

Electronics Watch Contract Conditions

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1. Purpose

- 1.1. The Electronics Watch Contract Conditions (hereafter, the Conditions) may be included in contracts between the Client, a contracting or framework authority that is an Affiliate of Electronics Watch, and the Contractor, involving the provision of Goods and/or Services that are within the scope of monitoring performed by Electronics Watch.
- 1.2. Because the effectiveness of the Conditions is dependent upon compliance with them, they should only be included in contracts where there is a will and capacity to do so. This may be done directly by the Client or in cooperation with a Monitor.
- 1.3. The Conditions may be included in whole or in part in the Contract, as deemed appropriate by the Client and in accordance with its internal policies and legal obligations. Guidance on the application of the Conditions, the priority of individual clauses, and proportionality considerations will be made available separately.
- 1.4. The Conditions are designed to function in a system with the Electronics Watch Code. However, the Conditions may be used in conjunction with an equivalent code of conduct¹ if inclusion of the Electronics Watch Code is not possible.

2. Definitions

- 2.1. Terms used in the Conditions, the Electronics Watch Code, and the corresponding explanatory texts are defined in Appendix I. For terms defined in the singular form, the same meaning shall apply in the plural form.

3. General obligations

- 3.1. The Contractor shall fulfil the Contract in accordance with the Commitments enumerated in the Code.
- 3.2. The Contractor shall comply with all applicable laws in all jurisdictions where the works and services rendered under the Contract are performed. Whenever international and domestic standards differ, the standard that affords the greater protection to Rightsholders shall apply unless doing so directly violates domestic law in the relevant jurisdiction.

¹ An equivalent code is one that requires Contractor compliance with all applicable domestic laws in production countries and to respect internationally recognised human rights, labour rights, and environmental rights articulated in relevant International Standards. Please see the Commitments in the Electronics Watch Code and the relevant International Standards in the explanatory guidance for further information.

- 3.3. Nothing in the Conditions shall prevent the Parties from fulfilling existing obligations and responsibilities in accordance with applicable national and international law and associated contractual obligations.

4. Due diligence

- 4.1. In performing its obligations under the Contract, the Contractor shall implement Human Rights Due Diligence (HRDD) in a manner aligned with established international guidelines, including the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. This includes but is not limited to the following:

- 4.1.1. establishing and maintaining an HRDD process for identifying, preventing, mitigating and accounting for the potential and actual adverse impacts of its activities on Rightsholders, including those directly and indirectly affected by its operations and supply chains in relation to the Subject-Matter of the Contract; and

- 4.2. The Client shall support the Contractor in fulfilling its HRDD obligations, which include providing for, or cooperating in, access to Remedy ² for adverse human rights impacts that it has caused or to which it has contributed and acknowledging and operationalising the principle of Shared Responsibility in its contracts.

5. Disclosure and reporting

- 5.1. The Contractor shall disclose:
- 5.1.1. actual and potential adverse human rights impacts at Production Sites and any breaches of the Code or these Conditions to the Client in writing within 20 business days of having identified or been made aware of these; and
- 5.1.2. its commitments on Remedy and/or corrective action to reverse adverse human rights impacts at Production Sites to the Client in writing within 20 business days of these having been decided.
- 5.2. If the Contractor is unable to fulfil any of the obligations described in the Conditions in full or in part, a written explanation shall be provided to the Client, upon request, describing the measures taken and obstacles to compliance.

6. Exercising responsible business conduct

- 6.1. In relation to the Goods and/or Services of the Contract, both the Contractor and the Client shall engage in responsible sourcing and purchasing practices which, at a minimum, include the following.

² Access to effective remedy is a human right referenced in Article 8 of the Universal Declaration of Human Rights (1948), Article 2(3) of the International Covenant on Civil and Political Rights (1966), and Pillar 3 of the UN Guiding Principles on Business and Human Rights (2011), among others.

- 6.1.1. delivery schedules and payment terms that address risks and negative impacts to Rightsholders, are transparent, and support the proportionate transfer of risk throughout the supply chain, and
 - 6.1.2. costing procedures that cover all labour costs and account for potential increases therein as a result of changes to national minimum wages, social insurance payments, laws concerning occupational health and safety requirements, and/or collective bargaining agreements.
- 6.2. Responsible sourcing and purchasing practices should be communicated to the other party and discussed, upon request.

