



Cloud elements for 'The Nose'  
Reference no.: 122205

**AGREEMENT ON PRODUCTION  
OF CLOUD ELEMENTS FOR  
'THE NOSE'**

**between:**

[...]

(hereafter referred to as the Supplier)

**and**

THE ROYAL DANISH THEATRE

(hereafter referred to as the Client)



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# THE ROYAL DANISH THEATRE

Scenic Design



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## List of Appendices

- Appendix 1: The project description and specifications; and model/reference photos.
  - Appendix 2: Technical Drawings
  - Appendix 3: Response Form Tender submission letter and qualifications *[to be completed by Tenderer]*
  - Appendix 4: Response Form Total price *[to be completed by Tenderer]*
  - Appendix 5: Response Form Solemn Declaration *[to be completed by Tenderer]*
  - Appendix 6: Samples list (description of the samples acquired) *[to be submitted by Tenderer]*
  - Appendix 7: Other parts of the Supplier's Tender] *[if relevant]*
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**1. PURPOSE AND SCOPE OF THE AGREEMENT**

**1.1 Purpose and scope**

The Client has a requirement for the production of Cloud elements for ‘The Nose’.

**1.2 Delivery deadline**

Delivery	March 7, 2022
Assembly (only work days)	March 7-11, 2022

**1.3 Execution**

The Supplier will start production immediately on signing this Agreement, and in accordance with the Agreement and enclosures

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## **2. GENERAL PROVISIONS**

### **2.1 Definitions**

The Agreement means this agreement together with any appendices, enclosures and any additions or amendments that have been agreed in writing.

The Client is The Royal Danish Theatre, reg. Nr. 10842255

The Delivery is the description of the delivery that shall be delivered in accordance with the Agreement.

The Parties are the Client and the Supplier (each of them referred to as a Party).

The Supplier is xxxxxx, company reg. no. xxxxxxxxxxxx.

The Supplier's Tender means the Supplier's tender dated [xx.xx.]2019.

### **2.2 Precedence of Documents**

In the event of any conflict between the documents, the documents shall apply in the following order of priority:

- The Agreement (without appendices)
- Appendix 1: The project description and specifications; and model/reference photos.
- Appendix 2: Technical Drawings
- Appendix 3: Response Form Tender submission letter and qualifications *[to be completed by Tenderer]*
- Appendix 4: Response Form Total price *[to be completed by Tenderer]*
- Appendix 5: Response Form Solemn Declaration *[to be completed by Tenderer]*
- Appendix 6: Samples list (description of the samples acquired) *[to be submitted by Tenderer]*
- Appendix 7: Other parts of the Supplier's Tender] *[if relevant]*

### **2.3 General**

These terms and conditions apply for the purchase of Cloud elements for 'The Nose'

By submitting the Supplier's Tender and signing the Agreement, the Supplier has accepted the terms and conditions of the Agreement. Any deviating terms and conditions will be invalid for the Parties unless the Client has accepted these in writing.

The Supplier's own terms and conditions included in any accompanying documents, order confirmations or invoices will not be accepted.

## 2.4 The Parties' contact persons

Each Party shall appoint a contact person who will be authorised to act on behalf of the Party in all matters relating to implementation of the Agreement.

Each Party shall also appoint a person who, on behalf of the Party, shall be responsible for the execution of the installation work and be available to the other Party during the installation phase until actual delivery has taken place.

The contact persons at the Client are listed in the table below:

Name:	Email:	Role / title:	Telephone:
Martin Ilsøe	mils@kglteater.dk	Production Manager	+45 2551 7925

Contact persons/key personnel of the Supplier are as follows:

Name:	Email:	Role/title:	Telephone:

## 2.5 Communication

Communication concerning the Agreement shall be directed to the Parties' contact persons. Questions shall be answered without undue delay.

## 2.6 Status Meetings

Status meetings between the Parties are to be held as specified by the Client in Appendix 1 (project description and specifications) or as otherwise agreed between the Parties.

## 3. THE SUPPLIER'S GENERAL OBLIGATIONS

The Supplier shall carry out the Delivery with the degree of professional competence that can be expected of reputable suppliers within the equivalent or similar industry. The Delivery shall be in accordance with the requirements of the Agreement, and shall comply with all requirements regarding the nature, amount and quality, as stipulated in the Agreement. The Delivery shall be appropriate for the intended purpose and be free of legal deficiencies of all kinds.

The Delivery shall be carried out in accordance with applicable laws and regulations, including any applicable occupational health and safety regulations, and shall be carried out professionally, documented and/or controlled by qualified and authorized personnel where this is required. The Supplier shall obtain and maintain all necessary permits in connection with the completion of the Delivery, and shall, at the Client's request, provide documentation that necessary permits have been obtained.

