

General Terms of Delivery

# of Installation Companies 2024



# General Terms and Conditions of Delivery of Installation Companies 2024

## A. General provisions

### Article 1 Scope and definitions

1. These general terms and conditions shall apply to all legal and other acts of the Contractor and shall also take precedence over the general terms and conditions of the Contractor if the Contractor has expressly rejected their applicability. Any reference by the Client to its own purchasing conditions, conditions of tender or other terms and conditions is expressly rejected and does not lead to the applicability of those terms and conditions.
2. Besides and in addition to the provisions of paragraph 1, these general terms and conditions shall apply if the Client has accepted their application in previous agreements with the Contractor.
3. The Client accepts the application of these general terms and conditions to all future legal acts with the Contractor.
4. Where the following terms are capitalised, the following definitions apply:
  - a) Agreement: the agreement relating to the Work between the Client and Contractor to which these general terms and conditions apply;
  - b) Work: the entirety of design, installation and/or maintenance work – including the supply of goods and/or services – that the Contractor is required to perform under the Agreement;
  - c) Contractor: the natural or legal person to whom the Work has been assigned;
  - d) Client: the natural or legal person who commissions the Work;
  - e) Structure: a structure as referred to in Section 758(4) of Book 7 of the Dutch Civil Code.

### Article 2 Tender

1. The Contractor's tender to the Client is without obligation. The Contractor's tender may still be revoked by the Contractor shortly after receipt of the Client's acceptance.
2. The contents of all tender documents, such as drawings, descriptions or specifications, are as accurate as possible, but are not binding.
3. In the event of conflicting stipulations in the documents, the following applies:

- a. a new written or drawn document takes precedence over an old written or drawn document;
  - b. a description takes precedence over a drawing, and
  - c. a special arrangement takes precedence over a general arrangement.
- furthermore, a takes precedence over b and c, and b takes precedence over c.
4. The Client shall treat information from the tender documents and tenders as confidential and may not use this information for its own use or the use of third parties or disclose it to third parties without written consent. The provisions of Article 4 paragraph 19 of these terms and conditions shall apply accordingly.
  5. If an Agreement is not concluded on the basis of the tender documents, all these documents must be returned to the Contractor's address immediately by the Contractor at the Client's first request and at its expense and risk. Insofar as digital documents are concerned, all such documents must be removed or destroyed immediately by the Client and at its expense and risk at the Contractor's first request.

### Article 3 Obligations of the Contractor

1. The Contractor is obliged to warn the Client if there is such an apparent mistake in the Agreement that it would be acting contrary to the requirements of reasonableness and fairness if it were to continue building on the basis of it without warning in its performance of Work. The provisions of Section 754(2) of Book 7 of the Dutch Civil Code shall not apply.
2. However, the Contractor will not be obliged to go beyond an overall assessment of the information, designs, drawings, calculations and specifications provided by the Client. The Contractor's inspection of goods to be delivered by the Client will, as far as possible, involve no more than a visual inspection.
3. The Contractor will make every effort to perform the Work.
4. The Contractor will ensure that it is aware of the statutory regulations and general technical and/or industrial standards relevant to the Work.
5. The Contractor shall make every effort to perform the Work in such a way that the installation complies with the Agreement.
6. In the event of damage to the installation or any part thereof occurring during and due to or in connection with the performance of the Work before delivery, the Contractor will repair the damage at its own expense, unless the damage was not caused by it or it is otherwise unreasonable for it to bear such damage, without prejudice to the parties' liability under the Agreement or the law.
7. If requested, the Contractor shall transfer to the Client all rights from guarantees provided to it by independent auxiliary persons with respect to the installation or parts thereof.
8. Upon request, the Contractor will ensure that the Client receives timely information about the wage/material ratio used in its tender and its payment behaviour within the context of the Dutch Wages and Salaries Tax and National

Insurance Contributions (Liability of Subcontractors) Act and the VAT reverse charge mechanism.

