

**Adopted by Bouwend Nederland in 2016,  
including amendments by Van de Wiel  
Complete Afbouw B.V.**

**Article 1: The agreement and terms and conditions**

1. The agreement shall be concluded in writing. The agreement shall state the applicability of these General Terms and Conditions of Subcontracting (hereinafter referred to as 'these terms and conditions').
2. Where the agreement and these terms and conditions refer to 'in writing' this shall also include 'electronically'.
3. Where these terms and conditions refer to 'subcontractor', this may also include (if applicable) the 'ZZP'er'.

**Article 2: Statutory regulations and government decisions**

1. The subcontractor shall be deemed to be familiar with the statutory regulations and government decisions relevant to the execution of the work, insofar as they have entered into force on the day of the quotation. The consequences of complying with these regulations and orders shall be at his expense.
2. The consequences of compliance with statutory regulations or government decrees that come into force after the date of the quotation will be at the Contractor's expense, unless it must reasonably be assumed that the Subcontractor could have foreseen those consequences on the date of the quotation.

**Article 3: Specific provisions regarding subcontracting**

1. Subcontractor shall provide prior to or upon entering into the contract:
  - a. a copy of a recent extract from the Chamber of Commerce trade register of the company;
  - b. its VAT identification number and (if applicable) payroll tax number;
  - c. a recent 'Verklaring betalingsgedrag keten- en inlenersaansprakelijkheid' (no older than three months);
2. The subcontractor shall be obliged to comply with its statutory obligations to pay wage tax and social security contributions, insofar as directly and indirectly related to the work assigned to it.
3. A man-days register shall be completed in full and shall contain at least the following information:
  - a. NAW-data subcontractor;
  - b. NAW data contractor;
  - c. date;
  - d. project/work number;
  - e. number/character of subcontract agreement;
  - f. project name and location;
  - g. full names and initials of subcontractor's employee;
  - h. week number;
  - i. number of hours worked per employee including start and end time.
4. The man-days register shall be signed by subcontractor, which shall also certify that:
  - a. the employees will be processed in the subcontractor's records in the prescribed manner;
  - b. the wages actually paid to the employees are in accordance with the requirements under the Minimum Wage Act (WML) and the applicable collective bargaining agreement;

- c. the legally due contributions and taxes will be paid for these employees as well as (if applicable) the contributions under the applicable collective agreement;
  - d. no other employees or employees hired by the subcontractor will be deployed on this project, unless prior written permission has been obtained from the contractor.
5. A man-days register shall be submitted weekly to the contractor for approval. The contractor is authorized at all times to check the accuracy of the man-days register.
  6. In accordance with the provisions of the 'Uitvoeringsregeling verplicht gebruik BSN', the contractor is authorized to collect and store the BSN of every person who performs work at the construction site on behalf of the subcontractor. These persons must identify themselves at the contractor's first request by presenting a valid identity document showing their nationality and (if applicable) residence status. From this document the contractor will take the BSN, type of identity document, number and period of validity of the persons, as well as the initials, surname, date of birth and nationality.
  7. If the contractor can reasonably come to the conclusion that a higher percentage of wage tax and social security contributions will be owed by the subcontractor in respect of the work assigned to him than the percentage laid down in the agreement, the contractor may change the percentage to be deposited in the g account.
  8. If the subcontractor employs persons who do not meet the requirements of this article, the contractor shall be entitled to deny such persons access to the work with immediate effect. Damage, including consequential damage, suffered by the contractor as a result will be borne by the subcontractor.

