

Koninklijke BAM Groep nv / Royal BAM Group nv

General Purchase and Subcontract Conditions (G.P.S.C.)

(Version 6 – November 2010, Articles 1-19)

Article 1. General.

- These General Purchase and Subcontract Conditions (hereinafter referred to as G.P.S.C.) apply to all purchase enquiries from and orders placed by the companies forming part of Royal BAM Group.
- In these G.P.S.C. the following terms shall have the meanings given: Main Contractor: the party placing an Order, i.e. a company forming part of Royal BAM Group; Supplier: a natural person or legal entity receiving an Order or having an Order awarded; Order: the supply of products and/or execution of work and/or performance of services ordered by Main Contractor; Employer: the third party placing an order with a company forming part of Royal BAM Group; Contract: the contract that is entered into on acceptance of an Order. Main contract: the contract between Employer and Main Contractor, of which the Order forms part.
- Words in the singular should also be understood as having a plural sense if required by the context and vice versa.
- Each Order is placed on the condition precedent that the Main contract is signed and Supplier is approved by the Employer and/or construction team.

Article 2. Acceptance of Order.

- Supplier should return the Order that is sent to him to Main Contractor duly signed and without amendment within 14 days of dispatch of the Order. If Supplier fails to return the Order within the above period and does not register any objection regarding the content thereof or have commenced execution of the Order within said period, the Order will be deemed to have been accepted on the terms stated in the Order and subject to these G.P.S.C.
- All Orders placed by Main Contractor will be subject to the following requirements as if they had literally been included in the Order:
 - all technical and administrative requirements relating to the Order together with the associated drawings and any official reports and/or modification lists, explanatory notes and supplementary information pertaining thereto;
 - these G.P.S.C.;
 - the terms of the Main contract inasmuch as it relates to the supply and/or the work for which the Order has been awarded to Supplier by Main Contractor, as well as the S&H plan and/or project plan drawn up by the Employer and/or Main Contractor.The terms of the Order will take precedence above that which is stated in clauses a, b and c at all times.
- In the event of conflict between the requirements and/or documents referred to in Article 2, clause 2.a, clause 2.b or clause 2.c, those mentioned first shall take precedence over those subsequently mentioned. In the event of conflict between the requirements and/or documents referred to in Article 2, clause 2.a, none of the requirements and/or documents shall take precedence over another and the requirements and/or documents should be considered in relationship to each other, let alone the provisions of Article 2, clause 5.
- The functional and/or technical specification and/or other details, the associated drawings, official reports and/or modification lists, explanatory notes and supplementary information are available for inspection by Supplier at Main Contractor's offices. Copies of these documents will be provided to Supplier on request. Supplier will be deemed to have had sight of the specification, all drawings and relevant documentation and to have obtained any other information he requires.
- It is incumbent upon Supplier discovering apparent ambiguities or shortcomings in the Order to bring them to the attention of Main Contractor forthwith and to seek clarification before proceeding to execute the work, produce the goods or make the supply.
- Requirements stipulated by Supplier and/or Supplier's general terms and conditions will not be applicable to the Order placed by Main Contractor unless they have been expressly accepted in writing.

Article 3. Supplier's obligations.