9. The Contractor shall, to the best of its ability and if so requested, provide timely instructions for putting the installation in and out of operation and maintaining the installation in operational condition.
10. The Contractor is obliged to treat all information of the Client as confidential, insofar as the Contractor has been informed that such information is confidential.
11. In the event that the Contractor has to supply products, including software and hardware, within the context of the Work, for which the supplier applies generic terms and conditions (which the Client would reasonably have had to accept itself if it had contracted with that supplier), the Contractor will not be obliged, with regard to the delivery by that supplier to the Client, to do anything more in terms of performance and liability than what the Contractor can hold that supplier to under the generic terms and conditions as applied by the supplier to the Contractor.

#### Article 4 Obligations of the Client

1. The Client will ensure that the Contractor has timely access to all technical and other information, data, decisions and modifications necessary to enable the Contractor to perform the Work in accordance with the Agreement.  
The Client is responsible for the accuracy and completeness of this information, data, decisions and modifications.
2. The Client shall ensure that the Contractor has timely access to all goods to be made available by the Client. The Client is responsible if these goods are unsound or unsuitable.
3. The Client shall indemnify the Contractor against claims by third parties in connection with the information, data, decisions, modifications and goods referred to in paragraphs 1 and 2.
4. The Client will ensure that the Contractor has the permits, exemptions, orders and consents necessary for the set-up of the Work and/or the use of the installation in good time. The Contractor will provide the necessary cooperation to the best of its ability in obtaining the above. If the Client fails to fulfil this obligation, the Contractor may dissolve the Agreement pursuant to Article 11, paragraph 5 and claim damages.
5. The Client shall ensure the timely availability of and free access to the site, the building and the location on or in which the Work is to be carried out and for clean, safe and healthy conditions, as well as suitable storage space and a site hut there.
6. The Client shall ensure the good condition and unobstructed accessibility of the buildings/locations and the installations or parts thereof around, under, in or above which the Work is performed. The Client is responsible for any circumstances that limit, prevent and/or impede the performance of the Work. The Contractor is obliged to inform the Contractor and its personnel in good time about working conditions, including warning them of dangerous situations.
7. The Client will ensure that, at the locations where the Work is to be performed, the Contractor will have the necessary (mains) services, such as electricity (mains voltage), (drinking) water, gas, compressed air, telecom and/or sewerage connection, available in good time, free of charge and with a delivery guarantee.
8. The Client is responsible for the timely connection of the installation to the public networks.
9. The Client shall provide timely information about the nature and content of the work of subcontractors and other third parties engaged by it, the anticipated time at which they will be performed, as well as their coordination, so that the Contractor can take this information into account in its tender. Changes to that information and/or the offer shall entitle the Contractor to additional payment and/or extension of the term pursuant to Article 12. The Client alone is responsible for coordinating this work, unless otherwise agreed.
10. The Client shall be responsible for any delays and/or costs caused by the work of ancillary contractors which cannot be attributed to the Contractor. Damage caused to the installation by the work of subcontractors shall be borne by the Client.
11. The Client is obliged to warn the Contractor in writing and within a reasonable time if it has become aware or could reasonably have become aware of a breach by the Contractor.
12. The Client is liable for soil and other contamination(s), environmentally harmful substances and/or bacteria found during the performance of the Work, such as asbestos or legionella. The Client may instruct the Contractor to remove the contaminants, substances and/or bacteria found by means of an amendment pursuant to Article 13. Regardless of whether the Contractor carries out this instruction, it shall be entitled to extension of time and/or reimbursement of costs pursuant to Article 12.
13. The Client is responsible for the goods it has stipulated or to be procured from a stipulated supplier, as well as for their non-delivery or late delivery.
14. The Client is responsible for auxiliary persons, such as subcontractors or suppliers it has stipulated. The Contractor is not obliged to contract these independent auxiliary persons if the Client does not wish to accept the contract terms of these auxiliary persons.  
If the stipulated auxiliary person does not perform, does not perform on time or does not perform properly, the Contractor will be entitled to an extension of time and/or reimbursement of costs pursuant to Article 12.
15. The Client is responsible outside the Contractor's working hours for all goods, such as materials, equipment or tools brought to the work, regardless of to whom these goods belong. The Client shall ensure that these goods are adequately insured; including against theft, disabling and/or destruction.
16. The Client is responsible for delays and/or costs resulting from compliance with statutory regulations and decisions made by government and other authorities, as well as regulations of a special nature, such as technical and industrial standards, which are amended or come into force after the tender.

