



Terms of sale and delivery

For test, consultancy and development work D-TRU 010113

1.0 Legal effect

1.1 These terms of sale and delivery form an integral part of the contractual basis for work where a reference is made to the terms of sale and delivery D-TRU 010113 in DELTA's offer to or agreements with a

2.0 Responsibility for work description

2.1 The customer is responsible for making sure that the work description ensures fulfilment of the customer's intended purpose of the work. DELTA is prepared to assist in the drafting of such work description, but is not responsible for errors, omissions or ambiguities.

3.0 Performance of the work

3.1 DELTA will faithfully perform all work on the basis of the knowledge available to DELTA when performing the work, but DELTA will not be liable if subsequent developments show that such knowledge was insufficient or erroneous.

3.2 During in particular development work etc., specific tasks may prove to be impossible or only partially possible. DELTA will only bear the risk in that respect if a written guarantee for a specific result of such work has been provided.

3.3 If it proves impossible to perform work or if performance of work proves to be considerably more difficult or more time-consuming than expected, DELTA will notify the customer thereof as soon as possible. The customer or DELTA may then choose to stop the work. Irrespective of who stops the work, the work will be finally invoiced as stated in Clauses 10.2 to and including 10.4.

4.0 DELTA's use of sub-suppliers

4.1 Unless otherwise agreed in writing, DELTA may use sub-suppliers for the performance of work. If it has been agreed that DELTA cannot use sub-suppliers, such prohibition does not include DELTA's wholly-owned subsidiaries unless this is specifically stipulated in the agreement.

4.2 DELTA is only entitled to disclose to sub-suppliers confidential information on work and customers if such sub-suppliers have agreed to observe at least the same level of confidentiality as DELTA itself.

4.3 Irrespective of DELTA's use of sub-suppliers, DELTA bears full responsibility for the performance of the work in question.

5.0 Time schedules and liability for delay

5.1 The time schedules and times of delivery stated are estimated by DELTA using its best judgment. Unforeseen problems or events within or outside of DELTA may result in delays. DELTA is solely liable for delays if agreed upon in writing prior to commencement of the work.

customer. When a customer accepts the offer or otherwise enters into the agreement, the customer also accepts these terms of sale and delivery with the exception, however, of terms which have specifically been derogated from in the offer or agreement.

5.2 An agreement on liability for delays by DELTA will only be valid if it states in exact terms, which deadlines may trigger liability for delay and if the nature and scope of such liability has been specified in detail.

5.3 If a delay is owing to circumstances attributable to the customer or to force majeure (see Clause 23.2 below), DELTA's liability for such delay and any subsequent delays will lapse as the personnel and equipment required may be reserved for periods during the continuous performance of work.

6.0 Payment of fixed price for work performed

6.1 If a fixed price has been agreed upon for the performance of work, such work must be paid for at the agreed price. Notwithstanding the aforesaid, DELTA may in accordance with Clause 9 below charge an additional fee if the work has been delayed or rendered difficult due to circumstances attributable to the customer.

7.0 Payment of work according to invoice

7.1 If a fixed price for work performed has not been agreed, the customer will pay for (i) time spent and equipment used by DELTA and (ii) materials, travelling expenses and costs of accommodation, foreign labour and for any other resources and services purchased in connection with the work. If the work is interrupted in the process due to circumstances attributable to the customer, DELTA may also according to Clause 9 demand payment for the period of time in which personnel and equipment cannot be used due to the interruption.

7.2 The time spent and equipment used by DELTA must be paid for at the rates agreed upon in respect of the work or, in the event of no agreement, at DELTA's rates applicable during the work period.

7.3 Resources and services purchased must be paid for at the prices and rates agreed upon in respect of the work or, in the event of no agreement, at DELTA's cost price plus a handling charge of 10%. No handling fee will be charged for travelling expenses and accommodation costs.

7.4 If DELTA has quoted an expected price of work according to invoice, such price is an expression of DELTA's best judgment. However, the price is not binding on DELTA.



