



**SUB-CONTRACTOR
TERMS & CONDITIONS**

NETHERLANDS



A. TERMS AND CONDITIONS OF SUBCONTRACT

1. Existence And Scope Of Contract

1.1 These Terms and Conditions together with the Purchase Order Contracts set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions are implied by statute.

1.2 Unless otherwise expressly agreed, commencement of the Subcontract Works shall signify acceptance of these Terms and Conditions. For the avoidance of doubt Centum do not intend to enter into contract on any terms and conditions other than those set out herein. It is an express term and agreement between the parties that if work commences without signing of any terms that this contract/purchase order and terms therein apply to the said works contract.

1.3 The Subcontract Works are executed as part or all of work to be carried out by Centum for its Customer under the Principal Contract.

1.4 In the event of conflict between the terms and conditions of the Principal Contract and these Terms and Conditions the latter shall take precedence.

2. Definitions

2.1 The following terms shall have the following meanings:

- (i) "Centum" means Centum Engineering Services BV, Teelmanstraat 1, 1431GL, Aalsmeer.
- (ii) The "Subcontract Works" means all materials to be supplied and work to be done by the Subcontractor including incorporation of Free Issue Equipment, as specified in the Purchase Order.
- (iii) The "Subcontract Price" means the total price payable exclusive of Value Added Tax in the amount stated in the Purchase Order.
- (iv) "Variation" means any change or addition to or

omission from the Subcontract Works, or any change in the manner order or time in which the Subcontract Works are required by Centum to be carried out, such variation will only be paid for if pre agreed in scope and price by Centum, in writing - See Section 4 below.

(iv) The "Site" means the location notified by Centum to the Subcontractor as the place where the Subcontract Works are to be carried out.

(v) "Defect" and "Defective" means materials supplied or work carried out not in accordance with the Subcontract.

(vi) "CDM Regulations" means the Construction (Design and Management) Regulations 1994.

(vii) "Principal Contract" means the contract between Centum and its Customer.

(viii) "Subcontract" means Centum's Purchase Order and the Subcontractor's acceptance thereof, these Terms and Conditions, and any documents referred to therein including the provisions of the Principal Contract.

(ix) "Customer" means the customer/employer of Centum under the main contract.

(x) "Completion Date" means the date (if any) specified in the Purchase Order as the date on which the Subcontract Works shall be Complete.

(xi) "Free Issue Equipment" means Equipment or goods or materials supplied by Centum to the Subcontractor without charge for incorporation in the Subcontract Works.

(xiii) "Substantially Complete" means finished except for de minimis items which are capable of being finished without material effect on the Customer's use of the Site, such being at the sole discretion, approval and certification of Centum.

(xiv) "Client" means the name registered as the Client with the Health and Safety Executive under the CDM Regulations.

3. Subcontractor's Obligations

3.1 The Subcontractor shall carry out and complete the Subcontract Works in accordance with the Subcontract and to the reasonable satisfaction of Centum and its Customer and any other person whose satisfaction is expressly required under the Principal Contract.

3.2 The Subcontractor shall not assign whole or part of the benefit of this subcontract nor sublet the whole or part of the Subcontract Works without first obtaining Centum's written consent.

3.3 If a Completion Date is stated in the Purchase Order the Subcontract Works shall be completed by that date or such extended date as shall be fixed under Clause 6.3. If no such date is stated the Subcontractor shall carry out and complete the Subcontract Works in a reasonable time from the date on which it is requested to commence by Centum.

3.4 The Subcontractor shall fully comply with its Industry's Working Rule Agreement current in force and shall supply such evidence in verification of its compliance as may reasonably be required by Centum from time to time upon request.

3.5 The Contractor shall comply with all applicable laws, rules, regulations and bylaws and with all orders, decrees, policies and directives issued by applicable governmental authorities. Nothing in this agreement shall be construed as requiring either party to perform its obligations hereunder, where such performance shall constitute an infringement, contravention, breach or interference with any third party.

3.6 The Contractor is obliged to unconditionally cooperate with the monitoring of compliance with its legal obligations and other obligations arising from this Contract.

