

**GENERAL PURCHASE AND (SUB) CONTRACT CONDITIONS 2020**

General purchase and (sub) contracting conditions of J&W Service B.V. at Borculo

**General****Article 1: Relevancy**

1. "Client" is the natural person, legal person or partnership that uses these purchasing conditions. The other party is referred to as "Contractor". By "Principal" in these conditions the client of Client is meant. In addition, 'work' also means the provision of services.
2. Articles 1 to 23 of these conditions apply to all offers made to the Client and agreements concluded with the Client and to all agreements resulting from them, to the extent that the Client is a buyer or a client. Where such offers or agreements relate to (the) adoption of work or the provision of services, Articles 24 to 32 of these conditions shall also apply.
3. Derogations from these general purchasing and (sub)contracting conditions only apply if they have been confirmed in writing by the Client to The Contractor.
4. In the event of a conflict between the content of the agreement concluded between the Client and the Contractor and these general terms and conditions, the provisions of the agreement will prevail.

**Article 2: Cost of 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 fines**

1. A specified delivery time or implementation period is final. The Contractor is in default by operation of law due to exceeding the delivery time or implementation period. As soon as the Contractor knows or should know that the performance of the agreement will not take place, will not take place on time or properly, it will immediately notify the Client of this.
2. The Contractor is liable for all damage suffered by the Client as a result of exceeding the delivery time and / or implementation period as referred to in paragraph 1 of this article.
3. For each day of delay in the delivery or performance period, the Contractor will forfeit to the Client an immediately payable fine of € 1,000 per day. This fine can be claimed in addition to compensation under the law.

**Article 4: Prices**

1. The prices stated in the offer are based on delivery as referred to in Article 5, first paragraph, of these terms and conditions.
2. All prices are expressed in euros, fixed, excluding VAT and including proper packaging.
3. An increase in cost-determining factors that occurred after the conclusion of the agreement will remain at the expense of the Contractor, regardless of the period that has elapsed between the conclusion of the agreement and its implementation.

**Article 5: Delivery and transfer of risk**

1. Delivery takes place at the moment that the Contractor makes the good available to him unloaded at the Client's business location. Until that moment, the Contractor bears the risk of the goods for storage, loading, transport and unloading. 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 arrange for the transport. The risk of, among other things, storage, loading, transport and unloading also rests with the Contractor in that case. 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 loading without charging any costs.

**Article 6: Inspection and testing**

1. The client has the right at all times to inspect or test 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 at no time obliged to inspect or test the ordered or delivered goods and / or the work (in progress) and may assume that the ordered or delivered goods and / or the work (in progress) is working properly.
3. The costs of the inspection / testing referred to in paragraph 1 of this article will be borne by the Contractor if these items / the work are rejected by the Client. Inspectie of goedkeuring ontslaat Opdrachtnemer niet van enige garantie of aansprakelijkheid, zoals deze voortvloeien uit deze voorwaarden, de overeenkomst of de wet. Inspection or approval does not relieve the Contractor of any warranty or liability, as arising from these conditions, the agreement or the law.

**Article 7: Disapproval / Rejection**

1. If the goods delivered by the Contractor or the work delivered do not comply with the agreement, the Client has the right to reject them. Receipt of the goods or payment of the goods or the work does not imply acceptance thereof.
2. If the Client rejects the delivered goods and / or the work, the Contractor is obliged to return within a period to be determined by the Client:
  - Arrange for free repair or, at the option of the Client;
  - To arrange for the goods to be replaced free of charge and / or to have the work carried out in accordance with the agreement.
3. If the Contractor does not fulfill his obligation referred to in paragraph 2 of this article, or within the set period or not to the satisfaction of the Client, the Client is entitled to carry out the activities referred to in paragraph 2 of this article itself or by a third party at the expense of the Contractor.