**Article 4: Subcontractor's Obligations**

1. Subcontractor is obliged to perform the work well and soundly and in accordance with the provisions of the agreement. He shall carry out the work in such a way that damage to persons, goods or the environment is minimized as a result.
2. The execution of the work shall be such as to ensure the completion of the work within the agreed period.
3. The electricity, gas and water required for the execution of the work shall be at the subcontractor's expense unless otherwise agreed.
4. If warranted by the nature of the Work, the Subcontractor will inform itself of the location of cables and pipelines and the location where the Work will be performed before the Work commences.
5. If the Contractor makes a storage area available to the Subcontractor during the Work to house the necessary equipment, the Subcontractor undertakes to take the necessary measures to close off or secure the area. Under no circumstances will the contractor be liable for any damage and/or theft to the materials or equipment stored by the subcontractor in the storage area.
6. The subcontractor is obliged to point out to the contractor any imperfections in constructions and working methods prescribed by or on behalf of the contractor and in orders and instructions given by or on behalf of the contractor, as well as to defects in building materials and tools provided or prescribed by the contractor, to the extent that the subcontractor knew or reasonably should have known about them.
7. From the moment the subcontracting agreement is concluded, the subcontractor will not be permitted to make price offers to the contractor's client for work that can be regarded as an extension or modification of the contractor's work, except with the contractor's prior written permission.

8. Subcontractor may not transfer all or part of the work to another person, except with the contractor's prior written consent.

9. Without written permission from the contractor, the subcontractor is not permitted to subcontract all or part of the work to third parties or to borrow employees. In the event that the contractor grants permission, the subcontractor will be obliged to declare the provisions under which the subcontracting agreement was entered into applicable to the legal relationship between the subcontractor and the third party it engages. Even if third parties are engaged, the subcontractor will remain fully responsible to the contractor for the work.

10. In performing this Agreement, the Subcontractor shall comply with applicable laws and regulations, the applicable collective bargaining agreement and the arrangements it has made in individual employment contracts. With due observance of the provisions of the previous paragraph, the Subcontractor shall stipulate, when engaging subcontractors or companies that supply workers, that they are obliged to comply with the applicable laws and regulations, the applicable collective bargaining agreement and all agreements made in the individual employment contracts. He also stipulates that these parties also subsequently impose said obligations in full on all parties with whom they in turn enter into contracts.

11. Subcontractor shall record in a clear and accessible manner all labor arrangements for the purpose of performing the Work.

12. Upon request and without delay, the Subcontractor shall provide competent authorities with access to these employment conditions and cooperate in inspections, audits or wage validation.

13. On request, the subcontractor shall provide the contractor with immediate access to the employment conditions referred to in the previous paragraph if the contractor considers this necessary in connection with preventing or dealing with a wage claim regarding work performed for the execution of the work.

14. Instructions from the management, contractor, principal or others at the work within the scope of the H&S plan must be strictly complied with by the subcontractor and any third parties engaged by him (such as a further subcontractor or hired staff). Contractor has the right to deny access to the construction site to subcontractor personnel or third parties engaged by him who do not comply with the safety regulations.

15. Insofar as the contractor has agreed to further subcontract the work to a third party, the subcontractor may only further subcontract part of the work to a ZZP-er if this is done in accordance with an approved model subcontracting agreement from the Tax Authorities. If subcontractor falls within the scope of the Construction & Infra collective bargaining agreement, the "Model agreement Construction & Infra for the deployment of ZZP-ers" must be used. Subcontractor shall ensure that the actual situation and circumstances under which work is performed correspond to the arrangements in the model agreement used.

16. Subcontractor shall at all times comply with the Health & Safety Act and regulations, the H&S plan, and the contractor's applicable construction site rules. The general safety rules and any specific safety rules can be requested from the contractor's HSE coordinator. The subcontractor shall inform its employees and hired helpers about the aforementioned rules.

17. Unless the parties have agreed otherwise, the subcontractor shall provide:

a. all matters necessary for the execution, such as: storage area/ lockable spaces, horizontal transport, vertical transport, tools, auxiliary works, utility connections;

a. the removal of waste generated in the performance of the work assigned to the subcontractor;

b. for the production of (working) drawings relating to the work assigned to the subcontractor;

c. for performing measurements.

18. If the subcontractor is to provide weekly reports, these will include notes regarding:

(a) the progress and status of the work;

b. changes in the order;

c. hours worked;

d. unworkable weather;

e. the supply and removal of building materials;

f. the supply and removal of resources.

#### Article 5: More and less work

1. In case of changes in the agreement or in the conditions of performance desired by the contractor, the subcontractor may demand an increase in the price only if it has pointed out to the contractor in good time the necessity of a resulting price increase, unless the contractor should have understood that necessity by itself.

2. Amendments to the agreement or to the conditions of performance will be agreed in writing. No evidence can be attributed to verbal agreements and/or actual conduct.

