

General Purchasing And (Sub)Contracting Terms And Conditions Temporary Works Design

Article 1. Applicability

1.1 These terms and conditions apply to all offers made to client and agreements entered into with client for the provision of goods and/or services.

1.2 Client is Temporary Works Design, specifically Temporary Works Design B.V., or an affiliated business. The other party is indicated as contractor. The work in these terms and conditions is also understood to be the performance of services.

1.3 The general terms and conditions of the contractor do not apply to the offer to or the agreement with the client and are expressly rejected.

1.4 Any deviations from these general purchasing and (sub)contracting terms and conditions are only valid if they have been confirmed in writing by the client and contractor.

Article 2. Offer and Confirmation

2.1 All offers or price quotes are valid for a period of at least 30 days.

2.2 Any costs, related to the making of the offers or price quotes, including the costs of advice, drawings, etc. by or on behalf of contractor, will not be paid by client.

2.3 Offers will only have been accepted once they have been confirmed by the client through a purchase order.

Article 3. Delivery Time and Penalty

3.1 The agreed delivery time or delivery date is a deadline. By exceeding the delivery time, contractor will be legally in default. As soon as contractor is aware that the performance of the agreement will not take place, not take place in time, or not take place properly, he will immediately notify client of this.

3.2 Contractor is liable for any damages that are incurred by client as a result of exceeding the delivery time or delivery date as referred to in article 3.1.

3.3 For each day of delay of delivery, client forfeits an immediately due and payable penalty of 0.5% of the total order amount, with a maximum of 15% of the total order amount.

3.4 The penalty referred to in article 3.3 can be claimed in addition to statutory reimbursement of damages. Client has the right to set this penalty and/or reimbursement for damages off with sums owed to contractor.

Article 4. Prices

4.1 The prices listed in the offer are based on freight paid delivery at the agreed destination, DDU for shipments within the European Union, and DDP for deliveries outside of the European Union, in accordance with Incoterms 2010. All prices are fixed, excluding VAT, including proper packaging.

4.2 The agreed price is binding.

Article 5. Risk Transfer

5.1 Delivery takes place freight paid at the agreed destination, DDU for shipments within the European Union, and DDP for deliveries outside of the European Union, in accordance with Incoterms 2010.

5.2 If prices have been agreed 'from factory' and contractor still performs or arranges transport, any risk of loading and transport will be borne by contractor.

5.3 If goods are picked up by or on behalf of client, contractor must provide help during loading without charging costs for this. The risk of loading will in this case be borne by contractor.

Article 6. Inspection and Verification

6.1 Client and/or his principal and/or management of the work always have the right to inspect or verify the ordered or delivered goods/the work (in progress). In this event, contractor will make available required facilities, if these may reasonably be requested.

6.2 The costs of the inspection referred to in the article 6.1 are borne by the contractor in the event that these goods/the work are/is rejected by client and/or his principal and/or management of the work.

6.3 Inspection or approval does not release contractor from any warranty or liability that is pursuant to the agreement or the law.

Article 7. Rejection

7.1 If the goods delivered/work performed by contractor do not meet the requirements described in the assignment and/or specification, client has the right to reject these. Receipt of the goods and/or payment of the goods of the work does not mean acceptance of it.

7.2 If client rejects the delivered goods or the work, contractor is obligated to ensure a repair free of charge, ensure a replacement of the goods free of charge, or continue to carry out the work (have it carried out) in accordance with the agreement within a period to be determined by client.

7.3 If contractor does not comply satisfactorily with his obligation referred to in article 7.2, does not do so within the set period, or does not do so to the satisfaction of client, client has the right to carry out the repair himself or have it repaired by a third party at the expense of contractor. Client has the right to set the incurred costs of with sums owed to contractor.

Article 8. Intellectual Property Rights

8.1 All intellectual property rights developed during the assignment shall vest and shall remain vested in client.

8.2 Contractor provides an everlasting, non-exclusive, worldwide, all-inclusive, transferable licence free of charge to client regarding all intellectual property rights that are relevant to the assignment.

8.3 Contractor guarantees that the goods/services to be delivered by him to or work to be done by him for client do not violate any third-party intellectual property rights.



Article 9. Confidentiality

9.1 All models, design data, drawings, and other documents, etc. provided by client to contractor, as well as know-how of which contractor learned via client, are confidential and will not be used by contractor for any other purpose than meeting his obligations pursuant to the agreement with client.

9.2 The data mentioned in article 9.1 will not be made public or duplicated by contractor, unless after written permission from client. Additionally, contractor will also impose the confidentiality obligation referred to in this article to his staff.

9.3 If contractor is required to communicate the data referred to in article 9.1 for the performance of the agreement, he commits to also impose a confidentiality obligation as referred to in this article on this third party (these third parties) and inform client of this as soon as possible.