3.7 The Subcontractor is solely responsible for the payment of all social security contributions and tax obligations (to include but not limited to income tax and corporation tax), including VAT, with respect to the fees paid under this Contract.

4. Instructions And Variations

4.1 Centum may issue written instructions which the Subcontractor shall carry out.

4.2 The Subcontractor shall not make any Variation

except Variations ordered by or approved in writing by Centum and the Subcontractor shall not accept instructions relating to this subcontract from anyone except Centum or any person expressly authorised by Centum or any person having statutory powers to give the relevant instruction.

4.3 Centum may instruct the Subcontractor to carry out a Variation. No Variation shall vary the Subcontract.

4.4 Centum will require the value of any Variation to be agreed before its execution by the Subcontractor.

4.5 If the value of any Variation is not agreed as provided in Clause 4.4 Centum may require such Variation to be executed, and on completion of the Variation it shall be valued using rates and prices set out in this Subcontract (if any) or in the absence of such rates and prices on a fair and reasonable basis in all the circumstances which shall take into account any rates or prices for similar work contained in the Subcontract.

5. Completion And Defects

5.1 The Subcontractor shall notify Centum in writing When, in his opinion, the subcontract works are Substantially Complete giving dates when such works will be complete. Within 21 days of such notification Centum shall either dissent in writing giving reasons for such dissent or shall accept that the Subcontract Works are substantially complete. It is agreed that the period required to fully complete the Subcontract Works shall be taken into account in determining whether the Subcontracts Works are Substantially Complete.

5.2 The Subcontractor shall, until the end of the Defects Liability Period, stated in the Purchase Order (If it is not stated in the purchase order that period will be for 12 calendar months from date of completion) be responsible for making good at its own cost any Defect in or damage to the Subcontract Works to the extent that Centum is responsible to make good under the Contract. Unless that if such damage was caused

by the act of neglect or default of Centum or others (except the Subcontractor) for whom it is responsible Centum shall pay the reasonable costs of making good such damage.

6. Time

6.1 On the date or dates for commencement stated in the Order, the Subcontractor shall commence the Subcontract Works on site and regularly and diligently proceed with and complete the Works within the period or periods (if any), specified in the Order. Centum may issue, from time to time, to amend the phasing, sequencing or co-ordination of the Subcontract Works to facilitate the overall progress of the Principal Contract works. It is the responsibility of the Sub contractor to ensure that it is aware of the requirements of the construction programme on a daily basis. If it becomes reasonably apparent that the Subcontractor is failing to maintain progress in accordance with the requirements of the construction programme, Centum may employ other persons to carry out that part of the Subcontract Works so affected without being in breach of the Subcontract. The costs of labour, plant and materials incurred by Centum including a reasonable allowance for overheads and profit in carrying out that part of the Subcontract Works shall be deducted from any monies due to the Subcontractor or at the absolute discretion of Centum, instruct acceleration at no extra cost to Centum or the Employer.

6.2 The Subcontractor shall have allowed for the required number of visits to site to properly complete the Subcontract Works in accordance with the construction programme including any amendments thereto. If the Subcontractor considers it necessary to leave site at any time and make additional visits to complete the Subcontract Works, then it is its responsibility to ensure that any such arrangements are confirmed in writing to Centum before withdrawing operatives and/or leaving site.

6.3 If the Subcontractor fails to complete the Works or any section thereof within the period or periods specified or any extended period or periods which

may be granted by Centum, the Subcontractor shall pay or allow to Centum a sum equivalent to any loss and/or expense suffered or incurred by Centum and caused by the failure of the Subcontractor as aforesaid. Centum shall at the earliest opportunity give reasonable notice to the Subcontractor that loss or damage or expense is being or has been suffered or incurred.

6.4 The loss, damage or expense referred to in Clause 6.3 shall be recoverable by Centum from the Subcontractor by way of deduction from any monies due to the Subcontractor under this Subcontract or any other contract between Centum and Subcontractor. Centum shall also be entitled to apply monies due to the Subcontractor under this Subcontract towards payment of any sum owing by the Subcontractor to Centum in relation to any matter whatsoever.

