire warranty period for all costs of remedial work, including, but not limited to, costs of transporting service staff to the Customer's address.

12.8 The Supplier is liable in damages under the general law of damages in Denmark for any loss incurred by the Customer as a result of the non-serviceability of the Products.

13. Supplier's breach of contract

13.1 A defect will be deemed to exist if the Products are not suitable for the use warranted by the Supplier or do not possess such properties, are not of such quality or do not operate in such a manner or meet any such requirements as the Customer may reasonably expect on the basis of the Contract.

13.2 The Supplier must remedy any defect notified by the Customer within the warranty period without undue delay. The notification must be in writing without undue delay after the defect has been detected and contain a description of the defect.

13.2.1 The Supplier must initiate any remedial work within two (2) Working Day of notification by the Customer.

13.2.2 The Supplier must complete any remedial work within ten (10) Working Days of notification by the Customer.

13.2.3 If remedial action is not completed within ten (10) Working Days of notification by the Customer, the Customer will be entitled to arrange for the remedying of a defect for the Supplier's own account and risk.

13.3 The Supplier will be required to deliver a serviceable replacement product or, in the alternative, make delivery of substitute goods if remedial work is required repeatedly within the first year after the Acceptance Date and the Product(s) consequently cannot be used for 30 days or more within any given period of 60 days.

13.4 The general rules of Danish law in respect of proportionate reduction apply.

13.5 In case of incorrect and/or defective delivery, the Customer reserves the right to invoice the administration costs to the Supplier for inspecting the Products, subject to a minimum of DKK 10,000.

13.6 The Customer is entitled to return incorrect and/or defective deliveries at the Supplier's expense. If the Supplier is able to prove that a defect is caused by the Customer, the Supplier will be entitled to a refund of all costs incurred in connection with the remedying of such defect.

13.7 The Customer is entitled to terminate the Contract for cause if defects are identified during the warranty period and if the defects have not been remedied within reasonable time.

13.8 In case of termination for cause, the Supplier shall immediately repay the amounts paid by the Customer without any deduction for decrease in value or for ordinary use. The Customer shall return the Products in the condition in which it is found at the Customer's premises. The Supplier shall bear all costs incidental thereto and shall arrange and pay for any disassembling of the Products. However, the Customer will be entitled to use the Products until a replacement purchase can be made.

14. Customer's breach of contract

14.1 Any failure by the Customer to comply with its payment obligations under this Contract will entitle the Supplier to charge interest in accordance with the rules of the Danish Interest Act (*renteloven*).

14.2 Furthermore, the Supplier will be entitled to terminate the Contract upon the Customer specifying the breach and on the Customer's failure to fulfil its payment obligations within 40 (forty) Business Days.

15. Damages and product liability

15.1 Each Party is liable in damages to the other Party in accordance with the general rules of Danish law for any loss suffered by such other Party for any breach of this Contract.

15.2 The Customer is entitled to choose whether claims for damages will be made against the Supplier or the sub-supplier, if any.

15.3 The Supplier undertakes full product liability in accordance with the general rules of Danish law.

15.4 To ensure observance of product liability, the Supplier undertakes to take out the necessary and adequate insurance and provide the Customer with the necessary documentation thereof.

16. Force majeure

- 16.1 The Supplier is only entitled to invoke force majeure covered by the ordinary definition of force majeure under Danish law and as provided for in the Danish Sales of Goods Act (*købeloven*).
- 16.2 The Party wishing to claim relief under this Clause must without undue delay notify the other Party in writing of the event constituting force majeure and when the force majeure event no longer exists.
- 16.3 In case of relief, each Party must as soon as possible return what such Party has received from the other Party.
- 16.4 Events experienced by a sub-supplier will only be regarded as force majeure if the sub-supplier is faced with the events described above as force majeure events, provided that such events could not have been foreseen, avoided or overcome by the sub-supplier or the Supplier.

17. Third-party rights

- 17.1 The Supplier warrants that the Customer's use of the Products does not infringe any third party rights.
- 17.2 In the event that any third party raises objections and/or claims that the Products infringe any third-party rights, the Party receiving the claim must immediately notify the other Party thereof.
- 17.3 The Supplier is obliged to indemnify the Customer for any claim raised by a third party for the alleged infringement of patents, licences, trademarks and/or designs, copyright, know-how, *etc.*, in respect of the Products and for all costs and expenses incurred by the Customer in relation therewith.

