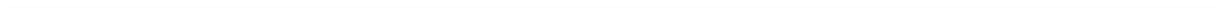


# How to procure fair ICT hardware

Criteria set for socially responsible public procurement



## Imprint

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'The power of public procurement can create a positive impact across global supply chains. We see every upcoming procurement as an opportunity to act on the responsibility we have as a public authority to create public value. From our perspective this ambition includes doing our best to assure fair working conditions in the supply-chain of electronic products that Barcelona City Council needs. The new criteria will enable us and other procurers to further advance our socially responsible public procurement practice.'

- Carla Canal Rosich, Directorate of Global Justice and International Cooperation, Barcelona City Council

'Region Stockholm has identified ICT as a priority area to be addressed in our procurement, due to the high risk of human rights, labour rights, and child labour violations within the supply chain. The new set of criteria helps pave the way towards fair ICT products. This requires not only criteria per se, but regular dialogue between buyer, reseller and suppliers including thorough contract management.'

- Kathleen McCaughey, Manager Sustainable Supply Chains, Region Stockholm

## CONTENTS

|   |           |
|---|-----------|
| <b>Background</b>   | <b>1</b>  |
| <b>Points of attention</b>  | <b>2</b>  |
| <b>Most significant social impacts on working conditions</b>      | <b>3</b>  |
| <b>Defining the Subject Matter</b>                                | <b>4</b>  |
| <b>Selection criteria</b>   | <b>4</b>  |
| <b>Technical specifications</b>                                   | <b>7</b>  |
| <b>Award criteria</b>   | <b>11</b> |
| <b>Electronics Watch Contract Conditions for Supply Contracts</b> | <b>17</b> |

# 1. Background

Cities, local governments, universities, hospitals and other public bodies in the European Union procure over €50 billion worth of electronic devices annually. These purchases include desktop or laptop computers, servers, screens, workstations, printers or smartphones.

Human and environmental rights violations take place daily in the Information and Communication Technology (ICT) supply chain. Long working hours, low wages, suicides, poisonings, child labour, armed conflicts, water depletion and environmental disaster are just some of the labour and human rights violations reported in the electronics industry from mining to manufacturing.

Working together, public buyers can shape the market by requiring corporations to implement social and environmental standards and monitoring progress. Social criteria can have a positive impact on work conditions and help to mitigate and prevent human rights violations in the supply chains of suppliers.

The following criteria have been developed to support this work. It includes selection criteria, technical specifications, award criteria and contract performance clauses. The criteria document is made as [guidance for experienced procurers](#) that want to do socially responsible procurement. The choice of which criteria to include in the tender should be adapted to the planned procurement and reflect the feedback that you receive from your target market.

The criteria focus on supply chain social considerations and cover but are not exclusive to the following ICT equipment:

- Desktop computers, portable computers, work stations, tablets, and thin clients
- Display screens and monitors
- Input peripherals, including mouse, keyboard, joystick, cables, and headsets
- Scanners, printers, fax machines, copiers, and combination units
- Enterprise ICT: switches, routers, high-performance computing (HPC), servers and storage systems
- Smartphones and IP telephones

This guidance has been developed together with the [Procura+ Interest Group on Socially Responsible Public Procurement of ICT hardware](#), coordinated by ICLEI Europe. The Interest Group consisted of procurers and experts on social aspects from the Advanced Procurement for Universities and Colleges (APUC) Scotland, Barcelona City Council, Greater London Authority, Municipality of Haarlem, Region Stockholm, Municipality of Stavanger, Municipality of Malmø, the City of Aalborg and Rijkswaterstaat.

The Interest Group is linked to a three-year EuropeAid project that began in November 2017 entitled Make ICT Fair. The project aims at improving the lives of workers and those impacted along different stages of the ICT supply chain through research, campaigning, capacity building, advocacy and pilot procurements. The project focuses on workers and communities associated with ICT supply chains, particularly in the Global South.

## 2. Points of attention

Devoting attention to the opportunities and possibilities for the most socially responsible procurement possible in the preparation phase can result in more worker-protective criteria. The table below presents points for attention and suggestions for promoting social responsibility in procurement.

- **Take into account changes in corporate sustainability policies**

Consider trends in the sector relating to transparent and ethical supply chains. In the recent past, several large brand owners of ICT equipment have announced updated policies on socially responsible supply chain management. It may be that the criteria below can be pushed further and as a result improve workers conditions further.

- **Demand decent working conditions**

Demand decent working conditions in the electronics supply chain through specifications and contract performance conditions that can be included in contracts for ICT equipment.

- **Recognise that supply chains do not end at the factory**

ICT equipment contains precious minerals, such as lithium, gold, copper and cobalt. The extraction of these minerals impacts the ecosystems and wellbeing of the communities surrounding mining sites. Mining negatively impacts communities' health. Studies report that people in surrounding communities have high levels of lead and arsenic in the blood samples. The sales of minerals from conflict or high-risk areas can fund armed groups and fuel human rights abuses. These minerals often end up in electronic devices.

Currently, ICT companies cannot be held accountable for human rights violations in mines as linkages between specific mines and product supply chains are obscure. To change this, supply chains need to be made transparent to allow the identification of specific mines.

- **Transparency can lead to improvement**

Disclosure of manufacturing locations, risks and compliance findings can keep large brand owners of ICT equipment accountable for their suppliers. These companies do not want to be associated with any human rights and labour law violations. Procurement specifications and clauses can increase the transparency of a product's supply chain.

- **Materials responsibly sourced and fairly produced**

To meet the Sustainable Development Goals ICT equipment should be circular, responsibly sourced, conflict-free, non-toxic, and using traceable raw materials and components in the products. Material extraction, processing of materials, manufacturing, assembly, reprocessing and recycling of the products should not harm humans or the environment.

Source: Transform Together (2018), *Smartphones and ICT for SDG 12*

- **Ethical production processes**

Human rights of the people and rights of the communities affected by the production of the products and services in all stages of the supply chain should be respected and valued. Companies should implement workers' rights and good working conditions under established international standards throughout the supply chain. All parties should create sustainable livelihoods, training, jobs and equal opportunities throughout the supply chain.

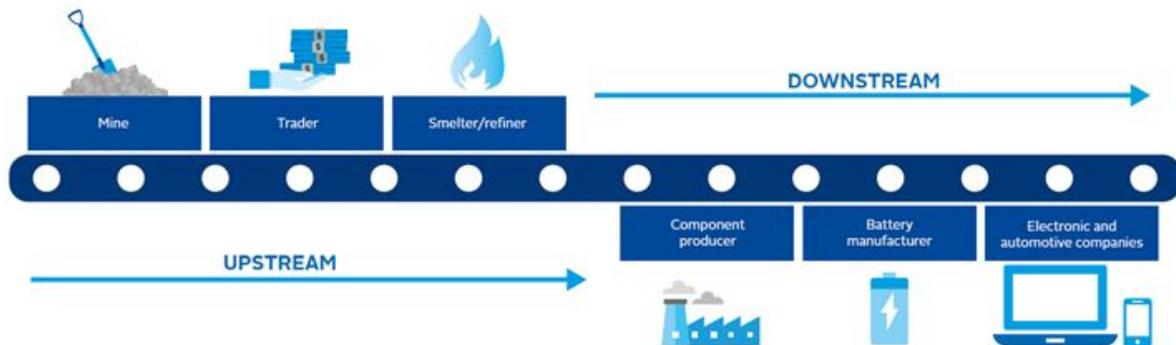
Source: Transform Together (2018), *Smartphones and ICT for SDG 12*

- **Does circular mean social?**

Human rights, labour and health and safety violations can still take place in a circular supply chain the same way as they can in a linear supply model. Consider the transparency of remanufacturing facilities and the sources of secondary use materials.