7. Price And Payment

7.1 In consideration of performance of the Subcontract Works in accordance with the Subcontract, Centum shall pay the Subcontract price to the Subcontractor at the times and in the manner set out in the Subcontract, purchase order or terms agreed.

7.2 Subject to the provisions of the Subcontract, the cost of executing the Subcontract Works shall be at the risk of the Subcontractor, which shall be deemed to have obtained all information and taken into account of all circumstances which may affect such cost. Save as expressly provided elsewhere all such costs shall be deemed to be included in the Subcontract price which shall not be adjusted in any way other than in accordance with these terms and conditions.

7.3 The Subcontract price excludes Value Added Tax.

7.4 Unless otherwise stated in the Purchase Order the Subcontract Price is fixed for the duration of the Subcontract Works.

7.5 Payment to the Subcontractor shall be made in

the following manner

(a) The Subcontractor may submit application for payment together with details of amounts claimed for work properly executed under the Subcontract and for any unfixed goods or materials properly supplied and stored on the site accompanied by such documents as Centum may require and for any other amounts due under the Subcontract. Applications for payment may be submitted at intervals of one month starting either one month after the Subcontractor commences work on site or on completion of the Subcontract Works whichever is the sooner

(b) Payment shall become due 14 days after the end of the calendar month during which Centum receives the Subcontractor's application and payment shall be made within 14 days of becoming due. Please refer to application, certification and payment dates document for more clarity, this can be requested via our accounts department.

(c) Within 5 days after a payment becomes due Centum shall notify the Subcontractor in writing giving details of the amount to be paid and the basis on which such amount is calculated.

(d) If in respect of any application for payment Centum intends to withhold payment (or part thereof) of a sum previously notified as due under (c) above Centum shall give written notice of such intention not later than 3 days before the latest date for payment under (b) above giving details of each amount to be withheld and the grounds for withholding each amount.

(e) Payment of retention monies (if any) shall fall due and, subject to the Subcontractor first submitting an application for payment thereof, the final dates for payment shall be:

(i) the first half of the retention shall be due on the date when the Subcontract Works are agreed to be Substantially Complete and its final date for payment shall be 30 days thereafter.

(ii) the second half of the retention shall be due on the date when all Defects notified to the Subcontractor within the defects liability period specified in the Purchase Order or 12 calendar months from completion have been properly made good and its final date for payment shall be 30 days thereafter

or such time or duration as agreed by Centum.

7.6 Value Added Tax where properly chargeable shall be added to any payments made under the Subcontract.

7.7 Notwithstanding the provisions of Clause 7.5 payment shall not be made until Centum receives payment under the Principal Contract in respect of work or materials or other amounts incorporated in the Subcontractor's application for payment.

7.8 Subject to Clause 7.5(d) Centum shall be entitled to set off against any payment otherwise due to the Subcontractor, under this Subcontract or otherwise or any other contract or sub-contract existing between the parties, the amount of any damages costs, losses and expenses which have been incurred by Centum and/or the Customer or which Centum bona fide estimates are likely to be incurred by reason of any breach of or failure to observe the provisions of this Subcontract by the Subcontractor. Such set off or cross company/jurisdiction recovery shall not be restricted to this contracted jurisdiction, but may be made against any trading entity, affiliate or group, or parent company in any other jurisdiction at the failure of this contracting sub-contractor, without reservation, such cross set off or warranty to be chosen at the absolute discretion of Centum.

7.9 Any Statutory Tax Deductions shall be applied in accordance with local laws and any subsequent amendments to or revisions thereof to all payments due in accordance with the Subcontract.

8. Supervision, Health And Safety, Quality

8.1 At all times during the carrying out of the Subcontract Works the Subcontractor shall provide all necessary supervision to ensure the proper execution of the Subcontract Works and shall have a competent person in charge on the site who shall be authorised to accept instructions and directions on behalf of the Subcontractor.

