



## **General Terms and Conditions of the University of Groningen for WORK and associated deliveries and services relating to newbuild and renovation projects for the University**

### **1. Terms and definitions**

- 1.1 The client: University of Groningen, having its place of business at 9712 CP Groningen, Broerstraat 5, and its registered office in Groningen.
- 1.2 The contractor: the supply firm, or the contracting firm (including building, mechanical and electrical), also referred to as supplier or consultant (including engineer, architect).
- 1.3 The agreement: the agreements between the client and contractor laid down in writing in, for example, an engagement letter or a framework agreement, including the relevant (digital) work orders and/or other written agreements specifying the work and/or deliverables and/or activities, defined if necessary in greater detail in the specifications.
- 1.4 The specifications: the description of the work, the relevant drawings, the administrative and technical conditions that apply to the work, the summaries of additional information and the minutes of the pre-tender meeting as reported by the client in writing at least five working days before the tender.

### **2. Validity**

- 2.1 These General Terms and Conditions will govern the legal relationship between the client and contractor.
- 2.2 These General Terms and Conditions will, to the exclusion of all general terms and conditions of the contractor or third parties, form an integral part of the agreement between the client and contractor as if included verbatim therein.
- 2.3 If the parties wish to depart from these General Terms and Conditions, they must expressly agree to this in writing.
- 2.4 The following will apply in full to an agreement entered into between the client and a contractor who is a building contractor, unless agreed otherwise in writing by both parties:

- these General Terms and Conditions
- the complete edition of the Uniform Administrative Conditions for the Execution of works (UAV) 2012
- the safety regulations and codes of conduct applied by the client

In the event of any discrepancy between these General Terms and Conditions and the UAV, the former will prevail. In view of the provisions of section 2 (1) UAV 2012, any discrepancy between these General Terms and Conditions and the UAV will be explicitly identified as such.

### **3. Agreement**

- 3.1 Unless otherwise agreed in writing, the agreement will only be valid if signed by an authorised signatory on behalf of the client.
- 3.2 Any additional agreements and/or commitments made by or on behalf of the client will only be binding if signed by an authorised signatory on behalf of the client.
- 3.3 Management will only be part of the agreement if and inasmuch as is explicitly stated in the agreement.
- 3.4 Changes to the agreement must be set out in writing by the parties.
- 3.5 As soon as the contractor knows or anticipates that the work or deliverables and/or activities will not be delivered/transferred and/or completed on time or that it will not meet its obligations on time in some other respect, the contractor will notify the client in writing within five working days of the emergence of the cause or circumstances that render timely delivery/transfer and/or completion impossible, stating that cause or those circumstances.
- 3.6 In the event of malfunctions and/or calamities, the contractor will inform the client of the situation without delay. The same will apply in the event of damage sustained to property belonging to the client.
- 3.7 If the contractor pleads force majeure, the contractor will do its utmost in consultation with the client to minimize the damage to the delivery and/or execution of the activities.

#### **4. Scope of the work (or deliverables)**

- 4.1 The work and/or deliverables and/or activities will comprise all the work, deliverables or activities respectively, as set out in the agreement.
- 4.2 The contractor will carry out all the activities that constitute a reasonable part of the delivery and/or execution. This must at least include the activities needed (i) to satisfy the client's requirements and (ii) to deliver/transfer deliverables or advice or a fully operational, turnkey system in accordance with the agreement.
- 4.3 The contractor must have the prior written consent of the client in order to install or place an advertising hoarding featuring the brand name of the contractor(s). The form and design of the advertising hoarding must be carried out in accordance with the client's specifications.
- 4.4 The delivery documents, including test reports, as-built drawings and letters of guarantee will constitute an integral part of the scope of the work.

#### **5. Prices**

- 5.1 All prices quoted by the contractor will be exclusive of VAT.
- 5.2 The agreed prices will be fixed until the end of the assignment and/or work and/or delivery. There will be no interim settlement of changes in the costs of labour and materials.
- 5.3 If third parties are subcontracted with the client's consent, the costs of these third parties will be deemed to be included in the contractor's price and will not qualify for separate reimbursement by and/or settlement with the client.

