

## **Labour Clause concerning protection of employee rights in connection with work performed for Odense Municipality**

### **1. The obligation**

#### **1.1 Wage and employment conditions**

The Contractor undertakes to ensure that the employees employed by the Contractor and any subcontractors in Denmark with a view to performing the contract are ensured wages (including special benefits) and employment conditions that are not less favourable than the wage and employment conditions that apply to work of the same kind under a collective agreement entered into by the most representative labour market parties in Denmark in the given area and which applies throughout Danish territory.

For sole proprietorships carrying out work on employee-like terms with a view to performing the contract, the same requirements regarding wage and employment conditions as mentioned above shall apply.

#### **1.2 Employment conditions and identification**

The Contractor shall ensure compliance with the Danish Statement of Employment Terms Act in force from time to time, including the requirement to provide employees with a statement of employment terms.

The Contractor is also responsible for ensuring that only employees with a valid residence and work permit are used throughout the supply chain, and that the employees can, upon request, prove their identity by presenting valid photo ID or other identification. Odense Municipality is entitled to take photos of the employees' identification.

In addition, the Contractor shall ensure that all wage payments are made through a digital payment system, e.g. via a bank's payment system.

#### **1.3 Information about subcontractors**

The Contractor is obligated to notify Odense Municipality about the use of subcontractors before using the subcontractors to carry out work for the performance of the contract.

The notification is made by electronic reporting in Odense Municipality's contract management system. The Contractor must state its own and subcontractor's name, CVR number and contact information, as well as when the subcontractor is expected to perform work on the contract.

#### **1.4 Staying at the work site**

The Contractor is at all times subject to Odense Municipality's instructions regarding stays at the work site. Odense Municipality may issue instructions such as prohibiting overnight stays at the work site etc.

## 2. Documentation

### 2.1 Documentation of compliance with the obligation

It is for the Contractor to prove that the obligation, see section 1 of the Labour Clause, is complied with. Odense Municipality may request documentation of the Contractor's compliance.

Odense Municipality may ask the Contractor to provide relevant documentation of all employees throughout the supply chain.

Relevant documentation shall for each individual employee include:

- A statement of employment terms or a contract of employment
- Payslips with account number for the payment of wages
- Documentation of digital payment of wages, e.g. bank statement
- Time sheets/time registration with start and end times for each day, indicating when work has been performed for Odense Municipality.
- E-income receipts from SKAT or equivalent if the employees pay tax abroad.
- Documentation of pension payments
- Documentation of payment of holiday pay/holiday allowance
- Residence and work permits, if required

In addition, Odense Municipality may ask the Contractor to submit other documents, e.g. lease agreements, local agreements, company agreements, RUT registration (Register of foreign service providers), documentation of valid industrial injury insurance, etc.

The Contractor shall keep all relevant documentation in the term of the contract and for 12 months after the expiry of the contract.

If the Contractor does not provide accurate documentation on one or more employees, it is necessary for Odense Municipality to make an estimate of the employees' wage and employment conditions. In this situation, the Contractor must accept that this estimate is applied as a basis for the conclusion of the control, including sanctions, see section 3.

#### *Deadline*

The documentation must be submitted in English or Danish and be received by Odense Municipality no later than **5 working days** after receipt of the request.

### 2.2 Report

At the request of Odense Municipality the Contractor must submit a report on how the Contractor has ensured compliance with the Labour Clause.

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The report must as a minimum include information on the frame of reference used by the Contractor in connection with the determination of the employees' wage and employment conditions, including working hours, overtime pay and wage rates. In addition, the Contractor must account for housing conditions as well as transport and meals when these are part of the employer's responsibility.

If the Contractor uses subcontractors, the report must include similar information regarding the subcontractors' employees.

The report must also include information on how the Contractor has ensured that subcontractors are familiar with, understand and implement the Labour Clause.

In the specific case, Odense Municipality may ask the Contractor to elaborate on other relevant matters.

### *Deadline*

The report must be submitted in English or Danish and be received by Odense Municipality no later than **10 working days** after receipt of the request.

