

## IDH SUSTAINABLE TRADE INITIATIVE GENERAL TERMS AND CONDITIONS

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*These General Terms and Conditions of IDH Sustainable Trade Initiative ("IDH") state the rights and obligations of both the contracting party and IDH regarding their cooperation in general. Specific rights and obligations are agreed to in a separate agreement between the contracting party and IDH.*

## IDH General Terms and Conditions

### I. GENERAL CONDITIONS

#### 1. DEFINITIONS

1.1. In these General Terms and Conditions of IDH Sustainable Trade Initiative, the following definitions apply:

**"IDH"**: Stichting IDH Sustainable Trade Initiative, a foundation under the laws of the Netherlands, registered with the Dutch Chamber of Commerce under number 53521129, having its registered office and its place of business at Arthur van Schendelstraat 500 (3511 MH) Utrecht, the Netherlands.

**"Contracting Party"**: The party (or parties) engaging in a contract with IDH.

**"Party" / "Parties"**: IDH and the Contracting Party individually and collectively.

**"Affiliates"**: affiliates and/or subsidiaries (*groeps- en/of dochtervennootschappen*) within the definition of section 2:24 a and b of the Dutch Civil Code (*Burgerlijk Wetboek*);

**"IDH General Terms and Conditions"**: The terms & conditions in this document.

**"Specific Agreement"**: Separate contract (and all amendments thereto) between IDH and the Contracting Party in which IDH and the Contracting Party agree to the implementation or execution of a certain Project or activities.

**"Entire Agreement"**: The IDH General Terms and Conditions and the Specific Agreement together, as well as any annexes or other documents and terms and conditions which are applicable to the relationship between IDH and the Contracting Party ('Additional Conditions') and to which the Specific Agreement expressly refers.

**"Program"**: The sector Program(s) that IDH operates in and concerning which the Contracting Party and IDH are entering into agreement.

**"Project"**: The activities agreed to in the Specific Agreement.

**"Guidelines"**: IDH Guidelines for Planning and Reporting, including audit instructions attached to this document. This is a separate document containing the terms and conditions specific to planning and reporting activities relating to the Project.

**2. APPLICABILITY OF THE IDH GENERAL TERMS AND CONDITIONS**

- 2.1 The IDH General Terms and Conditions apply to the Entire Agreement between the Contracting Party and IDH. The applicability of any of the Contracting Party's conditions or other conditions is expressly excluded.
- 2.2 IDH has the right to change or add to the IDH General Terms and Conditions. IDH will notify the Contracting Party of any changes and/or additions before they take effect.
- 2.3 In case of inconsistencies between the General Terms & Conditions, the Specific Agreement and/or the Proposal, the Specific Agreement will prevail over the General Terms & Conditions. The General Terms & Conditions will prevail over the Proposal.

**3. LIMITATION OF LIABILITY**

- 3.1 IDH cannot be held liable if - for whatsoever reason - the objectives of the Project and/or Program have not been met nor can it be held liable for any other damages resulting from the performance of the Project by either Party or any third party involved, including any infringement of intellectual property rights of the Contracting Party. In addition, either Party's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions or damage ensuing from claims by third parties - whether based on contract, tort or otherwise - shall be excluded. The limitations of liability mentioned in this clause, or elsewhere in the Entire Agreement, shall not apply if and insofar as the damage or injury is the result of the willful intent or deliberate recklessness by the Parties or their executives.

**4. FRAUD AND CORRUPTION**

- 4.1 The Parties are aware of the IDH Code of Conduct (which can be found [here](https://www.idhsustainabletrade.com/about-idh/), or via the 'Organization' tab on the 'About IDH' webpage: <https://www.idhsustainabletrade.com/about-idh/>). The IDH Code of Conduct provides the ethical framework in which IDH and any party contracted by IDH must operate. It provides an overview of the values, commitments, responsibilities and integrity that IDH stands for. IDH expects its business partners to apply similar standards of conduct when working for IDH.
- 4.2 The Parties will not offer to third parties or seek or accept from third parties, for themselves or for any other party, any gift, remuneration, compensation or benefit of any kind whatsoever, which would be deemed corrupt or illegal.
- 4.3 The Parties will refrain from providing any form of support to activities that have the goal of undermining the political independence of a state, or unlawfully overthrowing a lawful government. The

'lawfulness' (or unlawfulness) referred to in this clause is not solely defined by the opinions or views of the government in question, but is also defined by international standards and/or international law.

