

# GENERAL TERMS AND CONDITIONS

OF

## ANERA EXPORT B.V.

### SECTION 1 (GENERAL)

#### Article 1 Definitions

In these Terms and Conditions, the terms below will be defined as follows, unless explicitly stated otherwise.  
User/Contractor: Anera, the User of these General Terms and Conditions, the contractor, the seller;

Principal: the Contractor's counterparty, the buyer;

Agreement: the agreement between the Contractor and the Principal.

The Work: the total of the activities agreed between the Contractor and the Principal and any goods to be supplied by the Contractor in that context.

#### Article 2 General

- 2.1 These General Terms and Conditions will apply to every offer, quotation and agreement between the Contractor and the Principal, insofar as these Terms and Conditions are not expressly deviated from by the parties in writing.
- 2.2 Any applicability of the Principal's general terms and conditions is hereby expressly excluded, unless the parties have agreed otherwise in writing. If both parties' general terms and conditions apply, the provisions of the Contractor's General Terms and Conditions will prevail in the event of any contrariety between these General Terms and Conditions and the Principal's.
- 2.3 If one or more provisions in these General Terms and Conditions are null and void or nullified, the remaining provisions of these General Terms and Conditions will continue to apply.
- 2.4 If the Contractor concludes Agreements with the Principal more than once, the present General Terms and Conditions will apply to all subsequent Agreements, irrespective of whether they have been explicitly declared applicable.

#### Article 3 Offers, quotations and Agreements

- 3.1 All dated offers, whatever their form, will be without obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which the Contractor is a party will be considered to have been concluded:
  - a) after an Agreement drafted for that purpose has been signed by both parties; or
  - b) following receipt and approval of the written acceptance by the Principal with respect to an offer made by the Contractor; or
  - c) in the absence of the above, as a result of the actual performance of the assignment, for instance in the form of the delivery and/or installation of the goods and equipment or the commencement of the activities.
- 3.3 The invoice will be presumed to contain an accurate and complete representation of the Agreement and the amounts payable by the Principal – also the event of verbal Agreements or Agreements for contract extras – unless a complaint is lodged within 10 days of the invoice date.
- 3.4 If, during the performance of the activities, the Contractor receives a verbal order for contract extras from the Principal or from one of the Principal's employees or representatives present at the work, and the Principal has accepted or at least not objected to such contract extras after their completion, then the contract extras may be presumed to have been performed at the Principal's express request subject to the prices and rates applied by the Contractor.
- 3.5 If the Principal concludes an Agreement on behalf or for the account of another natural person, it will be presumed to declare – by signing the Agreement – that it is authorised to do so. The Principal, in addition to this other natural person, will be jointly and severally liable for all obligations ensuing from that Agreement.
- 3.6 The prices listed in the said offers and quotations will be stated in euros, exclusive of Dutch VAT [BTW] and other government levies or charges, as well as exclusive of any transport, disposal, clearing, dumping and destruction costs, unless expressly stated otherwise.
- 3.7 The prices will be based on the data furnished by the Principal. If these data prove to be incorrect, the Contractor will at all times be entitled to charge the Principal any additional costs. Unless the parties have agreed otherwise in writing, the Principal must ensure that all required government permits and licences have been obtained. If, during the Work, it proves necessary to opt for a different manner of implementation, the Contractor will be entitled to charge the Principal any additional costs, in accordance with its current rates.
- 3.8 If no fixed price has been agreed, the price will be determined on the basis of hours or parts of hours actually worked. The prices of goods will be fixed in accordance with the prices quoted by the Contractor as per the date of the Agreement and, in the absence of such quotation, in accordance with the gross prices that apply on the date of the assignment. The hourly rate will be calculated in accordance with the Contractor's usual hourly rates as apply during the period in which the activities are performed, unless a different hourly rate has been agreed.
- 3.9 If the acceptance deviates from the offer laid down in the quotation, the Contractor will not be bound to same. In that event, the Agreement will not be concluded in accordance with that deviating acceptance, unless the Contractor indicates the otherwise.
- 3.10 The Contractor reserves the right to refuse orders without stating its reasons.
- 3.11 A composite quotation will not oblige the Contractor to fulfil part of the assignment contained in the offer or quotation for a corresponding part of the stated price. Offers or quotations will not apply to follow-up orders.

#### Article 4 Performance of the Agreement

- 4.1 The Contractor shall perform the Agreement to the best of its knowledge and ability and in accordance with the requirements of good workmanship. Such performance will be in compliance with the provisions agreed by the parties.
- 4.2 The Contractor will determine the manner in which the Agreement is performed, to the extent that the parties have not expressly agreed otherwise in writing.
- 4.3 The Contractor will be entitled to have the activities or part of the activities performed by third parties.
- 4.4 The Contractor will accept the assignment subject to the condition that any permits, licences, exemptions and allocations required for the Work that are to be obtained by the Principal have been obtained before the commencement of the Work. Unless otherwise agreed, the Principal will be res-

ponsible for obtaining any permits, licences, exemptions and allocations required for the Work. If, during the Work, it proves necessary to opt for a different manner of implementation, the Contractor will be entitled to charge the Principal any additional costs, in accordance with its current rates.

