GENERAL TERMS AND CONDITIONS OF PURCHASE AND (SUB)CONTRACTING 2019

General terms and conditions of purchase and (sub)contracting of Pillen Group in Lichtenvoorde.

General

Article 1: Scope of application

1. The 'Client' is the natural person, legal entity or partnership that applies these terms and conditions of purchase. The other party is referred to as the 'Contractor'. In these terms and conditions 'Principal' refers to the Client's client. In addition, 'the work' is also understood to refer to the provision of services.
2. Articles 1 up to and including 23 of these terms and conditions apply to all offers made to the Client and agreements concluded with the Client and to all agreements arising from this, all insofar as the Client is the buyer or the client. If those offers or agreements relate to the (sub)contracting of work or the provision of services, then Articles 24 up to and including 32 of these terms and conditions also apply.
3. Deviations from these general terms and conditions of purchase and (sub)contracting only apply if these have been confirmed in writing by the Client to the Contractor.
4. In the event of conflicts between the content of the agreement entered into by the Client and the Contractor and these general terms and conditions, the provisions set out in the agreement will prevail.

Article 2: Costs related to offers

1. Any costs associated with making offers or quotations, including the costs of advice, drawings and the like made by or on behalf of the Contractor, will not be reimbursed by the Client.

Article 3: Delivery time and penalty

1. Specified delivery times or execution periods are deadlines. The Contractor is in default by operation of law on exceeding the delivery time or execution period. As soon as the Contractor knows or ought to know that the agreement will not be executed, or will not be executed on time or properly, it will inform the Client immediately.
2. The Contractor is liable for all damage suffered by the Client as a result of exceeding the delivery time and/or execution period as referred to in paragraph 1 of this article.
3. For every day of delay in the delivery time or execution period, the Contractor will pay the Client an immediately due and payable fine of € 1,000 per day. This penalty can be claimed in addition to compensation by virtue of the law.

Article 4: Prices

1. The prices mentioned in the offer are based on delivery as referred to in Article 5.1 of these terms and conditions.
2. All prices are expressed in euros, fixed, exclusive of VAT and inclusive of proper packaging.
3. An increase in cost-determining factors that occurred after the conclusion of the agreement remains at the expense of the Contractor, regardless of the period that elapsed between the conclusion of the agreement and the execution thereof.

Article 5: Delivery and risk transfer

1. Delivery takes place at the moment that the Contractor delivers the good to the Client's business location unloaded. Until that time the Contractor bears the risk of the good in terms of, inter alia, storage, loading, transport and unloading. The Contractor is obliged to insure itself against these risks at its own expense.
2. The Client and the Contractor may agree that the Client will be responsible for the transport. In that case too, the Contractor bears the risk of, inter alia, storage, loading, transport and unloading. The Contractor can insure itself against these risks.
3. If the goods are collected by or on behalf of the Client, the Contractor must provide assistance with the loading free of charge.

Article 6: Inspection and approval

1. The Client has the right at all times to inspect or approve the ordered or delivered goods and/or the work (in progress). In that case, the Contractor will provide such facilities as can reasonably be required for this.
2. The Client is never obliged to inspect or approve the ordered or delivered goods and/or the work (in progress) and can assume that the ordered or delivered goods and/or work (in progress) are sound.
3. The costs of the inspection/approval referred to in paragraph 1 of this article will be borne by the Contractor if these goods/the work are rejected by the Client. Inspection or approval does not release the Contractor from any guarantee or liability, arising from these terms and conditions, the agreement or the law.

Article 7: Rejection

1. If the goods/work delivered by the Contractor do not comply with the agreement, the Client has the right to reject these. Receipt of the goods or payment of the goods or work does not imply acceptance thereof.
2. If the Client rejects the delivered goods and/or the work, the Contractor is obliged to act as follows within a period to be determined by the Client:
   - arrange for free repair or, at the discretion of the Client;
   - arrange for free replacement of the goods and/or have the work carried out in accordance with the agreement.
3. If the Contractor fails to comply with its obligation referred to in paragraph 2 of this article within the set period or does not do so to the satisfaction of the Client, the Client will be entitled to carry out the work referred to in paragraph 2 of this article itself or have it done by a third party at the Contractor's expense.

