

## GENERAL PURCHASING TERMS AND CONDITIONS AVAG

### **Article 1: Definitions**

In these general purchasing terms and conditions, the following definitions apply:

- Agreement:** All agreements between [.....] and the Counterparty, concerning the delivery of movable goods and/or the rendering of services by the Counterparty;
- Counterparty:** [.....] contractual contractor to the Agreement;
- Offer:** The Offer made by the Counterparty at the request of [.....], as described in more detail in Article 3 of these terms and conditions;
- Parties:** [.....] and the Counterparty;
- Terms and Conditions:** The provisions as recorded in these general purchasing terms and conditions.

### **Article 2: Scope**

1. These Terms and Conditions shall apply to all Offers and Agreements which [.....] acts as client and the Counterparty as seller or supplier, related to the purchase and delivery of goods, the performance of services and the contracting of work, unless explicitly agreed otherwise.
2. [.....] Terms and Conditions supersedes any conditions or stipulations of the Counterparty.
3. If any provision of these Terms and Conditions is wholly or partly null or void, the remaining provisions shall remain in full force and effect. [.....] and the Counterparty agree to replace the null or void provisions with a provision that they would have agreed upon if they had known the nullity or voidability.

### **Article 3: Offer**

1. Offer is understood to mean a proposal made in writing by the Counterparty at [.....] request. The Offer must include:
  - A description of the goods and/or services offered by the Counterparty;
  - The fee owed for the goods/or services offered;
  - The latest delivery period or latest delivery date of the goods and/or services offered;
  - Whether the Counterparty will use the services of any third parties to be engaged by the Counterparty ;
  - The corporate identity of the Counterparty.
2. Unless the parties have agreed otherwise in writing, an Offer made by the Counterparty is irrevocable for a period of 3 months after the Offer has been submitted to [.....].
3. [.....] is not obliged to award the Agreement to the lowest bidder. Also, [.....] is not required to provide any information about whether or not an Agreement has been issued.

### **Article 4: Conclusion of Agreement**

1. All Offer requests made by [.....] are without obligation and can only be regarded as an invitation to make a more detailed proposal, unless explicitly stated otherwise. The Agreement shall only be concluded at the moment that [.....] expressly confirms the acceptance of the Offer to the Contractor in writing by means of an order confirmation.
2. If [.....] sends the acceptance after the term described in article 3.2 of the Terms and Conditions or if the acceptance deviates from the Offer, the Agreement will be concluded in accordance with the acceptance made by [.....], unless the Counterparty objects to the acceptance in writing, stating reasons, within 5 working days of the date of acceptance. If the Parties do not reach agreement on the Offer as a result of the objection, no Agreement will be concluded and the Parties are not mutually obliged to pay any compensation for costs or damage.

## **Article 5: Performance**

1. The performance to be delivered by the Counterparty must comply with the following:
  - a. The reasonable expectations that [.....] may have of: quality, specifications under these Terms and Conditions and the description in the Offer;
  - b. The specification and/or description provided by [.....];
  - c. The time schedule or execution schedule issued or approved by [.....];
  - d. The requirement that the materials and raw materials used meet the agreed quality.
  - e. The (legal) requirements that can reasonably be set from the point of view of safety, welfare and the environment;
  - f. The requirement that the performance includes all applications for permits that are necessary for the execution of the Agreement;
  - g. The requirement that the persons to be engaged by the Counterparty are suitable for their task and have proper certifications in place if required.
2. Regardless of the engagement of third parties, the Counterparty remains fully liable for the execution of the Agreement.
3. The Counterparty is obliged to declare all obligations arising for the Counterparty from the Agreement, including these Terms and Conditions, applicable to all agreements that the Counterparty enters into with third parties in the context of the Agreement.
4. The Counterparty must immediately notify [.....] in writing of any circumstance that may affect the performance of the Agreement. As a result of this information, [.....] has the right, if necessary, to take necessary and reasonable measures and/or to demand changes to the Order at the expense of the Counterparty.
5. The execution of the Agreement by the Counterparty is deemed to have been accepted by [.....] if [.....] has notified the Counterparty in writing of its approval. An approval does not release the Counterparty from any liability for any defect in the services or goods provided with which [.....] could reasonably have been aware at the time of acceptance.

