

# CONTRACT ON CONSULTANCY TIL THE DEVELOPMENT OF EXTENDED PRODUCER RESPONSIBILITY GUIDELINES

## Vejledning til udfyldelse

- Yellow marked places to be filled in
- Green marked places to be filled in before the contract is agreed
- Gray marked places/text boxes contain guidance text

All guidance text, commentary boxes, colours and sharp parentheses around the places are to be deleted before the document has been finalised.

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# 1. Parties to the Contract

This Contract was made between the following parties:

Miljøstyrelsen  
Tolderlundsvej 5  
5000 Odense C  
CVR-nr: 25798376

(the "Customer")

and

[Fill in name of contractor]  
[Fill in address]  
[Fill in postal code, city and country]  
[Angiv CVR-nr (if Danish company).]

(the "Supplier")

## 2. Contractual framework

The contractual framework consists of the following documents:

- The Contract (this document)
- Annex 1 – Customer's specifications of requirements
- Annex 2 – Supplier's tender (including price list, if any)

In the event of any discrepancy between the Contract and the annexes, the Contract will prevail. In the event of any discrepancy between the annexes, an annex with a lower number will prevail over an annex with a higher number.

Any adjustments, additions or changes to the deliverables agreed between the parties after the conclusion of the Contract will, however, prevail over the other documents forming part of the contractual framework.

The standard terms and conditions of the Supplier do not form part of the contractual framework.

## 3. Scope of the Contract

### 3.1 Scope

The Contract covers performance of consultancy til the development of Extended Producer Responsibility Guidelines to the Customer. The services are described in more detail in annexes 1 and 2.

### 3.2 Changes to the scope of the Contract

To the extent it does not contravene applicable procurement rules, the Customer may demand changes to the scope of the Contract.



Any demands for changes by the Customer must be made in writing. If requested by the Customer, the Supplier must subsequently prepare a draft amending annex, in which any demands for modifications of the Contract with respect to price, time or security, as a result of the change, are described.

Amendments to the Contract will not become effective until such time as the parties have signed a written addendum to the Contract. The Supplier is not entitled to additional payment, unless a written addendum to the Contract to that effect has been entered into.

## 4. Term of the Contract

The Contract commences when signed by both parties and remains in effect until delivery has been made.

## 5. Delivery

Delivery must be made in accordance with customers specifications of requirements.

## 6. Quality

The services covered by the Contract must comply with any directives, statutes, executive orders, other regulatory requirements and industry standards applicable at the time of signing of the Contract and throughout the term of the Contract.

The services must conform to the specifications of requirements and be in accordance with the Supplier's tender throughout the term of the Contract.

## 7. Prices and price adjustments

### 7.1 Price

The prices of the services covered by the Contract are stated in annex [2].

Prices are exclusive of VAT, including any form of fees, taxes and duties, outlays, travel costs, secretarial services, copying and other office expenses, etc., unless otherwise provided in the price list and/or the specifications of requirements.

### 7.2 Price adjustments

Prices remain fixed for the term hereof, including any periods of extension.

### 7.3 Bonus payable to the Customer and the Customer's employees

Revenue from this Contract must not form the basis of any payment of bonus, discounts or other form of compensation to the Customer or the Customer's employees.



## 8. Invoicing

The Supplier may request payment when the service has been performed, and the deliverable is approved as described in the specifications of requirements.

Invoicing must be effected according to the rules on electronic invoicing of public authorities applicable from time to time.

Invoices must be sent electronically to the person who placed the order (under EAN number 5798000860810).

The invoice must state:

- Date of issuance (invoice date);
- Invoice number (number to identify the invoice);
- Company registration number of the Supplier (CVR number/SE number);
- Supplier's name and address and the Customer's name and address;
- Name of the person placing the order;
- Contract or order number (if available);
- An informative description of the services supplied – each service must be described on a separate line on the invoice;
- Project number
- Quantity and unit of the services supplied;
- Price excluding VAT;
- VAT rate and VAT amount;
- Final payment date.

The Customer may reject invoices which are not received electronically or which lack any of the above information, or if invoicing is generally not in compliance with the Danish Act on Public Payments etc.

