

## **Appendix 8. General purchase conditions municipality of The Hague 2009**

*(This is a translation of the Dutch version of the The Hague Municipality General Terms and Conditions of Purchase, the Dutch version is always the leading version, you can find the Dutch version here: <http://www.denhaag.nl/home/bewoners/to/Algemene-inkoopvoorwaarden-gemeente-Den-Haag.htm>)*

The Hague Municipality General Terms and Conditions of Purchase

(having come into force on 21 December 2009)

### **1. DEFINITIONS**

In these terms and conditions, the following terms shall have the following meaning:

Contact: the person appointed or acting as the representative of The Hague or the Contractor;

The Hague: the Municipality of The Hague, a legal entity under public law;

Services: all other work, activities and/or actions performed by the Contractor not related to the Work or the supply of movables as listed in Annexe II to Directive 2004/18;

Supply: the purchase, lease, rent or hire purchase with or without an option to purchase products, which are taken to include both goods and property rights. Supply may also cover the work required to fit or install products;

Contractor: the (potential) counterparty having a legal relationship with The Hague to which the present Terms apply;

Agreement: the agreement concluded between The Hague and the Contractor on the Performance, these Terms forming part whereof as the general terms and conditions referred to in Book 6, Title 5, Section 3 of the Dutch Civil Code;

Performance: all that the Contractor is to supply or perform by virtue of the Agreement;

Parties: the parties to the Agreement jointly;

Written Communication: this is taken to include communication by telefax. Written Communication is not taken to include e-mail, text messaging and other electronic communication, unless provided differently by law;

Terms: the present general terms and conditions;

Work: the entire product of construction or road engineering works intended to fulfil an economic or technical role as such.

## **2. APPLICABILITY**

2.1. These Terms apply to all Supply, Services or Work agreements concluded by The Hague and to all connected acts and legal acts.

2.2. The Parties may only derogate from the present Terms by written agreement.

2.3. The applicability of any Terms or other terms and conditions of the Contractor and/or third parties is expressly rejected.

2.4. If any provision of these Terms is void or is voided, the other provisions of these Terms will remain unimpaired. The Parties will consult on the void or voided provisions so as to come to an alternative arrangement. Such alternative arrangement will not affect the purport of these Terms.

## **3. FORMATION OF AGREEMENTS**

3.1. An Agreement, or an amendment to an existing Agreement, between Parties is formed and concluded by written acceptance of a written offer, or by the agreements reached by the Parties having been confirmed in writing in any other way.

3.2. The Contractor cannot derive any right from the Agreement in order to be granted a follow-up assignment.

3.3. Should any legal act have been performed on behalf of The Hague without there having been authorisation to do so, Section 3:69(3) of the Dutch Civil Code will not apply.

## **4. AMENDMENT OF THE AGREEMENT**

4.1. The Contractor undertakes to cooperate when the Agreement is amended, including when the size or nature of the Performance agreed upon is altered. In exercising its authority to make amendments, The Hague will observe the principles of reasonableness and fairness.

4.2. The Contractor will submit a written and substantiated report of the consequences to the price, quality, usability, third-party role, licenses and permits, fees, additional costs, delivery times and guarantees resulting from any amendment proposed by The Hague within 10 (ten) working days.

4.3. The Contractor is entitled to reasonable and fair compensation of the adverse consequences it suffers due to the amendment, provided such adverse consequences have been reported in writing to The Hague in advance and in conformity with the procedure of Article 4.2., and The Hague has approved the report.

4.4. Should The Hague deem the consequences of the amendment proposed by The Hague to be unreasonable, The Hague will be entitled to terminate the Agreement.

4.5. Without prejudice to the provisions of Article 3.1., the Agreement will only be amended after the authorised The Hague employee has provided written approval.

## **5. PRICES & RATES**

5.1. Prices and rates will be stated in euros and will exclude VAT. Prices and rates will be fixed for the duration of the Agreement, unless otherwise agreed upon. All costs related to the preparation and execution of the Agreement will be deemed to have been included in the prices and rates agreed upon, unless otherwise agreed upon.

