



**Bergen kommune, Bymiljøetaten/AUE**

**Prosjekt: Bergenslykter / Historical lamps**

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## Appendix 3: Call-off agreement

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# **1. GENERAL PROVISIONS**

## **2. PERFORMANCE OF THE GOODS**

### **2.1 THE DUTIES OF THE SUPPLIER**

#### **2.1.1 General duty**

The Supplier shall be responsible for ensuring that the goods delivered under this Agreement meet the requirements and descriptions specified in Appendices 1 and 2, and have the functions, properties and quality stipulated therein.

If errors result in the goods deviating from what was agreed under this Agreement, it shall be the responsibility of the Supplier to rectify the error in such a way as to make the goods conform to what was agreed.

#### **2.1.2 Time and place for the Supplier's performance**

The goods shall be delivered DDP (Incoterms) to the address within Bergen municipality stated by the Customer when the order was made.

The Supplier shall perform in accordance with the timeline proposed in its Tender. Deviations to the benefit of the Customer may be made.

#### **2.1.3 Warranty period and guaranteed performance**

The warranty period shall be two (2) years, starting from the date delivery is deemed to have taken place pursuant to clause 2.1.2.

Contingent upon normal, diligent use on the part of the Customer, the Supplier shall, at no additional cost, rectify errors and defects, replace defect parts of goods which the Customer has complained about before the expiry of the warranty period.

Appendix 2 may specify detailed requirements for the maintenance of goods that must be performed for the warranty to remain valid.

Rectifications shall be performed without undue delay.

The Supplier is free to choose if errors shall be rectified through rectifications, redelivery or additional deliveries. If the Supplier chooses to rectify errors during the warranty period by delivering a new specimen, the Supplier shall not be entitled to any payment in respect of the new specimen, even if it contains improvements.

This clause does not affect the Customer's rights under the Sale of Goods Act, cf. clause 2.7.

## **2.2 THE DUTIES OF THE CUSTOMER**

### **2.2.1 Contributions**

The Customer shall contribute to facilitating the Supplier's performance of its duties under this Agreement.

### **2.2.2 Duty to examine**

The Customer shall examine the goods in accordance with the normal legal rules for the sale of goods and pursuant to good business practice.

The Customer may not refuse to approve the goods if the reported errors are immaterial to the Customer's use.

If the Customer approves the goods, the Customer shall notify the Supplier of this in writing. The delivery date shall be deemed to have taken place on the first working day after the notice has been sent. If the Customer rejects the goods, notification of this shall be sent to the Supplier by no later than ten (10) working days after the delivery.

## **2.3 RESPONSIBILITY FOR SUBSUPPLIERS AND THIRD PARTIES**

If the Supplier appoints a subsupplier or the Customer appoints a third party to perform work occasioned by this Agreement, the relevant party shall remain fully responsible for the performance of such work in the same manner as if said party was performing the work itself.

## **2.4 WAGES AND WORKING CONDITIONS**

In respect of areas covered by the Regulations relating to Generalised Collective Wage Agreements, the Supplier shall ensure that its and any subsuppliers' employees who contribute directly to the performance of the Supplier's obligations under the Agreement do not receive wages or have working conditions that are inferior to those stipulated in the Regulations relating to Generalised Collective Wage Agreements. In areas not covered by generalised collective wage agreements, the Supplier shall ensure that the same employees do not receive wages or have working conditions that are inferior to those stipulated in any applicable nationwide collective wage agreements relating to the relevant trade. This applies to work performed in Norway.

All agreements that are entered into by the Supplier and that involve the performance of work that contributes directly to the performance of the Supplier's obligations under the Agreement shall include corresponding terms and conditions.

If the Supplier fails to meet this obligation, the Customer shall be entitled to retain part of the contract price, corresponding to approximately two (2) times the savings of the Supplier, until it has been documented that compliance has been achieved.

The Supplier's obligations as mentioned above shall be documented in Appendix 3 by means of either a self-declaration or a third-party declaration showing conformity between the relevant collective wage agreement and the actual wages and working conditions relating to compliance with the Supplier's and any subsuppliers' obligations.

