

Due diligence for sustainable supply chains

The contract clause on due diligence for sustainable supply chains aims to ensure that contracted suppliers have policies and processes in place to identify, assess, prevent, mitigate and remedy adverse impacts on people, the environment and society in their own operations and supply chains.

The clause, including the concepts used, is based on the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the OECD Due Diligence Guidance for Responsible Business Conduct and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

1. Supplier's commitments in the Supplier Code of Conduct

1.1 Supplier shall fulfil the contract in accordance with the commitments in appendix [1] Supplier Code of Conduct regarding human rights, workers' rights, the environment and business ethics and take the measures specified in [this chapter/agreement section].

1.2 The commitments apply to all operations connected to what is purchased.

2. Supplier's due diligence process

To ensure compliance with the commitments in the Supplier Code of Conduct in section 1, Supplier shall have a due diligence process in accordance with sections 2.1 - 2.7. The process shall be documented and applied from [contract start/other time determined by the contracting organisation]. Through this process, Supplier shall identify, assess, prevent, mitigate and remedy adverse impacts on people, the environment and society in its own operations and supply chains. This means that:

2.1 Supplier shall integrate the commitments in the Supplier Code of Conduct into policies and allocate responsibility for policies and due diligence, by

- a) ensuring that relevant policies, established at the highest management level, are adopted or revised to align with the commitments in the Supplier Code of Conduct,
- b) making the policies publicly available and communicating them to rights-holders affected by its own operations,
- c) ensuring that the board of directors considers the policies when making decisions,
- d) appointing one or more persons in management positions as responsible for the due diligence process and
- e) assigning responsibility for the implementation of the policies to employees whose decisions are most likely to increase or decrease the risks of adverse impacts.

2.2 Supplier shall identify and assess actual and potential adverse impacts, by

- a) identifying risk suppliers,
- b) mapping the supply chains of risk suppliers,
- c) regularly examining the risks of adverse impacts in its own operations and in the supply chains of risk suppliers,

- d) engaging in meaningful consultations with rights-holders or their representatives and obtaining information from credible and independent sources if consultations are not possible in the supply chains of risk suppliers,
- e) paying attention to adverse impact on individuals from groups and populations that are at heightened risk of vulnerability or marginalisation, including environmental and human rights defenders and
- f) prioritising the most significant risks based on likelihood and severity.

2.3 Supplier shall prevent and mitigate actual and potential adverse impacts that Supplier causes or contributes to, by

- a) ceasing activities that cause or contribute to adverse impact in its own operations or supply chains,
- b) establishing action plans in meaningful consultation with affected rights-holders or their representatives, with a particular focus on the most significant risks identified and
- c) promoting purchasing practices that do not hinder sub-suppliers from complying with the commitments in the Supplier Code of Conduct.

2.4 Supplier shall use its leverage to prevent and mitigate actual and potential adverse impacts linked to Supplier's operations, by

- a) assessing risk suppliers based on the commitments in the Supplier Code of Conduct and the due diligence process, with a particular focus on the most significant risks identified,
- b) establishing action plans for risk suppliers, with a particular focus on the most significant risks identified,
- c) forwarding the commitments in the Supplier Code of Conduct (section 1) and the due diligence process (section 2) in writing to risk suppliers,
- d) requiring risk suppliers to disclose their supply chains in accordance with the supply chain transparency requirement (section 4.4) and
- e) ensuring the possibility of temporarily suspending deliveries from a sub-supplier while preventive and mitigating measures are implemented and, in the event of severe deviations that remain unaddressed, the possibility of terminating the contract with the sub-supplier concerned.

2.5 Supplier shall monitor the measures to prevent and mitigate actual and potential adverse impacts, by

- a) following-up established action plans for its own operations and risk suppliers, with a particular focus on the most significant risks identified,
- b) engaging in meaningful consultations with rights-holders affected by its own operations, or their representatives, and to the extent possible in the supply chains of risk suppliers and
- c) addressing deviations.

2.6 Supplier shall enable stakeholders such as rights-holders, their representatives and environmental and human rights defenders to submit complaints if they have concerns about actual or potential adverse impacts in Supplier's operations or supply chains. Supplier shall address the submitted complaints.

2.7 Supplier shall, if Supplier has caused or contributed to actual adverse impact, provide for remediation by

- a) to the extent possible, restoring affected rights-holders to the situation they would have been in had the adverse impact not occurred and enabling remediation that is proportionate to the significance and scale of the adverse impact,
- b) engaging in meaningful consultation with affected rights-holders or their representatives on appropriate remedy and
- c) assessing whether affected rights-holders are satisfied with the process and outcome.

3. Supplier's reporting obligation

3.1 If Supplier has reasonable grounds to assume that a severe deviation is occurring or has occurred in its own operations or supply chains, Supplier shall within [two (2)] weeks report the actual circumstances and the implemented and planned measures in accordance with sections 2.1 - 2.7, to [contracting organisation].