7.5 DELTA will notify the customer as early as possible if the price of the work is expected to be considerably higher than the price most recently estimated and will at the same time also quote a new estimated price for the work. DELTA will usually not inform the customer if an expected price increase amounts to less than DKK 10,000 or less than 20% of the price most recently estimated.

7.6 According to Clause 10 below, the customer may at any time stop the work in question.

8.0 The customer's cancellation or postponement of work prior to commencement

8.1 If, without DELTA's written acceptance, a customer (i) cancels work later than 20 business days prior to the date agreed for commencement of the work or (ii) postpones the commencement of work later than five business days prior to the date agreed for commencement of the work or (iii) delays the commencement of work by not delivering required items (including without limitation equipment, materials, information or services) in due time, DELTA may demand that the customer pays a penalty of 20% of the estimated or fixed price for the work, however, no less than DKK 5,000 and no more than DKK 100,000. DELTA may also choose to cancel the order for work that is postponed or delayed according to (ii) and (iii) above.

8.2 The provisions of Clause 8.1 above apply to each date of commencement of work agreed upon irrespective of previous postponements or delays and irrespective of whether a penalty has been paid at an earlier date.

9.0 Delays, etc., after commencement of work

9.1 If circumstances attributable to the customer result in the work being delayed or rendered difficult, the customer must indemnify DELTA for the additional costs incurred by DELTA in that respect, including costs of additional work and temporarily idle personnel or equipment for up to five working days at the rates agreed upon for the work or, in the event of no agreement, at DELTA's rates applicable at the time.

9.2 Circumstances attributable to the customer include, but are not limited to, non-delivery or late delivery of required items, materials, information or services and errors or defects in the items delivered, including non-compliance with stipulated or required specifications by test samples.

10.0 The customer's right to stop work

10.1 The customer may at all times demand in writing that DELTA stops work immediately.

10.2 If the customer orders work to be stopped, the customer must pay for work already performed, but not invoiced as if the work had been performed according to invoice with the addition of the costs incurred by DELTA as a consequence of the work being stopped. This includes costs

of obligations assumed by DELTA with a view to performing the work and costs of idle personnel and equipment.

10.3 Irrespective of Clause 10.2 above, a customer's total payment for work which has been stopped may never (i) exceed the most recently agreed price (for fixed-price work) or the price most recently estimated by DELTA (for work according to invoice) for the work with the addition of any additional fee pursuant to Clause 6.1 or 7.1 and may never (ii) be lower than the penalty to be paid upon cancellation prior to the commencement of work, see Clauses 8.1 to and including 8.2.

10.4 If work is stopped due to the fact that DELTA has stated that the performance of work will be more difficult, more expensive or more time-consuming than expected, and if the customer is not responsible therefor, the customer shall not pay the costs of idle personnel or equipment and there is no requirement of a minimum penalty.

10.5 After work has ceased, the customer will receive any results of the work so far in the state at hand at the time when work is stopped. If work is stopped at the request of the customer then (i) DELTA's liability for errors and omissions in work performed ceases, (ii) any subsequent use of the results received is solely the responsibility of the customer and (iii) the customer may not use DELTA's name or logo in connection with the work or the results.

11.0 Changes in the work

11.1 If the customer wishes to change the scope or time schedule of the work, DELTA will, if possible, make an offer for the changes requested. If DELTA cannot comply with the customer's request or if the customer does not accept the offer within a time limit stipulated by DELTA, the work will continue on unchanged terms unless the customer orders the work to be stopped according to Clauses 10.1 to and including 10.5.

12.0 Liability for loss of or damage to objects, material and information provided by the customer

12.1 The customer bears the risk of any loss of or damage to equipment, materials, drawings, information storage media and any other objects or information provided to DELTA or one of DELTA's sub-suppliers unless DELTA has assumed such risk of damage or loss in writing or the damage or loss was caused by intent or gross negligence on the part of DELTA or a sub-supplier.

