

Agreement for purchase of power supply unit for train heating

26/00243

has been entered into between:

xx

(The Supplier)

and

Norske tog AS

(The Customer)

CONTRACT FOR PURCHASE OF GOODS AND SERVICES

THE CUSTOMER:

Norske tog AS

THE SUPPLIER:

XX

Place/date:

Place/date:

Name:

Name:

Signature:

Signature:

These general terms and conditions cover single and ongoing deliveries of goods and services.

Signature _____ / _____

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1. GENERAL PROVISIONS

1.1 Introduction

Upon entering into the Agreement, the Supplier has accepted the current terms and conditions. Any deviating or supplementary terms and conditions shall only be deemed to have been agreed upon if the Customer has accepted these in writing.

Unless otherwise stipulated in the individual clauses, these terms and conditions shall apply for both services and goods.

1.2 Definitions

The Agreement is these General Terms and Conditions for the Purchase of Goods and Services, any appendices as specified in clause 1.3, and any additions or amendments that have been agreed to in writing.

Change is the term used for both amendments and additions to the Agreement, including to terms and conditions, specifications, statements of quantities and/or deadlines.

The Customer is Norske tog AS.

The Supplier is **xx**

The Deliverable/Assignment is the term used for the goods and/or services that are to be provided pursuant to the Agreement.

Breach means any delay or defect as described in clause 8, or breach of any other obligation in the Agreement.

The Party(ies) is/are the Customer and the Supplier.

Services is the term used to describe the Services that may be provided as part of the Deliverable.

1.3 Contract documents

The agreement consists of the following documents:

- Contract Conditions – Power supply unit for train heating
- Exhibit A1 – SoW – Power supply unit for train heating
- Exhibit A2 – The Customer's requirements specification
- Exhibit B1 – Price form
- Exhibit B2 – Terms of payment
- Exhibit C – Warranty
- Exhibit D – Suppliers descriptions
- Exhibit E – Reservations and deviations
- Exhibit F – NTs Code of Ethical Conduct for Suppliers
- Exhibit G – Technical documentation

1.4 Contact persons

Each of the Parties shall appoint a contact person who will be authorised to act on behalf of the Party in all matters relating to execution of the Agreement.

1.4.1 The Customer's contact person

Name: **(Insert)**

Signature _____ / _____

Title: (Insert)

Telephone no.: (+47) (Insert)

Email: (Insert)

1.4.2 The Supplier's contact person

Name: (Insert)

Title: (Insert)

Telephone no.: (Insert)

Email: (Insert)

1.5 Communication

Any communication pertaining to the Agreement shall be directed to the Parties' respective contact persons. Inquiries must be responded to without undue delay.

2. DURATION AND SCOPE OF DELIVERY**2.1 Duration**

Unless otherwise specified, the assignment shall begin immediately after signing the agreement and shall continue uninterrupted until the assignment is fully executed, however rights relating to breach, compensation, warranties and intellectual property rights shall also be retained after this point in time.

2.2 Scope**2.2.1 The delivery**

The delivery shall cover the Customer's purpose for the procurement as specified in Exhibit A and must be free of legal defects.

The Delivery must comply with requirements and descriptions as set out in Exhibit A of the Agreement.

The Delivery must be in compliance with all statutory requirements.

2.2.2 Documentation and drawing materials

All necessary documentation, such as certificates, descriptions, drawings, instructions etc. forms an integral part of the Delivery.

2.3 Options

Any options shall be specified in Exhibit A ' Scope of Work '.

Unless otherwise stipulated in Exhibit A, the Customer must notify the Supplier by the end of the current contract or option period if the Customer intends to exercise an option to extend the Agreement. Any decision to exercise the options will be made prior to contract signature.

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3. THE SUPPLIER'S GENERAL OBLIGATIONS

3.1 Basic requirements

All work relating to the Delivery must be professionally carried out, documented and/or checked by qualified and authorized personnel where this is required. The Delivery must be in accordance with the requirements specified in the Agreement, and otherwise be of good quality and suitable for the intended purpose.

The Supplier must loyally cooperate with the Customer and safeguard the Customer's interests. Inquiries from the Customer must be responded to without undue delay.

3.2 Communication and documentation

The supplier must ensure proper storage and back-up of documents and other material of importance to the Delivery, regardless of form.

The Supplier is responsible for compliance with all relevant EU requirements and national requirements, as well as for having all necessary certifications when performing work under this Agreement.

If requested by the Customer, the Supplier must present documentation that the Supplier has all necessary certifications in connection with the Delivery.

4. THE CUSTOMER'S GENERAL OBLIGATIONS

4.1 Assistance

The Customer shall provide the assistance that can reasonably be expected of the Customer in order for the Supplier to be able to comply with its obligations under the Agreement.

5. CHANGES AND CANCELLATION

5.1 Right to make Changes

The Customer can, within the scope of what the Parties could reasonably expect when the Contract was entered into, require changes relating to the quality and/or quantity of the Delivery, as well as changes to the schedule.