Article 8: Intellectual property rights

1. 'Intellectual property rights' include copyright, database rights, design rights, trademark rights, patents, topographies, or the right to obtain these intellectual property rights by application, filing, registration or otherwise.
2. 'Intellectual property rights to the work' include all intellectual property rights vested in the work, the performance to be delivered, the goods and tools such as drawings, designs, models, moulds and equipment realised with regard to or for the execution of the agreement between the Contractor and the Client.
3. All intellectual property rights to the work belong to the Client. The Client is considered to be the maker, designer or inventor of the works created in the context of the agreement. The Client therefore has the exclusive right to apply for a patent, trademark or model. If the performance (partly) consists of currently existing intellectual property rights, the Contractor hereby transfers these rights, insofar as possible, to the Client and at the first request of the Client will undertake the additional actions required for the transfer without delay.
4. For (the transfer of) the intellectual property rights to the work, the Client will not owe any compensation to the Contractor.
5. The Contractor waives the personality rights mentioned in Article 25.1(a) of the Copyright Act. Insofar as it concerns changes to the work, the goods or the name thereof, the Contractor also waives the personality rights referred to in Article 25.1(b and c) of the Copyright Act. The Contractor will not invoke the authority granted in Article 25.4 of the Copyright Act.
6. The Contractor guarantees that the goods to be delivered to the Client, the work to be performed and the intellectual property rights to the work do not infringe the rights of third parties, including intellectual property rights, and indemnifies the Client against all claims on that account. The Contractor will compensate the Client for all damage resulting from any infringement, including the (full) costs of defence.

Article 9: Source code and user licence for computer software

1. If the performance to be delivered by the Contractor (also) consists of the delivery of computer software developed specifically for the Client, the Contractor will transfer the source code to the Client.
2. If the performance to be delivered by the Contractor consists of the delivery of computer software not specifically developed for the Client, the Client - by way of derogation from Article 8.3 of these terms and conditions - will be given a non-exclusive, worldwide and perpetual user licence to that part of the computer software for the normal use and proper functioning of the good. If a part of the computer software has been developed specifically for the Client, Articles 8 and 9, first paragraph of these terms and conditions apply in full to that part. The Client is not permitted to transfer the licence or to issue a sublicence. Upon the sale of the good by the Client to a third party, the licence automatically transfers to the acquirer of the good.
3. For the acquisition of the source code as referred to in the first paragraph of this article or user licence as referred to in the second paragraph of this article, the Client shall not owe any compensation to the Contractor.

Article 10: Confidentiality and non-solicitation clause

1. All information provided to the Contractor by or on behalf of the Client, such as models, design information, images, drawings, know-how and other documents, of whatever nature and in whatever form are confidential, and the Contractor will not use this for any purpose other than for the execution of the agreement.
2. The Contractor will not disclose or reproduce the information referred to in paragraph 1 of this article.
3. The Contractor will in no way directly or indirectly submit quotations or offers to the Principal that relate to the goods or work that is the subject of the agreement between the Client and the Contractor.

Article 11: Penalty

1. In the event of violation of the provisions set out in Article 9.1 or Article 10, the Contractor will owe an immediately due and payable penalty of € 25,000 per violation. This penalty can be claimed in addition to compensation by virtue of the law.

Article 12: Resources

1. All resources, such as drawings, models, moulds and equipment, which are made available to the Contractor by the Client for the execution of an agreement or which the Contractor has made or commissioned specifically within the framework of the agreement with the Client, remain or become the property of the Client under all circumstances, irrespective of whether or not these have been paid for.
2. All resources and all copies made of these must be made available or returned to the Client at the first request.
3. As long as the Contractor has the resources in its possession, the Contractor must provide these with an indelible mark indicating that they are the property of the Client. The Contractor will remind all third parties who wish to lay claim to these resources of the Client's ownership.
4. Without prejudice to the provisions set out in Article 10 of these terms and conditions, the Contractor shall only use the resources referred to in this article for the performance of deliveries and work for the Client and shall not show these to third parties, unless the Client has given explicit written permission for this. The Contractor bears the risk of loss, misplacing, destruction or damage and is obliged to insure this risk at its own expense.