12.2 Irrespective of the basis of liability, DELTA's liability for loss or damage is limited to the value of the physical objects, including information storage media, calculated at the purchase price in ordinary trade or, if the objects are not available in ordinary trade then, at the value of similar objects in ordinary trade. This for example implies that no damages will be paid for the additional value of prototypes as compared to similar products in ordinary trade or for the value of lost or damaged information.



12.3 In connection with the performance of certain tests, it will be necessary to break into or damage test objects. Consequently, there is no guarantee that items being subjected to tests may subsequently be used for their respective purposes. Upon request, DELTA will state the nature of possible damage occurring in connection with specific tests, but assumes no liability for lack of usability or damage owing to a test which has essentially been completed correctly.

13.0 Return of test samples etc.

13.1 Unless otherwise agreed, DELTA will upon completion of work return all items received by DELTA from the customer. Any return will be at the expense and risk of the customer.

13.2 In connection with the approval by authorities of products, DELTA may be required to keep test samples and documentation on file for a period. If so, the work will not be considered completed with respect to returning or collecting items received until upon expiry of such period.

14.0 Reports

14.1 In the event that the results of work are to be delivered in whole or in part in the form of a report, DELTA may at its discretion deliver such report as a PDF file or in a paper version. DELTA may charge a fee for delivery of paper copies of reports delivered as PDF files.

14.2 The customer is entitled to publish DELTA's reports in their entirety. The customer is solely entitled to publish or otherwise use reports and results in processed form if no reference is made to DELTA or if DELTA has approved the publication or use in writing. If a customer erroneously ascribes to DELTA work, results or viewpoints which are not ascribable to DELTA, DELTA may demand that the customer corrects the error. If, at the discretion of DELTA, the error is of such nature that it may damage DELTA's reputation, DELTA may choose to correct the error itself in the way deemed most appropriate by DELTA.

14.3 DELTA is entitled to store information for the purpose of documenting the performance and results of work, but is only obliged to do so if required to by authorities and if informed of such requirements.

14.4 Usually, DELTA stores reports and other information on work performed which DELTA considers to be important for a period of five years after completion of such work. However DELTA only guarantees that such reports and information are stored to the extent required by authorities.

15.0 The customer's title in work results

15.1 Subject to the provisions of Clauses 16 and 17 below, the customer has full title in work results.

16.0 DELTA's title in accessory tools

16.1 Accessory tools, including special equipment, computer programmes and methods developed in connection with performance of work belong to DELTA.

16.2 Common experience gained through performance of work may freely be used by DELTA.

17.0 Inventions

17.1 Inventions made by DELTA's employees during performance of development or consultancy work belong to DELTA unless the basis of the invention is included in material from the customer. Subject to DELTA's obligations pursuant to the Danish Employees' Inventions Act (lov om arbejdstageres opfindelser), however, the customer is entitled to use the invention in connection with the product or process etc. to which the work is related, without paying any additional fee to DELTA.

17.2 If an invention is patented by DELTA, the customer will be granted a royalty-free, exclusive and assignable licence for use in connection with the product or the process etc. to which the work related.

17.3 If DELTA does not wish to patent an invention or if the customer wishes more comprehensive patent protection than DELTA, the customer itself may take out a patent provided that the customer (i) pays all costs incidental thereto, (ii) is subrogated to DELTA's obligations towards the inventor pursuant to the Employees' Inventions Act and (iii) grants to DELTA a royalty-free, exclusive and assignable licence for use of the invention except in connection with the product or the process etc. to which the work related.

18.0 Use of third party intellectual property rights

18.1 DELTA makes an effort not to infringe the patents of third parties or other intellectual property rights in the performance of work. However, DELTA will not without special agreement conduct actual patent searches etc. as protection against infringements.

18.2 If, at a later date, work delivered by DELTA proves to include elements infringing third party intellectual property rights, DELTA will at no cost to the customer seek an alternative solution or seek to acquire the rights required for ceasing the infringement. If this is deemed not to be possible or solely possible only at disproportionately high costs compared to the price of the work, DELTA will instead reimburse the customer for part of the customer's payment for the work corresponding to the reduction in the utility value of the work caused by the infringement. The customer is in no other way entitled to raise claims against DELTA on the basis of the infringement unless the infringement was caused by gross negligence or intent.