The Supplier shall, at the request of the Customer, disclose documentation relating to the wages and working conditions which are used. Each of the Customer and the Supplier may request that the information be submitted to an independent third party appointed by the Customer to examine whether the requirements of this provision have been complied with. The Supplier may require the third party to sign a declaration that the information will not be used for any purpose other than to ensure fulfilment of the Supplier's obligations pursuant to this provision. The disclosure obligation shall also apply to subsuppliers.

## **2.5 CONFIDENTIALITY OBLIGATION**

Information that comes into the possession of the parties in connection with the Agreement and the implementation of the Agreement shall be kept confidential and shall not be disclosed to any third party without the consent of the other party.

The scope of the confidentiality obligation under this provision shall not go beyond that laid down by the Act of 10 February 1967 relating to Procedure in Cases concerning the Public Administration (Public Administration Act) or corresponding sector-specific regulations.

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is demanded pursuant to laws or regulations, including any disclosure or right of access pursuant to the Act of 19 May 2006 relating to the Right of Access to Documents in the Public Administration (Freedom of Information Act). The other party shall, if possible, be notified prior to the disclosure of such information.

The confidentiality obligation shall not prevent the information from being used when there is no legitimate interest in keeping it confidential, for example when it is in the public domain or is accessible to the public elsewhere.

The parties shall take all necessary precautions to prevent unauthorised persons from gaining access to, or knowledge of, confidential information.

The confidentiality obligation shall apply to the parties' employees, subsuppliers and other third parties who act on behalf of the parties in connection with the implementation of the Agreement. The parties may only transmit confidential information to such subsuppliers and third parties to the extent necessary for the

implementation of the Agreement, and provided that they are subjected to a confidentiality obligation corresponding to that stipulated in this clause 2.5.

The confidentiality obligation shall not prevent the parties from utilising experience and expertise developed in connection with the implementation of the Agreement.

The confidentiality obligation shall continue to apply after the expiry of the Agreement. Employees or others who resign from their positions with one of the parties shall be subjected to a confidentiality obligation following their resignation as well, as far as factors mentioned above are concerned. The confidentiality obligation shall lapse five (5) years after the delivery date, unless otherwise stipulated by law or regulation.

## **2.6 FORM OF COMMUNICATION - IN WRITING**

All notices, demands or other communications relating to the Agreement shall be submitted in writing to the electronic address stated on the first page of the Agreement, alternatively the postal address on that page.

## **2.7 EXTERNAL LEGAL REQUIREMENTS**

The contract is regulated by Norwegian law, in particular the Norwegian Sale of Goods Act.<sup>1</sup>

Each party is responsible for following up its own duties pursuant to external legal requirements.

Each party shall, as a general rule, pay the costs of complying with legal requirements applicable to the party and its activities.

If legal requirements that are applicable to the goods are changed after the Agreement has been concluded, but before the delivery date, the Customer may request that the necessary changes be made to ensure compliance with the new requirements. The Supplier shall, as soon as possible, clarify the cost and progress related consequences of the changes and present these to the Customer. The Customer shall then make a decision about whether or not the change should be implemented.

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<sup>1</sup> A non-official English version of the act can be found in *Skarning, Nicolay: Kontraktsrett i Norge, Skottland og England – en praktisk handbok*, page 73 onwards, which should be available under this link: [https://www.nb.no/items/URN:NBN:no-nb\\_digibok\\_2014060308062?page=75](https://www.nb.no/items/URN:NBN:no-nb_digibok_2014060308062?page=75).

### **3. PAYMENT TERMS**

#### **3.1 INVOICING DATES AND PAYMENT TERMS**

Payment in respect of goods shall be invoiced when delivery is deemed to have taken place pursuant to clause 2.1.2. Assistance shall be invoiced when the services have been performed, in arrears per month.

Payment shall be made within thirty (30) calendar days of the invoice date. The invoices of the Supplier shall be specified and documented so that the Customer can easily check whether the invoice conforms to the agreed payment. All invoices relating to hours recorded on an ongoing basis shall be accompanied by a detailed specification of the hours accrued. Disbursements shall be specified separately.