### 3. Most significant social impacts on working conditions

Procuring authorities can consider the impact they can have on the supply chain through the use of specifications, award criteria and contract performance clauses outlined in this document.



| Social impact categories  | Procurement approaches  |
|---|---|
| <b>Occupational health and safety violations have direct effects on worker's lives.</b> | → Supplier code of conduct policy that goes as far as the mining stage of the supply chain.   |
|   | → Capacity building target workers in the supply chain.   |
|   | → Reporting on steps taken to address labour and human rights impacts during the extraction phase of production.  |
| <b>Employment conditions that include long hours, low wages and temporary contracts</b> | → Supplier code of conduct that ensures contracts for both short-term and long-term Employees.  |
|   | → Supplier code of conduct that ensures living wages and benefits <sup>1</sup> , including overtime compensation.   |
|   | → Supplier code of conduct that ensures local labour law compliance with hours of work, public holidays and annual leave entitlement.   |
| <b>Forced labour in factories, smelting facilities and mines<sup>2</sup></b>            | → Contractor exercises due diligence by identifying and mitigating the risk of potential breaches.  |
|   | → Ensure supplier has no previous offence or investigations involving modern slavery, forced labour or human trafficking <sup>3</sup> , or that the supplier has remedied on previous grievances. |

<sup>1</sup> ILO MNE Declaration emphasizes that multinational enterprises should “provide the best possible wages, benefits and conditions of work. The elements to be taken into consideration should include: (a) the needs of workers and their families[...] and (b) economic factors” Read more here: [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_559137.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_559137.pdf)

<sup>2</sup> Guidance for Remediation and Prevention of Migrant Worker Recruitment Fees and Related Costs in Public Procurement, April 2019 : [http://electronicswatch.org/guidance-for-remediation-and-prevention-of-migrant-worker-recruitment-fees-and-related-costs-in-public-procurement-april-2019\\_2557767.pdf?disposition=attachment](http://electronicswatch.org/guidance-for-remediation-and-prevention-of-migrant-worker-recruitment-fees-and-related-costs-in-public-procurement-april-2019_2557767.pdf?disposition=attachment)

<sup>3</sup> Relevant exclusion grounds can be found in Article 57 of the 2014 Directives: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

### 3. Defining the Subject Matter

The ‘subject-matter’ of a contract is about what product, service or work you want to procure. This process of determination describes the product, service or work, but it can also take the form of a functional or performance-based definition. Choice of subject-matter is essential because it determines the permissible scope of specifications and other criteria you may apply. Chapter 3 of the [Buying Green! Handbook](#) provides a good overview of this concerning the 2014 Procurement Directives.

| Subject-matter                                   | Applicable rules                                  | Social approach  |
|--|---|--|
| Supply of desktop PCs (estimated €900,000 value) | Directive 2014/24/EU <sup>4</sup> (fully covered) | <ul style="list-style-type: none"> <li>• Exclusion and selection criteria to ensure ethical labour practices along the supply chain</li> <li>• Award criteria include a reference to standards or third-party labels certifying ethical production</li> <li>• Contract clauses reinforce commitments and allow monitoring of supply chain</li> </ul> |

### 4. Selection criteria

Selection criteria focus on an economic operator’s ability to perform the contract for which they are tendering. When assessing a tenderers ability to perform a contract, contracting authorities may take into account specific experience and competence related to social aspects that are relevant to the subject matter of the contract. They may ask for evidence of the ability of operators to apply socially responsible supply chain management measures when carrying out the contract. They may also exclude operators who are, or have in the past, been in breach of labour and human rights law.<sup>5</sup>

The below selection criteria are possible approaches to be used. You do not need to apply all of them in the same call for tender, but one or more can be chosen according to product or service, market conditions and socially responsible ambitions. The advanced criteria should only be used if you know you have suppliers that can meet these criteria. Take into account that the tenderers who do not meet the selection criteria will be excluded from the tender. For a transparent evaluation process, you should write a report explaining your decisions for why suppliers pass or fail on the criteria. Make sure the criteria are proportional and based on market knowledge so that at least some of the tenderers will be able to meet the requirements. Also, take into account and adjust the language according to where the tenderers are situated in the supply chain, i.e. whether the tenderers are resellers, brand owners or manufacturers.

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0024>

<sup>5</sup> Adapted from *Buying Green! Handbook* (2016), available at [ec.europa.eu/environment/gpp/buying\\_handbook\\_en.htm](http://ec.europa.eu/environment/gpp/buying_handbook_en.htm)

## Selection criteria

### 1 Responsible sourcing practices

The tenderer has a sourcing policy that takes into account its suppliers' performance on labour and human rights impacts with respect to ILO core labor principles.

#### Verification

Description of how the supplier uses labour and human rights performance data in direct spend sourcing decisions. The description should include at least a form of corrective mechanism if they encounter any human rights violations in their supply chain.

### 2 Supplier risk screening<sup>6</sup>

The tenderer has a developed process to identify labour and human rights risks in its supply chain, including:

- Periodic risk screening of suppliers based on information about labour and human rights risks. The tenderer may base risk screening on reports published by external parties on an annual or semi-annual basis. Screenings should take into account several of the following factors:
  - Geography: weak governance structures in certain countries may correlate to higher incidences of human rights and labour rights violations.
  - Local and national labour laws: certain countries may have more stringent regulatory requirements in place to protect workers.
  - Country specific labour inspection and enforcement capacity: some countries do not adequately monitor and enforce labour laws.
  - Type of manufacturing process: certain parts of the manufacturing process may have higher risks to worker health and safety.
- A requirement for suppliers to complete a self-assessment questionnaire: the self-assessment questionnaire is used to evaluate the risk of individual suppliers.
- Risk screening that goes beyond directly contracted suppliers and **should** include smelting, refinery and mining companies
- Ongoing risk screening takes into account dynamic data such as supplier audit findings; reports from credible NGOs that highlight labour and human rights impact; and evolving trends in different geographies.

#### Verification

- Description of the screening process including tiers of supply chain included in the scope of the risk screening, risk factors used in the screening and how the screening is used to categorise the level of risk associated with each supplier. The practices and risk screenings must include a corrective mechanism which sets in when a violation of labour laws or human rights is observed.
- Copy of supplier self-assessment questionnaire.
- Description of the sources of information on risks: the US State Department Country Reports on Human Rights Practices, Danish Human Rights Institute Human Rights and Business Country Guide, ITUC global rights index and the World Bank Governance Indicators are examples of credible sources on information relating to labour rights and human rights risks. These resources are updated every 1-2 years. Other credible sources must (at least) fulfil the following requirements:
  - The assessment of the source is based on objectively verifiable and non-discriminatory criteria.

<sup>6</sup> Adapted from Green Electronics Council *Purchaser Guidance to Address Social Impacts in ICT Supply Chains*

- All relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations have access to the source.
- The source forms an independent party over which the economic operator cannot exercise a decisive influence.

### 3 Supplier code of conduct<sup>7</sup>

Tenderer can provide the following:

- Supplier Code of Conduct or Supplier Policy that addresses: child labour; forced labour; working hours; wages; discrimination; health and safety; freedom of association and collective bargaining and disciplinary practices/humane treatment of workers.
- The Supplier Code of Conduct or Supplier Policy requires compliance with local or national regulations (whichever is stricter to provide better protection for workers, although Priority might be regulated by national law).
- Suppliers that the company has a direct contractual relationship with are required to adhere to the Supplier Code of Conduct or Supplier Policy.

#### Verification

Tenderer provides one or more of the following:

- A copy of the Supplier Code of Conduct or Supplier Policy or industry code of conduct<sup>8</sup>
- A website address, URL or contact email to obtain this policy
- An example of a contract, supplier terms and conditions, or another legally binding agreement that requires suppliers to adhere to the Supplier Code of Conduct or Supplier Policy

### 4 Implementation of Codes and Policies<sup>9</sup>

Tenderer evaluates its suppliers' performance against its Supplier Code of Conduct or Supplier Policy on labour and human rights impacts. Evaluation can include:

- A defined program or schedule for auditing higher risk suppliers. Higher risk suppliers are assessed at least every two years
- Assessing more frequently those suppliers who perform poorly on audits
- Focused audits on areas where the supplier has a higher risk for specific human and labour rights issues, e.g. mining sector

#### Advanced criteria – *Can be applied in addition to the above criteria*

- Audit of suppliers representing over 95% of total spend
- Third-party audits conducted by accredited certification bodies and independent verification of audit results
- Increasing the effectiveness of on-site audits with one or more of the following practices:
  - Off-site worker interviews
  - External consultation with local labour unions or civil society organisations or engaging labour unions or civil society organisations in conducting the audit.
  - A policy that prevents retaliation against workers who participate in interviews

<sup>7</sup> Adapted from Green Electronics Council *Purchaser Guidance to Address Social Impacts in ICT Supply Chains*

<sup>8</sup> RBA and other schemes is not included as it is unclear if they are comparable: e.g. the eligibility criteria and self-assessment questionnaires of the RBA are not fully publicly available.

<sup>9</sup> Adapted from Green Electronics Council *Purchaser Guidance to Address Social Impacts in ICT Supply Chains*

### Verification

- Description of the company's audit program detailing: the topics covered by the audit, if different for high, medium and low-risk suppliers; percentage of directly contracted suppliers audited; frequency of audits; audit notice (announced, semi-announced or unannounced); audit types (initial audit or follow-up/closure audit; 1st, 2nd or 3rd party audits); and protocols for interviewing workers. *The description should clearly show how the implementation of Codes and Policies has resulted in positive progress in labour and human rights impacts.*

## 5 Labour and human rights at raw material extraction

The tenderer should take steps to address labour and human rights impacts during the extraction phase of production. Steps can include:

- Disclosures related to Section 1502 of the Dodd-Frank Act on Conflict Minerals (Tin, Tantalum, Tungsten and Gold, also referred to as the 3TGs) (even if not a public company)
- Sourcing policies that include the use of conflict-free smelters
- Identifying suppliers and smelters that are at higher risk of using or processing raw materials with human and labour rights violations.
- Sourcing policies that address raw materials beyond the 3TGs

### Verification

- SEC Conflict Minerals filings
- Copy of, or link to the organisation's Responsible Sourcing Policies: companies that report using the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas meet this best practice.
- Description of activities to address raw materials at the extraction phase: Companies that participate in initiatives such as the Responsible Cobalt Initiative, The Alliance for Responsible Mining (ARM); the Initiative for Responsible Mining Assurance (IRMA) and the Responsible Raw Materials Initiative meet this best practice.

