



General Terms and Conditions for the Execution of Foundation Works 2009

Clause 1. Application of these general terms and conditions

- 1.1. These general terms and conditions apply to all offers for the execution of foundation works and to all contracts between the client and the contractor (the foundation specialist) that might arise therefrom.
The applicability of the client's general terms and conditions is expressly excluded. The client's general terms and conditions shall only be binding for the contractor if and insofar as their applicability has been accepted by the contractor in writing.
- 1.2. Derogations from or additions to these general terms and conditions shall only apply insofar as they are expressly agreed to in writing in each individual case.
- 1.3. Furthermore, the Uniform Administrative Conditions for the Execution of Works 1989 (*Uniforme Administratieve Voorwaarden voor de uitvoering van werken 1989, UAV*) shall apply *mutatis mutandis* insofar as they do not contradict these general terms and conditions or the contract.

Clause 2. Offer

- 2.1. The contractor shall honour its written offer for a period of thirty (30) days.
- 2.2. Unless agreed otherwise, the offer shall not include the following:
 - value added tax (VAT);
 - municipal tax owed for encroachments on or above public land;
 - insurance premiums;
 - connection charges, shut-off charges and consumption charges for gas, water and electricity;
 - inspection charges incurred by contractors in relation to materials, equipment and work;
 - soil investigation;
 - making calculations and drawings;
 - dimensioning and associated checks and levelling;
 - the required digging, demolition, cutting and buttressing work and repairs to constructions;
 - welding and oxy-acetylene cutting work;
 - cutting off pile heads, diaphragm walls and ground consolidation by means of injection;
 - the performance of all earth-moving and drainage work required to ensure the proper and efficient execution of the work;
 - the removal of all obstacles in, on and above the ground that hinder execution of the work or that could cause damage;
 - taking measures to prevent nuisance or damage to the environment, adjoining premises, installations, information carriers, cables, pipelines and paving;
 - client commission.

Clause 3. Insurance against the risk of price increases

- 3.1. The prices specified in the offer are based on the taxes, levies, wages, social insurance costs, prices of materials and raw materials, and other costs applicable on the date of the offer.
- 3.2. If a change occurs in one or more of these cost categories after the date of the offer, the contractor shall be entitled to alter the agreed price.

Clause 4. Contents of the contract

- 4.1. The contract shall be concluded by assignment on the basis of the contractor's offer or by further written agreement. If the accuracy of a written confirmation of oral assignment is not denied within eight (8) working days of its receipt, the parties shall be bound by that confirmation.
- 4.2. The client shall inform the contractor in full and in writing about provisions of the specifications that could be of importance to the contractor's work and about the method of execution.
- 4.3. In the event of any conflict between these general terms and conditions and the specifications, these general terms and conditions shall prevail.

Clause 5. Obligations of the client

- 5.1. The client shall ensure that all the information, approvals and permits required for execution of the work are at the disposal of the contractor in time.
- 5.2. The client shall pay any levies and fees owed for use of the land or for execution of the foundation works. The connection charges, shut-off charges and consumption charges for gas water and electricity, as well as any municipal tax owed for encroachments on or above public land, shall be payable by the client.
- 5.3. Without prejudice to the provisions of § 5 of the Uniform Administrative Conditions for the Execution of Works 1989, the client shall also ensure that geotechnical and hydrological data and information about soil pollution, old building materials freed in the course of the work and building materials made available by the client, as well as changes in work and/or site circumstances known in advance that are relevant to the work or that could affect the price, are at the disposal of the contractor on time.
- 5.4. The client shall make occupational safety and health facilities available in order to ensure compliance with applicable legislation and regulations, and with orders or regulations issued by a competent authority that exercises control over the contractor's work.
- 5.5. The client must make appropriate and efficient rescue equipment available, including lifeboats and coxswains where necessary, and must maintain that equipment.

- 5.6. The client shall take all measures necessary to prevent nuisance to the surrounding area and damage to adjoining premises and the environment.
- 5.7. The client bears responsibility for the order, as specified by the client or on its behalf, in which the activities are performed, for prescribed constructions and working methods, including the influence exerted thereon by the soil conditions, for the condition and position of underground cables, pipelines and constructions or obstacles, for the provision of inaccurate information or the failure to provide information that the client is obliged to provide pursuant to the contract, and for the orders and instructions it issues or that are issued on its behalf.
- 5.8. If construction meetings are held, the client must inform the contractor about the issues addressed in such meetings insofar as those issues relate to the work assigned to the contractor. In such cases, the client shall forward a written copy of the relevant sections of the construction meeting's minutes to the contractor.

