

## 2003 VMRG GENERAL CONDITIONS OF PURCHASE AND (SUB)CONTRACTING

General conditions of purchase and (sub)contracting of the Vereniging Metalen Ramen en Gevelbranche (VMRG – Association of Metal Façade Element Manufacturers) filed with the Registry of the Court of Utrecht on 22 December 2003 under number 380/03.

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### GENERAL

#### Article 1: Applicability

- 1.1 Articles 1 to 16 of these conditions apply to all offers made to and agreements concluded with members of the Vereniging Metalen Ramen en Gevelbranche (hereafter referred to as ‘the VMRG’) for the delivery of goods and/or provision of services. If the offers or agreements made also or only include the provision of services, Articles 17 to 23 of these conditions will also apply. The client is the VMRG member applying these conditions. The other party is referred to as the contractor.
- 1.2 These conditions may only be declared applicable to agreements between VMRG members and their the contractors.
- 1.3 General conditions of the contractor do not apply and are expressly not accepted.
- 1.4 Any deviations from these General Conditions of Purchase and (Sub)Contracting will only apply if the client confirms them to the contractor in writing. The client is only bound by written agreements.

#### Article 2: Costs of Offers

Any costs associated with submitting offers or quotes, including the costs of advice, drawings, etc., incurred by or on behalf of the contractor are not refunded by the client.

#### Article 3: Delivery Date and Penalty

- 3.1 The agreed delivery date is a deadline. By exceeding the deadline, the contractor will be in default by operation of law. As soon as the contractor knows or should know that the agreement cannot be performed or not be performed properly or on time, he will notify the client immediately.
- 3.2 The contractor is liable for all damage sustained by the client as a result of not meeting the deadline referred to in Article 3.1.
- 3.3 For each day of delay in the delivery, the client reserves the right to charge the contractor an immediately exigible penalty of 1% of the total order amount, to a minimum of 50 and to a maximum of the total order amount. This penalty may be claimed in addition to damages under the law. The client is entitled to set off this penalty and/or amount of damages from the invoice amount payable to the contractor.

#### Article 4: Transfer of Risk

Delivery is effected to the agreed address free of charge. The delivery also includes unloading and stacking at the site specified by the client. The risk associated with unloading and stacking is borne by the contractor.

#### Article 5: Prices

- 5.1 The prices stated in the offer are based on free delivery to the agreed address, including loading, unloading and stacking. All prices are fixed, inclusive of transport, insurance and packaging, and exclusive of VAT.
- 5.2 Price increases following conclusion of the agreement are and remain at the contractor’s expense, regardless of the period that has lapsed between the date on which the agreement is signed and the date on which it is performed.

#### Article 6: Inspection and Testing

The client and/or his principal and/or the management of the work are at all times entitled to inspect or test the goods ordered or delivered and/or the work (in progress). In that event, the contractor will arrange the facilities that may reasonably be required therefor. The costs associated with this test will be payable by the contractor if these goods and/or work are/is rejected by the client and/or his principal and/or management of the work. Inspection or approval does not release the contractor from any guarantee obligations or liability under the agreement or the law.

#### Article 7: Rejection

- 7.1 If the goods/work delivered by the contractor do/does not meet the requirements set out in the order and/or specification, the client will be entitled to reject the same. Receipt of the goods or payment for the goods or work does not constitute acceptance of the same. The contractor will remain liable for the goods until they are approved.
- 7.2 If the client rejects the delivered goods or work, the client will set a term within which the contractor is obliged to:
  - repair the goods or work free of charge; or
  - replace the goods or (have a third party) perform the work in accordance with the agreement free of charge.

**7-3** If the contractor does not fulfil the obligation referred to in Article 7.2 or does not fulfil it to the client's satisfaction, the client will be entitled to (have a third party) carry out the repair at the contractor's expense. The client is entitled to set off the costs incurred against the contractor's invoice.

**7-4** Without prejudice to the provisions of Article 7.2 and 7.3, the client reserves the right to claim damages and/or dissolve the agreement in whole or in part.

#### **Article 8: Intellectual Property Rights**

The contractor guarantees that the goods to be delivered to the client by him or the work to be performed by him do not infringe any third-party intellectual property rights and indemnifies the client against any claims filed against the client on that account. The contractor will compensate the client for all damage resulting from any such infringement.

#### **Article 9: Confidentiality**

**9-1** All models, design data, drawings and other documents, etc., with which the client provides the contractor as well as the know-how that the contractor acquires through the client are confidential and are not to be used by the contractor for any purpose other than the performance of his obligations under the agreement with the client.

**9-2** The contractor will not publish or reproduce the above data without written permission from the client. In addition, the contractor will impose the obligation to observe confidentiality as referred to in this article on his personnel.

**9-3** If, for the performance of the agreement, the contractor has to pass on the data referred to in Article 9.1 to any third parties, he undertakes to impose the confidentiality obligation referred to in this article on those third parties as well.

