

# General Terms and Conditions for the Purchase of Services - Flytoget AS

## 1 INTRODUCTION

- 1.1 These general terms and conditions apply for Flytoget's purchase of services unless otherwise agreed in writing between the parties or is stated in the contract defining the Parties' agreement regarding the purchase of the services in question the Contract.
- 1.2 The party who has contracted to provide services to Flytoget will be referred to as Supplier, Flytoget and the Supplier will jointly be referred to as the Parties.

## 2 SUPPLIER'S OBLIGATIONS

- 2.1 Supplier shall provide the services specified in the Contract (the Services). The Services must be provided to a high standard of workmanship, in accordance with the contractual requirements and always in compliance with current laws, regulations and government directions as well as the relevant trade standards.
- 2.2 The Services shall be provided according to the progress schedule defined in the Contract. If no such progress schedule exists, the Supplier shall deliver the Services with a level of progress that Flytoget could reasonably expect.
- 2.3 Supplier is obliged to ensure that all personnel employed to fulfil this contract always have relevant and sufficient skills for their tasks.
- 2.4 When undertaking work at Flytoget's premises, Supplier shall comply with Flytoget's instructions with regard to health, environment and safety. This applies similarly for work undertaken at other premises on Flytoget's instruction.
- 2.5 Supplier shall never employ sub-suppliers to provide significant parts of the Services without Flytoget's written consent. Such consent does not relieve Supplier of his duties under the contract. Supplier is fully responsible to Flytoget for the work and conduct of his sub-suppliers.
- 2.6 Flytoget will not be considered the employer of Supplier's personnel in law or in fact, even when such personnel provide the Services, or parts thereof, by working jointly with Flytoget, at Flytoget's premises or on Flytoget's instructions.
- 2.7 Supplier shall provide reports regarding work undertaken and any other matter of importance to Flytoget. Such reports must be submitted at the frequency and level of detail described in the Contract, or as otherwise requested by Flytoget. On completion of the work, Supplier shall submit a completion report. Unless otherwise agreed, all reports shall be submitted electronically.
- 2.8 During the Contract period and for a period of four months thereafter, the Supplier shall not deliver services to a competitor of Flytoget without Flytoget's prior written acceptance, when the Supplier during the course of their delivery has obtained access to Flytoget's knowhow, business secrets or other information defined in Clause 14.1. During this period, the Supplier undertakes to notify Flytoget in writing about any such potential deliveries and Flytoget will decide, in their own discretion, whether the Supplier shall accept the delivery in question. The Parties may agree on a different post-term period in a written agreement, but that period may not be shorter than the four months defined in this Clause.
- 2.9 During the Contract period and for a period of twelve months thereafter, the Supplier shall refrain from actively

recruiting Flytoget's personnel, regardless of whether this recruitment takes place directly, indirectly or by means of third parties/service providers.

## 3 FLYTOGET'S ASSISTANCE

- 3.1 Flytoget shall fulfil their obligations under the Contract and otherwise reasonably accommodate Supplier's efforts to fulfil their contractual obligations. To this end, Flytoget shall provide the necessary office space for work which shall be performed at Flytoget's premises and ensure access and reasonable accommodation for work to be carried out at other premises, on Flytoget's instructions.

## 4 COMMUNICATION AND MEETINGS

- 4.1 Any and all communication between parties shall take place between the contact persons defined in the Contract.
- 4.2 The parties shall meet regularly to assess the work under the Contract. The frequency of meetings is subject to further agreement. Both parties are entitled to demand a meeting with the opposite party by giving 14 days' notice in writing.

## 5 VARIATIONS

- 5.1 Flytoget may demand changes to the Services, which will result in an increase or reduction in scope, character, nature, quality or execution, as well as changes to the progress schedules.
- 5.2 The Supplier must inform Flytoget no later than ten days following receipt of such a change order outlined in Clause 5.1, about any impact on the progress schedule, contractual price and any and all impact on other aspects of the Contract. If the Supplier has not sent any such notification within the set time limit, the Supplier has agreed to undertake the changes to the contractual works without any modifications to either price or progress schedule and no subsequent claim for compensation may be brought.
- 5.3 Any cost impacts of the change order shall be defined according to the agreed prices. If no agreed prices are applicable, the prices for the change order shall reflect the general price level of the Contract.
- 5.4 The Supplier shall execute the change order immediately upon receipt, if not otherwise agreed in writing. The fact that the impact of the change order on prices, progress plan or any other aspect of the Contract has not been agreed does not allow the Supplier to delay execution of the works defined in the change order.
- 5.5 Supplier shall keep a record of all changes under Clauses 5.1 and 5.2. These records must be kept updated at all times.

