

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

1 INTRODUCTION

- 1.1 These general terms and conditions govern Flytoget's purchase of services, unless otherwise agreed in writing between the parties, or unless otherwise prescribed by the contract outlining the parties' agreement regarding the purchase of the services in question.
- 1.2 The party who is contracted to provide services to Flytoget will be referred to as the Supplier, Flytoget and the Supplier will individually be referred to as a Party and jointly as the Parties.

2 SUPPLIER'S OBLIGATIONS

- 2.1 The 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 orders as well as the relevant industry 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 The Supplier is obliged to ensure that all personnel employed to fulfil this contract at all times possess the relevant and sufficient skills for their tasks.
- 2.4 When undertaking work at Flytoget's premises, the Supplier shall comply with Flytoget's instructions with regard to health, environment and safety. The same applies for work undertaken at other premises on Flytoget's instruction.
- 2.5 The Supplier may employ sub-suppliers to provide parts of the Services, unless otherwise agreed. This does not relieve Supplier of its duties under the contract. The Supplier is fully responsible to Flytoget for the work and conduct of its sub-suppliers. Flytoget has the right to refuse the choice of a sub-supplier if there are reasonable grounds for doing so.
- 2.6 Flytoget will not be considered the employer of the 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 The Supplier shall regularly 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 specified in the contract, or as otherwise requested by Flytoget. On completion of the work, the Supplier shall submit a completion report that includes all provided work related to provision of the Services. Unless otherwise agreed, all reports shall be submitted electronically.

3 FLYTOGET'S ASSISTANCE

- 3.1 Flytoget shall fulfil its obligations under the contract and otherwise reasonably accommodate the Supplier's efforts to fulfil its 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 the 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 other party by giving 14 days' written notice.

5 VARIATIONS

- 5.1 If Flytoget wish to change the Services or other circumstances of the contract, which will result in an increase or reduction in scope, character, nature, quality, progress schedules or execution, Flytoget may issue a change order.
- 5.2 The Supplier must inform Flytoget within reasonable time following receipt of such a change order, about any effects on the progress schedule, contractual price and any and all effect on other aspects of the contract. Any modifications to either price or progress schedule must be claimed no later than the time of the Supplier's notification to Flytoget about such effects.
- 5.3 Any cost implications of the change order shall be determined 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 effect of the change order on prices, progress plan or any other aspect of the contract has not been agreed does not entitle the Supplier to delay execution of the works defined in the change order.

6 REPLACING KEY PERSONNEL

- 6.1 The Supplier's key personnel cannot be replaced without Flytoget's permission. Such permission cannot be unreasonably withheld.
- 6.2 Flytoget may reasonably demand that the Supplier replace any personnel performing work under the contract without undue delay.

7 SUSPENSION OF SERVICES

- 7.1 Flytoget may suspend the delivery of all or some of the Services under the contract by providing written notice thereof. Flytoget shall notify the Supplier of when the delivery is to be suspended, as well as when it is to be continued. Upon receipt of such notice, the Supplier shall notify Flytoget without undue delay of the effects that this suspension may have on the overall performance of the Supplier's obligations under the contract, if any.
- 7.2 Throughout the period during which the provision of Services is suspended, the Supplier is entitled to compensation only for documented direct costs incurred due to the suspension of delivery of the Services.

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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 Should Flytoget terminate the contract before the Services have been fully delivered and before the contract period has expired, the Supplier is entitled to payment for Services that have already delivered, as well as compensation for documented direct costs incurred due to the termination of the contract and in connection with demobilizing and mobilizing personnel.
- 8.3 The Supplier has no right to terminate the agreement unless otherwise agreed in writing.

9 PAYMENT

- 9.1 The prices payable for the Supplier's Services must be specified in the contract or in Flytoget's purchase order and shall constitute the total contract sum. All prices must be given in NOK exclusive of VAT.
- 9.2 Unless otherwise agreed, 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. If there is reason to believe that the budget or estimate will be exceeded by more than 15 per cent, the Supplier shall immediately notify Flytoget. The Supplier will not be entitled to additional payment if the Supplier fails to provide a notification prior to exceeding the budget or estimate.
- 9.3 All unit prices shall be fixed throughout the contract period unless otherwise agreed in writing. The unit prices can be adjusted once per year in accordance with the consumer price index.
- 9.4 Invoices shall be submitted monthly in arrears and must contain 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 must always approve such costs in advance and in writing.
- 9.6 All invoices must contain a reference number and the name of a reference person, and must be addressed in PDF to:
- 1) E-invoice: 9908:965694404
 - 2) PDF invoice: invoice@flytoget.no
- 9.7 All invoices must be itemized and accompanied by time sheets etc. to enable verification by Flytoget. Invoices that are incorrect or which lacks references may be rejected by Flytoget. In such case, the Supplier shall credit the amount to Flytoget's account and issue a new and correct invoice. Payment is due from the date of the correct invoice.
- 9.8 If it has been agreed that the Supplier will provide a bank guarantee, Flytoget will not be obliged to make any payment until such guarantee has been submitted.

- 9.9 Payment of an invoice does not constitute an approval of the Services provided, nor the invoice documents or the specification.
- 9.10 In case of late payment, the Supplier is entitled to claim interest under the Norwegian Act of 17 December 1976 no. 100 relating to Interest on Overdue Payments.
- 9.11 The Supplier shall submit its final invoice within 60 days of the expiry or termination of the contract, and/or final delivery of the Service.

