

# GENERAL TERMS OF PURCHASING AND (SUB) CONTRACTING

General Terms of Purchasing and (Sub)Contracting Conditions of OTM-Projectadvies in Duiven, filed at the Chamber of Commerce in Rotterdam under number 55502113)

<b>GENERAL article 1: Applicability</b>					
1.1.	The Client is the natural or legal person using these General Terms of Purchasing and (Sub)Contracting. The other party shall be referred to as the Contractor. In these General Terms, 'work' shall also include the execution of Services.				
1.2.	Articles 1 to 16, inclusive, of these General Terms shall be applicable to all offers made to the Client and all agreements concluded with the Client and to all agreements that may result therefrom. If the offers or the agreements concluded also or exclusively concern (sub)contracting and/or execution of Services, articles 17 to 22, inclusive, of these General Terms shall apply as well.	<b>article 9: Confidentiality</b>			
1.3.	Any deviations from these General Terms of Purchasing and (Sub)Contracting shall only apply if the Client has provided the Contractor with written confirmation of these.	9.1	All Confidential Information which means and includes all information, documents, drawings, know-how, and knowledge etc. disclosed by the Client in whatever form to the Contractor, shall be kept secret and confidential and shall not be disclosed to others or used by the Contractor for any purpose other than for the purpose of executing his respective contractual obligations.	15.5	Without prejudice to the provisions of the previous paragraph, the Client shall at all times be entitled to deduct the social security contributions and wage tax amounts referred to above from the (sub)contract sum and to pay these directly to the Tax Collectors Office on behalf of the contractor.
1.4.	In the event of any conflicts between the contents of the agreement concluded between the Client and the Contractor on the one hand and these Terms & Conditions on the other, the provisions set out in the agreement shall take precedence.	9.2	The Confidential Information as meant in article 9.1 shall not be disclosed, directly or indirectly to any third party, without the express written consent of the Client. If for the execution of the agreement the Contractor needs to disclose the Confidential Information to its employees, the Contractor is obliged to bind its employees to the same confidentiality obligations as stipulated in this agreement, before the Confidential Information is disclosed to them.	<b>article 16: Applicable law and choice of forum</b>	
<b>article 2: Costs related to offers</b>	The Client shall not reimburse any costs made in connection with offers or quotations, also including the costs of advice, drawings etc. made by, or on behalf of, the Contractor.	9.3	If the Contractor has to disclose the Confidential Information as stipulated in article 9.1 to any third party (parties) in connection with the execution of his contractual obligations, he shall also bind such party (parties) to the same confidentiality obligations as stipulated in this article.	16.1	The law of the Netherlands is applicable.
<b>article 3: Delivery date and penalty</b>		9.4	The Contractor shall owe the Client a penalty payable on demand to the amount of 25% of the total order sum with a minimum of € 1.000,00, if it violates one or more of the aforementioned articles.	16.2	The Vienna Convention on Contracts for the International Sale of Products (CISG) is not applicable, nor is any other international regulation the exclusion of which is permissible.
3.1	Agreed upon delivery time and/work period are deemed final deadlines. If the Contractor exceeds the delivery time and/or work period, the Contractor shall be deemed to be in default. As soon as the Contractor has reasons to suspect that he will not be able to deliver, to deliver on time or to deliver duly, he shall inform the Client immediately.	9.5	The penalty referred to in article 9.4 may be claimed in addition to compensatory and complementary damages by virtue of the law. The Client shall be entitled to set off this penalty and/or these damages against the amounts owed to the Contractor.	16.3	Only the Dutch civil court that has jurisdiction in the place of establishment of the Client may take cognisance of disputes, unless this would be contrary to peremptory law. The Client may deviate from this rule of jurisdiction and apply the statutory rules concerning arbitration. The parties may agree a different form of dispute resolution such as arbitration or mediation.