## 9. Payment terms

The invoiced amount falls due for payment 30 days after electronic submission of a proper invoice, see clause 8.

If the final payment date is not a banking day, the payment date is deferred to the next banking day.

In the event of late payment, the Supplier is entitled to charge interest under the provisions of the Danish Interest Act.

## 10. Collaboration

The parties will jointly ensure that the Contract is implemented at the Customer.

Each of the parties will appoint employees to be in charge of the day-to-day contact in relation to the Contract.

The Supplier's employees in charge of the day-to-day contact must keep the Customer's employees in charge of the day-to-day contact up to date on the progress of the service/services covered by the Contract.

The Parties must notify one another in the event of any doubt as to the conditions for or purpose or performance of a deliverable.



The parties are also under an obligation to notify one another in the event of dissatisfaction with the other party's performance, work or quality in relation to the work.

At the initiative of either party, a joint evaluation of the collaboration between the Supplier and the Customer must be performed.

## 11. Staffing

The Supplier will make the employees (its own as well as employees of subcontractors) stated in the tender available for the provision of the services.

To the extent possible, the Supplier must not replace employees or make any significant changes to the distribution of roles between the employees during the performance of the services.

In the event that an employee is replaced, the Supplier must explain the reason for the replacement and appoint a new employee having at least the same professional qualifications as the former employee. This must be substantiated in the form of a complete and detailed CV for the new employee. The Supplier's replacement of employees must not affect the services or result in additional costs to or delays for the Customer. For example, the Customer must not pay for a new employee being instructed on the services and the Customer's needs to reflect the level of knowledge of the employee who was replaced. The Customer may reject a new employee who is not deemed to have the same professional qualifications as the original employee.

At the Customer's request, the Supplier must replace an employee, provided the request is reasonably justified.

## 12. Subcontractors

The Supplier has assigned the following subcontractors to the Contract:

- [fill in names and company codes of subcontractors, mentioned in the offer]
- [etc. ....]

The Supplier must not without prior written consent of the Customer assign the performance of the Contract or any part thereof to subcontractors, replace a subcontractor or change the distribution of roles between the Supplier and the subcontractor.

If subcontractors are used, the Supplier guarantees and is liable for the subcontractors' services in the same way as for its own supplies and services.

Subcontractors are not entitled to raise any form of claim against the Customer under this Contract, including claims for payment or damages.



## 13. Personal data

### 13.1 The Supplier's processing of personal data

If the Supplier processes personal data as part of the performance of the Contract, the Supplier is required to ensure compliance with Danish data protection legislation applicable from time to time in respect of the Supplier's processing of data, and in particular the General Data Protection Regulation<sup>1</sup> and the Danish Data Protection Act<sup>2</sup>.

The Supplier and its employees are required to process personal data in a manner that ensures appropriate security and confidentiality of the personal data, as well as the prevention of unauthorised access to or use of personal data to which the Supplier gains access in connection with the performance of the Contract. Furthermore, the Supplier must ensure that persons authorised to process personal data in connection with the performance of this Contract have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality, see clause 14.

The Supplier is not entitled to independently process personal data disclosed as part of the performance of the Contract for its own purposes or to disclose data to any third party, unless otherwise expressly provided under EU law or national law.

## 14. Confidentiality

The Customer is subject to the rules of administrative law, including section 27 of the Danish Public Administration Act on confidentiality. In connection with performance of the task for a public authority, the Supplier must observe a similar duty of confidentiality, see section 152a of the Danish Criminal Code. The Supplier must inform employees engaged in tasks under the Contract thereof.

Furthermore, the Customer is subject to the rules on open administration, including rules on access to documents. Depending on the circumstances, the Customer is entitled and obliged to grant access to documents to the extent prescribed by law.

## 15. Disclosure

The Supplier will be entitled to state the name of the Customer on a list of references once delivery has been made. Except for the foregoing, any marketing by the Supplier of the service is subject to the Customer's consent.

## 16. The Supplier's independence

The Supplier guarantees that it has not undertaken and will not undertake any other task which would raise reasonable doubts as to the Supplier's ability to fully provide the service under this Contract.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

<sup>2</sup> Act no. 502 of 23 May 2018 on supplementary provisions to the regulation on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (the Danish Data Protection Act).





