

# GENERAL PURCHASING CONDITIONS

ESD-SIC B.V.  
Version: July 2017



ESD-SIC bv

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### A. GENERAL

#### 1. Definitions

Definition of terms used in these Purchasing Conditions:

- Services:** the service provided by the Contractor for ESD including the performance of work or works.
- ESD:** ESD-SIC B.V., the user of these Purchasing Conditions and the Contractor's Client.
- Goods:** the products, articles, goods, merchandise and products of production processes that ESD purchases or rents from the Contractor.
- Purchasing conditions:** these General Purchasing Conditions of ESD.
- Contractor:** the party to the Contract with ESD named in the Contract, being a natural person or legal entity.
- Contract:** the contract between ESD and the Contractor.
- Party/Parties:** ESD and/or a Contractor.
- Work or works:** the performance of the agreed work (contracting of work).

#### 2. Scope of application

- 2.1. All applications, quotations, offers, orders, order confirmations and Contracts in which ESD is the Client are subject exclusively to these Purchasing Conditions.
- 2.2. The Contractor contracted under these Purchasing Conditions agrees to their applicability to future and/or subsequent contracts with ESD. The Contractor cannot derive any rights for future and/or subsequent contracts from any agreed departures from these Purchasing Conditions.
- 2.3. The general terms and conditions, including terms and conditions of delivery and other stipulations contrary to ESD's Purchasing Conditions are expressly rejected unless they have been expressly accepted in writing by ESD.
- 2.4. If any provision or part of a provision of these Purchasing Conditions becomes fully or partially non-binding for any reason, this will not affect the binding nature of the remaining provisions of the Purchasing Conditions or the remaining part of the provision in question.
- 2.5. ESD reserves the right to unilaterally amend these Purchasing Conditions, for reasons including legislative amendments.

#### 3. Applications, offers, quotation and formation of the Contract

- 3.1. All applications made by ESD for a quotation/offer are subject to contract. All costs related to formulating/issuing a quotation will be borne by the Contractor. The quotation shall include all costs, including but not limited to the costs of auxiliary equipment, tools, payable taxes, social insurance contributions, travelling expenses, transport costs and insurance.

- 3.2. The Contractor will give its quotation/offer a minimum term of validity of three (3) months unless otherwise agreed in writing.

- 3.3. Contracts (and amendments and additions to them) shall be formed by way of a written or electronic confirmation (purchase order) of the quotation/offer sent by ESD to the Contractor.

- 3.4. Unless otherwise agreed in the Contract, ESD has the right to cancel the contract in writing or electronically, free of charge, without giving reasons and without being thus liable for compensation for damages, for a maximum period of three (3) days following the formation of the Contract.

#### 4. Prices, cost-raising factors and contractual variations

- 4.1. All prices (given in the Contractor's offer/quotation and the Contract) are fixed prices, are binding, do not include VAT, include all costs related to the Contractor's compliance with its obligations and are not indexed.

- 4.2. Cost-raising factors (including price rises) are and remain at the expense of the Contractor, even after the Contract has been concluded, regardless of the period that has expired between the date of concluding the Contract and its performance.

- 4.3. ESD reserves the right to require changes to the performance of the Contract or parts of it, even if this involves more work or less work being required (contractual variations). Price rises caused by additional work related to the deliverable Goods, Services and/or Works may only be charged on by the Contractor if ESD has approved the performance of this additional work and the price rise in writing beforehand.

- 4.4. If - on the request or with the consent of ESD - the Contract is not fully executed or is executed less expensively than originally agreed between the Parties, the original price will be reduced accordingly.

#### 5. Invoicing and payment

- 5.1. Unless otherwise agreed, the invoice will be paid within 30 days of its receipt, provided that the Contractor has fulfilled all of its obligations.

- 5.2. In the event of an agreed payment term being exceeded, ESD will not be held in default with payment of the invoice until the Contractor has granted a reasonable payment period to ESD in writing in which to make payment. ESD's exceeding of any payment term or its non-payment of any invoice does not entitle the Contractor to suspend its obligations under the Contract, to dissolve the Contract or to claim compensation for damages.

- 5.3. ESD is authorised to require the Contractor to furnish sufficient security for its compliance with its obligations under the Contract in cases to be stipulated. The costs of the furnishing of security shall be borne by the Contractor.

- 5.4. Payment by ESD of any amount does not in any way constitute any relinquishment of its rights.

- 5.5. ESD reserves the right at all times to set off claims of the Contractor on ESD against claims of ESD (of any nature) on the Contractor.

- 5.6. If the Contractor fails to meet any obligation under the Contract and/or these Purchasing conditions, all of ESD's claims the Contractor will become immediately due and payable, without any further notice of default being required, and ESD will be authorised to suspend its continued compliance with all other Contracts with the Contractor Party.

- 5.7. Without the express prior consent of ESD, the Contractor is not permitted to suspend any of its obligations to ESD under the Contract and/or these Purchasing Conditions, to set them off and/or to compensate them with a claim of the Contractor on ESD of any nature whatsoever. The Contractor cannot invoke a right of retention in respect of ESD.

#### 6. Delivery, delivery term, transfer of ownership and risk

- 6.1. Delivery shall be made through transfer of control to ESD by the Contractor at ESD's address or another place agreed in a Contract and at the agreed time and in accordance with the current Incoterm Delivered Duty Paid (DDP), unless otherwise agreed under a Contract.

- 6.2. The agreed times of delivery and performance are firm deadlines. In the event of these deadlines being exceeded the Contractor will be held in default by operation of law without any payment demand or notice of default being required. The Contractor is obliged, as soon as he is aware or should be aware that the performance of the Contract will not take place or take place on time or in full, it is obliged to report this in writing to ESD without delay. In the absence of such written notice, the Contractor will no longer be entitled to invoke force majeure.

- 6.3. In the event of a firm delivery or performance period being exceeded, ESD will be entitled to additional or replacement compensation for damages and to suspend and/or dissolve the Contract.

- 6.4. The Contractor is obliged to issue with the Goods a packing slip stating: the description of the Goods, the number/quantity, the order number of ESD and any other references and deliveries as yet to be made. The packing slip must be presented directly on delivery by the Contractor for signature by or on behalf of ESD.