Article 13: Liability

1. The Contractor is liable for all damage, including fines, caused by a failure or wrongful act on the part of the Contractor.
2. The Contractor indemnifies the Client against all third-party claims for compensation of damage as referred to in the first paragraph.

Article 14: Insurance

1. The Contractor is obliged to take out adequate insurance covering any damage that the Client suffers due to a failure or wrongful act on the part of the Contractor or third parties engaged by it. At the Client's first request, the Contractor will provide copies of the relevant policy and proof of payment of premiums.

Article 15: Cancellation or termination of the agreement

1. The Client is entitled at all times to terminate or cancel the agreement with immediate effect on payment of a fee equal to the actual costs incurred by the Contractor and a reasonable profit margin. The burden of proof with regard to the costs incurred and a reasonable profit margin lies with the Contractor.

Article 16: Warranty

1. The Contractor guarantees the proper execution of the agreed performance for a period of 12 months after commissioning.
2. In the event that the completed or delivered goods or the work are not commissioned within 12 months after delivery or completion, the guarantee applies for a period of 12 months after delivery or completion.
3. If the agreed performance has not been properly executed, the Contractor will execute the performance properly as yet without delay, with the Client making the choice between repair or replacement, without prejudice to all other rights that the Client is entitled to by virtue of the law.
4. The Contractor will bear all costs associated with the repair of the defect, or the replacement of the goods and/or the work. This also includes the costs for the commissioning of the goods and/or the work after aforementioned repair or replacement. If the goods and/or the work are part of a larger object, the costs for commissioning that larger object will also be borne by the Contractor.
5. If the Contractor fails to comply with its guarantee obligation, the Client will be entitled to perform the guarantee work itself or have it performed by third parties at the expense of the Contractor.

Article 17: Payment

1. Unless otherwise agreed, payments must be made within 30 days of the invoice date.
2. If an advance payment has been made or payment is made in instalments, the Client has the right to require the Contractor to provide what in the Client's opinion is sufficient security for the fulfilment of the obligations. If the Contractor does not comply with this provision within the set time limit, it will immediately be in default. In that case, the Client has the right to terminate the agreement and to recover its damages from the Contractor.

Article 18: No right of offset or suspension on the part of the Contractor

1. The Contractor's right to offset any claims against the Client or to suspend the fulfilment of its obligations is excluded, unless the Client has been granted a suspension of payments or is bankrupt or the statutory debt adjustment scheme applies to the Client.

Article 19: Transfer of ownership in advance

1. At the Client's first request, the Contractor is obliged to transfer the ownership of the goods to be delivered, or the equipment, parts and/or structural parts from which the goods will be assembled or manufactured, to the Client in advance. The Contractor will perform all additional actions required for this transfer without delay.

Article 20: Prohibition on retention right

1. The Contractor is at all times prohibited from exercising the right of retention with regard to goods belonging to the Client that it has in its possession for whatever reason.
2. If the provisions set out in paragraph 1 of this article are infringed, the Contractor will owe an immediately due and payable penalty of € 250 per day up to a maximum of € 25,000. This penalty can be claimed in addition to compensation by virtue of the law.

Article 21: Right of offset or suspension on the part of the Client

1. The Client is entitled to offset any debts it owes to the Contractor against:
   a. claims that the Contractor has against the Client;
   b. claims that companies affiliated to the Client have against the Contractor;
   c. claims against companies affiliated to the Contractor.
2. In addition, the Client is entitled to offset its claims against the Contractor against debts that companies affiliated to the Client have against the Contractor.
3. For the purpose of this article 'affiliated companies' means all companies belonging to the same group, within the meaning of Article 2:24b of the Dutch Civil Code, and a participation within the meaning of Article 2:24c of the Dutch Civil Code.
4. If the Contractor does not fulfil its obligations, the Client may suspend its payment obligations until the Contractor has fulfilled its obligations.