## 5. Technical specifications

Technical specifications tell the market precisely what you wish to purchase, and may include social aspects where this is an essential part of what is to be delivered. Tenders which do not comply with technical specifications must be rejected,<sup>10</sup> so it is important only to include essential requirements. How you will verify tenderers' claims to comply should be included in the tender documents<sup>11</sup>. Depending on jurisdiction and ways of working, verification may be asked for at the time of the tender, upon request or at the time the contract enters into force and in that case, only from those who are awarded a contract. Preferences should be reflected in the Award criteria. After the contract is awarded, verification of the technical specifications is part of the contract and should be followed up through contract management.

<sup>10</sup> Article 56.1(a) of Directive 2014/24/EU. The obligation to reject tenders which do not meet specifications was highlighted by the CJEU in Case C-243/89 *Commission v Kingdom of Denmark (Storebaelt)* and Case C-561/12 *Nordecon AS and Ramboll Eesti AS v Rahandusministerium (Nordecon)*

<sup>11</sup> [Buying Green! - A Handbook on green public procurement](#). Chapter 3.6: Verifying compliance with technical specifications

The below technical specifications are possible approaches to be used. You do not need to apply all of them in the same call for tender, but one or more of the technical specifications can be chosen according to the product or service, market conditions and socially responsible ambitions.

The numbering under some of the specifications represents options for requirements to include, you can do either a, b or c, where c is the most advanced option. The advanced technical specification should only be used if you know you have suppliers that can meet these requirements.

## Technical specifications

### 1 Product transparency<sup>12</sup>

**1a.** The tenderer must describe how it has previously maintained the supply chains for the offered product.

#### *Verification*

Upon request, the tenderer agrees and is able to supply a list of relevant suppliers with their legal names and the complete physical addresses of the factory production sites for each product model offered.

**1b.** The tenderer must describe the supply chain for offered product and list significant brand owners of principal components.

#### *Verification*

The tenderer evidences the requirement by listing the brand owners of principal components in the supply chain, with company name, manufacturing unit and legal names and the complete physical addresses of the factory production sites for each product model offered. This list should be provided in the bid when specifying which products will be supplied for the contract.

**1c.** The tenderer must show that the brand owner<sup>13</sup> of offered product regularly monitors and verifies that basic terms are complied with throughout the delivery chain for each type of configuration according to the following minimum level:

- **Review:** Brand owners and its suppliers' manufacturing units deemed by the brand owner to be at high risk of deviations from the Basic Terms are periodically reviewed by an independent external auditor, at least once every four years.
- **Forwarding:** The brand owners' audit of manufacturing units shall include follow-up of their systematic work actively to ensure compliance with basic terms of the supply chain.
- **Management:** The brand owner has an established routine for the division of responsibilities and handling of deviations from the basic conditions of manufacturing units and suppliers, smelters, and miners. Deviations should be corrected and the actions verified by re-audit. The brand owner should immediately handle deviations identified in child labour, forced labour, imminent health and environmental risks, bribery and false data.

<sup>12</sup> Adapted from Region Stockholm criteria

<sup>13</sup> The company that markets and sells the product under its brand

The basic terms shall be fulfilled in accordance with the following terms regarding human rights, workers' rights, environmental protection, and anti-corruption (sustainable supply chains):

- the UN Universal Declaration on Human Rights,
- the UN Convention on the Rights of the Child, Article 32,
- the eight core conventions of the ILO regarding forced or compulsory labour, child labour, discrimination, as well as freedom of association and the right to collective bargaining, (no 29, 87, 98, 100, 105, 111, 138, and 182),
- the labour law in force in the country where the work is performed, including regulations for salary, working hours, leisure time, and work environment,
- the environmental law in force in the country where the work is performed, and
- the UN Convention against Corruption.

#### *Verification*

The bid includes documented evidence that the supplier monitors that final assembly manufacture, component manufacture, smelting, and mining of minerals and raw materials are carried out in accordance with the basic terms.

## **2 Conflict minerals requirements<sup>14</sup>**

**2a.** The contractor must ensure ICT-equipment must be produced by brand owners who have a public policy for conflict minerals.

#### *Verification*

Inclusion of the proprietor's policy

---

**2b.** The contractor must supply ICT equipment produced by brand owners who apply a due diligence process corresponding to OECD's Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

#### *Verification*

Documentation in the form of Due Diligence instructions/process, sustainability report, conflict report, a TCO certificate stating compliance, or equivalent documents that demonstrate the brand owner follows the OECD Due Diligence Framework must be delivered after the contract is awarded.

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**Advanced technical specification** – *Can be applied if the market is ready*

<sup>14</sup>Adapted from Region Stockholm criteria

**2c.** Tenderer's offered ICT equipment must be produced by brand owners who conduct audits of mines in conflict areas for the mining of minerals for the production of tantalum, tin, tungsten and gold (3T + G).

#### Verification

Submission of evidence that tenderer is leading or part of an audit program to monitor responsible tantalum, tin, tungsten and gold (3T + G) breakdown in conflict areas.

*Note: This requirement is challenging, so it is important that you have market dialogue with suppliers and start talking with their supply chain about this technical specification and how they would like to see it fulfilled and how the industry should be working on it.*

### 3 Product risk screening<sup>15</sup>

The contractor must have a developed process to identify labour and human rights risks in the product supply chain, including:

- Periodic risk screening of suppliers based on information about labour and human rights risks. The tenderer may base risk screening on reports published by external parties on an annual or semi-annual basis. Screenings should take into account several of the following factors:
  - Geography: weak governance structures in certain countries may correlate to higher incidences of human rights and labour rights violations.
  - Local and national labour laws: certain countries may have more stringent regulatory requirements in place to protect workers.
  - Country specific labour inspection and enforcement capacity: some countries cannot monitor and enforce labour laws.
  - Type of manufacturing process: certain parts of the manufacturing process may have higher risks to worker health and safety.
- A requirement for suppliers to complete a self-assessment questionnaire: the self-assessment questionnaire is used to evaluate the risk of individual suppliers.
- Risk screening that goes beyond directly contracted suppliers and **should** include smelting and mining companies
- Ongoing risk screening takes into account dynamic data such as supplier audit findings; reports from credible NGOs that highlight labour and human rights impact; and evolving trends in different geographies.

#### Verification

- Description of the screening process including tiers of supply chain included in the scope of the risk screening, risk factors used in the screening and how the screening is used to categorise the level of risk associated with each supplier. The practices and risk screenings must include a corrective mechanism which sets in when a violation of labour laws or human rights is observed.
- Copy of supplier self-assessment questionnaire.
- Description of the sources of information on risks: the US State Department Country Reports on Human Rights Practices, Danish Human Rights Institute Human Rights and Business Country Guide and the World Bank Governance Indicators are examples of

<sup>15</sup> Adapted from Green Electronics Council *Purchaser Guidance to Address Social Impacts in ICT Supply Chains*

credible sources on information relating to labour rights and human rights risks. These resources are updated every 1-2 years.

- ICT equipment that is minimum [Bronze/Silver/Gold] EPEAT Registered and meet the baseline expectation on performing a risk screening.

#### **4 Labour and human rights at raw material extraction**

The contractor must take steps to address labour and human rights impacts during the extraction phase of product production. Steps can include:

- Disclosures related to Section 1502 of the Dodd-Frank Act on Conflict Minerals (Tin, Tantalum, Tungsten and Gold, also referred to as the 3TGs) (even if not a public company)
- Sourcing policies that include the use of conflict-free smelters
- Identifying suppliers and smelters that are at higher risk of using or processing raw materials with human and labour rights violations.
- Sourcing policies that address raw materials beyond the 3TGs

##### *Verification*

- SEC Conflict Minerals filings
- Copy of, or link to the organisation's Responsible Sourcing Policies: companies that report using the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas meet this best practice.
- Description of activities to address raw materials at the extraction phase: Companies that participate in initiatives such as the Responsible Cobalt Initiative, The Alliance for Responsible Mining (ARM); the Initiative for Responsible Mining Assurance (IRMA) and the Responsible Raw Materials Initiative meet this best practice.