The Supplier shall submit invoices, credit notes and reminders in accordance with the Electronic Trading Format (EHF) that has been determined. If the Supplier is foreign, it shall use the standard PEPPOL BIS.

The Supplier shall be responsible for paying any costs it incurs in respect of submitting electronic invoices.

#### **3.2 LATE PAYMENT INTEREST**

If the Customer fails to make payment by the agreed time, the Supplier shall be entitled to claim interest on any overdue amount, pursuant to the Act No. 100 of 17 December 1976 relating to Interest on Overdue Payments, etc. (Late Payment Interest Act).

#### **3.3 PAYMENT DEFAULT**

If overdue payment, with the addition of late payment interest, has not been paid within thirty (30) calendar days of the due date, the Supplier may send a written notice to the Customer, stating that the Agreement will be terminated for breach, unless settlement has taken place within sixty (60) calendar days of receipt of such notice.

Termination for breach may not take place if the Customer settles the overdue payment, with the addition of late payment interest, by the expiry of the deadline.

## **4. BREACH OF CONTRACT**

### **4.1 BREACH OF CONTRACT ON THE PART OF THE SUPPLIER**

#### **4.1.1 What is deemed to constitute breach of contract**

There is a breach of contract on the part of the Supplier if the goods do not conform with the agreed functions, requirements or deadlines. There is also a breach of contract if the Supplier fails to perform other duties under the Agreement.

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Customer or by force majeure.

The Customer shall submit a written complaint without undue delay after the breach of contract has been discovered or ought to have been discovered.

#### **4.1.2 Cure**

The Supplier shall commence and complete the effort of curing the breach of contract without undue delay, by way of repair, redelivery or supplementary delivery, at no additional cost to the Customer.

#### **4.1.3 Infringement of the intellectual property rights of third parties (defect in title)**

If the delivered goods infringe any copyrights or other intellectual property rights of third parties, the Supplier shall secure the missing rights or secure a right of disposal for the Customer of at least equal benefit. If this is not possible, the Customer shall be entitled to return the relevant component of the goods and be refunded the associated share of the purchase price.

If a third party asserts to the Customer that the goods entail a defect in title, the Customer shall inform the Supplier in writing as soon as possible.

The Supplier shall deal with the claim at its own expense. The Customer shall, to a reasonable extent, assist the Supplier with this. The Customer has previously examined the probability of any intellectual property rights to the lamps post and luminary design, and found that it is unlikely that such rights exist. The result of these examinations is not binding for the Customer.

### **4.2 BREACH OF CONTRACT ON THE PART OF THE CUSTOMER**

There is breach of contract on the part of the Customer if the Customer fails to perform its duties under the Agreement. In the event of late payment, the Supplier shall be entitled to late payment interest pursuant to clause 3.3.

Nevertheless, there is no breach of contract if the situation is caused by circumstances related to the Supplier or by force majeure.



The Supplier shall give written notice without undue delay after the breach of contract has been discovered or ought to have been discovered.

#### **4.3 FORCE MAJEURE**

If an extraordinary situation should arise which is outside the control of the parties, which makes performance of the duties under this Agreement impossible, and which under Norwegian law must be classified as force majeure, the other party shall be notified of this as soon as possible. The obligations of the affected party shall be suspended for as long as the extraordinary situation prevails. The corresponding obligations of the other party shall be suspended for the same period.

In force majeure situations, the other party may only end the Agreement with the consent of the affected party, or if the situation prevails or is expected to prevail for more than ninety (90) calendar days as of the date on which the situation arose, and in such case only with fifteen (15) calendar days' notice. Each of the parties shall cover their own costs associated with the ending of the contractual relationship. The Customer shall pay the agreed price for the part of the goods that was performed prior to the Agreement coming to an end. The parties may not present other claims against each other due to the Agreement coming to an end pursuant to this provision.

The parties shall, in connection with force majeure situations, have a mutual disclosure obligation towards each other concerning all matters that must be deemed relevant to the other party. Such information shall be disclosed as soon as possible.

#### **4.4 NOTIFICATION OBLIGATION**

If one of the parties is unable to perform its duties as agreed, such party shall give the other party written notice of this as soon as possible. The notice shall specify the reason for the problem and, to the extent possible, when the deliverable can be delivered. A corresponding obligation shall apply if additional delays are to be expected after the first notice has been given.