Article 22: Transfer and pledging of claims

1. The Contractor cannot transfer or pledge claims arising under the agreement with the Client. This provision has effect under property law.

Article 23: Applicable law and competent court

1. Dutch law applies.
2. The Vienna Sales Convention (CISG) does not apply, nor does any other international regulation that may be excluded.
3. The Dutch civil court with jurisdiction in the Client's place of business is authorised to take cognisance of any disputes. The Client may deviate from this rule governing jurisdiction and rely on the statutory rules governing jurisdiction instead.

(Sub)contracting of work/services

Article 24: Prohibition on further subcontracting and hiring in of personnel

1. Without the prior written permission of the Client, the Contractor may not contract out the work, or parts thereof, to another party or hire in personnel for the execution (of parts) thereof.
2. If the Client gives permission for outsourcing work or hiring in personnel, the provisions set out in Articles 25, 26 and 27 will in any case apply. The Contractor is also obliged to impose the provisions set out in these articles on its contractual party and also to stipulate that this contractual party shall fully incorporate these obligations into agreements it enters into for the execution of (parts of) the work.

Article 25: Vicarious tax liability in the event of subcontracting

1. If the vicarious tax liability for wage levies in the event of subcontracting applies, the Contractor is obliged to have a G account and, at the first request of the Client, to make a copy of the original G account agreement available to the Client.
2. The Client is always entitled to pay the agreed part of an invoice amount to the Contractor by way of payment to the G account. If no part has been agreed in advance, the Client will determine which part of the invoice amounts it will deposit into the G account. Every payment into the G account by the Client must be regarded as valid payment to the Contractor.
3. The Contractor is obliged to provide the Client with a new, original statement of payment conduct issued by the tax authorities every three months.
4. The Contractor is obliged to provide the Client with the citizen service numbers of all the employees to be deployed, in writing, before the work commences.
5. All workers employed by the Contractor - i.e. all persons who come to perform work - must, prior to and during the work, carry an original and valid proof of identity and - as far as applicable - residence documents, work permits and A1 declarations to be produced during checks to be carried out by the Client. The Client is authorised to deny a worker who does not comply with the above access to the place where the work is to be performed or to remove the worker from this place. The Contractor is liable for all damage resulting from this.
6. The Contractor must organise its administration in such a way that the following documents or data can be found immediately or almost immediately:
   - the agreement or the contents thereof on the basis of which it has executed the performance it has provided to the Client;
   - the details of compliance with that agreement, including a registration of the persons who have performed work and of the days and hours during which those persons have performed work;
   - the payments made in connection with the aforementioned agreement.
7. In the event of bankruptcy on the part of the Contractor, the Client is entitled to suspend its payment obligations until the Client has received a statement from the Tax and Customs Administration confirming whether, and to what amount, it is being held liable for wage tax and VAT unpaid by the Contractor. The amount that the Client has to pay to the Tax and Customs Administration may be deducted from any amount it still owes the Contractor.
8. The Contractor is obliged at the first request of the Client to provide without delay any information that the Client deems necessary for its administration or that of its Principal.