3.2	The Contractor shall be liable for any damage and/or loss incurred as a result of a delay in delivery and/or work period as meant in article 3.1.	<b>article 10: Non-competition</b>		<b>(SUB)CONTRACTING/SERVICES</b>	
3.3	For each day of delay in delivery the Contractor is liable to pay the Client a penalty, payable on demand, of 5% of the agreed purchase order with a minimum of € 1.000,00 up to a maximum of 25% of the agreed purchase order.	10.1	Without the express written consent of the Client, the Contractor shall completely refrain from quotations and/or offers to the principal relating to the work, whether directly or via mediation by any third parties.	<b>article 17: Prohibition on Assignment/Pledging</b>	
3.4	The penalty referred to in article 3.3, may be claimed in addition to compensatory and complementary damages by virtue of the law. The Client is entitled to set off this penalty and/or these damages against the amounts owed to the Contractor.	<b>article 11: Appliances</b>		17.1	The Contractor shall be prohibited from assigning, pledging or transferring under any title whatsoever, the ownership of the social security contributions and wage tax due, included in the contract sum, for which the Client is liable pursuant to the Wages and Salaries and Social Security Contributions (Liability of Subcontractors) Act.
<b>article 4: Prices</b>		11.1	All appliances such as drawings, models, moulds, matrices and tools which Client puts at the disposal of the Contractor for the purpose of executing its respective contractual obligations shall remain or shall become under all circumstances the property of the Client. This also applies to the appliances, which Contractor especially made within the framework of the agreement irrespective of whether costs are charged to the Client for their production.	<b>article 18: Contractor's obligations</b>	
4.1	The prices referred to in the offer are based on delivery Free Domicile at the agreed place of delivery, "Delivered Duty Paid", in accordance with Incoterms 2010. All prices are firm, fixed, net of all duties and taxes and include adequate packaging.	11.2	All resources and all copies made of these must be made available to the Client or returned to the Client upon its first request.	18.1	The Contractor is obliged to: have a valid declaration of registration from the relevant Employee Insurance Schemes Administration Office (UWV), in so far as this is provided by the Office. The Contractor is obliged to show this registration form at the Client's request; at the request of the Client, provide the Client with a recent extract (no older than three months) from the Trade Register of the Chamber of Commerce; hand over to the Client a list of all employees to be employed for the work, as well as hand over once only for each employee (before the employee commences work) a copy of valid proof of identity and, upon request, payroll records; hand over to the Client a man-days register, which states for each employee the name, social security number, address, domicile, date of birth and number of hours worked and on which date;
4.2	Any increase in prices shall be borne by the Contractor, even after the agreement has been concluded. This applies regardless of the period elapsed between the date the agreement was concluded and its execution.	11.3	At Client's demand the appliances have to be clearly and indelibly marked as the property of the Client. The Contractor shall indicate the Client's ownership of these appliances to any third party that may wish to seize them.	18.2	strictly comply with all obligations regarding the employees employed by the Contractor;
<b>article 5: Transmission of risk</b>		11.4	Notwithstanding the stipulations in article 9 the Contractor shall not use the appliances for any purpose other than the performance of his contractual obligations. The Contractor shall not reveal the appliances to third parties without Client's express written permission. The Contractor shall bear the risk of loss of and/or damages to the appliances and shall at his own expense insure the appliances against these risks.	18.3	strictly perform all statutory obligations with respect to the payment of social security contributions and wage tax related to the work assigned to it and, furthermore, to strictly observe the applicable Collective Labour Agreement;
5.1	Delivery of Products shall be made Free Domicile at the agreed place of delivery, "Delivered Duty Paid", in accordance with Incoterms 2010.	<b>article 12: Liability</b>		18.4	automatically provide a periodic statement with respect to its payment of wage tax and social security contributions, as referred to in the guideline(s) established within the framework of the Wages and Salaries and Social Security Contributions (Liability of Subcontractors) Act;
5.2	If delivery "ex works" has been agreed upon and nevertheless the Contractor either transports or arranges for transport, the risk for loading and transport shall be borne by the Contractor.	12.1	The Contractor is fully liable for all direct and consequential losses, which may arise as a result of an attributable shortcoming or wrongful act of the Contractor, its staff or auxiliary persons. This also includes any loss arising as a result of the presence, use, delivery or removal of the property of the Contractor, its staff or other persons engaged by the Contractor in the execution of the order.	18.5	at the request of the Client, prepare weekly reports according to a model approved by the Client and to offer the weekly reports, completed and signed, to the Client every week for its approval;