8.2 The Subcontractor shall make itself familiar

and comply with the requirements for health and safety and quality control under the provisions of the Principal Contract in so far as they relate to the Subcontract Works.

8.3 Without prejudice to the Subcontractor's obligations under Clause 8.2 the Subcontractor shall comply with the provisions of Centum's current Health and Safety Regulations, a copy of which shall be given to the Subcontractor on demand.

8.4 To the extent that the Subcontractor is a Designer or a Contractor for the purposes of the CDM Regulations, the Subcontractor shall provide such information as may be required for it to comply with the said Regulations including, but not limited to, information for incorporation by duty holders under the said Regulations in the Health and Safety Plan and the Health and Safety File for the Client's project.

8.5 All materials and goods supplied shall so far as procurable be of respective kinds and standards described in the specification drawings or other documents specified in the Purchase Order.

8.6 All workmanship shall be of the standard described in the specifications drawings and other documents specified in the Purchase Order. If no such standards are described the workmanship shall be of a standard appropriate to the Subcontract Works.

8.7 All work shall be carried out in a proper and workmanlike manner, qualifications must be provided for all operatives if not provided then rates will be amended unless otherwise agreed in writing (in short we will not pay qualified rates for unqualified men regardless of performance).

8.8 To the extent that the Subcontractor carried out design including the choice of materials, the Subcontract Works shall be fit for any purpose made known to Centum.

9. Indemnity And Insurance

9.1 The Subcontractor shall indemnify Centum

against and from any breach, non-observance or non-performance by the Subcontractor, its servants or independent contractors of any of the provisions of the Principal Contract, any act, omission or default of the Subcontractor, its servants, agents or independent contractors which involves Centum in any liability whatsoever and against any claim, damage, loss or expense due to or resulting from any negligence or breach of duty of the Subcontractor, its servants, agents or independent contractors. The limit of such indemnity shall be as stated on the Order.

9.2 The Subcontractor shall without prejudice to its liability to indemnify Centum as aforesaid, adequately insure against any expense, liability, loss, claim or proceedings whatsoever arising under any statute in force or at common law in respect of personal injury to or death of any person whomsoever and arising out of, or in the course of, or caused by or in connection with the carrying out of the Subcontract Works and against any expense, liability, loss, claim or proceedings in respect of any injury, loss or damage whatsoever to any property real or personal in so far as such injury or damage arises out of, or in the course of, or is caused by, or by reason of or in connection with the carrying out of the Subcontract Works and provided that the same is due to any act, omission or default of the Subcontractor or anyone for whom the Subcontractor is responsible.

9.3 The Subcontractor shall produce for inspection on demand by Centum the policies of insurance required by Clause 9.2 and the premium receipts therefor. In the event of any failure by the Subcontractor to comply with the provision of Clause 9.2, Centum may itself insure and deduct the cost of the premiums so incurred from any monies due or to become due to the Subcontractor.

9.4 The Contractor agrees to indemnify and save harmless the Company and its successors and assigns, from any claim, action, liability, loss, damage or suit, arising from claims in the broadest sense related to employees of the Contractor, or employees of the Contractor, which have been employed by or

via Contractor for activities of the Company, such as, but not limited to; - Fines by governing bodies;- Pension claims;- Social securities; - Claims based on the Sequential Liability Act.

9.5 In the event of any asserted claim on the Company, The Contractor shall provide the Company immediate written notice of the same, and thereafter The Contractor shall at its own expense defend, protect and save harmless the Company against that claim or any loss or liability thereunder.

9.6 In the event the Contractor shall fail to so defend and/or indemnify and save harmless the Company then in such instance the Company shall have the right to defend, pay or settle the claim on its own behalf without notice to the Contractor and with full rights of recourse against the Contractor for all fees, costs, expenses and payments made or agreed to be paid to discharge the claim.

9.7 This Indemnification shall be unlimited as to amount or duration.

9.8 The Contractor shall be fully responsible to comply with all Tax Laws and the Company shall not accept any liability in relation to same.

