

## **GENERAL PURCHASING AND SUB-CONTRACTING CONDITIONS OF HE TUBING NETHERLANDS B.V. AND ALL BUSINESSES MAINTAINED BY HE TUBING NETHERLANDS B.V.**

### **1. General**

**1.1.** Only these general conditions are applicable to and form an integral part of all requests for quotations and instructions from HE Tubing Netherlands B.V. and all businesses maintained by HE Tubing Netherlands B.V., hereinafter referred to as "**HE Tubing**", for the delivery of goods, the performance of sub-contracted work and the provision of services, and furthermore to all other legal relationships arising there from with the Seller (the "**General Conditions**").

**1.2.** The Seller's, hereinafter the "**Seller**", General Conditions, as well as any other terms and conditions not prescribed by law, do not apply, unless HE Tubing has expressly agreed to these conditions in writing. Conditions or stipulations which deviate from these conditions shall only apply to the extent that these have been explicitly accepted by HE Tubing in writing.

**1.3.** If any provision or any part of a provision of these General Conditions is or becomes invalid in part or in full for any reason whatsoever, the other provisions of these General Conditions, or the remaining part of the provision concerned, shall remain binding.

**1.4.** Acceptance of the order from HE Tubing by a natural person or a legal entity implies acceptance of these General Conditions.

**1.5.** All communications, notices and approvals required by these General Conditions shall be in writing and shall be sent either by prepaid registered mail or by electronic mail.

### **2. Conditions and regulations**

**2.1.** Besides the provisions in the order and the instructions to the Seller, only these General Conditions shall be applicable to the legal relationship as referred to in article 1.1.

In the event of sub-contracting the following shall be applicable besides these General Conditions:

- a. the sale and purchase agreement as concluded between HE Tubing and the Seller (the "**Agreement**");
- b. the main contracting agreement between the Seller and the subcontractor, whereby the powers awarded to the Seller shall also accrue to HE Tubing;
- c. provisions of the technical specifications in connection with which the instructions have been given to the Seller, including the administrative conditions and standards as set out in the technical specifications, as well as the appertaining drawings and detailed drawings;
- d. the contents of official reports and/or amended documents; and
- e. all changes and additions to the technical specifications and drawings.

In the event of conflicting provisions, the General Conditions shall prevail, after which the first rules mentioned in this section shall apply over and above what is stated later herein.

**2.2.** If the drawings and/or documents mentioned in this article have not been provided by HE Tubing to the Seller with the application and/or the instructions, these shall be sent upon request by the Seller. The Seller shall in any event not be able to invoke a claim based on ignorance thereof. The Seller shall be obliged to notify HE Tubing in case the above mentioned drawings and/or documents contain any errors or omissions.

**2.3.** The Seller shall be deemed to be familiar with all statutory and other regulations and standards that effect the fulfilment of the instructions and/or the delivery of goods. The Seller shall be obliged to comply in full with those regulations and standards.

### **3. Instructions; prices; risk for the goods which have been delivered; extra work.**

**3.1.** Instructions shall only be given in writing by HE Tubing, under the condition that those instructions are approved by HE Tubing's principal.

All instructions from HE Tubing shall be confirmed in writing by the salesperson of the Seller within 14 days of the instruction. If the Seller fails to confirm the instructions within this period, HE Tubing shall maintain the right to consider the instruction not to have been issued. Any amendment of the instructions is only valid after a written confirmation from HE Tubing.

**3.2.** The price agreed upon with the Seller shall be fixed. Changes in prices, wages, social insurance costs, taxes and other cost-determining factors shall not be charged. The price charged by the Seller is based on delivery carriage and insurance paid, unloaded and stacked at the work site, including packaging, costs of inspections and insurances. In case of sub-contracting, the costs of horizontal and vertical transport shall also be included.

**3.3.** Goods destined for HE Tubing shall be transported for the account and risk of the Seller. The Seller shall therefore be obliged to cover this risk. Goods that have been lost and/or have become damaged during transport –

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as a result of any reason whatsoever - shall be immediately replaced by the Seller by new and undamaged goods. If this replacement is not made within eight days after the loss or damage, HE Tubing may cancel the order by means of a written notification to the Seller.