**Article 8: Intellectual Property Rights**

1. "Intellectual property rights" are understood to include copyrights, database rights, design rights, trademark rights, patents, topographies, or the right to acquire these Intellectual Property Rights by application, filing, registration, or otherwise.
2. 'Intellectual property rights to the work' are all intellectual property rights that rest on the work, the performance to be delivered, on the goods and on the aids such as drawings, models, molds, molds and tools, created at or for the benefit of 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 regarded as the maker, designer or inventor of the works created in the context of the agreement. Client therefore has the exclusive right to apply for a patent, trademark or design. If the performance (partly) consists of existing intellectual property rights, the Contractor will transfer these rights to the Client, insofar as possible, for then and will immediately perform any additional actions required for the transfer at the Client's first request.
4. The Client does not owe the Contractor any compensation for (the transfer of) the intellectual property rights to the work.
5. The Contractor waives the personality rights referred to in Article 25, paragraph 1, under 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, first paragraph, under b and c of the Copyright Act. The Contractor will not invoke the authority granted in Article 25, paragraph 4 of the Copyright Act.
6. The Contractor guarantees that the goods to be delivered to the Client, the activities 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 that is the result of any infringement, including the (full) costs of defense.

**Article 9: Source code and user license computer software**

1. If the performance to be delivered by the Contractor (partly) consists of the delivery of computer software that has been specially developed 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 that has not been specially developed for the Client, the Client will receive a non-exclusive, worldwide and perpetual user license for that part, notwithstanding Article 8, third paragraph of these conditions. of the computer software for the normal use and proper functioning of the item. If part of the computer software has been specially developed for the Client, Articles 8 and 9, paragraph 1 of these terms and conditions apply in full to that part. The Client is allowed to transfer the license or to issue a sub-license. When the good is sold by the Client to a third party, the license will automatically transfer to the acquirer of the good.
3. The Client does not owe the Contractor any fee for obtaining the source code as referred to in the first paragraph of this article or a user license as referred to in the second paragraph of this article.

**Article 10: Confidentiality and non-compete clause**

1. All information provided to the Contractor by or on behalf of the Client (such as models, design data, images, drawings, know-how and other documents, etc.) of whatever nature and in whatever form, are confidential and will not be used by the Contractor for any other purpose than for the implementation of the agreement.
2. The information referred to in paragraph 1 of this article will not be made public or multiplied by the Contractor.
3. The Contractor will in no way whatsoever, directly or indirectly, make quotations or offers to the Principal that relate to the good or the work that is the subject of the agreement between the Client and the Contractor.

**Article 11: Fines/Penalties**

1. In the event of violation of the provisions of Article 9, first paragraph or Article 10, he will owe an immediately payable fine of € 25,000 for each violation. This fine can be claimed in addition to compensation under the law.

**Article 12: Devices/Tools**

1. All auxiliary materials, such as drawings, models, molds, molds and tools, which are made available to the Contractor by the Client for the performance of an agreement or which the Contractor has made or has had made specially in the context of the agreement with the Client, remain or become the property of the Client under all circumstances, regardless of whether or not payment has been made for this.
2. All resources and all copies made thereof must be made available to the Client or returned to the Client on demand.
3. As long as the Contractor has the resources in his possession, the Contractor must provide them with an indelible mark that indicates that they are the property of the Client. The Contractor will inform third parties who wish to recover these resources of the Client's right of ownership.
4. Without prejudice to the provisions of Article 10 of these terms and conditions, the Contractor will only use the resources referred to in this Article for the performance of deliveries and work for the Client and will not show them to third parties, unless the Client has given explicit written permission for this. The contractor bears the risk of loss, loss, 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 shortcoming or wrongful act on the part of the Contractor.
2. The Contractor indemnifies the Client against all claims from third parties for compensation of damage as referred to in the first paragraph.

**Article 14: Insurance**

1. The Contractor is obliged to have taken out adequate insurance that covers any damage suffered by the Client as a result of a shortcoming or wrongful act on the part of the Contractor or third parties engaged by him. At the first request of the Client, the Contractor will submit copies of the relevant policy and proof of premium payment.

**Article 15: Termination or cancellation of the agreement**

1. The Client is at all times entitled to terminate or cancel the agreement with immediate effect against payment of a fee equal to the actual costs incurred by the Contractor and a reasonable profit margin. The burden of proof for costs incurred and a reasonable profit margin rests 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 delivered goods or the work is not taken into use within (12) months after delivery or completion, the warranty applies for a period of (24) months after delivery.
3. If the agreed performance has not been properly performed, the Contractor will immediately perform the performance properly, whereby the Client makes the choice between repair or replacement, without prejudice to all other rights that accrue to the Client on the basis of the law.
4. The Contractor bears 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 putting the goods and / or the work into use after the said repair or replacement. If the goods and / or the work belong to a larger object, the costs for putting that larger object into use will also be borne by the Contractor.
5. If the Contractor fails to fulfill its warranty obligation, the Client has the right to carry out the warranty work itself or to have it carried out by third parties at the expense of the Contractor.

