

## General Purchasing and Subcontracting Terms and Conditions

July 2018

### Clause 1. Applicability, definitions, communication

1. These General Terms and Conditions apply to all oral and written applications from, offers to, assignments granted by and/or agreements with Ballast Nedam N.V., hereinafter: "BN", where BN acts as the buyer of goods (materials and equipment), and/or as the lessee of goods (materials and equipment), and/or as the Principal if work is to be performed based on contracting or subcontracting of work, manned rental and/or service provision (including the hiring of outside employees), or if BN states that these General Terms and Conditions apply or otherwise declares that these General Terms and Conditions apply. BN includes all by BN legally owned subsidiaries according to Article 2:24a Dutch Civil Code (DCC) and BN's group companies according to Article 2.24b DCC.
2. If any provision of these General Terms and Conditions is found to be null and void or is successfully voided, the other provisions of these General Terms and Conditions shall remain in full force and effect.
3. "Subcontractor" shall mean the party with which BN has a contract as referred to in paragraph 1 of this Clause.
4. "Principal" shall mean the principal of BN or his legal successor.
5. "Agreement" shall mean the written agreement concluded between BN and the Subcontractor to provide the Work, Delivery or services.
6. "Activities" shall mean the Activities that the Subcontractor performs for BN based on the Agreement.
7. "Delivery" shall mean the goods and services provided or to be provided (or delivered) in execution of the Agreement.
8. Any (general) terms and conditions of the Subcontractor are expressly rejected by BN and will only bind BN if and in so far as BN has expressly declared the same in writing.
9. Any communication on the implementation of these General Terms and Conditions shall be in Dutch, unless otherwise agreed.

### Clause 2. Prices

1. Prices that have been agreed with BN are fixed prices and shall not be subject to indexation, unless otherwise agreed.
2. The price/contract price shall be inclusive of:
  - a. all wages, social security charges, risk, profit, general operating costs, cost of travel and/or accommodation, workwear/rainwear, commuting hours, time lost etc,
  - b. all packaging costs, transport costs (for both horizontal and vertical transport), transport risks and unloading costs, the cost of storage on or near the location of the construction site, currency exchange risks, import duties and the cost of crossing borders,
  - c. all components that are not specifically mentioned and/or stipulated, but that are necessary for the complete completion of the Activities, Delivery or service provision assigned.
3. All prices in the Agreement shall be in euros, unless expressly stated otherwise in the Agreement.

### Clause 3. Invoicing and payment

1. BN's requirements for invoices and the way BN processes invoices are set out on the website: [www.ballast-nedam.com](http://www.ballast-nedam.com) (Invoice Conditions of Ballast Nedam).
2. Invoices must at all times include the performance voucher signed and issued by BN.
3. All annexes that are part of the invoice (for instance the man days register) must be offered together with the invoice in one file.
4. Unless agreed otherwise, invoicing shall take place after the Subcontractor has performed and complied with all obligations arising from the Agreement.
5. BN will only pay the Subcontractor's first invoice if and when it complies with both BN's invoice conditions and the signed Agreement, without any additional comments and/or amendments added to either document, and all documents and information required is in BN's possession.
6. If partial payments have been agreed, the Subcontractor's last invoice shall only be paid by BN if the Subcontractor has performed and complied with all obligations arising from the Agreement.
7. In deviation from Article 6:120 paragraph 2 DCC, an interest of 4% per year applies.

### The environment and Social Responsibility Clause

#### 4. Corporate Social Responsibility

1. BN attaches great importance to (i) Corporate Social Responsibility (CSR), endorsing in this context the applicable guidelines of the ILO (International Labour Office) and the OECD (Organisation for Economic Co-operation and Development) and (ii) integrity.
2. The expectations and conduct regarding CSR and integrity have been recorded in the Ballast Nedam Code of Conduct for Subcontractors and Suppliers (Gedragcode voor Onderaannemers en Leveranciers d.d. November 2015). This Code

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of Conduct shall apply to the Subcontractor. The Code of Conduct can be found on the BN's website: [www.ballast-nedam.com](http://www.ballast-nedam.com) (Code of Conduct for Subcontractors and Suppliers).

3. BN expects its subcontractors, their employees and all members of their supply chains to likewise act in keeping with the standards of corporate social responsibility and integrity, and to behave in accordance with the aforementioned Code of Conduct.

### **Clause 5. CO2 Emission Data (LCA) of Product and Company**

1. The Subcontractor shall provide his cooperation to the analyses of CO2-generating (chains of) activities.
2. If available, the Subcontractor shall provide his product LCA's (CO2-emission data and energy data) as part of chain analyses and the identification of opportunities for energy and CO2 reduction measures in those chains.
3. If emission data regarding the products are not available or reasonably cannot be composed, or in case of delivery of services are less relevant, then the Subcontractor's CO2-emission-inventory can be used. To do so, the Subcontractor shall use the Dutch National CO2 Database, [www.duurzameleverancier.nl](http://www.duurzameleverancier.nl).
4. The Subcontractor shall make a quantitative inventory of the expected and actual energy streams (energy data) for the project regarding the Activities and will report thereon.