- The obligations incumbent upon Supplier include among others:
 - executing the supply to be made or the work to be performed by him in a proper manner and in accordance with the terms of the Contract;
 - carrying out only the directions and instructions given by Main Contractor;
 - having a valid certificate of registration with the Tax Authorities and a recent extract of Supplier's entry in the Trade Register kept by the Chamber of Commerce and in addition the original *G-rekening* (blocked account) agreement, if the *Wet Ketenaansprakelijkheid* (so called Derived Liability Act) applies, and presenting these documents to Main Contractor on request;
 - providing copies of valid identity cards and certificates of competence of those employees to be involved to the Main Contractor's authorised representative prior to commencement of the work on the construction site. For the duration of the performance of work, employees must be able to show their identity cards upon first demand;
 - undertaking, vis-à-vis the Main Contractor, to observe the *Wet arbeid vreemdelingen* (the Aliens Employment Act) and to indemnify the Main Contractor against any fines and/or sanctions imposed for breaching this act;
 - submitting to Main Contractor on request a statement - in a format to be supplied by Main Contractor - containing the names and Citizen Service Numbers (*BSN - Burgerservicenummer*) of all the employees engaged by Supplier on the project on a weekly basis;
 - granting Main Contractor sight of the payment sheets on request;
 - complying strictly with everything required of him with regard to his employees engaged on projects;
 - as and when requested by Main Contractor, and spontaneously at least once a quarter, presenting the original of a statement showing the payments made by Supplier to the Tax Authorities, as referred to in the guidelines adopted in connection with the *Wet Ketenaansprakelijkheid*;
 - refraining from quoting prices and/or making offers to Main Contractor's Employer in respect of additions, alternatives or changes to the work ordered by Employer from Main Contractor;
 - maintaining a salary administration in accordance with the prevailing *Wet op de loonbelasting 1964* (the 1964 Wages and Salaries Tax Act), the *Invoeringswet* (the Collection of Taxes Act) and the *Zorgverzekeringswet* (the Health and Social Care Insurance Act);
 - taking out adequate insurance at his own expense covering his work, equipment and materials as well as his liability, and maintaining such cover; equipment, measuring instruments and engine-driven tools must demonstrably have been inspected by an authorised body;
 - removing surplus plant and equipment from the site;
 - having sufficient numbers of suitably skilled employees undertaking the work at all times and instructing these employees effectively and demonstrably about the rules applicable on the construction site;
 - ensuring that an authorised representative, who will actually supervise the employees to be involved and having an adequate command of the Dutch language is on site at all times during the work being carried out by Supplier;
 - ensuring that all the materials made available to Supplier are used and maintained in a professional way, in the absence of which Supplier will be liable for all damages and costs;
 - allowing Supplier's employees to make use of site facilities provided by the Supplier during personal and meal breaks, unless the Order includes a provision that use may be made of existing site facilities;
 - on completion of the Order or a part thereof, allowing full or partial payment, ensuring Supplier has obtained a goods-received statement, a man-hour statement or completion statement signed by an authorised representative of the Main Contractor. This receipt is essential for the Main Contractor's administration and does not, at this stage, confer any right to payment;
 - ensuring, at his own expense, that there is sufficient storage space to meet Supplier's requirements. The horizontal and vertical transport required in this context will be for his account, unless agreed otherwise. Should there be storage space available on the building site, storage will be at the risk of the Supplier;

- providing a copy of a valid *Verklaring Arbeids Relatie* (VAR - a declaration of independent contractor status) if the Supplier is a ZZPer (a self-employed person with no employees). That is a *VAR Winst Uit Onderneming* (VAR, profit from entrepreneurship), or a *VAR Directeur Groot Aandeelhouder* (VAR, managing director and major shareholder). The activities described in the VAR must correspond to the activities described in the Order.

Article 4. Dates of delivery of supplies and work.

- The supplies and/or work should commence on the date stated in the Order and take place according to the timetable stipulated by Main Contractor.
- As soon as Supplier knows or suspects that the goods cannot be supplied on time and/or that the work cannot satisfactorily be completed on time, he shall notify Main Contractor accordingly in writing without delay, stating the circumstances leading to that situation. Such notification will not relieve Supplier of his obligations under the Contract.
- Supplier's working hours should coincide with the hours generally worked on the project. Overtime will only be permitted by prior agreement with the Health & Safety Inspector and Main Contractor.
- Main Contractor reserves the right to change the sequence in which the work is to be performed and/or to specify the actual times/dates of delivery by means of call-off orders or otherwise if this is deemed desirable in connection with the progress of the work. In that case Supplier will not have any right to compensation and/or reimbursement of costs unless - exclusively on the assessment of Main Contractor - the costs to Supplier have been demonstrably increased by a significant amount as a result of the changes and it is therefore only reasonable and fair that those costs (or part thereof) should be borne by Main Contractor.

Article 5. Delivery and Title.