- 4.4 IDH partners and persons associated with IDH projects who become aware or suspect the existence of fraud, corruption or bribery shall bring it to the attention of IDH.

**5. PRIVACY**

- 5.1 The privacy statement for business partners and consultants can be found [here](https://www.idhsustainabletrade.com/about-idh/) or via the 'Our Policies' tab on the 'About' webpage: <https://www.idhsustainabletrade.com/about-idh/>.

**6. ICSR**

- 6.1 The Contracting Party must cooperate in the Program in a manner that is compatible with the *ICSR Policy* of IDH, which can be found [here](https://www.idhsustainabletrade.com/about-idh/), or via the 'Our Policies' tab on the 'About' webpage: <https://www.idhsustainabletrade.com/about-idh/>.

**7. COMPETITION COMPLIANCE**

- 7.1 The Contracting Party specifically acknowledges that IDH works in compliance with competition laws and principles as set out in IDH's *Competition Compliance Policy*, (which can be found [here](https://www.idhsustainabletrade.com/about-idh/), or via the 'Organization' tab on the 'About IDH' webpage: <https://www.idhsustainabletrade.com/about-idh/>). IDH and the Contracting Party, individually and collectively, shall not engage in any behavior that restricts competition. IDH and the Contracting Party are free to enter into any agreements with third parties.

**II. PROJECT IMPLEMENTATION**

**8. IMPLEMENTATION RESPONSIBILITIES**

- 8.1 The Party liable for the implementation of the Project is agreed to in the Specific Agreement. That Party must do so with the necessary care and transparency, and in accordance with the terms and conditions of the Entire Agreement.

**9. DELAYS, UNFORSEEN CIRCUMSTANCES, CHANGES TO IMPLEMENTATION**

- 9.1 The Parties are obliged to promptly inform each other and consult with each other regarding any (suspected) changes in circumstances or irregularities that may affect the implementation of the Project as is agreed in the Specific Agreement, and/or affect compliance with the IDH General Terms and Conditions. Such notifications should include the financial interests involved (if applicable) as well as mitigating measures taken.

9.2 IDH may request changes to the implementation of the Project if IDH's donors request changes to policy that affect the implementation, or if they request changes to the Project specifically. Any changes will be discussed between the Parties and must be agreed to in writing before they take effect. If the Parties cannot reach agreement on the changes referred to in this clause, each Party has the right to terminate the Agreement without the risk of incurring liability for damages or compensation.

#### **10. COMPLIANCE WITH LOCAL LAWS**

10.1 In the execution of the Project, the Contracting Party must comply with all applicable laws and respect internationally recognized human rights, multilateral environmental agreements and internationally agreed core labor standards.

10.2 In the event of conflict between applicable laws and internationally recognized human rights, multilateral environmental agreements and/or internationally agreed core labor standards, the Contracting Party shall seek ways to respect the principles of internationally recognized human rights, multilateral environmental agreements and/or internationally agreed core labor standards to the greatest extent possible given the circumstances.

10.3 In case a breach of article 10.1 occurs or such actual or potential conflict, as referred to in article 10.2, arises under the Entire Agreement, the Contracting Party shall immediately inform IDH in writing of the breach or of the actual or potential conflict and must request IDH's approval prior to continuing the Project.

#### **11. THIRD PARTY COMPLIANCE**

11.1 The Contracting Party will not assign the Entire Agreement or transfer any right or obligation thereunder to an Affiliate or any third party without the prior written consent of IDH.

11.2 The Contracting Party will ensure that any and all of the terms and conditions in the Entire Agreement shall be incorporated in equivalent contract terms in any sub-contract between the Contracting Party and a third party related to the execution of activities by the Contracting Party under the Entire Agreement. Any engagement of the Contracting Party with third parties in relation to the Specific Agreement must be in writing and will not relieve the Contracting Party of its responsibility for the third parties' performance.

#### **12. INSURANCES**

12.1 The Contracting Party is responsible for its own insurances, social premiums, income tax and any other levies related to the Project regarding its performance of the activities related to its roles and responsibilities under the Entire Agreement.

#### **13. GOOD ADMINISTRATION**

13.1 In order to provide proof that the activities under the Project have indeed been implemented as agreed to between IDH and the Contracting Party, as well as for the purpose of good governance in general, the Contracting Party is required to have and maintain a proper and transparent (financial) administration and management.