Clause 6. Construction site facilities

- 6.1. The client shall ensure proper accessibility and passability with respect to the construction site, or, in the case of water works, proper navigability, for the transport of equipment, materials and personnel.
- 6.2. The contractor shall ensure that there is sufficient space at the location in question for the contractor's activities and equipment, as well as sufficient space for the protection of activities on adjoining premises and the property of third parties. If necessary, the minimum free space required shall be agreed.
- 6.3. The client shall guarantee a properly prepared construction site with subsoil that is sufficiently load-bearing, dry, hard and weather and wind-resistant, and that, moreover, complies with requirements pertaining to proper working conditions.
When assessing the passability of the site, the test and measures taken must be in accordance with the CUR/CROW/Arbouw report pertaining to an assessment system for the passability of construction sites (*Beoordelingssysteem voor de begaanbaarheid van bouwterreinen*) as it reads three months prior to the conclusion of the contract. The client shall ensure a suitable construction site with facilities to store materials where necessary and maintain the site in such a way as to enable mobile equipment and appliances to be transported and used safely.
- 6.4. The client shall ensure the construction and maintenance of suitable access routes from the public road to the building site and storage site.
The client must ensure weather and wind-resistant subsoil between the construction site, work platforms and storage site in order to guarantee the safe operation and transport of the mobile equipment and appliances. Gradients may not exceed a ratio of 1:10.
- 6.5. The client shall ensure suitable general lighting and direct lighting of the construction site to enable work to be performed safely, ensure safe access and egress and ease the performance of work by the contractor.
- 6.6. The client shall ensure the supply of electricity and water on the work site where the activities are performed.
- 6.7. The client shall arrange for the directing or rerouting of road, rail or shipping traffic and see to the placement, maintenance and removal of all necessary traffic signs and other traffic-related measures.
- 6.8. The client bears responsibility for the prior removal of surface or underground obstacles that could adversely affect the activities of the contractor or the quality of the work, or otherwise cause damage with respect to the foregoing.
- 6.9. The client shall ensure the removal of unanticipated man-made obstacles, including archaeological objects.
- 6.10. The client shall ensure the filling of excavations or holes with a suitable material that shall not hinder or adversely affect execution of the work and that shall guarantee the stability of the contractor's equipment.
- 6.11. The client shall make adequate arrangements for the removal of, packaging of, or protection against toxic or harmful materials encountered.
- 6.12. The client shall ensure the KLIC (Cables and Pipelines Information Centre) report and shall clearly demarcate, mark or indicate the precise locations of existing underground or aboveground obstacles, cables and pipelines at the site. The client shall furthermore provide drawings indicating the precise positions and levels of the foregoing in relation to the contractor's work, and shall also provide thorough instructions to the contractor's management team in this regard.
- 6.13. The client shall ensure canteen and sanitary facilities (also) for the contractor in accordance with the Working Conditions Act (*Arbeidsomstandighedenwet*).
- 6.14. The client shall reimburse the additional costs incurred by the contractor due to delays or damage as referred to in this clause.
- 6.15. The contractor is entitled to partition off its work area by means of fencing. In the case of the work area being partitioned off, only the contractor shall be authorised to be in that area.

Clause 7. Commencement of the work and term of execution

- 7.1. The client must ensure that the contractor can commence its activities on the agreed date.
- 7.2. If it is not possible for the contractor to commence its activities on the agreed date, the client shall inform the contractor accordingly as soon as possible, but in any case no later than five (5) working days or as many working days as agreed by the parties prior to the agreed commencement date.