- Delivery will be made free to destination at the agreed delivery address, including payment of any duties (*Delivered Duty Paid* in accordance with Incoterms 2000), and unloaded in the position or positions indicated by Main Contractor, all risks during transport on the construction site and offloading being borne by Supplier.
- Title to goods to be supplied or produced will be deemed to be transferred to Main Contractor on the date of delivery. Goods to be produced will be considered to have been transferred to the Main Contractor as soon as Supplier commences work on them, obtains them from third parties or manufactures them. Supplier will keep these goods on behalf of Main Contractor, identifying and marking them as Main Contractor's property. This transfer of title does not imply acceptance of Supplier's performance under the Contract.
- Any materials made available by Main Contractor are and will remain Main Contractor's property in all circumstances and shall be identified and marked as such by Supplier in a manner identifiable to third parties; the materials will be deemed to be in good condition and to satisfy the required specifications unless Supplier makes a written claim to the contrary within a reasonable period after having received them.
- Supplier will not be permitted to use the above items or to allow their use by third parties for or in connection with any other purpose than the making of the supply or performance of the work for Main Contractor unless Main Contractor has given prior express permission in writing.

Article 6. Acceptance, inspection and testing.

- The product supplied and/or work performed, in accordance with the Contract, shall be of sound materials and good workmanship, shall be executed by sufficient numbers of skilled personnel under competent supervision, shall correspond to the drawings and specifications in all respects and/or be at least the equal of samples or models provided by Supplier to Main Contractor and shall be fully capable of delivering the performance required for the purpose for which the supplied product is intended and shall also comply with all standards, legal requirements and official regulations in force at the time of delivery and/or processing, including those relating to health, safety, welfare and the environment.
- Inspection and/or signing off and/or acceptance and/or payment of instalments will not relieve Supplier of any guarantee obligations or liability under the Contract.
- If Main Contractor so desires, Main Contractor, Employer and/or construction team will have the right to inspect and/or test the products during processing, manufacture or storage. Supplier will in that case ensure that he has such inspection and/or testing facilities at his disposal as may reasonably be required by Main Contractor. Supplier will be unable to derive any rights whatsoever from the results of such inspection and/or testing. The costs of testing will be borne by Main Contractor if it is found that the materials conform to the requirements of the Contract. If the opposite is the case, these costs will be borne by Supplier.
- In case of rejection, Main Contractor will notify Supplier of this fact forthwith. Supplier shall immediately make good or replace the rejected material and/or work or part thereof at Main Contractor's request without Main Contractor being required to make any extra payment and without prejudice to Supplier's obligation to make good any losses incurred by Main Contractor or by third parties, including losses due to delays.
- On rejection of the material and/or the work or part thereof, Main Contractor will have the right to suspend payment of the price relating to the material and/or the work or part thereof or a proportion of a contract price, without prejudice to the obligation on Supplier to make good any losses subsequently incurred by Main Contractor owing to rejection of the material and/or work or part thereof.
- In the event of failure to remove/repair the rejected products, Main Contractor will be entitled to return/repair the products concerned at Supplier's expense and risk.

Article 7. Waste removal and processing.

- Main Contractor and Supplier will promote the reuse of materials and limit as much as possible quantities and flows of waste.
- Supplier will be under obligation not only to hand over the site in a clean condition afterwards but also to keep the site clean during execution of the work performed by him, and to process packaging, rubble and other waste in conformity with the requirements arising out of the regulations specified in the Main Contractor's S&H plan and the statutory provisions, including environmental legislation in general and the *Wet Bodembescherming* (Soil Protection Act) and/or the *Wet Milieubeheer* (Environmental Protection Act), in particular.
- Supplier's prices stated in the Order shall include the costs of segregated removal and/or processing or removal and/or storage, as applicable, of all waste materials resulting from Supplier's activities.
- Supplier will be under obligation to make use of lockable containers, waste skips, etc. hired at his own expense and risk for the removal, processing or storage of waste materials associated with the goods supplied or work performed by him.
- Supplier will be under obligation to supply Main Contractor with copies of the waste disposal forms required pursuant to the *Wet Milieubeheer*. Main Contractor will have the right to suspend payment until such time as the requirements pursuant to the *Wet Milieubeheer* and/or other environmental legislation have been satisfied.
- If removal of waste does not take place when first requested by Main Contractor, Main Contractor will be free to remove (or arrange the removal of) the waste materials concerned at Supplier's expense and risk.

