

TERMS AND CONDITIONS

General Purchasing and Subcontracting Terms and Conditions

The Dutch version of which was filed at the Brabant Chamber of Commerce on 1 November 2010

In case of inconsistency between the Dutch version and the English translation of these general terms and conditions, the Dutch version will take precedence.

I GENERAL SECTION

Article 1 General

- 1.1 The following terms have the stated meaning in these general terms and conditions:
- 'the employer': Heijmans N.V. and/or one or more of its subsidiaries.
 - 'the contractor': any natural person with whom or legal entity with which the employer negotiates regarding the conclusion of a contract and/or with whom or which the employer enters into a contract.
 - 'order': the supply of goods and/or performance of work commissioned by the employer.
 - 'contract': any contract for the supply of goods and/or performance of work that is entered into between the employer and the contractor, any addition and/or amendment thereto, as well as all (legal) acts in preparation for (including the employer's request for an offer and the contractor's offer) and for the performance of the contract.
 - 'supply of goods': all activities and services relating to the supply of goods, insofar as these do not fall under the definition of 'performance of work'.
 - 'performance of work': the performance of design and/or implementation activities, including the creation of a tangible work and/or the performance of services, whether or not linked to the supply of goods, and which does not constitute an employment contract.
 - 'main building contract': the contract between the employer and the principal.
 - 'the principal': the employer according to the main building contract.
 - 'the site management': the management according to the main building contract.
- 1.2 If the contract relates to the supply of goods, the provisions of the SPECIAL SECTION ON PURCHASING CONDITIONS (II A) will apply in addition to the GENERAL SECTION (I). In case of inconsistency, the provisions of the SPECIAL SECTION ON PURCHASING CONDITIONS will take precedence.
- 1.3 If the contract relates to the performance of work, the provisions of the SPECIAL SECTION ON SUBCONTRACTING CONDITIONS (II B) will apply in addition to the GENERAL SECTION (I). In case of inconsistency, the provisions of the SPECIAL SECTION ON SUBCONTRACTING CONDITIONS will take precedence.
- 1.4 The working language for all matters relating to the contract is Dutch.

Article 2 Offers of the Contractor; Conclusion of the Contract

- 2.1 A request for an offer by the employer is always without obligation.
- 2.2 An offer by the contractor is irrevocable, unless the contractor has expressly stated in writing that the offer is revocable prior to or at the time of submitting it.
- 2.3 The contractor's offer is valid for a period of six weeks. If the contractor submits its offer as part of the employer's participation in a tender procedure, its offer will be valid for six months after the award of the work by the principal to the employer.
- 2.4 In case of an offer submitted by the contractor, a contract will only be concluded between the employer and the contractor once the employer has accepted the contractor's offer in writing.
- 2.5 In case of the performance of a framework agreement, the contract will only be concluded when the employer sends the order for the supply or partial supply of goods and/or the performance or partial performance of work.

Article 3 Acceptance of the Order; the Contract

- 3.1 The contractor must sign and return the order, without any alterations, to the employer within 14 days of the order having been sent. If the contractor fails to return the order within the aforementioned period and does not enter any objection to the content thereof within that period or commence with the execution

of the order, the order will be deemed to have been accepted on the conditions mentioned therein, pursuant to these general terms and conditions, notwithstanding the provisions of Article 5 (Conditions Precedent) hereof.

- 3.2 The following applies to all of the employer's contracts as though they are included verbatim therein:
- a all technical and administrative provisions of the specifications, report and/or statement of on-site information or similar changes to the specifications relating to the main building contract or another contract;
 - b these general terms and conditions;
 - c everything else binding the employer towards the site management and/or the principal under the main building contract, insofar as directly or indirectly related to this contract.
- The provisions of the contract will take precedence over the provisions of subparagraphs a, b and/or c at all times.
- 3.3 In case of inconsistency among the provisions of subparagraph a, b and c of paragraph 2 of this article, those mentioned first will take precedence over those mentioned later, on the understanding that:
- subparagraph b will take precedence over subparagraph a, if subparagraph b contains more onerous provisions for the contractor, and
 - in case of inconsistency between the administrative provisions declared applicable in the specifications and the additions and amendments to these administrative provisions mentioned in the specifications on the one hand, and the general terms and provisions (subparagraph b) on the other hand, the general terms and provisions will take precedence.
- 3.4 The contractor may examine the technical and administrative provisions of the specifications, the accompanying drawings, report and/or statement of on-site information, explanatory notes and additions at the employer. If requested, copies of these documents will be provided to the contractor. The contractor will be deemed to have examined the specifications, all drawings and relevant documents and to have received all other requested information.
- 3.5 If the contractor comes across clear inconsistencies or defects in the order, it will be obliged to immediately inform the employer thereof and request clarification before proceeding to perform, manufacture or supply, failing which it will be liable for all resultant damage.
- 3.6 Additions to and amendments of provisions in the contract and/or the documents forming part thereof, pursuant to paragraph 2 of this article, will only be binding on the employer if and insofar as the employer has accepted these in writing.

Article 4 Integrity

- 4.1 During the performance of the contract, the contractor, its employees and the subcontractors, workers and suppliers that it hires must observe the rules as laid down in the terms of reference of the prevailing Heijmans code of conduct ('Code of Conduct'), which is available on the website <http://uk.heijmans.nl>. Insofar as possible, 'employees' as referred to in the Code of Conduct means employees of the employer as well as the subcontractors, workers and suppliers that it hires.
- 4.2 If and insofar as the contractor applies its own sectoral or other code of conduct, which at least complies to the model business code of the Foundation for the Assessment of Integrity in the Construction Industry (Stichting Beoordeling Integriteit Bouwnijverheid), the contractor, its employees and the subcontractors, workers and suppliers that it hires must observe the rules as laid down in the contractor's own code of conduct during the execution of the order.
- 4.3 If there is a serious suspicion of conduct contrary to the Code of Conduct or the contractor's own code of conduct, the employer will be entitled to arrange for an independent forensic accountant to perform an audit. The contractor must cooperate in this regard.
- 4.4 The contractor warrants that any offers that it has submitted under this contract have been made legally and, more specifically, that these offers have been made without any agreement or mutually coordinated conduct with co-tenderers, subcontractors and/or other third parties for the purpose of or resulting in the unlawful restraint or restriction of competition and/or the unlawful raising of prices, now or in the future.

Article 5 Conditions Precedent

- 5.1 The contract will be concluded under the following conditions precedent:
- the work, for which the employer has made an offer to the principal, is awarded to the employer in accordance with that offer; and
 - the principal has confirmed to the employer that it will grant consent for the contractor to be hired by the employer.

Article 6 Joint and Several Liability

- 6.1 If the contract is concluded between the employer and two or more contractors jointly, or two or more natural persons or legal entities are subject to any obligation under that contract, these contractors and natural persons or legal entities will always be jointly and severally liable for everything towards the employer.

Article 7 Ownership of Documents, Models, Designs, etc.