Breakage and damages which have arisen during unloading are for the account of the Seller, unless the Seller proves that the damages have arisen as a result of a fault of the employees of HE Tubing. The costs of replacement of the damaged goods as described in this section are to be paid by the Seller.

**3.4.** When making quotations to HE Tubing, the Seller shall be obliged to uphold its price statement during a period of at least two months or as long as shall be stipulated by HE Tubing. An offer may not be revoked after it has been accepted by HE Tubing.

**3.5.** To the extent that an offer does not provide for any work that does belong thereto according to its nature, the Seller shall be obliged to carry out this work without this giving rise to any right to the Seller to charge for this work.

**3.6.** Extra work or less work, or extra or lack of deliveries shall only be eligible for settlement if HE Tubing has provided its approved written instructions. Settlement shall be made in accordance with the provisions provided in the instructions.

**3.7.** The Seller shall abstain from making price statements or offers to the principal of HE Tubing with regard to expansion of or changes to the work.

**3.8.** If HE Tubing provides instructions to two or more private individuals or legal entities, they shall always each be bound severally and for the full amount towards HE Tubing. If HE Tubing provides instructions to a B.V. or a N.V. which is under formation, the founders shall each remain severally liable for the full amount besides the company. This shall also apply after the confirmation of the instructions by the B.V. or the N.V., respectively.

## **4. Performance**

**4.1.** The Seller is obliged to perform the work or the delivery, respectively, in accordance with the demands of good and sound work, and to use sound materials, that are suited for the purposes for which it/they is/are destined and in accordance with the requirements and the rules and instructions of government institutions, departments and public service companies insofar applicable, as well as the orders, regulations and instructions of HE Tubing.

**4.2.** In the event of sub-contracting, the Seller shall take care of the necessary equipment and materials. The Seller may only make use of facilities that are present on the work site with permission from HE Tubing and for its own risk. Materials that have been made available to the Seller shall be used with due care and in accordance with the purposes for which they are destined.

**4.3.** The work, or the delivery, respectively, shall be carried out or be performed in accordance with the agreed planning, within the working times that are applicable on the work site and in such a manner that the work of HE Tubing and third parties is not disturbed. The Seller is obliged to notify HE Tubing if it will not be able to perform or deliver in accordance with the agreed planning. In that event, HE Tubing retains the right to terminate the Agreement without further proof of default with regard to the goods that have not been delivered as well as the goods that have already been delivered as part of the Agreement but cannot be used effectively because of the delayed delivery of the other goods, notwithstanding any other rights HE Tubing has, such as the entitlement to compensation.

Furthermore, HE Tubing will have the right to return the goods to the Seller, at the cost and the risk of the Seller, that have already been delivered but can no longer be effectively used for this order after which the Seller will credit HE Tubing for the returned goods. In the event of complete or partially delayed delivery of goods by the Seller, HE Tubing can completely or partially terminate the Agreement, without being obliged to pay any damages to the Seller.

HE Tubing is entitled to change the planning and the sequence of the work in connection with the progress of the work, without this giving the Seller a claim to any payment.

**4.4.** The Seller is obliged to implement changes of (parts of) the instructions and/or the delivery at the request of HE Tubing or as a result of changed regulations from government institutions, departments or public service companies, if these changes can reasonably be implemented. Any changes in the price and time of performance or delivery that are a result of these changes shall be agreed upon between HE Tubing and the Seller in advance. If no agreement is reached hereon, HE Tubing can terminate the Agreement in whole or in part, or have the Seller carry out the changed work or delivery(ies) while awaiting a settlement of the dispute concerned in accordance with the provisions in these conditions.

**4.5.** All work and deliveries that shall be carried out by the Seller shall be subject to approval by HE Tubing and, if applicable, the construction management of the work concerned. HE Tubing shall at all times be entitled to inspect, certify and/or test the goods and work or to have this done.

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**4.6.** Goods that have been delivered can only be deemed to have been accepted by HE Tubing after a favourable result of a definite inspection carried out by HE Tubing. HE Tubing shall be entitled to terminate the Agreement and to return the goods within a reasonable time and without any further notice of default or court intervention - and in doing so to thereby cancel a part and to accept another part - if the goods do not comply with the requirements that have been set out in the instructions by HE Tubing or have hidden defects, all without prejudice to any other rights which accrue to HE Tubing in that respect, including the right to demand that the returned goods concerned shall be replaced.