5.2. Insofar as the Agreement concluded between The Hague and the Contractor permits the charging for additional work, the following conditions will apply:

- a. Whenever it becomes clear additional work will be required, the Contractor will immediately inform The Hague accordingly;
- b. Additional work can only be charged if The Hague has granted its written approval thereto prior to the performance of the additional work.

5.3. The Contractor will upon The Hague's request provide The Hague with a detailed estimate of the total amount to be charged on to The Hague.

5.4. Insofar as no fixed prices have been agreed upon, the Contractor may not charge an amount higher than 110% of the costs estimated by the Contractor to be made in connection with performance of the Agreement, unless additional work needs to be performed and the conditions of Article 5.2. have been met, or unless The Hague has otherwise granted its written permission to charge on a higher amount after the Contractor has, in time, informed The Hague in writing of an imminent overrun of estimated costs.

5.5. The Hague is entitled to have a registered accountant, to be appointed by The Hague, investigate the correctness of the amounts charged on to The Hague and the Contractor is to provide full cooperation to such an investigation. The costs of such an investigation are to be borne in full by the Contractor should it become apparent that the amounts charged on are incorrect.

## **6. TIMELINESS**

6.1. All terms and times the Contractor undertakes to meet are final, the Contractor defaulting with no prior written notice of default being required if it exceeds these final deadlines.

6.2. Without prejudice to the provisions of Article 6.1., the Contractor will, as soon as it becomes aware it will be unable to complete performance within the agreed upon terms, submit a written and detailed report to The Hague.

## **7. PROGRESS, COORDINATION AND REPORTING**

7.1. The Contractor is wholly responsible for safeguarding the progress of the execution of the Agreement. Without prejudice to the provisions of this Article, the Contractor will itself remain wholly and fully responsible for the final Performance.

7.2. Both of the Parties will appoint a Contact responsible for maintaining contact on the execution of the Agreement. If no Contact has been appointed, all contact is to take place by way of the The Hague staff member authorised to conclude an Agreement on behalf of The

Hague and the Contractor staff member authorised to represent the Contractor in concluding the Agreement.

7.3. The Contractor may not derive any rights with respect to delayed or altered performance from any act by the The Hague Contact, unless if the The Hague Contact is also a staff member authorised to decide on the matter on behalf of The Hague.

7.4. If and as soon as the Contractor is of the opinion that The Hague fails to in time provide the information or make the decisions required to properly and in time complete the Performance, the Contractor is to inform The Hague accordingly in writing in a timely manner. Should the Contractor fail to do so, it cannot invoke any such defaulting by The Hague.

7.5. The Contractor is to independently coordinate its work activities with the work activities of other involved parties, including any involved parties of The Hague other than the Contact. It is, when it considers such to be desirable, to consult with or request instructions from The Hague.

7.6. If the Contractor is of the opinion that the work activities of the third parties involved in executing the Agreement should be better coordinated, it is to inform The Hague accordingly in a timely manner. Should the Contractor fail to do so, it cannot invoke any such defaulting by The Hague. However, this does not prejudice the fact that the Contractor will at all times be wholly responsible for the Performance if third parties involved in executing the Agreement other than The Hague are of will be in default.

7.7. Should The Hague believe it wise, The Hague may provide further instructions on the execution of the Agreement.

7.8. The Contractor will report The Hague on the progress of the execution of the Agreement on The Hague's request. When so required, The Hague may provide further instructions on the report. In exercising its authority in requesting reports, The Hague will observe the principles of reasonableness and fairness.

## **8. INFORMATION AND NOTIFICATION**

8.1. Insofar as the Contractor in executing the Agreement relies on information or notification provided by The Hague staff or third parties, the Contractor is to observe due care. Unless this cannot reasonably be required, the Contractor will verify the correctness of any information or notification with its The Hague Contact.