- 7.1 The schedules pertaining to the contract, as referred to in Article 3.2 (Acceptance of the Order, the Contract) of these terms and conditions, as well as the drawings, calculations, other documents, models, working methods, computer files and other data carriers (electronic or otherwise), which the employer has supplied to the contractor, or which the contractor has made or arranged to be made for the order, or which the contractor has developed in conjunction with or on the instructions of the employer, will remain or become the property of the employer and must be returned or sent to the employer, at the contractor's expense, immediately on request of the employer.
- 7.2 The contractor may not use the items referred to in the previous paragraph in any way other than for the purpose of and as provided for in the contract. The use of the aforementioned items is entirely at the contractor's risk.
- 7.3 The contractor must make the items referred to in paragraph 1 of this article available to the employer when it supplies the goods/delivers the work, at the latest, failing which the employer will be entitled to suspend payment until it receives these items.

Article 8 Intellectual Property Rights

- 8.1 Intellectual property rights, including copyright, the rights referred to in the Benelux Convention on Intellectual Property, patent rights and rights derived from such rights, which are connected with the documents referred to in Article 3.2 (Acceptance of the Order, the Contract) that form part of the contract, as well as the documents referred to in Article 7.1 (Ownership of Documents, etc.) provided by the employer to the contractor, vest in the employer to the exclusion of any other party.
- 8.2 By entering into the contract, the contractor assigns the aforementioned intellectual property rights, insofar as necessary, to the employer.
- 8.3 The contractor is not entitled to any payment or additional payment for and in connection with the assignment of the rights referred to in the first paragraph, other than the price that it receives from the employer for the order.
- 8.4 The employer is considered to be the creator or designer of the items referred to in Article 7.1 (Ownership of Documents, etc.).
- 8.5 The contractor warrants that the performance of the contract will not infringe any intellectual property rights of third parties. The contractor limitlessly indemnifies the employer against third-party claims due to the infringement of these rights. The contractor's obligations arising from this paragraph also extend beyond the termination of the contract.

Article 9 Confidentiality

- 9.1 The contractor undertakes to keep the content of the contract – including the documents referred to in Article 3.2 (Acceptance of the Order, the Contract) and Article 7.1 (Ownership of Documents, etc.), structures, schemes and other commercial information and know-how, in the broadest sense, originating from the employer, which the employer communicates to the contractor or which comes to the contractor's knowledge in relation to the contract – confidential from third parties.
- 9.2 The contractor must impose the same duty of confidentiality in writing on the personnel that it involves in and/or the third parties that it hires for the performance of the contract.
- 9.3 The contractor's obligations arising from paragraph 1 of this article also extend beyond the termination of the contract.

Article 10 Non-Competition Clause

- 10.1 The contractor must refrain from submitting estimates and/or offers to the principal, either directly or through the involvement of third parties, including for extensions and/or alterations, relating to the work for which the employer is conducting negotiations with the principal or for which a main building or other contract will be or has been concluded.

Article 11 Outsourcing

- 11.1 The contractor may not assign or outsource all or part of the contract to a third party without the employer's prior written consent. Conditions may be attached to this consent.
- 11.2 If the contractor instructs another party to perform the work after having obtained consent for this purpose, it must immediately draw up a written contract, of which the conditions of this contract must form part, in such a manner that the instructing contractor assumes the legal position of the employer and the instructed supplier/subcontractor assumes the legal position of the contractor.
- 11.3 Assignment/outourcing does not affect the obligations of the contractor towards the employer under the contract.
- 11.4 If the contractor outsources all or part of the performance of the contract to a third party, it will be obliged to comply strictly with the stipulated administrative rules in order to be indemnified against any vicarious tax liability (Section 35 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990). The contractor's obligation to indemnify, as referred to in Article 17 (Liability and Indemnity), applies in this case.

Article 12 Hiring of Personnel

- 12.1 The contractor is not entitled to use hired workers for the performance of the work without the employer's prior written consent. Conditions may be attached to this consent.
- 12.2 If workers are hired, as referred to in the previous paragraph, the contractor will be obliged to comply strictly with the stipulated administrative rules in order to be indemnified against any vicarious tax liability (Section 34 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990). The contractor's obligation to indemnify, as referred to in Article 17 (Liability and Indemnity), applies in this case.

Article 13 Set Off

- 13.1 The employer is entitled to set off amounts that are owing to the contractor under the contract against claims that it, one of the other subsidiaries of the Heijmans group or a minority interest held by a subsidiary of the Heijmans group, has against the contractor, including under any other contract. The employer is not bound in this regard by the contractual ratio of what must be deposited respectively in the contractor's G account and ordinary account and is therefore entitled to set off the claim in its entirety, or to the extent that it so wishes, against that which it must credit to the contractor's ordinary account.

Article 14 Price and Quantity

- 14.1 Unless otherwise agreed in writing, all prices are fixed. Unless otherwise agreed, no set off will take place due to any increase in wages, prices and other cost-increasing factors.
- 14.2 All prices are for the carriage-paid delivery of the goods to the place referred to in Article 31 (Place of Delivery) and include all import and export duties, other levies and taxes and costs of insurance, excluding VAT. Currency differences (i.e. differences in the exchange rate between the time of ordering and the time of delivery/invoicing) will have no influence on the price.
- 14.3 Unless the contract makes specific provision for offsettable quantities, the quantities mentioned therein are stated as accurately as possible and must be delivered so much more or less as the work requires, without the contractor being entitled to request a price adjustment for each unit.
- 14.4 The contractor may only claim payment for cost-increasing circumstances if the employer may claim the same from the principal and may further not do so before the employer has received payment from the principal.

Article 15 Invoicing

- 15.1 The invoices to be sent by the contractor to the employer must comply with the requirements laid down by or pursuant to the Dutch Turnover Tax Act (Wet op de Omzetbelasting), 1968.
- 15.2 If Section(s) 34 and/or 35 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990 is/are applicable, the contractor must include at least the following details on the signed and numbered invoice in a clear and well-organised manner:
- the contact number relating to the work;
 - the work and place(s) of performance to which the invoice relates;
 - the time period and performed activities to which the invoice relates;
 - the amount included in the invoiced amount for wages;
 - the name, address and place of business of the contractor;
 - the VAT number of the contractor;
 - an indication as to whether or not the reverse charge mechanism (as referred to in Section 24b of the Turnover Tax (Implementation) Decree (Uitvoeringsbesluit Omzetbelasting), 1968) is applicable. If applicable, the words 'VAT reverse-charged' must be mentioned. If not applicable, the amount of the VAT must be mentioned.
 - the payroll tax number of the contractor;
 - the number of the contractor's G account, as referred to in Article 26 (Vicarious Tax Liability/Recipients' Liability).
- 15.3 A single copy of the contractor's invoices must be submitted mentioning the project, project/order or contract number allocated by the employer as well as the date of the order. Unless another form of invoicing is agreed in writing, the invoice must be submitted to the branch/district office of the relevant subsidiary which is acting as the employer.
- 15.4 The invoices must be accompanied by the goods receipts or timesheets (expressed in man-days), signed for approval by the employer's authorised representative.
- 15.5 The contractor is not entitled to add a discount for prompt payment to the invoice.
- 15.6 If requested, the contractor is obliged to provide the employer with all information needed for its records or those of the principal free of charge.
- 15.7 The employer will be entitled to suspend payment if the contractor has not complied with all its obligations. Payment by the employer does not in any way constitute a waiver of rights.
- 15.8 The contractor is obliged to furnish such security as required by the employer immediately on request.
- 15.9 The invoice address means the address mentioned in the employer's order.
- 15.10 Invoices that do not comply with the requirements as set out in the preceding paragraphs of this article will be returned unpaid without having been processed.