#### Article 6: Invoices, final account, payment and suspension

1. If payment in installments has been agreed upon, the subcontractor will send the relevant installment invoice to the contractor each time on or after the appearance of a payment deadline.

2. An invoice to be submitted by subcontractor shall comply with the requirements of the Turnover Tax Act.

2. If the Agreement stipulates that a document must be attached to an invoice showing that the invoiced performance has been delivered, the Contractor must issue that document no later than four days after it has been established during an inspection on the occasion of the appearance of an instalment that the performance in question has been delivered.

3. Subcontractor shall submit its final invoice to the contractor no later than two weeks after the day on which the work is completed.

4. Invoicing of additional work shall take place on a separate invoice. Payment for additional work approved in writing by the contractor shall take place simultaneously with the final invoice.

5. If the work performed does not comply with the agreement, the contractor has the right to suspend payment in whole or in part. The amount involved in the suspension shall be in reasonable proportion to the failure. Contractor shall notify subcontractor in writing of the suspension and the reason for it.

#### Article 7: Transferability and settlement

1. The transferability of claims relating to the amount of wage tax and social security contributions included in the contract sum, and for which the contractor is liable under the Wet Ketenaansprakelijkheid, and the other authority to encumber and/or alienate this claim is excluded - also in the sense of property law - as referred to in Article 3:83 paragraph 2 of the Dutch Civil Code.

2. If an additional assessment, sanction and/or fine is imposed on the Contractor by reason of the breach of or

non-compliance with laws and regulations, which is/are attributable to a breach or non-compliance by the Subcontractor, the Contractor will be entitled to recover the damage arising therefrom from the Subcontractor or to set off this damage against any due and payable claims of the Subcontractor. Damage will include administrative fines and penalty payments as well as damage resulting from shutdown of the Work. The Contractor will give written notice of a set-off to the Subcontractor.

#### **Article 8: Completion and acceptance of the work and maintenance period**

1. A reasonable time before the day on which the Subcontractor believes the Work will be ready, it will invite the Contractor in writing to inspect the Work. The inspection shall take place as soon as possible, but at the latest within eight days after the day referred to above. The inspection shall be conducted by the contractor and the subcontractor jointly. If the Work is ready, the Parties shall record this in writing, stating any shortcomings found jointly. These shortcomings will be remedied by the subcontractor as soon as possible.
2. The Work will be deemed completed at the time the Work is deemed completed between the Contractor and its Customer. The contractor will notify the subcontractor in writing of the latter delivery, stating the shortcomings found in the work. The subcontractor will remedy these shortcomings as soon as possible.
3. If, after the time when the Work has been completed, damage to the Work occurs as a result of the Contractor putting it into operation, including when the Contractor makes the Work available to third parties for further performance or grants those third parties access to the Work, such damage will not be payable by the Subcontractor.
4. After the day on which the Work is deemed to have been completed, the Work will be at the Contractor's risk, with the exception of hidden defects in the Work, which the Subcontractor must repair at its own expense and risk as soon as possible after discovery.
5. The duration of the maintenance period shall be laid down by the parties in the Agreement.

#### **Article 9: Execution time, extension, and liquidated damages for late completion of the work**

1. If the subcontractor is unable to commence its work on the day specified in the agreement, it shall be obliged to give written notice to the contractor as early as possible, but no later than five working days, or as many working days as the parties have agreed, before the agreed commencement date.
2. The subcontractor will be entitled to an extension of the execution period if, due to force majeure, circumstances for which the contractor is responsible, or due to a change in the agreement or in the conditions of execution, the subcontractor cannot be required to complete the work assigned to him within the period specified in the agreement.
3. If the commencement or progress of the work assigned to the subcontractor is delayed by circumstances for which the contractor is responsible, the damage resulting therefrom for the subcontractor shall be compensated by the contractor.
4. If the commencement or progress of the work assigned to the subcontractor is delayed due to circumstances for which the subcontractor is responsible, the damage

resulting therefrom for the contractor, other than damage due to exceeding the term of execution, must be compensated by the subcontractor.