5.2 Change orders

Changes to the Deliverable must be documented in the form of a written change order signed by both parties.

Remuneration for Changes shall correspond to the Agreement's original unit prices and price level. If Changes result in a cost increase or in savings, the Parties must negotiate this separately, however the unit prices shall be used as a basis.

Upon receiving a change order, the Supplier must, unless the Customer requests otherwise, implement this without undue delay, even if the effect of the change order on price, schedule and other terms and conditions in the Agreement has yet to be finally clarified.

5.3 Cancellation and temporary suspension

The Customer may, by sending written notice to the Supplier, temporarily suspend or cancel the Deliverable in whole or in part until actual delivery has taken place or require the temporary suspension of services.

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If the Customer temporarily suspends or cancels the Deliverable for a specified period, the Customer must pay the Supplier:

- a) remuneration for work already performed, and
- b) documented direct costs associated with the suspension.

If the Customer cancels the Deliverable, or the suspension continues beyond the specified period, in addition to the above, the Customer shall also pay the Supplier a cancellation fee of 4% of the cancelled/suspended part of the order.

6. DELIVERY

6.1 Acceptance of the Delivery

Any provisions relating to the delivery, receipt, testing and acceptance of the Deliverable must be included in Exhibit A 'Scope of Work'.

If the Delivery is not in accordance with the purpose and requirements of the Agreement, the Customer shall, within a reasonable time after delivery has taken place, notify the Supplier thereof, unless otherwise stipulated in cf. Exhibit A 'Scope of Work'.

6.2 Complaints and warranty

Assuming careful use by the Customer, the supplier shall, during a warranty period of 2 years without reason delay, remedy errors and defects on goods that are part of the Delivery. The remediation and testing must take place at no extra cost to the Customer. Claims under this warranty must be made in writing and no later than the end of the warranty period. See also Exhibit C.

7. PRICE AND PAYMENT

7.1 Price

The price is specified in Exhibit B1 'Prices' and Exhibit B2 'Terms of payment', in NOK and must include all costs associated with the Deliverable, including the Supplier's administration and invoicing costs.

If provision of the Deliverable is priced per hour, the Customer shall not pay overtime or compensation for evening, night or public holiday work without this being specifically required.

Prices are fixed during the agreement period.

7.2 Invoice and payment

7.2.1 Invoicing

Invoicing shall take place based on documented and completed milestones or deliveries in accordance with Exhibit A 'Specification of deliverables', and must be in accordance with guidelines and requirements for marking invoices as shown below:

Place of delivery:	Marienborg, Osloveien 101, 7017 Trondheim, Norway.
Contact person:	
Deliverable and invoice are marked:	26/00243

Signature _____ / _____

Invoice address:	EHF: 917 445 060 Drammensveien 35 0271 Oslo
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Payment of an invoice does not entail that the Deliverable or invoice documentation has been accepted.

The Customer has the right to return invoices that do not comply with the marking requirements.

7.2.2 Payment terms

Payment shall be made within 30 days after the correct invoice has been received.

The Customer may make deductions in the invoice received for advance payments, accrued daily fines, disputed or insufficiently documented items in the invoice amount, and may also off-set price reductions in accordance with clause 8.2.2.

7.2.3 Adjustment

Prices and rates payable are fixed through the contract period and may only be changed to the extent set out in Exhibit B2 'Terms of payment'.

8. BREACH

8.1 Delays

8.1.1 General

There is a delay if the Deliverable, or parts thereof, is not delivered or is delivered too late in relation to the agreed delivery.

The Supplier is not liable for delays pursuant to this clause 8.1 if the delay is due to the Customer or circumstances referred to in clause 9.4 (force majeure).

8.1.2 Duty of notification

If the Deliverable cannot be delivered as agreed, the Supplier must notify the Customer of this in writing as soon as possible. The notification must state the reason for the problem and, insofar as possible, state when the Deliverable can be delivered. The same applies if further delays must be expected after the initial notice has been given.

8.1.3 Effects of delay

Unless otherwise agreed in Exhibit A, the following shall apply:

Daily fines of 0.5% of the total remuneration payable in accordance with Exhibit B1 shall accrue for each day that the Supplier is delayed. The maximum daily fine is 15% of the total consideration for the Agreement. Clause 8.3 shall apply when the maximum daily fines pursuant to the first paragraph have accrued.

In the event of delay, the Customer may withhold consideration for the part of the Deliverable that is delayed, or for the entire Deliverable if the Customer is unable to utilise any parts that have been delivered.

Signature _____ / _____

8.1.4 Overdue payment

In the event of overdue payment, the Customer must pay interest on the amount owing in accordance with Act no. 100 of 17 December 1976 relating to interest on overdue payment etc.

8.2 Defects

8.2.1 General

A defect exists if, in qualitative or quantitative terms, the Deliverable does not fulfil the requirements specified in the Agreement. Defects include the following:

- a) That the Delivery is not in accordance with the agreed requirements and descriptions specified in the Agreement.
- b) The Supplier's breach of prerequisites for this Agreement that is not due to the Customer or force majeure pursuant to clause 9.4.