- 6.5. Unless explicitly otherwise agreed, deliveries by or for the Contractor will take place during ESD's regular opening hours (working days from 8:00 AM to 11.30 AM and from 12:00 PM to 3:00 PM).
- 6.6. ESD has the right to refuse a deliver that fails to meet the requirements of this Article without being obliged to pay any compensation for damages and/or costs in that regard. The signing of the packing slip serves only to confirm receipt of the Goods, does not imply that they have been inspected or approved and does not absolve the Contractor from any of its guarantee and/or maintenance obligations or its liability.
- 6.7. ESD reserves the right to postpone delivery and/or refuse to take receipt without thus being liable for the costs and/or damages. If ESD postpones delivery and/or is unable to take receipt of the Goods at the agreed time for any reason, the Contractor will be obliged at its own expense and risk to store the Goods separately, properly packaged and identifiable as being intended for ESD and to protect and insure them. In the situation set out above the Contractor will be obliged to take all reasonable steps to prevent any deterioration in the quality of the Goods until ESD is able to take receipt of them.
- 6.8. Notwithstanding any claims to rights of retention or the right of to claim back unpaid goods, the ownership of the Goods being delivered to ESD will transfer to ESD at the time of delivery. If and as soon as ESD makes a request to this effect, the ownership of the goods will be transferred sooner by means of a bilateral statement to that effect, in which case the Contractor will recognisably identify the Goods and/or the materials and parts intended for them as being the property of ESD and will indemnify ESD against loss, damage and the exercising of rights by third parties. The Contractor guarantees the transfer of full and unencumbered ownership.
- 6.9. The risk of the Goods delivered to ESD will transfer to ESD if ESD acquires the de facto control of them, provided that the Goods have been inspected and approved by ESD and found to fulfil the Contract.
- 6.10. If ESD declines to approve the deliverables, rejects them on inspection or invokes the right to dissolve the Contract or to have the deliverables replaced or repaired, the deliverables will remain at the Contractor's expense and risk.

#### **7. Packaging and transport**

- 7.1. The Contractor is obliged to package the Goods as economically, securely and carefully as possible and to ensure that the deliverable goods are manageable during transport and unloading.
- 7.2. The Contractor is responsible for ensuring that it and the transport companies that it contracts comply with national and international regulations and laws governing transport, packaging and safety.
- 7.3. The Contractor is liable for the damage or loss of Goods caused during loading, transport or unloading, as well as damage caused by unsound and/or insufficient packaging. The Contractor must be sufficiently insured against risks during transport.

#### **8. Inspection and complaints**

- 8.1. ESD reserves the right at all times to inspect and test the ordered or delivered Goods and/or the services during their performance.
- 8.2. The costs involved in the inspection and test provided for in paragraph 1 shall be for the Contractor's account if the Goods and/or performed Services are rejected. Inspections or tests do not absolve the Contractor from any guarantee or liability under these Purchasing Conditions, the Contract or the law.
- 8.3. ESD has the right to reject the Goods or Services delivered by the Contractor to ESD if they fail to meet the requirements laid down in the order and/or specification. Taking receipt of Goods and/or Services and/or payment for them does not imply their acceptance. In the event of the Goods and/or Services being rejected on or following delivery, their ownership and risk will be deemed to have remained with the Contractor and will in that case never have been transferred to ESD.
- 8.4. If ESD rejects the delivered Goods and/or Services, then the Contractor will be obliged, within 14 days, or another period to be set by ESD:  
- to have the goods repaired free of charge, or, to be decided at ESD's discretion:  
- to have the Goods and/or Services replaced in accordance with the provisions of the Contract;  
the above being without prejudice to ESD's other rights under these Purchasing Conditions and the law.
- 8.5. If the Contractor fails to meet its obligations as provided for in the previous paragraph to the complete satisfaction of ESD, ESD shall have the right to carry out the work itself or through a third party at the Contractor's expense. ESD reserves the right to set off the costs incurred and/or the losses suffered against amounts owed to the Contractor or to charge separately for them.

#### **9. Guarantee, quality and capacity**

- 9.1. The Contractor guarantees that the deliverable Goods or Services will at all times fulfil the provisions of the Contract, the applicable statutory and other regulations and will be of good and consistent quality, and free of faults in construction, materials, manufacturing composition and content. The Contractor further guarantees that the deliverable Goods are entirely suitable for their intended purpose and can be used and, where applicable, processed as such. The Contractor guarantees that its employees or the third parties it engages for the performance of the Contract concluded with ESD are sufficiently qualified for their assigned tasks.
- 9.2. Regardless of any inspection and/or test as provided for in the previous Article, if it emerges with a period of 10 years following delivery and transfer or any other agreed guarantee period that the Goods and/or Services are not in keeping with the provisions of the previous paragraph of this Article, the Contractor will be obliged, at its own expense and risk, within 14 days or another period to be set by ESD:  
- to have the goods repaired free of charge, or, to be decided at ESD's discretion:  
- to have the Goods and/or Services replaced in accordance with the provisions of the Contract;  
the above being without prejudice to ESD's other rights under these Purchasing Conditions and the law.
- 9.3. If the Contractor fails to meet its obligations as provided for in the previous paragraph to the complete satisfaction of ESD, ESD shall have the right to carry out the work itself or through a third party at the Contractor's expense. ESD reserves the right to set off the costs incurred and/or the losses suffered against amounts owed to the Contractor or to charge separately for them.

- 9.4. If reference is made in the Contract to technical, safety, quality or other regulations, conditions and documents that are not attached to the Contract, the Contractor will be deemed to be familiar with them, unless the Contractor informs ESD without delay that it is not in possession of them. In that case ESD will provide further information about these regulations, conditions and documents.

- 9.5. The Contractor is obliged to inform ESD of inaccuracies, imperfections and inconsistencies in the drawings and calculations provided by ESD, as well as in constructions and methods prescribed by ESD, that professional Contractor could reasonably be expected to be aware of. The Contractor is also obliged to seek clarification from ESD regarding all uncertainties, imperfections and inconsistencies that it establishes in these documents, constructions and methods before proceeding with the performance or continued performance of the Contract.

