

# General Purchase Conditions



## of Van Gansewinkel Groep bv and its affiliated entities

### For the execution of Work

#### 1. General

##### 1.1 Definitions

In these General Conditions for the execution of Work, the following terms will have the following meanings:

**Client:** Van Gansewinkel Groep b.v., as well as every entity that is a member of this group, as referred to in Section 24(b) of Book 2 of the Dutch Civil Code (Burgerlijk Wetboek), being the users of these Conditions;

**Contracted Party:** the natural person or legal entity or the combination of one or more legal entities and/or one or more natural persons to whom or which the Client assigns the Work;

**Parties:** the Client and the Contracted Party together;

**Agreement:** all the agreements made between the Client and the Contracted Party, including the Agreement with appendices and the Technical Specifications, in which the Client assigns the Work to the Contracted Party, which Assignment the Contracted Party accepts by signing the Agreement;

**The Work:** the project to be realized;

**Schedule of Requirements:** the description of the Work and the requirements and guarantees the Work must comply with;

**The Work:** all the activities, including the design, construction and operational delivery, necessary for the realization of the project in proper working order;

**The Building Site:** the site of the Client as described in detail in the Agreement, on, under or above which the Work will be executed, as well as the sites made available by the Client to the Contracted Party for the realization of the Work.

##### 1.2 Contract documents and explanation

1.2.1 With the exclusion of the applicability of any other conditions whatsoever, the Agreement will be executed in accordance with the following Contract Documents:

- a. the Agreement;
- b. these General Conditions for the execution of work;
- c. the Client's Schedule of Requirements;
- d. the Contractor's Manual of the Client;
- e. all other documents such as specifications, drawings, standards, etc. or parts thereof to which reference is made in the documents referred to under (a) to (d);

f. changes explicitly agreed on in writing after formation of the Agreement;

g. the plan of execution;

h. statutory requirements (see Article 12).

1.2.2 In the event of any conflict or lack of clarity between the provisions of the Contract Documents, statutory provisions and/or regulations, the most stringent will apply.

In the event that application of what is provided in the preceding sentence fails to provide a solution, the order of priority of the documents will, unless the Agreement provides otherwise, be determined as follows:

a. more recently written or signed document will have priority over a less recently signed or written document;

b. description will have priority over a drawing;

c. special regulation will have priority over a general regulation, with the proviso that rule (a) will have priority over rule (b) and rule (b) will have priority over rule (c).

In the event that application of these rules also fails to provide a solution, the contradiction will be interpreted with due observance of the principle of fairness and the interests of the Client.

1.2.3 Where in the Contract Documents reference is made to the Client's 'approval', 'permission', 'agreement', etc., this must always be evidenced by a written document of the Client.

##### 1.3 Additional and less work

1.3.1 The Client may expand the scope of the Work without settlement if the variation does not exceed a value of EUR 25,000, with a maximum of 5% of the contract price, in which case a separate written assignment must be given for the work to be executed.

Such variations will have no other effect on the Agreement.

In the event that Work already executed must be executed again for reasons not attributable to the Contracted Party, this work will be paid for as a variation by means of a separate written assignment.

Variations and adjustments arising from the normal development of the design process form part of the assignment without limitations.