8.2. The Contractor may, except where exceptional facts or circumstances, to be claimed and proven by the Contractor, are concerned, not invoke the assertion that any information or knowledge held at any one place or by any one person within the The Hague organisation is also held, or should also be held, by the The Hague Contact.

8.3. Should such be of paramount importance in executing the Agreement, all notifications made between the Parties in executing the Agreement will be made in writing.

## **9. STAFF AND THIRD PARTIES**

9.1. In executing the Agreement, the Contractor may, at its own expense and risk, make use of third-party services after having been granted written permission thereto by The Hague. The Hague may attach certain conditions to such permission.

9.2. If the work performed by, the conduct of or the quality of a Contractor employee or a third party engaged by it is unacceptable in The Hague's substantiated opinion, the Contractor will, at first request by The Hague, ensure the careful replacement of this employee or third party.

9.3. Insofar as this is, in the opinion of The Hague, required in executing the Agreement, the Contractor will, in the absence of any employees deployed or third parties engaged by the Contractor, as quickly and careful as possible replace these employees or third parties.

9.4. Whenever services need to be performed that are dependent on the personal or professional qualities and capabilities of the employee or third party engaged in this matter, this employee or third party will first be introduced to The Hague for approval.

9.5. The Contractor is to be able to submit a valid proof of identity of any persons deployed in executing the Agreement to The Hague.

9.6. The Contractor is to be able to submit a residence permit and a work permit of any persons deployed in executing the Agreement and meeting the criteria as listed in the Foreign Nationals (Employment) Act to The Hague.

## **10. DELIVERY, TRANSPORT AND PACKAGING OF MOVABLES**

10.1. The delivery of movables by the Contractor and any third party engaged by the Contractor will take place at the risk and expense of the Contractor and at a place and exact date and time to be determined by The Hague.

10.2. The Contractor will package movables in as sound and environmentally friendly manner as possible. The Hague is entitled, but not obliged, to return packaging materials to the Contractor at the Contractor's risk and expense.

10.3. All documentation belonging to the movables, including certificates, attestations, packing lists, instruction manuals, spare parts lists, maintenance instructions, etc., is to be supplied as part of the Performance. Should the Contractor fail to supply these accessories when delivering the movables, The Hague is entitled to partially suspend payment.

10.4. When delivering and handing over movables, the Contractor will submit a packing list stating the specifications, sizes and weights of the goods, the municipal order number, the municipal contact person and the address of delivery. Should this list be absent, The Hague is entitled to refuse acceptance of the delivery.

10.5. The warehouse manager of the business establishment the movables have been addressed to or the The Hague Contact is to have received a despatch advice from the Contractor two days prior to delivery for each shipment of any volume. The despatch advice is to refer to the order number.

## **11. ACCEPTANCE**

11.1. The Hague is at all times entitled to have an acceptance test carried out on the Performance. The test may be carried out prior to, during or within a reasonable term after the supply or implementation of the Performance.

11.2. Should The Hague partially or wholly declare a performance to be unacceptable, The Hague will notify the Contractor in writing accordingly after establishing the fault, stating grounds. In that case, the costs of carrying out the acceptance test are to be borne by the Contractor.

11.3. The Contractor is obliged to immediately and at its own expense and risk take back all rejected goods at The Hague's first request.

11.4. The Contractor is obliged to repair any fault established by The Hague within 14 days after receipt of the written rejection notice.

11.5. Should the Parties have come to establish at law that The Hague wrongly rejected the performance or that the fault cannot be attributed to the Contractor, the Contractor is entitled to compensation to cover all loss suffered and all costs made in connection with any additional performance made as a result of the rejection.

## **12. OWNERSHIP AND RISK**

12.1. The ownership of the movables purchased passes on to The Hague the moment The Hague took actual control over them. The ownership of any goods manufactured on The Hague's instruction by the Contractor or third parties passes on to The Hague the moment these goods come to be.