- 9.6. The same guarantees as those provided for in this Article will be applicable to replaced, repaired or redone parts of an Activity.

#### **10. Culpable breach on the part of the Contractor**

- 10.1. In the event of a culpable breach on the part of the Contractor, the Contractor will be held in default without notice of default being required.
- 10.2. Without prejudice to the right to damages and ESD's other statutory rights, in the event of a culpable breach of contract the Contractor will forfeit an immediately payable penalty of 1% of the total order amount per day from the date of default onwards, up to a maximum of 15% of the total order amount.
- 10.3. ESD is authorised to set off the statutory commercial interest over amounts that it has paid in advance, as well as the penalty forfeited by the Contractor against invoices to be paid by ESD.

#### **11. Force majeure**

- 11.1. In the event of force majeure on the part of ESD, ESD will have the right to suspend compliance with its obligations under the Contract for at least six (6) months and/or to dissolve the Contract in full or in part, without the Contractor thus being entitled to claim compensation for damages.
- 11.2. In the event of force majeure on the part of the Contractor, ESD reserves the right to decide - at its own discretion - either to suspend compliance with its obligations under the Contract in full or in part for the duration of the force majeure situation or to dissolve the Contract in full or in part without the need for legal intervention, and without ESD thus being obliged to pay any compensation for damages.
- 11.3. If the Contractor invokes force majeure it must inform ESD of this without delay, but within three (3) working days at the latest, of the circumstance giving rise to force majeure in writing, together with supporting documents by way of evidence of the force majeure situation.

- 11.4. Force majeure on the part of the Contractor does not include: sickness of/lack of personnel, strikes, non-conformities on the part of third parties engaged by the Contractor, the failure or unsuitability of auxiliary materials, liquidity or solvency problems affecting the Contractor.

#### **12. Liability, indemnification and insurance**

- 12.1. The Contractor is liable for all losses, including trading losses and consequential losses suffered by ESD or third parties as a result of a non-compliance with the Contract or the unlawful acts or omissions of the Contractor, its personnel or third parties it has engaged. The Contractor is further liable for losses caused by incorrect and/or incomplete information provided by or on behalf of the Contractor.
- 12.2. The Contractor indemnifies ESD against all claims of third parties related to the acts or omissions of the Contractor and its personnel or third parties it has engaged, as well as those related to the Goods and/or Services it has delivered or their use. The Contractor will indemnify ESD if necessary.
- 12.3. The Contractor is obliged to take out at its own expense adequate liability insurance (at least including corporate and professional liability insurance). The insurance must at least provide cover at the location where the Services are provided and during transportation of the Goods. The Contractor will present sufficient proof of the insurance and the payment of the premium on ESD's first request to that effect.
- 12.4. The Contractor will insure, to the satisfaction of ESD, all of the equipment and articles that it has received or will receive from ESD against all of the risks to which they are exposed for as long as they are under the responsibility of the Contractor. The Contractor will also take out all legally mandatory insurance policies as prescribed by the applicable laws.
- 12.5. An insurance policy does not affect the Contractor's liability under the Contract or the law.
- 12.6. ESD's liability for losses suffered by the Contractor, its personnel or third parties it has engaged is excluded unless the loss was caused by gross negligence or intentional act or omission on the part of a member of ESD's managerial staff. In that case the compensation will be maximised to the part of the invoice amount involved in the part of the performance of the Contract to which the liability relates, or to a maximum of the invoice amount in question, or a maximum of the total order amount, or a maximum of the amount paid out by ESD's insurer in the case in question.
- 12.7. ESD cannot under any circumstances be held liable for any trading losses and/or consequential losses suffered by the Contractor, its personnel and/or third parties it has engaged.

#### **13. Intellectual and industrial property rights**

- 13.1. The Contractor guarantees that the Goods and/or Services it is to deliver to ESD do not infringe any intellectual property rights of third parties.
- 13.2. The Contractor indemnifies ESD against claims arising from any infringement of the rights provided for in the previous paragraph and will compensate ESD for all losses and costs resulting from them.
- 13.3. Documents, models, stamps, moulds, drawings, technical specifications and so on issued by ESD to the Contractor or which the Contractor purchases and/or produces to perform the Contract shall be deemed to be the property of ESD from the point at which these articles are delivered to or manufactured by the Contractor. If ESD issues or is deemed to have issued these or other articles to the Contractor for the delivery, they will remain or become the property of ESD. The Contractor is obliged to keep these articles, clearly marked as being the property of ESD, and to issue ESD with a declaration of ownership on request. The Contractor bears the risk of all of the aforementioned articles until ESD has acquired de facto control of them. The Contractor is obliged to use these articles exclusively for the performance of the Contract with ESD.