## **Article 6: Duration and termination of the Agreement**

1. An Agreement will end upon expiry of the period for which the Agreement was entered into or upon completion of the Agreement.
2. [.....] is entitled to terminate the Agreement by providing 2 months written notice to the Counterparty.
3. All debts owed to [.....] by the Counterparty shall become immediately due and payable in the following situations:
  - If after concluding the Agreement, [.....] becomes aware of circumstances that give [.....] good reason to fear that the Counterparty will not meet its obligations.
  - If [.....], upon conclusion of the Agreement, requested the other party to provide assurance with respect to its performance and this assurance is not forthcoming, or is insufficient.
  - If bankruptcy, suspension of payments or a statutory debt rescheduling of the Counterparty has been requested, any attachment has been imposed on the Counterparty or has been placed in receivership.
4. If the situations referred to in Article 6.3 should arise, [.....] is entitled to suspend any further performance of the Agreement or to terminate the Agreement, such without prejudice to [.....] right to claim compensation.
5. Except in the cases specifically mentioned in the Agreement, [.....] may prematurely dissolve the Agreement extrajudicially against payment of all performance already delivered by the Counterparty and accepted by [.....], increased by a reasonable compensation. This compensation may not exceed 10% of the remaining corresponding price.

### **Article 7: Delivery, Delivery Times and Commencement of Contracted Work**

1. The agreed delivery date may not be exceeded and any partial deliveries shall not be permitted, unless explicitly agreed otherwise in writing. If delivery should take place later than agreed, the Counterparty shall be immediately in default without any further notice of default being required by [.....].
2. The Counterparty is obliged to immediately, inform [.....] in writing if it foresees that delivery will be late, and provide reasons for such delay. Irrespective of [.....] right to damages, parties will discuss the manner in which the situation that has arisen can be settled to [.....] satisfaction.
3. All costs resulting from the delay in delivery are for the account of the Counterparty; including but not limited to down time and/or the involvement of additional man hours to finish the contracted project on time. Any penalty clause included in the Agreement does not affect the foregoing provision. If in an Agreement the delivery has been determined based on a number of workable days that have passed, the number of workable days already passed shall be determined by [.....].
4. A packing list must be present with the goods to be delivered. The Counterparty is obliged, if [.....] so wishes, to provide written production or implementation plans and/or to cooperate with progress control. If the delivery has not taken place at the place designated by [.....], [.....] is entitled to deduct the costs of transport from the place of delivery to the place designated by [.....] from the order sum.
5. The Counterparty is obliged to provide any documentation related to the goods to be supplied to [.....] prior to or upon delivery of the goods. The Counterparty shall ensure that the documentation is complete and understandable for [.....] and that it contains all information required for the use and maintenance of the goods. Any as-built drawings and cut sheets (data info) of the materials applied must be provided to [.....] within 30 days of delivery.
6. The ownership of the goods shall pass to [.....] after delivery. If the goods should be returned for reasons of faulty delivery and/or a delay in the delivery times, the delivery of the goods and the passing of ownership shall be regarded as never having occurred. The Counterparty shall waive any rights of retention or suspension of performance, right of recovery and/or retention of title and the right to set-off.

### **Article 8: Transport and Risk**

1. Until the time that the goods have been unloaded at the delivery address provided by [.....], or have been loaded by [.....] at the agreed pickup address, the goods are for the account and at the risk of the Counterparty. The Counterparty is obliged to insure the goods against theft, loss or damage and to keep them insured until the time that the risk of the goods passes to [.....].
2. The Counterparty is liable for damage to or loss of goods caused during loading, during transport and/or during unloading, as well as for damage caused by faulty packaging.
3. The Counterparty shall ensure the goods are packed carefully. The Counterparty shall be liable for any damage resulting from the goods not being packed carefully. The packaging must be such that the goods will retain their quality at the time of packing for at least three months.
4. If the goods are ready for delivery, but [.....] is not reasonably able to receive them at the agreed time, the Counterparty shall keep the delivery separately and recognisably intended or [.....]. The Counterparty must secure the delivery and take all necessary measures to prevent a reduction in quality until the goods have been delivered. [.....] will reimburse the costs reasonably and demonstrably incurred by the Counterparty.
5. If the goods are returned for reasons of faulty delivery and/or a delay in the delivery times, the Counterparty shall bear the risk of the goods and pay the costs of the return shipment(s).

### **Article 9: Prices**

1. The agreed price is fixed and binding. The price can never be increased as a result of changes in purchase price, exchange rates, import and or export duties, freight rates, levies, excise duties, taxes, wages and other services owed by the Counterparty to third parties. The Counterparty is obliged to adjust the compensation downwards in accordance with changes in purchase prices, exchange rates, import and or export duties, freight rates, levies, excise duties, taxes, (transport) restrictions, wages and other services owed by the Counterparty to third parties that have a cost-reducing effect.
2. If the Counterparty is of the opinion that certain additions to or changes in the agreed work are required that result in additional work (costs), the Counterparty must inform [.....] about this in writing within 3 days after having determined this. Any additional work may only be executed after [.....] has agreed in writing to the additional work and related price. Any costs the Counterparty incurs due to changed regulations related to the goods to be supplied, services to be performed or work to be executed, shall not lead to chargeable additional work and are for the account of the Counterparty.