5.3	If the Products are collected on behalf of the Client, the Contractor has to assist the Client with the loading free of charge.	12.2	The Contractor shall fully indemnify the Client against third-party claims for loss compensation as meant in the first paragraph.	18.6	if the Wages and Salaries and Social Security Contributions (Liability of Subcontractors) Act is applicable, set up its administration in such a way the following information can be instantly retrieved: <ul style="list-style-type: none"><li>- the agreement or the content of the agreement on the basis Contractor has performed the Work;</li><li>- the data/information concerning the fulfilment of the obligations under the agreement including a registration of the persons engaged and the days/hours during which those persons have carried out the work;</li><li>- the payments made under the agreement.</li></ul>
<b>article 6: Inspection and testing</b>		<b>article 13: Insurance</b>		18.7	to provide the Client, upon request, with all information for its own administration or the administration of its principal;
6.1	The Client, its principal and the Board of Directors of the work site shall at all times be entitled to inspect or test the Products ordered and/or delivered and the work and/or work in progress. In that case, the Contractor shall arrange for any facilities which may reasonably be required in connection with this.	13.1	The Contractor shall prove to the Client, upon its request and to the Client's satisfaction, that the Contractor has arranged, at its own expense, adequate insurance for any loss the Client might sustain as a result of acts or omissions of the Contractor and/or any third parties used.	18.8	if the Wages and Salaries and Social Security Contributions (Liability of Subcontractors) Act is applicable, have at its disposal the original escrow account agreement and to show this at the Client's request, unless parties have agreed that the Client shall deposit directly at the deposit held for the Contractor by the Tax Collectors Office.
6.2	The costs of the testing referred to in article 6.1 shall be borne by the Contractor, in the event that the Client and/or its principal and/or the Board of Directors of the work site rejects these Products/the work. Inspection or approval shall not release the Contractor from any warranty or liability arising under these General Terms of Purchasing, the agreement or the law.	<b>article 14: Warranty</b>		18.9	In case the Contractor has not, or not yet, complied with its obligations of paragraph 1, the Client shall only be obliged to make any payment after it has received the missing data and has processed these administratively, and/or the Contractor has complied with any of its other obligations.
<b>article 7: Rejection</b>		14.1	The Contractor gives warranty that all Products/the work provided by the Contractor comply with the agreement, be free from any faults or defects with respect to material, design and manufacturing for a period of 3 months after the Products/the work has been put into use or to a maximum of 15 months from the date of delivery.	<b>article 19: Organisation of the work</b>	
7.1	If the Products/the work delivered by the Contractor do not meet the requirements set in the order and/or the specification, the Contractor shall be entitled to reject these. Taking delivery or payment of the Products and/or the work does not imply approval thereof. Despite approval of the Products/the work, the costs and risks shall remain the Contractor's responsibility.	14.2	The Client shall repair all defects in the Products/the work which become apparent during the warranty period immediately and in consultation with the Client, or, at the Client's discretion, else replace the defective Products, work or parts of the work.	19.1	The Contractor shall be obliged to exclusively observe the Client's directions and instructions.
7.2	Should the Client reject delivered Products and/or the work, the Contractor shall within a period determined by the Client; <ul style="list-style-type: none"><li>• repair the Products/the work free of charge or, at Client's discretion;</li><li>• replace Products free of charge and/or carry out (or have carried out) the work in accordance with the agreement.</li></ul>	14.3	All Costs in connection with the repair or the replacement of the Products/the work shall be borne by the Contractor. Those costs include inter alia the costs for returning the Products/the work to operation after the aforementioned repair or replacement. If the Products/the work form part of a larger object, the costs in connection with returning said object to operation will also be borne by the Contractor.	19.2	The Client shall be authorised to deny the Contractor's employees access to the work or to arrange for their removal, on account of unsuitability, disorderly conduct, misconduct etc., without reimbursement of any damages / costs the Contractor may encounter as a result thereof.