Article 16 Payment and Final Settlement

- 16.1 If the contractor has complied with all its obligations under the contract, it may invoice the agreed price to the employer, after which the employer must make payment within 60 (sixty) days of receipt and approval of the relevant invoice.
- 16.2 Payment must be made on the basis of an agreed instalment schedule or, in the absence of such an instalment schedule, after the last delivery (in case of purchasing) or after completion of the work (in case of subcontracting). The employer will only pay:
- once the contractor has satisfactorily delivered the goods/completed the work or the part thereof to which an instalment or other payment relates;
 - once it has received an invoice in accordance with the provisions of Article 15 (Invoicing); and
 - once the contractor has demonstrated, if requested, that it has paid the amounts owing to the employees involved in the work, as well as the income tax and social security contributions for these employees.

- 16.3 The contractor must submit its final statement to the employer within 4 (four) weeks of the completion of its work or of its last delivery. If the principal and the employer have agreed to a maintenance period, the final statement must be submitted within four weeks of the expiry of the maintenance period. If the employer does not receive the final statement within the aforementioned period, the contractor will not be entitled to the payment of any positive balance on the final statement.
- 16.4 Notwithstanding the above, payments or invoicing can only be done once the employer has received an unaltered and signed copy of the order back from the contractor.
- 16.5 The employer is not obliged to pay invoices if these are not accompanied by and comply with the goods receipts and/or timesheets (expressed in man-days), referred to in Article 15.4 (Invoicing), signed by an authorised representative of the employer.
- 16.6 In principle, the payment system is the same as that mentioned in the main building contract.
- 16.7 Payment by the employer for the supplied and approved goods and/or the work or parts thereof does not release the contractor from any warranty and/or liability arising from the contract or by law.
- 16.8 If the contractor is in breach of its obligations under the contract, attributable or otherwise, after having received a written notice of default, the employer will not be obliged to make any payment other than for supplies that have already been made and approved. If the contractor is in attributable breach of its obligations, this payment will be made after deducting the damage and costs that the employer has suffered and/or will suffer as a result of the attributable breach.
- 16.9 If the employer performs all or part of the work, or arranges for this to be done by third parties because of the contractor's breach or inability to do so, the employer will be entitled, at the contractor's expense, to pay a fair amount directly to the subcontractors and suppliers of the contractor for the work and supplies for which they have not yet received payment. The employer will not do so, however, without having first heard from the contractor or its legal representative.

Article 17 Liability and Indemnity

- 17.1 The contractor is liable for all damage of any nature that arises in connection with the execution of the order. The contractor is obliged to compensate all damage suffered by the employer, the principal or third parties in this regard. The contractor must indemnify the employer against all third-party claims in this regard and compensate the employer, if necessary.
- 17.2 The contractor is liable for administrative fines and/or other punitive measures imposed on the employer, the principal and/or third parties as a result of the contractor's acts and/or omissions.
- 17.3 The contractor is liable for damage to equipment, structures, tools and materials, as well as items that have been brought to the construction site by the contractor but which are not yet incorporated in the work, which includes loss arising from theft, a decrease in value, vandalism and damage, including arson.

Article 18 Insurance

- 18.1 The contractor is obliged – as policyholder – to take out primary liability insurance, to the employer's satisfaction, for the financial consequences of its liability towards the employer, the principal and/or third parties, to pay the premium in advance for the entire duration of the contract and to demonstrate, to the employer's satisfaction, that any payments for damage will be made directly to the employer, failing which the employer will be entitled, after having given a notice of default, to annul the contract without judicial intervention and without prejudice to its other rights. The insurance of its liability does not affect the contractor's contractual or statutory liability. If several insurance policies apply to a claim, the liability insurance of the contractor, as referred to in the first sentence of this paragraph, will take precedence over those other insurance policies.
- 18.2 The contractor must insure all items of the employer that it has or will have in its possession against any damage caused thereto during the period that they are under its control.
- 18.3 In case of the delivery or use of motor vehicles and other rolling stock, the contractor must insure the risk of liability for damage towards the employer and/or third parties in accordance with statutory requirements and with due observance of the applicable specifications and/or other contractual provisions. The insurance policies must comply with the following conditions, among others:
- the employer must be mentioned on the policy as a co-insured of the contractor in relation to the contract;
 - the motor vehicle and work equipment insurance may not include any exclusions with regard to what is known as operational risk and/or damage to underground items, such as cables and ducts.
- 18.4 The contractor is obliged, on request, to provide copies of the insurance policies from the various insurance companies to the employer as well as copies of the corresponding premium payments.
- 18.5 The contractor also bears the obligations that are imposed on insured parties and co-insured parties by the insurance terms and conditions. If the contractor is in breach of its insurance obligations, the employer will be entitled to fulfil these obligations on behalf of and at the expense of the contractor.
- 18.6 Notwithstanding the contractual or statutory obligations of the contractor, the contractor must insure the aforementioned liabilities up to amounts:
- that the Dutch Civil Liability Insurance (Motor Vehicles) Act (Wet Aansprakelijkheidsverzekering Motorrijtuigen) prescribes for the use of motor vehicles and self-operated work equipment;
 - in respect of liabilities arising from causes other than those referred to in the previous subparagraph of this article, up to an amount as mentioned in the contract, failing which an insured sum of at least €2 million per event will be required.
- 18.7 In case of incompatibility between the requirements set by the principal for the content of the employer's insurance and the actual content of the employer's insurance, the latter will take precedence. In other words, the contractor cannot rely on the requirements set by the principal.

- 18.8 The excess of any insurance is payable entirely by the contractor.
- 18.9 Claims against any insurance taken out by the employer (or the principal) will only arise once the employer (or the principal) has given a statement for that purpose to the insurer(s) concerned. The contractor cannot claim against any insurance taken out by the employer in relation to the cases mentioned in Article 17.3 of these general terms and conditions.

Article 19 Delivery of Certificates, etc.

- 19.1 If the contract requires warranty or other certificates, attestations and/or instruction books, etc., the contractor must ensure that these items are in the employer's possession no later than two weeks after the supply of the goods/completion of the work, unless an earlier period is mentioned in the contract, failing which the employer may suspend payment until these items are in its possession.