17. The Client will permit the Contractor to affix indications of its name and company or advertising on fences and fencing that serve to close off the building or the places where the Work is being performed, as well as elsewhere on the work site.
18. The Client is responsible for supplied equipment and goods and is obliged to take delivery of them.
19. The Client is obliged to treat all business or other data and all information received from the Contractor in connection with the Agreement as confidential. The Client is prohibited from using such data and information for its own use or the use of third parties or disclosing them to third parties. If the obligation set out in this paragraph is breached, the Client shall forfeit an immediately due and payable penalty of €100,000, which is not subject to judicial mitigation, without prejudice to the Contractor's right to claim damages.
20. The Client shall pay the amounts owed by it to the Contractor in accordance with the agreed payment schedule, including if the Client is entitled to compensation pursuant to Article 16.

#### **Article 5 Insurance of the Client**

1. The Client is obliged to take out and maintain a customary CAR insurance policy or equivalent customary insurance policy or policies in which the Contractor (including subcontractors and auxiliary persons) is included as a co-insured party if the Contractor's Work is in the performance of the Client's business, unless otherwise agreed in writing.
2. In the event of export of products and installations which partly consist of goods developed and/or supplied by the Contractor to the USA, Canada or territories to which the laws of these countries have been declared applicable, the Client is obliged to report the intention to export to the Contractor in good time. If the event the foregoing occurs, the Client must take out sufficient and adequate liability insurance policies and maintain them unchanged, to the satisfaction of the Contractor.
3. The Client shall ensure that the Contractor receives written proof of the existence, payment and content of the insurance policies referred to in paragraphs 1 and 2 as well as the insurance policies referred to in Article 4 paragraph 15 as soon as possible.

#### **Article 6 Acquisition of staff and secondees**

1. During the term of the Agreement and for one year after its termination, the Client is not allowed to employ employees of the Contractor, or cause them to be employed, who are or have been involved in the work for the Client in execution of the Agreement. If this prohibition is violated, the Client shall forfeit to the Contractor an immediately payable penalty in the amount of one gross annual salary of the employee concerned.
2. In case of secondment within the meaning of the Waadi (Dutch Placement of Personnel by Intermediaries Act), the Client is only allowed to acquire a seconded employee of the Contractor at the end of the secondment against payment of a reasonable fee to the Contractor.

#### **Article 7 Retention of title**

1. All goods designate for the Work, such as materials or parts, shall only become the property of the Client after the Client has fulfilled all its financial obligations to the Contractor.

#### **Article 8 Deadlines**

1. The Contractor cannot be required to commence the performance of the Work until all the information, data, goods and/or insurance/proof of insurance necessary for this purpose to be provided by the Client, as referred to in Articles 4 and 5, have been received by the Contractor, are in its possession on time and it has received the agreed instalment.  
Any exceeding of the applicable deadlines shall entitle the Contractor to additional payment and/or extension of deadlines pursuant to Article 12. The Contractor is authorised to start and/or deliver earlier, unless otherwise stipulated in the Agreement.
2. Unless expressly agreed otherwise, the deadlines applicable to the Contractor will be observed as far as possible. The mere exceeding of a stated deadline does not put the Contractor in default. If an overrun is imminent, the Contractor and Client will consult as soon as possible.

#### **Article 9 Review, acceptance and delivery**

1. The Client is authorised to review, through checks, trials or tests, whether the Work complies with the Agreement.
2. Assessment by or on behalf of the Client is carried out at the risk and expense of the Client.  
The Contractor shall provide the Client with the necessary cooperation in this regard within reasonable limits if an assessment plan has been agreed and the plan provides for it.
3. In exercising its power of review, the Client should cause as little disruption as possible to the Work. The Client is responsible for any delays and/or costs incurred as a result of a situation that cannot be attributed to the Contractor. Damage caused to the installation by the exercise of the authorisation to review shall be borne by the Client.
4. Once the Contractor has given written notice that the Work is ready for acceptance and the Client does not inspect it within the specified period, the Work will be deemed to have been tacitly accepted.
5. Minor defects that can be repaired before a subsequent payment period may not constitute grounds for refusal to accept the Work, provided they do not prevent the commissioning of the installation and/or the Work.
6. After (tacit) acceptance, the Work shall be considered delivered. The Contractor is authorised to divide the delivery into a number of partial deliveries.
7. If the Work is (tacitly) accepted by the Client, the time of acceptance will be the day of the notification referred to in paragraph 4.
8. At the Client's request, acceptance of the Work may also take place without the notification under paragraph 4. To this end, the Client will inform the Contractor in