7. Compliance monitoring

- 7.1. The Client shall monitor compliance with the Code and the Conditions during the performance of the Contract. It may do so directly and/or indirectly with Monitors.
- 7.2. The Contractor shall cooperate with compliance investigations and support effective Operational-Level Grievance Mechanisms, whether these are undertaken by the Client, a Monitor or an independent third party, and participate in Meaningful Stakeholder Engagement, as appropriate.
- 7.3. To enable compliance monitoring, the Contractor shall take reasonable and proportionate endeavours to achieve both of the following provisions:
- 7.3.1. Provide data requested by the Client to assess compliance with the Conditions, including a list of the Production Sites in supply chain tier(s) [...] ³ linked to the top [...] ⁴ product models (by spend volume) purchased on the Contract. Data provided in the list may be shared confidentially with Monitors. If the Contractor is unable to fulfil this obligation in part or in full, a written explanation shall be provided to the Client describing the measures taken and obstacles to compliance. The list of Production Sites shall:
 - a. be provided in the format requested by the Client;
 - b. include the legal names and complete physical addresses of the identified Production Sites; and
 - c. indicate the specific product model or component produced at each site.
 - 7.3.2. Ensure that Whistleblowers and Rightsholders who participate in audits and investigations, Worker Representatives, and Workers who express grievances to their employers, co-workers, public authorities and/or other third parties will be protected from retaliation, intimidation, threats and other reprisals.

³ Before including the Conditions in a procurement, the Client should replace [...] with the number(s) of the tier(s) for which data should be provided, e.g., tier 1, or tiers 1 and 2.

⁴ Before publishing the Conditions in a procurement, the Client should replace [...] with the appropriate number of products, with respect for the size of the contract and the principle of proportionality.

- 7.4. The Contractor and the Client shall exercise their respective leverage, including commercially viable incentives and contractual rights, over Suppliers to support compliance with the Code and these Conditions, and to facilitate Supplier cooperation with compliance investigations, Meaningful Stakeholder Engagement and access to Remedy.

8. Managing non-compliance

- 8.1. The Contractor and the Client shall demonstrate a commitment to continuous improvement throughout the performance of the Contract for the benefit of Rightsholders.
- 8.2. For any identified non-compliances with the Code and/or Conditions:
- 8.2.1. The Contractor shall address the non-compliances as effectively and efficiently as possible.
 - 8.2.2. Where legitimate obstacles to achieving full or timely compliance have been identified by the Contractor and are recognised by the Client, the Parties shall collaborate to develop an action plan. The action plan shall identify timebound measures to be undertaken by the Contractor. These measures shall be reasonable and proportionate to the severity of the non-compliances, taking into account the obstacles.
 - 8.2.3. The Contractor shall implement the action plan according to the agreed time frame and any associated reporting requirements.
- 8.3. If the Contractor does not fulfil the obligations stipulated in clauses [7.2 – 7.4 and 8.1 – 8.2], the Client may impose sanctions, such as fines, exemption from future contracts or call-offs (in the case of framework agreements), as agreed within the Terms and Conditions of the Contract.
- 8.4. In the instance of recurring or severe non-compliances, when appropriate alternative actions have been exhausted, the Client may terminate the Contract as a last resort. In that case, the Client shall assess the real and potential adverse impacts of contract termination on Rightsholders in the supply chain and disengage responsibly, taking measures to mitigate adverse impacts.

Appendix I: Definitions

“Affiliate” refers to affiliated members of Electronics Watch.

“Child Labour” refers to any work or activity conducted by persons under the age of 18 that deprives them of their childhood, their potential or their dignity, is harmful to their physical or mental development, and/or interferes with their schooling. The latter includes preventing them from attending school, obliging them to leave school prematurely, or requiring them to combine long and heavy work with school attendance.⁵

“Client” refers to the contracting or framework authority to which Goods or Services will be provided by the Contractor, in accordance with the Contract.

“Code” refers to the code of conduct included in the Contract, which may be the Electronics Watch Code or an equivalent code.⁶

“Commitments” refers to the obligations described in the Code that the Contractor pledges to uphold in the performance of the Contract.

“Conditions” refer the Electronics Watch Contract Conditions.

“Contract” refers to the legally binding agreement between the Client and the Contractor and the terms and conditions thereof.

“Contract of Employment” refers to a contract of service or apprenticeship, whether express or implied and, if it is express, whether agreed orally or in writing.

“Contractor” refers to the business enterprise that enters into the Contract with the Client for the provision Goods or Services.

“Electronics Watch” refers to Stichting Electronics Watch Foundation, a not-for-profit public benefit organisation whose registered office is Kingsfordweg 151, 1043 GR Amsterdam, The Netherlands.

“Employer” refers to a legal person or entity that employs Workers, directly or indirectly, to perform formal or informal work. This includes private employment, state-owned enterprises, and recruitment agencies, among others.

“Goods” refers to the products provided by the Contractor and those related to their provision, including the component parts and the raw materials (e.g., minerals) necessary for their production, that

⁵ This definition is consistent with guidance from the ILO. See, “What is child labour,” available at: <https://www.ilo.org/international-programme-elimination-child-labour-ipecc/what-child-labour>. Accessed in December 2024.

⁶ See Footnote 1 in the Electronics Watch Contract Conditions.

represent the Subject-Matter of the Contract. The Goods may be supplied permanently or temporarily, as part of a service contract.