### **Delivery and Execution of Activities**

#### **Clause 6. Manner, place and time of delivery**

1. Unless agreed otherwise in the Agreement, delivery shall be free of costs to the agreed place of delivery, including the duties to be paid (DDP, Incoterms 2010). The completed delivery shall in no event constitute acceptance of the Delivery.
2. The delivery period(s) or delivery date(s) stated in the Agreement are strict deadlines for the Subcontractor. The mere exceedance of those deadlines shall cause the Subcontractor to be in default.
3. As soon as the Subcontractor suspects or knows that he cannot realise the agreed Delivery at the agreed time or within the agreed time schedule, he will notify BN thereof immediately in writing while stating the reasons. The Subcontractor shall take all measures necessary to still deliver in time. If the Subcontractor, in connection with the above, incurs additional costs such as overtime payments and the like, these shall expressly be for his own account.
4. BN reserves the right to change the sequence of (any part of) the Delivery and the time of (any part of) the Delivery, whether or not on call, if it considers that to be advisable in connection with the progress of the Activities, and without being liable for any damages and/or compensation towards the Subcontractor.
5. Except if expressly agreed otherwise, the Subcontractor shall not be entitled to deliver in parts.
6. The Delivery must be packed properly. If unloading the goods is part of the Subcontractor's obligations, unloading and storing shall take place in accordance with BN's instructions. Breakage and/or damage that occur while loading, transporting, unloading or storing, shall be for the account of the Subcontractor, even if such breakage and/or damage is detected later, unless the Subcontractor demonstrates that the damage was due to the actions of BN.
7. Unloading or storing outside the applicable working hours can only take place subject to prior permission from BN. In such event, checks will be carried out afterwards.
8. Any goods rejected by BN shall immediately be removed from the construction site by the Subcontractor upon receipt of the notice of such rejection. If the Subcontractor fails to remove the rejected goods, BN shall have the right to return such rejected goods at the expense and risk of the Subcontractor.
9. Approval only applies to the quantity and the outward appearance of the delivery. If the goods are delivered in packaging and/or in bundles, approval shall only concern the quantity and the outward appearance of the packaging. The risk does not transfer to BN until the time when it has been established that the goods comply with the Agreement.

#### **Clause 7. Commencement and Completion of the Activities**

1. The Subcontractor shall commence the execution of the Activities at the time stated in the Agreement. The Subcontractor shall carry out the Activities in accordance with the time schedule provided by BN. The milestone dates, the delivery period(s) or completion date(s) stated in the Agreement shall be deadlines for the Subcontractor. The sole excess of those deadlines shall cause the Subcontractor to be in default.
2. As soon as the Subcontractor suspects or knows that he cannot realise the agreed Delivery at the agreed time or within the agreed time schedule, he will notify BN thereof immediately in writing while stating the reasons. The Subcontractor shall be held to take all measures that are necessary to yet deliver in time. If the Subcontractor in connection with the above must incur additional costs such as overtime payments and the like, these shall expressly be for his own account.

#### **Clause 8. Planning**

1. All costs and risks borne by the Subcontractor as a result of weather conditions shall be borne by the Subcontractor and will not give rise to any entitlement to compensation of costs and/or damages of any kind.

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2. The Subcontractor is expected to attend any “Lean Planning Sessions” that may be organised, and to actively contribute to that, in order to optimize the planning.
3. If BN is of the opinion that the performance of the Delivery and/or Activities to be performed by the Subcontractor is such that there is a delay or a delay threatens to occur, BN can instruct the Subcontractor in writing to cease the delay and to propose measures to that effect. If, in BN's opinion, the Subcontractor has not responded adequately within a reasonable period or (in BN's opinion) has not implemented sufficient measures to cease the delay, BN is authorized without an additional notice, or notice of default being required, to implement the required measures itself or, after a second reminder, to engage a third party to execute the Activities on the account and risk of the Subcontractor, without prejudice to BN's right to terminate the Agreement and / or to seek compensation.

### Clause 9. Means/equipment

1. Unless otherwise agreed, the Subcontractor shall provide the tools, equipment etc. it needs, including the customary Personal Protective Equipment (PPE) such as safety shoes, safety helmets, safety glasses, vests and workwear.
2. Unless otherwise agreed, BN (or Principal) shall provide electricity, water and/or orientation lights from the connections set up for such purpose. The Subcontractor shall provide work site lights and relocate or extend connections itself and for its own account.
3. The Subcontractor shall be under the obligation to mark any and all equipment made available by BN as BN's identifiable property and to keep it in a good condition while it is in the Subcontractor's possession. Use of the equipment made available by BN shall be for the risk of the Subcontractor.
4. The equipment shall be returned or made available to BN together with the last delivery or immediately when BN so requests.
5. Any equipment that the Subcontractor uses in performing the agreement shall be presented to BN for its approval immediately when BN so requests.
6. Any changes to or deviations from the equipment made available by BN or approved equipment provided by the Subcontractor shall only be permitted upon BN's prior approval in writing.
7. The Subcontractor shall not use the equipment made available by BN, or allow it to be used, for any other purpose than the Delivery to BN or for carrying out the Activities, unless BN has given its prior permission in writing.

### Clause 10. Local situation and rules on the construction site

1. To get access to the construction sites of BN Subcontractor must have a Building Pass (Bouwpas). To acquire a Building Pass every employee of the Subcontractor will receive an application form, through a secure link, with which a Building Pass can be acquired. The personal data that the employee is required to fill in shall be in line with the applicable privacy laws (such as the General Data Protection Regulation (AVG)) and the personal data shall be used by BN to meet their legal requirements (such as the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act) (Wet Ketenaansprakelijkheid), the Recipient's liability ('inlenersaansprakelijkheid'), Dutch Foreign Nationals Employment Act (Wav)). This application should only be done once and shall thereafter be applicable for every construction site of BN. The Subcontractor and its employees are responsible for the timely obtainment of the Building Pass and BN can deny the Subcontractor access if the employees do not have a Building Pass. Any consequences of this denial of access are for account and risk of Subcontractor. Furthermore, Subcontractor is responsible for the fact that the personal data received from Subcontractor's employees is correct and complete and that they are legitimately acquired. Any changes thereto shall be timely communicated with BN.
2. The local situation and the condition of the substrates, sites, the nature and extent of the work to be carried out, the circumstances under which the work have to be carried out as well as the physical arrangement of the construction site and, if applicable, the possibilities for supplying and removing tools and equipment are known to the Subcontractor and shall never entitle the Subcontractor to any expense allowance or additional expense allowance.
3. Once the Subcontractor has started to perform the Activities, this shall be considered as the Subcontractor's acceptance that the substrate onto which the finished work is to be installed or operations have to be applied is acceptable to be able to carry out the Activities and install the materials sufficiently well such that their quality can be guaranteed without having any entitlement to any expense allowance or additional expense allowance.
4. The Subcontractor and its employees shall comply with the regulations and rules that apply at the construction site and they shall be under the obligation to heed the instructions of the person in charge acting for BN on site.