Article 8. Maintenance period and guarantee.

- The maintenance periods to be observed by Supplier will be at least equal to the maintenance periods applying to Main Contractor under the Main contract with Employer. Even if Supplier's work is completed prior to the date on which the work as a whole is handed over pursuant to the Main contract between Main Contractor and Employer, Supplier's maintenance period will run until the same date as the maintenance period for the work agreed between Main Contractor and Employer.
- Supplier shall give at least the same guarantee in respect of the products supplied and/or work performed by him as that which Main Contractor is required to provide vis-à-vis Employer and if the manufacturer's guarantee is more extensive than that referred to above, the guarantee provided shall be at least that which is given by the manufacturer.

- All costs associated with the repair or replacement of defective products, as well as any costs associated with putting the repaired or replaced products or the work into operation again shall be borne by Supplier.
- If, in Main Contractor's judgement, Supplier fails to make good a defect properly or in time or if rectification of a defect is a matter of urgency, Main Contractor will be free, having made a written summons giving Supplier a reasonable period in which to comply, to take any necessary action or to arrange for the necessary action to be taken by third parties and to charge the costs involved to Supplier.

Article 9. Price / variations.

- All prices and, if applicable, the surcharge percentages specified in the Order are fixed and free agreed place of delivery (DDP according to Incoterms 200), and exclusive of Dutch VAT.
- Additional work and/or other variations on the Order, even where these concern a saving or an improvement, will only be recognised if details thereof are mentioned by Supplier in advance and are sanctioned in writing by Main Contractor.

Article 10. Prohibition of assignment / outsourcing.

- Supplier is prohibited from assigning or pledging amounts receivable from Main Contractor in connection with the Order to third parties or otherwise transferring title to them by any means whatsoever without Main Contractor's prior written consent. Supplier is also not permitted to engage third parties for all or part of the supply/work without the prior written consent of Main Contractor.
- If Supplier, having obtained the written consent of Main Contractor, engages a third party for all or part of the supply/work, Supplier is required to draw up a written contract with the terms of the Contract entered into between Main Contractor and Supplier forming an integral part thereof in such a way that Supplier placing such an order assumes the position of Main Contractor and the third party assumes that of Supplier. Main Contractor may make its consent as referred to above conditional on Supplier placing such an order establishing a silent lien in favour of Main Contractor on the rights of Supplier arising out of the contract with said third party.
- Without the express prior written consent of Main Contractor, Supplier will not be permitted to make use of labour made available (on contract or otherwise) by third parties.

Article 11. Invoicing.

- Invoices sent by post should be submitted to Main Contractor and accompanied by the goods-received/completion statements referred to in Article 3, clause r. Statements must be in conformity with the invoices.
- Parties will undertake to digitise their invoicing as much as possible.
- Any Orders relating to variations and other changes as referred to in Article 9 should be invoiced by Supplier on separate accounts.
- Invoices should comply with the statutory requirements with respect to the *Wet op de Omzetbelasting* (Turnover Tax Act) (VAT rules). As applicable, supplier should in any case show the following information clearly and concisely on the dated and numbered invoices:
 - name, street address and place of domicile of Supplier;
 - the Order number, job number and code number;
 - the work and the place or places where the work to which the invoice relates was carried out;
 - the total contract price, amounts already invoiced and the instalment number;
 - the period and the performance to which the invoice relates;
 - the name of the state benefit administration office to which Supplier is affiliated and Supplier's registration number with that office;
 - Supplier's wage tax number;
 - a statement indicating whether the VAT liability transfer scheme is applicable and, if not, the applicable VAT amount;
 - bank account numbers;
 - G-rekening (blocked account) number;
 - goods-received statement numbers;
 - in case of subcontracting within the meaning of the *Wet Ketenaansprakelijkheid*, the amount of the gross wage bill included in the invoiced amount based on previously agreed figures with respect to the payroll and payroll deductions.