No damages or other remedies for breach of contract may be claimed for circumstances that have not been notified at the latest prior to the expiry of the warranty period. Nevertheless, this shall not apply to any liability for damages imposed in relation to a third party in respect of defects in title pursuant to clause 5.1.3.

## **5. REMEDIES FOR BREACH OF CONTRACT**

### **5.1 SUSPENSION OF PERFORMANCE**

In the event of breach of contract, the Customer may withhold payment, although the amount withheld shall not be obviously higher than what is necessary to secure the Customer's claim resulting from the breach of contract.

### **5.2 LIQUIDATED DAMAGES IN THE CASE OF DELAY**

If the agreed date of delivery (delivery date) or other deadline in respect of which the parties have stipulated liquidated damages in Appendix 4 is not complied with, and this is not caused by force majeure or circumstances on the part of the Customer, there is a delay on the part of the Supplier that triggers liquidated damages.

The liquidated damages shall accumulate automatically. The liquidated damages amount to 0.15 per cent of the total payment agreed for the goods (the contract price), excluding Value Added Tax, for each calendar day of delay, but albeit limited to a maximum of one hundred (100) calendar days.

Other rates for liquidated damages, a different calculation basis and other periods for liquidated damages may be agreed in Appendix 4.

The Customer shall not have the right to terminate the Agreement for breach for as long as the liquidated damages continue to accumulate. However, this time restriction shall not apply in the case of wilful misconduct or gross negligence on the part of the Supplier or anyone for whom it is responsible.

If only parts of the agreed goods are delayed, the Supplier may request a reduction in the liquidated damages proportional to the ability of the Customer to utilise the part of the goods that has been delivered.

### **5.3 PRICE REDUCTION**

If the Supplier has not succeeded, despite repeated attempts, in curing a defect, the Customer shall have the right to a proportional reduction in price. The price reduction shall compensate for the reduced value of what has been delivered, and shall be independent of any damages.

### **5.4 TERMINATION FOR BREACH**

If there is a material breach of contract, the other party may, after giving the party that is in breach of contract written notice and a reasonable deadline for remedying the situation, terminate the Agreement for breach with immediate effect.

The Customer may terminate all or part of the Agreement for breach with immediate effect if the goods are materially delayed. There is a material delay if delivery has not taken place by the time liquidated damages reach their maximum limit, or by the expiry of an extended deadline, if this expires later.

## **5.5 DAMAGES**

A party may claim damages in respect of any direct loss, including additional costs incurred by the Customer due to substitute purchases, any loss caused by additional work and other direct costs in connection with delays, deficiencies or other breaches of contract pursuant to clauses 5.1.1 or 5.2, unless the defaulting party demonstrates that the defaulting party did not cause the breach of contract or the reason for the breach of contract.

Liquidated damages shall be deducted from any other damages in respect of the same delay.

## **5.6 LIMITATION OF DAMAGES**

No damages may be claimed in respect of indirect loss. Indirect loss includes, but is not limited to, lost earnings of any kind, and claims from third parties.

Overall damages over the term of the Agreement are limited to an amount corresponding to the contract price, excluding Value Added Tax.

The said limitations shall not apply in the case of gross negligence or wilful misconduct on the part of the defaulting party or anyone for whom it is responsible. The limitations shall also not apply in the case of liability for defects in title imposed on the Supplier.

# **6. DISPUTES**

## **6.1 GOVERNING LAW**

The rights and obligations of the parties under this Agreement shall in their entirety be governed by Norwegian law.

## **6.2 NEGOTIATIONS AND MEDIATION**

Should a dispute arise between the parties as to the interpretation or the legal effects of the Agreement, the parties shall first seek to reach agreement through negotiations and/or mediation.

### **6.3 LITIGATION OR ARBITRATION**

If a dispute is not resolved through negotiations or mediation, each party may require the dispute to be resolved with final effect before the Norwegian courts of law.

The venue shall be the court of domicile of the Customer.

The parties may alternatively agree that the dispute shall be resolved with final effect through arbitration.

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