The Client shall not be deemed to be the employer of the Supplier's personnel, even if such personnel carry out services in cooperation with the Client.

#### **4. TIME SCHEDULE**

The Delivery shall be carried out in accordance with the time schedule specified by the Client in Appendix 1 (project description and specifications); the delivery is stated in the Agreement with enclosures, any other deliveries shall be agreed in writing and shall be enclosed with the Agreement.

#### **5. TERMS OF DELIVERY**

The Delivery shall be appropriately packed, labelled and delivered free to the Client's goods receipt ready to unload within **Week 10, 2022**, at **Operaen, Ekvipagemestervej 10, 1438 Copenhagen K. Specific date to be agreed.**

The Supplier must be present when the Delivery is unloaded, and the risk related to the Delivery is transferred from the Supplier to the Client after the unloading has been successfully completed.

#### **6. CHANGES**

Any changes of the Delivery or the terms of the Agreement must be approved by both Parties in the form of a written change order before implementation.

#### **7. INSPECTION OF THE MATERIAL BEFORE DELIVERY**

Due to the description in Appendix 1, section 2 Work Process, supervision and inspection will be scheduled. The Supplier is obligated to arrange for supervision and inspection to be carried out. The Client is responsible for his own costs associated with inspection.

#### **8. THE SUPPLIER'S PERSONNEL AND SUBCONTRACTORS**

The Supplier is responsible for ensuring that specialist personnel have the official approvals, trade certificates, machinery operator certificates and other certificates that are necessary for completion of the Delivery. The Client has the right on request to control such information.

##### **8.1 Work permits**

The Supplier shall ensure that all personnel who carry out work under this Agreement have a valid work permit.

##### **8.2 Working hours**

The Supplier is obligated to ensure compliance with statutory requirements regarding working hours and overtime.



### **8.3 Time sheets**

When the Delivery, or parts of the Delivery, are paid according to the actual time spent, the Supplier's personnel shall fill out time sheets on a daily basis. If the time sheet is signed by a representative of the Client, the signature is only a confirmation of the time worked in connection with the Agreement, and does not entail an approval of cost.

### **8.4 Subcontractors**

The Supplier is entitled to use subcontractors for the performance of the Agreement.

If the Supplier – in connection with fulfillment of the technical minimum requirements for tender submission – has relied on the professional experience of other entities regarding the performance of certain deliveries, such deliveries must be performed by the entity on which the Supplier has relied when performing the Agreement.

The Supplier's use of subcontractors shall entail no limitation of the Supplier's responsibility for the performance of this Agreement. The Supplier shall be liable for the deliveries performed by subcontractors under the Agreement in entirely the same way as for the Supplier's own deliveries.

The Supplier shall be obliged to inform the Client of the name, contact details and legal representative of any of the Supplier's subcontractors for the performance of the Agreement.

## **9. LABOUR CLAUSE**

In accordance with ILO Convention no. 94 about work clauses in public contracts, the Supplier shall ensure that workers employed by the Supplier and any Subcontractors who contribute to the performance of the Agreement are secured pay, including special allowances, hours of work and other working conditions which are not less favourable than those established for work of the same character under a collective agreement entered into by the most representative organisations of workers and employers in Denmark in the trade or industry concerned being in force throughout the territory of Denmark.

The Supplier and any Subcontractors shall ensure that the workers are informed of the provisions of this labour clause.

“Contribute to the performance of the Agreement” shall mean work performed in Denmark for the performance of the Agreement.

The Client shall be entitled at any time to request relevant documentation of compliance with the conditions of pay and work for the workers as stipulated in this labour clause.

The Supplier shall ensure that any information in the material about the workers' racial or ethnic origin, political opinions, religious or philosophical beliefs, information about health or sex life, significant social problems and other strictly private matters is concealed/deleted before the material is submitted to the Client.

If the Supplier neglects its duty to provide the documentation required by the Client, the Client shall be entitled, at the expiry of a specified reasonable time-limit, to impose a penalty of DKK 1,000 per day on the Supplier until the documentation required has been duly provided to the Client.

For its assessment of whether the Supplier or Subcontractors have complied with this labour clause, the Client may seek advice from relevant employer organisations and/or labour organisations.

If the Supplier fails to comply with this obligation, and if such non-compliance results in a legitimate claim for further pay to the workers, the Client shall be entitled to withhold payments to the Supplier in order to ensure the satisfaction of such claim.