Article 26: Invoicing

1. The Contractor's invoices must comply with the requirements of Article 35a of the Turnover Tax Act 1968. In addition, the Contractor must state the following clearly and orderly on the invoices:
   a. the date of issuance;
   b. a consecutive number, with one or more series, so that the invoice can be uniquely identified;
   c. the Client's name and address;
   d. the Contractor's name and address;
   e. whether or not the reverse charge mechanism with regard to turnover tax is applicable and if not, the amount of the sales tax;
   f. the Contractor's VAT identification number;
   g. the client's VAT identification number, if the VAT is reversed to the Client;
   h. the invoice amounts, broken down for each tariff and then subdivided into unit price and any discounts applied;
   i. the number or reference, if any, of the agreement under which the Contractor has executed the invoiced performance(s);
   j. the time periods during which the performance(s) have been executed;
   k. the description or reference of the work to which the payment relates;
   l. if applicable: the Contractor's G account number;
   m. the amount of the wage costs and (separately) the wage tax rate payable on the wage amount.
2. The Contractor should attach a specification of the number of hours worked to each invoice. With regard to the employees deployed, the specification must state the citizen service numbers of these employees and the days and hours during which these employees have performed work. The Contractor must also submit a document showing that it is entitled to payment, such as a signed site manager form.
3. The Client will only pay invoices after the work or the part of the work to which a payment instalment relates has been approved by it and the invoices meet the requirements set out in this article.

Article 27: Hiring in of personnel by the Contractor

1. If the Contractor hires in personnel to execute the work, it must comply with the following provisions:
   - the Contractor deposits 25% of each invoice amount (including VAT) on the supplier's G account. If VAT is reversed this is 20%;
   - the Contractor must state the invoice number and any other identification details of the invoice with every payment;
   - the Contractor's administration must provide immediate insight into the details of the hiring, the time tracking administration and the payments;
   - the Contractor must have the citizen service numbers of the hired in personnel;
   - the Contractor must be able to prove the identity of the hired in personnel and the presence of any residence or employment permits.
2. The Contractor may only hire in personnel from a supplier that complies with NEN 4400-1 or NEN 4400-2 and is included in the register of the Dutch Labour Standards Foundation (SNA).
3. The Contractor is obliged to agree with the supplier that the supplier must state the following on its invoices:
   - the number or reference of the agreement to which the invoice relates;
   - the time period or time periods to which the invoice relates;
   - the description or reference of the work to which the payment relates.

Article 28: Indemnification with regard to wage taxes and VAT

1. The Contractor indemnifies the Client with regard to claims by the Tax and Customs Administration or the Employee Insurance Agency (UWV) in connection with:
   a. wage tax and national insurance contributions not paid by the Client;
   b. wage levies (wage tax and national insurance contributions) and VAT not paid by the Contractor;
   c. unpaid wage levies by any party to which (parts of) the work has been /is contracted out;
   d. unpaid wage levies and VAT by any party from which personnel has been hired in for the execution of (parts of) the work.
2. In particular, the Contractor shall immediately reimburse the Client for the following costs at the first written request by the Client by way of payment into the bank account number provided by the Client:
   a. the Client's lawyer's fees in full that relate to legal measures taken by the competent authority at the expense of the Client, insofar as these legal measures relate to the provisions set out in paragraph 1 of this article;
   b. all other costs relating to legal measures as described under a, including court fees and costs of experts;
   c. the costs of anything that the Client may be ordered to pay to the competent authority in connection with the provisions set out in paragraph 1 of this article, which order can be enforced;
   d. other costs that relate to the provisions set out in paragraph 1 of this article and are charged to the Client.
3. The Client is authorised to settle amounts which the Contractor must pay it on the grounds of paragraphs 1 and 2 of this article with amounts that it still owes the Contractor for whatever reason.

Article 29: Vicarious tax liability for wages (The Dutch Labour Market Fraud (Bogus Schemes) Act, WAS)

1. The Contractor is obliged:
   a. to comply with applicable laws and regulations and an applicable collective labour agreement in the execution of the work;
   b. to record all arrangements regarding employment conditions made for the execution of the work in an orderly and accessible manner;
   c. to grant competent authorities access to these employment condition arrangements on request and to cooperate with checks, audits or wage validation;
   d. if requested, to grant the Client access to these employment condition arrangements if the Client deems this necessary in connection with the prevention or handling of a wage claim concerning work performed for the execution of the work.
2. If the Contractor violates the obligations set out in this article, the Client will have the right - after notice of default - to terminate the agreement in whole or in part.
3. The Contractor indemnifies the Client against claims of employees on the grounds of Article 7:616a and 7:616b of the Dutch Civil Code for not paying the wages due.
4. If the Contractor contracts out (parts of) the work, it is obliged to impose the obligations referred to in paragraph 1 of this article on the party to which (parts of) the work is/are being contracted out and also to stipulate that the engaged third party fully incorporates these obligations into agreements that it enters into for the execution of (parts of) the work.