**Article 17: Payment**

1. Unless otherwise agreed, payment will be made within 30 days of the invoice date.
2. In the event of prepayment or payment in installments, the Client has the right to require the Contractor to provide sufficient security for compliance in the Client's opinion. If the Contractor does not comply with this within the set term, he will immediately be in default. In that case, the Client has the right to dissolve the agreement and to recover its damage from the Contractor.

**Article 18: No settlement and suspension by the Contractor**

1. The right of the Contractor to set off any claims against the Client or to suspend the fulfillment of its obligations is excluded, unless the Client has been granted a moratorium or bankruptcy or the statutory debt rescheduling 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 materials, parts and / or construction parts from which the goods will be assembled or manufactured, in advance to the Client. The Contractor will perform all additional actions required for this transfer without delay.

**Article 20: Prohibition of right of retention**

1. The Contractor is at all times prohibited from exercising a right of retention on goods of the Client that it has in its possession, for whatever reason.
2. In the event of violation of the provisions of paragraph 1 of this article, the Contractor will owe it an immediately payable fine of € 250 per day with a maximum of € 25,000. This fine can be claimed in addition to compensation under the law.

**Article 21: Settlement and suspension by the client**

1. The Client is authorized to set off any debts to the Contractor against:
  - a. claims of the Contractor on the Client.
  - b. claims of companies affiliated with the Client on the Contractor;
  - c. receivables from companies affiliated with the Contractor.
2. The Client is further authorized to set off its claims against the Contractor against debts owed to the Contractor by companies affiliated to the Client.
3. Affiliated companies as referred to in this article are understood to mean companies that belong to the same group, within the meaning of article 2: 24b of the Dutch Civil Code, and a participating interest within the meaning of article 2: 24c of the Dutch Civil Code.
4. If the Contractor does not fulfill its obligations, the Client may suspend its payment obligations until the Contractor has fulfilled its obligations.

**Article 22: Assignment and pledge claims**

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

**Article 23: Applicable law and competent court**

1. Dutch law is applicable.
2. The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations whose exclusion is permitted.
3. The Dutch civil court with jurisdiction in the Client's place of business will hear disputes. The Client may deviate from this jurisdiction rule and apply the statutory jurisdiction rules.

**(Sub) contracting work / services****Article 24: Prohibition of further subcontracting and hiring in of personnel**

1. Without the prior written consent of the Client, the Contractor may not outsource 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 or borrowing, the provisions of Articles 25, 26 and 27 will in any case apply. The contractor is also obliged to impose the provisions of these articles on his contracting party and also stipulate that this contracting party includes these obligations in full in agreements it enters into for the performance of (parts of) the work.

**Article 25: Chain liability for subcontracting**

1. If the chain liability for payroll taxes applies to subcontracting, the Contractor is obliged to have a blocked account and to make a copy of the original g-account agreement available to the Client at the first request of the Client.
2. The Client is always entitled to pay the agreed part of an invoice amount to the Contractor by depositing it into his g account. If no part has been agreed in advance, the Client will determine which part of the invoice amounts to pay into the g account. Every deposit into the g account by the Client is to be regarded as a release payment towards the Contractor.
3. The Contractor is obliged to provide the Client with a new, original statement on payment history issued by the Tax Authorities every three months.
4. The Contractor is obliged to provide the Client in writing with all citizen service numbers of the employees to be deployed before the work commences.
5. All workers to be deployed by the Contractor - being all persons who come to perform work - must carry an original and valid proof of identity and - where applicable - residence documents, work permits and A1 statements prior to and during the work. inspection (s) to be carried out by the Client. The client is authorized to deny a worker who does not comply with this access to the place where the work is being carried out or to send the worker away from this place. Contractor is liable for all damage resulting from this.
6. The Contractor must organize its administration in such a way that the following documents or data can be found therein immediately or almost immediately:
  - the agreement or the content thereof on the basis of which he has performed the performance delivered by him to the Client;
  - the data regarding the fulfillment of that agreement, including a registration of the persons who performed work and of the days and hours during which those persons performed work;
  - the payments made in connection with the said agreement.
7. In the event of the Contractor's bankruptcy, the Client is entitled to suspend its payment obligations until the Client has received a statement from the Tax and Customs Administration showing whether, and to what amount, it is held liable for payroll taxes and VAT that have not been paid by the Contractor. The amount that the Client must pay to the Tax and Customs Administration may deduct the Client from what he may still owe the Contractor.
8. The Contractor is obliged to immediately provide all information that the Client deems necessary for its administration or those of its Principal at the first request of the Client.