### Clause 11. Safety Sanctions Policy

1. On every construction site of BN a policy applies on the area of HSSE (“**Health Security Safety and Environment**”). This includes among other the obligation (for all external employees) to get a Generic Gate Instruction (Generieke Poort Instructie) certificate. The certificate must be acquired before the Activities have started. In the case of gravely dangerous behaviour, when somebody acts contrary to the GPI, BN can (temporarily) revoke the validity of the GPI certificate. Any

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- consequences that arise from revoking the GPI certificate is the responsibility of Subcontractor and therefore on Subcontractor's account and risk .
2. BN works with a sanctions policy in the area of HSSE. If any employee of the Subcontractor, of any third parties engaged by the Subcontractor (such as subcontractors, contractors, suppliers) and/or workers made available by or through such third party, does not comply with the applicable Construction Site Rules and/or Code of Conduct, any instructions' given and/or safety regulations, that person will receive an oral warning. In case of a second violation within a period of 3 months, a written warning will follow. If a third violation is committed within a period of 6 months after the second violation, the person concerned will immediately be removed from the construction site.
  3. The Subcontractor will be informed in writing of any established violation. The Subcontractor is then required to take measures to prevent any future similar behaviour.
  4. If the Subcontractor fails to fulfil the obligations of paragraph 3, BN has the right to impose
    - a fine of € 250,- per person per oral/ written violation, which will be withheld by BN from any payments due to the Subcontractor.
  5. In deviation from the abovementioned sanction policy, in the event of a "serious violation" by either Subcontractor's employee, of any third parties engaged by the Subcontractor (such as subcontractors, contractors, suppliers) and/or their employees and/or workers made available by or through such third party, the person concerned will immediately be removed from the construction site. A "serious violation" shall mean:
    - a. aggression, violence,
    - b. discrimination,
    - c. indecent behaviour,
    - d. use or being under the influence of any intoxicating substances,
    - e. removal of safety or security items,
    - f. knowingly putting others at risk.

The associated costs will be entirely for the account of the Subcontractor.

### Clause 12. Documents

1. If BN makes documents available, BN shall be responsible for the information provided, unless indicated otherwise. The processing and interpretation of the details and any further elaboration by the Subcontractor shall be for the Subcontractor's account and risk, even after approval or inspection by BN.
2. BN uses a digital program for exchanging files. BN shall make one licence available to the Subcontractor. Upon request, more licences can be made available for a certain fee.
3. Any intellectual property rights resting on the documents provided by BN, shall lie with and remain with BN, and must not be reproduced or otherwise be used or made available to third parties otherwise than exclusively in the context of the execution of the Agreement.

### Clause 13. Changes

1. BN shall be authorized to instruct changes in the nature and scope of the Delivery and/or the Activities. BN shall in that context inter alia be authorised to make changes in drawings, models, instructions, specifications, etc., relating to the assignment. The Subcontractor shall be held to carry out those instructed changes.
2. If this in the opinion of the Subcontractor has consequences for the agreed price and/or completion date, the Subcontractor shall, before executing the change, inform BN as soon as possible, but in any case within 5 working days after the notification of the required change, in writing of the consequences - including any technical and financial consequences - of the change for the Agreement. If these consequences in the opinion of BN are unreasonable in relation to the nature and scope of the change, BN shall have the right to cancel the ordered change.
3. A change executed by the Subcontractor shall only be eligible for payment if BN has instructed the change in writing. The Subcontractor shall not be entitled to suspend the execution of an instructed change for any reason whatsoever, including discussions regarding the financial consequences.
4. The Subcontractor shall without the prior written permission of BN not be permitted to carry out any changes to the Delivery and/or the Activities.
5. If the Subcontractor sees opportunities to carry out the Activities more efficiently, cheaper and/or faster (value engineering), he will inform BN thereof by means of a change proposal. The willing party will subsequently work out a change proposal regarding the anticipated value engineering, including the anticipated financial savings and/or time savings, as well as a proposal for the division of these benefits. A proposal for value engineering shall only be made by the Subcontractor if BN has provided a written instruction to do so. BN shall have the right to reject a proposal for value engineering without stating any reasons for that, and without being due any compensation for that to the Subcontractor.

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### Clause 14. Inspection, Checking and Testing

1. BN and the Principal shall have the right, but not the obligation, to (let others) inspect, check and test the (production of the) Delivery and the Activities.
2. The Subcontractor shall facilitate the inspection, checking and/or testing of the Delivery or the Activities. Each party shall bear their own costs.
3. If goods are rejected, BN shall notify the Subcontractor immediately. The Subcontractor shall forthwith repair or replace the rejected goods or parts of the Activities. Any goods rejected on BN's construction site will forthwith be removed by or for the account of the Subcontractor.
4. The Subcontractor shall be authorised at the expense of the party placed in the wrong to demand a re-testing of any goods or parts of the Activities rejected by BN. The parties shall appoint a body or an official for this. The results of the re-testing shall be binding on both parties.
5. In case of suspicion of inadequate work, BN shall at all times have the right at the expense of the party placed in the wrong to demand additional inspections and examinations from the Subcontractor, outside the agreed inspections and examinations.
6. Inspection or approval constitutes neither approval nor acceptance and does not release the Subcontractor from any obligation or liability.

