

FORCE Technology - Terms and Conditions

Gasflow



1. PREAMBLE

- 1.1 FORCE Technology ("FORCE") registration no. 55117314 is a GTS institute (in Danish: "Godkendt Teknologisk Servicevirksomhed"). FORCE is an approved technological service institution, organised and existing under the laws of Denmark with its registered office at Park Allé 345, 2605 Brøndby, Denmark.
- 1.2 In these Terms and Conditions ("Conditions"), Customer means the counterparty to the Agreement.
- 1.3 These Conditions constitute an integral part of the Agreement concluded between FORCE and the Customer ("the Parties"), including any quotations from FORCE and/or purchase orders from the Customer.
- 1.4 Any deviation from or amendments to individual provisions of FORCE's Conditions have no effect unless expressly agreed upon in writing, signed by an authorized representative of each Party and provided the deviation/amendment is clearly specified.
- 1.5 The Customer's prospective general terms and conditions is not accepted by FORCE irrespective whether the Customer sends such general terms and conditions to FORCE after having received FORCE's Conditions and irrespective of such general terms and conditions have been expressly rejected by FORCE. In the event of a conflict between the Agreement, these Conditions and/or the specifications, drawings, illustrations and photos the documents prevail in the above-mentioned order.

2. AGREEMENT

- 2.1 Prior to commencing Services (as defined below) and/or deliveries ("Report"), an agreement shall be concluded in writing between the Parties stating as a minimum the type of work, scope, time schedule, pricing (including whether fixed or time spent) and payment terms.
- 2.2 Quotations given by FORCE are valid for 30 days unless otherwise agreed in writing.
- 2.3 Test, calibration and/or product approval, including calibration of product and technical approval constitutes a test, measurement, and/or control of a condition, at any given time within specified standards, framework or by agreement ("Services"). Consultancy services are not part of the scope, unless otherwise stated in the agreement between FORCE and the Customer cf. 3.1.
- 2.4 FORCE is only liable towards the Customer for test, calibration or product approval performed, unless otherwise directly agreed with FORCE.
- 2.5 All tests are performed according to existing or agreed standards.

3. CONSULTANCY SERVICE

- 3.1 In the event that Service by FORCE includes consultancy service, the scope and content of such consultancy service must be specifically agreed between the Parties in writing.

4. FORCE MAJEURE

- 4.1 Any delay or failure of FORCE to perform its obligations according to the Agreement will be excused if and to the extent that it was caused by an event or occurrence beyond FORCE's reasonable control and without its fault or negligence ("Force Majeure"). Force Majeure includes, but is not limited to, acts of God, actions by any government authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, acts of terrorism, or court injunction or order, labour problems of FORCE, or its critical subcontractors, such as, lockouts, strikes, and slowdowns. Further, Force Majeure shall include epidemics, quarantines, isolations and denied access by national authorities to the site of the Customer or work site due to health risks, including restrictions in flights and/or other kind of transportation for the same reason.
- 4.2 Should a Force Majeure event continue for more than three (3) months, either Party shall have the right to terminate any relevant orders. In case the Customer terminates the Agreement or any order due to Force Majeure, the Customer must pay any outstanding fees or costs including pro rata payment of work performed until the date of notice of termination including unavoidable termination costs of sub-suppliers.

5. WORK ENVIRONMENT AND SAFETY

- 5.1 The Customer shall ensure safe working conditions and proper instruction to FORCE's personnel when or if entering and working on a site designated by the Customer.
- 5.2 FORCE's personnel shall have the right without incurring any liability on FORCE or itself to terminate work for the Customer at any time if the FORCE personnel, at their discretion, find that the performance of work at site pose a risk to the FORCE personnel's safety and health or in any other way prevents the safe performance of the work.

6. PRICE

- 6.1 FORCE reserves the right to modify hourly rates as of January 1st each year. Furthermore, modification of hourly rates can be made with thirty (30) days' notice.
- 6.2 Materials spent, purchased resources and services for the work are calculated at the agreed rates, or in case of no agreement on this, at FORCE's cost price, with a handling fee of ten percent (10 %).
- 6.3 FORCE notifies the Customer as soon as it is established that an estimated price of the agreed work materially is higher than the given estimated price, and quotes at

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the same time the new price. The Customer is not notified if an estimate increases to less than ten thousand (10,000) DKK or less than twenty percent (20 %) of the most recent estimated price.

6.4 All prices are exclusive of VAT and other taxes.

7. PAYMENT TERMS

7.1 The Customer shall comply with the payment obligations set out in the Agreement.

7.2 In the absence of payment obligations in the Agreement:

a) The Customer shall submit payment to FORCE within thirty (30) days from the date of invoice.

b) Payment shall be made to the bank account specified by FORCE.

c) The Customer shall pay all amounts due under the Agreement in full and without any setoff, counterclaim, deduction or withholding, except if said setoff, counterclaim etc. is required by law and the Customer has documented such request.

d) If a payment is delayed, the Customer shall pay to FORCE an interest rate of one percent (1 %) per month for the duration of the delay.