12.2. All risks associated with the movables purchased pass on to The Hague at the time the ownership passes on, but not, where applicable, until the movables have been successfully assembled, installed and tested in conformity with the Agreement.

12.3. The risks associated with any goods manufactured on The Hague's instruction by the Contractor or third parties will only pass on to The Hague after The Hague has taken actual control over them, but not, where applicable, until the goods have been successfully assembled, installed and tested in conformity with the Agreement.

12.4. The Hague testing the movables purchased and goods manufactured on its instructions does not imply they satisfy the guarantees provided by virtue of Article 13.

## **13. QUALITY AND GUARANTEES**

13.1. The Contractor guarantees that its Performance fully satisfies all it has agreed upon with The Hague. In the case of movables, this means that the movables at least possess the characteristics The Hague may expect them to possess by virtue of the Agreement.

13.2. The quality of any service provided by the Contractor at least satisfies the requirement that it is equal to the quality to be expected from any professional colleague acting in due care, in like circumstances, in the normal exercise of their profession.

13.3. The Contractor is to soundly, carefully and to the best of its abilities and knowledge perform, and will promote The Hague's interests to the best of its knowledge.

13.4. Insofar as an assignment wholly or partially entails the provision of mediation or advice and the Contractor has or may come to have any direct or indirect interest in any agreements The Hague may come to conclude because of such mediation or advice, the Contractor is obliged to inform The Hague in writing of this interest prior to the conclusion of the agreement or, should the interest come to exist at a later time, directly after it comes to exist. Should the Contractor fail to do so, it cannot claim any fees agreed upon, unless The Hague has provided a written notice of no objection against the existence of this interest.

13.5. Insofar as European law in the actual case allows for these terms:

1. the Contractor will guarantee that its performance meets all applicable European and Dutch quality and safety standards, including all standards established by CEN, ETSI, CENELEC and the NEN standards established by the Netherlands Standardisation Institute;

2. the Contractor will supply all goods that can be supplied with a KOMO guarantee certificate or quality mark or with a CE mark with the said guarantee certificate or marks.

## **14. INTELLECTUAL PROPERTY AND LIMITED RIGHTS**

14.1. The Contractor guarantees that the Performance and the normal use thereof, all in the broadest sense of the word, are free from any (third-party) patent rights, copyrights, trademark rights, design rights or any other special encumbrances or limitations, with the proviso that all user rights in the broadest sense of the word, including all processing, reproduction and publication rights, also without stating sources, at all times accrue to The Hague.

14.2. The Contractor indemnifies The Hague against any third-party claims on the intellectual and limited rights referred to above.

## **15. FORCE MAJEURE**

15.1. The following are at any rate not taken to constitute force majeure within the sense of Book 6, Article 75 of the Dutch Civil Code: lack of (sufficiently qualified) staff, strikes, staff sickness, late supply or unfitness for use of the materials required for the Performance, liquidity and solvency problems of the Contractor, or third-party shortcomings.

15.2. When one of the Parties due to force majeure is unable or insufficiently able to meet its obligations arising from the Agreement for a period of 30 (thirty) days, or when it has become reasonably certain that the period of force majeure will last for at least 30 (thirty) days, the other Party will be entitled to terminate the Agreement with immediate effect by registered letter, which termination will not give rise to any right to compensation.

## **16. LIABILITY**

16.1. The contractual and statutory liability of the Contractor with respect to the supply of goods is not limited in any way, unless otherwise agreed upon.

16.2. The contractual and statutory liability of the Contractor with respect to an agreement on the provision of services for a limited amount of time is the Client's liability limited to the value of the contract excluding VAT. The maximum liability with respect to an agreement on the provision of services for an unlimited amount of time is equal to the estimated average value of a contract year. The above limitation of liability does not apply in case of an intentional act or omission, gross negligence, intentional recklessness and/or intellectual rights violations by the Contractor or its staff.