## 6 REPLACING KEY PERSONNEL

- 6.1 Supplier's key personnel cannot be replaced without Flytoget's consent. Such consent cannot be unreasonably withheld.
- 6.2 Flytoget may demand that Supplier replace any personnel performing work under the contract without undue delay, if there are reasonable grounds for doing so.

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### 7 SUSPENSION OF SERVICES

- 7.1 Flytoget may suspend the delivery of all or some of the Services agreed under the Contract, by written notice. On receipt of such notice, Supplier shall, without undue delay, notify Flytoget of the effects that this suspension may have on the overall performance of Supplier's obligations under the contract, if any.
- 7.2 Throughout the period during which the provision of services is suspended, Supplier is entitled to compensation only for documented and necessary expenses incurred in connection with demobilising and mobilising personnel.

### 8 TERMINATION

- 8.1 Unless otherwise agreed, Flytoget is entitled to terminate the Contract and/or the work undertaken in fulfilment of Supplier's obligations under the Contract in whole or in part by giving one month's notice in writing.
- 8.2 Supplier has no right to terminate the agreement unless otherwise agreed in writing.

### 9 PAYMENT

- 9.1 The prices payable for Supplier's services must be specified in the Contract or in Flytoget's purchase order. All prices must be given in NOK exclusive of VAT.
- 9.2 Unless the parties agree otherwise, the payment shall be calculated on the basis of hours worked at the hourly rates listed in the Contract or in Flytoget's purchase order. Flytoget may demand that Supplier delivers a budget or provides an estimate for the expected time and cost involved with providing all or some of the Services. This budget shall be communicated to Flytoget in advance and include any and all potential risks of further works/excess time required for completion of the contractual services. If there is reason to believe that the budget or estimate will be exceeded by more than 15 per cent, Supplier shall immediately notify Flytoget. The notification will in no event be accepted after the budget has been exceeded and the Supplier will not be entitled to compensation for work exceeding the original estimate.
- 9.3 All unit prices shall be fixed throughout the contract period unless otherwise agreed in writing.
- 9.4 Invoices shall be submitted monthly in arrears and must provide a detailed breakdown of working hours, with payment due within 30 days of the invoice date. If a fixed price has been agreed, the invoice shall be submitted only after full delivery has been made and approved, unless a particular payment schedule has been agreed.
- 9.5 If Flytoget has agreed to cover travel and subsistence, such costs may be invoiced in accordance with the Norwegian Government's travel allowance scale. Flytoget shall always approve such costs in advance and in writing.
- 9.6 All invoices must provide a reference number and the name of a reference person, and must be addressed to:  
     in pdf: faktura@flytoget.no  
     or paper: Flytoget AS  
               Postboks 425, Forus  
               4067 Stavanger  
               Norway

All invoices must be itemised and accompanied by time sheets etc. to enable checking by Flytoget.

Invoices that are incorrectly completed or referenced may be rejected by Flytoget. In that case, Supplier shall credit the amount to Flytoget's account and issue a new, correct, invoice. The payment is due from the date of the correct invoice.

- 9.7 If it has been agreed that Supplier will provide a bank guarantee, Flytoget will not be obliged to make any payment until such guarantee has been submitted.
- 9.8 Supplier shall submit his final invoice within 60 days of fulfilment or termination of the contract, and/or final delivery of the service or termination of the cooperation by Flytoget for any reason. The final invoice shall include all of Supplier's claims under the contract. Any and all claims not included in the final invoice cannot be presented later.
- 9.9 Payment of an invoice implies no approval of the Services provided, the invoice documents or the specification.
- 9.10 In case of late payment, Supplier is entitled to claim interest under the Norwegian Act of 17 December 1976 no. 100 relating to Interest on Overdue Payments.