writing that it considers the Work to have been accepted. The date of dispatch of this communication shall be considered the time of acceptance.

9. Contrary to Section 757(a) of Book 7 of the Dutch Civil Code, the Contractor is not obliged to issue a handover file, unless the parties have stipulated otherwise in the agreement. In such cases, the Contractor shall make every effort to provide the handover file to the Client at the time of the notification referred to in paragraph 4.

#### **Article 10 Early commissioning**

1. If the Client wishes to put the installation or parts thereof into use before delivery, the parties shall deem this a modification and the parties shall follow Article 13 (modifications). In any case, the payment deadlines will be adjusted in such a way that the Client will pay the Contractor what it would owe on account of this early commissioning or the relevant parts thereof at the time of earlier commissioning. Any other payment obligations will be adjusted proportionate to time. The Client is only entitled to earlier commissioning if the following two cumulative conditions have been met: i) acceptance by the Client of the Contractor's offer as referred to in Article 13, paragraph 3 and ii) the Client has approved and signed for completion of the Work relating to the installation or parts thereof that it wishes to commission earlier.
2. In the event that the Client fails to follow the procedure referred to in Article 13 and the previous paragraph and/or fails to approve the Work and sign for completion and takes the installation or parts of it into use anyway, the Contractor will be entitled to a lump-sum payment of the entire price or contract price, which will then be immediately due and payable, as of the date of (partial or complete) early commissioning, and the installation/the Work shall be deemed approved and completed in its entirety. If the early commissioning (whether partial or not) results in damage to and/or disruption and/or delay of the Contractor's Work, any financial and time consequences of this will be borne by the Client, whereby the Contractor's statement to that effect will be presumed to be reasonable and correct, subject to evidence to the contrary by the Client.
3. The early commissioning of the installation(s)/Work, or part thereof, by the Client shall count as the date of (partial) delivery as referred to in Article 16.
4. Early commissioning of the installation(s)/Work, or part thereof, by the Client, will result in the commencement of any agreed warranty and/or maintenance period as well as any limitation and expiry periods in respect of the installation(s)/Work taken into use.
5. Damage incurred during or as a result of early commissioning as referred to in paragraph 1, for example to the installation and/or the Work, shall be borne by the Client. Delays arising in the Work during or as a result of commissioning as referred to in this article shall be borne by the Client and shall entitle the Contractor to an extension of the term and compensation for losses due to delay.

#### **Article 11 Suspension, termination and cancellation**

1. The Client is authorised to suspend the Work. The Client is obliged to substantiate this in writing and immediately to enter into discussions with the Contractor about the consequences.
2. If the Contractor has to take appropriate provisions or measures as a result of the suspension, it shall be entitled to an extension of time and/or reimbursement of costs pursuant to Article 12.
3. In the event that the Work or any part thereof is suspended or delayed and this is not attributable to the Contractor, the Client will be obliged to pay the Contractor, calculated on the basis of the state of the Work, an amount for all Work performed, as well as, inter alia, all costs reasonably incurred and still to be incurred, calculated from the time the suspension or delay occurred.
4. If the Work is suspended or delayed for more than two months, the Contractor is entitled to terminate the Work in an unfinished state.
5. If the Client has applied for a suspension of payment, is put into liquidation or has failed to fulfil the Agreement, the Contractor will be entitled to terminate the Agreement.
6. The Client is authorised to terminate the Agreement in whole or in part at any time.
7. In the cases referred to in paragraphs 4 to 6, the Client is obliged to pay the fixed price stipulated in the Agreement, increased by the costs incurred by the Contractor as a result of non-delivery and reduced by the savings to be proved by the Client which result for the Contractor from the termination. If the price was dependent on the actual costs to be incurred by the Contractor, the price payable by the Contractor will be calculated on the basis of the costs incurred, the work carried out and the profit that the Contractor would have made if the Work had been fully executed.
8. The Client shall also be obliged to compensate the damage suffered by the Contractor, without prejudice to the Contractor's obligation to limit such damage as much as possible, unless the damage is the result of a shortcoming that cannot be attributed to the Client.