#### **6. Contract variations**

- 6.1 Changes in the scope of the work must be authorized in writing by the client. Payment for additional work will only be made if a written instruction to that effect has been issued prior to execution.
- 6.2 If, at the request or with the consent of the client, the agreement is not fully implemented or is implemented at a lower price than originally agreed, the original price will be reduced accordingly because of the contract reductions.
- 6.3 Contract variations, additions and omissions must be reported separately on invoices or progress invoices.
- 6.4 Contract variations must never result in changes to the agreed delivery/transfer date, unless explicitly agreed beforehand in writing and approved in writing by the client.
- 6.5 For the benefit of the construction meetings, the contractor will draw up an overview of proposed contract variations.

#### **7. Delivery period**

- 7.1 The delivery period will commence on the date the agreement is signed, unless stipulated otherwise in the specifications or agreement.
- 7.2 The agreed delivery periods and other deadlines or agreed delivery/transfer date(s) must be strictly observed and are final deadlines.
- 7.3 The contractor will ensure that it is in possession of all the necessary information for the work and/or delivery and/or activities.
- 7.4 The lack of any information that is reasonably obtainable by the contractor does not constitute valid grounds for exceeding the agreed delivery periods or delivery/transfer date(s), unless this is due to intentional actions or gross negligence on the part of the client.

#### **8. Payment**

- 8.1 The client will not make any payments unless the agreement is signed and returned.

- 8.2 The contractor will submit in advance to the client a payment proposal containing payment deadlines. If the client accepts this proposal, it will be included in the agreement. Unless the agreement stipulates otherwise, payment of the agreed price will be made as follows:
- 30% of the price following execution of at least 35% of the activities included in the assignment and/or deliveries to the work address
  - 30% of the price following execution of at least 65% of the activities included in the assignment and/or deliveries to the work address
  - 35% at notice of completion or at the first completion of the work or delivery or activities
  - 5% three months after the delivery/transfer date once the client has established that the contractor has fulfilled all its obligations under the agreement.
- 8.3 The contractor will submit each invoice to the client by e-mail (crediteuren-FSSC@rug.nl) in the form of a non-editable PDF file, stating the job number issued by or on behalf of the client and/or a statement confirming that an instalment is due.
- 8.4 Where appropriate, the client may require the contractor to provide a bank guarantee or parent company guarantee not exceeding 5% of the contract value.
- 8.5 Payment will not exempt the contractor from any guarantee and/or liability.
- 8.6 The client is authorized to offset or cancel the payment of sums it owes to the contractor or to contractor affiliates against claims that it has on the contractor and with contractor affiliates, regardless of whether the amounts in question are payable.
- 8.7 If the client has valid grounds to assume that the contractor will not meet its contractual obligations in time, they have the right to require the contractor to furnish adequate security that the agreement will be fulfilled. If the contractor fails to furnish the client with adequate security then the client has the right to terminate the agreement with immediate effect.

## **9. Intellectual property**

- 9.1 Unless expressly agreed otherwise, the client will be the sole title holder in relation to all intellectual property rights pertaining to the work or deliverables or the design thereof, or the activities or result thereof to which the agreement relates.
- 9.2 Unless expressly agreed otherwise, the client will have sole exploitation rights (including the right to disclosure, creation and reproduction) of the designs, drawings, sketches, photos, etc. produced by the contractor, as well as all objects or information media that are an image or representation of the contractor's design.
- 9.3 Where necessary, the contractor will be deemed to have relinquished or will not exercise its personality rights in light of the right of the client to make changes at its own discretion to the work or the delivery or the design thereof, or the activities or result thereof to which the agreement relates.
- 9.4 Where necessary, and at the client's first request, the contractor will cooperate and make all necessary efforts to establish and/or uphold the rights referred to in the previous clauses of this article for the benefit of the client.
- 9.5 The contractor is not permitted to issue publications in any form (paper or digital) concerning the work without consultation and prior written approval from the client.

## **10. Guarantee**

- 10.1 In the case of works, the contractor will guarantee the soundness of the incorporated materials, the correct assembly in the work and its proper functioning during the periods specified in clause 3 of this article. The contractor must submit a report in writing as soon as it becomes aware that the design jeopardizes soundness and/or warranty. In the case of deliverables, the contractor must guarantee the absence of defects during the period specified in clause 3 of this article. With respect to its warranty obligations, the contractor must issue a warranty statement specifying this warranty obligation in greater detail.
- 10.2 The warranty obligation will take effect from the date of delivery/transfer of the work or delivery.