- 4.5 If the Principal has reserved the right to supply certain materials and/or to perform certain parts of the Work, the Principal will be liable for any late supply or late performance in that respect.
- 4.6 The Principal must ensure that any activities to be performed by third parties not covered by the Agreement with the Contractor are performed in such a way and at such a time as not to cause any delay in the Contractor's Work.
- 4.7 The Principal shall ensure that all data and permits which the Contractor has designated as necessary or which should reasonably be understood by the Principal as being necessary for the Agreement's performance are made available to the Contractor in good time. If the data and permits required for the Agreement's performance are not made available to the Contractor on time, the Contractor will be entitled to suspend performance of the Agreement and/or to charge the Principal the additional costs arising from the delay in accordance with its usual rates.
- 4.8 The Contractor will not be liable for damage, of whatever nature, resulting from the fact that the Contractor has operated on the basis of incorrect and/or incomplete information provided by the Principal, unless the Contractor should have been aware of such incorrectness or incompleteness.
- 4.9 If it has been agreed that the Agreement will be performed in phases, the Contractor may suspend its performance of those parts belonging to a subsequent phase until the Principal has approved the results of the preceding phase in writing.
- 4.10 If the commencement or the progress of the Work is delayed by factors for which the Principal is responsible, the Contractor should be compensated by the Principal for any damage and costs ensuing from the delay.
- 4.11 If, in the context of the assignment, any activities are performed by the Contractor or by third parties engaged by the Contractor on site at the Principal or at a location designated by the Principal, the Principal shall provide any facilities reasonably required by the Contractor's or the third party's employees free of charge, unless the parties have agreed otherwise in writing.
- 4.12 With regard to the progress of the activities to be performed, the Principal should be present at all site meetings that pertain directly or indirectly to the activities to be performed, in order to ensure proper progress monitoring.
- 4.13 The machinery and equipment made available by the Principal must be in compliance with the safety regulations prescribed by law and by the Health and Safety Inspectorate [arbeidsinspectie].
- 4.14 Unless otherwise agreed, the Principal will be responsible vis-à-vis the Contractor, at its own expense, for:
  - the availability and accessibility of the site on or at which the Work is to be performed as well as, where necessary, any surrounding sites;
  - sufficient facilities for supplying, storing and/or removing materials and auxiliary materials from and to the storage space and the Work, including horizontal and vertical transport on the construction site;
  - connection possibilities for electrical machines, lighting, heating, gas, compressed air and water;
  - the availability of lighting, heating, gas and water;
  - lighting of the construction site;
  - drawings showing the location of cables, pipes and wires;
  - the necessary traffic measures;
  - the removal of any obstacles that may affect the performance of the Work;
  - sufficient safety measures during performance of the activities at the Work;
  - order and safety at the Work, on the construction site and in and around the buildings where the activities are to be performed;
  - canteens and sanitary facilities;
  - any permits and licences to be obtained from government authorities; and
  - where relevant, the permission of neighbours and neighbouring businesses for the performance of the activities.
- 4.15 The Principal shall indemnify the Contractor against any claims of third parties that may incur damage in connection with the performance of the Agreement, which damage is attributable to the Principal.
- 4.16 The Contractor should be allowed to perform any assignments granted to it by the Principal on normal working days and under normal circumstances at times to be indicated by the Contractor.

#### Article 5 Delivery & completion

##### *general*

- 5.1 If the Contractor has stated a completion or delivery term, that term will be indicative only. A stated completion or delivery date may therefore never be considered a firm deadline. If a term is exceeded, the Principal should give the Contractor written notice of default and grant it a reasonable period of time to comply as yet.
- 5.2 If the Contractor is to perform the Work, any materials, goods and services will be delivered at the location where the Contractor is to perform the Work, unless the parties have agreed otherwise.
- 5.3 If the Contractor requires certain data from the Principal in the context of the Agreement's performance, the time of completion/delivery cannot be determined until the Principal has made the relevant information available to the Contractor.

##### *delivery of goods*

- 5.4 Unless the Contractor is to perform the Work, delivery will be effected ex seller's address.
- 5.5 The Principal/buyer will be obliged to take delivery of the goods at the time that the Contractor/seller delivers or has others deliver same to it, or at the time at which the goods are made available to it in accordance with the Agreement.
- 5.6 If the Principal/buyer refuses to take delivery of the goods or fails to provide information or instructions necessary for the delivery, the Contractor/seller will be entitled to store the goods at the Principal's expense and risk.
- 5.7 If the goods are delivered, the Contractor/seller will be entitled to charge the Principal the delivery costs, unless the parties have agreed otherwise in writing.