9.9 Notwithstanding title in Free Issue Equipment remains with Centum under Clause 10.2, the Subcontractor shall indemnify Centum in respect of loss or damage to such equipment and shall effect insurance for the benefit of Centum in the sum specified (if any) in the Purchase Order.

10. Free Issue Equipment

10.1 Centum may provide Free Issue Equipment to the Subcontractor for incorporation in the Subcontract Works.

10.2 Title in Free Issue Equipment shall at all times remain with Centum, such free issue shall be as agreed in the supplemental schedule to this contract, or if none agreed at the sole discretion of Centum.

10.3 The Subcontractor shall be responsible for unloading Free Issue Equipment at the Site, storage and protection on the site, and for proper installation of such equipment into the Subcontract Works in accordance with any specification drawing and other document provided by Centum, including manufacturer's instructions and recommendations.

11. Access, Facilities And Attendance

11.1 Centum shall provide the facilities and attendance tracking system (if any) described in the Purchase Order for use by the Subcontractor. If you are not clocked in or have a signed approved timesheet by the principle contractor/Centum, you will not be paid.

11.2 Centum shall provide access to the Site for the purpose of executing the Subcontract Works.

12. Confidentiality

Subcontractor acknowledges and agrees that it may have access to and become acquainted with Centum's trade secrets, trademarks, inventions, customer lists, accounts, services, innovations, processes and procedures, information, records, and specifications owned or licensed by Centum and/or used by Centum in connection with the operation of its business ("Confidential Information"). The Subcontractor agrees that it will not disclose, either directly or indirectly, any of the Confidential Information to any third party. The Subcontractor further agrees that it will not use the Confidential Information except in connection with Subcontractor's performance of this Agreement. All Centum's files, records, documents, blueprints, specifications, letters, notes, original artwork, furnished notebooks and similar items coming into Subcontractor's possession shall remain the exclusive property of Centum and shall be returned to Centum by the Subcontractor upon the completion of the Work Order or earlier termination of this Agreement or upon written request from Centum that said property be returned. The Subcontractor agrees to take all necessary and reasonable steps to preserve the Confidential Information during and after the termination or expiration of this Agreement. The

Subcontractor further agrees that it will not disclose to any third parties the fact that the Subcontractor has been retained by Centum, without the prior written consent of Centum. In the event of a material breach of this Centum will issue proceedings to recover damages incurred as a result of the subcontractors actions and any credit balance held on account due to the subcontractor will be withheld from payment.

13. Mutual Non-Solicitation And Noncompetition

13.1 The Subcontractor and Centum agrees that during the term of this Agreement and for 12 consecutive months after the termination or expiration of this Agreement. Each party will not solicit business from any client of Centum which the Subcontractor performs services for Centum under this Agreement nor will it compete with Centum in the provision of services of the kind and nature the Subcontractor performs for Centum pursuant to the Work Order or Work Orders. It is agreed there will be a mutual "no poaching of staff" arrangement. The Subcontractor further agrees that the non-competition and non-solicitation provisions of this Agreement are necessary to protect Centum's legitimate business interests, including, without limitation, the confidential business or professional information and trade secrets of Centum, the relationships between Centum and its clients, venders and subcontractors, and the goodwill of Centum.

13.2 The Subcontractor further agrees that the 12-month duration in this Section 13 are reasonable, and enforcement of this provision, whether by injunctive relief, damages or otherwise, is in no way contrary to the public health, safety and welfare. The parties acknowledge and agree that a Subcontractor's breach of this provision will result in irreparable injury to Centum not capable of being measured by money damages and the Subcontractor agrees to reimburse Centum for all costs and expenses, including legal fees in connection with Centum's enforcement action. This provision does not limit any other rights and legal or equitable remedies available to Centum on account of Subcontractor's breach of this Section.

14. No Kickbacks, Rebates, Referral Fees

Centum does not permit its subcontractors to engage in any transaction which may create a conflict of interest between Centum and the Subcontractor. In particular, Subcontractor agrees not to:

- (a) accept or offer any payment or kickbacks from or to any Centum employee;
- (b) provide undue or improperly influenced rebates; or
- (c) accept referral fees from any entities associated with any Work Order, including referral fees from Centum employees.