In connection with the performance of its services, the Supplier may, without being required to inform the Customer thereof, be an adviser or provide services to other customers whose interests may conflict with those of the Customer, always provided that no conflict of interests arise on the part of the Supplier in that context with respect to the services to be provided to the Customer.

The Supplier must not use employees if reasonable doubts may be raised as to their ability to fully perform the service under this Contract. The same requirement applies to any subcontractors of the Supplier and their employees.

Under this Contract, the Supplier must immediately notify the Customer of any matter which may give rise to doubts as to the Supplier's or any subcontractors' independence.

## 17. Labour clause

The Supplier must ensure that employees of the Supplier and subcontractors, if any, who contribute to the performance of the Contract are guaranteed wages (including special payments), hours of work and other conditions of labour which are not less favourable than those applicable to work of the same character pursuant to a collective agreement entered into by the most representative social partners in Denmark within the trade and industry concerned and which apply to the entire territory of Denmark. By "contribute to the performance of the Contract" is meant work performed in Denmark for the purpose of performing the Contract.

The Supplier must ensure that employees of the Supplier and subcontractors, if any, who contribute to the performance of the Contract are informed of the terms of the labour clause.

The Customer may at any time request relevant documentation showing that salary and working conditions meet the obligations under the labour clause.

The Customer may request that the Supplier, upon written demand, obtains relevant documentation, e.g. payslips, timesheets, payroll accounts and employment contracts, for the employees of the Supplier and subcontractors, if any, within ten working days.

For the purpose of assessing whether the Supplier or subcontractors have complied with the labour clause, the Customer may seek advice from relevant employers' or workers' organisations.

If the Supplier fails to meet its obligations under the labour clause, and if this results in a justified claim for additional pay from the employees, the Customer may withhold fees for the purpose of accommodating such claim.

## 18. Termination

### 18.1 Termination of the Contract

Subject to 2 months' notice, the Customer may terminate the Contract against payment to the Supplier for the work performed up until the effective date of termination.

In such event the Supplier must hand over to the Customer any material and data produced in connection with the deliverable [*dette omformuleres, såfremt der ikke skal udarbejdes materiale eller data i forbindelse med ydelsen*]. The Supplier will not be entitled to any other form of compensation or damages, including damages for business interruption, loss of profit or other indirect loss, other remuneration or the like.

### 18.2 Termination pursuant to an order or a judgment

If a court of law or the Complaints Board for Public Procurement:

- cancels the Customer's decision to award this Contract to the Supplier;



- declares this Contract null and void;
- considers an amendment to this Contract to constitute a change of fundamental elements which would have necessitated a new contract notice; or
- otherwise orders the Customer to terminate this Contract in whole or in part,

this Contract may be terminated by the Customer in whole or in part at 90 days' notice to the first day of any month. Regardless of the date of termination, the Supplier is not entitled to claim damages as a consequence of termination.

## 19. Separate agreement

The parties agree that clause 18.2 of the Contract constitutes a separate agreement between the parties and will remain in force regardless of whether the Contract is declared null and void.

## 20. Continued validity

Any provisions of the Contract which in the nature of things will continue after the Contract has terminated, regardless of the reason for termination, including, but not limited to, provisions on liability in damages and confidentiality, will remain in force after the termination of the Contract.

## 21. Breach

In the event of actual or anticipated breach, either party is required to notify the other party in writing of the breach, the reason for breach and the date when the breach is expected to be remedied.

If a party has to a significant degree or repeatedly breached its obligations under the Contract or an order, but is not as such in material breach hereof, the other party may terminate the Contract or the order in writing without notice.

The following matters will always be deemed to be material breach entitling the Customer to terminate the Contract with immediate effect by written notice to the Supplier:

- Matters falling within the scope of section 185(2)(ii) of the Danish Public Procurement Act;
- The Supplier initiates reconstruction negotiations or the financial situation of the Supplier is generally significantly impaired, thereby jeopardising the proper performance of the Contract;
- The Supplier enters into bankruptcy, provided the estate does not, based on a written enquiry from the Customer, declare that the estate will affirm the Contract;
- The Supplier discontinues the business activities to which the Contract relates, or other circumstances occur, thereby jeopardising the performance of the Contract;
- Non-compliance with provisions on quality, see clause 6;
- Non-compliance with the duty of confidentiality, see clause 14;
- Non-compliance with the provision on collaboration, see clause 10;
- Non-compliance with the provision on personal data, see clause 13.