Article 12. Payment.

- Supplier having fulfilled all his obligations under the Contract may invoice Main Contractor for the agreed price and payment will be made by Main Contractor within sixty (60) days after receipt of invoice.
- Main Contractor will only make payment when the supply/work or that part thereof to which a final payment or instalment applies has been satisfactorily completed by Supplier and Supplier has shown Main Contractor, if asked to do so, that he has paid the employees engaged in the work the amounts due to them and that he has paid the social security contributions and payroll taxes owed in respect of those employees.
- Main Contractor will have the right at all times to pay Supplier's social security contributions and payroll taxes owed in respect of the work, for which Main Contractor bears joint and several liability pursuant to the *Wet Ketenaansprakelijkheid*, by crediting the amounts concerned to his blocked G-rekening within the meaning of the *Wet Ketenaansprakelijkheid*.
- Without prejudice to the provisions of the preceding clause, Main Contractor will have the right at all times to retain the above amounts in respect of social security contributions and payroll taxes out of the subcontract value and to pay them to the *bedrijfsvereniging* and/or collector of direct taxation directly on Supplier's behalf. In the cases referred to in Article 12, clause 3, and this clause 4, Main Contractor through such payment will have discharged its debt to Supplier with respect to the amounts concerned.
- Supplier is required to submit his invoices in respect of any outstanding amounts payable to him to Main Contractor within one month of completion of the works, Supplier failing to do so deem to have forfeited any possible remaining claim on Main Contractor.
- Without prejudice to any of the above, neither invoicing nor payment will be possible before the copy of the Order unamended and duly signed by Supplier has been received by Main Contractor.
- Main Contractor will not be under obligation to pay invoices if they are not accompanied by and are in compliance with the goods-received and/or completion statement referred to in Article 3, clause r, duly signed by the Main Contractor's authorised representative.
- If Supplier fails to fulfill his obligations, Main Contractor will have the right to suspend its liability to make payment to Supplier until Supplier's obligations have been fulfilled, or to settle the costs for corrective work with invoices of the Supplier that have been submitted for payment, without prejudice to Main Contractor's right to demand compensation and/or either full performance of the Contract or its cancellation with suitable compensation.
- The method of payment will be similar to the method of payment specified in the Main contract.
- In the event of the Supplier's insolvency (or threatened insolvency), the Main Contractor will, having given written notice of default, be entitled to settle Order-related claims from the Supplier's suppliers and/or subcontractors directly with the creditors concerned; the Supplier will simultaneously be informed of this fact by the Main Contractor. The Supplier's claim on the Main Contractor will then be reduced by the same amount, notwithstanding the Main Contractor's rights by virtue of Article 18 below.

Article 13. Statutory requirements and other regulations.

- Supplier will be under the obligation to inform himself about the applicable construction site regulations, the project and safety plans and all permit and licence regulations that may affect the work. This information must be obtained from the Main Contractor's authorised representative.
- Supplier assumes liability for complying with and observing all regulations, provisions and stipulations, including construction site regulations, health & safety at work legislation, safety regulations and environmental legislation, covering the supply to be made and the work to be performed by him and therefore also those rules and regulations relating to the safety and working conditions of third parties and those relating to the creation of nuisance to others. Supplier will be independently responsible for obtaining any necessary permits/licences and instituting safety precautions in connection with the supply to be made and the execution of the work for which he has been contracted.

- Supplier undertakes vis-à-vis Main Contractor to fulfill his statutory obligation to promptly pay social security contributions and payroll taxes connected with the work for which he has been contracted and also to strictly adhere to the terms of the applicable Collective Labour Agreement (CLA).
- Supplier will only be entitled to appeal for reimbursement due to circumstances of increased costs on the basis of article 7:753 of the Dutch Civil Code or, if the provisions of §47 UAV 1989 (Uniform Administrative Conditions for the Execution of Works 1989) or respectively §44 UAV-GC 2005 (Uniform Administrative Conditions for the Execution of Works – Integrated Contracts 2005) are applicable, and the Main Contractor is able to invoke the same appeal on the Employer.