##### *inspections and completion*

- 5.8 If the period within which the Work is to be completed is expressed in days, a day will be presumed

to be a working day, not including days of rest or national holidays. Days on which the Contractor cannot perform any activities due to unworkable weather will not be counted as working days. Inspections of the Work will always be conducted on working days. If the inspection date does not fall on a working day, the next working day will be considered the agreed day of inspection.

- 5.9 The Contractor will invite the Principal – preferably in writing – to inspect the Work with due observance of a reasonable period of time preceding the date on which the Contractor expects the Work to be completed. The inspection will be conducted as soon as possible, though in any case within eight days of the above-mentioned invitation. The Principal will inspect the Work in the Contractor's presence in order to establish whether the Contractor has fulfilled its obligations.
- 5.10 After the Work has been inspected, the Principal shall notify the Contractor in writing, either by signing the inspection record immediately following the inspection or within five days of the inspection, whether or not the Work has been approved, in the former event noting any minor defects as described in the paragraphs below, in the latter event noting the defects in view of which the Principal has withheld its approval. If the Work is approved, the date on which the relevant notification was sent to the Principal will be considered the date of approval.
- 5.11 If no written notification stating whether or not the Work has been approved is sent to the Contractor within five days of the inspection, the Work will be presumed to have been approved on the fifth day following the inspection.
- 5.12 If the inspection is not conducted within five days of the date proposed by the Contractor, the Contractor may send the Principal a new written request to have the Work inspected within five days. If the Principal does not comply with this request, the Work will be presumed to have been approved on the fifth day following the original date proposed by the Contractor. If the Principal does comply with this request, the preceding two paragraphs will apply mutatis mutandis.
- 5.13 The Work will be presumed to have been approved if and insofar as it has been taken into use. The date on which all or part of the Work is taken into use will be considered as the date of approval of the Work or the relevant part of the Work.
- 5.14 The Work will also be presumed to have been approved if the User sends the Principal an invoice for the last instalment and the Principal does not indicate within 14 days of the invoice's dispatch that it has not approved the Work.
- 5.15 Small defects that can be properly repaired during the defects liability period cannot constitute grounds for withholding approval, provided that they do not prevent the Work from being taken into use.
- 5.16 In the event of a second inspection after approval has been withheld, the provisions above will apply mutatis mutandis.
- 5.17 The Work will be presumed to have been completed if it has been approved or is presumed to have been approved based on the preceding paragraphs. The date on which the Work is approved or is presumed to have been approved will be considered the date on which the Work is completed.
- 5.18 The Contractor will be obliged to repair any minor defects that do not give cause for withholding approval as soon as possible. The defects liability period will last thirty days and will immediately commence on the date on which the Work should be presumed to have been completed based on the preceding paragraph.
- 5.19 The Contractor will be entitled to complete the Work in parts, unless this provision is deviated from by Agreement or unless such partial completion has no independent value.

#### **Article 6 Changes in the performance / amendments to the Agreement**

- 6.1 If, during the performance of the Agreement, it proves necessary for the proper performance of the Agreement to change and/or supplement the activities to be performed, the Contractor will charge the Principal for these additional activities in accordance with its usual rates.
- 6.2 If the parties amend and/or supplement the Agreement, the term stipulated for the completion of its implementation may be influenced as a result. The Contractor will inform the Principal of any such change in the completion time as soon as possible.
- 6.3 The Contractor may charge any price increases on to the Principal after two months following the quotation date if any price changes have occurred between the time of the offer or quotation and the Agreement's performance as a result of, for instance, increases in social security charges, dumping charges, turnover tax, administrative charges, exchange rates, wages, raw materials, semi-manufactured goods or packaging materials.
- 6.4 If, for purposes of an amendment to the Agreement, the Contractor has to prepare new drawings, calculations, models, etc., the Contractor will charge the Principal any additional costs in that connection.
- 6.5 If a fixed price has been agreed, the Contractor will indicate the extent to which the amendment or supplement to the Agreement will result in such fixed price being exceeded. Any exceeding of the price agreed upon will be treated as contract extras.

#### **Article 7 Contract extras and cancelled work, estimated items**

- 7.1 Contract extras and cancelled work will be set off:
  - a. in the event of amendments to the Agreement or the terms governing its performance;
  - b. in the event of deviations from the estimated items; and
  - c. in the event of deviations in the offsettable quantities.
- 7.2 If, in the final settlement in respect of the Work, the total amount in cancelled work exceeds the total amount of the contract extras, the Contractor will be entitled to an amount equal to 10% of the difference of those total amounts. The Contractor will at all times be entitled to claim, instead of this fixed amount, the damage incurred by it as a result of the fact that only part of the agreed assignment was performed.
- 7.3 Estimated items are amounts laid down in the Agreement that are included in the contract price and are intended for either:
  - a. the purchase of materials, or
  - b. the purchase of materials and their processing, or
  - c. the performance of activities that have been insufficiently specified upon the Agreement's conclusion, the details of which are yet to be specified by the Principal.The Agreement should state to what each estimated item relates.
- 7.4 If an estimated item pertains only to the purchase of building materials, the costs of processing same will be included in the contract price and such costs may not be set off separately. The processing costs may, however, be set off against the estimated item insofar as, as a result of the manner in which the estimated item was carried out, these costs come out at a higher amount than the Principal could reasonably have taken into account.
- 7.5 If an estimated item pertains to the purchase and processing of building materials, the processing costs will not be included in the contract price and will be set off separately against the relevant

estimated item.