**Article 26: Invoicing**

1. The Contractor's invoices must meet the requirements of Article 35a of the Turnover Tax Act 1968. In addition, the Contractor must state clearly and conveniently on the invoices:
  - a. the date of issue;
  - b. a consecutive number, with one or more series, which uniquely identifies the invoice;
  - c. the name and address of the Client;
  - d. the name and address of the Contractor;
  - e. whether or not the reverse charge mechanism with regard to turnover tax applies and, in the latter case, the amount of the turnover tax;
  - f. the Contractor's VAT identification number;
  - g. the VAT identification number of the Client, if the VAT payment has been transferred to the Client;
  - h. the invoice amounts, split for each rate and then divided into unit price and any discounts applied;
  - i. the number or reference, if available, of the agreement for which the Contractor has performed the invoiced performance (s);

- j. The period (s) in which the performance (s) was performed;
  - k. The name or characteristic of the work to which the payment relates;
  - l. If applicable: the number of the Contractor's g account;
  - m. the size of the wage costs and (separately) the percentage of wage taxes on the wage amount.
2. Contractor must enclose a specification of hours worked with each invoice. With regard to deployed employees, the specification must state the social security numbers of these employees and the days and hours during which these employees performed work. The Contractor must also submit a document showing that he is entitled to payment, such as a signed executioner's receipt.
  3. The client will only pay invoices after the work or the part of the work to which a payment in installments relates has been approved by him and the invoices also meet the requirements of this article .

**Article 27: Hiring in of personnel/employees by the Contractor**

1. If the Contractor hires in personnel for the execution of the work, it is obliged to comply with the following provisions:
  - The Contractor pays 25% of each invoice amount (incl. VAT) into the G account of the lender. This is 20% when the VAT is transferred;
  - The Contractor must state the invoice number and any other identification details of the invoice with every payment;
  - The Contractor's administration must provide direct insight into the data of the loan, the man-hours administration and the payments;
  - The social security numbers of the hired employees must be known to the Contractor;
  - The contractor must be able to prove the identity of the hired employees and the presence of any residence or work permits.
2. Contractor may only hire in personnel from a lender who complies with NEN 4400-1 or NEN 4400-2 and is included in the register of the Labor Standards Foundation (SNA).
3. The contractor is obliged to agree with the lender that the lender must state on invoices:
  - The number or reference of the agreement to which the invoice applies;
  - The period or periods for which the invoice applies;
  - The description or characteristic of the work for which the invoice applies.

**Article 28: Indemnification of payroll taxes and VAT**

1. The Contractor indemnifies the Client against claims from the Tax Authorities or the UWV in connection with:
  - a. wage tax and social security contributions not paid by the Client;
  - b. payroll taxes (wage tax and social security contributions) and VAT not paid by the Contractor;
  - c. unpaid payroll taxes by all parties to whom (parts of) the work is / have been outsourced;
  - d. unpaid payroll taxes and VAT by all parties from whom personnel have been hired in for the performance of (parts of) the work. In particular, the Contractor will immediately reimburse the following costs to the Client at the first written request of the Client to the bank account number of its choice:
  - e. The Client's entire attorney's fees related to legal measures taken by the competent authority at the expense of the Client, insofar as those legal measures relate to the provisions of paragraph 1 of this article.;
  - f. All other costs related to legal measures as described under a, including court fees and experts' cost;
  - g. The costs of everything that the Client may be ordered to pay to the competent authority in connection with the provisions of paragraph 1 of this article and of which the judgment can be enforced;
  - h. Other costs related to the provisions of paragraph 1 of this article and to be borne by the Client.
2. The Client is authorized to set off the amount that the Contractor must pay him on the basis of paragraphs 1 and 2 of this article against what he still owes the Contractor for whatever reason.