### Clause 15. Handover

1. The Subcontractor shall notify BN in a timely manner and in writing of the date on which the Activities in the opinion of the Subcontractor are ready for actual delivery (request for actual delivery).
2. A request for actual delivery of the Subcontractor will have to meet the following requirements:
  - a. it will have to be submitted to BN in writing, and
  - b. it must be submitted after the Activities or a separate part of the Activities has been completed in full, and
  - c. the construction site where the Subcontractor has carried out the activities has been cleaned up in full, and
  - d. the results of the inspections listed in the inspection plan and/or all relevant evidence material demonstrating that the Activities meets the quality requirements of the Agreement have been provided.
3. If BN wants to make use of its right to test the Activities that are to be delivered, the testing shall take place expediently and as a rule within 3 working days after the date mentioned in the request referred to in paragraph 1. In that case, the date and time of the inspection shall in advance be communicated in a timely and expeditious manner to the Subcontractor in writing. BN may require that the Subcontractor or his authorised representative will be present during the testing.
4. Within 5 working days after the date mentioned in the request referred to in paragraph 1, BN shall notify the Subcontractor in writing whether the Activities have been accepted or not, in the latter case while providing a complete list of the defects that constitute the reason for the refusal of the Activities. If the defects as to their number, nature and/or scope are so significant that it cannot reasonably be required from BN that such a complete list is given, BN will only provide a summary of the relevant defects. If the Activities are accepted, the date mentioned in the request referred to in paragraph 1 shall be deemed to be the actual date of completion.
5. If the Subcontractor has not received one of the written notifications referred to in paragraph 4 within 5 working days after the date mentioned in the request referred to in paragraph 1, he can request BN anew, by means of a letter (which will as then also be sent by e-mail), to accept the Activities.
6. If BN has not notified the Subcontractor whether the Activities have been accepted or not within 5 working days after the date of the letter referred to in paragraph 5, the Activities shall be deemed to have been accepted. In that case, the date specified in paragraph 1 shall be deemed to be the actual date of completion.

### Clause 16. Maintenance period

1. During the maintenance period the Subcontractor shall for his own account at the first request of BN repair all defects in the Activities, unless the Subcontractor proves that the defect was caused by improper or careless use, or can be qualified as normal wear and tear as a result of actual use.
2. The maintenance period starts after delivery of the Activities by the Subcontractor to BN and ends:
  - a. For the construction and civil engineering parts of the Activities: 6 months after delivery of all the Activities (the project) by BN to the Principal.
  - b. For installations: 12 months after delivery of all the Activities (the project) by BN to the Principal.

### ***Obligations on the part of the Subcontractor***

#### **Clause 17. Performance of the Activities, Delivery or service provision**

1. The Subcontractor's obligations - for the account of the Subcontractor - include, without limitation:

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- a. performing all measurements based on the principal measurements to be specified by BN, consisting of heights and grid lines, required for the Activities;
  - b. carrying out the Activities and/or delivering the Delivery properly and soundly and in accordance with the provisions of the Agreement, and doing all that which belongs to the nature of the Activities and/or the Delivery, as may be expected from a professional party;
  - c. complying with the quality management system in accordance with NEN-EN-ISO 9001, the environmental management system in accordance with NEN-EN-ISO 14001 and VCA;
  - d. if applicable, heeding any orders and instructions given by BN;
  - e. heeding all general and safety regulations as well as the instructions of the Labour Inspectorate;
  - f. communicating warnings in respect of apparent mistakes in documents and/or performance and/or instruction, which shall be without prejudice to the Subcontractor's own responsibility;
  - g. taking protective measures to prevent damage and/or pollution if and in so far as the full assignment must be carried out on any parts of the construction site that have already been completed;
  - h. taking the performance of the full assignment by third parties into account while carrying out the Activities. The instrument of mutual consultation will be applied in order to attempt to avoid stagnation;
  - i. taking protective measures in order to prevent the construction site, adjoining and/or other buildings, sites, ground and/or surface water and/or the public road or parts thereof from being damaged and/or polluted.
2. All measurements and/or dimensioning must take place with demonstrably calibrated measuring equipment. Calibration must take place with the frequency applicable for the relevant equipment. If no set frequency exists, the relevant equipment must be calibrated at least once per year. The Subcontractor shall always at the first request of BN submit calibration reports to BN.
  3. The Subcontractor shall be held to keep the construction site clean and safe during the Activities to be performed by him. Unless agreed otherwise, the prices stated in the Agreement shall be deemed to include the costs of separate disposal and/or processing, or disposal and/or storage, of all packaging, waste and the like resulting from the Delivery or Activities by the Subcontractor.
  4. Waste materials that according to the Environmental Management Act and/or other relevant environmental legislation can be classified as being hazardous substances shall remain the property of the Subcontractor and must immediately be removed from the site by the Subcontractor. The Subcontractor shall be held to provide copies of the report forms under the Environmental Management Act and/or other relevant environmental legislation.
  5. The Subcontractor shall be held to carry out his obligations under the Agreement in such a manner that BN can always fulfil its obligations under the Agreement between the Principal and BN.

### Clause 18. Outsourcing

1. The Subcontractor shall refrain from transferring or outsourcing the performance of part or all the Agreement to a third party without BN's prior written permission. BN may attach conditions to its permission.
2. Transfer and/or outsourcing as referred to in paragraph 1 of this Clause shall be without prejudice to the obligations that the Subcontractor has in respect of BN pursuant to the Agreement and/or these General Conditions.
3. If the Subcontractor after having obtained permission for that transfers or contracts out the Activities or the Delivery or the provision of services to another party in full or in part, he shall draw up a written agreement thereof, of which the relevant rights and obligations under these General Conditions will constitute a part, so that BN can at all times meet its obligations under the Agreement between the Principal and BN.
4. If so requested, the Subcontractor shall provide BN with a digital copy of the agreement with the other party.
5. The Subcontractor shall warrant in respect of BN that it shall promptly pay all third parties that have a due and payable claim on the Subcontractor or on its contractor(s) or subcontractor(s) regarding every separate assignment or project, from the payments to be made by BN. If so desired, BN shall be entitled to obtain information in writing from the Subcontractor's contractor(s) or subcontractor(s) in this regard before making any further payments to the Subcontractor.
6. If this obligation on the Subcontractor is not complied with, BN shall also have the right, after sending a written warning, to directly pay any claims by said third parties that have been found to exist on behalf of the Subcontractor. The Subcontractor's obligation to pay such amount shall then be considered to have been discharged. BN shall have the right to set off any payments against the Subcontractor. In such event, BN shall inform the Subcontractor in writing.

### Clause 19. Hiring of External Workers

1. Without the prior written permission of BN, the Subcontractor will not make use of any (hired) workers made available to him by a third party. BN may attach conditions to its permission.
2. Using external workers as referred to in paragraph 1 of this Clause shall be without prejudice to the obligations that the Subcontractor has in respect of BN pursuant to the Agreement and/or these General Conditions.