Article 20 Warranty

- 20.1 Notwithstanding its contractual or statutory liability, the contractor warrants for the period stipulated in the contract, in the absence of which a five-year period will apply, that the supply of goods and the performed work, including the items used for that purpose, will at least be:
- of good quality and without any design, construction, assembly or material defects; and
 - will comply with the provisions of the contract (and the accompanying documents, including those mentioned in Article 3.2 (Acceptance of the Order, the Contract) of these terms and conditions), be suitable for the intended purpose and conform to the requirements laid down for that purpose in the contract and by or on behalf of the government. The goods and/or work delivered must be of sound material and properly performed by competent people under expert supervision, according to the drawings and specifications in all aspects and, if applicable, at least equivalent to the samples or models made available or shown by the contractor to the employer. The goods and/or work delivered must be fully capable of functioning as intended, as well as comply with all standards, quality marks, legislation and government rules applicable at the time of the conclusion of the contract and at the time of actual delivery (as soon as the employer takes receipt of the goods or work at the agreed place of delivery). The contractor further warrants that the goods and/or work delivered will be suitable for their intended purpose.
- 20.2 The provisions of paragraph 1 of this article apply on the understanding that, if the employer makes it known before placing the order that it is bound towards the principal, on the basis of the specifications, to provide a specific warranty for the work or part of the work that has been or will be delivered, the contractor will be obliged to provide the same warranty to the employer, unless the factory warranty is more comprehensive than the aforementioned warranty, in which case the factory warranty will apply.
- 20.3 The warranties as referred to in paragraphs 1 and 2 of this article apply (i) in case of purchasing, from the date of delivery, (ii) in case of subcontracting, from the date of the handover of the relevant part of the work by the employer to the principal and (iii) in case of supplied technical components and systems, in particular, from the date that these are put into use or operation.
- 20.4 Notwithstanding the other claims of the employer, the contractor must repair all defects arising during the warranty period, as soon as possible, at its own expense and upon the first request of and in consultation with the employer.
- 20.5 If the contractor does not remedy the defect, or fails to do so on time and/or properly, after having received a notice of default, or if no delay in remedying the defect can be tolerated, the employer will be entitled, after written notice, to carry out the necessary repairs itself or to arrange for the necessary repairs to be carried out at the contractor's expense. The employer will be entitled to recover these costs from the contractor.
- 20.6 After any replacement or repairs within the warranty period, the agreed warranty will start again for the relevant part of the goods and/or work delivered.
- 20.7 The employer will remain liable for hidden defects for a period of five years after the expiry of the applicable warranty period under this article. Hidden defects are defects that could not have been reasonably discovered by the employer during the inspection of the goods as referred to in Article 21 (Inspection and Testing) or the inspection of the work as referred to in Article 38 (Inspection and Approval).
- 20.8 The contractor is obliged to organise and set up its business in such a way that the origin of every part or component of the delivery can be traced, among other things, on the basis of production and history of origin.
- 20.9 The obligation of the employer to complain, as referred to in Section 23, Book 7 and Section 89, Book 6 of the Dutch Civil Code, does not imply that the employer must protest to the contractor within six months of discovering, or within which time he reasonably must have discovered, any defect in the contractor's performance.

Article 21 Inspection and Testing

- 21.1 The employer and/or the principal and/or the site management of the work are entitled to inspect or test the ordered or supplied goods and/or the work or work in progress – including the items used for that purpose – at all times. The contractor must then ensure such facilities as may be reasonably required for that purpose.
- 21.2 The costs of this testing will be payable by the contractor if the employer and/or the principal and/or the site management of the work reject these goods/the work.
- 21.3 Inspection or approval does not release the contractor from any warranty or liability under the contract or by law.

Article 22 Full or Partial Annulment/Termination

- 22.1 Unless otherwise agreed in writing, every deadline agreed between the employer and the contractor for the fulfilment of the contractor's obligations is a strict deadline. The contractor will be in breach due to the mere expiry of the deadline. This is not affected by demands sent by the employer to the contractor.
- 22.2 The contractor will be in breach by operation of law in the following cases and the employer will be entitled, without the need for any notice of default or judicial intervention, to declare the contract totally or partially annulled or to give notice of termination, notwithstanding its right to compensation:
- a if the contractor fails to comply with one or more of its contractual obligations, or fails to do so properly or on time, resulting or threatening to result in a delay of the work or part thereof;
 - b in case of one of the following, or a petition for one of the following:
 - (i) bankruptcy,
 - (ii) a temporary or permanent moratorium on the payment of debts,
 - (iii) partial or total liquidation, or
 - (iv) curatorship,of the contractor or of the natural person or legal entity that has stood surety or furnished security for the contractor's obligations;
 - c if one or more of the contractor's assets are placed under administration;
 - d if the contractor fully or partially transfers its business, part of its business or the control of its business, fully or partially closes down its business or there is otherwise any cessation of business operations;
 - e if pre-judgment attachment or attachment in execution is levied on the contractor's assets or part of its assets;
 - f if the contractor is unable to fulfil its obligations under the contract because of force majeure;
 - g if the contractor dies;
 - h if the audit as referred to in Article 4.3 (Integrity) reveals that the contractor, its employees, or the subcontractors, workers or suppliers that it hires have not observed the rules laid down in the applicable code of conduct during the performance of the contract, and have consequently acted in conflict with that code of conduct, in a way, that when viewed according to objective criteria, is so serious that it justifies full or partial annulment;
 - i if the contractor infringes any statutory rule, or if a fine or another punitive measure is imposed on the contractor.
- The employer is also entitled to fully or partially assign the performance of the contract to one or more third parties at the contractor's expense and risk in the aforementioned cases.
- 22.3 Notwithstanding the provisions of the previous paragraph, the employer and the contractor will be entitled to regard the contract as fully or partially annulled or terminated, without judicial intervention, notwithstanding their further right to compensation, if the other party does not fulfil its obligations relating to the contract after having received a proper notice of default.
- 22.4 If a party makes use of the right referred to in the previous paragraphs, the other party must be informed in writing of the full or partial annulment or termination of the contract.
- 22.5 In case of full or partial annulment or termination, the employer will be entitled, notwithstanding its right to compensation and costs, and at its option:
- a to return/demolish the goods that have already been supplied but which cannot or can no longer be used and/or the work that has already been performed, at the contractor's expense, and reclaim any payments that have already been made for these goods/this work;
 - b to complete the contract itself or arrange for it to be completed, if necessary after written notice, using the work that has already been delivered/performed by the contractor and the materials, equipment, etc. used by the contractor, whether or not for a reasonable fee to be subsequently agreed.
- 22.6 Any claims which the employer may have or acquire as a result of the annulment or termination of the contract, including any claim for the compensation of damage and costs, are immediately due and payable in full.
- 22.7 The contractor is obliged to immediately report bankruptcy, a petition for bankruptcy and an actual or impending attachment in writing to the employer.

Article 23 Rights to Suspend Performance

- 23.1 The contractor declares that it waives its right to suspend its obligations under the contract, if and insofar as the punctual performance of the work, for which the supplies and/or subcontracting or other activities are intended, will be delayed as a result.
- 23.2 The employer is entitled to suspend its payment obligations if the contractor is in actual or impending breach of performance of its obligations, regardless of whether this breach is attributable.
- 23.3 If the employer reasonably believed that it was entitled to suspend the performance of its obligations on the basis of circumstances known at that time, it will not be obliged to pay any compensation if it subsequently becomes clear that the employer's reliance on its right to suspend performance was not legally valid.
- 23.4 The contractor expressly waives its right of retention.

Article 24 Assignment and Pledge of Claims

- 24.1 The contractor may not assign, pledge, otherwise encumber or transfer claims to third parties which it has or will acquire on account of a contract with the employer (including any amounts owing in income tax and social security contributions included in the price, for which the employer is statutorily liable) without the employer's prior written consent.