## **6. Award criteria**

At the award stage, the contracting authority evaluates the quality of the tenders and compares costs. When you evaluate the quality of tenders, you use predetermined award criteria, published in advance, to decide which tender is the best. Under the 2014 procurement directives, public buyers must award all contracts based on the most economically advantageous tender (MEAT) method of assessment.

Beyond costs, a wide range of factors may influence the value of a tender for the contracting authority, and this includes social and ethical aspects.

The 2014 Directives provide that award criteria shall be considered to be linked to the subject-matter of a contract where they relate to the works, supplies or services provided under that contract in any respect and at any stage of their life cycle, including factors involved in:

- (a) the specific process of production, provision or trading of those works, supplies or services; or
- (b) a specific process for another stage of their life cycle.

These factors do not need to form part of the ‘material substance’ of what is being purchased, i.e. they do not need to be visible or discernible in the final product or service. What this means is that, as with technical specifications, award criteria may relate to labour and human rights considerations such as ethical sourcing of materials, or labour conditions associated with a particular product or service.

The main difference between technical specifications and award criteria is that whereas public buyers assess technical specifications on a pass/fail basis, award criteria are weighted and scored so that a higher score can be given to tenders offering better sustainability performance.<sup>16</sup> When weighing, take into account that award criteria that demand more time and effort to verify on the part of the tenderer should be given more weight, otherwise, there is a risk that few tenderers will choose to answer. To make it easier for tenders to answer the criteria and for the procurers to evaluate bids, an evaluation form, that shows how the criteria would be awarded (e.g. available points per criteria), can be added to the tender documents. If a tenderer claims to fulfil an award criterion, and are later awarded the contract, the criterion becomes binding.

The weighting given to social criteria in the tender entirely is decided on a case-by-case basis and depends on other quality criteria also included (environmental, circular, etc.). The table below provides some suggested criteria and ratios depending on the nature of the commodity/service being procured.

| Purchase classification   | Description  | Suggested Price - Quality Ratio |
|---|--|---------------------------------|
| <b>Routine</b><br>Not typically ICT products  | <ul style="list-style-type: none"> <li>• Low Value/High Volume</li> <li>• Many Existing Alternatives</li> </ul>  | 80:20                           |
| <b>Leverage</b><br>High spend and profile of ICT products can mean high influence on suppliers  | <ul style="list-style-type: none"> <li>• High spend area</li> <li>• Many Sources of Supply</li> <li>• Commercial involvement can influence social conditions</li> </ul>  | 60:40                           |
| <b>Strategic</b><br>High spend and high supply, risk so these should receive the most attention | <ul style="list-style-type: none"> <li>• Strategically sensitive product area for fair ICT</li> <li>• Few Sources of Supply</li> <li>• Large Spend Area</li> <li>• Supply chain may be particularly complex</li> </ul> | 60:40, or<br>50:50, or<br>40:60 |
| <b>Bottleneck</b><br>Mostly specialised products that are critical to an organisation           | <ul style="list-style-type: none"> <li>• Few Sources of Supply and alternatives available</li> <li>• Complex specifications</li> <li>• If supply fails, impact on an organisation could be significant</li> </ul>      | 40:60, or<br>10:90              |

The below award criteria are possible approaches to be used. You do not need to apply all of them in the same call for tenders, but one or more can be chosen according to product or service, market conditions and socially responsible ambitions.

<sup>16</sup> Adapted from Buying Green! Handbook (2016), available at [ec.europa.eu/environment/gpp/buying\\_handbook\\_en.htm](http://ec.europa.eu/environment/gpp/buying_handbook_en.htm)

## Award criteria

### 1 Responsible sourcing practices

In addition to sourcing policy (see selection criterion 1) based on performance on labour and human rights impacts, the tenderer is awarded additional points for:

- Training all sourcing staff for the offered product on company expectations for responsible sourcing.
- An approach that integrates supplier labour and human rights performance along with cost, delivery time, quality and environmental considerations, for the offered ICT-products.
- Process for suspending and eventually terminating suppliers of the offered ICT-products who perform poorly on labour and human rights

#### Verification

Description and implementation methods of the above systems and processes.

### 2 Transparency and systematic work<sup>17</sup>

The tenderer should describe the supply chain for the offered ICT equipment.

**Additional points are available for details of the smelting and mining stage of the supply chain.**

Points are awarded on the depth of the description. E.g. using a scale from:

1. assembly manufacturing
2. component manufacturing
3. smelting
4. mining
5. disposal and/or recycling

#### Verification<sup>18</sup>

1. List of assembly manufacturing facilities and locations of the offered ICT equipment: If no list of assembly manufacturing facilities currently exists, the tenderer should describe how it is developing such a list, what resources are being used to gather the information and the expected date\* of publishing the list.
2. List of component manufacturing facilities and locations of the offered ICT equipment: If no list of component manufacturing facilities currently exists, the tenderer should describe how it is developing such a list, what resources are being used to gather the information and the expected date\* of publishing the list.
3. List of smelting facilities and locations of the offered ICT equipment: If no list of smelting facilities currently exists, the tenderer should describe how it is developing such a list, what resources are being used to gather the information and the expected date\* of publishing the list.

<sup>17</sup> Adapted from Region Stockholm criteria

<sup>18</sup> For scoring: The weighing of points should correspond to the extra value of fulfilling the criteria, for example supplying a list is worth more than a description of how the tenderer is developing a list.

4. List of mining facilities and locations of the offered ICT equipment. If no list of mining facilities currently exists, the tenderer should describe how it is developing such a list, what resources are being used to gather the information and the expected date\* of publishing the list.

*\*Public buyer could specify a date that is within the contract period.*

### 3 Supplier code of conduct

The tenderer should offer a Supplier Code of Conduct or Supplier Policy that addresses: child labour; forced labour; working hours; wages; discrimination; health and safety; freedom of association and collective bargaining and disciplinary practices/humane treatment of workers and that covers the offered ICT-products.

***Additional points are available for a code of conduct that includes the smelting and mining stage of the supply chain.***

Points are awarded on the depth of the description. E.g. using a scale from:

1. assembly manufacturing
2. component manufacturing
3. smelting
4. mining

#### *Verification*

Copy of Supplier Code of Conduct or Supplier Policy or industry code of conduct, concerning how it relates to each stage of supply.

*\*When phrasing this criteria, be clear on whose policy that should be provided, for example, the reseller, the brand owner or the final assembly manufacturer.*

### 4 Capacity building<sup>19</sup>

The tenderer **should** offer ICT equipment from brand owners with active programmes for implementing measures in the supply chain that strengthens the knowledge of workers executing the contract of the Basic Conditions and their ability to influence and right to negotiate collectively on working conditions in countries with a high risk of human rights violations. To meet the criterion, there must be one or more independent committees with employee representatives on significant final assembly units for the procured product model.

Additional points awarded for:

- a company or industry-led programme that extends beyond compliance to equip workers with new skills; or
- training workers on issues “outside the factory walls” such as financial and basic health needs.

#### *Verification*

Description of the organisation’s capacity building program with suppliers, including:

<sup>19</sup> Adapted from Region Stockholm criteria and Green Electronics Council *Purchaser Guidance to Address Social Impacts in ICT Supply Chains*

- Description of the company's capacity building measures such as training and workshops.
- Information on the impact that capacity programs are having such as following: the number of programs, the number of workers reached, and related impacts and outcomes on worker well-being, number of collective bargaining negotiations and agreements, existence and number of OHS committees, the share of factories with existing occupational health and safety committees, the composition of occupational health and safety committees (production workers, supervisors and management).
- Documentation in the form of an extract from a third party's certified audit protocol stating that the evaluation criterion is met or other relevant description. The description should at least contain information about how the workers are organized, how dialogue with the employer is conducted and what proactive measures the employer takes to promote organization and collective bargaining. The documentation must be reported per procured product model. The information must be linked to a manufacturing unit specified for the evaluation criterion. In cases where the tenderer offers more product models manufactured in the same final assembly unit, one description per final assembly unit is sufficient.

## 5 External collaboration

The tenderer could be collaborating with external organisations (such as NGOs, civil society organisations and governments) to address labour and human rights impacts in your supply chain or the IT sector supply chain.

### Advanced criteria

Direct and ongoing collaboration with external organisations, such as NGOs, civil society organisations and labour unions to develop process improvements or address specific impacts.

### Verification

- Copy of, or link to, the company's responsibility report or other public communication describing the industry and member associations with which they engage. RBA, BSR, Global E-Sustainability Initiative, Conflict-Free Smelter Program and the Semiconductor Industry Association are all examples of industry and member associations that engage with external stakeholders on capacity building projects.
- Evidence from NGO partners in the form of reports, communications, audit results or other documentation demonstrating how the tenderer has addressed labour and human rights impacts in your supply chain or the IT sector supply chain.