- 7.3. If the contractor is not capable of commencing work on the agreed date, it shall inform the client accordingly as soon as possible, but in any case no later than five (5) working days or as many working days as agreed by the parties prior to the agreed commencement date.
- 7.4. If the commencement or progress of the work assigned to the contractor is delayed due to force majeure, due to circumstances for which the client is responsible, or due to amendment of the contract or terms and conditions governing execution, the damage consequently incurred by the contractor must be compensated by the client.
- 7.5. The client shall pay compensation to the contractor for business interruption costs and direct trading and consequential losses that the contractor incurs due to failures on the part of other parties to perform activities and/or make deliveries assigned to them or failures to do so properly or on time, or due to other circumstances for which the client is responsible.
- 7.6. If the contractor is hindered in the performance or performance in full of the contract due to altered circumstances, *force majeure* or the suspension of the contract and/or the main contract for services, it shall be entitled to adapt performance of the contract to the circumstances by mutual agreement.
- 7.7. Force majeure is understood to mean any cause beyond the will and/or control of the contractor and for which it is not liable that hinders the contractor from fulfilling its obligations. *Force majeure* is in any case understood to mean abnormally high or low water levels, floating ice, weather conditions that prevent the execution of work, strikes, riots, wilful damage and acts of war, delays in activities to be performed by the client and/or third parties and delays in deliveries for which the contractor is not responsible.
- 7.8. Without prejudice to the provisions of § 14 of the Uniform Administrative Conditions for the Execution of Works 1989, modified execution of the work as a result of the circumstances referred to above shall, as applicable, be treated as additional work or contract reductions for purposes of settlement.

Clause 8. Obligations of the contractor

- 8.1. The contractor shall execute the work properly and thoroughly and in accordance with the stipulations of the contract.
- 8.2. The contractor shall make proper use of the items and facilities made available to it by the client.
- 8.3. The contractor shall ensure that the waste generated during execution of the work assigned to it is deposited at the locations designated for the purpose by the client or in the dedicated container or containers.

Clause 9. Liability of the parties

- 9.1. Damage to the work shall be deemed to be payable by the client unless it can be attributed to the contractor.
- 9.2. The contractor is liable for damage to structures of the client that exist in connection with the work and to other structures and property of the client insofar as the damage is caused by execution of the work and can be attributed to wilful misconduct or gross negligence on the part of the contractor, its personnel, contractors or suppliers.
- 9.3. Without prejudice to the provisions of Clause 10 concerning insurance, the contractor can never be held liable for an amount greater than 10% of the contract price, with an applicable maximum of € 225,000.
- 9.4. The contractor is not liable for damage resulting from errors in design. For errors in its own designs, the liability of the contractor shall be limited to 10% of the contract price of the designed part. Design-related liability shall only apply if the contract expressly stipulates that the contractor is responsible for the whole design or for the part in which the error occurred.
- 9.5. All compensations referred to in this clause may never jointly exceed the maximum liability amount specified in paragraph 4. Needless to say, this limit applies to all of the contractor's contractual and statutory liabilities within the context of the contract entered into.
- 9.6. The contractor is not liable for damage to underground cables, conduits or pipelines, culverts, sewer systems and the like, unless the client has sufficiently informed it of the exact and factually accurate positions of the foregoing by means of drawings.
- 9.7. The client indemnifies the contractor against third-party claims due to damage for which the contractor is not liable by virtue of the contract.
- 9.8. The contractor shall not be liable for wrongly positioned piles and walls or sheet pile walls unless these errors are demonstrably the result of gross negligence and have been reported to the contractor in good time and in writing.

Clause 10. Insurance

- 10.1. The client shall insure the work from its commencement up to and including the end of the maintenance term if so agreed, but in any case up to and including completion, against all material damage, loss or destruction, irrespective of cause, by means of a primary CAR (Construction All Risks) insurance, notwithstanding the provisions of Article 951 and insofar as necessary those of Article 932 of Book 7 of the Dutch Civil Code. The amount insured must be such that the compensation paid is sufficient to cover the costs of cleaning up and repairing or replacing that which has been damaged or lost. This primary CAR insurance shall prevail over other insurances, which means that compensation shall first be sought from the primary CAR policy.
- 10.2. The primary CAR policy shall determine that in each case of damage, the insurance money shall be paid to the owner of the goods involved. For the contractor, deduction in connection with excess can never amount to more than 1% of its contract price in each case, with an applicable maximum of € 2,250. The client shall not set off any damage against the contract price of the contractor.
- 10.3. The insurance shall at least cover:
 - the work, concomitant works, additional work, changes, all materials and building materials intended for the work, constructions, components and furthermore all temporary and/or auxiliary works and/or auxiliary materials and all other objects to be used for the work;
 - the risk of damage to existing property of the original client arising from execution of the work;
 - the risk of damage to third parties arising from execution of the work (a so-called third-party liability clause).
- 10.4. The client shall stipulate that all parties involved in the execution of the work and their respective employees shall in the policy be deemed to be third parties in relation to each other.