#### **14. RIGHT TO AN ADDITIONAL AUDIT**

14.1 IDH, or any third party nominated by IDH, shall have the right to carry out audits of the Contracting Party's and/or subcontracted third parties' records to verify compliance with the provisions of the Entire Agreement, as may be relevant. IDH shall further be entitled to carry out audits of the Contracting Party's and/or subcontracted third parties' books and records insofar as they relate to payments made or to be made to the Contracting Party under the Entire Agreement and the manner in which the said amounts have been allocated by the Contracting Party. In this respect, IDH, or any third party nominated by IDH, shall have access to all records, including systems and computers where information is stored electronically, and to all other material and records related to the performance of the Entire Agreement. Such information will be treated as confidential and will be used exclusively for auditing. Information once verified will not be used for any other purpose without the prior written consent of the party to whom it relates. For the avoidance of doubt, IDH's right to audit as set out in this clause does not affect any obligation for the Contracting Party to submit an audited report on the Project, if the requirement of audited report on the Project is agreed to between the Parties in the Specific Agreement.

14.2 The Contracting Party shall maintain the material and records referred to in clause 14.1 until expiry of a period of two (2) years from the date of termination of the Entire Agreement or for the length of time required under the applicable law, whichever is longer.

14.3 Any costs related to an additional audit referred to in 14.1 shall be agreed to between the Parties in writing.

### **III. FINANCIAL CONDITIONS**

#### **15. (CO-)FUNDING BY IDH**

15.1 Any funding provided by IDH is subject to IDH's principles on co-funding as described in the Entire Agreement.

15.2 Co-funding by IDH must be allocated to Project activities that have either already taken place or are anticipated during the Project term and agreed to in the Specific Contract, based on actual costs incurred,

up to the total maximum amount agreed to in the Specific Agreement.

15.3 IDH's co-funding contribution shall at all times be proportionate to and dependent on the Contracting Party's contribution, to the extent that IDH's contribution shall never exceed the ratio between IDH's contribution and the Contracting Party's contribution as defined in the Entire Agreement and specified in the Project budget.

15.4 IDH reserves the right to adjust any future installments due to the Contracting Party, or to reassign or reclaim any amount of its contribution to the Project already transferred to the Contracting Party, in the event that, without the prior written consent of IDH: the Contracting Party does not fulfil, or not fulfil on time, its obligations under the Entire Agreement; the Contracting Party deviates from the Specific Agreement and in particular if the Contracting Party spends IDH's contribution to the Project other than as agreed to in the Specific Agreement; the Project is funded by third parties which third party funding was not known to IDH and which has consequences for the Project budget.

15.5 Due to IDH's principles on co-funding, payment of IDH's co-funding contribution is conditional to reports submitted to IDH by the Contracting Party in accordance with the IDH Guidelines and the terms and conditions in the Entire Agreement, and approval of these reports by IDH. If (part of) this condition is not met, IDH reserves the right to make partial payment of its contribution or to suspend payment until compliance is achieved.

15.6 IDH has no VAT entrepreneurial status. The total amount of IDH's co-funding contribution agreed to in the Specific Agreement is the maximum contribution from IDH and cannot be increased by any applicable VAT, other taxes or amount unless a budget increase is specifically agreed to between the Contracting Party and IDH. Furthermore, any applicable taxes that are reclaimable by the Contracting Party are not eligible for co-funding by IDH.

15.7 Any amount of the funds provided by IDH that are left unspent upon ending or termination of the Specific Agreement and/or any payments transferred by IDH to the Contracting Party in excess of the agreed Project budget in the Specific Agreement shall be returned by the Contracting Party to IDH within 60 days of ending or termination of the Specific Agreement. At the expiry of this period, the amount in question shall accrue interest at Euribor rate per annum. All judicial and extrajudicial collection and other costs reasonably incurred by IDH as a result of the Contracting Party's failure to return the excess payment will be borne by the Contracting Party.

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15.8 Any funding provided by IDH is subject to the condition that IDH reserves the right to request repayment of any amount paid but not yet spent in the event IDH's donors terminate their funding of IDH and request repayment. For the interpretation of this clause, "funds spent" is defined as expenditures agreed to in the Specific Agreement, reported on by the Contracting Party and approval of these reports by IDH.