Article 25 Equipment

- 25.1 Unless otherwise agreed in writing, the contractor must make its own arrangements for all equipment needed to perform the work, such as critical material as referred to in Article 44.3 (Quality, Occupational Health & Safety and the Environment) of these terms and conditions. All equipment must be of sound quality and comply with the applicable statutory requirements and rules.
- 25.2 The contractor may only make use of the employer's equipment with the employer's consent. Such use is at the contractor's risk and the contractor is fully liable for any damage caused by this use. The contractor will indemnify the employer against third-party claims in this regard. Once the contractor has finished using the equipment, it must return it to the employer in the same condition as which it was received. The contractor is obliged to immediately report any damage to and/or defects in the equipment to the employer and to compensate the employer for the damage on demand.

Article 26 Vicarious Tax Liability/Recipients' Liability

- 26.1 The Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act (Wet Ketenaansprakelijkheid) (Articles 34 and 35 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990, referred to hereinafter as 'the Act', applies on the basis of these terms and conditions, insofar as the contract has not excluded its application.
- 26.2 If the contractor outsources all or part of the performance of the contract to a third party, or uses hired workers for the performance of the contract, the administrative rules laid down by the Act must be strictly observed. Insofar as the failure to comply with these rules would result in the employer being held liable by third parties, the contractor hereby indemnifies the employer against all consequences hereof.
- 26.3 The contractor must cooperate in the establishment of guarantees for the collection of taxes, contributions and social charges relating to the activities to be performed and must ensure that all statutory obligations are complied with for all workers on site, including the obligation to withhold income tax and social security contributions. The contractor must indemnify the employer against third-party claims in this regard. The obligations of the contractor include:
- a providing proof, at the employer's request, of its entry in the Commercial Register, its membership number at the industrial insurance board where it is registered, its VAT number and the number of its licence to establish a business if this is required for the running of its business;
 - b handing over a list of all people who are directly or indirectly employed by it, at the employer's request, before the employees commence work;
 - c submitting a man-days register each week for the work entrusted to it. The man-days register must include the names of all the workers hired by the contractor for the work, as well as a copy of the identity documents of the employees, including their dates of birth and citizen service numbers, and a timesheet expressed in man-hours. In case of foreign workers, the contractor is obliged to request a Dutch citizen service number for each worker and provide this to the employer if liability to pay tax in the Netherlands arises.
 - d strictly complying with all its obligations towards its employees;
 - e providing a declaration to the employer every three months, or as more frequently as the employer requires, regarding its withholding of income tax and social security contributions. If the contractor is a member of the Labour Standards Association (Stichting Normering Arbeid), a copy of the latest NEN-4400 certificate will suffice.
 - f strictly complying with everything that it is obliged to do as contractor by or pursuant to the Act in connection with its performance under the contract concluded with the employer;
 - g indemnifying the employer against liability towards the principal and/or third parties due to its failure as contractor to comply with its obligations under the contract or the Act;
 - h providing proof, at the employer's request, of membership of a trade or employer organisation, where applicable, as well as providing its membership number of any mutual insurance association that it belongs to.
- 26.4 Payments to be made by the employer to the contractor will furthermore be made on condition that prior to the employment of the following employees:
- a the employer is advised whether employees from EU and/or non-EU countries will be employed on the work site, mentioning the names and dates of birth of these workers and providing proof that these workers have a valid work permit for the Netherlands for the duration of the activities to be performed, insofar as the Act provides for this obligation; and
 - b the employer is advised if employees from EU countries other than the Netherlands will be employed on the work site, mentioning the names and dates of birth of these employees and providing proof (such as an E101 form) that the social security contributions for these employees will be deducted in the other EU country concerned for the duration of the activities. If applicable, a copy of the EHIC (European Health Insurance Card) must also be submitted so that medical care can be provided in the Netherlands.
- 26.5 The employer will always be entitled to pay the social security contributions, income tax and national insurance contributions, for which it is jointly and severally liable under Section 35 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990, to the contractor by depositing the amounts in the contractor's blocked account within the meaning of the Act (the G account). If Section 34 of the Dutch Collection of State Taxes Act (Invorderingswet), 1990 is applicable and VAT is charged, the employer will be entitled to pay the VAT that is due by depositing it in the G account. The contractor must ensure that a G account is available.
- 26.6 Notwithstanding the provisions of Article 26.5 (Vicarious Tax Liability/Recipients' Liability), the employer will be entitled at all times to withhold the aforementioned amounts for social security contributions, income tax and national insurance contributions from the subcontracting price and to pay these amounts directly to the Collector of Direct Taxes on behalf of the contractor, together with any VAT due in case of hiring workers.

- 26.7 In the cases mentioned in Articles 26.5 and 26.6 (Vicarious Tax Liability/Recipients' Liability), the employer is discharged from its obligations towards the contractor by such payment, insofar as these amounts are involved.
- 26.8 If the employer can reasonably arrive at the opinion that the contractor will be liable for a higher amount in social security contributions, income tax and national insurance contributions than the percentage fixed in the contract, it may alter that percentage.
- 26.9 If the employer is held liable under the Act and obliged to pay unpaid contributions, advance contributions, social security and taxes, it will be entitled to recover the entire amount, plus statutory interest from the time it makes payment, from the contractor.
- 26.10 If the contractor fails to comply with its obligations towards its employees under the collective bargaining agreement for the construction industry (CBA Construction Industry), or any other collective bargaining agreement, and the employer is held liable to comply with these obligations, the employer will be entitled to recover the entire amount, plus statutory interest from the time it makes payment, from the contractor.
- 26.11 If the contractor and/or the third parties that it hires are no longer able to comply with their payment obligations under the Act, the contractor must advise the employer of this fact within five working days of the day on which the inability to pay arose, failing which the contractor will be in breach towards the employer by operation of law. The employer will then be entitled to declare the contract fully or partially annulled, without the need for any notice of default or judicial intervention, and notwithstanding its right to compensation.
- 26.12 If it is evident from the contract and on the basis of the contractor's information that this contractor and/or the third parties that it hires qualify as independent contractors, the contractor must furnish a valid Declaration of Independent Contractor Status (VAR) and a copy of the relevant identity document.

Article 27 Quality, Occupational Health & Safety and the Environment

- 27.1 The contractor is responsible for the health, safety and welfare of the employees and subcontractors under its supervision. The contractor is obliged to adopt the necessary measures according to the statutory provisions applicable to this work, as well as to strictly observe instructions, requirements and directions of the employer, the site management or government agencies, such as the Health & Safety Inspectorate.
- 27.2 The contractor is obliged to adopt measures so that no soil contamination and/or environmental damage will occur on the construction site during the transport of equipment and/or materials to and from the site or during the performance of its activities. If soil contamination and/or environmental damage nevertheless occurs as a result of unforeseeable contingencies, the contractor undertakes to immediately adopt appropriate measures, to report this contamination to the employer and to restore the site to its original condition at its own expense. The contractor must indemnify the employer against third-party claims in this regard.
- 27.3 The contractor is obliged to perform its activities in accordance with prevailing environmental rules and statutory requirements and is deemed to be prepared for and able to act during environmental and other emergency situations and to prevent and combat the associated adverse effects on the environment.
- 27.4 If an accident, near-accident or environmental incident occurs, the contractor must report this verbally to the employer without delay. The contractor must then report the accident, near-accident or environmental incident in writing to the employer within three working days by means of the accident/near-accident/incident report (available on request from the employer). The contractor must send:
 - one copy to the project manager;
 - one copy to the QHSE coordinator; and
 - one copy to the purchasing department.
If the contractor fails to report the accident, near-accident or environmental incident by means of this form, the employer will reject any form of liability in the broadest sense.
- 27.5 Businesses are obliged to register hazardous substances in accordance with Dutch laws and regulations. These businesses must also provide information on the nature and composition of these substances. As the contractor is aware of the composition of these substances, it is obliged to furnish the necessary product information in due time, unambiguously and in writing upon delivery of building materials. If necessary, it must do so immediately on request of the employer.
- 27.6 The contractor warrants that it is fully familiar with Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH') that are imported, distributed or used in the European Union. The contractor warrants, if and insofar as applicable, that the supplied goods comply fully with the requirements of REACH. The contractor must pass on the pre-registration numbers and registration numbers to the employer. Insofar as the supplied goods fall under national or international legislation that restricts the use of chemicals, the contractor warrants that the supplied goods comply fully with this legislation.