10 SUPPLIER'S BREACH OF CONTRACT

10.1 Defects

- 10.1.1 The Services shall be considered defective if they fail to meet the requirements set out in the contract.
- 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 10.1.1 above, Flytoget is also entitled to claim damages for any loss incurred due to the defective Services, unless the 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 considered delayed for the purposes of this contract. Should the Supplier become aware of circumstances that might result in delay, the Supplier shall notify Flytoget about these circumstances, and provide a plan to mitigate such delays within reasonable time. Flytoget may waive the requirement to provide such plan.
- 10.2.2 If the delivery is delayed, liquidated damages will automatically accrue, measured from the date on which delivery should have taken place according to 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 per calendar day of delay, exclusive of value added tax, until correct delivery has been made. Liquidated damages for delay shall not 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.
- 10.2.4 If Flytoget terminates the contract, Flytoget may claim damages for the loss incurred due to the Supplier's delay, provided that such loss exceeds the maximum liquidated damages Flytoget can claim under Clause 10.5.
- 10.3 **Infringement of intellectual property rights**
- 10.3.1 The Supplier shall indemnify and hold Flytoget harmless against all claims if the provision or results of the Service should cause, or be alleged to cause, any infringement of a third party's patent right or other intellectual property rights.

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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 shall not include liability for indirect loss as defined in the second and third paragraph of Section 67 of the Sale of Goods Act. This limitation does not apply if the liable Party has acted grossly negligent or with intent.
- 11.3 The Parties' liability for damages in Clauses 11.1 and 11.2 cannot exceed the contract sum. This limitation of liability does not apply if the liable Party has shown gross negligence or intent.

12 SOCIAL REQUIREMENTS

- 12.1 The Supplier shall ensure compliance with the obligations set out in the attachment "Ethical Expectations of Suppliers" by the Supplier and all subcontractors for the duration of the contract.

13 PROCESSING OF PERSONAL DATA

- 13.1 As a main rule, the Parties are independent data controllers for their respective processing of personal data in connection with the fulfilment of the contract.
- 13.2 If a data processing relationship arises between the Parties, a separate data processing agreement shall be entered into. The data processing agreement shall be attached to the contract documents as a separate appendix.

14 INSURANCE

- 14.1 The Supplier shall at its own expense take out and maintain such insurances which are appropriate for the Supplier's activities and the nature of the service provided, including liability insurance.
- 14.2 The Supplier shall submit the certificate of insurance to Flytoget no later than at the date of signing of the contract.

15 CONFIDENTIALITY

- 15.1 The parties are obliged to keep confidential any personal matters and trade secrets to which they may gain access in connection with the contract. This non-disclosure obligation shall survive the contract period without expiry for as long as the relevant information remains confidential. Flytoget may require the Supplier's personnel to sign a special non-disclosure agreement.
- 15.2 The Supplier is not at liberty to quote Flytoget or the contract as reference to a third party without Flytoget's permission. Should Flytoget provide such permission, this will not waive the non-disclosure obligation under Clause 15.1.

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 Unless otherwise agreed in writing, the ownership of all intellectual rights, property rights and related rights, created by or as a result of the Services provided will vest in Flytoget at the time of their making. Such legal title also includes the right to alter and assign these results, cf. section 67 of the Norwegian Copyright Act of 15 June 2018 no. 40.
- 16.2 All reports, drawings, specifications, and similar documents, as well as computer applications, software (including source code) and other technical material, are considered intellectual property created as a result of the Services provided.
- 16.3 The Supplier may not, under no circumstances, exercise lien in Flytoget's property rights, intellectual property rights and related rights. At Flytoget's request, and at no extra cost, Supplier undertakes to make all assignments and take all reasonable acts necessary to accomplish the assignment to and ownership of all such material and rights to Flytoget.
- 16.4 If the Supplier uses open-source code in connection with the Services, the Supplier must establish and maintain an overview of such open-source code. The Supplier undertake not to use such open-source code if such use may weaken (or otherwise reduce) Flytoget's rights to the results of the Services as prescribed by Clause 16.1.
- 16.5 The Supplier shall retain rights to its own tools and methods that are not subject to Clause 16.1. Flytoget shall acquire a free, unlimited, perpetual, irrevocable and non-exclusive right to use, duplicate, change and further develop such material (either itself or with the assistance of third parties), to the extent necessary for Flytoget to make use of the purpose with the Contract.
- 16.6 Unless otherwise follows from statutory non-disclosure obligations or those contained herein, 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 shall nevertheless be considered trade secrets (pursuant to section 2 of the Norwegian Trade Secrets Act) and the Supplier may not make any use of such information in connection with any purpose other than the fulfilment of the contract.

17 ASSIGNMENT

- 17.1 Flytoget is free to assign its rights and obligations under the contract.
- 17.2 The Supplier is not entitled to assign its rights and obligations under the contract without Flytoget's written permission. Such permission cannot be unreasonable withheld if the Supplier is assigning rights and duties to a subsidiary or another company within the group of companies as part of an internal reorganization. Furthermore, Flytoget cannot withhold its permission to an assignment necessitated by the Supplier's participation in a merger or demerger.
- 17.3 The Supplier may freely transfer the right to the compensation payable under the contract (factoring). However, such transfer will not exempt the Supplier of its obligations under the contract.

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18 GOVERNING LAW AND VENUE

- 18.1 The contract shall be construed in accordance with Norwegian law.
- 18.2 In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, each Party undertakes to reach a negotiated resolution to the same. Should such negotiations fail to resolve the matter, each Party may bring the matter before the ordinary courts of law.
- 18.3 Any dispute, controversy or claim arising out of or in connection with the contract, or the breach, termination or invalidity thereof, shall be brought before, Flytoget's court of domicile.

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