- 7.6 If an Agreement includes offsettable quantities and these quantities prove to be too high or too low, any increase or decrease in the costs resulting from this deviation will be set off.

#### **Article 8 Complaints**

##### *general*

- 8.1 The Contractor/seller should be enabled to verify any complaints submitted and it should be offered the opportunity to repair any faults in the performance or the supply. The Principal/buyer will, however, remain obliged to pay for the Work performed and the goods purchased.
- 8.2 Complaints pertaining to invoices must also be submitted in writing, within 30 days of the invoice date.
- 8.3 Following the expiry of the terms specified in this Article, the Principal will be presumed to have approved the performance or the invoice, as appropriate.
- 8.4 In the event of any unfounded complaints, the Contractor will be free to charge the Principal the costs of investigating the relevant complaint.

##### *complaints in respect of goods supplied*

- 8.5 The buyer will be obliged to inspect the delivered goods, or have others do so, at the time of delivery or transfer. In doing so, the buyer must inspect, inter alia, whether the quality and quantity of the goods supplied are in accordance with the agreements made. Any defects and deviations must be stated on the packing list/invoice and reported to the seller in writing within 48 hours, in default of which the goods delivered will be presumed to be sound.
- 8.6 Any defects that could not have been discovered upon the delivery or transfer should be reported to the seller in writing within eight days of delivery, or in any case within 24 hours of their discovery.
- 8.7 If a timely complaint is submitted and if the Contractor finds such complaint to be well-founded, the Contractor shall, at its discretion, supply new goods or repair the defects, or will take the goods back in return for a credit entry of the purchase price in favour of the Principal.

##### *complaints in respect of Works*

- 8.8 Invisible shortfalls or defects that could not have been discovered during the inspection of the goods should be reported in writing within one month of the completion of the activities, though in any case within one month of such completion, in writing.
- 8.9 If it is no longer possible or has become pointless to perform the agreed activities as yet, the Contractor's liability will be limited in accordance with the provisions laid down below under the heading 'Liability'.
- 8.10 Following the expiry of the terms referred to above, the Principal will be presumed to have approved the performance or the invoice, as appropriate.

#### **Article 9 Cancellation**

- 9.1 Cancellation must be effected by registered letter.
- 9.2 Cancellation can only be effected before the Contractor has commenced its performance of the Agreement. The term 'performance' includes the conclusion of agreements with third parties for the purchase of goods and the hiring and outsourcing of persons and services.
- 9.3 If the Principal cancels the Agreement, the Principal will be obliged, in accordance with the arrangement laid down below, to pay the Contractor a fixed percentage of the agreed price in cancellation on costs, without prejudice to the Contractor's right to full damages, including loss of profit.  
In the event of cancellation up to six (6) weeks in advance of the Agreement's performance: 10%;  
In the event of cancellation up to four (4) weeks in advance of the Agreement's performance: 20%;  
In the event of cancellation up to two (2) weeks in advance of the Agreement's performance: 30%;  
In the event of cancellation less than two (2) weeks in advance of the Agreement's performance: 40%.
- 9.4 If an hourly rate or a half-day rate has been agreed, the Contractor will determine, in all reasonableness, how the agreed price should be fixed for purposes of this cancellation arrangement. The Contractor should estimate for that purpose how many hours or half-days would have been charged to the Principal if the Agreement had not been cancelled.
- 9.5 If, upon the Agreement's cancellation, the Principal refuses to purchase goods, such as materials, already acquired by the Contractor, irrespective of whether they have been treated or processed, the Principal will be obliged to pay the Contractor all resulting costs.

#### **Article 10 Suspension and dissolution**

- 10.1 The Contractor will be entitled to suspend the performance of its obligations or to dissolve the Agreement inter alia if:
  - the Principal fails to perform the obligations ensuing from the Agreement or fails to perform them in good time or in full;
  - circumstances of which the Contractor has learned following the Agreement's conclusion give it good reason to fear that the Principal will not perform its obligations, or will not perform them on time or in full;
  - the Contractor has good reason to fear that the Principal will perform only part of its obligations, or will not perform its obligations on time, fully or properly.The performance may be suspended only insofar as this is justified by the relevant failure or if the Principal was requested to provide security for the performance of its obligations arising from same Agreement and such security was not provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.
- 10.2 In addition, the Contractor may dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is impossible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.
- 10.3 If the Agreement is dissolved, the Contractor's claims vis-à-vis the Principal will become immediately due and payable. If the Contractor suspends its performance of its obligations, it will retain its claims and rights by law and under the Agreement.
- 10.4 The Contractor will at all times retain the right to claim damages.