- 10.3 If no other warranty period has been agreed in the specifications or in the agreement, a warranty period of 12 months will apply for installations and 10 years for all other work. For deliverables, the statutory warranty period will apply inasmuch as no other agreement has been made in writing.
- 10.4 As long as the client's notification of a defect is submitted within the applicable warranty period, then this will be construed as a timely complaint within the meaning of articles 6:89 and 7:23 of the Dutch Civil Code.
- 10.5 In the event of a defect, the contractor must ensure that it rectifies the defect at the client's first notification or – if rectification is not possible in the client's view– that it replaces the item in question or re-executes the activities, without prejudice to the client's other rights, including the right to compensation. The contractor will make a start on rectification, replacement or re-execution respectively within a reasonable period set by the client unless agreed otherwise in writing under the warranty obligation, and will then complete matters expeditiously.
- 10.6 If the contractor does not fulfil its warranty obligations within a reasonable period set by the client, the client is entitled to rectify the defect (or have it rectified) or to replace the items in question (or have them replaced) or to re-execute the activities in question (or have them re-executed) at the contractor's expense.
- 10.7 Following rectification, replacement or re-execution, the contractor's warranty obligation will apply in full to the relevant work or item or part thereof, or the relevant activities respectively.

## **11. Testimonial**

- 11.1 The client will not request a testimonial from the contractor, nor will it provide one itself. The client will only issue a general statement that the client has participated in a given project (including a project description).

## **12. Liability**

- 12.1 The contractor is liable to the client for attributable shortcomings. In the relationship between the client and the contractor, shortcomings on the part of the contractor's employees will in all instances be deemed to be shortcomings on the part of the contractor, including in the case of secondments. Inasmuch as it is not permanently impossible to fulfil obligations, the statutory debtor's default regulation will apply.
- 12.2 In the event of an attributable shortcoming of the contractor, the contractor will – unless this cannot reasonably be demanded of the client – be given an opportunity to rectify the shortcoming and/or limit or remedy the resulting damage at its own expense in proper consultation with the client and within a reasonable period. This will be without prejudice to the contractor's liability for damage resulting from the shortcoming.
- 12.3 The damage to be compensated by a contractor who is a consultant will be limited to an amount that is three times the consultancy fees, to a maximum of € 2,500,000. The amounts specified in this clause are exclusive of VAT. The limitation of liability will not apply to other contractors, such as suppliers and building contractors. A contractor who is a consultant must arrange adequate professional liability insurance, whereby the policy covers at least three times the value of the assignment across all stages, for each project, to a maximum amount of € 2,500,000 per event. A contractor who is not a consultant must likewise arrange adequate liability insurance commensurate to the applicable risks. Evidence that such insurance has been taken out will be furnished at the client's first request.

## **13. Prohibition on subcontracting/transfer**

- 13.1 The contractor may not subcontract third parties to execute the agreement or any part thereof without the client's prior written consent. Consent granted by the client will not exempt the contractor from any obligation arising out of the agreement between the parties, and in particular article 14.

#### **14. Contractor's employees**

- 14.1 The provisions of this article apply to agreements for services or building contracts.
- 14.2 The contractor must guarantee that its employees are suitably qualified for the work and the delivery of the services in the agreement and that the equipment used by the contractor meets all statutory provisions for quality, occupational health and safety and the environment.
- 14.3 The contractor must comply with the applicable working conditions legislation and regulations and the applicable collective labour agreement in the performance of the agreement. The contractor must be in the possession of an industry standard certificate or quality mark that guarantees that its employees are remunerated in accordance with the legislation and regulations and the collective labour agreement and that it complies with all statutory regulations in regard to occupational health and safety.
- 14.4 The contractor must guarantee to the client that the requirements of the applicable collective labour agreement and the law (including the Foreign Nationals (Employment) Act and its provisions on the registration requirements for non-Dutch employees) are being met in regard to both its own employees and those of third parties it subcontracts (with due observance of article 13).
- 14.5 Whenever the contractor wishes to involve third parties in the work, the contractor must be on the alert for suspiciously low quotes or any other indication that the third party could be involved in an illegal practice, the exploitation of third parties (including its own employees) or tax evasion.
- 14.6 The contractor must record all agreements on the payment of salaries and bonuses to the employees involved in the performance of the agreement in a clear and accessible salary administration.
- 14.7 The contractor must similarly apply all contractual obligations in this article to all parties with which it makes agreements in regard to the performance of the agreement. Prior to and during the performance of the work, the contractor must verify that all third parties subcontracted by them comply with the legislation and regulations and the collective labour agreement, respectively the provisions of this article, in regard to their own employees, subcontractors and suppliers. The contractor must similarly apply the provisions of this article to these parties. The contractor must record any findings related to this provision as part of the information meant in this article.
- 14.8 The contractor must not involve any parties in the performance of the agreement if they (and/or their directors) do not have a fixed abode in the Netherlands or are not registered in the Trade Register of the Netherlands Chamber of Commerce, as verified by the client prior to the agreement.
- 14.9 If it proves that the contractor has failed to reimburse its employees in accordance with the legislation and regulations and the collective labour agreement and/or has failed to meet a subsequent payment obligation, the contractor must immediately meet its payment obligations and furnish reliable evidence to the client that it has done so.
- 14.10 The contractor must indemnify the client against all claims of third parties arising from the work undertaken by the contractor, including claims in respect of any fines on the basis of violations of the Foreign Nationals (Employment) Act or other legal provisions and salary claims pursuant to article 616a and/or article 616b Book 7 of the Dutch Civil Code. The contractor must pay the sums in question to the client on first demand. If the contractor fails to do so, the client has the right to withhold these sums from the next invoice payment, offset them against sums it owes the contractor, or otherwise recover these sums.
- 14.11 If the client requests further information and/or evidence from the contractor in connection with the provisions of this article, the contractor must furnish the requested information or evidence within 10 working days of the request. The client is entitled to have any reports of underpayment validated. The client may request the cooperation of trades unions and/or competent authorities to this end. The client will inform the relevant stakeholders of any reports of underpayment and the consequences thereof. The contractor may not impede these processes and must cooperate with the competent authorities and all efforts to validate these reports.