Article 28 Sustainability

- 28.1 The values as laid down in the Sustainability Declaration for Suppliers and Subcontractors of the employer ('Sustainability Declaration'), which can be consulted on the website <http://uk.heijmans.nl/>, are of essential importance to the employer. The contractor, its employees and the subcontractors, workers and suppliers that it hires must comply with the Sustainability Declaration, which is published on the employer's website and will be sent on request, during the performance of the contract.
- 28.2 As part of its policy on sustainability, the employer may, after consultation with the contractor, set further requirements for the contractor's business operations and for the products and services to be provided by the contractor to the employer.
- 28.3 The employer is free to set further requirements for the products and services of the contractor because of requirements or further requirements set by the principal with regard to sustainability.

Article 29 Dispute Resolution and Applicable Law

- 29.1 All disputes – including those that are only regarded as a dispute by one of the parties – arising from the contract or its ensuing contracts, which may arise between the employer and the contractor, will be settled in the manner provided for in the contract between the employer and the principal. If the employer does not have an employer of its own, or if no rules on dispute resolution have been agreed between the employer and the principal, disputes between the employer and the contractor, with the exception of subdistrict cases as referred to in Section 108(2) of the Dutch Civil Procedure Code, will be settled by the competent court in Den Bosch. The employer nevertheless remains entitled to submit a dispute to the court that is competent by law.
- 29.2 The aforementioned does not preclude either party from making an application to the court in interlocutory proceedings at the District Court for provisional relief or the pre-judgment attachment of property.
- 29.3 The contract is governed exclusively by Dutch law. The application of the Vienna Sales Convention, 1980 (CISG: Convention on the International Sales of Goods) is excluded.

II A SPECIAL SECTION: PURCHASING CONDITIONS

Article 30 Method of Delivery

- 30.1 Unless otherwise agreed in writing, delivery will take place carriage-paid. The transport of the goods therefore takes place at the contractor's risk and expense.
- 30.2 Any breakages and/or damage which arise during loading, transport and/or unloading and stacking will be payable by the contractor, unless it is demonstrated that the damage is the fault of the employer or its employees.
- 30.3 Unless agreed otherwise in the contract, unloading and stacking outside of the employer's normal working hours may only take place with the employer's prior written consent.
- 30.4 Goods must be packed properly and in an environmentally sound manner. The contractor is liable for any injury or damage to people or property caused by inadequate packaging and/or the damage or destruction of this packaging. The employer will be entitled at all times to return the transport packaging materials to the contractor at the contractor's expense.

Article 31 Place of Delivery

- 31.1 The contractor must deliver the goods to the place mentioned in the contract. If no such place has been agreed, delivery must be made to the construction site. The exact place of delivery on the construction site will be determined in close consultation with the employer.
- 31.2 If the employer requires the goods to be delivered to a place other than the agreed place, prior to the delivery, the contractor will be obliged to comply with this request insofar as it can reasonably be expected to do so.

Article 32 Date of Delivery

- 32.1 Deliveries must be made/take place on the date stipulated in the contract or in accordance with the schedule determined by the employer. If the contractor fails to meet the deadline for delivery, it will be in breach without any further notice of default and obliged to compensate all damage suffered by the employer on demand.
- 32.2 The contractor is bound by the date of delivery stipulated in the contract or the delivery schedule determined by the employer, on the understanding that the employer is entitled to adjust the date of delivery or the delivery schedule on a call-off basis in order to adapt to progress made in the work, without the contractor being entitled to any price alteration or other form of compensation.
- 32.3 The employer is also entitled, if progress in the work so requires, to adjust the sequence of the deliveries to be made by the contractor, even if a specific sequence is mentioned in the contract.
- 32.4 If the employer is unable for any reason to receive the goods on the agreed date according to the schedule, the contractor must store and safeguard the goods and take all reasonable methods to prevent any deterioration in the quality thereof until they are delivered.
- 32.5 If the contractor will be unable to complete its contractual performance by the date stipulated in the contract or in accordance with the delivery schedule determined by the employer, it must immediately notify the employer of this fact.
- 32.6 The contractor will be liable towards the employer for any fines or discounts on the contract price that are imposed on the employer by the principal and/or the site management due to the late delivery of the work, or parts thereof, as the result of a delay that is attributable to the contractor. The employer will be entitled to recover these fines or discounts from the contractor, if necessary by withholding these amounts from payments that it still owes to the contractor.
- 32.7 Notwithstanding its right to demand specific performance and possible compensation, at its discretion and option, the employer will be entitled to annul or give notice of termination of the contract, without being obliged to compensate any damage or costs, in accordance with Article 22 (Full or Partial Annulment/Termination) if any deliveries do not take place on the agreed date in accordance with the agreed schedule.
- 32.8 The contractor must ensure that the supplied goods are accompanied by all necessary documentation, intended for the proper use of the supplied goods, as well as any inspection, testing and control reports and warranty certificates.
- 32.9 Partial deliveries may only be made with the employer's prior written consent.

Article 33 Transfer of Ownership, Risk, Acceptance and Supplied Items

- 33.1 The ownership of goods to be supplied or manufactured will be deemed to have already passed to the employer as soon as the contractor has processed, manufactured or received these goods from third parties. In all other cases, the ownership of goods passes to the employer at the time of approval after delivery, as soon as the employer receives the goods at the agreed place of delivery. The goods that are delivered remain the risk of the contractor until they are received by the employer.
- 33.2 Items supplied by the employer are and will remain the property of the employer under all circumstances and must be marked and separated by the contractor in a manner that is distinguishable for third parties. These items will be deemed to be in good condition and in accordance with the required specifications, unless the contractor complains in writing within four working days of receipt thereof. The contractor must point out the aforementioned items and surrender or hand them over to the employer on demand.

- 33.3 If the employer rejects the supplied goods, these goods will remain the property of the contractor and the risk will be deemed to have remained with the contractor and thus never to have passed to the employer. The employer is not obliged to fulfil its obligations under the contract in that case. The contractor must then pass a credit note to the employer for all amounts already charged and immediately refund any amounts already paid by the employer.