Article 10. Non-compete

Client will entirely refrain from, directly or through involvement of third parties, making price quotations and/or offers to the principal, including those for expansions and/or changes regarding the work, for which negotiations have been or will be entered by client with principal.

Article 11. Instruments

11.1 All instruments, such as drawings, models, moulds, and tools, which are made available to contractor by client for the performance of the agreement, will remain the property of client under any circumstances.

11.2 All tools and copies made thereof must be made available to client or returned to client at first request.

11.3 For as long as contractor has those tools in his possession, they will be marked with an indelible mark that indicates that they are the property of client. Contractor will point out client's ownership right to third parties who want to seize these tools.

11.4 Without prejudice to the provisions in article 9 of these terms and conditions, contractor will only use the tools referred to in this article for carrying out deliveries and work for client and not show these to third parties, unless client has given express written permission to do so. Contractor bears the risk of loss or damage and is obligated to insure against this risk at his own expense.

11.5 Before using the tools referred to under 11.1, contractor must ensure that they are in proper condition. Client accepts no liability regarding the use of them by contractor and his subordinates and/or the third parties engaged by him.

Article 12. Liability

12.1 Contractor is liable for all direct and indirect damages, resulting from an attributable shortcoming or unlawful act by contractor, his subordinates, or his auxiliary personnel. This also includes any damages resulting from the presence and the use of matters that contractor has involved in the performance of the agreement.

12.2 Contractor will fully indemnify client against claims by third parties for reimbursement for damages as referred to in the first paragraph.

Article 13. Insurance

At client's request, contractor will demonstrate to client that contractor has ensured sufficient insurance at contractor's expense, which covers any damages that client incurs as a result of actions and negligence by contractor and/or engaged third parties. Contractor is obligated to provide client proof of insurance at client's first request.

Article 14. Warranty

14.1 For a period of 36 months after start of use, contractor guarantees that the supplied (completed) matters and the work are of proper quality, free of construction faults, material faults and manufacturing faults, and that they meet the requirements of the agreement.

14.2 Contractor will repair any faults demonstrated by the goods/work during the warranty period in consultation with client and without delay, or replace the faulty goods or (parts of) the work, this at the discretion of client.

14.3 All costs related to the repair of the fault, or the replacement of the goods/work, and the renewed use of the goods/work, or – if this is part of a larger object – of the renewed use of the object, are to be borne by contractor.

14.4 If contractor remains in default regarding the meeting of the warranty obligation included in this article, client has the right to carry out what is necessary, or have it carried out by third parties with the risk and expenses to be borne by contractor. Client has the right to settle the incurred costs with sums owed to contractor.

Article 15. Payment

15.1 Contractor will not invoice client owed amounts earlier than on the date of delivery of the performance. In the event of complete and correct performance of the agreement, client will pay a relevant invoiced amount within 30 days after approval of the invoice.

15.2 In the event of advance payment or payment in instalments, client has the right to require contractor to provide a financial collateral that is sufficient in the opinion of client. If contractor does not comply with this within the set period, he will be in default. In that event, client has the right to dissolve the agreement and claim his damages from contractor.

15.3 The invoice must meet the legal requirements as set out in the Dutch turnover tax act (Wet OB). Contractor must indicate the reference number on the invoice. Invoices without a reference number will not be processed.

15.4 At all times client has the right to settlement, of that which parties can claim from each other.

15.5 Client reserves the right to pay the social security payments and payroll tax contractor owes regarding the work, for which he is jointly and severally liable based on the Dutch chain liability act (WKA), to contractor by depositing it on his blocked account in the meaning of the Dutch chain liability act.

15.6 Without prejudice to the provisions in the previous paragraph, client always has the right to deduct the aforementioned premiums for social security and payroll tax from the (sub)contracting sum and pay them directly on behalf of contractor to the involved employee insurance agency (UWV) and/or the recipient.

15.7 Transfer of the claim on client is only permitted after prior written permission from client. If prior written permission from client is lacking, transfer, voluntary assignment, or pledging of the claim on client is not possible.

Article 16. Cancellation in the Event of Bankruptcy and Suspension of Payments

Without prejudice to the legal right of cancellation by client, client has the right to immediate cancellation when contractor is declared to be in a state of bankruptcy, legally applies for bankruptcy, has requested suspension of payment, or if contractor requests debt restructuring, or loses decision-making authority over his assets or parts thereof due to going into receivership or other reasons.

Article 17. Prohibition on Assignment/Prohibition on Pledging

Contractor is prohibited from assigning, pledging, or transfer under any name the amount included in the contracting sum for owed social security premiums and payroll tax, for which client is liable pursuant to the Dutch chain liability act (WKA).