Article 14. BAM Company Principles

- Main Contractor observes the following Company Principles (BAM Company Principles):
 - treating with respect all those who issue orders, fulfill orders, are employees or are members of the wider community;
 - recognising its environmental responsibility, including taking future generations into consideration;
 - creating economic value in an honourable and sustainable manner.The BAM Company Principles can be found on the website www.bam.nl under "sustainable/company principles". Supplier must take cognisance of the content of the BAM Company Principles. Supplier endorses these BAM Company Principles and will ensure that these or similar principles are observed in its enterprise.
- Main Contractor and Supplier regard health and safety as priorities. Parties value the continued improvement and maintenance of their performances in the area of safety and health for all employees and for all persons involved with their activities.
- At the first written request by the Main Contractor, Supplier will deliver – at its own expense – the CO2 emission statement of its company for the year in which the activities associated with the Order took place as well as for the preceding year. This statement must be in accordance with the ISO 14064-1 and/or the GHG protocol. The CO2 emission statement must be accompanied by a verification statement from a certifying institution (CI). This statement from the CI must satisfy, at a minimum, the requirements as set out in ISO 14064-3 under 'validation and verification statement' and/or as set out in the EA-6/03 under 'verification statement'.
- With reference to integrity the BAM Company Principles have been worked out in more detail in the Code of Conduct Integrity Royal BAM Group, with which all the employees of Royal BAM Group and its subsidiaries operating in the Netherlands must comply. The Code of Conduct Integrity Royal BAM Group can be found on the website www.bam.nl under "corporate governance/general/code of conduct integrity". Supplier must take cognisance of the contents of this Code of Conduct Integrity Royal BAM Group.
- Supplier warrants to Main Contractor that Supplier uses a code of conduct concerning integrity within his business, and imposes compliance with this code upon his employees. This code of conduct must at least comply with the model business code of the *Stichting Beoordeling Integriteit Bouwrijverheid (SBIB)* [Association for the Assessment of Integrity Building Industry]; this model can be found on the website www.sib.nl. On request Supplier will provide the Main Contractor with a copy of Supplier's code of conduct. As far as the performance of the Contract is concerned, Supplier may also choose to apply the Code of Conduct Integrity Royal BAM Group – and make his employees comply with this code – as though it were Supplier's own code of conduct.
- Supplier warrants to Main Contractor that, in the chain of his own suppliers and subcontractors, he will monitor compliance with both the BAM Company Principles and the code of conduct concerning integrity applied by Supplier. To this end Supplier will impose this article 14 as an automatic transfer provision on his own suppliers and subcontractors.

Article 15. Industrial and/or intellectual property / know-how/ confidentiality.

- Supplier shall indemnify Main Contractor in respect of claims for infringement of third-party industrial and/or intellectual property rights relating to products supplied/work performed by him and he will reimburse Main Contractor in respect of any losses which Main Contractor suffers and/or may suffer as a result of actions instigated against it on the part of any rightful owner of industrial and/or intellectual property rights.
- Drawings, illustrations, calculations, working methods and procedures made available by Main Contractor will remain Main Contractor's property and may not be reproduced, copied, released to third parties or published or used in any manner whatsoever other than for the present Contract. Supplier will be under obligation to return the aforementioned documents to Main Contractor at Supplier's expense if Main Contractor makes a written request for their return on delivery/completion.
- Products and methods developed by Supplier in partnership with or on behalf of Main Contractor may not be made available to third parties without Main Contractor's prior written consent. Knowledge acquired by Supplier in connection with such developments will be exclusively at the disposal of Main Contractor and shall not be disclosed to third parties by Supplier or used for his own purposes and/or those of third parties without the prior written consent of Main Contractor.
- Supplier will be under obligation to observe secrecy with regard to any data, information or know-how gained from the Main Contractor which the Supplier is aware is confidential or, in respect of which, the Supplier could reasonably have been expected to understand was confidential.