3.2 Severe deviations refer to forced labour, child labour, working conditions that pose a danger to life, serious environmental harm, grand corruption and attacks on environmental and human rights defenders. The severe deviations are defined in appendix 1: Supplier Code of Conduct.

4. Monitoring of the contract clause

4.1 Supplier shall participate in and cooperate with [contracting organisation's] monitoring of the commitments in the Supplier Code of Conduct (section 1) and the due diligence process (section 2). Monitoring may be conducted through various methods such as dialogue, self-assessment, supply chain transparency and audits.

4.2 Dialogue

Supplier shall, within [two (2)] weeks of [contracting organisation's] request, participate in a dialogue on how Supplier complies with its commitments and the due diligence process.

4.3 Self-assessment

Supplier shall, within [four (4)] weeks of [contracting organisation's] request, provide a written account of its due diligence process.

4.4 Supply chain transparency

Supplier shall, within [four (4)] weeks of [contracting organisation's] request, provide a written account of the sub-suppliers Supplier uses to fulfil the contract. This includes the legal names and physical addresses of:

- final manufacturing facilities for [product/products/assortment]
- [manufacturing facilities one (1) tier beyond] final manufacturing of [the product/products/assortment]
- [manufacturing facilities for [component/components] in [product/products/assortment]
- [smelters/refineries for the tin, tungsten, tantalum and gold (3TG), cobalt and mica] used in [product/products/assortment]
- [the origin of [raw material] used in [product/products/assortment]
- [extraction facilities for [raw material] used in [the product/products/assortment]

4.5 Audit

4.5.1 Supplier shall, within [four (4)] weeks of [contracting organisation's] request, enable [contracting organisation] to, on its own or through a representative, conduct audits in Supplier's operations. Supplier shall also enable [contracting organisation] to, on its own or through a representative, conduct audits of any sub-suppliers' operations. Supplier and any sub-suppliers shall, in connection with audits, provide the information that [contracting organisation] requests.

4.5.2 Supplier shall bear the cost of any follow-up audits required to verify that Supplier has corrected deviations.

4.6 Right to share results

[Contracting organisation] has the right to share results of completed monitoring with other regions within the regions' national collaboration for sustainable public procurement (National Secretariat for Sustainable Public Procurement) provided that the receiving region already has an agreement with Supplier, which includes equivalent conditions for sustainable supply chains.

5. Management of deviations from the contract clause

5.1 Supplier shall address deviations from the commitments in the Supplier Code of Conduct (section 1) and the due diligence process (section 2). Focus shall be on improvements in Supplier's operations and supply chains.

5.2 Action plan

In the event of a deviation from the commitments in the Supplier Code of Conduct (section 1) or the due diligence process (section 2), Supplier shall establish a time-bound action plan to be approved by [contracting organisation]. Supplier shall establish the action plan no later than [two (2)] weeks from [contracting organisation's] notification of the deviation. The action plan shall be proportionate to the severity of the deviations and shall describe how the deviations will be addressed within the time frame.

5.3 Liquidated damages

If Supplier does not report in accordance with section 3, does not participate in monitoring in accordance with section 4, fails to take action in accordance with sections 5.1 – 5.2 or does not address deviations in accordance with the established action plan, [contracting organisation] has the right to impose a liquidated damage on Supplier. Liquidated damages amount to [____ SEK, excluding VAT] per commenced week the circumstances persist. The liquidated damage may be imposed for a maximum of [____ weeks].

5.4 Call-off suspension (for framework agreements)

If Supplier does not report in accordance with section 3, does not participate in monitoring in accordance with section 4, fails to take action in accordance with sections 5.1 – 5.2 or does not address deviations in accordance with the established action plan, [contracting organisation] has the right to exclude Supplier from call-offs for as long as the circumstances persist. The same applies while [contracting organisation] investigates a potential ground for call-off suspension. During the suspension period, [contracting organisation] has the right to call-off from another framework

agreement supplier or, if such does not exist, procure the framework agreement subject matter from another supplier.

5.5 Termination of contract

If Supplier does not report in accordance with section 3, does not participate in monitoring in accordance with section 4, fails to take action in accordance with sections 5.1 – 5.2 or does not address deviations in accordance with the established action plan, [contracting organisation] has the right to terminate the [contract/framework agreement] with reasonable notice.

If [contracting organisation] has the right to a maximum liquidated damage [or if a call-off suspension has been in place for ___ months], [contracting organisation] has the right to terminate the [contract/framework agreement] with immediate effect.

Notwithstanding any other provision of the [contract/framework agreement], [contracting organisation] has the right to terminate the [contract/framework agreement] with immediate effect if [contracting organisation] has demonstrated that a severe deviation occurs in Supplier's operations or supply chains, and the party causing the severe deviation does not take immediate action to prevent and mitigate it.