- 10.5. The contractor is at all times entitled to inspect the policy, the general policy terms and conditions and the clauses.
- 10.6. In derogation from § 43b, paragraph 1 of the Uniform Administrative Conditions for the Execution of Works 1989, the contractor shall not arrange the insurance referred to in that clause unless the parties expressly agree otherwise.
- 10.7. Without prejudice to the provision of 10.6, the client, in any capacity whatsoever, and/or its employees shall never be deemed to be a co-insured party and/or co-insured parties under the insurance policies of the contractor.

Clause 11. Completion

- 11.1. Within a reasonable term prior to the date on which, in the opinion of the contractor, the work shall be completed, the contractor shall invite the client to carry out an inspection of the work.
- 11.2. Notification of completion must be issued in writing. A submitted specification of the final instalment due or a submitted final account shall be deemed to be a notification of completion of the prior activities. If the contractor does not receive a substantiated, written rejection from the client within two (2) weeks following the inspection of the work or within two (2) weeks following the issue of the written notification of completion by the contractor, the work shall be deemed to have been approved.
- 11.3. The date on which the work is approved or deemed to have been approved by the client shall be regarded as the date of completion. Unless agreed otherwise, there shall be no maintenance term.

Clause 12. Settlement

- 12.1. If payment in instalments has been agreed, each of these instalments must be paid no later than fourteen (14) days after the date on which the instalment invoice in question was sent to the client in accordance with the contract.
- 12.2. Within a reasonable term following completion of the activities, the contractor shall submit its final account. This document shall also contain a specification of the additional work and contract reductions and all other amounts the contractor can claim from the client pursuant to the contract.
- 12.3. Unless agreed otherwise, payment of the amount owed to the contractor must be effected within thirty (30) days following submission of the final account. The client may not deduct any alleged claims from the contract price.
- 12.4. Without prejudice to the provisions of § 45, second paragraph of the Uniform Administrative Conditions for the Execution of Works 1989, the debtor shall be obliged to pay statutory commercial interest as well as judicial and extrajudicial costs in the event of a failure to fulfil a payment obligation.

Clause 13. Retention of title

- 13.1. As long as the client has not made full payment pursuant to the contract, the materials delivered shall remain the property of the contractor and at the risk and expense of the client, irrespective of whether those materials are processed or unprocessed.
- 13.2. This retention of title shall also apply to the materials already paid for by the client if and insofar as other materials, also those delivered later, remain unpaid.

Clause 14. Guarantees

- 14.1. If it has been agreed that the contractor must issue a guarantee for the work it is to execute, that guarantee shall oblige the contractor to correct, on the demand of the client and as quickly as possible, all defects that occur during the guarantee period which the client can properly demonstrate are the result of lesser quality or improper execution.
- 14.2. The guarantee shall in no case extend beyond the correction of defects. Furthermore, consequential damage is expressly excluded or restricted to defects that were recognisable or verifiable prior to or during completion.
- 14.3. Guarantee claims shall cease to be valid if:
 - a. the executed work and/or goods delivered is or are subjected to different and/or heavier demands than those that were known at the time that the contract was concluded;
 - b. repairs or other activities are performed by third parties without the prior written permission of the contractor;
 - c. the materials delivered and completed work are not used in the manner for which they are intended;
 - d. the client has not fulfilled its obligations towards the contractor.
- 14.4. The client must inform the contractor of a defect within five (5) working days of its detection by registered letter. If this term is exceeded, all guarantee obligations shall cease to apply.
- 14.5. The maximum guarantee amount shall be equal to the contract price, with an applicable maximum of € 225,000.
- 14.6. It shall in any case not be possible to invoke the guarantee if the defects are the result of acts performed by third parties and/or items put in place by third parties.

Clause 15. Disputes

- 15.1. Unless the parties have agreed otherwise in the contract, all disputes that arise between the parties in connection with the contract, or in connection with further contracts which are the result of the contract, including those disputes deemed to be disputes by only one party, shall be settled by arbitration in accordance with the Statute of the Court of Arbitration for the Building Industry in the Netherlands as it reads on the date of assignment or assignment confirmation.
- 15.2. The contractor is entitled to bring a dispute before the competent court in the district in which the contractor is based instead of having recourse to the dispute settlement method referred to in the previous paragraph.