



## TERMS OF SALE AND DELIVERY

### SCOPE OF AGREEMENT

All purchases and deliveries, including but not limited to hardware, software components, third party software and/or consulting services ("**Services**") from E Foqus Denmark A/S, business reg.no. 25264800, with its registered address at Firkovvej 36, 1 tv., 2800 Kgs. Lyngby, Denmark, including its successors and assigns ("**E Foqus**") will take place according to these general terms of sale and delivery ("the **Terms**") unless otherwise agreed in writing.

When purchasing software systems developed by E Foqus, a separate licensing agreement and other agreements on delivery of software and/or services setting out the applicable terms and conditions will be entered into and shall take precedence over the Terms. Subject to the terms on retention of title, the customer will obtain ownership to the Services, however the IPR will remain E Foqus property.

By placing an order, the customer makes a binding offer for Services from E Foqus. The customer order should specify any special requirements by the customer. The order shall be deemed to be accepted by E Foqus either upon written confirmation or upon initiating performance of or dispatching of the Services within 2 weeks. An offer received from E Foqus is equally valid for 2 weeks. An E Foqus offer or order confirmation is not subject to any specific format.

The parties are obliged to act loyally to secure the fulfilment of the order for Services and to observe the Terms.

### PAYMENT TERMS

Prices are calculated in DKK. Prices are exclusive of the respective statutory VAT and possible expenses. Any customs duties, levies, public fees and charges, including those charged for export licenses, shall be borne by the customer. If the place of destination is outside Denmark, the customer shall also bear any taxes charged by the country of destination. The price follows from the order confirmation or is based on the E Foqus list prices. Unless an agreement is made to the contrary, the E Foqus list prices may be changed by 30 days' written notice to expire on the last day of any calendar month. A change in list prices will take into account any discounts previously agreed on.

E Foqus travel expenses and expenses for hotel and transport shall be subject to the customer's prior approval and are due and payable five working days after receipt of the invoice and any supporting documentation.

The purchase price is due and payable net within 8 days from the date of invoice. Consulting services will be invoiced on a current/monthly basis and the invoice is due and payable net within 8 days from the date of receipt of a specified invoice. In case the customer is not ready to receive the Services on the delivery date, E Foqus shall nevertheless be entitled to issue the invoice.

Invoices are payable only by bank transfer (wire transfer). The customer shall have no right of set-off or retention, except to the extent that the counterclaim has not been disputed by E Foqus or has been determined by a final and binding decision.

Failure to pay in accordance with the Terms is considered a default. From the default date, default interest in the amount of 8 percentage points above the respective base interest rate p.a. shall accrue in accordance with the Danish Act on Interest Rates.

Incidents giving rise to reasonable doubts about customer creditworthiness shall entitle E Foqus to defer delivery of Services and demand prepayments or a security deposit prior to resuming delivery. If a demand for prepayment or for depositing a security is not complied with within a reasonable period of time set by E Foqus, E Foqus shall be entitled to rescind the contract and claim resulting damages for non-performance by the customer.

### DELIVERY

Unless otherwise agreed, delivery is paid to destination. The delivery period for the Services and for full performance shall be expressly agreed on or is otherwise determined by E Foqus. Unless otherwise agreed, place of performance shall be the customer's place of business, including when Services are made electronically available to the customer. The mode of delivery is decided by E Foqus. E Foqus may substitute parts of Services if customer specifications and the intended purpose are fulfilled. E Foqus may make partial deliveries if the Services can be used separately, and the partial delivery does not cause the customer any additional costs or expenses. Delivery of Services has taken place when E Foqus gives notice to that effect and/or the customer has received the programme. In any event the Services shall be deemed delivered if the customer is in delay of receipt hereof.

### WORKING TIME

Unless otherwise agreed in writing, the consulting services will be carried out on weekdays within normal working hours, i.e. Mondays to Thursdays from 8.30 am to 5 pm (CET) and Fridays from 8.30 am to 4 pm (CET), including 30 minutes' lunch break. Any work outside these hours will only be carried out upon request by the customer and will be settled according to list prices.

### DOCUMENTATION



E Foqus does not provide any documentation or installation guidelines for the Services unless specifically agreed. Any product specifications, technical drawings and images provided by E Foqus are binding if the customer's exact compliance with the product specifications is required for the Services to be usable for their intended purpose. E Foqus Services are subject to variations recognised by trade practices.

#### **DELAY**

The parties must co-operate loyally towards limiting the effects of any delay. In case of delay, E Foqus must promptly notify the customer hereof and of the anticipated time for delivery. If by then the Services are still unavailable, E Foqus may rescind the order in whole or in part. In particular, the delivery shall be deemed unavailable if E Foqus' suppliers fail to perform in time and E Foqus' assess that delivery of Services of the agreed sort, volume or make as set out in the order have become commercially or practically impossible or unreasonable. Delivery shall not be deemed delayed if E Foqus within the agreed period for delivery dispatch or initiate performance of the Services or notify the customer that the Services are ready for dispatch. The time for delivery shall be extended for the period of delay in case of any delay for which E Foqus is not responsible. E Foqus can extend the delivery time for consulting Services with up to 25% of the total amount of working days assessed for the delivery and E Foqus must notify the customer of such extended delivery time as soon as possible. In all cases, E Foqus' delivery shall not be deemed delayed until seven days after an overdue notice from the customer has been received.