16.3. Any limitation of the liability of the Contractor agreed upon, including the previous paragraph, does not apply insofar as the Contractor in its turn having recourse on third parties, including insurers. Insofar as the Contractor is liable in this context, it may fulfil its duty to compensate by transferring the relevant claim or claims.

16.4. Insofar as the Contractor has seconded staff to The Hague, the Contractor is liable for any damage caused by the seconded staff, unless such damage resulted from following instructions provided by The Hague.

16.5. If a penalty clause has been agreed upon, this clause will apply without prejudice to The Hague's right to alternative and supplementary compensation, fulfilment and termination.

## **17. PAYMENT**

17.1. The Hague pays out any amounts due by virtue of the Agreement within 30 days following receipt of the invoice, unless another payment term has been agreed upon in writing.

17.2. The Hague will only pay out on the basis of a properly detailed Contractor invoice. On this invoice, the Contractor is to state the Agreement reference (purchase order number) desired by The Hague, as well as the nature and scope of the work performed and/or the movables supplied. In addition, The Hague may demand the Contractor provide further details, including a work completion certificate.

17.3. The Contractor will send the invoice to the invoice address supplied by The Hague.

17.4. If The Hague makes it known it wishes to receive invoices by electronic ways (e-invoicing), the Contractor will immediately cooperate with this request.

17.5. The Hague may partially or fully suspend payment of an invoice in case the invoice is incorrectly drafted or in case reasonable doubt exists concerning its correctness. This does not, however, entitle the Contractor to suspend or terminate its work activities.

17.6. The Hague is entitled to settle any amounts due by virtue of the Agreement with any amounts due to The Hague by the Contractor. The Contractor does not hold this right of settlement.

17.7. Payment by The Hague in no way implies any relinquishment of any right.

17.8. Without prejudice to the provisions of Sections 436, 479 and 720 of the Dutch Code of Civil Procedure, the Contractor is not entitled to impose prejudgment attachment against the municipality or prejudgment garnishment on the municipality's assets.

## **18. TERMINATION**

18.1. The Contractor will only be entitled to terminate the Agreement or suspend performance thereof when such termination or suspension has been announced by registered letter requiring acknowledgement of receipt sent to the The Hague Contact, which letter is to state grounds and is to declare The Hague in default and provides The Hague with a reasonable remedy period of no less than 14 days.

18.2. Without prejudice to any other rights it may hold, The Hague is entitled to partially or fully terminate the Agreement with immediate effect or suspend the (further) Performance if:

- a. The Contractor files a winding-up petition or enters a state of liquidation;
- b. The Contractor requests or has been granted a provisional or permanent moratorium;
- c. Attachment is imposed on a substantial part of the Contractor's assets or its business is discontinued;
- d. The Contractor and/or any of its directors, representatives, subordinates and/or non-subordinates have promised, offered or provided any benefit of whichever nature to the directors, representatives, subordinates and/or non-subordinates of The Hague;
- e. The Hague is barred by court order to execute the Agreement;
- f. The Contractor is deemed to have become unwilling or unable to meet its obligations arising from the Agreement.

18.4. The Hague is entitled to terminate the Agreement with the Contractor should it become apparent that the Contractor has concluded price-fixing agreements or committed any other offence implying unsound professional ethics to the disadvantage of The Hague or any other government institution.

## **19. CANCELLATION**

19.1. Should the Agreement run for an unlimited amount of time, both Parties are entitled to cancel the Agreement subject to a notice period of no less than 3 months. Such notice of cancellation is to be submitted by registered letter.

19.2. In derogation from the provisions of the first paragraph, The Hague is entitled to cancel both agreements for a limited amount of time and agreements for an unlimited amount of time with immediate effect by registered letter, or suspend (further) performance thereof, if, within six weeks following the day performance of the Agreement has commenced, a third party holds it liable due to the Agreement having been concluded in violation of procurement law or any other statutory provision. Cancellation under this paragraph entitles the Contractor to compensation for the costs it had to incur in executing the Agreement.