5. If the execution term is exceeded, the subcontractor will owe the contractor an immediately payable penalty, without prejudice to the contractor's right to recover the damage actually suffered and/or to be suffered by it from the subcontractor and/or to claim performance. The parties shall lay down the amount of this penalty in the agreement, in the absence of which the arrangement as laid down in the terms and conditions between the contractor and its principal shall apply. In the absence of the latter arrangement, this compensation shall amount to € 60.00 per calendar day. The contractor will be entitled to set off the penalty against everything he owes to the subcontractor.
6. The penalty shall be forfeited only as a result of the appearance of the specified day. No further notice of default shall be required.

#### **Article 10: Default of contractor**

1. If the contractor fails to pay what he owes to the subcontractor under the agreement and is in default - after a written notice of default with a deadline of at least 14 working days - he will owe the statutory interest (non-commercial interest) pursuant to Section 6:119 of the Dutch Civil Code on it as of the due date.
2. If the contractor fails to pay on time, the subcontractor will be entitled to collect the amount due, provided that it has given the contractor written demand for payment within a period of at least 14 days and that payment has not been made. If the subcontractor proceeds to collection, the related extrajudicial costs shall be borne by the contractor, provided the amount thereof is stated in the demand for payment. The subcontractor will be entitled to charge the amount calculated in accordance with the Compensation for Extrajudicial Collection Costs Decree.

#### **Article 11: Default of subcontractor**

1. If the Subcontractor fails to perform any of its obligations, or the Contractor has good reason to believe that the Subcontractor will fail to perform any of its obligations, the Contractor will be entitled, at its option:
  - a. require adequate security from the subcontractor, or
  - b. to dissolve the Agreement without further notice of default. Dissolution will be possible only if the Contractor has previously pointed out this consequence of non-performance to the Subcontractor in writing. The provisions of the preceding sentence will not affect the Contractor's right to compensation for damage, costs and interest.
2. If the subcontractor fails to comply with its obligations concerning the commencement or continuation of the work and the contractor wishes to give it notice in connection therewith, the contractor shall give it written notice to commence or continue the performance of the work as soon as possible.
3. The contractor shall be entitled to have the work performed or continued by a third party, if the subcontractor remains in default after the expiry of the period specified in the notice, and on condition that the contractor has so specified in the notice. In that case, the contractor will be entitled to compensation for the damage and costs resulting from the subcontractor's default.
4. The contractor will ensure that the costs arising for the subcontractor from the application of the previous paragraph remain within reasonable limits.

## Article 12: Suspension, termination of work in an unfinished state and notice of termination

1. Contractor is authorized to suspend the performance of the work in whole or in part. Provisions that the subcontractor must make as a result of the suspension, and damages that the subcontractor suffers as a result of the suspension, will be compensated to the subcontractor.
2. If damage to the Work occurs during the suspension, it will not be borne by the subcontractor, provided that the subcontractor has previously informed the contractor in writing of this consequence associated with the suspension and the damage is not the result of acts and/or omissions of the subcontractor.
3. If the suspension lasts longer than 14 days, the subcontractor may also demand that it be paid proportionately for the part of the work performed. This will take into account any building materials delivered to the Work which have not yet been processed but which have already been paid for by the subcontractor.
4. If the suspension of the work lasts longer than one month, the subcontractor shall be entitled to finish the work in an incomplete state. In that case, payment shall be made in accordance with the following paragraph.
5. The contractor shall at all times be entitled to terminate the agreement in whole or in part. Subcontractor shall in that case be entitled to compensation for the work performed and materials purchased by him up to that time.
6. The subcontractor shall send the contractor an itemized final invoice, if necessary accompanied by underlying documents, of what the contractor owes as a result of the termination of the work in an unfinished state.

## Article 13: Dissolution

1. Without prejudice to the power to dissolve the agreement under the law, the contractor and subcontractor will be entitled to dissolve the subcontract in whole or in part
  - a. if the other party ceases its business operations, applies for a suspension of payments or is declared bankrupt;
  - b. if the work assigned by the principal to the contractor, which includes the work assigned to the subcontractor, is terminated in an unfinished state;
  - c. if the agreement between the contractor and his principal, which includes the work assigned to the subcontractor, is dissolved or terminated.

