

# Contract Tool

## How are solid business agreements and contracts made?

Based on research, although everything may seem to be in order on paper, in reality, legitimate business structures may be used to hide the evidence of exploitation. This tool will help your company strengthen your business agreement and contracts through which to gain more control over your supply chains. Limiting the number of layers in your supply chain, using services of only legally operating and registered employment and recruitment agencies, establishing communications channels through which to report misconduct and introducing contractual clauses that specifically address the risks related to labour exploitation are strong measures both to prevent exploitation and to demonstrate your company's values to employees and stakeholders. This tool is for proactive and value-driven businesses who wish to go the extra mile to minimise the risk of becoming involved in labour exploitation or even trafficking.

**Step 1:** If your company uses a supplier / contractor / agency, check whether the company operates legally (e.g., is registered in the relevant state-run registers) and require or seek assurances that the company is not involved in an ongoing criminal case through, e.g., state-operated registers or via written testimonies. Companies may also request inspection reports from labour inspectorates if such inspections have been carried out. Ongoing criminal investigations are not publicly available information.

**Step 2:** Define your company policy for the use of suppliers and subcontractors with the help of the Strategy Tool on p. 32. Determine the obligations and requirements of the contractual partners, e.g., whether contractors can further contract out the work to subcontractors and if so, what kind of terms and conditions should be agreed upon in writing; should they be approved by your company before doing so? Should the same terms of employment apply to all layers of subcontracting? How do you intend to monitor your contractors and their possible subcontractors?

**Step 3:** Makes sure that the obligations and requirements are part of a written contract. Put the company policy in writing and consider including permanent clauses in the contracts with subcontractors and other partners. The items listed below are topics and possible measures that your company could take to decrease the risk of labour exploitation in supply and subcontracting chains. They are intended to inspire preventive action and need to be discussed with your company's legal team. The line of business and the size of the company determine the level of detail your company should apply in drafting contracts with business partners and subcontractors.

**Note:** *Businesses themselves are responsible for aligning the clauses with the national regulations related to, e.g., commercial confidential information and personal data protection. See the FLOW-publication "Normative Framework Guide" for examples of contractual clauses and more information on how to interpret the GDPR rules when drafting this type of contracts. It is recommended that the Contracting Party and its contractual partners secure written consents from data subjects. In the absence of written consents, the documentation should be required to be received after prior anonymization.*



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## Pointers for your consideration when drafting contractual clauses

- Ensure that labour exploitation or trafficking will not be tolerated.
- Ensure that the contractor has not been found guilty of any crimes in the past.
- Insist that the contractors familiarise themselves with your company's strategy on the prevention of labour exploitation and trafficking.
- Oblige contractors to inform their and their subcontractor's foreign employees of their rights and obligations as employees in the country they work in, in a language that they understand. To make sure that that employees have been informed correctly, request that a copy of the discussed rights and obligations be sent to your company (note that these could be fabricated, and that this measure alone does not guarantee that a company would not violate labour rights).
- Insist that contractual partners ensure that workers employed by them (including their subcontractors) have all necessary permits for work and the working conditions and pay are relative to those of the labour market in the country they work in.
- Ensure that recruitment agencies/subcontractors do not charge posted or temporary workers any recruitment fees.
- Make the contractor responsible for ensuring that any subcontractors fulfil the same requirements and obligations as those applying to the contractor.
- Compel contractual partners to monitor both their and their subcontractors' operations.
- Insist that contractual partners address possible breaches of contract in their subcontracting chains immediately and guarantee that the transpired misconduct is handled in a way that does not place any extra burden on the worker and that the worker has access to any due compensation and remedies.
- Give your company access at any time to information/documentation from the contractor showing that requirements and obligations are fulfilled, e.g., proof of paid salaries and working hours.
- Give the right to contact workers on your jobsites of the contractual partner or its subcontractors without prior notice in order to get information on the working conditions.

- Give your company access to the contractor's premises and/or site of work, in order to conduct inspections/workplace assessments/audits to ensure the contractor adheres to the Supplier Code of Conduct principles. In the contract, make sure that audits can be carried out by yourself but also by an external/3rd party on your behalf. Also make sure that in the case of an audit carried out by an external/3rd party, the contracting party is prevented from pressing for an NDA (non-disclosure agreement) that makes the whole audit pointless due to the number of restrictions as to what can be disclosed in the internal post-audit report.
- Allow the contracts to be revoked or terminated immediately if serious violations are identified. In less serious cases of infringement, consider the option of giving an agreed length of time to correct the situation, and if the conduct does not improve, and the clauses are systematically and intentionally violated, the contract can be revoked or terminated immediately. Before terminating a contract, it is important to consider what possible repercussions this action can have so that possible victims of exploitation are not in further harm and that exploitation will not continue elsewhere or in other forms after the termination of the contract.

**Step 4:** Draft a clear strategy on how to deal with possible breaches of contract. Consider different scenarios where a breach of contract/exploitation is identified by either your staff, staff working in the supply chain or by authorities. Ensure rapid responses to breaches of contract. Depending on national legislation, breaches of labour law might not be punished under criminal law, whereas severe labour exploitation and trafficking crimes are punishable offences that might include prison sentences. The repercussions for victims of trafficking are often severe, and the victims are entitled to receive state-funded specialised support services. Thus, it is important for businesses to have a clear strategy on how to deal with different scenarios of exploitation.

Sanctions from breaches of labour law remain small, making labour exploitation a relatively risk-free and high-profit endeavour. Some businesses have introduced their own sanction models to prevent the grey economy and at the same time safeguard workers' rights. The next box outlines an example where a company uses fines when they observe violations by their sub-contracting partners.