19.0 Confidentiality

19.1 DELTA will keep confidential (i) the identity of its customers and (ii) information on which work is performed for customers and (iii) any and all



information received from the customer as part of the performance of work and (iv) the result of the work performed.

19.2 DELTA's duty of confidentiality under Clause 19.1 above does not apply to information made publicly available by others than DELTA or information which DELTA has already received prior to the agreement on the work or which DELTA subsequently receives from others than the customer.

19.3 Notwithstanding Clause 19.1 above, DELTA will comply with any statutory requirements in respect of the disclosure of information on work and customers. DELTA will, however, if possible, make sure that, prior to such disclosure, the customer will have the opportunity to object to such requirement.

19.4 If work for a customer includes testing or evaluation of products or services from third parties and DELTA estimates that information from such third parties is required for reaching a true and fair result, DELTA will notify the customer thereof as early as possible. If the customer refuses to allow procurement of information, DELTA may choose to consider the work cancelled or stopped pursuant to the provisions of Clause 8 and Clause 10, respectively.

20.0 Invoicing and payment

20.1 Unless otherwise agreed in writing or stipulated in DELTA's offer, DELTA may upon acceptance of an order invoice a pre-payment of 20% of the fixed or estimated price of the work, however, no less than DKK 5,000.

20.2 If a pre-payment pursuant to Clause 20.1 above is not made in due time, DELTA may choose to consider the work cancelled and, subsequently, the provisions of Clause 8 will apply.

20.3 As for work performed according to invoice, work performed as well as costs incurred are invoiced on a current basis.

20.4 As for work performed at a fixed price the duration of which exceeds 30 days, DELTA may, on a current basis, charge unspecified on account payments on the basis of DELTA's estimate of the degree of completion of the work.

20.5 Any pre-payments made are only set off against current payments under Clauses 20.3 and 20.4 above to the extent that the pre-payment or part thereof, according to DELTA's estimate, exceeds the amount which DELTA may subsequently invoice to the customer.

20.6 DELTA is at all times entitled to use pre-payments to cover claims having fallen due against the customer in relation to the work and, if so, the customer is obliged to immediately re-establish such pre-payment.

20.7 Amounts owed to DELTA by the customer pursuant to the provisions of Clauses 8, 9 and 10 above (the customer's cancellation, delay and right to stop work) will be invoiced as soon as possible.

20.8 Final invoicing will take place upon completion of work.

20.9 If, at some point in time during performance of work, legitimate doubt as to a customer's ability to pay is raised, DELTA is, irrespective of Clauses 20.1 to and including 20.7, entitled to demand by registered letter that the customer pay for work performed and make pre-payments in whole or in part for work remaining to be performed within five working days as from the date of the letter. If the customer does not make payments in due time, DELTA may choose to consider the work stopped by the customer and, subsequently, the provisions of Clause 10 will apply.

20.10 The terms of payment of invoices are 15 days net as from the date of the invoice. Payment with discharging effect may only be made by transferring the amount due in DKK or other currency agreed upon to the bank account stated on the invoice. In the event of late payment, interest and fees will be charged at the maximum rates permissible under the Danish Interest Act (renteloven).

20.11 DELTA is entitled to send invoices and reminders electronically in a format chosen by DELTA. Should DELTA decide to implement electronic invoicing and dunning DELTA may subsequently charge an administrative fee of 100 DKK per document for each invoice or reminder mailed to customers who do not wish or cannot receive such invoices or reminders electronically.

21.0 Other limitations of DELTA's liability

21.1 DELTA is solely liable for loss or damage if it can be proved that the loss or damage is due to errors or omissions on the part of DELTA in connection with the performance of work and otherwise subject to the limitations provided for by these terms of sale and delivery D-TRU 010113.