# General Purchase Conditions, for the execution of Work.

- 1.3.2 The Contracted Party must inform the Client, no later than 5 days after establishing the nature of the intended variations, whether the Contracted Party is of the opinion that the variations justify the receipt of additional payment as referred to above.
  - 1.3.3 With regard to the price for additional or less work, a rates and material unit price list is used, which is appended to the Agreement. In the event that this price list does not provide for the additional or less work in question, the Client may decide in favour of a fixed price or payment based on time spent and costs incurred or any other form of payment which the Client deems appropriate under the circumstances.
  - 1.3.4 Variations will be carried out subject to the Client's written assignment. The Contracted Party must use the Client's standard form for variations.
- 1.4 Agreement
- 1.4.1 The Agreement is a result agreement. The Work will comply fully with all the requirements set and also the requirements of soundness and workmanship. The Contracted Party is fully aware of all the requirements and wishes of the Client and the purpose for which the Work is to be realized. The Contracted Party declares that the Contracted Party is pre-eminently suited for realizing the Work and guarantees the Client that the Work will be delivered on time and will comply fully with all the requirements set and to be set.
  - 1.4.2 The Work must be completed on or before the agreed date and any defects discovered during an inspection by or on behalf of the Contracted Party and/or the Client must have been remedied prior to this date. Minor defects, at the discretion of the Client, which will not affect or prevent the proper and safe use of the Work and which can be remedied within one month of the inspection, will not prevent the Work from being declared completed. The Contracted Party will be obliged to remedy these minor defects discovered during an inspection and laid down in a punch list, within one month of the inspection.
    - 1.4.3.1 A request from the Contracted Party to change the delivery date must be submitted to the Client, in writing and supported by reasons, as soon as possible, yet within no more than two weeks of the delay referred to in paragraph 2 having occurred.
  - 2 A well-founded reason for changing the delivery date will solely be considered to be a non-attributable delay, caused by:
    - a. the failure on the part of the Client to fulfil any of its obligations, including, but not limited to, the failure to provide the documents referred to in the Schedule of Requirements in good time, in the event that this affects the delivery date and the Contracted Party has reported this in writing within three working days;
    - b. any breach which cannot be attributed to the Client or the Contracted Party (see Article 10);
    - c. the instruction by the Client to make substantial changes to the Work or the order of execution.
  3. If and in so far as a delay has caused a change in the delivery date by more than 2 months on account of a circumstance as referred to in paragraph 2(a) and (c), the Contracted Party will be entitled to a reasonable payment of the direct costs arising from the delay and incurred after these two months, unless the delay was caused by the inability on the part of the Client to fulfil any of its obligations due to an event that cannot be attributed to the Client.
  4. In the event that mandatory government permits or licences, which must be obtained by the Client, are not provided in good time, despite the Client's efforts, this will not be deemed to be an attributable breach on the part of the Client. The Contracted Party will deploy all necessary persons and resources to ensure that the Work is completed in accordance with the contractual deadlines.
    - 1.4.4 In the event that the Client has the impression that the Work will possibly not be completed on time, for whatever reason, the Contracted Party will provide the Client, on the latter's mere request, with clear information about the progress and planning of the work in progress.
    - 1.4.5 In the event that the Client is of the opinion that the deadlines specified in the Contract Documents cannot be adhered to with the available personnel and facilities, and additional personnel, more shifts or overtime (in which respect work on Sundays is not excluded) or other measures will not guarantee delivery on time, the Contracted Party must comply with this request of the Client as soon as possible. The Contracted Party may not derive any right to additional payment from this.
    - 1.4.6 The delivery date or dates are strict deadlines. In the event that the delivery date is exceeded, the Contracted Party will be liable to pay a penalty equivalent to 0.5% of the assignment amount of the Work or the sub-delivery if that is the case, for each calendar day that the delivery date is exceeded.
    - 1.4.7 In the event that the delivery date has been exceeded or is in danger of being exceeded by more than 30 days, the Client will have the right to terminate the Agreement, with the continued applicability of the penalty arrangement. This penalty will not prevent the payment of all damage and/or loss, other penalties and costs.

## 2. Execution

### 2.1.1. General

1. Prior to commencing the execution of the Work, the Contracted Party must form an independent and complete opinion of the Building Site, compare this with



the Contract Documents and ascertain under which circumstances the activities must be carried out and the Work must be realized.

2. The Contracted Party will fulfil all its obligations towards the Client arising from this Agreement in good time, properly and meticulously. Prior to commencing the execution of the Work, the Contracted Party will prepare a plan of execution in consultation with the Client.

3. The Contracted Party will organize and attend project meetings on a regular basis and also whenever the Client or the Client expresses a wish for such a meeting. The Contracted Party must inform the Client of the progress of the activities during the entire execution at regular intervals of 4 weeks, by means of a written report specifically based on the aforementioned plan of execution.

This report must be submitted for every period of 4 weeks within 1 week of the end of the period to which it relates.

4. Information provided by the Client and/or by the Client with regard to the Building Site will not affect the relationship between the Client and the Contracted Party in any way whatsoever.

In the event that the Contracted Party is confronted with changed circumstances during the execution of the Work, the Contracted Party must inform the Client of this immediately.

5. If the change in the circumstances was in all reasonableness not foreseeable and the Contracted Party is not accountable for this change, the Agreement may be amended in consultation and, if this consultation does not result in agreement, the Agreement will terminate should the Client so determine. The Client's wish will be carried out and the costs will be determined, after which the competent court will decide which party is right and must therefore bear the costs.

2.1.2 A safety, health, welfare and environment project plan is part of the plan of execution, concerning the efficient cooperation between the Contracted Party and the Client in order to ensure compliance with the obligations arising for them as employers pursuant to the Working Conditions Act (Arbeidsomstandighedenwet).

The safety, health, welfare and environment project plan includes the following:

- an overview of the parties involved in the project (the Client, the Contracted Party, the subcontractor, any additional subcontractors, the Client), the positions of and hours to be spent on the project by their employees with primary responsibility;
- who, as the coordinator, will monitor the execution of the safety, health, welfare and environment project plan and provide the employees with primary responsibility with information;
- agreements about the measures to be taken and pro-

cedures to be followed based on a list of the Work of other employees.

The measures and procedures included in the safety, health, welfare and environment project plan must as much as possible be in keeping with what is laid down in the Client's Contractor's Manual, Safety Manual and Environmental Quality Plan, if any. In the event of any conflict or lack of clarity, the provisions of the Contractor's Manual, Safety Manual and the Environmental Quality Plan, if any, will prevail over those of the safety, health, welfare and environment project plan.