Article 34 Acceptance and Rejection

- 34.1 The delivery will only be deemed to have been accepted by the employer once it is approved. The employer and/or the principal and/or the site management of the work will be entitled to reject the supplied goods for up to one month after the date of delivery. Accordingly, all other periods within which complaints must be made, if and insofar as these may be applied by the contractor, will not apply to the employer.
- 34.2 Approval and acceptance only apply to the quantity and external condition of the supplied goods. If goods are packed and bundled on delivery, approval and acceptance will only apply to the quantity and external condition of the packages.
- 34.3 The employer must immediately notify the contractor in case of rejection. The contractor must remove the rejected goods on demand and at its own expense. If the contractor fails to remove the rejected goods, the employer will be entitled to return these goods at the contractor's expense and risk.
- 34.4 Notwithstanding the employer's right to fully or partially annul or give notice of termination of the contract and possibly claim compensation, at its discretion, the employer will be entitled after rejection to demand delivery of new goods that do comply with approval requirements, within a period that it stipulates, without being obliged to pay any additional amounts for this purpose.
- 34.5 The employer is entitled to suspend payment of rejected goods.

Article 35 Return Consignments and Packaging

- 35.1 If standard commercial goods become surplus to requirements because of changes to the specifications or other causes through no fault of the employer, the contractor must take these goods back at their invoiced price.
- 35.2 Unless otherwise agreed in writing, the employer will not pay for the packaging of the goods supplied and taken back by the contractor.
- 35.3 The contractor must take back any goods packaging that has been paid for on demand of the employer and refund the costs charged to the employer in this regard.

II B SPECIAL SECTION: SUBCONTRACTING CONDITIONS

Article 36 General

- 36.1 If the contract provides that the provisions of Article 26 (Vicarious Tax Liability/ Recipients' Liability) are not applicable, then Article 16.2, paragraph c (General Section. Payment and Final Statement) will not be applicable.

Article 37 Commencement and Completion of the Work; Deadlines

- 37.1 The contractor must commence the performance of the work on the date mentioned in the contract. If the contract does not make mention of any date and/or time for the contractor to commence work, this will be determined by the employer. The contractor must perform the work in accordance with the schedule received from the employer and complete the work by the date mentioned in the contract.
- 37.2 The work will be considered complete once it has been inspected and approved in accordance with the provisions of Article 38 (Inspection and Approval).
- 37.3 The work will be at the contractor's expense and risk up to and including the date of inspection.
- 37.4 The employer is entitled to alter the sequence of work to be performed if it deems this advantageous for the progress of the construction, without being liable to compensate any damage and costs in this regard.
- 37.5 If the contractor will be unable to complete its contractual performance by the agreed date or within the agreed schedule, it must immediately notify the employer thereof in writing.
- 37.6 The contractor will be liable towards the employer for any fines or discounts that are imposed on the employer by the principal and/or site management due to the late completion of the work, or parts thereof, as the result of a delay that is attributable to the contractor. The employer will be entitled to recover all of these fines and discounts (even if the breach only relates to a portion of the total work) from the contractor, for instance by withholding these amounts from payments that it still owes to the contractor.
- 37.7 Notwithstanding the employer's right to demand specific performance of the contract – possibly with compensation – at its discretion and option, the employer will be entitled to annul or give notice of termination of the contract in accordance with Article 22 (Full or Partial Annulment/Termination) of these general terms and conditions, without being obliged to compensate any damage or costs, in case of a total or partial failure by the contractor to meet the deadlines mentioned in the contract for the commencement or completion of work, or parts thereof, or to comply with the agreed periods within which it must fulfil its obligations, or if insufficient progress has otherwise been made in the employer's opinion.

Article 38 Inspection and Approval

- 38.1 The contractor must perform the work according to the requirements of proper and sound workmanship as set by the employer and/or the principal and/or the site management and in accordance with the provisions of the contract in this regard.
- 38.2 Inspection of the work will take place following a request addressed to the employer by the contractor in which it indicates the date by which the work will be completed. Unless otherwise agreed, the request must be made in writing.
- 38.3 The inspection will take place as soon as possible after the date mentioned in paragraph 2 of this article. The time and date of the inspection will be communicated to the contractor as soon as possible, and if possible at least three days before the inspection. The employer may require the contractor or its authorised representative to be present at the inspection.
- 38.4 Once the work has been inspected, the contractor will be notified whether it has been approved as soon as possible. Reasons must be provided if the work is rejected. Unless otherwise agreed, the notice must be given in writing.
- 38.5 Any further inspection after a rejection will take place in accordance with the aforementioned provisions.
- 38.6 The contractor must repair or replace the rejected work and/or parts thereof on demand of the employer, without the employer being liable for any additional payment and notwithstanding the employer's right to annul the contract and receive compensation for the resultant damage and costs.
- 38.7 Inspection or approval does not release the contractor from any warranty or liability under the contract concluded between the parties or by law.
- 38.8 If the work or part thereof is rejected, the employer will also be entitled to suspend payment of the price relating to this work or part thereof.

Article 39 Maintenance Period

- 39.1 Unless otherwise agreed, the maintenance period commences on the day after the contractor hands over the work to the employer and ends when the maintenance period for the total work agreed between the principal and the employer ends. If the main building contract or another relevant contract does not provide for any maintenance period, the maintenance period will end twelve months after the employer hands over the work to the principal.
- 39.2 The contractor must repair defects that arise during the maintenance period on demand of the employer, at its own expense and to the satisfaction of the employer, within a reasonable period to be stipulated by the employer.
- 39.3 The work will be inspected again after the expiry of the maintenance period to determine whether the contractor has fulfilled its obligations.

Article 40 Contract Variations

- 40.1 Contract extras may only be performed with the prior approval of and after a written order from the employer. The employer is only obliged to pay for contract extras that it has requested in writing. Unless otherwise agreed in writing, the settlement of contract reductions will be determined in joint consultation.
- 40.2 Activities that must reasonably be regarded as forming part of the work, in order to be able to hand over the work in accordance with the nature and intention of the order and in accordance with the requirements as laid down for sound work, may not be regarded as contract extras or additional work nor will they be paid by the employer under any circumstances.
- 40.3 Notwithstanding the other provisions of this article and unless otherwise agreed in writing, the terms and conditions of the main building contract will apply to contract variations.
- 40.4 The contractor will not be entitled to payment of contract extras if the employer is not paid for these contract extras by its own employer.
- 40.5 Quantities are not offsettable unless the contract specifically provides for offsettable quantities. The quantities mentioned in the contract are stated as accurately as possible and must be delivered so much more or less as the work requires, without the contractor being entitled to request a price adjustment for each unit.

Article 41 Laws, Regulations and Licences/Permits

- 41.1 The contractor is deemed to be familiar with all regulations laid down by or pursuant to the law, which the employer must comply with and observe under the main building contract that it has entered into with the principal during the performance of the work, which includes the work described in the contract. Licences/permits or exemptions issued to the employer for the performance of the work, which includes the work entrusted to the contractor, are available for inspection by the contractor.
- 41.2 The contractor undertakes to comply with and observe all regulations relating to its part of the work, as referred to in the previous paragraph, in the same way as the employer would have to comply with and observe these regulations if it was to perform this part of the work itself. The contractor must compensate the employer for all damage and costs caused by any failure to comply with these regulations and indemnify the employer against third-party claims in this regard, including all government measures for the enforcement of these regulations.
- 41.3 The contractor must make its own arrangements for any licences/permits that are required for the execution of its order. It must also ensure that any subcontractors that it hires have the necessary licenses/permits.