## **15. Termination**

- 15.1 The contractor is not entitled to terminate the agreement prematurely. This will not affect its rights under law in the event of attributable shortcomings on the part of the client.
- 15.2 The client is entitled to terminate the agreement prematurely, on account of works, activities or a delivery by giving written notice to the contractor, stating the reason for termination and the date on which the termination will take effect.
- 15.3 If the client terminates the agreement with a consultant for a reason that rests with the contractor and the client wishes to continue to use the work performed by the consultant or the result thereof, the client is obliged to pay, on presentation of the consultant's declaration concerning the status of the activities at the time that the termination takes effect, the agreed price or outstanding price and costs after deducting 10% of the total agreed price, without prejudice to the other rights of the client, including the right to compensation.
- If the client terminates the agreement with a consultant for a reason that rests with the client itself, and the client wishes to continue to use the work performed by the consultant or the result thereof, the client is obliged to pay, on presentation of the consultant's declaration concerning the status of the activities at the time when the termination takes effect, the agreed price or outstanding price and costs plus 10% of the remaining portion of the agreed price payable by the client on complete fulfilment of the agreement.

## **16. Termination with immediate effect**

- The client has the right to terminate the agreement with immediate effect:
- if the contractor is declared bankrupt, is granted a temporary or permanent moratorium, or is made subject to a statutory debt restructuring scheme
  - if the contractor ceases trading
  - if the contractor dies
  - if the contractor fails to meet the requirements of article 14
  - in other cases in which the client is entitled by law to terminate the agreement

## **17. Force majeure**

If the contractor is unable to perform the work in the agreement for a period of longer than one month due to force majeure, then both the client and the contractor will have the right to terminate the agreement. In this case, none of the parties will have the right to compensation of damages; however, the client will have the right to reimbursement of any invoice instalments already paid that have not been met with commensurate performance by the contractor.

## **18. Disputes and applicable law**

- 18.1 Parties will endeavour to settle in joint consultation any disputes relating to the creation, interpretation, execution or termination of an agreement.
- 18.2 Without prejudice to the provisions in the previous clause of this article, all disputes relating to the creation, interpretation, execution or termination of an agreement will be adjudicated at the client's discretion either (i) by a civil court in Groningen or by the civil court that is competent to hear it in accordance with the law, without prejudice to the parties' right to appeal and cassation, or (ii) by arbitration in accordance with the Regulations of the Court of Arbitration for the Netherlands Building Industry which were in effect three months before the conclusion of the agreement.
- 18.3 If the contractor wishes to initiate court proceedings concerning a dispute relating to the creation, interpretation, execution or termination of an agreement, the contractor must invite the client in writing at least eight days beforehand to make the choice referred to in the previous clause of this article. This choice is binding on the contractor. In the event of arbitration at least one of the arbitrators must be a lawyer.
- 18.4 The agreement is governed by Dutch law only.