In the event of any changes in the plan of execution and furthermore each time when there is reason to do so pursuant to the working conditions policy, the safety, health, welfare and environment project plan will be amended.

The Contracted Party guarantees the Client that the obligations arising from the safety, health, welfare and environment project plan will also be complied with by its subcontractors, if any. This guarantee will also apply in full force in the event of any interim changes to the safety, health, welfare and environment project plan.

## 2.2 Design, delivery, assembly and inspection

2.2.1 All materials must be of such a composition and have been treated in such a way that the Work will withstand long-term continuous use as well as intermittent use.

The Work must function reliably, quietly and without annoying vibrations when loads are applied and in operating mode.

2.2.2 The Work must be constructed and executed in such a way that it can be cleaned, maintained and repaired easily.

2.2.3 Drawings, working drawings and other documents made by the Contracted Party will be handed over to the Client at the times and in accordance with the requirements specified in the Agreement.

Drawings, etc. produced by subcontractors must be checked by the Contracted Party prior to being handed over to the Client.

If the Contracted Party has not checked them, the Client will not accept the drawings, etc.

Assessment of drawings, etc. by the Client will under no circumstances whatsoever discharge the Contracted Party from its responsibility for their accuracy and its obligation to perform the Agreement in full.

2.2.4 Deliveries and activities of the Client will be strictly limited to that which has been agreed between the Parties in this respect. The Contracted Party will provide its own tools, construction and assembly machinery and equipment. Ownership will be transferred where deliveries are concerned that will form part of the Work. Delivery to the Building Site will be considered to be a transfer of ownership to the Client.

2.2.5 The Contracted Party must always have an authorized representative on the Building Site who represents and



## General Purchase Conditions, for the execution of Work.

- binds the Contracted Party without limitation and exclusively.
- The Contracted Party must let the Client know in good time and in writing who the authorized representative of the Contracted Party will be.
- 2.2.6 The Contracted Party must deploy its own expert, experienced and skilled personnel in good time and in sufficient quantity to execute the Work in the correct manner and to complete it in good time. The Contracted Party will not withdraw any personnel from the Work without the Client's written permission.
- The Contracted Party will be responsible for transport on the Building Site and for storage, protection and security.
- The Contracted Party will be responsible for safety during the execution of the Work and will take all necessary measures to protect the Work, the personnel of the Contracted Party and other persons as well as property of the Contracted Party and the Client's property, the Client and third parties against injury, illness, accidents and losses. To this end, the Contracted Party will set up safety regulations prior to commencement of the construction/assembly activities. These regulations must contain all the applicable safety instructions of the Client. The Client and/or the Client may prescribe additional safety instructions and/or give instructions in this respect.
- 2.2.7 The Contracted Party will be obliged to allow activities to be carried out by or on behalf of the Client on or in the vicinity of the Building Site. Obstructions, inconveniences or waiting periods that may arise as a result will not constitute any grounds for extending the period in which the Work must be completed. Nor will this entitle the Contracted Party to any financial compensation.
- 2.2.8 The Contracted Party will, at its own expense, provide sufficient accommodation, changing rooms, sanitary facilities, canteen facilities, storage space and conveying facilities on the Building Site within the area designated by the Client and furthermore in accordance with the Client's instructions.
- The Contracted Party will, at its own expense, also provide the telephone, telex and fax connections necessary for the execution of the Work. The Contracted Party is not permitted to use facilities in so far as these belong to the Client.
- 2.2.9 From the commencement of the Work until the 'provisional takeover', the Contracted Party must make sure that the Building Site is kept clean and in good order and also that materials and waste are removed and if necessary processed at the risk and expense of the Contracted Party, in so far as this is the result of the activities of the Contracted Party or to have such materials and waste removed to a location approved by the Client where the materials or waste will be deposited or processed in an environmentally responsible manner.
- 2.2.10 Inspections and tests will be carried out as specified in the Agreement. The Contracted Party will grant the Client and its employees access to all the work locations where the Work is carried out and make all the necessary information available to the Client, free of charge.
- 2.2.11 The Client may require that the materials and/or calibration certificates of the equipment used be handed over and when the tests are carried out the Client will have the right to have all or some of the measuring instruments used which are made available by the Client.
- 2.2.12 The costs of the prescribed tests, in particular relating to devices, instruments, electrical energy and the required personnel, but excluding the costs of representatives and/or personnel of the Client and of the costs of measuring instruments made available by third parties at the Client's request, will be borne by the Contracted Party. This includes the costs of prior tests by the Steam Equipment Supervision Service (Dienst voor het Stoomwezen) or other official authorities. The Contracted Party will bear the risk of damage to or loss of materials, parts, etc. as a result of the prescribed tests. Additional tests not prescribed as mandatory but solely carried out at the request of the Client will be at the expense of the Client; any consequences arising from this for the delivery date can only be accepted if they have been made known to the Client by the Contracted Party in advance and in writing.
- 2.2.13 Any parts found not to be in accordance with the Agreement will be rejected by the Client. In the case of rejection, the Contracted Party will be obliged to have the test repeated at the expense of the Contracted Party until full approval has been obtained. Every replacement, repair or improvement necessary as a result of a test will be carried out immediately and will be at the expense of the Contracted Party.
- 2.2.14 The Client may require that one or more of the prescribed tests be carried out in laboratories of third parties. In that case, all the additional costs involved in the tests, including the costs of transport, will be at the expense of the Client and solely the Contracted Party will bear the risk of damage to or loss of the tested parts as a result of a failure to comply with the requirements set. The Client will ensure that the Contracted Party is able to be represented at such tests. The costs involved in such representation will be at the expense of the Contracted Party.
- 2.2.15 The Contracted Party must inform the Client in writing and in good time of the date of the tests and will grant the Client the opportunity to be present.
- 2.2.16 In the event that requirements have been set which cannot be verified by one of the prescribed tests, the