## **10. CORPORATE SOCIAL RESPONSIBILITY (CSR)**

In the performance of the Agreement the Supplier shall respect CSR by observing the principles of the UN Global Compact initiative and the provisions of ILO conventions Nos. 1, 26, 29, 30, 87, 98, 105, 131, 135, 138, 155 and 182. The Supplier may i.e. not make use of forced and child labour in contravention of these conventions.

Furthermore, the Supplier shall work against corruption and any other illegitimate influence in all its forms.

With respect to these obligations the Supplier is responsible for acts or defaults of any subcontractors, who contribute to the performance of the Agreement, as if they were the acts or defaults of the Supplier.

If the Supplier becomes aware of non-compliance in regard to the CSR requirements, or if proceedings are brought against the Supplier for such violation related to the CSR requirements, the Supplier must immediately, on its own initiative, inform the Client.

The Client is at any time entitled to request relevant documentation of compliance with the CSR requirements. However, as a general rule, the Client will not request documentation that the Supplier complies with the CSR requirements in the performance of the Agreement unless prompted by special circumstances, such as a suspicion based on actual observations and/or indications.

Relevant documentation shall as a minimum include a written statement and documentation of the production processes and / or methods used in manufacturing or delivering the Deliverables and of the materials used in the Deliverables.

The Supplier shall further state whether its own actions, including its choice of subcontractors or components, may have an impact on the compliance with the CSR requirements.

The written statement shall also describe any specific actions or measures taken by the Supplier to fulfil the CSR requirements and to reduce the risk of non-compliance.

The Supplier shall provide such documentation within 14 (fourteen) Days upon the Client's request. In case of subcontractors the same relevant documentation must be submitted within reasonable time, however no later than 42 (forty-two) Days upon the Client's request. In special circumstances the time limit can be extended by the Client upon a written and signed request from the Supplier stating the reasons.

On the basis of the written statement and documentation, etc., and taking all relevant circumstances into consideration, the Client will make an assessment of the individual incident.

**11. HANDOVER**

Unless otherwise agreed, a handover in order to ensure that the Delivery is in accordance with the Agreement shall be conducted immediately after assembly. Both Parties must be represented when the handover is carried out. Any shortcomings/deficiencies will be registered in the shortage list in a handover form and the shortcomings/deficiencies must be rectified without undue delay by the Supplier.

The Supplier is aware that there will be limited time for rectifications, as the place of delivery, cf. clause 5, may have limited space and rehearsals may start immediately after assembly. The Supplier must adjust to the circumstances.

The Supplier shall be liable for any deficiencies in accordance with clause 20.3 and 20.4, irrespective of whether or not the deficiencies have been stated in the shortage list.

**12. COMPLETED IN ACCORDANCE WITH THE SCHEDULE**

The Supplier shall provide the Client with written notification when the Delivery is completed, including a written statement of rectification of any shortcomings/deficiencies noted in the shortage list at handover, cf. clause 11.

Provided that any such shortcoming/deficiencies have been rectified, the Client will confirm in writing that the Delivery is considered completed.

**13. LIABILITY PRIOR TO UNLOADING OF DELIVERY**

The Supplier is liable for any damage to the Delivery that occurs before the risk passes from the Supplier to the Client, cf. clause 5; unless the Client has caused the damage or a person for whom the Client is responsible has caused this.

The Client may claim compensation for loss suffered as a result of damage to the Client's own property due to the Supplier. Such compensation is limited to direct loss, unless the Supplier or a person for whom the Supplier is responsible has demonstrated gross negligence or willful intent.

**14. PRICES**

The total price for the Delivery is stated in Appendix 4 (Response Form).

All prices are given in Danish kroner (DKK), exclusive of VAT, and shall cover all the Supplier's costs for completion of the Delivery, including all construction and assembling assistance required, as well as transportation, administration and invoicing costs, any customs duties, fees or taxes etc.

Exchange rate fluctuations do not entail any change of the contract prices.

The Supplier is solely responsible for any payments to any of the Supplier's subcontractors.

To the extent that the service is priced per hour (i.e. in case of any extra work not included in the initial specifications of the Delivery), the applicable rate per hour shall be based on the rates per hour stated in Appendix 4 (response form). The Client shall not pay overtime or compensation for work in the evening, at night or on public holidays.

Unless otherwise stated in Appendix 4 (Response Form), prices and hourly rates are fixed for the duration of the Agreement.

## **15. TRAVEL EXPENSES**

The Parties will cover their own costs in connection with travel/meetings related to implementation of the Agreement.

## **16. TERMS OF PAYMENT**

Upon the Client's written confirmation of completion, cf. clause 12 the Supplier shall be entitled to a payment corresponding to the total amount of the "offered price for complete delivery" stated by the Supplier in Appendix 4 (response form).