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3. If workers are made available by a third party to the Subcontractor, the Subcontractor will draw up a written agreement for that, of which the applicable rights and obligations under these General Conditions constitute a part.
4. If so requested, the Subcontractor shall provide BN with a digital copy of the agreement with the other party.
5. If external workers other than self-employed professionals are hired, they shall only be hired directly or indirectly from a third party who has a Labour Standards Register (SNA) quality mark ([www.normeringarbeid.nl](http://www.normeringarbeid.nl)) and -therefore- complies with the NEN 4400-1 or NEN 4400-2 standards.

### Clause 20. Confidentiality

1. The Subcontractor undertakes to observe confidentiality regarding the existence and content of the Agreement and regarding the nature and content of all oral and written information that he receives from BN, unless disclosure to third parties is necessary in connection with the performance of the Agreement, while imposing (at least) equivalent confidentiality obligations.
2. The Subcontractor shall not disclose anything in this regard without BN's prior written permission.
3. The Subcontractor undertakes to return the aforementioned documents to BN for his own account if BN after Delivery or completion requests the same in writing.
4. Without the prior written permission of BN, the Subcontractor shall be forbidden to make any statements or post any publications concerning the existence and content of the Agreement, the Activities and/or the Delivery in or on any media (including the website of the Subcontractor), or to use the name and/or the logo of BN for business or commercial purposes.

### Clause 21. Non-competition

1. The Subcontractor shall not be permitted, both directly and indirectly via a group company or a subsidiary company or a consortium of whatever nature or through any third-party intermediary, to make quotations and/or offers to the Principal that directly or indirectly relate to the execution of the Agreement, the relevant assignment and/or the relevant project of BN.
2. The Subcontractor shall refrain from all direct contact with the Principal as regards the performance of the Agreement, the assignment in question and/or BN's project in question, unless prior permission in writing has been given for such direct contact.

### Clause 22. Passing of title

1. Title to the goods shall already transfer prior to the factual delivery as soon as the Subcontractor has started to process or machine them, has obtained them from a third party or has manufactured them. The Subcontractor shall be under the obligation to administer these goods with due care, provide them with a distinctive mark, store them separately for BN and take out sufficient insurance cover for them. If requested by BN Subcontractor shall cooperate on primary request to a further proprietary statement.
2. All equipment associated with the Agreement and made available to the Subcontractor by BN or that has been manufactured by the Subcontractor or by third parties for the purpose of the Agreement shall remain or become BN's property.
3. The Subcontractor shall hand over the equipment referred to above to BN no later than during the factual delivering of the goods or completion of the Activities.

### Clause 23. Intellectual Property

1. The Subcontractor shall warrant that the Delivery and/or Activities do not infringe on any patent rights, trademarks, design rights, copyrights or other rights of third parties or of BN.
2. The Subcontractor shall hold BN harmless against third-party claims for compensation of any damage, costs or loss resulting from infringement of any rights referred to in the previous paragraph.
3. The Subcontractor shall grant BN and the Principal an unlimited license for using all intellectual property rights invoked by the Subcontractor.

### Clause 24. Security, suspension, setting off and prohibition on assignment

1. BN shall be entitled to request that security be provided at the Subcontractor's expense in order to ensure that the Subcontractor will comply with its obligations; if so requested, the Subcontractor shall be under the obligation to provide such security.
2. BN shall have the right to suspend all payments if the Subcontractor fails or threatens to fail to comply with or is at risk of failing to comply with one or more obligations pursuant to the Agreement and/or the present General Conditions.
3. The Subcontractor declares to waive his right to suspension (opschortingsrecht), among which, but not exclusively, the right of retention (retentierecht).

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4. Payment of the goods and/or all or part of the Activities by BN does not constitute any waiver of its rights resulting from the Agreement and/or these General Conditions and does not release the Subcontractor from any obligation and/or liability. BN has the right to set off any amounts it owes the Subcontractor against amounts that the Subcontractor owes BN for any reason.
5. The Subcontractor's claims on BN cannot be transferred (as referred to in Article 3:83(2) DCC) and cannot be pledged (as referred to in Article 3:83(2) in conjunction with Article 3:98 DCC).

### Clause 25. Cancellation

1. BN shall at all times be authorised to terminate the Agreement prior to the end of the Agreement by means of written notice to the Subcontractor. The Agreement shall end and the Subcontractor shall cease performing the Agreement immediately upon receipt of the written notice or at the time stated in such notice.
2. BN may, outside the cases specifically mentioned in the Agreement, dissolve the Agreement in the interim against reimbursement of the costs of all performances already delivered by the Subcontractor and accepted by BN, increased with a reasonable compensation. This compensation will at most be 2% of the unexecuted part of the agreed price, for damage, costs and losses incurred by the Subcontractor as a result of the non-completion of the Agreement. The total amount of the compensations to the Subcontractor under this Clause shall never exceed the order/contract price.

### Clause 26. Replacement, dissolution

1. Without prejudice to BN's entitlement to damages and/or its right to suspend all or part of its obligations under the Agreement, BN shall have the right to dissolve the entire Agreement or to only dissolve it in respect of the part that has not yet been performed, without any notice of default or judicial intervention being required if:
  - a. the agreed (completion/)delivery time is exceeded or if it is clear even before such time has elapsed that it will be exceeded.
  - b. (it follows from a notification from the Subcontractor that) the bankruptcy of the Subcontractor has been pronounced or petitioned.
  - c. (it follows from a notification from the Subcontractor that) the suspension of payments of the Subcontractor has been pronounced or petitioned.
  - d. the Subcontractor ceases its business operations (closing or termination).
  - e. third parties seize the Subcontractor's assets.
  - f. there is a violation of (the application of) the Code of Conduct referred to in Clause 30 of these General Conditions.
2. Without prejudice to the provisions of the previous paragraph, BN shall have the right to dissolve all or part of the entire Agreement, without prejudice to its entitlement to damages and/or its right to suspend all or part of its obligations under the Agreement, if the Subcontractor fails to comply with one or more of the obligations resulting from the Agreement or fails to comply with them properly or in good time.
3. In the events referred to in paragraph 1 above, BN shall be entitled to use any equipment used by the Subcontractor, such as scaffolding, hoisting equipment, transport tools, etc., without charge in order to complete the Activities contracted by the Subcontractor or to have such equipment used for such purpose without charge.
4. If an event as referred to in paragraph 1 or paragraph 2 occurs, all claims by BN on the Subcontractor shall be immediately and fully due and payable.