The above items are not exhaustive.

Furthermore, the general rules of Danish law on breach apply, including the general rules on delayed delivery and non-delivery. If, as a result of delay, the Customer cancels an order in whole or in part, the Customer is entitled to make substitute purchases for the Supplier's account. Any additional costs in relation to substitute purchases may be offset against any claim from the Supplier.

The Supplier's services will always be deemed to be defective if the service does not comply with this Contract and its annexes, or if the service is not what the Customer could reasonably expect.



At the Customer's request, the Supplier must as soon as possible remedy any defects of which notice has been given. If remedial action is not possible, or if the Supplier has made repeated unsuccessful attempts to remedy a defect, the Customer may instead claim a proportionate reduction of the payment to the Supplier. The proportionate reduction will be fixed taking into consideration the scope and the nature of the defect but will not exceed the payment for the supply.

## 22. Force majeure

Neither party will be deemed to be liable to the other party under this Contract if the liability arises out of matters beyond the party's control and which the party ought not have considered when signing this Contract or avoided or overcome after the signing of this Contract.

The party wishing to claim force majeure must submit written notification thereof without undue delay; however, no later than 10 working days after the force majeure event occurred.

If a force majeure situation persists for more than 60 working days, or if the force majeure situation is of a nature or duration rendering the final performance of the Contract impossible, the other party may terminate this Contract without notice. Neither party may raise any claim against the other party in that respect.

## 23. Liability in damages and insurance

The parties are liable in damages in accordance with the general rules of Danish law.

However, the parties are not entitled to claim damages for business interruption, loss of profit or other indirect loss, and the total liability in damages of each party under this Contract will not exceed a maximum amount corresponding to two times the fee payable for the specific order, including the fee for any unexercised options. These limitations of liability in damages do not apply to grossly negligent or wilful acts or omissions giving rise to liability.

Throughout the term of the Contract, the Supplier must maintain third-party liability insurance covering damage, injury or loss caused by employees in connection with the deliverables as well as insurance covering faulty advice if the Contract comprises advisory services.

The scope of cover of the Supplier's insurances must be commensurate in scope with the Contract and industry standards.

Furthermore, the Supplier must have taken out any other compulsory insurance, including industrial injuries insurance covering the employees.

## 24. Assignment

Subject to compliance with the procurement rules applicable from time to time, the Customer may assign its rights and obligations under this Contract in whole or in part to another public authority if the responsibility for services comprised by the Contract is transferred in whole or in part to that authority.

The Supplier is not entitled to assign its rights or obligations under this Contract in whole or in part to any third party, unless the Customer has consented thereto in writing.

## 25. Governing law and venue

This Contract is governed by Danish law.



In the event of a dispute between the parties in connection with this Contract, the parties must in a positive, cooperative and responsible spirit endeavour to initiate negotiations for the purpose of settling the dispute. If necessary, the negotiations will be escalated to the highest level in the parties' organisations.

If the parties are unable to reach a solution through negotiation within 30 days of the initial contact, resolution of the dispute must, at the request of a party, be sought by mediation managed by a mediator appointed by the parties. If the parties do not agree on a mediator within ten working days after one of the parties requested mediation, either of the parties may request the Danish Mediation Institute to appoint a mediator. Mediation will be conducted in accordance with the Rules for Mediation at the Mediation Institute.

Mediation is commenced by either party submitting a written request for mediation to the other party with a copy to the Danish Mediation Institute. A mediator must be appointed within eight (8) working days of the institute's receipt of the request for mediation. At a minimum, the parties are required to participate in the initial meeting called by the mediator. A party may, however, commence legal proceedings if the postponement thereof could result in rights being forfeited, e.g. due to statute-barring.

## 26. Signatures

**For the Customer:**

Date

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Signature

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Title and name of signatory

**For the Supplier:**

Date

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Signature

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Title and name of signatory