7.3 If the Customer does not comply with the payment obligations set out in the Agreement or hereunder, FORCE may suspend its performance until the Customer complies with the payment obligations.

7.4 Nothing under this Clause 7 will limit any other right or remedy available to FORCE.

7.5 FORCE reserves the right to set-off against any payments due under the Agreement and/or any other agreement with the Customer.

8. INVOICING

8.1 Unless otherwise agreed upon in writing or stipulated in FORCE's quotation, the Customer may be invoiced, upon acceptance of an order, an advance payment of twenty five percent (25 %) of the fixed or estimated price, however, at least five thousand (5,000) DKK if the price exceeds five thousand (5,000) DKK.

8.2 Ongoing Services including expenses will be invoiced continuously.

8.3 For Services with a fixed price with a duration exceeding thirty (30) days, FORCE may continuously charge on account payments based on FORCE's estimate on pro rata completion.

8.4 Final invoicing will take place at completion of the work.

9. ITEMS TO TEST

9.1 In connection with performance of certain tests it may be necessary to modify the test subject. The test subject may be damaged during testing. FORCE does not undertake that any subject tested can be used for its purpose after the testing.

9.2 After the Service is completed FORCE will return the test subject received from the Customer unless otherwise agreed in writing.

9.3 The shipment return is EXW (INCOTERMS 2020). If the Customer does not facilitate the return of the test subject within thirty (30) days after written notice from FORCE, FORCE is permitted to dispose of the Customers test subject. Any expenses related thereto will be invoiced to the Customer.

9.4 In connection with authority approval of products it can be a requirement for FORCE to store the test subject and any test documentation in a certain period.

10. WARRANTIES

10.1 FORCE undertakes to remedy defects in the Service due to the fault of FORCE.

10.2 The Customer has a standard duty to investigate the work at delivery according to agreement. FORCE's liability for errors and deficiencies shall be limited to errors and deficiencies present on delivery and which become known within twenty-four (24) months from delivery.

10.3 In the event of a claim, the Customer must immediately provide FORCE with a written notice detailing the deficiency or error. Upon receipt of a claim for which FORCE is liable, FORCE will as the only remedy perform a new test, calibration or product approval as relevant, including, if applicable, adjusting the Report.

10.4 FORCE's period of liability for replaced or repaired Service is identical with the period of liability for the original delivered work, which means the new period of liability starts at the same point in time as for the original delivered work.

11. LIABILITY

11.1 FORCE shall not be liable for any costs, loss or damage unless it can be documented and has occurred due to negligence of FORCE in connection with the performance of the Service or deliveries under the Agreement.

11.2 FORCE shall not be liable for loss of operation, loss of time, loss of profits or similar indirect or consequential losses, including any indirect losses which may be remunerated to third parties.

11.3 FORCE performs the requested Service and presents Reports and guidance on the basis of knowledge and engineering available to FORCE at the time of completing the Service.

11.4 FORCE is not liable for damages, costs or loss that may occur in connection with any use of data and results outside of the agreed Service and outside the purpose for which FORCE's Service or Report is issued.

11.5 FORCE is not liable in relation to statements nor estimates, where it is apparent that such are based on discretionary assessments, unless it can be proven that this assessment was clearly incomplete based on the common knowledge or techniques within the industry at the time of completing the Service.

11.6 FORCE is not liable for any loss or damage incurred if the loss or damage is caused by properties or content

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of a product or use of a product that has either not been tested nor investigated and described in the Report, or which deviates from FORCE's description in the Report of a product feature or of a possible use of the product.

- 11.7 FORCE is not liable for any damages incurred, so long as a harmful product or product type has not been actually tested, calibrated or product approved by FORCE, unless the Customer demonstrates a basis for liability and that the damaging product is identical to one that FORCE has specifically tested, calibrated or product approved.
- 11.8 Notwithstanding any other provisions of the Agreement or related documents, FORCE's total liability, for whatever reason, both in contract and tort, is maximized to the minimum amount of either; the total payment from Customer to FORCE under the specific purchase order under this Agreement or 5,000,000 (five million) DKK. The limitation of liability includes amounts that may be remunerated to third parties.
- 11.9 In the event of a third-party claim, which FORCE is not liable for under these Conditions, the Customer shall indemnify and hold harmless FORCE for all costs, including legal costs and compensations.

12. MARKETING AND REFERENCE

- 12.1 In case the Customer wishes to use results from the Service for marketing purposes all references to Services, shall be made to the complete documentation (Report) or product type from FORCE in adherence to applicable law. Any wording in such marketing material is the sole responsibility of the Customer.
- 12.2 In the event that the Service is ceased or suspended by the Customer in accordance with clause 15.1, the Customer may only use FORCE's name and logo in connection with the Service or its result after written agreement.