Contracted Party must demonstrate, through calculations or otherwise, that the requirements involved have been met.

2.2.17 If an inspection is repeated at the request of the Client on account of doubts about its accuracy, this will be effected, except when notification in good time, in accordance with Article 2.2.15 has not been forthcoming, with costs payable by the Party found to be in the wrong.

2.2.18 As soon as the assembly has been completed, the Contracted Party will report this to the Client in writing, after which a joint inspection will take place. A 'Completed Assembly Protocol' will be drawn up of this inspection, to be signed by both Parties. Any failures or shortcomings found and the period in which these must be remedied which, in the opinion of the Client, will not affect the signing of the protocol, will be specified in the protocol.

### 2.3 Completion and cold start-up

After the Work has been completed as specified in the Schedule of Requirements, all the technical assessments and the plan of execution, and any failures or shortcomings in so far as discovered during inspection, whether carried out jointly or otherwise, have been remedied to the Client's satisfaction, the Completion Protocol will be drawn up and signed by both Parties, after which, to the Client's satisfaction, a 'Completed Cold Start-up Protocol' will be signed by both Parties.

### 2.4 Commissioning, training of personnel and operating instructions

2.4.1 The Work will be commissioned at the time and in the manner laid down in the Schedule of Requirements.

2.4.2 The Contracted Party will be responsible for instructing the Client's personnel, in consultation with the Client, on conditions to be agreed at a later date.

2.4.3 The Contracted Party will provide 12 copies of the operating instructions in the Dutch language, on conditions to be agreed at a later date. The form in which these instructions are to be delivered will be determined in consultation with the Client.

2.4.4 After completion of the hot start-up, a 'Completed Hot Start-up Protocol' will be drawn up, to be signed by both Parties.

### 2.5 Trial operation

The purpose of the trial operation is to demonstrate that the Work is in an operational condition. The trial operation will take place in the manner and at the time as laid down in the Schedule of Requirements.

### 2.6 Takeover

2.6.1 In the event that the trial operation shows that the re-

quirements have been met and if the Work also complies with all the other provisions of the Agreement, the Work will be provisionally taken over by the Client and both Parties will sign a 'Provisional Takeover Protocol'.

2.6.2 With effect from the provisional takeover, the risk of the Work will pass from the Contracted Party to the Client.

2.6.3 In the event that all the contractual obligations have been met, both Parties will sign a 'Definite Takeover Protocol' at the end of the guarantee period.

## 3. Guarantees, guarantee period, guarantee tests

### 3.1 Guarantees

3.1.1 The Contracted Party guarantees that the Work and the activities will be in accordance with the Agreement.

3.1.2 The Contracted Party guarantees that the correct materials will be used which, without exception, will be new and unused, and that the Work will be properly constructed, according to the proper construction method, and properly executed. The Contracted Party furthermore guarantees a proper operation, such that the agreed guarantee values will be realized and the guaranteed properties will be achieved, in accordance with the Schedule of Requirements.

3.1.3 The guarantee obligation, the responsibility and the liability of the Contracted Party will not be reduced due to the fact that the Client has approved any calculations, drawings, executions, etc. or provided them with comments.

3.1.4 In the event that any part of the Work is not in accordance with the Agreement, the Contracted Party will, at its expense, immediately take such measures as are necessary in order to ensure that the Work will be in accordance with the Agreement.

3.1.5 In the event that failures or shortcomings are not remedied or improvements are not made within the agreed period or if it is foreseeable that this will be the case, the Client will have the right to carry out these activities or to have them carried out at the expense of the Contracted Party, after giving written notice, without any permission or authorization whatsoever being required in this respect. The Client will in this case have the right to make use of all the resources of the Contracted Party that are available.