“Human Rights Due Diligence” refers to the risk-based process through which business enterprises and other actors identify and respond to actual and potential negative impacts on Rightsholders in their operations and supply chains.

“International Standards” refers to conventions, protocols, recommendations and other instruments, whether binding or nonbinding, issued or adopted by international bodies.

“Meaningful Stakeholder Engagement” refers to responsive, ongoing, and interactive processes of engagement with relevant stakeholders, including Rightsholders, their representatives (e.g., trade unions and other Worker Representatives), and civil society organisations, that are characterised by two-way communication and depend on the good faith of participants on both sides.^{7,8}

“Monitor” refers to any party retained by the Client to monitor compliance with the Code during the performance of the Contract. A Monitor may be retained directly or indirectly (e.g., as a Supplier or partner), as part of a shared services arrangement, or through other means, such as a Memorandum of Understanding.

“Operational-Level Grievance Mechanism”, or OLGM, refers to a formalised means through which individuals or groups can raise concerns about the impact an enterprise has on them and can seek remedy. OLGMs support the identification of adverse human rights impacts as a part of due diligence and support these being addressed and remediated.⁹

“Parties” refers to the parties to the Contract, i.e., the Client and the Contractor.

“Production Site” refers to a factory, mine or other site where the Goods or Services provided by the Contractor and products related to their provision, including the components thereof, are assembled, manufactured or mined.

“Recruitment fee” refers to any fees or costs incurred in the recruitment process in order for a Worker to secure employment or placement, regardless of the manner, time or location of their imposition or collection.¹⁰

“Remedy” refers both to the process of counteracting negative impacts on rightsholders, sometimes described as making them whole, and the substantive outcomes thereof. The term “remediation” refers solely to the remedy process whereas the term “reparations” refers solely to its outcomes. Rightsholders that have experienced harms have the right to an effective remedy.

⁷ OECD (2018), *Due Diligence Guidance for Responsible Business Conduct*, OECD Publishing, Paris, <https://doi.org/10.1787/15f5f4b3-en>.

⁸ OECD (2011), *OECD Guidelines for Multinational Enterprises*, Commentary on General Policies, para 25.

⁹ OHCHR (2012), *The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, p. 68,, and UN (2011), *Guiding Principles on Business and Human Rights*, p. 32.

¹⁰ General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs. International Labour Office - Fundamental Principles and Rights at Work Branch, Labour Migration Branch – Geneva: ILO, 2019.

“Rightsholders” refers to individuals and social groups that have particular entitlements in relation to specific duty-bearers. The obligations of duty-bearers are defined in human rights law, including in such texts as the Universal Declaration of Human Rights. In the context of responsible business conduct, rightsholders such as Workers, vulnerable groups among them (e.g., migrant workers, temporary workers, and women workers), communities located near Production Sites, and those where Workers and their families reside, are given specific consideration as their rights are likely to be impacted by the business operations.

“Services” refers to transactions provided in exchange for money that are not governed by the roles relating to the freedom of movement for goods, capital and persons and that represent the Subject-Matter of the Contract. Services may include goods provided as-a-service, for instance, through leasing, temporary use, hosting and other similar arrangements. When it includes goods provided as-a-service, then “Services” refers to those goods themselves and the component parts and raw materials necessary for their production.

“Shared Responsibility” is a principle that recognises the need for mutual accountability among the parties to an activity with inherent risk and the allocation of tasks between them. It is operationalised in the Contract through language that prevents the Client or the Contractor from transferring their HRDD obligations to the other party or to third parties, e.g., by automatically rendering the contract void in the case of a compliance breach.

“Supplier” refers to any party that performs works or renders services related to the provision of the Goods and Services that comprise the Subject-Matter of the Contract. Suppliers include parties with a direct contractual relationship to the Contractor and others involved with any tier of the production process, including but not limited to assembly, manufacturing, and mining.

“Subject-Matter of the Contract” refers to all works performed, and services rendered under the Contract for the benefit of the Client, including the Goods and Services provided by the Contractor and products related to their provision. Applicable legislation in different jurisdictions may further describe the term.

“Whistleblower” refers to someone who informs on an individual, group or organisation engaging in illegal or unethical activity.

“Worker” refers to any individual who has entered into or works under (or, where the employment has ceased, worked under) a Contract of Employment with the Contractor or a Supplier, and job seekers, as well as those who are self-employed working in cooperatives. Workers include all those involved in the production of the Goods and Services provided on the Contract, including their assembly, the manufacture of their component parts, and the extraction and transformation of the raw materials necessary for their production, such as employees, subcontractors, agency and other forms of temporary labour, trainees, interns and apprentices.

“Worker Representative” refers to an individual or body, including a trade unions and health and safety committees, that is democratically elected by Workers to represent them and their interests in particular forums or processes.

“Working Day” refers to any day other than a weekend or a bank or public holiday in the jurisdiction under which the Contract is governed.¹¹

¹¹ Note: the definition should mirror the definition of "days" in the underlying contract.