- 13.4. Goods developed by the Contractor for or in partnership with ESD and/or produced through joining, mixing or otherwise are and/or will become the property of ESD and may not be manufactured for or delivered to third parties without the prior written consent of ESD.
- 13.5. ESD is the holder of all intellectual and industrial property rights that arise through or as a result of the Contractor's performance of the Contract. The Contractor transfers the intellectual and industrial property rights to ESD, now for then, if necessary. The Contractor will cooperate at all times with putting this transfer into effect.
- 14. Confidentiality**
- 14.1. The Contractor is obliged to protect the confidentiality of all information that it receives, directly or indirectly, from or about ESD in relation to the Contract. The duty of confidentiality will remain fully in effect following performance of the Contract.
- 14.2. If the Contractor is required to provide the information provided for in paragraph 1 to one or more third parties for the performance of the Contract, this may only be done with the prior written consent of ESD and the Contractor will also impose on these third parties the duty of confidentiality as provided for in this Article.
- 14.3. The Contractor will forfeit to ESD an immediately payable penalty of €25,000.00 on each occasion that it fails to meet its obligations under this Article, and this penalty may be demanded in addition to replacement and additional compensation by virtue of the law. ESD reserves the right to set off this penalty and/or compensation against amounts owed to the Contractor.
- 15. Transfer, prohibition on assignment and pledge**
- 15.1. ESD reserves the right to transfer (in full or in part) its rights and obligations specified under the Contract with the Contractor.
- 15.2. The Contractor is not permitted to transfer its rights and obligations under the Contract in full or in part to third parties or to outsource them without the prior written consent of ESD.
- 15.3. In urgent cases and if it can be reasonably assumed following consultation with the Contractor that the Contractor will not meet its obligations under the Contract, or meet them on time or in full, ESD will be authorised to require the Contractor to outsource the performance of the Contract, in full or in part, at its own expense and risk, to one or more third parties designated by ESD. The above will not absolve the Contractor of its obligations under the Contract. The additional costs of this outsourcing shall be borne by Contractor.
- 15.4. The Contractor is prohibited from assigning, pledging or otherwise transferring in ownership any of its claims against ESD under the Contract without the prior written consent of ESD.
- 16. Penalty**
- 16.1. If a penalty becomes payable by the Contractor, the penalty will be immediately due and payable without legal intervention, notice of default or demand for payment.
- 16.2. A penalty incurred by the Contractor will not affect any of the other rights or claims of ESD, including but not limited to ESD's demand for compliance and right to compensation for damages.
- 17. Notice of termination, suspension and dissolution**
- 17.1. ESD is authorised at all times to prematurely terminate the Contract without giving reasons and without thus being liable for compensation for damages by sending the Contractor written notice to that effect observing a 30-day notice period.
- 17.2. ESD is further authorised, at its own discretion, to suspend the Contract without further notice and with immediate effect, in full or in part, or to dissolve it in writing in full or in part without being obliged to pay any compensation for damages, if:
- the Contractor fails to meet any of his obligations that follow from Contract concluded with ESD or the Purchasing Conditions or any related Contract;
  - if there are good grounds to suspect that the Contractor is not or will not be able to meet its obligations to ESD;
  - in the event of the Contractor being subjected to a moratorium or bankruptcy or an application being made to that effect;
  - if the Contractor's business is being sold (in full or in part), transferred or closed, which includes the transfer of some of its claims;
  - in the event of permits that the Contractor needs to perform the Contract being withdrawn;
  - In the event of an attachment being imposed on a substantial part of the Contractor's assets or company equipment intended for the performance of the Contract;
  - in the event of circumstances arising that are of such a nature that ESD cannot be expected to maintain the Contract in unamended form.
- 17.3. The Contractor is liable for the costs and losses suffered by ESD in the event of termination in accordance with this Article. All claims that ESD may have or acquire on the Contractor, including any claims for compensation for damages, costs and penalties, shall become immediately due and payable in the event of suspension, cancellation or dissolution pursuant to this Article.
- 18. Applicable law and court with competent jurisdiction**
- 18.1. All legal relationships between ESD and the Contractor are governed by Dutch law. The applicability of the Vienna Sales Convention and foreign law is specifically excluded.
- 18.2. The Dutch version of the Purchasing Conditions will take precedence at all times as regards their interpretation.
- 18.3. All disputes arising from or related to the Contract and/or these Purchasing Conditions will be referred to the competent court in the Northern Netherlands district, Groningen location, unless the dispute is subject to the jurisdiction of the subdistrict court. However ESD is authorised at all times to refer the dispute to the court authorised to hear it based on the place of establishment of the Contractor.
- B. CONTRACTING AND SUBCONTRACTING OF WORK**
- 19. Scope of application**
- 19.1. Section B ("CONTRACTING AND SUBCONTRACTING OF WORK") is applicable to all applications, offers and contracts relating to Work or Works.
- 19.2. Section A ("GENERAL") and Section C ("RENTAL") are fully applicable to these applications, offers and Contracts unless explicit statement is made to the contrary in Section B or by Contract.
- 20. Formation of the Contract and representation of the Parties**
- 20.1. In addition to Article 3 of these Purchasing Conditions, information including but not limited to the following is given in the quotation:
- a. the place and description of the Work
  - b. the drawings, technical specifications, designs and calculations of the Work
  - c. the time of commencement of the Work
  - e. the term in which the Work is to be completed
  - f. the pricing method (contract price or cost-plus) to be operated for the Work
  - g. whether payment is to be made in instalments
  - h. whether provisional sums are taken into account
  - i. confirmation that these Purchasing Conditions are applicable.
- 20.2. The costs involved with issuing a Quotation will always be at the Contractor's expense and risk.
- 20.3. When concluding the Contract, but in all cases prior to commencement of the Work, the Contractor will inform ESD in writing of the names of the people involved in the performance of the Contract on its behalf and those who are authorised to represent the Contractor in all matters concerning the performance of the Contract.
- 21. Contractor's obligations**
- 21.1. The Contractor is obliged to prepare and carry out the work according to the requirements of good and sound Work in accordance with the provisions of the Contract and the Purchasing Conditions.
- 21.2. Unless otherwise agreed, the Contractor is responsible for and will attend to the following:
- all of the personnel and/or third parties involved in carrying out the Work
  - all of the items and equipment needed to carry out the Work, such as but not limited to: storage sites/lockable rooms, horizontal transport, vertical transport, equipment, auxiliary works, connection points for utilities, etc.
  - the removal of waste resulting from the performance of the Work
  - the production of work and other drawings relating to the Work
  - taking measurements and making calculations relating to the Work.
- 21.3. To the extent that the Work is carried out at the office and/or the site of ESD, the Contractor, personnel of the Contractor and third parties engaged by the Contractor are bound to the rules and regulations for that office/building and/or site.
- 21.4. The Work must be carried out in such a way that it does not cause any unnecessary nuisance to ESD or third parties. The Contractor is to carry out the Work safely and in such a way that damage caused to people, property and the environment is kept to a minimum. The Contractor recognises the fact that hazardous (or potentially hazardous) substances and gases are used at the ESD site. The Contractor guarantees that he will not take any actions at the ESD site that could cause any form of environmental damage. If the Contractor none the less causes damage or environmental damage, it will be held liable for this.
- 21.5. The Contractor is obliged to insure the Work at its own expense against all losses and to take out at least Construction All Risk (CAR) insurance. The Contractor will issue a copy of the relevant policy or policies on ESD's request.
- 21.6. Unless otherwise agreed by Contract, the Contractor is responsible for and will attend to the timely acquisition of permits, exemptions and decisions needed to carry out the work. The late issue of permits, exemptions and similar decisions will be at the Contractor's expense and risk.
- 21.7. The Contractor is responsible for order, tidiness and safety at the place where the Work is carried out and will take any necessary preventative environmental measures.
- 21.8. The Contractor and third parties engaged with the consent of ESD are obliged to correctly and adequately comply with legal regulations and other governmental requirements in the context of the Work at all times.
- 21.9. The Contractor ensures that the Work, its performance and the deployment of personnel and/or third parties fulfils the Contract and all relevant laws and regulations, including the current health, safety and environmental regulations.
- 21.10. During the performance of the Work the Contractor must follow the orders and instructions given to him by or on behalf of ESD.
- 21.11. The Contractor is obliged to inform ESD of imperfections in constructions and methods prescribed by or for ESD and in orders and instructions issued by or for ESD, and of faults in the building materials or equipment provided or prescribed by ESD. The Contractor must immediately inform ESD if, during the performance of the Work, objects and/or substances are found, the presence of which is not stated in the specification and which can reasonably be considered to be capable of causing harm or damage to people, goods or the environment. The Contractor must take the safety measures requirement by the circumstances without delay, if possible in consultation with ESD.
- 21.12. The Contractor declares that he relinquishes his right to invoke a right of retention to the Work or parts of the Work and all other rights to suspend the completion and delivery of the Work in its entirety or parts thereof or to retain possession of the Work from the date of completion onwards. If the work is outsourced to third parties with the consent of ESD, if employees are hired and/or the Work is outsourced in full or in part to one or more self-employed persons, the Contractor will stipulate to each of these subcontractors that they relinquish any rights of retention that they may have, the right to file complaints or other rights of suspension. The Contractor will demonstrate that this obligation has been met on ESD's first request to that effect. The Contractor indemnifies ESD against losses caused by the exercising of the right of retention, the right to claim back unpaid goods and any other right of suspension by a subcontractor.
- 22. General and technical instructions**
- 22.1. The Contractor must at all times ascertain the state and condition of the area in which the Work is to be performed. He will also take any necessary damage-preventing measures. If necessary in view of the nature of the work, the Contractor will establish the presence of cables, pipes and soil pollution on commencement of the Work and take any necessary action in that regard.