#### **Article 12 Deadline extension and/or reimbursement of costs**

1. In addition to article Section 753(1) of Book 7 of the Dutch Civil Code, the Contractor has the possibility to claim reimbursement of costs without court intervention.
2. In addition to the provisions of paragraph 1 and Article 13, the Contractor is in any case entitled to an extension of the deadline and/or reimbursement of costs if:
  - a) these terms and conditions expressly so provide and on condition that the delay and/or costs are caused by a circumstance that cannot be attributed to the Contractor, or
  - b) these are caused by a circumstance for which the Client is responsible and regarding which the Contractor was not required to warn in view of its obligation referred to in Article 3, paragraph 1, or
  - c) an unforeseen circumstance occurs of such a nature that, according to standards of reasonableness and fairness, the Client cannot expect the Agreement to remain unchanged.

3. If the Contractor is of the opinion that it is entitled to a deadline extension and/or reimbursement of costs, it shall inform the Client in writing, stating reasons. The Contractor shall include all direct and indirect costs, as well as a reasonable mark-up for overheads, profit and risk. It must also state the implications with regard to planning.

#### **Article 13 Changes (additions and omissions)**

1. The Client is authorised to instruct the Contractor to implement changes to the Agreement and the Work.
2. The Contractor is not obliged to carry out an ordered change if the change:
  - a) is not ordered in writing, or;
  - b) would lead to an unacceptable disruption of the Work, or;
  - c) exceeds the Contractor's knowledge and/or abilities and/or capabilities, or;
  - d) would not be in the Contractor's interest, or;
  - e) if the parties cannot agree on the financial and scheduling implications.
3. If the Contractor is prepared to implement the change, it will send the Client a written offer containing the following details:
  - a) the balance, formed by all direct and indirect costs, profit and risk, related to the change, less any savings resulting from the execution of the change, and;
  - b) the modification of the Work, adjustment of the schedules and similar documents, and;
  - c) the adjustment of the instalment statement or payment conditions.
4. The Contractor is entitled to reasonable compensation for the costs associated with the tender referred to in paragraph 3, regardless of whether the parties agree on that tender.
5. The Contractor will be entitled to submit proposals for changes to the Client if it sees reason to do so and on condition that the Work will comply with the Agreement.
6. The Client may refuse or accept the proposals for changes referred to in paragraph 5, if there is reasonable cause to do so. In the latter case, the parties will follow this article.
7. If, in connection with the changes, a delay occurs due to a circumstance that cannot be attributed to the Contractor, the Contractor shall be entitled to an deadline extension and/or compensation of costs pursuant to Article 12.
8. The absence of a written order regarding the change shall not affect the Contractor's claims for payment.

#### **Article 14 Price and payment**

1. Agreed amounts and amounts mentioned in these general terms and conditions do not include turnover tax. The Client shall reimburse the turnover tax payable by the Contractor under the Agreement.
2. All prices and rates are based on a normal working week from Monday to Friday. All Work performed outside normal working hours per calendar day shall be charged at the rates and surcharges set out in the Agreement, based on the Contractor's normal working hours. All

waiting hours or downtime respectively for personnel or equipment of the Contractor attributable to the Client shall be settled on the basis of the rates laid down in the Agreement.

3. The settlement of changes in wages, social security charges, prices, rents and freight charges will take place in accordance with the insurance against the risk of price increases for installation technology, unless otherwise agreed.
4. The parties agree on a payment schedule in instalments. The Contractor may submit the invoice for the final account if and as soon as the Work has been completed, or on the day on which the Agreement is terminated, terminated in an unfinished state or terminated pursuant to Article 11. Submission of this invoice does not imply a waiver of the Contractor's right to further claims under the Agreement.
5. Payment shall be made without deduction or set-off, unless otherwise agreed, within 14 calendar days from the date of the relevant invoice.
6. The Client is not entitled to make payments for or on behalf of the Contractor to its self-employed auxiliary persons.
7. A payment shall first be applied to reduce all costs and interest due and lastly to reduce the longest outstanding payable invoices, even if the Client states that the payment relates to later invoices.