### *Guarantees, damage or loss and liability*

#### Clause 27. Guarantees

1. The Subcontractor shall guarantee that Delivery and/or the Activities, including any goods and materials used:
  - a. are as agreed in the Agreement.
  - b. are of good quality, without defects as to their design, construction and implementation (assembly/installation) and are suitable for their intended purpose.
  - c. continue to be suitable for their intended purpose for their envisaged service life.
  - d. comply with all the relevant statutory provisions.
  - e. comply with all the applicable standards sheets, standards provisions and rules, including those of local, regional, national and European authorities and utilities companies.
2. If the Subcontractor's customary guarantee or the manufacturer's guarantee is more extensive than the guarantee referred to in 1. above, the most extensive guarantee shall apply.
3. The Subcontractor shall immediately and for his own account repair or properly remedy all defects in the Delivery and/or the Activities that turn out to be present on delivery, completion or within the guarantee period, unless the Subcontractor proves that the defect is due to improper or careless use, or can be qualified as normal wear and tear that can be expected as a result of the actual use.



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4. If BN is of the opinion that the Subcontractor has repaired a defect late and/or improperly, or if, in all reasonableness, repairing the defect does not tolerate any delay, BN shall be at liberty to carry out the things that need to be done, or have them carried out, for the Subcontractor's account.
5. Unless agreed otherwise:
  - a. the guarantee period referred to in this Clause shall be 12 months.
  - b. the guarantee period shall commence as per the date of Delivery, and in case of partial deliveries as per the date of the last thereof.
  - c. the guarantee period for Activities shall commence after the end of the maintenance period (in the case of no maintenance period: after delivery).
6. After replacement or repair within the guarantee period, the guarantee agreed for the relevant part of the Activities and/or Delivery shall start to run anew.
7. Any guarantees as regards to the Delivery and/or the Activities given to third parties hired on behalf of the Subcontractor shall be considered to have been given by the Subcontractor. As regards such guarantees, the Subcontractor undertakes to take care of compliance with the rights, entitlements and claims resulting from said guarantees, as if they were its own obligations, immediately upon BN so requesting. The Subcontractor undertakes to hand over to BN all guarantees received by the Subcontractor from any third parties hired by the Subcontractor and to hand such over no later than at the time of completion of the Subcontractor's Activities. In the relevant guarantee texts, it must be included that they apply for the benefit of BN and the Principal.
8. If and in so far as any guarantee provided by the Subcontractor under the Agreement has been formulated less far reaching than that to which the Subcontractor was held under the Agreement, this shall in no way release the Subcontractor from any of his guarantee obligations under the Agreement, regardless of whether BN has pointed out the same to the Subcontractor at the handing out of that guarantee or not.

### Clause 28. Liability, damage or loss, indemnification

1. The Subcontractor shall be liable for all damage, including loss of profits and costs, suffered by BN and/or any third parties, including the Principal, employees of BN and any third parties engaged by BN, a result of the execution of the Agreement by or on behalf of the Subcontractor. Subcontractor shall indemnify BN against any claims of third parties in this regard.
2. BN shall not be liable for any damage to or loss of materials, equipment and tools belonging to the Subcontractor, its personnel and/or any third parties hired by the Subcontractor or for any materials, equipment and tools rented and/or borrowed by them.
3. If two or more Subcontractors have jointly accepted an assignment they will be jointly and severally liable for the entire performance and any consequences thereof.
4. BN shall have the right - immediately and for the account and risk of the Subcontractor - to compensate and/or repair any damage or loss caused by the Subcontractor, but BN shall not be under any obligation to do so. The Subcontractor shall directly compensate BN for any associated cost incurred.
5. If the Subcontractor fails to comply with its contractual or statutory obligations and BN is held liable, the Subcontractor shall hold BN harmless against all consequences of BN being held liable.
6. Subcontractor is (undiminished what is stated in the agreed guaranties) responsible for hidden defects. The possibility of legal action from BN to Subcontractor because of hidden defects shall expire (i) five years after the end of the maintenance period from BN to Subcontractor or (ii) ten years after the end of the maintenance period from BN to the Principal in case of a threatening collapse or unsuitability of use. When there is not a maintenance period between BN and the Principal the before mentioned expire terms shall apply after the delivery from BN to the Principal.

### Clause 29. Insurance

1. The Subcontractor shall take out liability insurance, including for the benefit of BN, without the policy conditions or other elements of the policy containing any reference, plea, transfer or form of recourse to or with respect to BN or other parties involved in the assignment. In case of damage and/or costs that are attributable to the Subcontractor, the excess shall be for the account of the Subcontractor.
2. If the Subcontractor is also insured on a policy taken out by BN, and damage or loss attributable to the Subcontractor occurs, the Subcontractor shall be under the obligation to compensate the policy excess when the claim is paid or to compensate any damage or loss not covered by the policy. The policy conditions are available for inspection at BN's offices.
3. BN imposes the following obligations on the Subcontractor:
  - a. to take out an insurance on the equipment it uses to cover its liability for both material damage or loss and for personal injury, including any consecutive loss caused by or in connection with the use of the equipment;

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- b. to take out an insurance cover in accordance with the provisions of the Dutch Motor Insurance Liability Act (Wet Aansprakelijkheidsverzekering Motorrijtuigen - W.A.M.) providing a minimum cover for material loss of €2,500,000 per event for equipment that may be regarded as a motor vehicle;
  - c. to take out a corporate liability insurance (A.V.B.) providing a minimum cover of €2,500,000 per event including employer's liability cover;
  - d. to take out a professional liability ('beroepsaansprakelijkheidsverzekering') insurance providing professional liability cover for at least €2,500,000 per event, if applicable;
  - e. to have taken out an incapacity for work insurance ('arbeidsongeschiktheidsverzekering').
4. The policies to insure the liabilities referred to above shall comply with the following requirements:
    - a. The 'Principal' (BN) shall be named as the co-insured party;
    - b. the insurance shall offer primary coverage (invoking any insurance policies taken out elsewhere shall not be permitted);
    - c. in the policy conditions no (form of) recourse towards BN must have been included.
  5. The Subcontractor shall always pay its premium(s) in good time.
  6. The Subcontractor shall be under the obligation to provide BN with a copy of the policy and/or proof of payment in question if so requested.
  7. All not covered damage and the applicable excess shall remain for the account of the party for whose risk this is under the Agreement or under the law.

