### Sustainability Due Diligence (Special contract terms, [ID 11239](https://www.upphandlingsmyndigheten.se/en/criteria/labour-law-requirements/ilo-core-conventions-and-sustainable-supply-chains/sustainable-supply-chains/sustainable-supply-chains/advanced/))

*The special contract terms for sustainability due diligence aim to ensure that suppliers have policies and processes in place to identify, prevent, mitigate and account for adverse impacts in their own operations and in their supply chains.*

*The approach is based on the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct.*

*The special contract terms are accompanied by commitments at the core level aimed at ensuring that suppliers fulfil contracts in accordance with workers' rights (the ILO core conventions) and commitments at the advanced level aimed at ensuring that suppliers fulfil contracts in accordance with human rights, workers' rights, the environment and business ethics (sustainable supply chains).*

**Criterion text**

1. Supplier’s commitment

Supplier shall fulfil the contract in accordance with the commitments in Annex 1 concerning [workers' rights (ILO core conventions)/human rights, workers' rights, the environment and business ethics (sustainable supply chains)].

Supplier shall ensure compliance with the commitments by working in the manner specified in clause 2.

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

2. How Supplier ensures compliance with the commitments

In order to ensure compliance with the commitments, Supplier shall have a due diligence process in accordance with clauses 2.1 - 2.7. The process shall be documented and applied from [the start of the contract/other time determined by the contracting organisation]. Through this process, Supplier shall identify, prevent, mitigate and account for how it addresses actual and potential adverse impacts in its own operations and in its supply chain. This means that:

2.1 Supplier shall integrate the commitments into policies and management systems by:

1. ensuring that relevant policies, established at the highest management level, are adopted or revised to comply with the commitments;
2. publishing the policies;
3. ensuring that the board takes the commitments into account when making decisions;
4. appointing a responsible person in a management position to ensure compliance with the commitments;
5. assigning responsibility for the implementation of the policies to employees whose decisions are most likely to increase or decrease the risks of adverse impacts;
6. communicating the policies to affected rights-holders in its own operations.

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

1. mapping the supply chains of significant suppliers;
2. regularly examining the risks of adverse impacts in its own operations and in the supply chains of significant suppliers with focus on geographical risks, sector risks and product risks [including minerals from conflict-affected and high-risk areas[[1]](#footnote-2)] and with the support of the information gathered through the grievance mechanism in clause 2.6;
3. consulting with rights-holders affected by its own operations, or their representatives, and by retrieving information from credible and independent sources if it is not possible to consult with rights-holders, or their representatives, in the supply chains of significant suppliers;
4. paying special attention to adverse impact on individuals from groups and populations that are at heightened risk of vulnerability or marginalisation and adverse impact on environmental and human rights defenders;
5. 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[[2]](#footnote-3) or contributes to[[3]](#footnote-4), by:

1. ceasing activities that cause or contribute to adverse impact in its own operations or in the supply chains of significant suppliers;
2. establishing corrective action plans in consultation with affected rights-holders or their representatives, with a particular focus on the most significant risks identified, in order to prevent and mitigate future adverse impacts;
3. [establishing a mitigation plan to limit global warming in alignment with the 1.5°C target];
4. ensuring that purchasing methods do not make it more difficult for suppliers to comply with the commitments.

2.4 Supplier shall use its leverage to prevent and mitigate actual and potential adverse impacts linked to[[4]](#footnote-5) Supplier's operations, by:

1. assessing significant suppliers based on the commitments, with a particular focus on the most significant risks identified;
2. establishing corrective action plans before concluding agreements with significant suppliers, with a particular focus on the most significant risks identified, in order to prevent and mitigate future adverse impacts;
3. forwarding the commitments (clause 1) and the ensuring of compliance (clause 2) in writing to significant suppliers;
4. requiring significant suppliers to account for their supply chains [at least in accordance with the supply chain traceability requirement (clause 4)/as far as possible]] [including the chains for tin, tungsten, tantalum and gold (3TG), cobalt and mica to smelters/refineries];
5. ensuring the possibility of temporarily suspending a contractual relationship while preventive and mitigating measures are pursued, and the possibility of terminating a contractual relationship.

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

1. following-up established corrective action plans and address deviations;
2. consulting with rights-holders affected by its own operations, or their representatives, and to the extent possible with rights-holders in the supply chains of significant suppliers, or their representatives;
3. paying special attention to adverse impact on individuals from groups and populations that are at heightened risk of vulnerability or marginalisation and adverse impact on environmental and human rights defenders;
4. having a special focus on the most significant risks identified.

2.6 Supplier shall enable rights-holders, their representatives and civil society organisations to submit complaints if they have legitimate concerns about actual or potential adverse impacts in Supplier's operations or in the supply chain.

2.7 Supplier shall, alone or together with others, provide for remediation if Supplier has caused or contributed to actual adverse impact, by:

1. in so far it is possible restoring affected rights-holders to the situation they would be in had the adverse impact not occurred and enabling remediation that is proportionate to the significance and scale of the adverse impact;
2. consulting with affected rights-holders or their representatives on appropriate forms of remedy;
3. assessing whether those who have submitted complaints are satisfied with the process and its outcome.