Article 16. Recovery and set-off of amounts owed.

- Main Contractor will have the right to set off any amounts owed to Supplier under the Contract against amounts receivable by Main Contractor from Supplier.
- If Main Contractor, having been held liable for unpaid taxes and social security contributions attributable to Supplier or other suppliers further down the chain, has been obliged to pay said taxes and contributions, Main Contractor will be entitled to recover the entire amount paid from Supplier plus a mark-up in respect of the costs, which will be fixed at 15% of the amount paid without the need for Main Contractor to provide any more detailed justification, plus interest at the statutory rate calculated on the amount paid by Main Contractor as from the date of settlement by Main Contractor.
- Main Contractor will also have the right to set off any amounts owed to Supplier under the Contract against amounts receivable by Main Contractor from Supplier but not yet due in respect of unpaid social security contributions and wage tax attributable to Supplier or other suppliers further down the chain for which Main Contractor can be held liable pursuant to the *Wet Ketenaansprakelijkheid*.
- By virtue of settlement by Main Contractor of its obligation under the CLA for the construction industry vis-à-vis Supplier's employees, Main Contractor will be entitled to recover the amount paid in this connection from Supplier plus a mark-up in respect of the costs, which will be fixed at 15% of the amount duly paid without the need for Main Contractor to provide any more detailed justification, plus interest at the statutory rate calculated on the amount paid by Main Contractor as from the date of settlement by Main Contractor.

Article 17. Liability / insurance / compensation.

- Supplier will be liable for all losses, including consequential losses and costs, incurred by Main Contractor and/or third parties, including Employer, as a result of the late and/or improper delivery and/or performance on the part of Supplier. Main Contractor's accounting records shall constitute conclusive evidence of Main Contractor's losses, unless Supplier provides evidence to the contrary.
- Supplier will be required to take out insurance, with a minimum coverage of 2,500,000 per event, covering his liability to the satisfaction of Main Contractor and to pay the premium when it is due, in default whereof Main Contractor has the right to terminate the Contract without prejudice to Main Contractor's other rights. At the first request of the Main Contractor, the Supplier will submit a copy of the insurance policy.
- In the event of the use of equipment, Supplier shall be under the obligation to insure this equipment (liability, fire, theft and damage). Supplier shall ensure that the Main Contractor is mentioned as the co-insured in the policy. Supplier warrants and indemnifies the Main Contractor with respect thereto, that where items falling under the Motor Insurance Liability Act are concerned:
 - liability insurance has been taken out that complies with the requirements set out in or by virtue of the Motor Insurance Liability Act, including coverage of subsoil risks (to cables, wires and the like);
 - fire, theft and windscreen damage insurance has been taken out;
 - the policy must include a provision that the insurers cannot take recourse against the co-insured Main Contractor.
- Main Contractor will have the right, but will not be under obligation, to make good and/or repair any losses/damage caused by Supplier immediately and at Supplier's expense and risk. The associated costs, plus the costs of any legal action and legal assistance paid by Main Contractor, will in that case

be repayable by Supplier to Main Contractor forthwith and may be deducted by Main Contractor from the contract price or from amounts owed to Supplier, as applicable, without the need for any formalities.

5. If, by virtue of the Contract, the Supplier is co-insured under a CAR policy of either the Main Contractor or the Employer, then, should Supplier incur any loss or damage at work, the risk and cost of the settlement with the CAR insurer shall be borne by the Supplier.
6. In the case failure on the part of Supplier to fulfill his contractual or statutory obligations results in Main Contractor being held liable vis-à-vis third parties, including Employer, Supplier hereby indemnifies Main Contractor in respect of all consequences of such liability and in respect of Main Contractor's statutory third-party liability pursuant to the provisions of Section 6:171 of the Dutch Civil Code.
7. If two or more Suppliers accept the Order jointly, they will bear joint and several liability for the pertaining Order as a whole and for any resultant consequences.
8. In the event of Supplier's bankruptcy, Main Contractor may, without prejudice to all other claims that Main Contractor may enforce under the law, charge Supplier 10% of the agreed price for the Order and may, to the extent possible, set off this amount against any sums owed to Supplier as compensation in connection with the fact that, due to Supplier's bankruptcy, Main Contractor will be unable to exercise its claims under the guarantees agreed with Supplier.