### 10 SUPPLIER'S BREACH OF CONTRACT

- 10.1 **Defects**
- 10.1.1 The Services will be defective if they fail to meet the requirements set out in Clause 2 above.
- 10.1.2 If the Services are defective, Flytoget is entitled to a discount proportionate with the defect, or to require that the Supplier rectifies or replaces the defective parts of the Services, at Flytoget's choice.
- 10.1.3 Regardless of Clause 10.1.2 above, Flytoget is also entitled to claim damages for any loss incurred by defective Services, unless Supplier can prove that the loss was not caused by the defect in question. Flytoget may terminate the Contract for cause, if the defects constitute a material breach of Contract.
- 10.2 **Delay**
- 10.2.1 If the Services are not performed within the deadlines contained in the agreed progress plan, they are delayed for the purposes of this Clause 10.2.
- 10.2.2 If the delivery is delayed, liquidated damages will automatically accrue, measured from the date liquidated damages shall commence under the terms of the Contract. Unless otherwise agreed in writing, liquidated damages will accrue at the rate of one per cent of the price payable for the Services, exclusive of value added tax, per calendar day of delay until correct delivery has been made. Liquidated damages for delay cannot exceed 15 per cent of the price of the entire Services, for each instance of delay.
- 10.2.3 Flytoget is entitled to terminate the Contract with immediate effect if a delay should constitute material breach of contract. If maximum liquidated damages have accrued, the delay will constitute material breach of contract. Flytoget will also be entitled to terminate the Contract if it becomes clear that a significant delay constituting material breach will occur.

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### 10.3 Infringement of intellectual property rights

- 10.3.1 Supplier shall indemnify and hold Flytoget harmless against all claims if the provision or outcome of the service should cause, or be alleged to cause, any infringement of a third party's patent right or other intellectual property rights.

### 11 DAMAGES AND LIMITATION OF LIABILITY

- 11.1 Flytoget is entitled to claim damages for any loss suffered due to the Supplier's breach of contract. Flytoget's right to damages remains in force and effect regardless of whether Flytoget has also exercised their right to terminate the Contract for cause.
- 11.2 The Parties' liability for damages do not include liability for indirect loss as defined in Section 67 §2 and §3 of the Sales Act. This limitation does not apply in cases of gross negligence or intent.

### 12 SOCIAL REQUIREMENTS

- 12.1 Supplier shall ensure that the obligations set out in the attachment «Ethical requirements for suppliers» are always fulfilled by the entire chain of sub-suppliers and until the contract has been fulfilled in its entirety. Any failure to fulfil obligations under this clause will constitute a material breach of contract.

### 13 INSURANCE

- 13.1 Supplier shall at his own cost take out and maintain such insurances which are appropriate for Supplier's activities and the nature of the service provided, including liability insurance.
- 13.2 Supplier shall submit the certificate of insurance to Flytoget no later than at the time of entering into the contract.

### 14 CONFIDENTIALITY

- 14.1 The parties are obliged to keep confidential any personal matters, operational issues and business secrets to which they may gain access in connection with their work under the contract. This non-disclosure obligation extends beyond the contract period and for as long as the relevant information remains confidential. Flytoget will demand that Supplier's personnel sign a special confidentiality declaration.
- 14.2 Supplier is not at liberty to quote Flytoget or the contract as reference to a third party without Flytoget's consent.
- Should Flytoget provide such consent, this will not revoke the non-disclosure obligation under Clause 14.1.

### 15 LEGAL TITLE TO INTELLECTUAL PROPERTY

- 15.1 Unless otherwise agreed in writing, legal title to the intellectual property rights created by or resulting from the Services provided will be transferred to Flytoget at the time of their making. Such legal title also includes the right to alter and assign these results, cf. s. 39(b) of the Norwegian Copyright Act of 12 May 1961 no. 2.
- 15.2 All reports, drawings, specifications, and similar documents, as well as computer applications and software, which have been created in connection with the Services, are considered intellectual property created by the Services provided.
- 15.3 Supplier retains legal title to his own tools and methods.

Unless otherwise follows from statutory or contractual non-disclosure obligations, both parties are at liberty to make use of any general know-how they may have acquired in connection with their work under the Contract. Knowledge about Flytoget's best practices, routines, performance of work and other similar information is to be considered "operational issues" and/or "business secrets" under Clause 14.1 above and the Supplier may not make any use of such information in any other connection.

### 16 ASSIGNMENT

- 16.1 Flytoget is free to assign their rights and obligations under the contract.
- 16.2 Supplier is not entitled to assign his rights and obligations under the contract without Flytoget's written consent. Supplier may nevertheless freely transfer the right to the compensation payable under the contract (factoring). However, any such transfer will not exempt Supplier of his obligations under the contract.

### 17 CHOICE OF LAW AND DISPUTES

- 17.1 The contract shall be interpreted in accordance with Norwegian law.
- 17.2 Efforts must be made to reach a negotiated resolution to any dispute arising from the interpretation or implementation of the contract. Should such negotiations fail to settle the matter, the case will be brought before the ordinary courts of law.
- 17.3 In the event of litigation, Flytoget's court of domicile will constitute the appropriate place of jurisdiction.

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