**Article 29: Chain liability for wages (Act on bogus constructions)**

1. The Contractor is obliged to:

- a. to comply with applicable laws and regulations and an applicable collective labor agreement in the performance of the work.
  - b. to record all employment conditions for the performance of the work in an insightful and accessible manner.
  - c. to provide competent authorities with access to these terms and conditions of employment on request and to cooperate with checks, audits or wage validation. upon request, to grant the Client access to these terms and conditions of employment if it deems this necessary in connection with the prevention or handling of a wage claim regarding work performed for the performance of the work.
2. If the Contractor violates the obligations under this article, this gives the Client the right - after notice of default - to dissolve the agreement in whole or in part.
  3. The Contractor indemnifies the Client against claims from employees on the basis of Articles 7: 616a and 7: 616b BW for non-payment of the wages owed.
  4. In the event that the Contractor outsources (parts of) the work, it is obliged to impose the obligations referred to in paragraph 1 of this article on the party to whom (parts of) the work is / will be outsourced and to stipulate that the engaged third party includes these obligations in full in agreements it enters into for the performance of (parts of) the work.

**Article 30: Organization of the work**

1. The Contractor is obliged to only follow orders and instructions given by the Client.
2. The Client is authorized to deny the Contractor's employees access to the work or to remove them or have them removed, for example due to unsuitability, disruption, misconduct, etc., without further compensation for any damage suffered by the Contractor as a result.
3. The working and rest times at work and the generally or at the location of the work recognized by the government or on the basis of the Collective Labor Agreement, rest, holidays, holidays or other days off also apply to the Contractor and his employees who perform work at work. Any damage resulting from this for the Contractor cannot be recovered from the Client. The latter also applies if the services of 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 start of the work up to and including completion that a permanent foreman is present at the work, with whom both organizational and technical agreements can be made. His name must be known to the persons or authorities designated by the Client.
5. The Contractor must provide its employees with the correct personal protective equipment and supervise the correct use thereof. All costs arising from this are at the expense of the Contractor.
6. The Contractor must ensure such staffing levels that the performance of the work is fully adapted to the schedule established by the Client and must be such that other activities do not stagnate. In the event that the Client changes the planning / progress, the Contractor is obliged to adapt to this. Changes in staffing levels are only permitted with the Client's consent.
7. If the Contractor is co-insured under a CAR policy of the Client or its Principal and damage occurs caused by the Contractor, the Contractor must reimburse the Client for the excess, damage that is not covered and the costs to be incurred.
8. The contractor is obliged to ensure that equipment that can be classified as a motor vehicle (equipment subject to WAM) is adequately insured. The work risk must 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 deployed by the Contractor.
9. With regard to cables, pipes and other above- and underground property of third parties, the Contractor remains obliged at all times to ensure that the location is located. The Contractor must immediately notify the Client of any damage.
10. Necessary equipment such as scaffolding, aerial work platforms, hoisting equipment and small equipment, including hand tools, measuring equipment, mobile scaffolding, ladders and steps, etc., will be provided by the Contractor and are included in the total price.
11. If work must be performed on or on parts of the work that have already been completed, such as plastered walls, tiling, painting, etc., the Contractor must take protective measures to prevent damage and / or contamination. Damage and / or contamination established after or during the work is deemed to have been caused by the Contractor.
12. After completion of the work, the Contractor must deliver the work broom clean and leave the construction site clean.

**Article 31: Work permits**

1. The Contractor is obliged to strictly comply with the provisions of the Aliens Employment Act (hereinafter: "Wav"). The contractor may only have persons perform work at work who is 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 claims from third parties, including, for example, fines from the Social Affairs and Employment Inspectorate, which are the result of a breach by the Contractor of the provisions of paragraph 1 of this article.
3. If an administrative fine has been imposed on the Client due to its deliberate or gross negligence on its failure to comply with its obligations under the Wav, the Client cannot recover this fine from the Contractor, contrary to paragraph 2 of this article.

**Article 32: Permits and security measures**

1. The Contractor will provide at its own expense the permits and security measures required in connection with the deliveries to be made and the performance of the work accepted by it.