- 22.2. Unless otherwise agreed and if necessary to the performance of the Contract, the Contractor is responsible for and will attend to: temporary connections, the necessary electricity, gas, water and other utilities, the laying and removal of site pipelines, telephone lines, encroachments, all necessary items and equipment needed for the performance of the work, necessary paving and repairing of public pavements and/or other necessary additional work and repair work.
- 22.3. The Contractor is only entitled to use collective facilities (e.g. electricity in a communal area) with the prior consent of or on behalf of ESD. A payment in that regard may be agreed and charged at a later date by deducting it from the invoice for the payable amount.
- 22.4. If the Contractor wishes to make use of heavy duty equipment in the context of the Work, such as scaffolding, storage and waste containers, etc., it must first obtain the consent of ESD for this.
- 22.5. The Contractor is obliged to commence the Work at the time laid down in the Contract and in keeping with the planning schedule and to complete it within the agreed time period.
- 22.6. ESD may change or set the time of the Work to be completed by the Contractor and/or the order in which it is to be done.
- 22.7. The Contractor will have the Work carried out by the same employees where possible.
- 22.8. Waste released during the performance of the Work must be disposed of in consultation with ESD as soon as possible. The disposal of harmful or hazardous waste substances, such as asbestos and chemical waste, must be carried out in accordance with statutory requirements and reported to the LMA (National Waste Substances Reporting Centre), at least stating the place of origin.
- 22.9. On completion of the Work, the location of the Work must be restored to the same condition as that it was found on commencement of the Work. All material residues must be removed. If necessary, the Contractor will have the place and its vicinity cleaned. The costs involved in the above will be borne by the Contractor.
- 23. Legislation, working conditions, tax and social insurance contributions**
- 23.1. Prior to or upon conclusion of the Contract and to any changes and/or on ESD's (periodic) request, the Contractor will issue on the first request of ESD:
- the number under which he is registered with the collector of income tax and VAT
  - its most recent financial statements
  - a recent 'Vicarious Tax Liability and Recipients' Liability Payment History Report' ('*Verklaring betalingsgedrag keten- en inlenersaansprakelijkheid*') that is no more than one (1) month old
  - an extract from the Chamber of Commerce Registration that is no more than 3 months old.
- 23.2. The Contractor is obliged in respect of ESD to meet its statutory obligations regarding the payment of wage tax and social insurance contributions and (where applicable) premiums under any applicable Collective Bargaining Agreement.
- 23.3. Before starting the Work (and in the event of changes being made), the Contractor will issue a list of the employees involved in the performance of the Work, stating their full names, dates of birth and nationalities. For workers from outside of the European Economic Area (EEA), a copy of a valid identity document and a copy of a valid residence and work permit must be included. The question of whether the identity document or residence or work permit is valid will be judged exclusively at the discretion of ESD. The Contractor will not under any circumstances have the Work carried out by employees or third parties under the age of 18.
- 23.4. The Contractor is required to keep timesheets. Unless otherwise agreed by Contract, the timesheets must be completely filled in and presented weekly for approval. ESD is authorised to check the accuracy of the records at all times.
- 23.5. The Contractor is obliged:
- to enter employees in its administrative records in the legally prescribed manner (with special reference to Article 6.1 of the Liability of Recipients, Subcontractors and Clients Implementing Regulations (*Uitvoeringsregeling inleners-, keten- en opdracht-aansprakelijkheid*))
  - to lay down in a clear and accessible manner all administrative records/documents and employment agreements (including net wage constituents paid to employees) relating to the performance of the Work
  - to ensure that the wages actually paid to employees are in keeping with the requirements under the Dutch Minimum Wage and Minimum Holiday Allowance Act (WML) and the applicable CBA.
- The Contractor will provide the competent authorities and ESD, on request and without delay, with access to these administrative records/documents and employment agreements and will cooperate with checks, audits and/or wage validation.
- 23.6. If the Contractor employs persons who do not meet the requirements of this Article, ESD will have the right to deny those persons access to the Work with immediate effect.
- 23.7. Without the written consent of ESD the Contractor is not permitted to outsource the Work in full or in part by way of contracting or subcontracting to third parties, to hire employees or to outsource the Work in full or in part to one or more self-employed persons. In cases where ESD has given its consent, the Contractor is obliged to declare the provisions under which the Contract was concluded (including the Purchasing Conditions) applicable to the legal relationship between the Contractor and the third party it has engaged. If ESD gives its consent, the Contractor is obliged to make use of the facility of transferring funds to a G account, unless ESD indicates in writing that this does not need to be done. The Contractor will remain full responsible for the Work in respect of ESD in the event of third parties being engaged.
- 23.8. During the performance of the Contract the Contractor will act in conformity with current laws and regulations, including the Dutch Labour Market Fraud (Bogus Schemes) Act (*Wet Aanpak Schijnconstructies*, WAS), the Dutch Foreign Nationals (Employment) Act (*Wet arbeid vreemdelingen*, Wav) and the Dutch Compulsory Identification Act (*Wet op de identificatieplicht*, WId), as well as the applicable CBA and the agreements it has made in individual employment contracts. With due observance of the provisions of the above paragraph, when engaging third parties, subcontractors or companies that provide temporary workers, the Contractor will stipulate that it is obliged to act in conformity with the current laws and regulations, the applicable CBA and all agreements it has made in the individual employment contracts. The Contractor is further obliged to stipulate that these third parties are also subject to these obligations and to impose them in turn on all third parties with they conclude contracts.
- 23.9. The Contractor guarantees that it will only have work carried out by persons who are legally resident in the Netherlands and in possession of the necessary work permits, etc. In this context the Contractor guarantees on behalf of ESD that it will establish the identity of all foreign nationals involved in the performance of the assigned work, as provided for in Article 15 of the Foreign Nationals (Employment) Act and will check the identity documents and work permits of these foreign nationals for authenticity and validity. The Contractor will keep on ESD's behalf copies of these documents in its administrative records as provided for in Section 5 of the Wav for at least the statutory period following the end of the calendar year in which the Work has been completed and delivered.