## 6 Plan for supply chain transparency as well as the scope of the labour and social standards to be observed<sup>20</sup>

Tenderers should explain their plans for the next 3 years to establish transparency in their minerals supply chain, i.e. how they intend to link individual mines to the supply chains of specific products that form the subject matter of this contract as well as ensure that the labour and social standards set out in the call for tenders are respected.

This should include:

- A plan that specifies the steps that they want to take to establish the supply chain transparency in their minerals supply chain and describe the milestones that will be reached and when they will be reached.

<sup>20</sup> As a long-term strategy is being evaluated the criteria should only be applied for long term contracts.

- An overview of the management system, i.e. policies, processes and procedures they have or will set up to achieve the objective of establishing transparency for the minerals supply chains of the subject matter of the contract. One way could be to describe the management system through a "Plan, Do, Check, Act" approach.
- A description of the resources they will allocate to implement the plan and the respective management system.

The tenderer should where possible demonstrate how they will ensure compliance with the labour and social standards defined in this tender by the Electronics Watch contract clauses.

## 7 The plausibility of the concept for compliance

The plausibility depends in particular on the extent to which:

- (1) the tenderer provides a plan that defines realistic steps and milestones that will enable naming the suppliers of raw materials (mines, etc.) to their smelters/refiners published in the so called smelter lists, i.e. linking the mines to the subject matter of this contract;
- (2) the tenderer provides a time plan for the specific milestones;
- (3) the tenderer provides a description of their management system, demonstrating how processes and procedures relate to supply chain transparency and engagement
- (4) the tenderer is able to identify concrete measures which the manufacturer intends to take in order to ensure that the production and production of raw materials necessary for the production are given the best possible consideration for the employment resulting from the ILO Conventions referred to in point 1. and social standards;
- (5) the tenderer provides a plan on how they will periodically report to the client on the progress of the implementation of the plan.

## 9. Electronics Watch Contract Conditions for Supply Contracts

Electronics Watch Contract Conditions are an effective tool for Electronics Watch affiliates to ensure social responsibility in their electronics supply chains. The Contract Conditions are consistent with Directive 2014/24/EU on public procurement and reflect international guidance for public procurement, business and human rights, including the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines on Multinational Enterprises.

The Contract Conditions require the contractor to perform due diligence to achieve supply chain transparency, collaborate with independent monitors, and remedy breaches of labour rights and safety standards.

Affiliates to Electronics Watch incorporate the Electronics Watch Contract Conditions or equivalent clauses in their ICT hardware contracts.

The Electronics Watch Contract Conditions are publicly available. However, to be able to make use of the full power of the contractual obligation they set out, public buyers need to affiliate to Electronics Watch. Only then Electronics Watch is able to provide the worker-driven monitoring that is the basis for compliance monitoring to detect possible contract breaches.

### Part I: Contract Conditions<sup>21</sup>

#### Introductory provisions

1. These Conditions are for inclusion in a contract between the Affiliate and the Contractor for the supply of electronic goods.

OR

These Conditions are for inclusion in a contract for goods and services between the Affiliate and the Contractor, which involves the temporary or permanent provision of electronic goods.

2. In these Conditions:

**"Affiliate"** means an affiliate of Electronics Watch who, as a contracting authority (as defined in Directive 2014/24/EU), monitors Code compliance in Factories through Electronics Watch;

**"Code"** means the Electronics Watch Code of Labour Standards contained at Part III to these Conditions, or an equivalent code<sup>22</sup> of international labour standards<sup>23</sup>;

**"Conditions"** means the Electronics Watch Contract Conditions for Supply Contracts;

**"Contract"** means the legally binding agreement between the Affiliate and the Contractor that requires the Contractor to supply the Goods under the terms of the Conditions;

**"Contract of Employment"** means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

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<sup>21</sup> The present contract conditions are for the UK legal frame. Electronics Watch has transposed the Contract Conditions to legal frameworks of: Belgium, Germany and Spain. You can download them here: [http://electronicswatch.org/en/contract-conditions\\_2548258](http://electronicswatch.org/en/contract-conditions_2548258)

<sup>22</sup> Equivalent codes require compliance with country of production labour laws, including health and safety regulations, and international labour standards, including the ILO core conventions (please see clause 2 at Part III to these Conditions).

<sup>23</sup> Please see Article 42(13) of the Public Contracts Regulations 2015 that indicates that where a precise description of the subject-matter of a contract is not possible, reference to the contract shall be accompanied by the words "or equivalent".

- "Contractor"** means the business enterprise that enters into the Contract with the Affiliate;
- "Disclosure Form"** means the disclosure form contained at Part II to these Conditions;
- "Electronics Watch"** means Stichting Electronics Watch Foundation, whose registered office is Sarphatistraat 30, 1018 GL Amsterdam, The Netherlands;
- "Employee"** means an individual who has entered into or works under (or, where the employment has ceased, worked under) a Contract of Employment with the Contractor and/or a Supplier;
- "Factory"** means an assembly factory in which any of the Goods are assembled or a component supplier factory in which the main (based on value) electronic components used in the assembly of any of the Goods are produced;
- "Goods"** means the electronic goods (including components) that form the subject matter of the Contract (including goods and components that are supplied only temporarily as part of a service contract);
- "Monitor"** means a civil society organisation under contract with Electronics Watch to monitor Code compliance at Factories;
- "Socially Responsible Trading Conditions"** means, in general, trading conditions under which the Goods can be produced in compliance with the Code, and specifically includes a fair and reasonable timeframe for delivery, forecasting that mitigates business spikes, fair pricing of Goods, and a proportionate transfer of risk through the supply chain;
- "Supplier"** means any of the Contractor's suppliers and sub-suppliers of any tier involved in the manufacturing process for the production of the Goods;
- "UNGP"** means United Nations Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council in June 2011 as amended from time to time;
- "Working Day"** means any day other than a weekend or a bank or public holiday in the jurisdiction under which the Contract is governed.<sup>24</sup>

## Contractor's Obligations

3. In performing its obligations under the Contract, the Contractor shall comply with all applicable labour, anti-slavery and human trafficking laws, statutes and regulations from time to time in force, and undertake its business in a manner that is consistent with the Code, the UNGP, and Socially Responsible Trading Conditions.
4. The Contractor represents and warrants that, at the date of this agreement, neither the Contractor nor any of its officers, employees or agents have been convicted of any offence involving modern slavery and/or forced labour and/or human trafficking, nor have they been or are the subject of an investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery and/or forced labour and/or human trafficking.

## Due Diligence

5. The Contractor shall exercise due diligence by identifying and mitigating the risk of potential breaches and remedying actual breaches and preventing recurrence of breaches of the standards contained in the Code in the production of the Goods and the performance of the Contract.
6. In order to exercise due diligence the Contractor shall, as a minimum, throughout the term of the Contract:
  - a. use any bargaining power which it has over its Suppliers, including contractual rights and commercially viable incentives, to procure, in the spirit of continuous improvement, the Goods in accordance with the Code, the UNGP, and Socially Responsible Trading Conditions;
  - b. use reasonable and proportionate endeavours to include, in its contracts with Suppliers:
    - i. a provision obliging the Supplier to procure the Goods in accordance with the Code; and
    - ii. engagement and escalation provisions equivalent to those set out in paragraphs

<sup>24</sup> Note: definition should mirror the definition "days" in the underlying contract.

- 14 to 19 below, to take effect upon breach by the Supplier of its obligation to procure the Goods in accordance with the Code;
- c. implement an appropriate system of training for the Contractor's employees to ensure compliance with the Code;
  - d. notify the Affiliate and/or Electronics Watch as soon as it becomes aware of any breach, or potential breach of the Code or these Conditions, or any actual or suspected modern slavery and/or forced labour and/or human trafficking related to the manufacturing process for the production of the Goods; and
  - e. use its reasonable and proportionate endeavours to procure that its Suppliers co-operate and engage with Electronics Watch in remedying and preventing breaches.

### Disclosures and Verification

7. Within 25 Working Days of the date of the Contract (or as soon as reasonably practicable) and free of charge, the Contractor shall, by way of a completed Disclosure Form, inform the Affiliate and Electronics Watch of:
  - a. the Factories where the Goods are produced (including their legal names and complete physical addresses);
  - b. the specific products or components produced in each Factory

The Contractor shall as soon as reasonably practicable notify the Affiliate and Electronics Watch of any changes to the information provided in its Disclosure Form, of which it becomes aware.

8. The Contractor shall use reasonable and proportionate endeavours to disclose the compliance findings in summary or in whole (or, if available for disclosure, the audit reports) relating to the Factories conducted within the previous 24 months which it is able to discover and obtain through reasonable enquiries. These disclosures shall be made within 25 Working Days of the date of Contract (or as soon as reasonably practicable).