Inspection by or on behalf of HE Tubing shall not release the Seller from any liability. The Seller shall be responsible for the obtaining of the required approval(s) by the relevant governmental institutions. HE Tubing shall not be obliged to pay for adaptations or changes to goods delivered by the Seller in order to comply with comments from the relevant governmental institutions.

**4.7.** The Seller shall not be permitted to contract out the work or parts thereof to third parties or to have the work carried out with the aid of labour that has been made available by third parties or has been hired in, other than with the written permission from HE Tubing and only under the same conditions as the conditions that apply between HE Tubing and the Seller and on the basis of a written agreement.

Permission from HE Tubing shall not effect any obligations of the Seller that arise from the Agreement.

**4.8.** If requested by HE Tubing, the Seller shall draw up weekly reports in accordance with a model laid down by HE Tubing. The Seller shall sign these reports and offer them to HE Tubing for approval every week.

**4.9.** The Seller shall be obliged to take all legally obligatory and suitable safety steps, and to maintain them, to provide protective clothing to its personnel and to ascertain that these are also actually used. Furthermore, the Seller shall comply without any restrictions with all provisions of the Dutch "Working Conditions Act" (or have this done). The Seller shall be obliged to impose similar obligations on its sub-contractor(s). The Seller shall inform HE Tubing immediately of possibly unsafe or risky circumstances that may arise on the work site. HE Tubing shall not be liable for accidents of employees of the Seller or any other personnel as hired by the Seller on the work site, except in the event of intent or gross negligence of HE Tubing.

## **5. Building materials and goods**

**5.1.** Building materials and goods that are brought by the Seller and other goods which have been delivered by the Seller shall become the property of HE Tubing, even if they have not yet been processed, as soon as they have been delivered to the work site or the warehouse or in the work shop of HE Tubing, the actual transfer of possession has occurred and has subsequently been approved by HE Tubing. Only then the risk and the ownership of the particular goods will transfer to HE Tubing. If the Seller sources goods from third parties specifically for the performance of any obligation arising under the legal relationship that exists between the parties, the Seller shall hold these goods following their delivery on behalf of HE Tubing as owner.

**5.2.** If HE Tubing delivers goods to the Seller for the performance of the legal relationship which exists between the parties, those goods shall remain the property of HE Tubing.

**5.3.** Goods in the sense of sections 1 and 2 shall include raw materials, semi-finished products, materials, parts, models, matrices, moulds, drawings and other information bearers.

**5.4.** The Seller undertakes to store the goods that belong to HE Tubing by virtue of the above sections as far as possible separately and marked as the property of HE Tubing. If a third party claims that it has any rights in respect of those goods and/or has encumbered them with an attachment, the Seller shall notify the third party of the ownership of HE Tubing and notify HE Tubing immediately of the claim and/or encumbrance with an attachment. HE Tubing shall at all times be entitled to remove the goods that belong to it from the place where the relevant goods are located (or to have this done). The Seller grants HE Tubing an irrevocable authorization to enter the spaces used by the Seller to store the goods owned by HE Tubing (or to have this done).

## **6. Delivery, maintenance term, guarantees**

**6.1.** Work and deliveries shall only be considered to have been delivered or accepted following approval by HE Tubing and/or the construction management, and are for the risk of the Seller until that time. The respective maintenance and/or warranty period shall commence and end at the time that applies in respect of the entire work or delivery as carried out by the Seller.

**6.2.** Upon HE Tubing's first request and in consultation with HE Tubing, the Seller is obliged to repair all defects that HE Tubing becomes aware of during the maintenance period, within a term to be set out by HE Tubing.

The costs of reassessment, re-approval and retesting shall be for the account of the Seller.

**6.3.** The Seller shall in any event provide HE Tubing, and if requested also the principal of HE Tubing, with the warrant(y)(ies) demanded by HE Tubing in respect of the part of the work that it has been instructed to do,

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regardless of any warranty obligations of the Seller under the instructions and without prejudice to any of its liabilities under the instructions.