### **Legislation and regulations**

#### **Clause 30. Legislation, Collective Labour Agreement (CLA), Code of Conduct, Consequences of Non-Compliance**

1. The Subcontractor shall be considered to be familiar with the legislation and regulations, rules, terms and conditions and provisions, in the widest sense, that apply to the Agreement, hereinafter referred to as the "Law".
2. The Subcontractor undertakes to comply with the Law, as well as any collective labour agreement that may apply, and to make sure that employees and any third parties it has hired (such as subcontractors, contractors, suppliers) and/or workers made available by or via such third party also comply with the Law, as well as with any collective labour agreement that may apply.
3. The Subcontractor undertakes to comply with the Code of Conduct for Subcontractors and Suppliers (hereinafter: the "Code of Conduct") and to make sure that the employees and any third parties it has hired (such as subcontractors, contractors, suppliers) and/or workers made available by or via such third party also comply with the Code of Conduct.
4. To the extent allowed by these General Conditions, the Subcontractor can enter into an agreement with third parties for the Activities for, Delivery to or service provision to BN. Such agreement shall explicitly state that (i) these General Conditions constitute an integral part of such agreement, and (ii) these General Conditions constitute an integral part of any agreement to be entered into by such third party. In such an agreement with third parties, the Subcontractor shall have the legal status of principal and the third party shall have the legal status of contractor, in accordance with the provisions of these General Conditions. It shall thus be ensured that these General Conditions are passed on in the chain of general contractors/principal/suppliers and apply integrally.
5. Should any failure to comply with the Law, the Code of Conduct or these General Conditions lead to BN being held liable by third parties, regardless of the reason, the Subcontractor shall hereby hold BN harmless against all consequences and damage or loss in this respect and against any third-party claims in this regard.
6. The consequences of compliance with (the changes of a statutory provision or a government decree that takes effect after the Agreement was entered into shall be for the account of BN if, and to the extent that, it is reasonable to assume that the Subcontractor was not able to foresee such consequences.

#### **Clause 31. Dutch Compulsory Identification Act (Wet op de identificatieplicht - Wid) and Dutch Foreign Nationals Employment Act (Wet Arbeid Vreemdelingen - Wav)**

1. The Subcontractor shall warrant in respect of BN that all the rules that result from the Dutch Compulsory Identification Act (Wid) and the Dutch Foreign Nationals Employment Act (Wav) are complied with for, by or via any natural persons to be engaged by the Subcontractor, directly or indirectly and in any capacity whatsoever (including self-employed professionals).
2. The Subcontractor shall proactively provide BN with all the information that BN needs to be able to establish that the Subcontractor complies with the Wid and the Wav before the Activities start.
3. Among other things, the Subcontractor shall warrant that the natural persons referred to in paragraph 1 of this Clause:
  - a. have a BSN number;
  - b. have a valid passport, based on which the identity of the person to be engaged can be established before the Activities start. If and insofar legally required can the following personal details be recorded in BN's (and the Subcontractor's) records:
    - name, address and residence details;

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- the date of birth;
  - the BSN number;
  - the nationality;
  - the type of ID, number and term of validity;
  - name, address and office address of the subcontractor/the party providing the outside workers.
- c. have a valid residence and/or work permit, if required, based on which it can be established that the rules that result from the Wav have been complied with before the Activities start.
4. In the case of a self-employed professional (see Clause 38) and to the extent that this is mandatory pursuant to the Wav, the Subcontractor shall provide the following to BN before the Activities start: copies of a valid passport and/or the documents referred to in Clause 31 paragraph 3c. These documents will also be kept in the Subcontractor's records for at least five years after the end of the calendar year in which the natural person ended the Activities.
5. The Subcontractor shall ensure that any person whose services are engaged shall be able to show valid proof of identity (passport or driving licence) immediately when requested to do so by BN. BN has the right to check periodically (randomly) whether this obligation is met. BN may deny access to the construction site to any person failing to comply with this obligation or remove such person from the construction site.
6. The Subcontractor shall hold BN harmless for any damage or loss, fines, penalties, taxes and premiums and/or other payment obligations BN may have that relate to the Agreement due to any failure on the part of the Subcontractor to comply with obligations resulting from the Wid, the Wav and/or this Clause. If a fine or penalty is imposed on BN as a result, the Subcontractor shall compensate BN for this immediately when BN so requests.

### **Clause 32. The Dutch Placement of Personnel by Intermediaries Act (Wet allocatie arbeidskrachten door intermediairs - Waadi)**

1. The Subcontractor has been registered in the Trade Register in good time and correctly in keeping with the Dutch Placement of Personnel by Intermediaries Act (Waadi).
2. When hiring external workers, either directly or indirectly, the Subcontractor shall only hire the services of third parties that have -also- been registered in the Trade Register in good time and correctly in keeping with the Waadi.

### **Clause 33. Personal Data**

1. Whilst processing the personal data by BN and Subcontractor in the context of the Agreement both parties shall uphold the statutory obligations laid down in the applicable laws and regulations concerning personal data, among which the General Data Protection Regulations (AVG). Subcontractor declares to have taken knowledge of these laws and regulations.
2. Subcontractor will cooperate fully to provide personal data to BN, at least to the extent that BN is legally required to have such personal data. Subcontractor is completely responsible for the fact that the personal data provided by Subcontractor to BN is correct and that the data is lawfully obtained.