3.1.6 In the event that the Contracted Party proves unable to remedy the failure or shortcoming despite the fact that the Contracted Party has made two attempts to do so, the Contracted Party will be obliged to replace the part in question at the expense of the Contracted Party with a part that is of a different type or make, or with a different concept, which does function without defects and reliably.

3.1.7 The Contracted Party guarantees that the Work complies with the function for which it is intended and will assume full responsibility for any hidden defects.



# General Purchase Conditions, for the execution of Work.

## 3.2 Guarantee period

- 3.2.1 The guarantee period will commence after the Provisional Takeover Protocol, as referred to in Article 2.6.1, has been signed.
- 3.2.2 The term of the guarantee period is specified in the Agreement but will be at least 24 months.
- 3.2.3 With regard to parts of the Work which have been replaced in accordance with Article 3.1.6, the guarantee period will recommence from the date on which the replacement part is put into use.

## 3.3. Guarantee tests

The Agreement specifies the guaranteed properties. Proving this by means of guarantee tests will be effected by and at the expense of the Contracted Party and in the presence of the Client, in the manner and at the times specified in the Agreement.

## 4. Price

### 4.1 Basis

The price for the Work as specified in the Agreement is fixed for the term of the Agreement, not subject to application of any price change formula whatsoever and includes all the costs, charges and expenses incurred by the Contracted Party in this respect, including any import duties and insurance of risks, in so far as not covered by any insurance taken out by the Client.

- 4.2 In the event that payment in instalments has been agreed on in the Agreement, these will always be linked to a stage in the realization of the Work and the relevant length of time that has passed since the Assignment was issued. Payment will not be due until after both of these conditions have been met in full.

## 5. Payments

### 5.1 Invoicing and payment

Invoicing will take place based on a schedule agreed between the Client and the Contracted Party; payments will be effected within 90 days of receipt by the Client of the approved invoice, provided that the relevant invoices have been approved by the Client and can be deemed in accordance with what was agreed in this respect.

In the event that payment is based on time spent and costs incurred, payment will be effected, after approval of the invoice of the Contracted Party by the Client, within 90 days of receipt of such invoice, relating to the calendar month immediately preceding the invoice date.

The Client has the right to suspend payment of invoiced amounts after written notification to the Contracted Party, or to make deductions with regard to the payments to be made, in the even that:

- the Client, as a result of the (alleged) failure on the part

of the Contracted Party and its subcontractors to fulfil the obligations arising from the Agreement, is held liable for the ensuing damage and/or loss;

- the Contracted Party fails to remedy failures or shortcomings in respect of the Work in good time;
- it is probable that the Contracted Party will be unable to complete the Work within the agreed time;
- the Contracted Party has applied for a moratorium or has discontinued the Work;
- the Contracted Party's application for a bankruptcy order or winding-up petition is being dealt with.

The Client will at all times have the right to set off any amounts it is owed at any time against amounts payable to the Contracted Party by the Client or any other company that is a member of the same conglomerate of companies.

Payment will not imply acceptance of any part of the Work or restrict the Client's rights to take legal action against the Contracted Party on account of non-fulfilment of the Agreement.

Invoicing will take place in the manner specified in the Agreement.

Invoices must be prepared in triplicate in a format to be determined by the Client.

In the event that an invoice has not been received in good order and approved by the Client, the Client will inform the Contracted Party of this fact in writing within four weeks of receipt of the relevant invoice.

The Client will effect payment of the invoiced amount within 90 days after the relevant invoice has subsequently been received in good order and approved or a corrected invoice has been received in good order and approved, unless the Client claims suspension or set off, as described above.

### 5.2 Vicarious tax liability

The Client must be informed on a regular (monthly) basis by the Contracted Party about the payment of income tax and national insurance contributions (also relating to the subcontractor(s)). If the Contracted Party wishes to engage subcontractors, it must request permission to do so from the Client in good time and this permission must have been granted by the Client.

The Client has the right to pay the income tax and national insurance contributions due in respect of the Work on behalf of the Contracted Party directly to the relevant industrial insurance board or the collector of direct taxes. In effecting this payment, the Client will be discharged in respect of the Contracted Party where these amounts are concerned. The Contracted Party will indemnify the Client against any liability in this respect.

The Contracted Party must arrange its invoices in such a manner that the aforementioned amounts can be unequivocally derived from them.



The Client will have the right to inspect the accounts of the Contracted Party or to have this done to ascertain whether the aforementioned basis and statement are correct.

### 5.3 VAT reverse charge mechanism

The Client will have the right to pay the VAT due directly to the collector of direct taxes instead of to the Contracted Party.

As a result, the Contracted Party will be obliged, should the Client exercise this right, not to include the VAT amount due on its invoices but to state in this respect: 'VAT reverse charged' ["BTW Verlegd"], in so far as the exceptions referred to in the Social Security (Coordination) Act (Coördinatiewet Sociale Verzekering) do not arise.