Material delays entitles the customer to rescind the order and E Foqus will reimburse the customer any payments made for the delivery, but will not assume any further liability for delayed deliveries. In case of default in receipt or acceptance, any other breach of duty by the customer, or any other event that causes a delay in delivery for which the customer is responsible, E Foqus is entitled to claim any resulting damage. E Foqus' delivery is conditional upon timely and proper performance of all the customer's contractual duties.

#### **RETENTION OF TITLE**

E Foqus reserves the right to reuse any knowhow delivered as part of the Services and retains title to the Services until complete payment of all related claims has been received. All delivered Services as well as all replacing Services, are subject to the retention of title pursuant to this provision. The customer must exercise due care for products, including keeping and maintaining the Services in a proper manner and refrain from making any changes hereto without E Foqus' prior written consent. The customer may neither pledge the Services subject to retention of title nor create security interests unless E Foqus gives prior written consent. In the event of third party pledges, seizure or other disposals or interventions

concerning the Services, which are subject to retention of title by E Foqus, the customer must inform the third party of E Foqus' property rights and inform E Foqus thereof without delay. All costs and damages caused thereby shall be borne by the customer.

#### **LIABILITY AND LIMITATIONS**

The Services shall be inspected by the customer immediately upon delivery. Complaints regarding any defects or shortcomings, including incorrect delivery, shall be made promptly in writing, specifying the nature and extent of the defect or shortcomings in reasonable detail. The customer must always thoroughly test all software or programming delivered under the Services in a test environment resembling the operational environment. Complaints shall be considered as prompt if the complaint is sent within five days after the Services have been delivered or, if a defect occurs at a later time, within seven days after the defect has been detected. In the event of a defect or shortcoming for which E Foqus is responsible E Foqus shall remedy the defect. E Foqus may suspend remedying the defect or replacing the Services until the customer pay the purchase price or a proportionate part hereof.

If the Services are in fact defective, E Foqus shall pay any costs required to remedy the defect or replace the Services, however, if a complaint is unfounded the customer shall reimburse E Foqus for all costs incurred by trying to remedy the alleged defect or replacing the Services. E Foqus is entitled to deliver the Services or to remedy defects by replacing a subcomponent, which a supplier does not deliver or not deliver on time, with a suitable subcomponent from another supplier or manufacturer, which is considered equal to or better in terms of quality.

In case of non-performance by E Foqus where remedying the defect or replacement has failed or not been made in time, the customer is entitled to reduce the purchase price or to rescind the contract at its option. The customer may only rescind where the non-performance is material. In all cases, E Foqus' must be given notice seven days in advance if the customer claims material non-performance and rescinds the order.

Services delivered by E Foqus may be affected by the customer's other software, and performance may vary due to hardware platform, software interaction, configuration of software and other factors, for which E Foqus assumes no liability. E Foqus' will be liable for damages in accordance with Danish law, however E Foqus shall not be held liable for:

- Defects caused by the customer, its employees or third party provided access to Services and due to negligence, changes, mistreatment, misuse of any

kind, excessive wear and tear, or failure to observe maintenance, servicing or other instructions.

- Defects in standard software from sub suppliers.
- Defects, which originates from incomplete order specifications.
- Defects originating from performances by an E Foqus consultant or employee working under the instructions of the customer.

E Foqus accepts product liability according to mandatory provisions under Danish law. Should E Foqus become liable to pay damages, such claim can only be submitted for directly documented expenses as a result of the condition incurring such liability. The customer cannot claim damages for any consequential loss, operating loss or any other indirect loss of any nature, including losses due to virus, operating failures, loss of data and reestablishment costs as well as loss of earnings and other commercial losses. Repayment obligations cannot exceed the total payment made by the customer in relation to the relevant delivery of Services and liability for damages cannot exceed 25% of this amount. In no circumstances can E Foqus' liability for damages exceed EUR 50,000.

#### **FORCE MAJEURE**

Neither party shall be held financially or otherwise responsible for delays, failures or omissions in relation to an order, which are due to any cause beyond a party's control, including labour disputes, war, mobilisation, political disturbances, governmental intervention of various kinds, including any delay in issuance or denial of any required licenses, in particular export licenses, riots, fires, earthquakes, floods, storms, lightning, epidemics, power cuts, interference with transport, extensive operational breakdowns.

#### **CHOICE OF LAW AND DISPUTE RESOLUTION**

The Terms are governed by Danish law. Any dispute arising out of or in connection with this contract, including any disputes regarding the existence, validity or termination thereof, shall be settled by arbitration administered by The Danish Institute of Arbitration 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.