The Contractor shall make enquiries of every direct Supplier every 6 months into whether any further compliance finding (or, if available for disclosure, audit reports) relating to the Factories have been undertaken, and disclose such findings in accordance with the provisions of this paragraph.

### Contractor's obligations in respect of the Supplier

9. Upon evidence of a Supplier's breach of the Code, the Contractor shall collaborate with the Affiliate and Electronics Watch and use reasonable and proportionate endeavours to:
  - a. obtain access for Monitors to the Factories where there has been a breach, including:
    - i. visits to all relevant work floors, hostels, and/or dormitories;
    - ii. worker interviews without the presence of supervisors or management;
    - iii. examination of relevant factory records, including:
      1. collective bargaining agreements;
      2. personnel records;
      3. records of working hours and wages paid;
      4. records of social security payments, pension contributions, and holiday pay;
      5. grievance procedures;
      6. disciplinary log books;
      7. health and safety policies; and
      8. other relevant factory records.
  - b. obtain and provide to Electronics Watch the Suppliers' full written compliance findings and corrective action plans related to the actual or potential breach;
  - c. obtain and provide to Electronics Watch inventory of chemicals used and stored and related health and safety and environmental impact monitoring reports for each Factory where there has been an actual or potential breach of the health and safety standards of the Code; and
  - d. report to the Affiliate and Electronics Watch on the extent to which its trading conditions

and its Suppliers' trading conditions adversely affect its compliance with the Code in the specified Factories, and/or contravene the Socially Responsible Trading Conditions.

10. The Contractor shall:

- a. comply with, and use reasonable and proportionate endeavours to ensure that its Suppliers comply with, all applicable whistleblowing laws, statutes and regulations in force from time to time in the jurisdiction where the Goods are manufactured;
- b. implement and maintain, and use reasonable and proportionate endeavours to ensure that its Suppliers implement and maintain, an appropriate whistleblowing policy to ensure the protection and support of any of its personnel and/or the Suppliers' personnel that notifies the Contractor, the Affiliate or Electronics Watch of any actual or potential breach of these Conditions or any applicable laws, statutes and regulations; and
- c. irrespective of whether or not a Contractor or a Supplier (as applicable) maintains a sufficient whistleblowing policy, use reasonable and proportionate endeavours to ensure that whistleblowers who face any detrimental treatment as a result of raising a genuine concern receive adequate remedy; and
- d. the whistleblowing policy referred to in paragraph 10 b. above shall as a minimum:
  - i. encourage openness and support whistleblowers who raise genuine concerns, even if they turn out to be mistaken;
  - ii. protect whistleblowers from any detrimental treatment as a result of raising a genuine concern and establish a dedicated whistleblowing officer who is responsible for investigating any such treatment; and
  - iii. establish disciplinary sanctions to apply to any personnel who commit threats or acts of retaliation against whistleblowers must be subject to.

### Transparency

11. The Contractor agrees to Electronics Watch making the following information publicly available (to the extent permitted by law in the applicable jurisdiction):
  - a. the identities of the Suppliers and the Factories listed in the Disclosure Form; and
  - b. Electronics Watch monitoring reports relating to the Contractor once the Contractor has had a reasonable opportunity to review and address the findings of such monitoring reports; and
12. The Contractor shall use reasonable and proportionate endeavours to obtain any legally necessary consent to the publication of such information listed in paragraph 11.
13. Where information provided by the Contractor is shared with third parties (such as Monitors and other Affiliates, to enable them to support verification), those third parties will undertake not to make any onward disclosure or alternative use of the information unless required to do so by law.

### Engagement and Escalation<sup>25</sup>

#### Escalation Process

14. Where the Contractor has (or the Affiliate has reasonable grounds to believe that the Contractor has) failed to comply with its obligations under these Conditions, the Contractor shall promptly collaborate with the Affiliate and Electronics Watch to allow the Affiliate to determine whether such failure has occurred and, if so, how such failure may be corrected without immediate recourse to contractual sanctions.
15. The Affiliate (or Employees pursuant to paragraph 23 below) may at its discretion require the Contractor to:
  - a. provide a written explanation to the Affiliate and Electronics Watch of its failure or potential failure to comply with its obligations, any corrective steps which it proposes to take, and the period within which such steps will be taken; and/or

<sup>25</sup> Note: where the Affiliate intends to rely exclusively on its own contract management, engagement and enforcement provisions contained elsewhere in the Contract, this section should be omitted.

- b. arrange for an appropriately senior representative of the Contractor to attend a meeting with the Affiliate and Electronics Watch, and take any corrective steps reasonably required by the Affiliate and Electronics Watch.
16. The Contractor shall carry out the requirements set out in paragraphs 14 and 15 at its own risk and within a reasonable period, relative to the term of the Contract, as determined by the Affiliate (acting reasonably).
17. If a failure to comply with the Contractor's obligations under these Conditions has occurred repeatedly or requests to act are ignored persistently, the Affiliate may serve a written notice on the Contractor:
  - a. specifying that the notice is a formal warning notice;
  - b. giving reasonable details of the Contractor's breach; and
  - c. stating that the breach is a breach which, if it recurs frequently or continues, may result, first, in suspension and then in termination of the Contract.
18. If, following service of a warning notice under paragraph 17 above, the breach specified has continued for an excessive period of time or recurred excessively in the sole determination of the Affiliate (acting reasonably), then the Affiliate may serve another written notice on the Contractor:
  - a. specifying that it is a final warning notice;
  - b. stating that the breach specified has been the subject of a warning notice served within the 12 month period prior to the date of service of the final warning notice; and
  - c. stating that if the breach continues for a specified period or recurs a specified number of times after the date of service of the final warning notice, the Contract may be, first, suspended, then, terminated.
19. Following service of a final warning notice under paragraph 18 above, the Affiliate may also serve a further notice (in accordance with the Contract) suspending the operation of the Contract pending the Contractor's remedy of the breach(es).

### **Sanctions**

20. Where a breach continues or recurs pursuant to paragraph 19 above, the Affiliate may terminate the Contract by written notice to the Contractor, with a notice period as advised by the Affiliate (acting reasonably).
21. The Contractor shall indemnify the Affiliate against any losses, damages, costs and expenses incurred by or awarded against the Affiliate as a result of any breach of these Conditions by the Contractor.
22. The Affiliate may set-off any sums due to it from the Contractor pursuant to paragraph 21 above against any sums owed to the Contractor under the Contract or under any other contract between the Contractor and the Affiliate.

### **Third Party Rights**

23. In order to be able to assert their rights, Employees may enforce and rely on the rights, terms and conditions granted to the Affiliate in paragraph 15 above, [pursuant to the Contracts (Rights of Third Parties) Act 1999]<sup>26</sup>, as if the Employees were also parties to this Contract.
24. The Affiliate and the Contractor confirm that it is their express intention to grant the rights set out in paragraph 23 for the benefit of Employees.
25. If there is any conflict or inconsistency between any of the provisions of the Contract and the provisions of paragraphs 23 and 24, then the provisions of paragraphs 23 and 24 shall prevail.

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<sup>26</sup> Note: to be included for contracts in England, Wales and Northern Ireland only. To be substituted by "Contract (Third Party Rights) (Scotland) 2017" in Scotland.

## Part II: Disclosure Form

*The Disclosure Form is available separately to Electronics Watch affiliates.*

## Part III: Electronics Watch Code of Labour Standards

### Introduction

This Code sets out standards for the production of Goods. To be in compliance with this Code, the Contractor must exercise due diligence to ensure that the Goods are produced under conditions that comply with all the listed standards. This means:

- where the standards relate to the rights and conditions of Employees, the Goods must be produced by Employees who benefit from all of those rights and conditions;
- where the standards relate to workplaces, the Goods must be produced in workplaces that meet all of these standards;
- in both cases, the trading conditions should include a fair and reasonable timeframe for delivery, forecasting that mitigates business spikes, fair pricing of Goods, and a proportionate transfer of risk through the supply chain (see Socially Responsible Trading Conditions in Part I).

Employees are involved in the production of Goods, for the purposes of this Code, if they have any involvement, however slight, in the assembly of the Goods or the production of the electronic components from which the Goods are assembled.

### Standards

#### 1. Domestic Labour Standards

Goods must be produced in compliance with all applicable domestic labour law. Domestic labour law includes international standards that are applicable to employers under domestic law. Relevant applicable domestic labour law includes (but is not limited to) laws regulating:

- Health and safety;
- Wages and benefits, including overtime compensation;
- Hours of work, public holidays and leave;
- Discipline, violence, harassment and abuse;
- Contracts for both short-term and long-term Employees;
- Freedom of association and collective bargaining;
- Prohibition of forced labour;
- Prohibition of child labour;
- Prohibition of discrimination;
- Social security; and
- Environmental protections.