### **Article 10: Payment term**

1. Unless the Parties have agreed otherwise in the Order, all amounts on invoice must be stated in Euros.
2. Invoices must be sent to the invoice address specified in [.....] order confirmation. [.....] order numbers and/or project numbers must be stated on all invoices.
3. The payment term for invoices from the Counterparty shall commence on the day the invoice for the delivery is received by [.....], on the condition that the goods have already been received. If the goods or services are delivered after the invoice has been received, the payment term will commence at the time when the goods or services have been received. The payment term is 30 days.
4. If [.....] has not received a (milestone) payment from its Principal, the payment term shall not commence until [.....] has received the (milestone) payment from its principal. Upon request, [.....] will provide the Counterparty with information about the agreed payment terms between [.....] and its Principal.
5. Payment by [.....] shall not result in a waiver of any rights related to the goods delivered, services performed or work executed. [.....] will not make any payments into a bank account that is not in the name of the Counterparty. The Counterparty is not entitled to assign or pledge any claim it may have against [.....].

### **Article 11: Force Majeure**

1. If the Counterparty should not meet its obligations on time due to a force majeure event, the Counterparty is obliged to inform [.....] in writing within 24 hours after having determined this. [.....] shall then be entitled to terminate the Agreement without being obliged to pay any damages to the Counterparty. Should the Counterparty fail to notify [.....], it shall forfeit the right to invoke force majeure and shall remain obliged to deliver on the agreed delivery date and/or start the work. Should it fail to do so, the Counterparty will be held liable for any resulting damage.
2. The Counterparty shall not be able to invoke force majeure event when its supplier has failed to perform.

## **Article 12: Inspection**

1. [.....] is entitled to inspect the materials and goods before or at the time of loading or delivery, without it being reproach for not having exercised this right. [.....] has the right, just like its client, to inspect (partly) performed services or (partially) delivered goods on the basis of the statutory specifications agreed between the Parties. Inspection of the delivered goods does not release the Counterparty from any liability for any defect in the services or goods provided and does not exclude the warranty given by the Counterparty.
2. The costs of the inspection will be borne by the Counterparty, if a shortcoming of the Counterparty is established.
3. If the delivered goods are rejected, [.....] will immediately inform the Counterparty. The Counterparty will then immediately repair or replace the delivered goods (at the choice of [.....]).

## **Article 13: Insurances**

1. The Counterparty is obliged to take out adequate insurance, as specified in the Purchase Order, for its liability towards [.....] and third parties at its own expense. This includes product liability and legal (risk) liability. The Counterparty must, if necessary, make the insurance policy available for inspection at [.....] request.

## **Article 14: Liability / Obligations of the Counterparty**

1. The Counterparty is liable for any damage, costs and interest whether or not as the result of claims by third parties, based on a defect in the material and/or goods supplied by the Counterparty or any failure to perform an order or delivery of the work.
2. The Counterparty guarantees that the use or sale by [.....] of the goods delivered or the utilization of work performed shall not constitute a breach of any patents, copyrights, rights to brands or trade names and/or any other intellectual property rights of third parties. The Counterparty shall indemnify [.....] against any claims from third parties related to intellectual property rights.
3. Insofar as the failure on the part of the Counterparty to meet its contractual or legal obligations would result in [.....] being held liable by a third party or being liable towards a third party, the Counterparty shall indemnify [.....] for any consequences of such a claim or liability. The Counterparty shall explicitly provide indemnification, with respect to, but not limited to, any possible claims of third parties, including any penalties, pursuant to the Dutch Sequential Liability Act (Wet Ketenaansprakelijkheid), the Collection Act (Invorderingswet 1990), Foreign Nationals Employment Act (Wet Arbeid Vreemdelingen) and any related rules and regulations. If non-Dutch laws and regulations apply to the Agreement, this indemnification also applies to these laws and regulations.
4. [.....] is entitled in appropriate cases, to pay any social security premiums and contributions into a so-called blocked guarantee account or, after the deduction of the agreed price, to pay them directly to the executor of social security provisions or the tax authorities.