### 5.4 Condition for direct payment

The Client will solely exercise its rights referred to in Articles 5.2 and 5.3 if it deems it likely that it could be held liable in the event that the Contracted Party fails to pay the national insurance contributions, income tax and turnover tax due in the correct manner.

## 6. Liability

### 6.1 Liability and compensation

6.1.1 The Contracted Party will be responsible for the correct and efficient execution of the Work in accordance with the Agreement.

6.1.2 The Contracted Party will be liable for and obliged to pay for all damage and/or loss sustained by the Client and the Client's personnel on account of or in connection with the execution of the Agreement.

6.1.3 The Contracted Party will indemnify the Client against any claims from third parties relating to damage and/or loss on account of or in connection with the execution of the Agreement.

The Contracted Party will indemnify the Client against any claims on account of infringement or violation or alleged infringement or violation of any third-party rights, including municipal tax on encroachments on or above public land, industrial property rights such as copyrights, trademark rights, etc., in connection with the Work.

6.1.4 Without prejudice to the obligation of the Contracted Party to pay compensation to the Client and the third party, the Contracted Party will be obliged to remedy any failures in this respect at its own risk and expense.

6.1.5 In the event that the Work has been assigned to a consortium, each of the members of the consortium will be jointly and severally liable to the Client and third parties for the fulfilment of all the obligations which may arise for the consortium from this Agreement.

### 6.2 Refusal

6.2.1 The Client will have the right to refuse the Work, including any parts of the Work, if, despite improvements, defects occur which cannot be remedied, as a result of which the guaranteed properties cannot be realized.

6.2.2 During the guarantee period, the Client will still have the right to refuse the Work or parts of the Work if defects occur which cannot be remedied within a reasonable period of time or if measurements carried out by or on behalf of the Client or by third parties show values which would have resulted in refusal in accordance with Article 6.2.1.

6.2.3 The Client also has the right to refuse the Work if the delivery date, after the contractual delivery date has been exceeded and a reasonable extended period has been granted, is once again exceeded.

6.2.4 In the event of refusal, the Contracted Party will be obliged, at the discretion of the Client:

- a. to place the Work at the disposal of the Client; the Client will subsequently be at liberty to modify or remove the Work, either wholly or in part;
- b. to remove the Work immediately, either wholly or in part, on the Client's demand.

The Contracted Party will not be able to claim any compensation whatsoever for placing the refused Work at the disposal of the Client or for removing the Work.

Should the Contracted Party fail to remove the refused Work or the refused part of the Work in good time, the Client will have the right to do so or to have a third party do so, at the expense of the Contracted Party. In the event of refusal of the Work or a part of the Work, the Contracted Party will be obliged to repay all of the payments made by the Client or the payments which may be deemed to relate to that part.

The Client will, if the occasion arises, determine whether the part that has not been removed represents a value (residual value). After receipt of the instalments that have been repaid, the Client will pay the Contracted Party the amount of the residual value after agreement with the Client has been reached about this value.

6.3 In the event that the Contracted Party fails to fulfil one of the obligations referred to in the Agreement, the Contracted Party will be liable to pay the Client a penalty, which is not subject to judicial mitigation, of EUR 1,500 for each event and for each day that the breach continues, without prejudice to the Client's right to full compensation.

## 7. Insurance

### 7.1 Insurance taken out by the Contracted Party

The Contracted Party must take out and maintain the insurance cover specified below in connection with the



# General Purchase Conditions, for the execution of Work.

execution and realization of the Work, and on conditions which are satisfactory to the Client. The insurance facilities referred to in this article in no way whatsoever reduce the liability of the Contracted Party.

a. Motor vehicles

including all the other equipment of the Contracted Party that comes within the scope of the Civil Liability Insurance (Motor Vehicles) Act (Wet aansprakelijkheidsverzekering motorrijtuigen, WAM).

Liability insurance for the motor vehicles and other equipment to be used by the Contracted Party in the execution of the Agreement, irrespective of whether this is the property of or has been leased by the Contracted Party or the Contracted Party has in any other way obtained use thereof, which covers the liability of possessing and using these motor vehicles and this equipment. Minimum amount insured: cover laid down by order in council pursuant to the Civil Liability Insurance (Motor Vehicles) Act with a minimum of EUR 1,500,000 per event.

b. Vessels and other floating equipment

Insurance to cover liability on account of the possession or use of vessels and other floating equipment, including liability for damage and/or loss as a result of a collision, at least equivalent to the value of the item in question but with a minimum of EUR 5,000,000 per event.

c. The Contracted Party guarantees the Client that any subcontractors engaged by the Contracted Party in the execution of the Work will have taken out insurance which will at least provide similar cover.

d. The insurance cover which the Contracted Party is obliged to have pursuant to the above and that which the Contracted Party may choose to take out over and above this in connection with the Work must be specified by the Client and its personnel as co-insured parties and must therefore contain a cross-liability clause. The insurance conditions must prescribe that insurers waive their right of recourse in respect of the Client and its personnel.

e. The Contracted Party has, at its expense, taken out All Risks Construction insurance, also for all those involved in the Work.