Article 18. Substitution / cancellation.

1. The Main Contractor will be entitled to terminate the Contract, either wholly or partially, without prejudice to the right to compensation and/or its right to suspend its obligations under the Contract, wholly or partially, should, having been given notice of default, the Supplier fail, within the period laid down in the notice of default, to fulfill one or more of the obligations by virtue of the Contract, or fail to fulfill these obligations adequately or promptly.
2. If Main Contractor judges that the execution of supplies made or work performed by Supplier is such as to delay construction or pose the threat of delay affecting all or part of the project, Main Contractor will, without giving notice of default, have the right to give notice of cancellation and have the execution of the supplies and work taken over by the Main Contractor itself or by a third party. As a result of such action the Contract will be dissolved to the extent it has not been completed and any reasonable costs incurred by the Main Contractor shall be for the account of the Supplier.
3. Main Contractor will have the right, without prejudice to the right to compensation and/or its right to suspend its obligations under the Contract either in whole or in part, to consider the Contract to be cancelled either in its entirety or with respect to the unexecuted part thereof at Main Contractor's discretion without needing to serve any notice of default or take the matter to court:
 - a. if the agreed delivery/completion date is exceeded or if it becomes clear even before that date that the date will be exceeded;
 - b. if application is made or impending for the bankruptcy of Supplier or for a payment moratorium or if the court declares Supplier bankrupt or grants protection from creditors or if Supplier ceases its activities; or
 - c. if the main contract between Main Contractor and Employer is wholly or partially cancelled or suspended.
4. In the event of cancellation other than due to default on the part of Supplier under the Contract, Main Contractor will make payments to Supplier for all the work executed prior to cancellation by way of full and final compensation on the basis of the prices and rates stated in the Contract. If the Contract does not state such prices and rates, all costs incurred prior to cancellation that are reasonably attributable to the execution of the Contract will be paid on the basis of generally accepted accounting principles, plus reasonable compensation for overheads and profit. Any amounts already paid or withheld will be deducted from these payments. If cancellation is due to default under the Contract or due to an unlawful act on the part of Supplier, no payments whatsoever will be made in respect of overheads and profit and the amount to which Main Contractor is entitled as compensation for losses will be set off against the amount payable. Main Contractor will in no circumstances be liable for losses or costs in respect of lost profit due to cancellation and will not otherwise have any liabilities vis-à-vis Supplier.
5. In the cases referred to in Article 18, clauses 1, 2 and 3, Main Contractor will have the right either directly or indirectly to make use of any ancillary materials used by Supplier existing on the site, such as scaffolding, lifting equipment, cement mixers, transport equipment and so on, for the completion of the work contracted by Supplier except for the situation referred to in Article 18, clause 3.c.

Article 19. Disputes, applicable law and headings.

1. Any disputes arising between the parties, including disputes regarded as such by one party only, in connection with or resulting from a Contract entered into by them or any contracts emanating therefrom that cannot be amicably resolved, shall be decided by the *Raad van Arbitrage voor de Bouw* (Construction Industry Arbitration) in accordance with the Board's constitution as of the date of the award of the Order by Employer to Main Contractor to the exclusion of the ordinary courts. Contrary to the above Main Contractor will always have the right to have a dispute decided by the body stipulated in the Main contract with Employer.
2. The relationship between Main Contractor and Supplier shall be governed exclusively by Dutch Law.
3. The headings to the Articles are intended solely to enhance the readability of these G.P.S.C. and not to serve as a basis for interpretation.
4. Where conflicts occur between this translation and the Dutch text of the Algemene Inkoop- en Onderaannemingsvoorwaarden (A.I.O.V.) version 5, the latter shall prevail.