- 23.10. If the Contractor is a member of a mutual guarantee fund, it will arrange the issue of an indemnification certificate.
- 23.11. The Contract will be registered in the administrative records of ESD and the Contractor under a unique number assigned by ESD.
- 24. G account, invoices and final settlement**
- 24.1. Invoices submitted by the Contractor must comply with the requirements set by the Dutch Turnover Tax Act (*Wet op de Omzetbelasting*, Wet OB). In addition to the requirements stated in this statutory provision, the Contractor must at least provide the following details in the invoices:
- the unique number (in accordance with Article 6.10) and the date of concluding the Contract
  - the name of the Work and the place where the Work is being carried out
  - the time period and the work performed to which the invoice relates
  - the percentages set in accordance with Articles 24.4 and 24.5.
- 24.2. The contractor is to submit its final account to ESD two weeks at the latest following the date on which the work was reported as being complete (in accordance with Article 31). Without prejudice to the payment period agreed in the Contract and the Purchasing Conditions, ESD is not under any circumstances obliged to pay any invoice or final account before the Work, or the part of it to which the payment instalment relates, is deemed to have been completed and delivered.
- 24.3. ESD reserves the right to withhold the amounts of turnover tax, wage tax, social insurance contributions, employee insurance premiums and any interest and penalties payable in their regard from the payments to the Contractor and to transfer those amounts to a G account. In these cases ESD will be discharged for the payment of these amounts to the Contractor.
- 24.4. Depending on the type of Work performed, the Contractor will determine the amount of the wage cost constituent of the amount given in the invoice. The amount of the wage cost constituent will be expressed as a percentage.
- 24.5. The percentages of wage tax and social insurance contributions total 40% over the wage constituent provided for in the previous paragraph. Should it emerge during the course of the Work that the set percentages of wage tax and social insurance contributions are too low, the correct percentages will be transferred to the G account. If additional agreements concerning additional work are made (whether or not under a separate agreement), the same percentages will be fully applicable.
- 24.6. The ability to transfer claims relating to the amount of wage tax and social insurance contributions included in the contract price and for which ESD is liable under the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act (*Wet Ketenaansprakelijkheid*), and the authority to encumber and/or sell this claim - also in the sense of property law - is excluded as provided for in Section 3:83 (2) of the Dutch Civil Code. Other than the above, the assignment, pledging or transfer by other means of the Contractor's claims under the Contract are subject to the prior written consent of ESD.
- 24.7. In a situation in which the Tax and Customs Administration holds ESD liable for the Work or issues notice to that effect, ESD is authorised to set off the stated amount with the contract price payable to the Contractor in relation to the Work.
- 24.8. ESD is authorised to make a request to the tax authorities of its own accord to set the amount for which it may be liable.
- 24.9. ESD has the right to suspend its payment obligations under the Contract as soon as ESD receives a notification from the Tax and Customs Administration stating that it intends to hold ESD liable in relation to the Work.
- 24.10. The Contractor explicitly relinquishes any right of suspension, retention or set off that it may have.
- 24.11. The Contractor has no right of recourse as provided for in Sections 55 and 56 of the Dutch Collection of State Taxes Act 1990 (*Invoeringswet 1990, iw 1990*) in relation to the Work.
- 25. Self-employed persons**
- 25.1. The provisions of this Article will apply if the Contractor makes use of self-employed persons - with the consent of ESD - for the performance of the contract and ESD and the Contractor take the use of these self-employed persons into account when determining the percentage to be transferred to the G account as provided for in the previous Article.
- a. Other than in the situation provided for under paragraph b, the Contractor is exclusively permitted to make use of self-employed persons for the performance of the Work if ESD has granted its prior written consent for this and if the contract concluded between the Contractor and the self-employed person in question has been assessed by the Tax and Customs Administration in the light of the Dutch Assessment of Employment Relationships (Deregulation) Act (*Wet deregulering beoordeling arbeidsrelaties*) and the result of this assessment is that the employment relationship is not deemed to be a contract of employment and that the fictitious employment relationships for home-workers and equivalent have been declared inapplicable.
- b. If the contract concluded between the Contractor and the self-employed person has not been assessed by the Tax and Customs Administration in the light of the Dutch Assessment of Employment Relationships (Deregulation) Act, the Contractor will only be permitted to make use of self-employed persons if:
- ESD has given its prior written consent for this; and
  - the Contractor has independently assessed the employment relationship and the result of this assessment is that the employment relationship is not deemed to be a contract of employment; and
  - the fictitious employment relationship has been declared inapplicable to home-workers and equivalent in the contract concluded between the Contractor and the self-employed person.
- c. The Contractor and the self-employed person will sign a declaration to the effect that the self-employed person is acting in accordance with a contract approved by the Tax and Customs Administration as provided for in paragraph a, or that the Contractor and the self-employed person are acting in accordance with the conditions provided for in paragraph b. This signed declaration will be issued to ESD, together with a copy of the contract and the assessment referred to in paragraphs a and b by the time at which the self-employed person starts his work at the latest.
- d. During the period of the employment relationship both the Contractor and the self-employed person undertake to act in accordance with the provisions of the contract referred to in paragraphs a or b.
- e. The Contractor will keep administrative records of the details of the self-employed person's identity (name, address, date of birth, BSN/SOFI number, nationality, type of ID, and the number and validity of the ID). The Contractor will issue these identity details to ESD by the time at which the self-employed person starts the work at the latest.
- f. Where reference is made in this Article to the Contractor, this also refers to all subcontractors employed by the Contractor in the performance of the work.