The Seller shall only be deemed to have complied with these obligations if and to the extent that HE Tubing and/or its principal have provided written approval of the warranty declarations that have been issued by the Seller.

## **7. Invoicing**

**7.1.** The Seller shall submit invoices for each work and good. The Seller shall in any event state the following details clearly and in an orderly manner on the dated and numbered invoices:

- the purchase order number that relates to the work;
- the work and the place(s) of implementation and/or delivery of goods to which the invoices relate;
- the period and the performance delivered to which the invoice relates;
- the size of the wage component which is included in the amount that has been invoiced;
- name, address and place of residence of the Seller;
- a statement whether the transfer rules with regard to the turnover tax are applicable or not and, if so, the amount of that turnover tax;
- the names of the employees who have been put to work by the Seller on the work, the hours worked and - if HE Tubing requests so - the wages paid to the employees concerned;
- a note signed by HE Tubing's contractor or HE Tubing's principal, from which it appears that the work which has been carried out has been approved.

**7.2.** The Seller shall always prove to HE Tubing's express satisfaction in writing that it complies with its statutory obligations to pay the social insurance premiums and wage taxes. The Seller shall also maintain proper books and records. HE Tubing is entitled to demand a monthly declaration from the Seller on the payment conduct of the Seller with the relevant (governmental) institutions.

The Seller guarantees to HE Tubing that it complies with the legal requirements regarding the vicarious tax liability and its obligations in that respect and releases HE Tubing from any responsibility in this respect.

**7.3.** HE Tubing is always entitled to either withhold the premiums and wage tax which are due by the Seller in respect of its work, for which HE Tubing is severally liable, and to pay them directly on behalf of the Seller to the relevant (governmental) institutions, or to pay the Seller by means of transfer to its blocked account. As a result of payment and transfer hereof, HE Tubing shall have complied with its obligations towards the Seller for an amount equal to these amounts.

HE Tubing is entitled to change the amount which is to be withheld or transferred under this section, if it can reasonably reach the opinion, based on the details available to it, that the Seller will owe a higher amount in social insurance premiums and wage tax than has been determined earlier. HE Tubing shall, in the event of a change of these percentages, notify the Seller thereof in writing.

**7.4.** If, by complying with its obligations towards the employees of the Seller or after being held liable for unpaid taxes and premiums by the Seller or sub-contractors, HE Tubing has paid taxes and premiums, it shall be entitled to recourse on the Seller for the entire amount which it has paid. This claim shall be increased by the statutory interest and costs which it has incurred, including extra-judicial costs.

## **8. Payment**

**8.1.** Payments shall only be made after the Seller has returned to HE Tubing the unchanged copies of the order confirmation with enclosures that have been signed for agreement by the Seller, and shall be made in proportion with the progress of the work or the delivery and approval by HE Tubing, respectively, and only if the requirements which have been laid down by HE Tubing in respect of the invoicing and the performance of the obligations of the Seller under the relevant Dutch social insurance and wage tax laws have been complied with.

**8.2.** Payment of goods and/or work that have been delivered shall be made within 60 days following receipt and acceptance of these goods by HE Tubing and/or its principal or - if this is received later - after receipt of the invoice, unless HE Tubing and the Seller agreed otherwise. Payment shall be made without observing any form of credit restriction or any other type of price increasing measures.

**8.3.** Payment of work instructed by HE Tubing under sub-contracting shall be made within two months after receipt of the invoice or - if this is of a later time - after assessment and approval of the work by HE Tubing or the construction management, respectively, and also without observing any form of credit restriction or any other type of price increasing measures.

**8.4.** HE Tubing shall at all times have the right to set-off any claims towards the Seller against what is owed to the Seller, regardless of whether this is enforceable, or falls under time stipulations or any other conditions. The Seller shall not be entitled to set-off any claims.

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**8.5.** If this has been expressly agreed upon between HE Tubing and the Seller and with a maximum of 80% of the value of the approved part of the work concerned carried out under sub-contracting at the time of the payment, one or more payments may be awarded in advance of the final payment. Such advance payments shall only be made after a bank guarantee has been issued by the Seller to HE Tubing, this to the express satisfaction of HE Tubing.