19.3. In derogation from the provisions of the first paragraph, The Hague is entitled to cancel both agreements for a limited amount of time and agreements for an unlimited amount of time with immediate effect by registered letter, or suspend (further) performance thereof, if, after six weeks following the day performance of the Agreement has commenced, a third party holds it liable due to the Agreement having been concluded in violation of procurement law or

any other statutory provision. Cancellation under this paragraph entitles the Contractor to compensation for the costs it had to incur in executing the Agreement and for profit lost.

## **20. INSURANCE**

20.1. The Contractor states it has and will continue to have taken out sufficient insurance to cover professional and other statutory liability applicable to the execution of the Agreement.

20.2. The Contractor will at The Hague's first request immediately submit a certified copy of its insurance policy and proof of payment of the premiums payable for the said insurance.

20.3. The Contractor will not without having received The Hague's written permission cancel or alter these insurance agreement(s) or the conditions of conclusion of such agreement(s).

## **21. TRANSFERABILITY**

21.1. Any claims the Contractor may have against The Hague are not transferable or subject to pledge, unless The Hague has granted written permission thereto. This permission will not be withheld on unreasonable grounds.

## **22. ORDER OF PRIORITY**

22.1. In case of inconsistency, the terms and conditions agreed upon in writing in the Agreement prevail over the present Terms and terms and conditions not agreed upon in writing will be last in the order of priority, even if they are of the most recent date.

22.2. The Contractor is aware of the fact that The Hague also acts as government and accepts all possible consequences to the Agreement arising from the execution and exercise of the obligations The Hague has by virtue of regulations and provisions of public law.

## **23. CONFIDENTIALITY**

23.1. The Contractor is obliged to treat all information and knowledge it may obtain from The Hague or gathers in executing the Agreement in confidentiality. The Contractor will impose the same duty of confidentiality on all employees and third parties it engages and guarantees that they keep to this duty.

## **24. CONTRACTING WORK**

24.1. In case The Hague has drawn up contract documents for the purpose of awarding a contract for a Work, these Terms do not apply.

24.2. If the request, offer or Agreement refers to contracting a Work for which no contract documents were drawn up, the following apply:

- a. Articles 1 through 5, 13, 14, 17, 19, 21, and 23 through 27 of the present Terms;
- b. the 1989 Uniform Administrative Conditions for the Execution of Works (UAV), except for the following sections:

Section 14; Section 18; Section 22, Section 40(6); Section 42(2) (additionally, the municipality is entitled to claim supplementary compensation in addition to the rebate); and Section 45(1) and (2). Changes in material prices, shipping, wages, national insurance contributions and suchlike cannot be offset. In the event of conflict between the provisions of the present Terms and the provisions of the UAV, the provisions of the present Terms will prevail.

## **25. WAGES AND SALARIES TAX AND NATIONAL INSURANCE CONTRIBUTIONS (LIABILITY OF SUBCONTRACTORS) ACT**

25.1. If the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act applies to the Agreement, the Contractor is to fulfil all obligations arising from the said Act.

25.2. The Hague is entitled, in cases determined at its discretion, not to pay the share of the price covering wage tax and national insurance contributions to the Contractor, but to pay it out to a G account or directly to the tax authorities and the industrial insurance board.

## **26. GOVERNING LAW**

26.1. Any legal relationship to which these Terms apply is exclusively governed by Dutch law, to the exclusion of the applicability of the Vienna Sales Convention and any other international regulations on the sale of goods, insofar as their applicability can be excluded by the Parties.

## **27. COMPETENT COURT**

27.1. Any disputes on the realisation, explanation or execution of any Agreement to which the present Terms apply will be resolved by the competent court in 's-Gravenhage.

27.2. The provisions of the first paragraph do not apply to disputes to which, by virtue of Article 24, the provisions of the UAV apply.

## **SHORT TITLE**

The present Terms may be cited as "2009 The Hague Municipality General Terms and Conditions of Purchase".