#### **Article 11 Force majeure**

- 11.1 Neither party will be obliged to fulfil any obligation if it is prevented from doing so due to a circumstance which cannot be attributed to gross negligence or an intentional act or omission on its part, and which is also not for its account pursuant to the law, a juristic act or generally prevailing opinion.
- 11.2 For purposes of these General Terms and Conditions, the term 'force majeure' will cover – in addi-

- on to its definition in law and legal precedent – all external causes, foreseen or otherwise, which the Contractor is unable to influence, but as a result of which the Contractor is unable to fulfil its obligations. This will include strikes in the Contractor's business, illness among its staff, staffing shortages, traffic congestion, accidents, power and computer failures, fire, theft, government measures, poor weather circumstances, any lack of raw materials and late supplies by the Contractor's suppliers.
- 11.3 The Contractor will also have the right to invoke force majeure if the circumstance preventing the performance or further performance occurs after the Contractor should have fulfilled its obligations.
- 11.4 The parties may suspend the obligations ensuing from the Agreement while the situation of force majeure lasts. If this period lasts longer than two months, either party will be entitled to dissolve the Agreement without being obliged to pay the other party damages.
- 11.5 Insofar as the Contractor has performed part of its obligations under the Agreement or is able to perform part of same at the time that the situation of force majeure arises, and that part performed or to be performed has independent value, the Contractor will be entitled to invoice the part performed or to be performed separately. The Principal will be obliged to settle this invoice as if it pertained to a separate Agreement.

#### **Article 12 Retention of title**

- 12.1 All materials and other goods supplied by the Contractor, be they processed or unprocessed, will remain the Contractor's property until the Principal has fulfilled all its obligations under the Agreements concluded with the Contractor.
- 12.2 The Principal undertakes to insure and keep insured the goods supplied subject to the retention of title against fire, explosion and water damage and against theft, and to allow the Contractor to inspect the relevant insurance policy at first request.  
Any damages paid by the insurer will replace the aforementioned goods and will accrue to the Contractor.
- 12.3 The Principal may not sell, pledge or encumber in any other way any goods covered by the retention of title.
- 12.4 If third parties levy attachment on the goods supplied subject to the retention of title or wish to create or enforce rights to same, the Principal will be obliged to inform the Contractor thereof as soon as possible.
- 12.5 Should the Contractor wish to exercise its proprietary rights laid down in this Article, the Principal hereby grants the Contractor or any third parties designated by the Contractor its unconditional and irrevocable permission to enter those places where the Contractor's property is located and to recover those goods.

#### **Article 13 Warranty**

- 13.1 The goods will be covered by a warranty only to the extent that such a warranty has been explicitly agreed.
- 13.2 If the goods and materials to be supplied are not in accordance with the warranty issued, the Contractor will, at its discretion, replace or repair the goods within a reasonable term following its receipt of the written notification regarding the relevant defect. The Principal should at all times offer the Contractor the opportunity to remedy any problems that may arise and grant it a reasonable period of time for doing so.
- 13.3 A warranty issued in respect of the Work may be invoked only if the Principal provides for the periodical inspection and maintenance of the Work by an expert.
- 13.4 The said warranty will apply only to defects in materials and manufacturing faults and will not apply if the relevant defects or faults have resulted from inexpert, incorrect or improper use or improper maintenance or if, without the Contractor's written permission, the Principal or third parties have modified or tried to modify the good or have used it for a purpose for which it is not intended.
- 13.5 If the Contractor has issued a warranty in respect of a good that has been produced by a third party, that warranty will be limited to the warranty issued by that third party and the Contractor will be obliged only to invoke the warranty issued by the producer and take any steps required to ensure that the claim is granted.
- 13.6 Warranties will be issued only in respect of materials, and not in respect of wages or hours or any additional costs, which will be payable by the Principal.
- 13.7 As long as the Principal fails to perform its obligations ensuing from the Agreements concluded between the parties, it cannot invoke this warranty provision.

#### **Article 14 Models/samples**

- 14.1 If the Principal has been provided with a model, sample or illustration, that model, sample or illustration should be presumed to have been provided as an indication only, without the good having to correspond to same, unless it has been expressly agreed that the good will be identical.
- 14.2 Any figures, sizes, weights and descriptions stated in catalogues/offers/advertisements/price lists should be presumed to be indicative only.
- 14.3 If the Agreement provides for the surface area or other measurements and specifications, these should also be presumed to be indicative only, unless they are necessary for the activities to be performed. Surface areas will be fixed in units rounded off (up) to zero decimal places. Openings will be included in the calculation of the surface areas and will not be set off.