#### **Article 15 Failure of the Client to meet its obligations**

1. If the Client fails to cooperate in a timely manner in an inspection or acceptance of the Work or fails to pay on time, the Contractor will be entitled to compensation of interest at the statutory rate in accordance with Section 119(a) of Book 6 of the Dutch Civil Code with effect from the day on which the cooperation should have been provided or paid. In such cases, the Client is also authorised to suspend the Work.
2. If cooperation or payment does not take place within one month after the day on which it should have taken place at the latest, the Contractor will be entitled to compensation of interest at the statutory interest rate increased by two percentage points with effect from the day on which this month has passed, without the requirement of a reminder by the Contractor. In such cases, the Contractor will also be authorised to terminate the Agreement pursuant to Article 11.
3. If the Contractor suspects that the Client is not fulfilling or will not fulfil its obligations, the Contractor may require adequate security from the Client and at the Client's expense and risk, such as a bank guarantee. If the Contractor fails to provide the required security, the Contractor will be entitled to suspend the Work or terminate the Agreement pursuant to Article 11.
4. In the event that the Client does not fulfil its obligation to deliver goods on time at the agreed place of delivery, or will not fulfil it, the Contractor will be entitled to store these goods at the risk and expense of the Client or to sell them in a suitable manner and to recover the amount owed to the Contractor from the proceeds, provided that the Client has given the Contractor notice to purchase

the goods within five working days. The Contractor is authorised to settle the surplus to be paid to the Client by offsetting, also during the Contractor's moratorium or bankruptcy.

5. All costs actually incurred by the Contractor to obtain payment of invoices due, both judicial and extrajudicial costs, shall be borne by the Client, unless the Contractor chooses to fix these costs at a flat rate of 15% of the amount to be claimed.