**9-4** The contractor will owe the client an immediately exigible penalty of 25,000 if he defaults on any of the above obligations, without prejudice to the client's right to claim compensation from the contractor for the actual damage sustained or yet to be sustained.

#### **Article 10: Non-competition**

The contractor will refrain entirely from submitting quotes and/or offers to the principal, either directly or through the mediation of third parties, including quotes and/or offers for additions and/or changes to the work for which the client enters or has entered into negotiations with the principal

#### **Article 11: Auxiliary Materials**

**11.1** All auxiliary materials, such as drawings, models, moulds, matrices and tools with which the client provides the contractor for the performance of the agreement or which the contractor makes or has a third party make specially in connection with the agreement with the client, whether paid for or not, remain or become the client's property under all circumstances.

**11.2** All auxiliary materials and all copies made of them must be

made available or returned to the client upon request.

**11.3** As long as the contractor has any such auxiliary materials in his possession, they will be marked as property of the client. The contractor will notify any third parties claiming these auxiliary tools of the client's right of ownership.

**11.4** Without prejudice to the provisions of Article 9 of these conditions, the contractor will only use the auxiliary materials referred to in this Article to effect deliveries and perform work for the client and not show them to third parties without the client's express written permission. The contractor will bear the risk of loss or damage and is obliged to insure this risk at his own expense.

#### **Article 12: Liability**

**12.1** The contractor is liable for all direct and indirect damage sustained by the client, his personnel or his buyers due to an attributable failure or unlawful act on the part of the contractor, his personnel or his assistants. This includes all damage ensuing from the presence and use of items in connection with the contractor's performance of the agreement.

**12.2** The contractor will indemnify the client entirely against any third-party claims for compensation for damage as referred to in the first paragraph.

#### **Article 13: Insurance**

At the client's request, the contractor will demonstrate to the client that he has taken out sufficient insurance, at his own expense, to cover any damage that the client sustains due to actions and omissions on the part of the contractor and/or third parties working for him.

#### **Article 14: Guarantee**

**14-1** The contractor guarantees, for a period of 10 years after delivery and/or completion, unless agreed otherwise, that the goods delivered and/or work completed are of sound quality, free of construction, material and manufacturing defects and that they meet the pertinent requirements specified in the VMRG Quality Regulations and the VMRG-Kwaliteitseisen en Adviezen© (Quality Requirements and Recommendations), as they apply three months before conclusion of the agreement.

**14-2** The contractor will repair all defects appearing in the goods/work during the guarantee period immediately in consultation with the client or replace the defective goods or (parts of) the work.

**14-3** All costs associated with the repair of the defect or the replacement of the goods/work and the reoperationalisation of the goods/work or, if part of a larger object, the reoperationalisation of that object are payable by the contractor.

**14-4** If the contractor defaults and continues to default on the guarantee obligation stipulated in this article, the client will be entitled to repair or have a third party repair the defect at the contractor's expense and risk.

### Article 15: Payment

- 15.1** Payment is made within the agreed period wherever possible, unless the client complains about the quantity and/or quality of the delivery upon receipt of the goods, including the related documents.
- 15.2** In the event of prepayment or, as the case may be, payment in instalments, the client will be entitled to require that the contractor provide sufficient security for payment at the client's discretion. If the contractor fails to comply, he will be immediately in default. In that event, the client will be entitled to dissolve the agreement and recover any damage sustained from the contractor.
- 15.3** The client is at all times entitled to set off any amounts receivable from the contractor against any amounts payable to the contractor.
- 15.4** The client reserves the right to pay taxes and contributions directly to the tax authorities and industrial insurance boards.

### Article 16: Applicable Law and Competent Court

- 16.1** Netherlands law applies.
- 16.2** The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations whose exclusion is permitted.
- 16.3** Disputes will be brought exclusively before the competent court of the town or city where the client has offices, unless provided otherwise by mandatory law. The client is entitled to deviate from this rule of jurisdiction and follow the statutory rules of jurisdiction.
- 16.4** The parties may agree on another form of settling disputes, such as arbitration or mediation.

## SUBCONTRACTING

### Article 17: Prohibition on Assignment/Pledge

The contractor is prohibited from assigning, pledging or transferring under any title the amount of social security contributions and wage taxes for which the client is liable under the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act and that is included in the contract sum.

### Article 18: Obligations of the Contractor

- 18.1** The contractor has a duty to the client to:
- possess and, at the client's request, show valid proof of registration with an industrial insurance board and, in so far as required, his business licence;
  - present the client with a list of all personnel employed as well as a once-only copy of a valid proof of identity of each employee (before they commence work);
  - grant the client access to the payrolls and timesheets;
  - fulfil all obligations towards the contractor's personnel to the letter;

- strictly fulfil all statutory obligations to pay social insurance contributions and wage tax relating to the work assigned to him and comply with the applicable collective bargaining agreement to the letter;
- automatically issue periodic statements regarding the payment of wage tax and contributions, as referred to in the guidelines established within the framework of the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act;
- draw up, upon request, weekly reports in accordance with a model approved by the client and submit the weekly reports completed and signed by him to the client for approval;
- organise his administration with due observance of the guidelines of the Social Security (Co-ordination) Act (CSV);
- provide the client, upon request and free of charge, with all information required for the client's or his principal's administration.