#### **Article 15 Liability**

- 15.1 The Contractor will not be liable for any damage ensuing from the performance of the Agreement.
- 15.2 If the Contractor is nevertheless liable for any damage, that liability will be limited to that part of the invoice amount corresponding with the part of the performance of the Agreement to which the liability pertains, or in any case to the invoice amount, or otherwise to the total amount due for the assignment, or to the amount paid out by the Contractor's insurer.
- 15.3 The Contractor will under no circumstances be liable for any indirect damage, including consequential damage, loss of profit, loss of savings or any damage due to interruptions in business operations.
- 15.4 Under no circumstances will the Contractor be liable for any damage ensuing from the presence of hazardous substances or materials in or on the goods supplied if it was unaware of same at the time of delivery.
- 15.5 The Contractor will not be liable for damage, of whatever nature, resulting from the fact that the Contractor has operated on the basis of incorrect and/or incomplete information provided by the Principal – particularly regarding the presence of any contaminated or hazardous substances or materials – unless the Contractor should have been aware of such incorrectness or incompleteness.
- 15.6 The Principal shall indemnify the Contractor against any claims of third parties that may incur damage in connection with the performance of the Agreement, which damage is attributable to the

Principal.

- 15.7 The Principal will bear responsibility for engineering designs and working methods prescribed by it or on its behalf, including the effect of such working methods on the soil conditions, as well as for any orders and instructions issued by or on behalf of the Principal.
- 15.8 Under no circumstances will the Contractor be liable for any soil contamination that has resulted directly or indirectly from the performance of the assigned activities with the agreed resources.
- 15.9 If any building materials or auxiliary materials made available or prescribed by the Principal are defective, the Principal will be liable for any ensuing damage.
- 15.10 The consequences of compliance with any statutory regulations or government decisions that may take effect after the date of the quotation will be for the Principal's account, unless it should reasonably be assumed that the Contractor could have foreseen such consequences on the date of the quotation.
- 15.11 Under no circumstances will the Contractor be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to the Contractor and on the basis of mutual consultations, in which respect the Contractor will always use the Principal's intention as a guideline and starting point.
- 15.12 The limitations of liability in respect of direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of the Contractor or its employees.
- 15.13 The Principal should enable the Contractor to take every measure that may prevent, limit, remedy or remove damage, in default of which the Principal will be liable for any damage that may arise as a result.

#### **Article 16 Contamination**

- 16.1 If, following the Agreement's conclusion, the site proves to be contaminated or the building materials released by the Work prove to be contaminated, the Principal will be liable for any consequences for the performance of the Work.
- 16.2 If the Contractor has doubts about the nature of the waste/materials to be removed or disposed of, the Principal will be obliged to conduct a survey at the Contractor's first request. If the Principal refuses to do so, the Contractor will be entitled to conduct such a survey at the Principal's expense. The Contractor may suspend its performance of the agreed activities, at the Principal's expense, until the results of the survey are known.
- 16.3 If, without the Contractor's permission, the Contractor receives waste of a different nature than provided for in the Agreement from the Principal, the Principal will be liable for any ensuing costs and damage incurred by the Contractor.
- 16.4 If the Contractor is instructed to process, treat and/or to dispose of materials and equipment which, according to government standards at the time of the performance of the relevant activities, should be presumed to be contaminated or hazardous, the Principal will remain, if necessary with retroactive effect, the owner of the contaminated or hazardous materials and equipment, unless the parties have expressly agreed otherwise, irrespective of whether the parties were aware, at any point in time, of such contamination or hazard. In such events, the Contractor will be presumed never to have been the owner of the relevant materials or equipment.
- 16.5 Any additional costs arising from the fact that the materials and equipment to be processed, treated and/or disposed of are presumed to be contaminated or hazardous that, for whatever reason, could not have been foreseen by the Contractor at the time that it issued the quotation will be borne by the Principal.

#### **Article 17 Neighbouring buildings, sites**

- 17.1 The Principal will be obliged, before the Contractor commences its performance of the agreed activities, to gain information on and, if necessary, survey the state and condition of any neighbouring buildings and sites and the possible effect of the activities to be performed by the Contractor on those buildings and sites.
- 17.2 The Principal shall inform the Contractor of its findings in this respect for the performance of the activities is commenced and will conduct consultations with it regarding any measures to be taken and/or provisions to be made. Any measures to be taken and/or provisions to be made by the Contractor will be considered contract extras.
- 17.3 The Principal will be obliged to take any necessary measures and/or make any necessary provisions to prevent and/or limit any damage to third parties' property, at its own account and risk.

#### **Article 18 Passing of risk**

The risk relating to the loss of or damage to the materials, raw materials and other goods supplied will pass to the Principal at the time that the relevant goods are legally and/or actually delivered to the Principal and have thus come under the Principal's control or under that of a third party designated by the Principal.