#### 2. International Labour Standards

Goods must be produced with respect for the following international labour standards:

- ILO Core Conventions (ILO No. 29, 105, 87, 98, 100, 111, 138 and 182);

- ILO Conventions No. 1, 95, 102, 115, 119, 120, 131, 135, 136, 139, 148, 155, 158, 161, 162, 170, 174, 183, 187;
- ILO Recommendations No. 35, 90, 111, 131, 135, and 143;
- Articles 23 of the United Nations Universal Declaration of Human Rights
- Article 32 of the United Nations Convention on Rights of the Child

### 3. Conflict between domestic and international standards

Whenever international and domestic standards differ the standard that affords the greater protection for Employees shall apply, except that this Code does not require the performance of an act that violates a domestic law in a country of production. In particular, international standards must be honoured by:

- permitting all activities related to freedom of association that are not prohibited by domestic law, and
- avoiding practices that violate international standards unless a practice is mandated by domestic law.

## Examples of Violations

### 4. Employment is freely chosen

(Relevant ILO Conventions: No. 29<sup>27</sup> and No. 105<sup>28</sup>; Relevant ILO Recommendation: No. 35)

The production of the Goods must not involve:

- 4.1. Use of bonded labour. Examples of non-compliance include, but are not limited to requiring payment of a debt to the employer or a third party in order to leave employment.
- 4.2. Abuse of prison labourers. Examples of violations include, but are not limited to:
  - 4.2.1. Using a prisoner for work without that prisoner's consent.
  - 4.2.2. Treating prisoners less favourably than non-prisoners with respect to wages, hours of work, or health and safety protections.
- 4.3. Prevention of a worker from freely leaving employment or a workplace. Examples of non-compliance include, but are not limited to:
  - 4.3.1. Preventing a worker from voluntarily leaving a workplace, including dormitories and the Factory area.
  - 4.3.2. Locking any exits of a workplace or dormitory.
  - 4.3.3. Refusing to return any personal document to a worker upon request.
  - 4.3.4. Using or threatening to use violence, deportation, visa cancellation, immigration action or arrest to force a worker to work.
- 4.4. Use of economic coercion in conjunction with forced overtime. Examples of non-compliance include, but are not limited to:
  - 4.4.1. Requiring overtime work in order for a worker to make a legally mandated minimum wage.
  - 4.4.2. Compelling a worker to work hours beyond legal limits by threatening to terminate employment or eliminate overtime hours.

### 5. Freedom of association and the right to collective bargaining

<sup>27</sup> C029 - Forced Labour Convention, 1930 (No. 29), Convention concerning Forced or Compulsory Labour (Entry into force: 01 May 1932).

<sup>28</sup> C105 - Abolition of Forced Labour Convention, 1957 (No. 105), Convention concerning the Abolition of Forced Labour (Entry into force: 17 Jan 1959!).

(Relevant ILO Conventions: No. 87<sup>29</sup>, No. 98<sup>30</sup> and No. 135<sup>31</sup>; Relevant ILO Recommendation: No. 143<sup>32</sup>)

The Employees involved in the production of the Goods must enjoy freedom of association and the right to collective bargaining. Examples of violations include, but are not limited to the following.

- 5.1. Interference with an Employees' organisation or its efforts to organize Employees. Examples of non-compliance include, but are not limited to:
  - 5.1.1. Promoting the formation of an Employees' organisation to compete against an existing Employees' organisation.
  - 5.1.2. Interfering with, manipulating or controlling an Employees' organisation.
  - 5.1.3. Limiting the freedom of Employees to meet without management present.
  - 5.1.4. Restricting access of Employees' representatives to Employees in the workplace.
- 5.2. Discrimination against a member of an Employees' organisation. Examples of non-compliance include, but are not limited to:
  - 5.2.1. Using membership in, or activities with, an Employees' organisation as a factor when making hiring decisions.
  - 5.2.2. Using a blacklist of members of an Employees' organisation to ensure that they are not employed.
  - 5.2.3. Offering or providing any incentive to Employees to keep them from joining, or participating in the activities of, an Employees' organisation.
  - 5.2.4. Threatening, intimidating or harassing Employees who join, or participate in the activities of, an Employees' organisation.
- 5.3. Refusal to bargain collectively in good faith on any issue or failure to implement any term in a collective bargaining agreement. Examples of non-compliance include, but are not limited to:
  - 5.3.1. Refusing to bargain collectively.
  - 5.3.2. Limiting the issues that can be negotiated during collective bargaining.
  - 5.3.3. Failing to implement any provision of a collective bargaining agreement in force.
  - 5.3.4. Employer "protection contracts" that do not provide Employees with significant monetary and non-monetary benefits beyond those already required by law and prevent Employees from benefitting from collective bargaining.
- 5.4. Interference with a strike by Employees or retaliation against any Employee for striking. Examples of non-compliance include, but are not limited to:
  - 5.4.1. Hiring new Employees to replace striking Employees.
  - 5.4.2. Punishing any Employee for participating in a strike.
  - 5.4.3. Failing to reinstate all eligible Employees after striking.
  - 5.4.4. Using security guards, the police or armed forces to break up a peaceful strike or to arrest any striking worker.

## 6. No discrimination in employment

<sup>29</sup>C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Convention concerning Freedom of Association and Protection of the Right to Organise (Entry into force: 04 Jul 1950).

<sup>30</sup>C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (Entry into force: 18 Jul 1951), df.

<sup>31</sup>C135 - Workers' Representatives Convention, 1971 (No. 135), Convention concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking (Entry into force: 30 Jun 1973),

<sup>32</sup>R143 - Workers' Representatives Recommendation, 1971 (No. 143), Recommendation concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

(Relevant ILO Conventions: 100<sup>33</sup> 111<sup>34</sup> and 183<sup>35</sup> and Article 68 of Convention 102<sup>36</sup>; Relevant ILO Recommendations: No. 90<sup>37</sup> and 111<sup>38</sup>)

Discrimination must not be used in the selection of the workforce involved in the production of the Goods. The Employees involved in the production of the Goods shall not be discriminated against.

6.1. Examples of violations include, but are not limited to the following.

6.1.1. Recruiting in a way that expresses a discriminatory preference.

6.1.2. Discrimination in a decision regarding: hiring, conditions of work, pay, benefits, opportunities for promotion, access to training, retirement, termination, or any other aspect of the employment relationship.

6.1.3. Harassing a worker in a way that discriminates, including sexual harassment.

6.1.4. Requiring a worker to undergo a pregnancy test or to use contraception.

6.1.5. Paying migrant Employees lower wages or less benefits or otherwise discriminate against migrant Employees.

6.1.6. Using student Employees, interns, and apprentices in order to avoid obligations of labour and social security laws and regulations arising from regular employment relationships and paying less than the entry level wage for regular Employees.

6.2. For purposes of this section, “discriminate” means to treat a worker differently based on that worker’s age, gender, race, colour, origin, religious affiliation, political affiliation, sexual orientation, membership in a union or other Employees’ organisation, nationality, social origin, pregnancy, or handicaps during any phase of employment.

## 7. No exploitation of child labour

(Relevant ILO Conventions: No. 138<sup>39</sup> and No. 182<sup>40</sup>; Art. 32 UN Convention on the Rights of the Child)

Child labour must not be exploited in the production of the Goods. Examples of violations include, but are not limited to the following.

7.1. Failure to keep adequate records of Employees under 18 years of age. Examples of non-compliance include, but are not limited to:

7.1.1. Failing to verify the age of a worker appearing to be under 18 years of age with available documentation.

7.1.2. Failing to keep a registry of all Employees under 18 years of age.

7.2. Employing a worker under 18 years of age in a way that is hazardous to health, safety or morals. Examples of non-compliance include, but are not limited to:

7.2.1. Allowing a worker under 18 years of age to work overtime or at night.

7.2.2. Allowing a worker under 16 years of age to do physically hazardous work.

7.2.3. Allowing a worker between 16 and 18 years of age to do physically hazardous work without adequate safety training.

<sup>33</sup>C100 - Equal Remuneration Convention, 1951 (No. 100), (Entry into force: 23 May 1953).

<sup>34</sup>C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Convention concerning Discrimination in Respect of Employment and Occupation (Entry into force: 15 Jun 1960).

<sup>35</sup>C183 - Maternity Protection Convention, 2000 (No. 183), Convention concerning the revision of the Maternity Protection Convention (Revised), 1952 (Entry into force: 07 Feb 2002).

<sup>36</sup>C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102), Convention concerning Minimum Standards of Social Security (Entry into force: 27 Apr 1955).

<sup>37</sup>R090 - Equal Remuneration Recommendation, 1951 (No. 90), Recommendation concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

<sup>38</sup>R111 - Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), Recommendation concerning Discrimination in Respect of Employment and Occupation.