8.2.2 Effects of defects

Unless otherwise agreed, the following shall apply:

The Supplier must remedy a defect as soon as the Supplier becomes aware of this. The Customer may require postponement of the remedy if there are reasonable grounds for doing so. The Supplier is liable for all costs associated with the remedy.

If the Supplier has not remedied the defect within a reasonable period of time, the Customer is entitled to remedy the defect itself, or through the use of other parties, at the Supplier's expense and risk, or demand a reduction in price. The same applies if waiting for the Supplier to remedy the defect would cause significant inconvenience for the Customer. In such instances, the Supplier must be notified in writing before the remedy is initiated.

The Customer may require modification of or new verification tests and/or procedures to re-approve the Deliverable following remedy. Such new tests are to be performed at the Supplier's expense and must ensure continued fulfilment of the specifications and requirements in the Agreement.

The remedy provided by the Supplier, a third party, or the Customer itself does not deprive the Customer of the right to claim compensation on the grounds of delayed fulfilment of the contract or deficient delivery.

In the event of non-conformities, the Customer may withhold a proportionate share of the consideration.

8.3 Termination

If there is material breach of the Agreement, the Customer may, after having provided the Supplier with written notice and a reasonable deadline for remedying the situation, terminate the Agreement with immediate effect.

Material Breach includes the following:

- a) Delays or defects which compromise the Customer's purpose for the Deliverable.
- b) The maximum daily fine pursuant to clause 8.1.3 has accrued.
- c) The Supplier's bankruptcy, insolvency, commencement of debt settlement proceedings or breach of other material financial conditions.
- d) Repeated violation of instructions or violation of applicable laws and rules.

Signature _____ / _____

- e) Fraud, neglect or other circumstances which violate the relationship of trust with the Customer, delay or defects that result in the Customer not achieving its purpose for the Agreement.

8.4 Compensation

The Customer may claim compensation for any loss the Customer suffers as a result of Breach on the part of the Supplier.

Compensation is limited to direct loss and to an amount equivalent to the contractual consideration pursuant to Exhibit B.

In the event of termination of the Agreement, the limit shall be three times the agreed consideration. These limitations do not apply if termination is due to gross negligence or intent on the part of the Supplier or a party the Supplier is liable for.

The Customer will not lose its right to compensation even if the Customer asserts or can assert other claims as a result of Breach.

Any accrued daily fines in accordance with clause 8.1.3 shall be deducted from the compensation claim.

The Supplier is exempt from liability if the Supplier can prove that the damage, shortages, loss or delay that may have occurred was/were due to circumstances for which the Customer is responsible. The Supplier will nevertheless be partly liable if the damage or loss occurred as a result of circumstances that the Supplier was involved in. Involvement includes both active involvement and omission of involvement.

9. VARIOUS PROVISIONS

9.1 Meetings, follow-up and reporting

If necessary, meetings shall be held between the Parties to ensure correct fulfilment of the contractual obligations.

9.2 Audit

The Customer has the right to conduct an audit of the Supplier and any sub suppliers to the extent necessary for ensuring fulfilment of the Agreement. The Supplier is obligated to contribute to the performance of the audit.

If the audit reveals non-conformities, the Supplier is obligated to initiate corrective measures without undue delay. The Customer may set a deadline for implementing such measures.

9.3 Intellectual property rights

The Customer has full copyright and ownership rights to any result of work performed for the Customer in accordance with this Agreement.

The Supplier nevertheless retains the copyright to methods and foundation materials which have been prepared in advance and which the Supplier uses in connection with the Delivery. The Customer shall have access to, free of charge, and perpetual right of use to such methods and materials to the extent that such use is necessary to fulfill the purpose of the Delivery.

The Supplier warrants that he has the necessary property and/or usage rights to the Delivery, including to solutions provided by third parties that are included in the Delivery. The Supplier shall indemnify the Customer for any infringement of third-party rights.

Signature _____ / _____

9.4 Force Majeure

A party shall not be held liable for Breach if the party establishes that the Breach was due to an obstacle beyond the party's (or a sub suppliers') control, and which the party could not reasonably be expected to have taken into account, or avoided or overcome the consequences of, on the date the Agreement was entered into. The other party's obligations shall be suspended during the same period.

If the Force Majeure situation continues for longer than 30 days, the Parties have the right to terminate the Agreement by sending written notice to the other party.

9.5 Choice of law and dispute resolution

The Parties shall seek to resolve disputes between the Parties through negotiations. If a solution is not achieved within a reasonable period of time, either party may bring the case before the ordinary courts. Alternatively, the parties may agree to arbitration pursuant to Act No. 25 of 14 May 2004 relating to arbitration.

The Agreement is governed by Norwegian law, with the Customer's address as the correct legal venue.

Signature _____ / _____