7.3	If the Contractor does not, not within the set period, or not to the Client's satisfaction, meet its obligation referred to in article 7.2, the Client shall be entitled to carry out the activities referred to in article 7.2 by itself or to arrange repairs by a third party, at the Contractor's expense. The Client shall be entitled to set off the costs incurred against the amounts owed to the Contractor.	14.4	In case the Contractor does not fulfil his responsibilities as agreed within this article, the Client is entitled to rework or to subcontract the rework in order to fulfil the Contractor's warranty responsibilities at the Contractor's risk and expense. The Client shall be entitled to set off the costs incurred against the amounts owed to the Contractor.	19.3	The work and break times at the work site and the rest days or public holidays, vacations or other days off recognised generally or at the location of the work site, or prescribed by public authorities or pursuant to any Collective Labour Agreement, shall also apply to the Contractor and its employees who execute work at the work site. It shall not be possible for the Contractor to recover any losses arising from this from the Client. The latter shall also apply if the Contractor's services cannot be used on account of a strike or other causes evident at the Client or at third parties.
<b>article 8: Intellectual property rights</b>		<b>article 15: Payment</b>		19.4	Unless agreed otherwise, the Contractor is obliged to ensure, from commencement to completion of the work, that there is a regular foreman at the work site, with whom it shall be possible to make both organisational and technical arrangements. His name must be known to the persons or institutions designated by the Client.
8.1	"Intellectual Property Rights" are understood to include copyrights, database rights, industrial design rights, trademarks, patents, as well as the right to obtain these rights through petition, deposit, registration or any other means.	15.1	Payment will be effected within the agreed term of payment as much as possible, unless the Client has a complaint after taking delivery of the Products - including the corresponding documents - with regard to the quantity and/or quality of the consignment or if the consignment is rejected.	19.5	The Contractor should provide its employees with the correct means of personal protection and to supervise their (correct) use. Any costs arising from this shall be borne by the Contractor.
8.2	"Intellectual Property Rights to the Work" are all Intellectual Property Rights to the work, to the Products and to the resources such as drawings, models, moulds and equipment, formed during or for the execution of the agreement between Contractor and Client.	15.2	In the event of advance payment or periodic payment, the Client shall be entitled to demand a sufficient guarantee for delivery at Client's discretion. If the Contractor does not provide this within the set period, it shall immediately be in default. The Client shall in that case be entitled to rescind the agreement and to recover its losses from the Contractor.	19.6	Any required insurance as well as the excess of any CAR policy which may have been taken out with respect to the work site, shall be at the Contractor's expense.
8.3	All Intellectual Property Rights to the Work belong to the Client. The Contractor hereby nunc pro tunc transfers these rights insofar as possible to the Client and at first request of the Client the Contractor will without any delay carry out any additional actions required for said transfer.	15.3	The Client shall be entitled at all times to offset any amounts the parties may have to claim from each other.	19.7	The Contractor should arrange for such manpower that the execution of the work is completely adjusted to the planning established by the Client and that other work does not come to a halt. If the Client alters the planning/progress in the work, the Contractor shall be obliged to adjust itself to this. Man-
8.4	For the (transfer of) Intellectual Property Rights to the Work, the Client owes no compensation to the Contractor.	15.4	The Client reserves the right to pay the Contractor the social security contributions and wage tax owed by the Contractor with respect to the work, for which the Client is jointly and		
8.5	The Contractor guarantees its (moral) rights mentioned in article 25 clause 1 subsection a of the Copyrights Act. Insofar as changes in the work, the products or their name are concerned, the Contractor also relinquishes its (moral) rights mentioned in article 25 clause 1 subsections b and c of the Copyrights Act. The Contractor will not appeal to the powers granted in article 25 clause 4 of the Copyrights Act.				
8.6	The Contractor relinquishes its (moral) rights mentioned in article 25 clause 1 subsection a of the Copyrights Act. Insofar as changes in the work, the products or their name are concerned, the Contractor also relinquishes its (moral) rights mentioned in article 25 clause 1 subsections b and c of the Copyrights Act. The Contractor will not appeal to the powers granted in article 25 clause 4 of the Copyrights Act.				

*These conditions are a full translation of the Dutch version of our 'General Terms of Purchasing and (Sub)Contracting Conditions' as filed at the Chamber of Commerce in Rotterdam under number 55502113. Explanation and interpretation of the text of these Conditions shall be based on the Dutch text.*