## Article 14: Liability

### Article 14.1: Liability for delivery

1. Subject to the provisions of Article 9.3 of these Terms and Conditions, the Work and its performance shall be the responsibility of the Subcontractor from the time of commencement until the day on which the Work is completed.
2. Without prejudice to the parties' liability under the Agreement or the law, and with due observance of the provisions of Article 9, paragraph 3, of these Terms and Conditions, the Subcontractor shall be liable for damage to the Work, unless such damage is the result of extraordinary circumstances against the harmful effects of which the Subcontractor has not had to take appropriate measures in connection with the nature of the Work, and it would be unreasonable to make the damage payable by it.
3. Subcontractor shall be liable for damage to other works and property of contractor to the extent it is caused by the execution of the work and is due to negligent carelessness imprudence or wrong actions of subcontractor, its own or hired workers, its subcontractors or its suppliers.

4. The subcontractor shall indemnify the contractor against claims by third parties for compensation for damage, insofar as it has been caused by the execution of the work and is due to negligence, carelessness or wrong actions of the subcontractor, his own or hired workers, his subcontractors or his suppliers.

### Article 14.2: Liability after completion.

1. After the day on which the Work is considered delivered, the Subcontractor will no longer be liable for defects in the Work.
2. The provisions of paragraph 1 will be an exception if there is a defect
  - a. which became apparent during the maintenance period and which could not reasonably have been recognized by the contractor at the time of delivery (a 'hidden defect'), unless the subcontractor makes it plausible that the defect must be attributed with a high degree of probability to a circumstance that can be attributed to the contractor;
  - b. which became apparent after the maintenance period had expired, which could not reasonably have been discovered by the contractor at the time of delivery, and in respect of which the contractor makes it plausible that the defect must be attributed with a high degree of probability to a circumstance that can be attributed to the subcontractor.
3. As far as the duration of liability is concerned, that which has been agreed upon between the contractor and its client applies.

### Article 14.3: Other provisions

1. In the cases provided for in Article 15.2 of these Terms and Conditions, the Contractor shall give notice to the Subcontractor within a reasonable time after discovery of the defect and give the Subcontractor the opportunity to remedy the defect.
2. If the costs of repairing a defect are not in reasonable proportion to the Contractor's interest in repairing it, the Subcontractor may, instead of repairing it, suffice with paying damages to be determined by the Contractor.

## Article 15: Warranty(s)

1. The agreement shall define the warranty(s) to be provided by subcontractor.
2. Warranty claims by the Contractor shall not affect its (legal) claims under Article 15 of these Terms and Conditions.
3. If a third party has provided a more far-reaching guarantee to the subcontractor than that provided by the subcontractor to the contractor, the guarantee provided by the subcontractor will be deemed to include that more far-reaching guarantee. Subcontractor shall be obliged to give written notice thereof to Contractor.
4. In the event of a claim under a warranty, Subcontractor shall - depending on the nature of the defect covered by the warranty - respond and commence repair or replacement. If the Subcontractor does not comply with the Contractor's demand to repair or replace within a fixed term, the Contractor will give the Subcontractor notice of default with a reasonable term to still comply with the guarantee obligation. If the Subcontractor then still fails to (fully) comply with its obligations, the Contractor will be entitled to have the repair or replacement carried out by (a) third party (parties) at the Subcontractor's expense. If the defect causes or threatens to cause major, direct consequences and/or if safety is at stake, no further notice of default shall be required. In the situation referred to in the previous sentence, the contractor and subcontractor will determine in proper mutual consultation who will bear what costs.

**Article 16: Delivery c.p.**

1. The items to be delivered by the subcontractor as part of the performance of the agreement over which the contractor does not have actual control shall be effected by taking possession in accordance with the provisions of Article 3:115(a) of the Dutch Civil Code. The required bilateral declaration by subcontractor and contractor for this purpose shall be made by signing the subcontract agreement.

2. The subcontractor shall be obliged to separate and keep separate the items in its possession as part of the performance of the agreement with the contractor, or held by a third party on behalf of the subcontractor, in such a way that these items can be individualized at any time as items held by the subcontractor for the contractor.

**Article 17: Applicable Law**

The subcontract and agreements resulting therefrom shall be governed by Dutch law.