#### **Article 19 Intellectual property and copyrights**

- 19.1 Without prejudice to the provisions of these General Terms and Conditions, the Contractor reserves the rights and powers vested in it pursuant to the Dutch Copyright Act [Auteurswet] and intellectual property law.
- 19.2 Any ideas, designs, sketches, recommendations, calculations, drawings, samples and models, etc., made by the Contractor in the context of the Agreement, as well as any parts thereof, will remain the Contractor's property, irrespective of whether they have been made available to the Principal or to third parties, unless the parties have agreed otherwise. Such items may not be reproduced, made public or be brought to the notice of third parties without the Contractor's prior permission, unless the contrary ensues from the nature of the documents provided.
- 19.3 The Contractor will retain the right to use any knowledge acquired during the performance of the activities for other purposes, to the extent that this does not involve making confidential information available to third parties.

#### **Article 20 Payment**

- 20.1 Unless the parties have agreed otherwise for purposes of the performance of Works, the first instalment of 40% of the contract price will become due and payable upon the assignment being given and the remaining 60% instalment will become due and payable no later than 30 days following the completion of the Work.
- 20.2 Payment must be effected within 60 days of the invoice date or a term to be further agreed, in the manner indicated by the Contractor and in euros. Objections to the amounts stated in invoices will not suspend the relevant payment obligation.

- 20.3 The Principal will not be free to set off any claims it may have against the Contractor against its payment obligations vis-à-vis Contractor.
- 20.4 The Contractor will be entitled to charge the Principal advance payments or instalments. The Contractor will commence its performance following its receipt of such advance payment/instalment.
- 20.5 If the Principal fails to effect payment within the agreed period of time, the Principal will be in default by operation of law. In that event, the Principal will owe interest at a 1.5% rate per month or part of a month, unless the statutory interest or the statutory commercial interest is higher, in which case the highest interest will apply. The interest on the payable amount will be calculated from the time that the Principal defaults to the time of full payment of the outstanding amount.
- 20.6 If the Principal is liquidated, is declared bankrupt or its bankruptcy is filed for, applies for or is admitted to statutory composition pursuant to the Dutch Natural Persons Composition Act [Wet schuldsanering natuurlijke personen], attachment is levied against it or is granted a suspension of payments, provisionally or otherwise, the Contractor's claims vis-à-vis the Principal will become immediately due and payable.
- 20.7 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

#### **Article 21 Collection costs**

- 21.1 If the Principal is in default or breach of contract regarding the performance or timely performance of its obligations, all reasonable costs incurred in obtaining payment extra-judicially will be borne by the Principal. The Principal will in any case owe the Contractor collection costs in the event of a financial claim. The collection costs will be calculated in accordance with the collection rate recommended by the Netherlands Bar Association [Nederlandse Orde van Advocaten] in collection cases, subject to a EUR 350 minimum.
- 21.2 If the Contractor has incurred higher costs which were reasonably necessary, such costs will also qualify for compensation. Any court costs and enforcement costs reasonably incurred will also be borne by the Principal.

#### **Article 22 Disputes**

Any disputes arising from or related to the Agreement to which these conditions apply will be settled by the competent Dutch court in the city or town where the Contractor has its registered office. Nevertheless, the Contractor will be entitled to submit such disputes to the competent court according to the law or to the Arbitration Board for the Building Industry [Raad van Arbitrage voor de Bouw].

#### **Article 23 Applicable law**

All offers and Agreements will be governed exclusively by Dutch law.

#### **Article 24 Filing of these General Terms and Conditions**

These Terms and Conditions have been filed at the offices of the Chamber of Commerce in Breda under number 20098239.

### **SECTION 2 (ANERA as subcontractor)**

#### **Article 25**

##### **Provisions pertaining to assignments where the Contractor is engaged as a subcontractor**

- 25.1 The provisions laid down in this Article will apply only in cases where ANERA acts as a subcontractor. These provisions will not apply in cases where ANERA enters into Agreements with subcontractors (see Section 3 in that respect).
- 25.2 Unless the parties have agreed otherwise, the Principal will be obliged to take out Construction All Risk (CAR) insurance and other insurance required for the Agreement's implementation and any liability that may ensue from same.
- 25.3 The subcontractor will only be bound to any provisions of the agreement between the Principal and its principal if this is expressly stated in the agreement.
- 25.4 Unless the parties have expressly agreed otherwise in writing, the delivery between the subcontractor and its direct Principal will be considered the delivery of the Work.
- 25.5 If this has been agreed in writing, the subcontractor will, if so requested, provide the Principal with a list of all employees selected or to be selected by the subcontractor in connection with the performance of the Work assigned by the Principal. This list may include information like payroll data with tax and social insurance [SOFI] numbers, copies of identity cards and employees' work permits.
- 25.6 If this has been agreed in writing, the subcontractor will, if so requested, provide the Principal with a statement evidencing:
- the name and address of the industrial insurance board with which the subcontractor is registered;
  - valid proof of registration with the industrial insurance board;
  - the subcontractor's payroll tax number.
- 25.7 If this has been agreed in writing, the subcontractor will provide the Principal, if so requested, with a statement of payments to the industrial insurance board and a statement of wage tax payments, within the meaning of the guidelines set out in the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act [Wet ketenaansprakelijkheid].
- 25.8 If the subcontractor does not provide the information referred to in the preceding paragraphs or does not provide such on time, this will not give the Principal cause to deduct any contributions and wage tax payable in connection with the Work from the contract price or purchase price due to the subcontractor and to pay the relevant industrial insurance board or the said collecting agency such amounts in the subcontractor's stead.