3. Reporting obligation

If Supplier has reasonable grounds to assume that there is or has been a zero tolerance deviation in its own operations or in the supply chain, Supplier shall within \_\_\_\_\_calendar days report the actual circumstances and the implemented and planned measures to ensure compliance with the commitments in accordance with clauses 2.2 - 2.7.

Zero tolerance deviations refer to [forced labour and child labour/forced labour, child labour, occupational health and safety risks where there is a danger to life, serious environmental harm, grand corruption and attacks on environmental and human rights defenders]. The zero tolerance deviations are defined in Annex 1.

4. Monitoring

Supplier shall participate in and cooperate with [the contracting organisation] in the monitoring of the commitments and the ensuring of compliance. Monitoring may be carried out through various methods such as self-assessment, supply chain traceability, auditing and dialogue.

**Self-assessment**

Supplier shall, within [four (4)] weeks from [the contracting organisation's] request, in writing account for how it ensures compliance with the commitments, in accordance with [Annex: self-assessment questionnaire/[the contracting organisation's] instructions].

**Supply chain traceability**

Supplier shall, within [four (4)] weeks from [the contracting organisation's] request, in writing account for which 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 tin, tungsten, tantalum and gold (3TG), cobalt and mica] in [product/products/assortment]
* [extraction plants for [raw material] for [the product/products/assortment]

**Audit**

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

[Supplier shall bear the cost of re-audits required to verify that Supplier has corrected deviations/ Supplier shall bear the cost of audits in its own operations, if Supplier has paid a maximum fine in accordance with clause 4 or 5].

[The contracting organisation] has the right to publish audit reports and share results of follow-ups with other contracting organisations, provided that [the contracting organisation] [conducts a secrecy examination in accordance with the Public Access to Information and Secrecy Act/takes into account sensitive business information].

**Dialogue**

Supplier shall, within [two (2)] weeks from [the contracting organisation's] request, participate in a dialogue on how Supplier complies with the commitments.

5. Deviation management

In the event of a deviation from the commitments (clause 1) or the ensuring of compliance (clause 2), Supplier shall establish a timed corrective action plan to be approved by [the contracting organisation]. Supplier shall establish the corrective action plan no later than \_\_\_\_\_ calendar days from [the contracting organisation's] notification of the deviation. The corrective action plan shall be proportionate to the nature of the deviations and shall describe how the deviations are to be corrected within the time frame.

If Supplier does not report in accordance with clause 3, participate in follow-up in accordance with clause 4 or handle deviations in accordance with the established corrective action plan, [the contracting organisation] is entitled to a fine from Supplier. Fines are paid at [\_\_\_ SEK, excluding VAT] per commenced week the ground remains. The fine can be paid for a maximum of [\_\_\_ weeks]. There is no ground for a fine if the circumstances are due to a supplier refusing to enable supply chain traceability or participating in an audit.

[In the case of a framework agreement]: If Supplier does not report in accordance with clause 3, participate in follow-up in accordance with clause 4 or handle deviations in accordance with the established corrective action plan, [the contracting organisation] has the right to exempt Supplier from call offs as long as the ground remains. The same applies during the time [the contracting organisation] investigates a potential ground for a call off stop. During the period the call off stop lasts, [the contracting organisation] has the right to call off from another framework agreement supplier or, if such does not exist, procure the framework agreement object from another supplier. There is no ground for a call off stop if the circumstances are due to a supplier refusing to enable supply chain traceability or participating in an audit.

If the Supplier does not report in accordance with clause 3, participates in follow-up in accordance with clause 4 or handles deviations in accordance with the established action plan, [the contracting organization] has the right to terminate [the contract / framework agreement] with a reasonable notice period.

If [the contracting organization] is entitled to a maximum fine [or if the call-off has been in place for \_\_\_ months], [the contracting organization] has the right to terminate [the contract / framework agreement] with immediate effect.

Notwithstanding any other provision of the contract, [the contracting organization] has the right to terminate the contract with immediate effect if [the contracting organization] has made it probable that a zero tolerance deviation will occur in the Supplier's operations or in the supply chain.

1. Conflict-affected and high-risk areas are identified by the presence of armed conflict, widespread violence or other risks of harm to people. Armed conflict may take a variety of forms – it can be of an international character and involve two or more states or of a non-international character, such as wars of liberation, insurgencies or civil wars. High-risk areas include areas of political instability and repression, institutional weakness, insecurity, collapse of civil infrastructure and widespread violence. Such areas are often characterised by widespread human rights abuses and violations of national or international law. [↑](#footnote-ref-2)
2. Supplier "causes" an adverse impact if Supplier's activities on their own are sufficient to result in the adverse impact. Supplier is most likely to cause an adverse impact in or through its own operations. [↑](#footnote-ref-3)
3. Supplier "contributes to" an adverse impact if its activities, in combination with the activities of other entities, cause the adverse impact, or if Supplier's activities cause, facilitate or incentivise another entity to cause an adverse impact. Contribution must be substantial, meaning the responsibility is not actualized for minor or trivial contributions. Contribution can occur in or through both Supplier’s own operations and in a supplier's operation. [↑](#footnote-ref-4)
4. Supplier is ”linked to” an adverse impact caused by a supplier or sub-supplier, regardless of where in the supply chain it occurs. “Linkage” is defined by the relationship between Supplier’s products, services or operations and the adverse impact. “Linked to” is not the same as direct contractual relationships. [↑](#footnote-ref-5)