Article 42 Materials, Tools and Equipment

- 42.1 If and insofar as materials needed for the work must be delivered by the employer, these materials will be delivered when called for by the contractor. The contractor must care for these materials at its own expense and risk. The contractor must ensure that the materials are correctly received, stored and transported on the work site and arrange any return consignments.
- 42.2 The contractor must arrange for all necessary equipment, such as scaffolding, aerial platforms, etc., at its own expense and risk. All transport of materials and equipment is at the contractor's expense and risk.
- 42.3 If materials, tools and/or equipment supplied by the employer are used for the work performed by the contractor, this use is at the contractor's risk and these materials, tools and equipment must be returned immediately to the employer after the performance of the contract, and moreover on demand of the employer, in the same condition as which they were supplied. The contractor is responsible for ensuring that the materials, tools and/or equipment are used correctly and carefully and for ensuring the correct receipt, storage and transport thereof.

Article 43 Organisation of the Construction Site

- 43.1 The contractor is obliged to only follow orders and instructions given by the employer. The employer may however request the principal (or its authorised representative) in writing, after consultation with the contractor, to give its orders and instructions directly to the contractor. The contractor will only abide by the orders and instructions given directly by or on behalf of the principal after receipt of a written notice of the aforementioned request.
- If the contractor receives any direct orders and instructions from the principal or its authorised representative without having received the aforementioned written notice from the employer, it must immediately inform the employer thereof in writing.
- 43.2 The contractor is obliged to follow the instructions of the Health & Safety Inspectorate and those of any adviser hired by the employer for the organisation of the construction site, including with regard to the storage and safety of equipment and the safety of the work to be performed.
- 43.3 Days of rest, public holidays, vacation days or other days off as may be determined now or in the future and which are generally recognised, recognised locally in the workplace or are otherwise prescribed by the government or pursuant to a collective bargaining agreement also apply to the contractor and its employees who perform activities in relation to the work. The contractor will not be able to recover any additional costs from the employer in this regard.
- This also applies if the services of the contractor cannot be used because of industrial action at the employer or at third parties, including the principal.
- 43.4 The work/deliveries to be carried out by the contractor must take place within the working hours that apply on the construction site. The contractor and its employees must adapt to the vacation, working and shift times of the employer. If the employer wishes to continue working through the winter season, the contractor must cooperate in this regard.
- 43.5 The contractor undertakes not to employ any worker if he does not provide signed and dated proof from his previous employer evidencing that the employment relationship was terminated with that employer's consent.

- 43.6 The names of the workers employed by the contractor for the purpose of the work must be provided in due time to the works foreman and each of these employees must provide a copy of a valid identity document.
- 43.7 The employer is entitled to refuse employees of the contractor access to the construction site or to have them removed from the construction site on account of unsuitability, disturbance of the peace, misconduct, etc.
- 43.8 Unless the contractor or its authorised representative is on site, there must always be a person present who is charged with following the orders and instructions given by or on behalf of the employer and communicating these orders or instructions immediately to the contractor or its authorised representative.
The name of this person must be communicated to the employer's works foreman and any site management on the construction site. This person must report to the employer's works foreman upon the commencement, interruption or termination of the work activities.
- 43.9 The contractor must cooperate in keeping the construction site clean and tidy.
The contractor is specifically obliged, at its own expense, to clear up all rubble and building waste that is produced during its activities, including used packaging material, tools and equipment, as well as any remaining materials and consumables, in a legal and proper manner and in accordance with the instructions for the separation of waste which the employer has specifically imposed on its workers.
Unless otherwise agreed in writing, the contractor's own containers must be used for clearing up rubble, etc.
- 43.10 Vehicles may not be parked on the construction site, except in any designated parking areas at the contractor's own risk.
- 43.11 Any parking charges are payable by the contractor.

Article 44 Quality, Occupational Health & Safety and the Environment

- 44.1 The contractor declares that it is in possession of the 'SCC'^{cc} (VCA³) or 'SCC'^{cc} (VCA^{cc}) certificate. Copies of the certificate must be handed to the employer before the commencement of work activities.
- 44.2 The contractor warrants that the worker(s) it assigns will comply strictly with all construction site rules and safety regulations, such as those laid down by law and in the employer's Health, Safety and Environmental Plan for the project ('HSE Plan').
The contractor must complete and sign the appended HSE Plan and hand it to the employer's works foreman during the initial meeting.
- 44.3 The contractor is responsible for the personal protective equipment and the testing of critical material (material and equipment as set out in the HSE Checklist for Contractors SCC) (VGM Checklist Aannemers VCA). The contractor must arrange or participate in toolbox meetings (periodic safety instructions) and ensure that the rules and regulations applicable to the work are implemented and observed.
- 44.4 The workers assigned to the work by the contractor must immediately and conscientiously abide by the directions and instructions given by or on behalf of the employer in relation to working conditions and safety in and around the workplace, as well as such directions and instructions given by the Occupational Health & Safety Service, the Health & Safety Inspectorate and any external advisers hired by the employer.
- 44.5 The contractor's works foreman must report before the commencement of the work activities to the employer's works foreman on the project in order to receive instructions on the applicable rules of conduct and any additional requirements that apply to the project.
- 44.6 If the contractor or its workers fail to comply with one of more of the obligations or rules of conduct as described in the previous paragraph, the employer will be entitled to send that worker away from the project or work and deny him further access thereto.
- 44.7 The contractor declares that it is in possession of all diplomas/certificates that are required by law and, if applicable, by local regulations for the performance of the work activities as described. Copies must be provided to the employer immediately on request.
- 44.8 In case of so-called winter arrangements, the contractor is obliged to cooperate in measures aimed at controlling work stoppages in accordance with the Department for Controlling Weather-Related Work Stoppages (Bureau Weerverletbestrijding) of the Technical Office for the Construction Industry (Technisch Bureau Bouwnijverheid).

Article 45 Dutch Compulsory Identification Act (WID) and Foreign Nationals (Employment) Act (WAV)

- 45.1 The contractor and its workers (including the parties hired by the contractor with the employer's consent) must comply with all regulations arising from the Dutch Compulsory Identification Act (Wet op de Identificatieplicht – WID) and the Dutch Foreign Nationals (Employment) Act (Wet arbeid vreemdelingen – WAV).
The contractor must alert its workers to the rules laid down in the WID and WAV as well as the obligations included in this article.
- 45.2 The contractor warrants that somebody will be available during the work activities who can communicate in both Dutch and the relevant foreign language of its workers.
- 45.3 The contractor's workers must prove that they may work without restrictions or otherwise possess a valid work permit if they are not Dutch nationals, Swiss nationals or nationals of one of the countries of the European Economic Area (EEA), with the exception of Bulgaria and Romania.
- 45.4 The contractor's workers must be able to produce a valid identity document and, if applicable, a valid work permit at all times, including in the workplace.
The employer may carry out periodic spot checks in this regard. In the absence of a required document, the employer will deny the worker access to the work or remove or have the worker removed from the work. The employer will be able to recover all damage that it suffers in this regard from the contractor.
- 45.5 The contractor must submit all documents to the employer, including identification details, of which the employer requires a copy for the purpose of the WID and/or WAV, immediately on request.
- 45.6 The contractor must indemnify the employer against any fines imposed on it for contraventions of the WID and WAV by the contractor's workers. This also applies to any damage arising from the contravention (such as loss of income or third-party claims).