## 7.2 Insurance certificates

On the Client's first demand, the Contracted Party must have its insurer(s) issue an insurance certificate that specifies the type of insurance and the insured amounts and the insured period of each policy, plus a declaration that no insurance policy will end or change drastically during the execution of the Work without the Client being informed of this in writing at least thirty (30) calendar days in advance.

Responsibility and failure to take out insurance

In the event that the Contracted Party fails or refuses to take out a required insurance or in the event that any required insurance cover is terminated, the Client will have the right to take out this insurance cover itself. In that case, the amount of the insurance premium and costs involved will be deducted from the price of the Work.

## 8. Client responsibilities

- a. For the purposes of the Work, the Client will make electricity (voltage yet to be agreed), water, in the quantities specified in the Schedule of Requirements and a sewer connection available to the Contracted Party free of charge at points to be designated by the Client. The costs involved in connecting and disconnecting will be payable by the Contracted Party.
- b. The Client will provide the Contracted Party with the information specified in the Agreement.
- c. The Client will make the Building Site available to the Contracted Party in good time.
- d. Following receipt, the Client will respond within 15 working days in respect of documents which require the Client's consent, provided that the Contracted Party provides the documents in accordance with the agreed plan of execution.

## 9. Client representation

The Client will at all times have the right to appoint one or more people to act as Client representatives or to assist the Client or to replace persons appointed as such by others.

The Contracted Party will not have the right to demand that the Client representatives be replaced.

In all matters relating to the Work, the Client will be represented by the representatives, except where the Client is specifically referred to in the Agreement or when the Contracted Party has been informed by the Client, in writing, that the representative's power of representation has been withdrawn or restricted.

In the event that more than one person is appointed as a representative, each of the appointed persons will be deemed to represent the Client. Persons who have been appointed to assist the Client will bind the Client, in so far as the Contracted Party has not been informed otherwise in writing. If and in so far as the Client has not exercised the aforementioned power, only the Client will be authorized.

## 10. Non-attributable breach

The Client and the Contracted Party will not be in default and will not be able to claim any compensation for costs from each other in the event that the fulfilment of con-



tractual obligations is delayed, impeded or prevented due to events that are not attributable to a failure on the part of the Client or the Contracted Party or events for which they are not accountable in accordance with the law, legal acts or generally accepted standards, which events include in particular: war or hostilities, riots or civil commotion, floods or other natural disasters, nuclear disasters and other external contingencies.

The Client and the Contracted Party must inform each other of such an event immediately, in writing.

In the event that the non-attributable breach continues for a period exceeding 2 months, the Client will have the right to terminate the Agreement in accordance with Article 13.

## **11. Documents, confidentiality, publicity, industrial property rights**

### **11.1 Delivery of documents in good time**

The Contracted Party must deliver the documents in good time.

### **11.2 Ownership and use of information**

Information, however laid down, which has been provided to the Contracted Party by the Client, is and will remain the property of the Client.

In so far as not explicitly agreed otherwise, this information will be made available to the Contracted Party for information purposes only and it will not change the relationship between the Client and the Contracted Party in any way whatsoever.

The Contracted Party will grant the Client an irrevocable right of use in respect of all documents and information developed by the Contracted Party in connection with the execution of the Agreement and made available by the Contracted Party to the Client for internal use within the conglomerate of companies of which the Client is a member.

### **11.3 Confidentiality**

All the information received from the Client will be kept confidential by the Contracted Party.

This obligation does not apply with regard to information which:

- the Contracted Party can prove was in its possession, without the Client's intervention, prior to the Agreement being signed;
- the Contracted Party can prove is or will be available without the Contracted Party being in any way to blame in this respect;
- is disclosed to the Contracted Party, without the Contracted Party being obliged to maintain confidentiality, by a third party entitled to make such disclosures;

- may be disclosed to third parties with the Client's explicit permission.

This obligation to maintain confidentiality will also remain in force after termination of the Agreement.

The above will not affect the fact that the Client will have the right to make use of all the information obtained from the Contracted Party relating to the Work, for its own business.

### **11.4 Industrial property rights**

The Contracted Party guarantees that the Contracted Party and subcontractors will not enforce any industrial property rights to which they may be entitled now or in the future, including patent rights, copyrights, rights to drawings and/or models and trademark rights, against the Client with regard to the Work. The Contracted Party will also indemnify the Client and compensate the Client for infringement proceedings that may arise from the application of any process, system, method or construction, equipment, etc. selected by the Contracted Party. The Contracted Party will require from its subcontractors that they provide a written declaration to the effect that they will not enforce the aforementioned rights against the Client and the Contracted Party will send copies of these declarations to the Client on first request.