13. INTELLECTUAL PROPERTY

- 13.1 Subject to clause 12 the Customer has full title to Reports, when delivered to the Customer. FORCE's Reports may only be published in their entirety, and with source credits. Use of extracts and in citations is only allowed with written consent.
- 13.2 FORCE maintains all rights to know-how, technology, methods, trade secrets, design, source code, Software, interfaces, images, graphics, documentation, tools, processes, patents and other intellectual property rights, and reserves the right to all developments, improvements or modifications thereof, including those used or incurred in connection with the performance of the work (collectively "FORCE Rights").
- 13.3 FORCE retains all rights to data generated by FORCE based on the FORCE Rights regardless of how such

arise, and any statistics, information, and other analysis derived from such. FORCE shall have royalty free, perpetual, right to use and further improve or develop for any of its products or services or FORCE Rights including machine learning of any data that may belong to the Customer (and of which inferred statistics, information and other analysis) arising from access to or use of the FORCE Rights by, or on behalf of, the Customer, regardless of how such have occurred, while respecting confidentiality, cf. clause 14.

- 13.4 The Customer must respect the obligations of FORCE under the Danish Employee's Inventions Act.

14. INFORMATION AND CONFIDENTIALITY

- 14.1 FORCE treats Customer information, the performance of Services, and other details in relation to the customer relationship confidentially. However, FORCE may use the Customer's name and the overall scope of the Service for reference unless the Customer relationship itself is subject to a separate confidentiality agreement.
- 14.2 FORCE being a GTS institute, means that FORCE is subject to Ministerial supervision, which includes user surveys of Danish Customers, and in this regard, FORCE shall provide Customer's company name, VAT number and address unless the Customer relationship itself is subject to a separate confidentiality agreement.

15. THE RIGHT OF THE CUSTOMER TO STOP THE WORK

- 15.1 Should the Customer wish to cease the Service, the Customer must pay for Services already performed, with the addition of the costs incurred by FORCE for staff, equipment etc. as a consequence of the Service being ceased.
- 15.2 Notwithstanding the above, the Customer's total payment shall never exceed the agreed or estimated price for the Service, and never be less than twenty percent (20 %) of the estimated or fixed price, however, no less than five thousand (5,000) DKK.
- 15.3 After the Service has ceased the Customer will receive any preliminary results of the Service in the form available at the cessation time.
- 15.4 If the Service is stopped at the request of the Customer, (i) FORCE's liability for errors and deficiencies in performed work will lapse and, (ii) any subsequent use of the results received is the sole responsibility of the Customer.

16. TERMINATION

- 16.1 The Agreement may be terminated by either Party with thirty (30) days written notice, however, the Customer must pay any outstanding fees or costs including pro rata payment of work performed until the date of notice of termination including unavoidable termination costs of sub-suppliers.
- 16.2 In case of material breach of the Agreement and/or these Conditions FORCE may terminate without notice. Any breach of clauses 17 and 18 is a considered a

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material breach.

17. BUSINESS ETHICS AND CODE OF CONDUCT

17.1 FORCE's Code of Conduct applies to FORCE and any performance by the Parties under this Agreement.

18. SANCTIONS AND EXPORT CONTROL

18.1 Customer represents and warrants that it is not subject to any sanctions, including but not limited to sanctions issued by the United States Department of Treasury Office of Foreign Assets Controls (OFAC), the European Union, or any other applicable sanctions rules ("Sanctions") that would prevent FORCE from transacting business with the Customer, and agrees that it shall comply with such Sanctions.

18.2 In the event that the Customer, or its affiliates, is or becomes subject to Sanctions at any point in time, FORCE shall have the right to amend the Agreement, withhold any deliverables and payments, and reject payments in order to comply with the applicable Sanctions.

18.3 If, as a part of the Service performed under the Agreement, the Customer shall deliver or disclose to FORCE any technologies, products, test objects or elements that are covered by any global export control programmes such as the European Union Regulation (EC) No 428/2009 or similar, the Customer represents and warrants that the delivery and redelivery of the product, test object, or Report has received relevant export control approval from the applicable authorities. Failure to ensure that items and other elements that are covered by export

control regulations have received adequate approvals will cause Customer to be liable and Customer shall indemnify FORCE for any losses, damages or costs in respect of such non-compliance.

19. GOVERNING LAW AND DISPUTES

19.1 The Agreement, including these Conditions are governed by Danish law, without giving effect to its provision or rules regarding conflicts of law.

19.2 Any dispute arising between the Parties including disputes arising out of the performance of the Service or the interpretation of the Agreement and/or these Conditions shall, if such dispute cannot be solved amicably between the Parties within reasonable time, be settled by the Danish Arbitration Institute in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced. The process shall be subject to strict confidentiality.

20. ACCREDITED SERVICES

20.1 Accredited services are performed subject to applicable regulations on accreditation, as amended from time to time, and in accordance with and limited in scope to the relevant standards.

20.2 FORCE is subject to the supervision of the accreditation authority, which has a duty of confidentiality. The Customer agrees that FORCE, for accredited services, provides the accreditation authority access to the Customer's information for the execution of review and audits.

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