**8.6.** The Seller shall be prohibited from transferring, pledging or assigning the title to its claims towards HE Tubing that have arisen under the agreement to a third party.

## **9. Liability**

**9.1.** The Seller shall be liable for all damages, including also indirect or consequential damages or losses due to delays, which result from the (delayed) fulfilment of the instructions or from the (delayed) delivery of goods or by third parties of which it avails itself. The Seller is responsible for damages resulting in death, bodily injury or any other damages that are the result of the unsoundness of the goods supplied by it or by its suppliers.

The Seller shall furthermore be liable for damages that result from the presence of its employees or any other personnel as hired by it and/or the use on/in the work of construction materials, tools and materials that are used or have been delivered by it, or from an infringement of the rights of third parties, including intellectual and industrial rights.

**9.2.** The Seller shall indemnify HE Tubing and HE Tubing's principal in respect of the liabilities as set out in article 9.1 with regard to all claims of third parties, future owners and users, and government institutions and any other institution. The Seller releases HE Tubing completely from all costs, damages and interests that arise from any breach or alleged breach of patents, licences, copyrights, registered drawings or designs, trademarks or trade names, protected within or outside the Netherlands, as a consequence of providing goods or actions to HE Tubing. If the Agreement involves the supply of certificates and/or instruction books, the Seller is responsible for seeing that these are in the possession of HE Tubing as soon as possible, but ultimately within 3 weeks after delivery, in the absence of which HE Tubing has the right to defer payment or to completely or partially terminate the agreement.

**9.3.** The approval of HE Tubing as referred to in article 4.5 shall not exonerate the Seller from any of its liabilities towards HE Tubing.

**9.4.** HE Tubing is not obliged to guard the work on the work site, nor the materials, the equipment or any other property of the Seller.

**9.5.** All court and other decisions which apply between HE Tubing and its principal and/or third parties that are connected to the deliveries and/or work of the Seller, shall be equally binding on the Seller as they are on HE Tubing. HE Tubing shall inform the Seller of the course of the proceedings in this respect.

## **10. Insurances**

**10.1.** The Seller is obliged to take out the statutory liability and motor vehicle statutory liability insurances as demanded by HE Tubing.

The Seller is also obliged to satisfactorily insure all goods that it has in its possession or uses in connection with the instructions, as long as they are for the Seller's risk.

The Seller shall only be covered by the CAR Insurance that is applicable for the work or that is continuous, respectively, under the conditions which HE Tubing lays down in that respect. Under this insurance policy the Seller shall in any event not be considered to be a fellow insured party; furthermore, the Seller shall in case of damages bear in any event the personal franchise risk that applies for those damages. If requested by HE Tubing, the Seller shall provide HE Tubing with copies of policies and conditions of the insurances taken out by the Seller.

**10.2.** If HE Tubing and the Seller agree that the Seller shall conclude warranty insurance to the express satisfaction of HE Tubing, the policy and conditions shall be approved in advance by HE Tubing. The following shall apply in this respect:

- a. the warranty insurance shall state HE Tubing as the beneficiary;
- b. the Seller undertakes to pay the premium due for the entire warranty period to the insurer by payment in advance. The policy, conditions and premium receipts shall be handed over to HE Tubing immediately following receipt by the Seller;
- c. if the Seller does not comply with one of the obligations as set out in this article 10.2, HE Tubing shall be entitled to conclude a warranty insurance for the account of the Seller. In that case, HE Tubing shall be entitled to set-off the costs and further damages connected therewith to the amount it owes to the Seller;
- d. the warranty insurance shall cover all material damages and damages arising from non-performance of the insured performance in accordance with the Agreement and other requirements that are set out by HE Tubing.

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**10.3.** All decisions of insurers with regard to the above insurances that are binding on HE Tubing, shall also be binding on the Seller to the extent that they relate to any work of the Seller.