### 16. EXCHANGE RATES

16.1 For all contributions provided to the Contracting Party by IDH, the exchange rate of the day of receipt by the Contracting Party of the IDH's contribution(s) is applicable. The applicable exchange rate must be included in the financial reports that the Contracting Party must provide to IDH under the terms and conditions of the Entire Agreement.

### 17. TRANSFER OF FUNDS & PAYMENT CONDITIONS

16.1 Payment requests sent to IDH by the Contracting Party must contain the total amount to be transferred and a reference to the IDH contract number and the Project budget period the payment relates to. Payment will be made by IDH within 45 days after receiving a payment request, provided the payment request and the reporting from the Contracting Party is in accordance with the terms and conditions in the Entire Agreement.

16.2 IDH is an organization that is dependent on funding from multiple donors and subject to various levels of (government) approvals for payments. IDH will use its best efforts to transfer the payment to the Contracting Party on time in accordance with the Entire Agreement. However, a late payment by IDH, notwithstanding IDH's best efforts, that is later than 45 days but no more than 60 days later than the date of the payment request, will not be considered a breach of the Entire Agreement. For payments received later than 60 days, the Contracting Party reserves the right to adapt the planning of the Project to ensure, to the extent possible, uninterrupted delivery of the objectives of the Project. The Contracting Party must notify IDH of the adapted planning as soon as possible.

## IV. PLANNING & REPORTING

### 18. REPORTING GUIDELINES

18.1 The Contracting Party must report to IDH in accordance with the Guidelines in a full and timely manner, unless the Specific Agreement states otherwise.

18.2 IDH reserves the right to amend the Guidelines unilaterally if changed circumstances give reason to such amendment and the Contracting Party can reasonably be expected to accept such an amendment. Before the amended Guidelines take

effect, IDH will inform the Contracting Party of the changes and give the Contracting Party reasonable time to review the amended Guidelines.

#### **19. 'IATI' COMPLIANCE**

19.1 The Contracting Party acknowledges that IDH is required to comply with the International Aid Transparency Initiative (IATI) Standard. The IATI Standard is a framework for publishing information on development cooperation activities in a timely, comprehensive and forward-looking manner (see <http://iatiregistry.org/>). The IATI Standard requires publication of data about both the organization(s) involved in development cooperation activities such as the Project, and the development cooperation activities (the Project) carried out by that organization. For the purpose of meeting the IATI Standard within the scope of the terms and conditions of the Entire Agreement, and notwithstanding the agreed confidentiality thereof, IDH retains the right to publish aggregated Project results, data and other relevant Project information on an aggregated Program level. In practice this will entail that the results based on a Program's KPIs as well as the total contributions per commodity (Program) per country will be published on IDH's website.

#### **V. CONFIDENTIALITY**

##### **20. CONFIDENTIALITY**

20.1 In the course of agreeing and implementing the Project, the Parties may receive and become aware of information (such as but not limited to projects, practices, and customer or potential customer information) that is sensitive and confidential in nature. Any information and knowledge shared, obtained before, during or after the Entire Agreement, with the exception of the existence of the Entire Agreement and the purpose thereof, shall be treated confidentially and may not be stored or shared with any other organization without the prior written consent of the other Party.

#### **VI. INTELLECTUAL PROPERTY**

##### **21. INTELLECTUAL PROPERTY**

21.1 If IDH's donors, or the governments they may relate to, request use of reports, documentation, studies, publications, logo's or other material that is Arising Intellectual Property belonging (jointly) to IDH or free to use by IDH, IDH is free to share such information with the donor freely and without the consent of the Contracting Party.

21.2 Nothing contained in this Entire Agreement shall affect the absolute and unfettered rights of each Party in all materials, inventions, discoveries and intellectual property owned or controlled by that Party independently of the subject matter of the

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Entire Agreement (the "**Background Intellectual Property**").

21.3 Each Party (the "**Indemnifying Party**") will indemnify and hold the other Party (the "**Indemnified Party**") harmless from claims of third parties as a consequence of infringement of intellectual property rights of said third party, provided that the Indemnified Party informs the Indemnifying Party immediately in writing of the existence and content of the alleged right to claim. The aforementioned obligation to indemnify and hold harmless lapses if and insofar as the concerned infringement is related to modifications in the intellectual property rights made by the Indemnified Parties, or by third parties mandated by the Indemnified Party.