### **2.3 Disclosure of information**

Odense Municipality may in accordance with the existing rules on data protection and after a specific assessment disclose information serving as documentation of compliance with the requirements of the Labour Clause, see section 2, to SKAT, the Danish Working Environment Authority, the police or other relevant authorities if the disclosure is deemed to be of material importance to the authorities' business.

### **2.4 Personal data**

The Contractor shall not anonymise the documentation submitted to Odense Municipality. It is essential for Odense Municipality's control that the individual employees to whom the documentation relates can be identified.

Odense Municipality points out that the Contractor is obligated to comply with the data protection rules on its own initiative, including complying with the duty of disclosure vis-à-vis the employees.

## **3. Sanctions**

Significant breaches of the Labour Clause by the Contractor or subcontractors are considered a material breach of the contract, with the result that Odense Municipality may terminate the contract wholly or partly.

Significant breaches include, for example, gross or repeated breaches of the provisions of the Labour Clause in sections 1 and 2. Repeated breaches also include a plurality of breaches observed in this contract and other contracts between the parties.

If the Contractor becomes liable to the penalties listed below, the Contractor shall not be released from the obligation to perform the contract.

If a subcontractor violates section 1 of the Labour Clause, the Contractor is responsible for ensuring that the subcontractor remedies the situation. If the subcontractor grossly or repeatedly breaches section 1 of the Labour Clause, Odense Municipality may require the Contractor to cease using the subcontractor in question for the performance of the contract. This will not entitle the Contractor to compensation, damages or an extension of the deadlines in the contract.

### **3.1 Sanction for non-fulfilment of the obligation in section 1**

#### **3.1.1 Additional payment**

If employees have not had wage and employment conditions that are in accordance with the obligation in section 1.1, the Contractor shall ensure that, at Odense Municipality's instruction, additional payment is made to the employees within a deadline set by Odense Municipality and that the conditions are remedied in the future.

Odense Municipality is entitled to withhold remuneration from the Contractor as security for additional payment and/or in order to allow for legitimate claims from the Contractor's or subcontractors' employees.

If no subsequent payment is made to the relevant employees within the deadline set by Odense Municipality, the remuneration withheld shall finally accrue to Odense Municipality.

#### **3.1.1 Penalty for non-fulfilment of the obligation in section 1**

In the event of a breach of section 1 of the Labour Clause, the Contractor shall be liable to a penalty of DKK 1,000 per breach per working day or part thereof on the project.

To illustrate what constitutes one breach, the following examples are highlighted below:

- Each employee who has not received a wage equivalent to that of a collective agreement or other of the conditions mentioned in section 1 constitutes one breach.
- Each subcontractor that is not stated in time in Odense Municipality's contract management system, see section 1.3, constitutes one breach.

"Working day or part thereof" means the days on which the employee/subcontractor in relation to whom a breach of section 1 is observed has performed work on the project.

The penalty amount may be set off against the Contractor's remuneration.

### **3.2 Penalty for non-fulfilment of the obligation in section 2**

The Contractor shall be liable to a penalty for breach of section 2 of the Labour Clause if the Contractor fails to submit a report or accurate documentation within the deadlines specified in sections 2.1 and 2.2, or if the Contractor fails to submit all or part of the requested documentation/report.

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The penalty is DKK 1,000 per employee and/or report per working day or part thereof until the Contractor has complied with Odense Municipality's request.

The penalty amount may be set off against the Contractor's remuneration.

A maximum of two months after the expiry of the deadline(s), a penalty may be incurred for late documentation and/or report. Thereafter, Odense Municipality is entitled to make an assessment of the wage and employment conditions with a view to sanctioning a breach of section 1, see section 2.1, in fine.

### **3.3 Possibility of reducing the penalty**

In exceptional cases, Odense Municipality may choose to reduce a penalty if specifically warranted by the circumstances. In this connection, Odense Municipality will emphasise the nature and extent of the breach, the Contractor's possibility of and efforts to prevent breaches of the nature in question, the Contractor's contribution to ending the breach and the Contractor's compliance with demands for additional payment.

## **4. Control measures**

In the term of the contract, Odense Municipality's control unit may implement various control measures to ensure compliance with the Labour Clause, e.g. by making unannounced visits to the work site.