In the event that any claims whatsoever are made by third parties against the Client on account of an alleged infringement of rights of those third parties, the Contracted Party must put forward a defence or effect a settlement at its expense and the Contracted Party must pay all of the costs and the damages awarded as a result of any infringement.

In the event that operating the relevant part of the Work is prohibited on account of such proceedings, the Contracted Party must, at its expense, either replace the relevant part or modify it in a commercially and technically sound manner in order to remove the infringement.

### **11.5 Publicity**

The Contracted Party will ensure that neither the Contracted Party nor any persons engaged by the Contracted Party will make any public reference, in whatever manner, to the following, without the Client's prior written permission:

- the Agreement and its contents;
- the nature and scope of the Work;
- methods, equipment or personnel used or deployed;
- information about the Client's company which the Contracted Party or its personnel has at its disposal; or information which has been passed on to its personnel, if such personnel is not directly involved in the Work, or to third parties (except for the Client's personnel).



# General Purchase Conditions, for the execution of Work.

The Client reserves the right to withhold permission for publication, without being obliged to give any reasons for this, or to attach conditions to the granting of such permission.

## 12. Statutory provisions

### 12.1 Laws, standards, regulations, etc.

The Contracted Party must comply with all of the applicable European, national, provincial, municipal, local and other laws, standards and regulations, all of the requirements, regulations, rules and provisions of all of the authorities having jurisdiction in connection with the Work, relating to employees, social security benefits, employment conditions, safety, equipment, environment, tax, technical requirements, etc.

### 12.2 Official approval of documents and materials

The Contracted Party will be responsible for all official documents and approvals of government and other authorities and for affixing all the stamps of government or other authorities to materials and equipment, which stamps are required in order to use these materials and equipment, put them into operation and keep them in operation.

### 12.3 Permits and permission

The Contracted Party must obtain all necessary permits and permission required for the proper execution and management of the Work, except those which are to be obtained by the Client according to the Schedule of Requirements.

### 12.4 Compensation

The Contracted Party will indemnify the Client and the Client and compensate the Client in respect of any liability of or penalty imposed on the Client and/or the Client relating to any violation or alleged violation by the Contracted Party of statutory provisions, standards, regulations, etc. concerning the Work.

### 12.5 Penalty clause

In the event that the Contracted Party is in default, the Contracted Party will be liable to pay a penalty equivalent to 5% of the Assignment amount for each day that the Contracted Party continues to be in default.

## 13. Termination

The Client may terminate the Agreement or part thereof by means of a written notification, with effect from the date stated in the notification.

The Client will never be liable for any loss of profits or other losses as a result of the termination of the Agreement, for whatever reason.

On termination, the Contracted Party will be paid for the

part of the Work executed up to the termination, except in the event of termination on account of an attributable breach on the part of the Contracted Party by reason of which the Client may invoke a right of suspension and/or set off.

In that case, the Contracted Party will also be entitled to reimbursement of the costs which the Contracted Party incurred or had to incur as a result of the termination and to reimbursement of reasonable costs relating to demobilization, except in the event of termination on account of an attributable breach on the part of the Contracted Party by reason of which the Client may invoke a right of suspension and/or set off. The costs saved by the Contracted Party as a result of the termination will be deducted from this.

In the event of termination, for whatever reason, the Contracted Party will render every assistance necessary and place the Work entirely at the disposal of the Client in order to enable the Client to finalize/complete the Work.

## 14. Concluding provisions

### 14.1 Transfer of rights arising from the Agreement

The Contracted Party may only transfer rights and obligations arising from the Agreement to third parties, including subcontractors, with the Client's prior written permission.

### 14.2 Bank guarantee

The fulfilment of the obligations of the Contracted Party arising from the Agreement will be guaranteed by means of a bank guarantee issued by a reputable Dutch bank, the amount and text of which will provide the Client with complete security.

### 14.3 Corporate guarantee

In the event that the Contracted Party is a member of a group of companies, the parent company of that group must act as guarantor for the fulfilment of the obligations of the Contracted Party arising from the Agreement. This declaration must be submitted when the Agreement is signed.

### 14.4 Ownership right

The parts of the Work will become the property of the Client on delivery at the Building Site.

### 14.5 Settlement of disputes

The competent court in Rotterdam will settle any disputes concerning the Agreement which cannot be solved amicably, unless it is agreed by settlement agreement that the dispute is to be settled by arbitration.



#### 14.6 Applicable law

Dutch law will apply to the Agreement and the bank or corporate guarantee given pursuant to the Agreement.

#### 14.7 Language

The Agreement and the General Purchase Conditions will be laid down in the Dutch language.

In the event of conflict between the provisions of the Agreement and the General Purchase Conditions and any other documents forming part of the Agreement which have been laid down in a language other than Dutch, the Agreement and the General Purchase Conditions will prevail.

#### 14.8 Place of business of the Contracted Party

The Contracted Party must choose as address for service a permanent place of business or residence in the Netherlands.