Article 18. Organisation of the Work

18.1 Contractor is obligated to exclusively follow the orders and instructions given by client.

18.2 Client has the authority to deny employees of contractor access to the work or have them removed, for instance because they are unfit for the work, disorderly, behave inappropriately, etc., without further reimbursement of the costs.

18.3 The working and resting times at the work and the rest or bank holidays, holidays, or other days off, recognised at the work or prescribed by the government or collective labour agreement, also apply to contractor and his employees who carry out activities at the work. Any damages resulting from this for contractor cannot be claimed from client. This last part also applies if it is impossible to use contractor's services at client or at third parties due to a strike or other demonstrable causes.

18.4 Unless otherwise agreed, contractor must ensure that a regular foreman is present at the work from the start until its completion. This foreman must be authorised to make both organisational and technical commitments. His name must be known by the persons or organisations appointed by client.

18.5 Contractor must supply his employees with the proper personal protective equipment and supervise their proper use. Any costs resulting from this are to be borne by contractor

18.6 All required insurance policy as well as the excess of any CAR policy taken out for the work are to be paid by contractor.

18.7 Contractor must ensure that staffing is sufficient that the execution of the work is fully coordinated with the schedule established by the client and must ensure that the work does not stagnate. In the event client changes the schedule/progress, contractor is obligated to adjust accordingly. Changes in staffing are only allowed after permission from client.

18.8 As is prescribed by the Dutch motor vehicle liability insurance act (WAM), contractor is obligated to ensure that the work equipment to which WAM applies supplied by him is insured. With regard to the work equipment to which WAM applies rented by contractor, contractor must make sure that it meets the insurance conditions listed for this.

18.9 Regarding cables, pipes, and other above-ground and underground property of third parties, contractor always remains obligated to ensure establishing their location. Contractor must inform client of any damages without delay.

18.10 Required equipment and materials such as scaffolding, lifting platforms, hoisting equipment, and smaller equipment including hand tools, measurement instruments, rolling scaffolds, ladders and steps, etc., will be supplied by contractor and are included in the total price.

18.11 If work must be carried out on already completed parts of the work, for instance in the event of an assignment to create parts of an already partially completed tool of client, contractor must take protective measures to prevent damage and/or fouling and will be considered to have been applied in violation of the above-mentioned obligation if damage and/or fouling is still found.

Article 19. Laws and Regulations

19.1 Contractor is expected to be aware of all legal and other obligations, conditions, and provisions, including the Building Code and the Construction Material Code, which client, according to the contracting agreement entered into by him of which the execution of the work described in this agreement is part, must comply with and observe.

19.2 Contractor commits to comply with and observe all regulations, conditions, and provisions, including the building site regulations, occupational health and safety act, safety regulations, environmental laws, insofar as these apply to the delivery to be made by him and the work to be carried out by him, also including those with regards to the safety and working environment and the nuisance and/or inconvenience to third parties. Contractor will make sure that he is in the possession of any permits potentially required for the delivery to be made and the work to be carried out accepted by him, and take the necessary safety measures.

19.3 Towards client, contractor commits to meet all his obligations towards or related to the personnel working for contractor, which means that he must meet the exact legal obligations for paying payroll tax and premiums for social security and employee benefits (hereinafter to be called 'premiums'), wages, and other payments related to the personnel that carries out the work assigned by Client, and also commits to strictly observe the relevant collective labour agreement towards the employees.

19.4 If contractor does not comply with any of the provisions from this article 19, he will indemnify client against any damages that this results in for client.

Article 20. Performance by Third Parties

20.1 Without prior written permission from client, contractor will not outsource or transfer the assignment, or any part thereof or its execution respectively, to a third party.

20.2 If contractor transfers the work, or part of it, to another party after receiving permission, he must immediately compose a written agreement of that, of which the terms and conditions of this agreement must be part. In this event, contractor granting the assignment takes on the legal position of client, while the third party takes on that of contractor.

20.3 Transfer/outourcing does not affect the obligations that contractor has towards client pursuant to the agreement.

20.4 Without prejudice to the provisions in articles 20.1, 20.2, and 20.3 contractor is not authorised to employ outside workers, other than following written permission from client. When outsourcing the work or hiring employees as referred to above, contractor is required to comply with the administrative regulations from the Dutch social security coordination act (CSV).

Article 21. Applicable Law

21.1 These terms and conditions, including the assignment to which these terms and conditions apply, are subject to Dutch law.

21.2 The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is excluded.

21.3 Disputes between client and contractor are resolved through amicable means as much as possible, including mediation by appointing a registered MfN mediator. If no amicable resolution can be achieved, the disputes will be brought to the district court of Rotterdam. Alternatively, client may also choose arbitration at the Netherlands Arbitration Institute (NAI).