- 18.2** If the contractor has not (yet) fulfilled his obligations under paragraph 1, the client will not be obliged to make payment until he has received the missing information and entered it into his accounts and/or the contractor has fulfilled his other obligations, if any.

### Article 19: Organisation of the Work

- The contractor is obliged to follow only the orders and instructions given by the client.
- The client is authorised to deny personnel of the contractor access to the work or to have them removed on account of unsuitability, disorderly conduct, misconduct, etc., without compensation of the costs.
- General or local days of rest or public holidays prescribed by the government or collective bargaining agreement, holiday days or other days off also apply to the contractor and his personnel who carry out the work. Any damage sustained by the contractor as a result cannot be recovered from the client. This also applies if the contractor's services can no longer be used due to strikes or other demonstrable causes affecting the client or third parties.
- The contractor's work/deliveries are to be performed/made within the working hours applicable on site, unless agreed otherwise.
- From the moment of commencement of the work up to completion, the contractor must ensure that there is a regular foreman present on site with whom both organisational and technical matters can be agreed. His name must be known to the persons or organisations specified by the client.
- The contractor must ensure that all safety and precautionary measures that may be required under the provisions of the Façade Construction Health and Safety (sub)plan as well as under the requirements that may be set for the employer and/or the work under the Working Conditions Act and/or any other national and/or international regulations have been taken before work commences and remain in place during the work. The contractor must provide his personnel with the appropriate personal protective equipment and oversee its use. All resulting costs are payable by the contractor. The contractor is liable for all insurance policies required and the excess of any CAR insurance policy taken out for the work.

- g.** The contractor must provide such a staff complement that the performance of the work is fully in line with the client's schedule and that any other work will not stagnate. In the event of any acceleration or delay, the contractor will adjust to the changed schedule/progress. Changes in staff complement are only allowed with the client's permission.
- h.** As prescribed by the Motor Insurance Liability Act (WAM), the contractor is obliged to ensure that the WAM-liable work material introduced by him is insured. In addition, the contractor must ensure that the WAM-liable equipment hired by him meets the insurance conditions referred to above.
- i.** With respect to cables, pipes and other overground and underground property belonging to third parties, the contractor is at all times obliged to locate their position. The contractor must notify the client immediately of any damage.
- j.** Any material and equipment required, such as scaffolding, tower wagons, hoisting equipment and small material, including hand tools, measuring devices, rolling scaffolding, ladders and stepladders, etc. will be provided by the contractor and are included in the total price.
- k.** If the work is to be performed on or to already completed parts of the work, such as plastered walls, tiling, paintwork, etc., the contractor must take protective measures to prevent damage and/or soiling and any damage and/or soiling nevertheless caused will be deemed a default on the obligation previously referred to.
- l.** Upon completion of the work, the contractor is required to leave the work swept clean and the construction site in a clean condition.

#### **Article 20: Performance by Third Parties**

- 20.1** Without prior written permission from the client, the contractor will not transfer or outsource the assignment or any part thereof or its performance to a third party.
- 20.2** If, after obtaining permission, the contractor assigns the work or part of it to a third party, he must draw up a written agree-

ment immediately and include the conditions set forth in this agreement in it. The outsourcing contractor will assume the legal position of client and the third party that of contractor.

- 20.3** Any transfer or outsourcing does not prejudice the contractor's obligations towards the client under this agreement.
- 20.4** Without prejudice to the provisions of paragraphs 1, 2 and 3 of Article 20, the contractor is not authorised to use the manpower made available without prior written permission from the client. When outsourcing the work or hiring in manpower as referred to above, the contractor is obliged to comply with the administrative regulations of the Social Security (Co-ordination) Act.

#### **Article 21: Invoicing**

- 21.1** The client will only accept an invoice for payment once the work or the part to which an instalment pertains has been completed satisfactorily by the contractor.
- 21.2** The invoice must satisfy the statutory requirements as set in the Turnover Tax Act and in any event state the following details in a clear and easy-to-read fashion:
  - a.** the client's name and address;
  - b.** the contractor's name and address;
  - c.** the number of the agreement;
  - d.** the work and workplace(s) to which the invoice pertains;
  - e.** the period and the work to which the invoice pertains;
  - f.** a statement as to whether or not the turnover tax transfer regulations apply and, if they do not, the amount of turnover tax;
  - g.** the amount of CSV wages included in the invoiced amount;
  - h.** the contractor's VAT identification number;
  - i.** the client's VAT identification number if VAT liability has been transferred to the client;
  - j.** the invoice amounts, divided according to tariff and subdivided according to price per unit and discounts applied.