Following signing of this Agreement and upon the Supplier's written request, the Supplier shall be entitled to receive a prepayment of an amount to be decided by the Supplier up to a maximum of 50 % of the total amount of the "offered price for complete delivery" stated in the foregoing paragraph. However, such prepayment shall only be made against an on-demand bank guarantee being issued in favor of the Client in an amount corresponding to the full amount of the prepayment. The on-demand bank guarantee shall be issued by a bank acceptable to the Client and on terms acceptable to the Client. The on-demand bank guarantee shall be valid until the Client's written confirmation of completion, cf. clause 12.

In case the Client has made a prepayment to the Supplier, such prepayment shall be deducted from the Client's payment upon the Client's written confirmation of completion, cf. the first paragraph of this clause 16.

Payment shall be made within 30 days of the date of a correct invoice.

All invoices must specify the contract number and clearly state to what the amount applies. The Client has the right to return invoices that do not meet the specification requirements.

Payment of an invoice does not equate to acceptance of the invoice data. Disputed claims will not be due for payment until agreement has been reached, or before any legally binding judgment has been pronounced.

The Client can deduct from received invoices prepayments, conventional penalties incurred, disputed or insufficiently documented items in invoice amounts.

In the event of default, the Client can withhold the payment, corresponding to the amount that the default appears to constitute of the total payment.

The Supplier shall send the final invoice within 30 days after the end of the contract period. The final invoice shall cover all the Supplier's claims under the Agreement. Claims not included in the final invoice cannot be made later. The invoice must be marked "Final invoice".

**17. DELAYED PAYMENT**

In the event of late payment, the Client shall pay late payment interest on the due amount pursuant to “Lov om renter ved forsinket betaling mv.” (Danish interest act in the event of delayed payment).

**18. MEETINGS AND REPORTING**

Regular meetings for supervision and inspection shall be held between the Parties to ensure the correct fulfilment of the contractual obligation, as described in Appendix 1, section 2 Work Process.

**19. REPORTING TO PUBLIC AUTHORITIES**

It is the Supplier's responsibility to ensure that public authorities and institutions acting on behalf of public authorities receive statutory information in connection with the Delivery. The Supplier is obligated to ensure that subcontractors in descending line report to public authorities in accordance with applicable laws and regulations.

The Client shall be indemnified for any costs incurred by the Client as a result of the Supplier's failure to comply with laws, regulations or agreements. The Client reserves the right to offset such costs together with an administration fee against amounts the Supplier may have outstanding from the Client.

**20. BREACH OF CONTRACT**

**20.1 Delay**

A delay will exist if the Supplier fails to deliver at the agreed time or if the Delivery is not qualitatively or quantitatively in accordance with the Agreement, unless the delay is due to the Client's circumstances.

If the Supplier's execution of the Delivery has such defects that the Client's purpose with the Delivery is essentially no longer relevant, the Client may regard this as a delay.

If the Client, after supervision meetings is concerned about progress in the workflow according to delivery time, and the Supplier is in lack of documentation and proof of ability to comply, as described in Appendix 1, section 2 Work progress, this will also be regarded as a delay.

**20.2 Effects of delay**

The Client can claim indemnification of any loss suffered due to the delay. Such compensation is limited to direct loss unless the Supplier or a person for whom the Supplier is responsible has demonstrated gross negligence or willful intent.

The Client may terminate the Agreement if the delay entails a material breach of contract.

In the event of delay or assumed delay, the Supplier shall notify the Client of this in writing without undue delay. Such notification must state the reason for the delay and when the Delivery will be implemented.

If the Client does not receive such notification within a reasonable period after the Supplier became aware of or should have been aware of the hindrance, the Client can demand indemnification of loss that could have been avoided if the notification had arrived in time.

### **20.3 Deficiencies**

The Supplier will be liable for any deficiency in the Delivery and its implementation, provided that the deficiency is not due to the Client or any circumstance for which the Client is liable.

The Client shall make a complaint in writing within a reasonable period of time after the deficiency has been discovered, and no later than 3 months after the Client's confirmation of completed Delivery, cf. clause 12. The notification of complaint must contain a description of the deficiency. A corresponding complaint deadline concerning the rectification work runs from the time the rectification work has been completed. The deadlines for complaints will not run as long as rectification or other such activity is being carried out that is necessary for the correct performance of the Agreement.

### **20.4 Effects of deficiencies**

If the Client submits a complaint, the Supplier shall begin to rectify the deficiency immediately. Rectification shall be carried out at no cost to the Client, and without the Client's normal business being subjected to a disadvantage to a greater extent than is reasonable.