### **SECTION 3 (ANERA as the subcontractor's principal)**

#### **Article 26 Provisions pertaining to assignments granted by the Contractor to third parties**

- 26.1 For purposes of this Article, the terms below will be defined as follows:
- 26.2 User: ANERA, the principal, the user of these provisions, the user of the third party's services;
- Subcontractor: the Supplier, the User's counterparty;
- Agreement: the agreement between the User and the Subcontractor.
- The provisions laid down in this Article will not apply if the User is acting as the contractor (see Section 2 in that respect).
- 26.2 At first request, the Subcontractor must provide the User with a written list of all employees selected or to be selected by the Subcontractor in connection with the performance of the Work assigned by the User.
- 26.3 At first request, the Subcontractor will make the employees' wage lists, including their tax and social insurance [SOFI] numbers, copies of identity cards and employees' work permits available for inspection by the User, and provide the User with written information about where, when and at what times the employees will be at work.
- 26.4 The Subcontractor guarantees vis-à-vis the User that it will fulfil its statutory obligations in respect of the employees referred to above in a timely manner.
- 26.5 At the User's first request, the Subcontractor will be obliged to furnish the following data in writing:
- the name and address of the industrial insurance board with which the Subcontractor is registered;
  - valid proof of registration with the industrial insurance board; and
  - the Subcontractor's payroll tax number.
- 26.6 The Subcontractor will be obliged to provide the Principal, at first request, with a statement of payments to the industrial insurance board and a statement of wage tax payments, within the meaning of the guidelines set out in the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act [Wet ketenaansprakelijkheid]. If the Subcontractor is an owner/no employee business [ZZP-er], it will be obliged to submit a valid Declaration of Employment Relationship [Verklaring Arbeidsrelatie] issued by the Tax and Customs Administration which is still applicable under the current tax standards.
- 26.7 The Subcontractor should keep proper records of the payments made to the industrial insurance board and the collector of direct taxes relating to the employees referred to above.
- 26.8 The User will be entitled at all times to deduct the contributions and wage tax payable relating to the work from the contract price or purchase price to be paid to the Subcontractor by the User and to pay such to the relevant industrial insurance board or the collector referred to above on the Subcontractor's behalf.
- 26.9 Without prejudice to the provisions of the preceding paragraph, the Subcontractor will be obliged, at the User's first request, to open an escrow account [G-rekening] as referred to in the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act for purposes of the work assigned. The User will then be entitled to transfer the part of the contract or purchase price payable by it to the Subcontractor – comprising the amounts due in social security contributions and wage tax for the employees referred to in paragraph 1 – to that escrow account. This transfer will serve as discharge for the User in respect of the relevant part of the contract or purchase price.
- 26.10 If and insofar as the Subcontractor has not informed the User in writing that the escrow account has been opened, the User will be entitled to deduct the amount in question from the contract or purchase price.
- 26.11 The Subcontractor may not have any part of the Agreement performed by third parties, unless it has obtained the User's written approval.
- 26.12 If, after obtaining the User's approval, the Subcontractor instructs a third party to perform any part of the Agreement, it should do so based on an agreement which includes paragraphs 1 up to and including 11 of this Article mutatis mutandis.
- 26.13 If the agreed completion or delivery term is exceeded, the User will be entitled, without any notice of default or judicial intervention being required, to dissolve the subcontract, without prejudice to its right to full damages.
- 26.14 If the agreed completion or delivery term cannot be met, the Subcontractor will be obliged to notify the User of this fact at least two weeks before the expiry of the said term. In doing so, the Subcontractor will also be obliged to inform the User of what measures it has taken in order to complete, deliver or perform, as appropriate, the assignment in the shortest possible term.
- 26.15 The agreed dates will be firm deadlines.
- 26.16 In the event of the Subcontractor's non-performance of any of the obligations mentioned above, the Subcontractor will forfeit to the User an immediately due and payable penalty equal to 10% of the contract or purchase price that applies between the User and the Subcontractor, plus the costs of having the work completed by third parties, without prejudice to the User's additional right to dissolve the Agreement and claim damages.