18. Confidentiality

- 18.1 The Supplier, including its chief executives, board members, employees, advisers or representatives, *etc.*, undertakes to protect and keep strictly confidential any information concerning the Customer's affairs of which the Supplier may obtain knowledge in connection with the deliveries under this Contract, except in cases where disclosure is required by law or by order of a **competent court or governmental authority**. The Supplier is required not to provide or disclose information to any third party relating to any drawings and/or other documentation or material received from the Customer.

- 18.2 The name Aalborg University must not be subject to any kind of advertising or be used or otherwise referred to without the prior written consent of the Customer.
- 18.3 Following discussions with the Supplier, the Customer will decide how to publish the conclusion of the Contract.

19. Assignment

- 19.1 The Supplier is not entitled to assign its rights or obligations under this Contract to any third party without the prior written consent of the Customer. The Customer is subject to the public procurement rules, and permission to any such assignment may therefore only be granted in exceptional circumstances.
- 19.2 The Customer is entitled to assign its rights under the Contract to other legal entities without the prior consent of the Supplier.

20. Governing law and venue

- 20.1 Any dispute arising out of or in connection with this Contract, including any dispute regarding its existence, interpretation, validity or termination, shall be governed by the laws of Denmark, excluding any conflict of laws rules which might refer the dispute to the laws of another jurisdiction, and shall be settled by arbitration in accordance with the Rules of Procedure of the Danish Institute of Arbitration (Danish Arbitration) in force at the time of commencement of such proceedings.
- 20.2 The arbitration tribunal must consist of 3 (three) members if the amount in dispute is above DKK 1 (one) million. If the amount is below DKK 1 (one) million, the court of arbitration must consist of 1 (one) member elected by the Parties in accordance with the Rules of Procedure of the Institute.
- 20.3 The Parties accept and agree that, in addition to the aforesaid, the Parties are entitled to seek injunctive relief for any breach or threatened breach of Contract.

21. Term and termination

- 21.1 The Contract becomes effective upon signing and shall remain in force until expiry of the warranty period.

- 21.2 Furthermore, notwithstanding expiry or termination of the Contract for whatever reason, any duty of confidentiality, cf. Clause 18 above, will continue for an indefinite period of time.
- 21.3 The Customer has tendered this Contract in accordance with applicable law, including the public procurement rules. In the event that an administrative authority, including, but not limited to, the Complaints Board for Public Procurement (*Klagenævnet for Udbud*), the Competition Authority (*Konkurrencestyrelsen*), the European Commission or a Danish or European court of law, decides or rules that the public procurement rules or other legislation have been infringed in relation to the award of the Contract and resulting in the award being annulled or the contract being rendered ineffective, the Customer will be entitled to terminate the Contract at 1 (one) month's prior written notice, and the Supplier will not be entitled to any compensation, damages or indemnification. The Customer's right of termination under this clause shall also apply in the event that an appeal is lodged against a decision, ruling or judgment.
- 21.4 In the event of termination under this Clause 21, the Supplier will be obliged to take back the Products and refund the Customer the entire Product Price. In such case, the Customer must reimburse the Supplier for direct and documented costs incurred prior to termination as well as costs which cannot reasonably be avoided by the Supplier.
- 21.5 Each Party is furthermore entitled to terminate the Contract in the event of the other Party being in material breach of Contract.

22. Copies of the Contract

- 22.1 This Contract is executed in 2 (two) identical counterparts, one for each Party.

23. Notices

23.1 Notices under the Contract must be sent by email or mail and delivered to:

If to the Customer:

Aalborg University
Department of Energy Technology
Pontoppidanstræde 101
9220 Aalborg Øst, Denmark
Denmark
Email: [...]

If to the Supplier:

Name: [...]
Address: [...]
Email: [...]
Attn.: [...]

24. Signatures

[...] on the _____

Aalborg on the _____

[...]

[...]

Aalborg University