### **Taxes, contributions and wage payments**

#### **Clause 34. Supply chain liability (in the event of work being contracted)**

1. BN has the right to deduct 40% of the wage cost component of the contract price/order price on every invoice and to transfer this to the Subcontractor's guarantee account or to pay it directly to the tax authorities for the Subcontractor.
2. The Subcontractor shall hold BN harmless against any claims from third parties, especially the tax authorities, due to non-compliance with obligations resulting from the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act (Wet Ketenaansprakelijkheid), from these General Conditions or this Clause, such as wage tax and social insurance contributions not having been paid, additional tax assessments, fines, penalties and interest on tax due. The Subcontractor will compensate BN immediately if so requested.

#### **Clause 35. Recipient's liability (if external workers are hired)**

1. The Subcontractor shall warrant that it complies with and takes care of its statutory obligations to pay wage tax, social security contributions, employed persons insurance premiums and the income-related health insurance (Dutch Zvw) premium and turnover tax, together with any contributions imposed on BN for industry-specific schemes as laid down in the applicable collective labour agreement.
2. BN shall have the right to transfer at least 25% of the wage cost component (including turnover tax) to the guarantee account or to pay it directly to the tax authorities on behalf of the Subcontractor.
3. If the regulations governing the transfer of the turnover tax liability apply, 20% of the wage cost component will be transferred.
4. If external workers are hired from a listed Subcontractor whose registered office is in an OECD country, there will not be any transfer to the guarantee account if the Subcontractor has a statement from the tax authorities and if the Subcontractor or its operating company are in the SNA register.

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5. The Subcontractor shall hold BN harmless against any claims from third parties, especially the tax authorities, due to non-compliance with obligations resulting from the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act ('Wet Ketenaansprakelijkheid'), from these General Conditions or this Clause, such as wage tax, turnover tax and social insurance contributions not having been paid, additional tax assessments, fines, penalties and interest on tax due. The Subcontractor will compensate BN immediately if so requested.

### Clause 36. Regulations governing the transfer of the VAT liability

1. If the regulations governing the transfer of the VAT liability apply (as is the case if work is contracted or personnel is made available and BN qualifies as a 'builder/developer' ('eigenbouwer'), or if the agreement is an agreement between companies that constitute a group for turnover tax purposes), the Subcontractor's invoices shall be set up accordingly.

### Clause 37. Subcontractor's liability for wage payments

1. If the Subcontractor fails to comply with its obligations as regards terms and conditions of employment pursuant to the Law, the applicable collective labour agreement or any other, lower regulations in respect of its employees and BN is held liable for complying with such obligations, BN shall be entitled to recover the full amount from the Subcontractor plus the statutory interest rate from the time of payment by BN. This shall be without prejudice to the possibility for BN to claim from the Subcontractor payment of the entire loss, including any damage to its image.

### Clause 38. Self-employed professional without any staff

1. If the Subcontractor qualifies as a self-employed professional without any staff, (hereinafter "self-employed professional") or hires the services of a self-employed professional, the Subcontractor shall provide the following to BN for every self-employed professional:

- weekly: a summary of the hours worked (if applicable), and
- from time to time: proof of turnover tax payment.

2. The self-employed professional shall not engage any third party and/or will not make use of any (hired) workers made available to him by a third party.

3. The Subcontractor shall hold BN harmless against any claims from third parties, especially the tax authorities, such as for, without limitation, wage tax and social insurance contributions not having been paid, additional tax assessments, fines, penalties and interest on tax due in connection with the services of a self-employed professional being hired. The Subcontractor will compensate BN immediately if so requested.

### Checks on compliance Clause

#### 39. Audit

1. BN shall at all times have the right to check or have another party check that the Law, the Agreement, the Code of Conduct and/or these General Conditions are complied with by the Subcontractor and that a third party whose services are hired by the Subcontractor complies with the Law, the Agreement, the Code of Conduct and these General Conditions.

2. The Subcontractor shall, to a reasonable extent, cooperate in an audit by or on behalf of BN and shall ensure that any third party whose services have been hired by the Subcontractor shall also cooperate.

3. The Subcontractor is aware that BN may conduct a specific investigation regarding compliance with social laws and regulations, such as the Wid, Wav, Waadi, Labour Market Fraud (Bogus Schemes) Act ('Wet Aanpak Schijnconstructies'), WAGA, the applicable CLA, the Working Hours Act, the Working Conditions Act and the like. The Subcontractor shall, if necessary and allowed according to the Law, be held on request to make all relevant documents available to BN, including, but not limited to:

- (example) job contracts or examples of job contracts between the Subcontractor and its employees;
- salary specifications and/or pay slips, possibly anonymised;
- proof of payment of salary, social security and other premiums, etc.;
- a summary of time savings fund entitlements and pension entitlements; e. "A1" statements.

4. Inspection or approval by BN shall not release the Subcontractor from any guarantee or liability resulting from the Law, the Agreement or these General Conditions.

### Closing Provisions

#### Clause 40. Disputes, Applicable Law

1. All disputes, also including a dispute that is considered to be a dispute by only one of the parties, which may arise as a result of this Agreement or any other agreements arising therefrom, and that cannot be resolved amicably, will be settled by means of arbitration in accordance with the rules as laid down in the Articles of Association of the Arbitration Board for the Building Industry as these read three months before the date that this Agreement has been concluded.

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2. Any disputes in which BN and Principal become involved and for which BN and/or Principal wish to institute legal proceedings against or implead the Subcontractor shall not be covered by paragraph 1. In such events, BN and the Subcontractor shall submit to the dispute resolution procedure as stated in the agreement between BN and Principal.
3. Paragraphs 1 and 2 are without prejudice to the possibility of requesting an injunction or taking precautionary measures.
4. Dutch law shall apply to the relationship between the Subcontractor and BN. Applicability of the Convention on the International Sales of Goods (CISG)('Weens Koopverdrag') is herewith excluded.
5. The occurrence of any disputes shall not entitle the Subcontractor to suspend or alter its performance of the Agreement.