21.2 Irrespective of whether it may be documented that errors or omissions have been committed by DELTA, DELTA cannot be held liable therefor if work has not been completed by providing a report or other, similar detailed documentation of the work performed, its objective, preconditions and results. In addition, DELTA cannot be held liable for statements which, according to DELTA, are based on a discretionary estimate or assessment.

21.3 If work consists of control or testing of a product, DELTA is not liable for damage caused by the product if the customer has started using such product or placed it on the market prior to receipt of DELTA's report. This also applies if a harmful product has not actually been



controlled or tested by DELTA unless the customer proves that the harmful product is identical to a product actually controlled or tested by DELTA. Furthermore, DELTA is not liable if damage occurring is due to properties in or use of the harmful product which has not been controlled or tested and described in the report or which deviates from the report's description of the properties or use of the product.

21.4 When controlling or testing the product, DELTA is solely liable for damage occurring as a consequence of DELTA not informing the customer of existing defects in due time.

21.5 DELTA is not liable for loss or damage as a consequence of the customer's or a third party's use of the results of work if the use falls outside the scope and/or purpose of such work.

21.6 DELTA is not liable for operating loss, loss of time, loss of profits or similar indirect loss and assumes no liability for unfulfilled sales agreements.

21.7 In no event may DELTA's total liability for personal injury, damage to property and financial loss exceed the actual contractual amount or DKK 5,000,000, whichever is lower.

21.8 DELTA's liability for damages ceases three years after completion of work.

21.9 In the event that parties other than the customer raise claims for damages against DELTA, the customer must indemnify DELTA against all costs, including legal costs and amounts awarded in damages exceeding the claims which the customer may raise against DELTA according to these terms of sale and delivery D-TRU 010113.

22.0 Changes to agreed terms

22.1 These terms of sale and delivery or the terms otherwise provided for by the contractual basis of work to be performed may only be changed or derogated from by a written agreement stating that the agreement implies a change of or derogation from the terms.

23.0 Force majeure

23.1 DELTA is not liable for non-fulfilment of obligations if the non-fulfilment is due to force majeure.

23.2 Force majeure events are events outside the control of DELTA which occur after conclusion of an agreement for the performance of work and which could not reasonably have been foreseen at the time of concluding the agreement and whose consequences cannot be overcome by DELTA or which cannot be overcome without making performance of the work unreasonably onerous.

23.3 Force majeure includes, but is not limited to, war, revolt, terrorism, civil unrest, epidemics, natural disasters, fire, general scarcity of goods or

restrictions in supply, labour conflicts, general lack of materials or components and export, import or currency restrictions irrespective of whether such events affect DELTA or sub-suppliers of DELTA.

24.0 Non-exercise of rights

24.1 DELTA's non-exercise or non-enforcement of a right or provision of these terms of sale and delivery D-TRU 010113 does not constitute a waiver of such rights or provisions.

25.0 Invalid provisions

25.1 If a provision of these terms of sale and delivery D-TRU 010113 is deemed to be invalid by a court of law, the relevant provision must be amended and construed by such court of law to the effect that it guarantees the purpose of the original provision the best possible way as far as is permissible by law, and the remaining provisions must remain in force.

26.0 E-mails

26.1 An email must be deemed written communication if receipt of such email has been confirmed by the recipient or can be proved otherwise.

26.2 Notices on contractual matters, including cancellation, postponement and ceasing of work sent to DELTA by email must, in order to be valid, be sent to the project manager designated by DELTA as well as to kundecenter@delta.dk.

27.0 DELTA's right of cancellation

27.1 In the event of the customer's material breach of the obligations incumbent on the customer, and if the customer does not remedy such breach within two weeks after DELTA having notified the customer of the breach in writing, DELTA may consider the work cancelled or stopped and, subsequently, the provisions of Clause 8 and Clause 10, respectively, will apply.

28.0 Disputes

28.1 All disputes arising out of or in connection with these terms of sale and delivery D-TRU 010113 must be settled according to the substantive rules of Danish law.

28.1 Any dispute arising out of or in connection with an agreement, including disputes regarding its existence or validity, must be settled by the ordinary courts, the Copenhagen City Court being the proper venue