15. Termination

15.1 If the Principal Contract is terminated or if Centum's contract under the Principal Contract is terminated for any reason excluding termination as a result of the Subcontractors actions, then the Subcontract shall thereupon be terminated, and the Subcontractor shall be entitled to payment in respect of the Subcontract Works properly carried out, but the Subcontractor shall not be entitled to any claim for loss and/or expense and/ or damages including loss of profit resulting from such termination.

15.2 Centum may, after giving 7 days written notice to the Subcontractor expel the Subcontractor from the Site and/or terminate at will the Subcontract if the Subcontractor:

- (a) Fails to comply with Clause 3.2, or
- (b) Fails to proceed regularly and diligently with the Subcontract Works, or
- (c) Has abandoned the Subcontract, or
- (d) Has suspended the progress of the Subcontract Works other than by entitlement conferred on it by the provision of any Act of Parliament and has not resumed progress within 7 days after receiving notice from Centum to proceed, or
- (e) Becomes bankrupt or insolvent or has a receiving order made against it, compounds with its creditors, or, being a corporation, commences to be wound up or has an administrative order made against it, carries on business under an administrator, a receiver or a manager for the benefit of any of its creditors.
- (f) Centum reserves the unilateral right to terminate

this contract at will for any matter howsoever arising, such termination, it is hereby agreed shall give no rise on the part of the sub contractor for any losses or damages howsoever arising.

15.3 Any such expulsion shall be without prejudice to any other right or power of Centum under the Subcontract. Upon such expulsion the respective rights and duties of Centum and the Subcontractor shall be:

(a) Centum may use all goods and materials delivered to the Site and shall, unless their value has previously been included in a payment to the Subcontractor, purchase such goods and materials at a fair price. Payment for such goods and materials shall be made in accordance with subclause (c) below.

(b) Centum shall, as soon as possible after the date of expulsion or termination, value the Subcontract Works as at that date in accordance with the provisions of the Subcontract.

(c) The Subcontractor shall not be entitled to payment of any amounts valued under subclauses (a) or (b) above until after completion of the Subcontract Works. Upon such completion the Subcontractor may apply to Centum and Centum shall pay to the Subcontractor the value of any work properly executed or goods and materials supplied to the extent that their value has not been included in previous payments.

(d) When calculating the payment to be made to the Subcontractor, Centum may deduct without prejudice to any other rights of Centum, the amount of any loss and/or expense and/or damages caused to Centum by the termination.

16. Notices

16.1 Where Centum is required by the terms of the Principal Contract to give any return, notice, account or information to the Customer, the Subcontractor shall, in relation to the Subcontract Works, provide Centum with a similar return, notice, account or information in sufficient detail to enable Centum to comply with its obligations under the Principal Contract.

16.2 To be served effectively, any notice or communication in writing required under the Subcontract shall be sent to the registered office or the address of the respective parties set out in the Purchase Order.

17. Settlement Of Disputes

17.1 Should any dispute or difference arise between the parties under the Subcontract, whether during the Subcontract Period or after its completion, and whether before or after the termination, abandonment or breach of the contract, then either party shall have the right to refer that dispute or difference for adjudication in accordance with the following conditions.

17.2 If any such dispute or difference arises then one party ("the Applicant") may serve upon the other ("the Respondent") a notice in writing ("the Notice") which shall state in sufficient detail the nature of the dispute, the remedy sought together with a request to refer the dispute for adjudication.

17.3 The Notice under Clause 15.2 shall also be served forthwith by the Applicant on the Adjudicator named in the Purchase Order or if not so named, forthwith either upon his identity being subsequently agreed or upon him being appointed under Clause 14.4 below as the case may be.

17.4 In the event that no Adjudicator is named in the Subcontract, then the parties shall, within four days of the Notice, being served upon the Respondent agree upon a suitable Adjudicator. Failing agreement, the Applicant shall and the Respondent may apply for an appointment to the Academy of Construction Adjudicators (whilst at the same time).




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