## 26. Contractual variations

- 26.1. If the Contractor establishes that the work specified in the work description will not be sufficient to achieve the desired level of quality or if the desired result calls for the deployment of fewer resources than foreseen in the work description, the Contractor will report this to ESD without delay.
- 26.2. Following the Contractor's report as provided for in the previous paragraph, ESD will indicate whether this could be deemed to be additional or reduced work because more work or less work or resources are required to achieve the desired quality. The cost implications of an order for additional or reduced work will be discussed by the Parties. ESD will confirm the additional or reduced work order in writing.
- 26.3. The invoice relating to additional or reduced work must be accompanied by the confirmation provided for in the previous paragraph.

## 27. Working conditions

- 27.1. In the context of the performance of the Work, the Contractor is obliged to comply promptly and correctly with all obligations under the Dutch Working Conditions Act, the Working Conditions Decree (decree of 15 January 1997, Bulletin of Acts and Decrees 1997, 60) and the regulations and instructions arising from or related to them. The Contractor indemnifies ESD against claims of third parties related to the failure to meet these obligations or do so on time or in full.
- 27.2. The Contractor is required to demonstrate each year that the general risk assessment of company activities provided for in Article 5 of the Working Conditions Act has been geared to the work being carried out under the contract and the rights and obligations laid down in it. The Contractor is obliged to demonstrate this by:
  - issuing this general risk assessment to ESD, and
  - submitting a Safety Certificate for Contractors (*Veiligheids Certificaat Aannemers, VCA*) for the work laid down in the contract, and
  - submitting a certificate issued by a certified working conditions service confirming that the Contractor has geared its general risk assessment to the work laid down in the contract.The Contractor will perform the work in accordance with the procedures and methods laid down in the general risk assessment and/or the VCA.
- 27.3. If it is necessary to draw up a Safety, Health and Environment Plan and/or a Safety, Health and Environment File (SHE) in connection with the Work, or coordinators are to be appointed for the implementation phase, this will be indicated in the work description.
- 27.4. If a Safety, Health and Environment (SHE) plan is required, the Contractor will guarantee its timely, correct and complete implementation.
- 27.5. If a coordinator is designated for the implementation phase, and the Contractor is made responsible for this designation, the Contractor guarantees that the tasks to be performed by the appointed coordinators as provided for in Article 2.31 of the Working Conditions Decree will be carried out promptly, correctly and completely.
- 27.6. If the Contractor or implementing phase coordinator establish during the performance of the work any notable risks or structural or technical issues that could be important to the health and safety of employees during future maintenance work and which differ from the risks or issues identified in the contract, the Contractor or coordinator must report this in writing to ESD. This notification is deemed to be the implementation phase SHE file.

## 28. Audit

- 28.1. ESD reserves the right at all times to check that the Contractor and third parties engaged by the Contractor are complying with the laws and regulations, the Contract and these Purchasing Conditions. The Contractor will cooperate within reason with an audit carried out by or on behalf of ESD and will ensure that third parties engaged by the Contractor cooperate as well.
- 28.2. Inspections or tests carried out by ESD do not absolve the Contractor from any guarantee or liability under laws and regulations, the Contract or these Purchasing conditions.

## 29. Liability and indemnification

- 29.1. The Contractor is liable for all damages suffered by ESD, its personnel and third parties it has engaged as a result of any non-compliance with the Contractor's obligations and for damages caused by the Contractor to other works and property of ESD and third parties (including, but not limited to the personnel and temporary employees of ESD).
- 29.2. In the event of ESD (or other parties in the supply chain) being subjected to a subsequent tax assessment, penalty or fine for the Contractor's violation of or non-compliance with laws and regulations, ESD reserves the right to recover its losses thus incurred from the Contractor, directly or by means of setoff. Damages are defined in all cases but not limited to: administrative or other fines, penalties, incremental penalties subsequent income and other tax assessments, other subsequent tax assessments and losses resulting from interruption of the work.
- 29.3. Without prejudice to the other provisions of these Purchasing Conditions, the Contractor fully indemnifies ESD, also with regard to legal assistance, against:
  - claims of third parties, including permanent or temporary employees of the Contractor or third parties engaged by the Contractor for the Work, for compensation for damages;
  - subsequent tax assessments, penalties and/or fines as provided for in paragraph 2 of this Article.