<sup>39</sup>C138 - Minimum Age Convention, 1973 (No. 138), Convention concerning Minimum Age for Admission to Employment (Entry into force: 19 Jun 1976).

<sup>40</sup>C182 - Worst Forms of Child Labour Convention, 1999 (No. 182), Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Entry into force: 19 Nov 2000).

- 7.2.4. Frequently shouting at, insulting, or hitting a worker under 18 years of age.
- 7.2.5. Employ any worker under 15 years of age or the age of completion of compulsory schooling, except as allowed by domestic law.

## 8. No excessive working hours

(Relevant ILO Convention: No. 1<sup>41</sup>)

Employees involved in the production of the Goods must not be required to undertake excessive working hours.

- 8.1. Examples of violations include, but are not limited to the following.
  - 8.1.1. Requiring Employees to work in excess of 48 hours per week on a regular basis.
  - 8.1.2. Requiring Employees to work more than six days in a row without at least 24 consecutive hours off.
  - 8.1.3. Compelling non-voluntary overtime work.
  - 8.1.4. Allowing voluntary overtime work in excess of 12 hours per week.
  - 8.1.5. Failure to compensate overtime at a premium rate.

## 9. Safe and healthy working conditions

(Relevant ILO Conventions: No. 115<sup>42</sup>, No. 119<sup>43</sup>, No. 120<sup>44</sup>, No. 136<sup>45</sup>, No. 139<sup>46</sup>, No. 148<sup>47</sup>, No. 155<sup>48</sup>, No. 161<sup>49</sup>, No. 162<sup>50</sup>, No. 170<sup>51</sup>, No. 174<sup>52</sup>, No. 183<sup>53</sup>, and No. 187<sup>54</sup>)

The Goods must be produced under safe and healthy working conditions, in compliance with domestic and international labour standards. The Goods must be produced in Factories that maintain effective occupational health and safety (OHS) programs in the following three areas: comprehensive OHS programs; identification, evaluation, and control of health and safety hazards; and worker participation in the development, implementation, and verification of OHS programs.

- 9.1. Examples of violations include, but are not limited to the following.
  - 9.1.1. Failing to maintain a written occupational health and safety management system;
  - 9.1.2. Failing to maintain an effective emergency action plan to respond to natural disasters and industrial incidents, including explosions and fires;
  - 9.1.3. Failing to evaluate and control specific health and safety hazards for women;
  - 9.1.4. Failing to maintain accurate statistics of occupational injuries, illnesses, and fatalities at the facility;
  - 9.1.5. Failing to evaluate and control hazards from factory buildings, machinery, equipment, tools, and production processes;
  - 9.1.6. Failing to evaluate and control hazards from electrical equipment and installations;
  - 9.1.7. Failing to evaluate and control hazards from chemical, physical, and biological agents;

<sup>41</sup> C001 - Hours of Work (Industry) Convention, 1919 (No. 1).

<sup>42</sup> Radiation Protection Convention, 1960 (No. 115), Convention concerning the Protection of Workers against Ionising Radiations (Entry into force: 17 Jun 1962).

<sup>43</sup> C119 - [Guarding of Machinery Convention, 1963 \(No. 119\)](#)

<sup>44</sup> C120 - [Hygiene \(Commerce and Offices\) Convention, 1964 \(No. 120\)](#)

<sup>45</sup> C136 - [Benzene Convention, 1971 \(No. 136\)](#)

<sup>46</sup> C139 - [Occupational Cancer Convention, 1974 \(No. 139\)](#).

<sup>47</sup> C148 - [Working Environment \(Air Pollution, Noise and Vibration\) Convention, 1977 \(No. 148\)](#).

<sup>48</sup> C155 - Occupational Safety and Health Convention, 1981 (No. 155), Convention concerning Occupational Safety and Health and the Working Environment (Entry into force: 11 Aug 1983).

<sup>49</sup> C161 - [Occupational Health Services Convention, 1985 \(No. 161\)](#).

<sup>50</sup> C162 - [Asbestos Convention, 1986 \(No. 162\)](#).

<sup>51</sup> C170 - Chemicals Convention, 1990 (No. 170) Convention concerning Safety in the use of Chemicals at Work (Entry into force: 04 Nov 1993).

<sup>52</sup> C174 - [Prevention of Major Industrial Accidents Convention, 1993 \(No. 174\)](#).

<sup>53</sup> C183 - [Maternity Protection Convention, 2000 \(No. 183\)](#).

<sup>54</sup> C187 - [Promotional Framework for Occupational Safety and Health Convention, 2006 \(No. 187\)](#).

- 9.1.8. Failing to safely store, treat, and dispose of chemicals and other hazardous materials;
- 9.1.9. Failing to ensure that each chemical used or stored in the facility that appears on a hazardous substances inventory list, has an individual Safety Data Sheet with hazard information, and providing this information to all exposed Employees;
- 9.1.10. Failing to ensure that buildings and structures are safe and healthful facilities, including required lighting, ventilation and air conditioning.
- 9.1.11. Failing to ensure that required personal protective equipment is provided and used when hazards cannot be controlled by engineering and administrative controls.
- 9.1.12. Failing to ensure that Employees are provided with understandable information, and participate in regular comprehensive trainings related to the specific hazards to which they are exposed;
- 9.1.13. Failing to ensure that Employees participate in factory-level health and safety committees, and are provided with the training, authority and paid release time necessary for them to effectively perform assigned committee tasks;
- 9.1.14. Failing to ensure that Employees are able to exercise their right to refuse dangerous and unhealthy work without reprisal or discrimination by their employer.

## 10. No abusive termination of employment

(Relevant ILO Convention: 158<sup>55</sup>)

The Employees involved in the production of the Goods must not have their employment terminated unless there is a valid reason for such termination based on the capacity or conduct of the worker or on the operational requirements of the Factory.

- 10.1. Examples of violations include, but are not limited to the following. A worker's employment must not be terminated because the worker:
  - 10.1.1. Is a member of an Employees' organisation, participates in activities of an Employees' organisation outside working hours or, with the consent of the employer, within working hours;
  - 10.1.2. Seeks office as, or acts or has acted in the capacity of, an Employees' representative;
  - 10.1.3. Files a complaint or participates in proceedings against an employer involving alleged violations of laws or regulations or recourse to competent administrative authorities;
  - 10.1.4. Identifies as a particular race, colour, sex, sexual orientation, marital status, religion, political persuasion, national extraction or social origin
  - 10.1.5. Is pregnant or has certain family responsibilities;
  - 10.1.6. Is absent from work during maternity leave;
  - 10.1.7. Is temporarily absent from work because of illness or injury.

## 11. Legal wages

(Relevant ILO Conventions :No. 95<sup>56</sup> , No. 131<sup>57</sup> ; ILO Recommendations 131<sup>58</sup> and 135<sup>59</sup>)

<sup>55</sup>C158 - Termination of Employment Convention, 1982 (No. 158), Convention concerning Termination of Employment at the Initiative of the Employer (Entry into force: 23 Nov 1985).

<sup>56</sup>C095 - Protection of Wages Convention, 1949 (No. 95), Convention concerning the Protection of Wages (Entry into force: 24 Sep 1952).

<sup>57</sup>C131 - Minimum Wage Fixing Convention, 1970 (No. 131), Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (Entry into force: 29 Apr 1972).

<sup>58</sup>R131 - Recommendation concerning Invalidity, Old-Age and Survivors' Benefits.

<sup>59</sup>R135 - Minimum Wage Fixing Recommendation, 1970 (No. 135).

The Goods must be produced by Employees who receive the remuneration to which they are legally entitled.

11.1. Examples of non-compliances include but are not limited to:

- 11.1.1. Payment of wages and benefits to Employees that are less than those defined in applicable domestic laws, including those relating to minimum wages, overtime hours and benefits.
- 11.1.2. The use of wage deductions as a disciplinary measure or for reasons not provided for by domestic law without the express permission of the worker concerned
- 11.1.3. Failure to provide a worker complete and accurate written information about employment conditions in respect to wages before beginning of employment.
- 11.1.4. Failure to provide pay slips with all legally required information, including details of the gross wages for the pay period and the taxes and any other deductions for the pay period concerned.
- 11.1.5. Failure to provide a worker with a legally required permanent contract.

## 12. Living wages

(Art. 23 Universal Declaration of Human Rights)

The Goods should be produced by Employees who receive a living wage.

- 12.1. For the purposes of the Code a “living wage” means a “take home” or “net” wage (excluding any taxes, bonuses, allowances, or overtime wages) earned during a country’s regular legal maximum work-week (not exceeding 48 hours), which is sufficient to pay for the basic needs (housing, energy, nutrition, clothing, health care, education, potable water, childcare, and transportation) of a family of four people, and includes an additional 10% of the cost of basic needs as discretionary income.

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