#### **VII. PUBLICATIONS / COMMUNICATION**

##### **22. COMMUNICATION**

22.1 Communication on the IDH funded and/or by IDH managed projects will be done in close collaboration with IDH. The Contracting Party shall give IDH a reasonable period of time to review intended communications and must receive IDH's approval in writing prior to any external communication regarding the Program or Project. In the event that the Program or Project is mentioned publically, the Contracting Party shall mention IDH or the Program or Project, using IDH's logo. IDH reserves the right to use the logo of the Contracting Party on its website and in publications related to the Program or Project.

22.2 The Parties shall only take position on behalf of any of the other Party with that other Party's prior written consent.

22.3 Subject to the terms and conditions regarding confidentiality in these IDH General Terms and Conditions, the Parties may communicate the existence of their cooperation under the Entire Agreement on their website and may inform other parties of its purpose, but the Parties shall refrain from mentioning anything relating to the content of the Entire Agreement. The Parties agree that these communications shall be driven and focused on the Program's objectives. IDH will take all necessary precautions to ensure that sensitive information will not be shared with anyone outside of IDH, especially with potential competitors.

##### **23. LEARNING**

23.1 By participating in the Project, the Parties commit to participate in the learning activities that are part of the Program and Project. The Parties shall share lessons learned and relevant Project information including digital data with each other for the benefit of the Project. IDH has access to this information for inter- and cross-sectoral learning purposes. IDH will take all necessary precautions to ensure that

confidential information will not be shared with anybody outside of IDH.

## **VIII. TERM & TERMINATION**

### **24. TERM**

24.1 The Entire Agreement takes effect on the starting date agreed to between the Parties in the Specific Agreement. The Entire Agreement ends on the end date agreed to between the Parties in the Specific Agreement or if the Entire Agreement is terminated in accordance with the terms and conditions in the Entire Agreement. If the end date agreed to in the Specific Agreement is exceeded yet the reporting obligations of the Contracting Party have not been met, the terms and conditions related to reporting on the Project will remain in effect until all obligations have been met by the Contracting Party or the Entire Agreement is terminated, whichever is earlier. Continuation of implementation activities after the end date in the Specific Agreement will explicitly not be covered by this Entire Agreement and will not be eligible for (co-)funding from IDH.

### **25. AMENDMENT & TERMINATION**

25.1 The terms and conditions of the Specific Agreement can be amended only if the Parties agree to such amendment in writing.

25.2 IDH is an organization that is dependent on funding from multiple donors. In the event that IDH's donors terminate or materially change their funding of IDH, IDH and the Contracting Party individually and collectively have the right to terminate the Entire Agreement with immediate effect and without the risk of incurring liability for damages or compensation.

25.3 If a breach of any terms of the Entire Agreement, suspected fraud, or other illegitimate circumstances exist to such an extent that IDH considers the Contracting Party to be at fault or grossly negligent and further continuation of the Project is not possible or of too much risk, IDH shall be entitled to terminate the Entire Agreement without the risk of incurring liability for damages or compensation. Written notice of termination shall be provided, stating the applicable circumstances. Funding provided by IDH to the Contracting Party must be returned to IDH under the terms and conditions of clause 15.7 of these IDH General Terms and Conditions.

25.4 The Entire Agreement may be terminated in writing with immediate effect and at any time if:

- a. a receiver is appointed for a Party or its property,
- b. a Party makes an assignment for the benefit of its creditors,

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- c. proceedings are commenced by or for a Party under any bankruptcy, insolvency, or debtor's relief law,
- d. a Party liquidates or dissolves or attempts to do so,
- e. a Party assigns or purports to assign (part of) the Entire Agreement in breach of its provisions,
- f. a Party commits any other breach of a material obligation hereunder which it fails to cure within 30 calendar days of written notice or which is by its nature incurable; or
- g. a Party undergoes a change in control.

## **IX. APPLICABLE LAW & DISPUTE RESOLUTION**

### **26. APPLICABLE LAW**

26.1 The Entire Agreement is governed by the laws of the Netherlands.

### **27. DISPUTE RESOLUTION**

27.1 Any dispute arising from or in connection with this Agreement which cannot be resolved amicably shall be submitted exclusively to the district court in Utrecht, the Netherlands, and each Party to this Agreement hereby submits irrevocably to the jurisdiction of such court.