Article 30: Organisation of the work

1. The Contractor is obliged to comply exclusively with the orders and instructions issued by the Client.
2. The Client has the authority to deny the Contractor's employees access to the work or to have them removed, for example due to unsuitability, disturbance of the order, misconduct, etc., without being required to pay further compensation for any damage that the Contractor suffers as a result thereof.
3. The work and break times at work and the prescribed rest times, public holidays, holidays or other days off, generally recognised or recognised at the work location, by the government, or on the basis of the CLA also apply to the Contractor and its employees who perform the activities at the work location. Any damage resulting from this for the Contractor cannot be recovered from the Client. The latter also applies if the services provided by the Contractor cannot be used due to a strike or other causes at the Client or at third parties.
4. Unless otherwise agreed, the Contractor must ensure from the commencement of the work up to and including the completion that a permanent foreman is present at the work, with whom both organisational and technical arrangements can be made. His name must be known to the persons or authorities appointed by the Client.
5. The Contractor must provide its employees with the correct personal protective equipment and ensure proper use thereof. All resulting costs are at the expense of the Contractor.
6. The Contractor must provide a workforce that is able to execute the work fully in accordance with the schedule adopted by the Client and without other activities coming to a halt. If the Client changes the schedule/progress, the Contractor is required to adapt to this. Changes in staffing are only permitted after obtaining the Client's permission.
7. If the Contractor is co-insured under a CAR policy taken out by the Client or its Principal and damage occurs caused by the Contractor, the Contractor must compensate the Client for the excess, the damage not covered and the costs to be incurred.
8. The Contractor is obliged to ensure that equipment that can be designated as a motor vehicle (equipment falling under the Motor Insurance Liability Act) is adequately insured. The work risk should also be insured. In addition, the Contractor must also have taken out adequate insurance for the risk of damage caused by or related to the use of other equipment used by the Contractor.
9. With regard to cables, pipelines and other surface and underground property belonging to third parties, the Contractor will at all times continue to be responsible for pinpointing the location. The Contractor must immediately inform the Client of any damage.
10. Required equipment such as scaffolding, aerial work platforms, hoisting equipment and small equipment, including hand tools, measuring equipment, rolling towers, ladders and steps etc., will be provided by the Contractor and are included in the total price.
11. If work has to be carried out on or to completed components of the work, such as plastered walls, tilework, paintwork, etc., the Contractor must take protective measures to prevent damage and/or contamination. Damage and/or contamination discovered after or during the work will be deemed to have been caused by the Contractor.
12. After completion of the work, the Contractor must deliver the work swept clean and leave the construction site clean.

Article 31: Work permits

1. The Contractor is obliged to comply strictly with the provisions set out in the Dutch Foreign Nationals (Employment) Act (hereafter: the Wav). The Contractor may only have work performed at the work by persons who are in possession of all required documents and permits and in particular, but not exclusively, the required work permits or combined permits for residence and work.
2. The Contractor will indemnify the Client against all third-party claims, including, for example, fines from the Social Affairs and Employment Inspectorate, which are the result of breach by the Contractor of the provisions set out in paragraph 1 of this article.
3. If an administrative fine is imposed on the Client due to the Client's intentional or gross failure to comply with the obligations under the Wav, the Client cannot recover this fine from the Contractor, in deviation from paragraph 2 of this article.

Article 32: Licences and safety measures

1. The Contractor will, at its own expense, arrange the permits and safety measures required in connection with the deliveries to be made and the execution of the work that it has accepted.

These Terms and Conditions constitute a comprehensive translation of the Dutch version of the General terms and conditions of purchase and (sub)contracting of (company name) in (company location) of **date** . The Dutch version will prevail in the explanation and interpretation of this text.