## 30. Insurance

- 30.1. The Contractor shall insure its liability, also in respect of ESD, without any reference being made in the policy conditions or otherwise to exceptions, transfer or any form of recourse in respect of ESD or other parties involved in the Work. In the event of claims and/or costs, the deductible will be payable by the Contractor.
- 30.2. In addition to Article 12 of these Purchasing Conditions and unless agreement is made to the contrary by Contract and/or this is not applicable to the Contractor, to be decided at ESD's discretion, the Contractor will at least be obliged, for the term of the Contract:
  - a) to insure the equipment it uses against liability for both material losses and damages caused to persons, including the losses thus incurred or caused by or related to the use of the equipment
  - b) to insure equipment that can be deemed to be vehicles in accordance with the provisions of the Dutch Motor Insurance Liability Act (*Wet Aansprakelijkheidsverzekering Motorrijtuigen, WAM*), at least in accordance with the statutory requirements
  - c) to have occupational disability insurance
  - d) to take out Corporate Liability Insurance providing minimum cover of €2,500,000.00 per event, including cover for employer's liability
  - e) to have taken out professional liability insurance under which its professional liability is insured for at least €2,500,000.00 per event.
- 30.3. Unless agreement to the contrary has been made by Contract, the policies for the insurance provided for in the previous paragraph must meet the following requirements:
  - a) ESD must be named as the co-insured party
  - b) the insurance must offer primary cover (it is not permitted to make a claim on insurance policies taken out elsewhere).
- 30.4. The Contractor is obliged on request to issue to ESD a copy of the relevant policies or receipts for payment.

## 31. Completion and maintenance period

- 31.1. The Contractor will invite ESD in writing or by electronic means to inspect the

Work within a reasonable period of time prior to its completion.

- 31.2. The inspection will be carried out as soon as possible. Once the Work has been completed, the Parties will lay this down in writing, stating any established non-conformities. The Contractor will rectify these non-conformities as soon as possible.
- 31.3. ESD's receipt of the invoice details from the Contractor and/or payment of the final invoice will not under any circumstances constitute acceptance or approval of the Work and/or completion of the Work or the part of it in question.
- 31.4. The Work will be at the Contractor's risk up to the date on which it is deemed to have been completed and delivered. Completion and inspection or approval does not absolve the Contractor of guarantee and/or liability.
- 31.5. The maintenance period for the Contractor's Work is at least twelve months, calculated from the time of completion and delivery, unless otherwise agreed by Contract. If the Contractor remains in default regarding compliance with the maintenance obligation, ESD will have the right to have the necessary repairs or replacements carried out at the Contractor's expense.

## C. RENTAL

### 32. Scope of application

- 32.1. Section C ("RENTAL") is applicable to all applications, offers and Contracts concerning the rental of manned or unmanned equipment.
- 32.2. Section A ("GENERAL") and Section B ("CONTRACTING AND SUBCONTRACTING OF WORK") are fully applicable to rental by ESD unless this is explicitly departed from in Section C or by Contract.

### 33. Commencement, end and cancellation of rental

- 33.1. The rental of equipment commences at the date and time laid down in the Contract, in the absence of which the rental commences at the time when the rented equipment is made available to ESD ex works (when the equipment is made available to ESD) or another location (at the time of placement or unloading by the Contractor).
- 33.2. The rental period ends at the date and time laid down in the Contract, in the absence of which the rental period ends when the rented equipment is made available to the Contractor in response to a request for collection made by ESD or delivery of the rented equipment by ESD to the Contractor.
- 33.3. If a rental period has been agreed, ESD can unilaterally extend it in writing through the expiry of the original rental period.
- 33.4. ESD has the right to cancel the Contract in writing or by electronic means for up to three (3) days prior to the commencement date of the rental period, without thus being obliged to pay any compensation, costs and/or damages.

### 34. Contractor's obligations

- 34.1. The Contractor guarantees that it has the full power of disposition over the rented property, that it has not rented out the rented property or issued it for use to a third party and the rented property is not encumbered with a restrictive right.
- 34.2. The Contractor guarantees that the rented property is ready for use and in a good state of maintenance and that it meets all of the legal regulations, in particular the safety regulations.
- 34.3. If the rented property is manned, the Contractor guarantees that the rented property operator is qualified and competent to operate it and will behave in accordance with all of the regulations and instructions provided for in this Article. The Contractor is obliged to demonstrate this competence to the satisfaction of ESD on request.
- 34.4. The Contractor is obliged on ESD's request to resolve faults in the rented property free of charge unless the faults can be attributed to the intentional act or omission or wilful recklessness of ESD.
- 34.5. At the end of the rental period the Contractor is obliged to inspect the rented property on collection or delivery for damage and/or faults. If the Contractor fails to report any damage and/or faults to ESD immediately on return of the rented property, the rented property will be deemed to have been returned in its original condition and without any damage and/or faults other than normal wear and tear.

### 35. Damage and theft

- 35.1. ESD will notify the Contractor of any defects in or damage to the rented property or its loss.
- 35.2. In the event of the rented property being defective, damaged or lost, the Contractor will repair or replace it within a reasonable period of time (or have this done by others). If the Contractor fails to carry out the repair or replacement within a reasonable period of time set by ESD, then ESD will be authorised to dissolve the Contract without any legal intervention being required. In that case the Contractor will be liable for the damages/costs incurred by ESD as a result of this, including the costs or additional costs of replacement rental.

### 36. Insurance, risk and liability

- 36.1. The Contractor will insure the rented property and keep it insured for the period of the Contract against legal liability for personal injury and damage to property and have it covered and keep it covered for all-risk insurance against theft, damage, fire, loss and damage caused to others.
- 36.2. The rented property is and remains at the expense and risk of the Contractor during the rental period, other than in cases of loss or damage caused by intentional act or omission or wilful recklessness on the part of a member of ESD's managerial staff.
- 36.3. The Contractor is liable for damage caused by the rented equipment (whether or not manned by the Contractor's personnel) and/or injury caused to permanent or temporary personnel of ESD and/or third parties. The Contractor indemnifies ESD and its permanent and temporary personnel against all claims in this regard.