Rectification shall be carried out where the Delivery is located, unless otherwise agreed between the Parties. If the material is sent to the Supplier for repair or replacement, the Supplier will be liable for the costs related to this.

If repair cannot be carried out without significant disadvantage for the Client, the Supplier must redeliver.

If the Supplier has not rectified the deficiency within a reasonable time, the Client will be entitled to carry out rectification or make a replacement purchase for the Supplier's expense and risk, or to claim a reduction in price. The same applies if it will be a significant disadvantage to the Client to await the Supplier's rectification. In such cases, the Supplier shall be informed in writing before rectification is carried out. The Supplier must be aware of the limitations of space and time described in clause '11. Handover'.

The Client may claim compensation for loss suffered as a result of a deficiency. Such compensation is limited to direct loss, unless the Supplier or a person for whom he is responsible has demonstrated gross negligence or willful intent.

The Client can terminate the Agreement if the deficiency entails a material breach of contract. In such cases, the Client can oppose the Supplier's offer of rectification.

## **20.5 Indemnification**

The Client's right to compensation is independent of any other claims the Client may make as a result of the breach of contract or whether such claims can be made.

## **20.6 Material breach of contract**

The Supplier's bankruptcy, insolvency, breach of other material economic conditions, repeated breaches of instructions or infringement of public laws and regulations, fraud, negligence or other circumstances that breach the relationship with the Client, or any delay or failure that results in non-achievement of the Client's purpose with the Agreement, will always constitute a material breach of contract. The list in this clause is not to be considered exhaustive in relation to assessment of what constitutes a material breach of contract.

## **21. FORCE MAJEURE**

The Parties shall not be held liable for any delays or deficiencies if it is proved that they are due to an impediment outside the control of the Parties and which they could not reasonably be expected to take into account during the term of the Agreement or to have avoided or overcome the consequences thereof.

If the delay or deficiency concerns a third party whom the Supplier has commissioned to fulfil the Delivery in full or in part, the Supplier will be free of liability only if the third party would also be exempted in accordance with the previous clause. The same applies if the delay or deficiency is due to a supplier that the Supplier has used or to another person in an earlier stage of the sales channel.

If the Force Majeure situation lasts longer than 60 days, the Parties will have the right to terminate the Agreement by giving written notification of this to the other party.

## **22. INSURANCE**

The Supplier is obligated to take out, and maintain at his own expense, insurance cover, including product liability insurance, adapted to the Supplier's business activity and the nature of the Delivery.

The Supplier is obligated to take out and maintain insurance cover for any damage and liability that may arise during fulfilment of the Agreement.

The Supplier is obligated to have satisfactory accident insurance and statutory employee insurance for his employees.

The Client can demand to see documentation of the insurance cover and the extent of the insurance.

## **23. INDEMNIFICATION**

The Supplier shall indemnify the Client for any claim arising from damage to the Supplier's property and any claims from his own or a third party's personnel.

The Supplier shall indemnify the Client for damage to property or persons due to the fact that the Delivery does not comply with the safety standards and requirements that the Client could reasonably have expected.

When assessing the level of safety that could have been expected, all aspects related to the Delivery, its presentation, marketing and expected use will be taken into account.

The Parties shall notify each other when claims relating to the other Party are made by a third party.

#### **24. CONFIDENTIALITY**

The Supplier and the Supplier's personnel are required to treat all information about the Client and the Agreement as confidential, even after the contractual relationship has ended.

The Supplier must not disclose the conclusion of this Agreement or use the Client as a reference without the Client's written consent. Consent will not be refused without due reason.

Breach of this provision will be deemed to be material breach of contract.

#### **25. ASSIGNMENT OF THE CONTRACT**

The Client may assign its rights and obligations under the Agreement, in full or in part, provided that the Client can prove that the acquirer has the financial resources required to fulfil the Client's obligations under the Agreement.

The Supplier may not assign or pledge the Agreement, part of or interest therein, without the Client's consent. Such consent cannot be refused without a valid reason.

#### **26. APPLICABLE LAW AND RESOLUTION OF DISPUTES**

The Agreement shall be subject in all respects to Danish law, substantive as well as procedural, however excluding rules on the choice-of-law.

Attempts shall be made to resolve any dispute between the Parties through negotiation. If no solution is obtained, the case shall be referred for resolution to an ordinary court of law.

The place of jurisdiction is the Client's legal venue.



**27. SIGNATURE**

2 - two - identical copies of this Agreement have been drawn up of which the Parties have retained 1 - one - copy each.

Dato:     /   -2021

Dato:     /   -2021

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The Client

The Supplier