## **Article 15: Employees**

1. If the Agreement includes that the Counterparty is responsible for any work, the Counterparty guarantees:
  - a. That all work will be performed exclusively by the Counterparty's own employees, or if the Counterparty has engaged other (sub)contractors, these employees will perform their work under the full responsibility of the Counterparty;
  - b. That all employees (if applicable) have the diplomas, permits and/or certifications which allows them to perform the work;
  - c. That all employees, have (if applicable) the necessary work permit and other documents showing that they are allowed to reside and work at the place of performance of the Agreement;

- d. That all employees are familiar with and will comply with all applicable regulations and safety regulations that apply to the work;
- e. That all employees of the Counterparty as well as the (sub)contractors engaged by the Counterparty have signed in writing all compliancy documents prior to the commencement of the work as mentioned in point d.
2. The Counterparty indemnifies [.....] against any fines and/or other sanction imposed on [.....] by or on behalf of the Labor Inspectorate any other competent (national) body in connection with any alleged or established violation of the Counterparty's violation of the Foreign Nationals Employment Act or related (national) laws and/or regulations. The Counterparty also indemnifies [.....] against all costs, including costs for legal assistance, which [.....] has to incur in connection with the aforementioned fines and/or other sanctions.
3. The Counterparty is responsible for any tools and materials that it or the personnel uses in the execution of the work. The Counterparty will provide its employees with safety clothing and any further safety instruments that comply with the applicable laws and regulations.
4. The Counterparty shall ensure that the presence of personnel on the worksite does not cause any interruption or other interference for [.....] and its third parties.
5. Prior to deploying personnal at the work site, the Counterparty must provide [.....] upon first request with a copy of their proof of identity and any work permit and/or other permits required pursuant to the rules and regulations and/or local provisions applicable to the work site.
6. Prior to the performance of the Agreement, the Counterparty must be registered with the chamber of commerce, have a VAT number and, if necessary, an establishment permit and a compulsory insurance with an employers', employees' or trade association. [.....] is entitled at all time to demand proof of the foregoing and the Counterparty will make this proof available on first request.

#### **Article 16: Guarantee**

1. The Counterparty guarantees that the goods to be supplied, the services to be performed or the work to be executed are in accordance with the Agreement, are suitable for the intended use and comply with any applicable regulations.
2. The guarantee provided by the Counterparty shall be at least equal to the guarantee that [.....] must provide to its Principal. If the guarantee of the Counterparty or its supplier is more extensive than the guarantee referred to in the previous sentence, the guarantee of the Counterparty will apply. The guarantee must at least be valid for a period of 12 months after delivery of the goods, the performance of the service or the delivery of the work.
3. The warranty period commences at the moment that the goods delivered or work performed are accepted by [.....] in the manner as described in Article 5.5 of these Terms and Conditions.
4. If defects are found, the goods, parts of goods and/or services rendered to which the defect has manifested itself remain at [.....] disposal until the cause of the defect has been established. Any repair work pursuant to the guarantee must be executed by the Counterparty within a reasonable period, as determined by [.....]. Any costs resulting from such repair work are for the account of the Counterparty.
5. If the Counterparty, despite [.....] having informed it about found defect, still fails to make replacement or repair, [.....] has the right to, without further notice, to carry out the replacement or repair at the expense of the Counterparty.
6. As soon as a replacement performed by the Counterparty has been completed and accepted by [.....], a new warranty period starts for that replacement.

### **Article 17: Information**

1. Any information that [.....] makes available to the Counterparty is the property of [.....]. The Counterparty may not make the information available or known to any third party other than for the purpose of performing the Agreement. If the Counterparty must make confidential information available to a third party with respect to the performance of the Agreement, it must have received prior written consent from [.....]. Confidential information is all information including drawings, computer programs, computer files and all other information that is not generally known and legally obtained by the Counterparty or that has been stipulated as confidential.
2. If no Agreement is concluded, all information provided by [.....] to the Counterparty must be returned to [.....] free of charge on first request.
3. The Counterparty must supply the goods, execute the Agreement or realise the work in accordance with the latest drawings made available by [.....]. After delivery, performance of the service or execution of the work, the Counterparty must provide [.....] with a drawing related to the work it has executed, which incorporates, but is not restricted to, the location of all gas, water and electricity pipes and cables.
4. After termination of the Agreement, the Counterparty will immediately hand over to [.....] and return all documents, goods and matters in its possession that are property of [.....].

### **Article 18: Transfer of Rights**

1. The Counterparty is not entitled to transfer any rights or obligations resulting from the contract to third parties without written consent from [.....]. The Counterparty is not permitted to make any direct offer with respect to the delivery of goods, performance of services or execution of work to [.....] Principal.
2. The Counterparty is not entitled to use any subcontractors without written consent from [.....]. The Counterparty shall be fully liable towards [.....] if the non-compliance with any contractual or legal obligations by the subcontractor would result in [.....] being held liable by third parties or being liable towards third parties, as referred to in article 14.

### **Article 19: Applicable Law**

1. Dutch law, applies to the Agreement between [.....] and the Counterparty and to agreements resulting from it. The parties expressly exclude the applicability of the Vienna Sales Convention.
2. Any disputes between [.....] and the Counterparty, arising from or in connection with the Agreement, will be submitted to the exclusion of other courts and authorities to the competent court in The Hague, the Netherlands. These terms and conditions are available in Dutch and in English. In event of discrepancies between the two versions, the Dutch version shall prevail.

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