## **11. Default, incapacity**

**11.1.** HE Tubing shall have the right to terminate the Agreement with the Seller without court intervention, in whole or in part, and/or to postpone its obligations which result therefrom, without prejudice to any of its rights to compensation of damages, if:

- a. the Seller defaults in the performance of its obligations under the instructions;
- b. HE Tubing has valid reasons to believe that the Seller is not or will not be capable of complying with its obligations towards HE Tubing and a written request to perform from HE Tubing has not been complied with within the term laid down therein;
- c. the Seller is declared bankrupt or is awarded a moratorium of payments, and also in the event of cessation, liquidation or entire or partial transfer, whether or not as security, of its business, including the transfer of an important part of its claims.

**11.2.** In that event HE Tubing shall be entitled to complete the work and/or the delivery itself or have the completion and/or delivery carried out by third parties for the account of the Seller, and in doing so to use all construction materials and equipment which are available to the Seller and/or which have been brought to and/or are used at the work site. In this case the Seller may not invoke any right of retention.

**11.3.** If HE Tubing has valid reasons to believe that the Seller is not or will not be capable of complying with its obligations towards HE Tubing, the Seller shall at all times be obliged to immediately put up satisfactory security in the form desired by HE Tubing as security for the performance of those obligations, and to supplement this security if necessary for any damages which may be suffered by HE Tubing.

## **12. Termination**

**12.1.** Without prejudicing any of its rights to compensation or claiming repayment of the actual costs, HE Tubing has the right to completely or partially terminate the Agreement by way of a written statement and without prior notice of default or judicial intervention, if the Seller in addition to the conditions stated in paragraphs 3.3, 4.3, 4.4, 4.6, 9.2 and 11.1 of these conditions, does not or does not reasonably fulfil its obligations, in the case of bankruptcy of the Seller, his moratorium on payments, seizure of a major part of his assets, seizure of goods intended for the Agreement or the closing down or liquidation of the company.

**12.2.** In the event of partial termination of the Agreement by HE Tubing, HE Tubing has, without prejudicing any of its rights to compensation, the right to choose:

- to return any goods supplied to it by the Seller that cannot or can no longer be used to the Seller at the risk and the payment of the Seller and the Seller will credit HE Tubing for the returned goods;
- after notifying the Seller in writing, to finish the order itself or have the works completed by a third party, possibly using the goods already supplied.

## **13. Force majeure**

A force majeure, which shall include strikes, exclusion of employees, work-to-rule actions, illness, import, export and transit prohibitions, transport problems, non-performance or non-timely performance of the obligations of suppliers and disruptions in production with the Seller shall in any event be for the account of the Seller.

## **14. Miscellaneous**

**14.1.** Documents, drawings and other information bearers which have been provided by HE Tubing or have been used and made by the Seller for the performance of the Agreement, as well as rights in respect of these, shall remain or shall become the property of HE Tubing. These may not be reproduced or handed over to third parties or be used otherwise than for the benefit of the performance of the Agreement.

After the Seller has finished the work or delivery, the documents drawings and other information bearers concerned shall be handed over by the Seller to HE Tubing upon HE Tubing's first request. The Seller shall provide HE Tubing without charge with all revised drawings and other details.

**14.2.** The Seller is obliged to maintain secrecy towards third parties in respect of the instructions and all information which has come to its knowledge within that framework.

**14.3.** The Seller shall not be at liberty to advertise with instructions received from HE Tubing without express written permission from HE Tubing.

**14.4.** HE Tubing shall have the right to deny employees of the Seller or any other personnel as hired by the Seller access to the construction site on account of unsuitability, disturbances, or unfitted behaviour. HE Tubing shall not

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accept any liability arising from such decisions. The liability arising from such decisions shall remain for the account of the Seller. The Seller shall comply with all instructions from HE Tubing in order to prevent an employee or any other personnel as hired by the Seller who has been denied access from returning to the construction site.

## **15. Limitations**

Claims towards HE Tubing by virtue of any legal relationship between it and the Seller shall lapse in the sense of the statute of limitations after the passage of one year after they have arisen.

## **16. Applicable law and disputes**

**16.1.** These General Conditions and the Agreement shall be governed by Dutch law. The legal provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) do not apply.

**16.2.** Any dispute arising from or in connection with the interpretation or execution of the offer, order confirmation or Agreement and/or these General Conditions shall be submitted to the competent court in Amsterdam, the Netherlands.