#### Article 16 Liability and warranty

1. After the moment of delivery, the Contractor will no longer be liable for defects unless:
  - a) those defects are attributable to the Contractor, and moreover;
  - b) the Client did not notice those defects prior to delivery; and moreover;
  - c) the Client would not reasonably have been able to discover those defects up to and at the time of delivery.
- 1a. Contrary to the first paragraph, if and insofar as there is contracting of a Building Work (as referred to in Article 1.4 under e), the Contractor will be liable for defects as referred to in Section 758(4) of Book 7 of the Dutch Civil Code that were not discovered upon delivery of the Building Work, unless these defects are not attributable to the Contractor and except in the event that the Contractor deviates from this in the Agreement and/or the Contractor's offer.
2. If the Contractor is liable under the provisions of paragraph 1, paragraph 1a and/or under the Agreement, the Contractor will only be obliged to pay compensation for the direct material damage suffered by the Client as a result, if and in so far as that damage could not be mitigated by the Client and is not remedied by repair as referred to in paragraph 4.
3. Direct material damage shall under no circumstances include: all forms of consequential damage other than those referred to in the preceding paragraph, such as – but not limited to – loss of production, trading loss (such as loss of turnover or profit) or reduction in value or loss of products, as well as amounts that would have been included in the implementation costs if the Work had been properly executed from the start.
4. Without prejudice to the provisions of this article, the Contractor undertakes, at its own expense, to remedy the defects for which it is liable as well as reasonably possible during the period referred to in paragraph 10. In the event that the costs of repair are not in reasonable proportion to the interest of the Contractor in repair and in the event that the installations are not installed in the Netherlands, the Client's right to repair shall be converted into compensation to be paid by the Contractor as referred to in paragraph 2. Parts replaced by the Contractor become will the Contractor's property.
5. The Contractor will only be liable for compensation of damage other than that mentioned in this article if and to the extent that the Client can show that this is due to intent or gross negligence on the part of the Contractor.
6. Without prejudice to the provisions of this article, in the case of Work in service of the Client's profession or business, the Contractor will only be liable for claims that are not covered by the insurance(s) referred to in Article 5, paragraph 1, and in the case of Work relating to products and installations that are exported by the Client to the USA and Canada, or to territories to which the law of one of these countries has been declared applicable, the Contractor will only be liable for claims that are not covered by the insurance policy or policies referred to in Article 4, paragraph 15 and Article 5, paragraph 2.
7. If and to the extent that the Client has insured any risk associated with the Agreement, it shall be obliged to claim any damage under that insurance and to indemnify the Contractor against recourse claims from the insurer.
8. The extent of the damage to be compensated by the Contractor is limited to a maximum of the amount of the price stipulated in the Agreement or if no price was stipulated when the Agreement was concluded, as is the case for work carried out on the basis of a cost-plus contract, up to the amount of the presumed price. For maintenance contracts with a term of more than one year, the price is set at the total fees for one year.
9. In no event shall the compensation exceed the total of the amounts of the Contractor's insurance excess and the payment made by the Contractor's insurer up to a maximum of €1,000,000.
10. Any liability of the Contractor as well as any legal or other claim of the Client on account of any failure(s) on the part of the Contractor will lapse, to the extent that nothing else has been agreed in the matter, by the expiry of one year from the time of i) delivery or termination in an unfinished state or ii) the time at which the Agreement is terminated by termination or cancellation.
11. Legal action on account of a defect shall not be admissible if the Client has not given the Contractor notice of default in writing, stating reasons, with due speed after it has discovered or reasonably should have discovered it.
12. The right to claim on account of a defect shall expire one month after the expiry of the reasonable period stated in a written and reasoned notice of default.
13. The Contractor shall not be liable for compensation of damage of the Client or third parties (partly) caused by persons as referred to in Article 6, paragraph 2.
14. The Client indemnifies the Contractor against all third-party claims due to (product) liability as a result of a defect in a product or installation supplied by the Contractor to a third party and which partly consisted of goods developed and/or supplied by the Contractor, except if and insofar as the Client proves that the damage was caused by those goods and without prejudice to the provisions of paragraph 7 of this article.
15. Insofar as this does not already ensue from the law or the Agreement, the Contractor will in any case not be liable if a failure of the Contractor is the result of:
  - industrial action with third parties or among its own staff;
  - performance of the Contractor's supplier as referred to in Article 3, paragraph 11;
  - transport problems;
  - supply problems concerning materials and/or raw materials;

- epidemics;
- wars, riots, rows and wilful damage;
- fire and loss of parts for processing;
- measures taken by any domestic, foreign or international government, such as import bans or trade prohibitions;
- violent or armed actions;
- breakdowns in energy supplies, in communication links or in equipment or software of the Contractor or third parties.

If a circumstance as referred to in this paragraph arises, the Contractor will – in order to limit any adverse consequences arising from it for the Client – take such measures as can reasonably be required of it.

16. The Client indemnifies the Contractor against third-party claims for compensation for damage, to the extent that such damage remains for the Client's account under these general terms and conditions.

#### Article 17 Intellectual property

1. The intellectual and industrial property rights to all goods, programme, data and (technical) information delivered to the Client shall remain with the Contractor. Only the Contractor has the right to disclose, attain and reproduce these goods, data and information and the Client has the exclusive right of use thereof.
2. The documents issued by the Contractor to the Client, such as designs, drawings, technical descriptions or specifications shall become the Client's own property and may be used by the Client with due observance of the rights arising from intellectual and industrial property legislation, after the Client has fulfilled its financial obligations towards the Contractor.
3. The Client shall not be permitted to duplicate all or parts of the installation realised in accordance with the Contractor's design without the Contractor's express written consent and without prejudice to the provisions of paragraphs 5 and 6. The Contractor is authorised to attach conditions to such permission, including the payment of a fee. The provisions of this paragraph shall apply mutatis mutandis to goods manufactured according to the Contractor's design.
4. The Client is only authorised to have the installation designed by the Contractor realised by a third party without the Contractor's intervention and approval if the Agreement has been terminated due to a breach attributable to the Contractor. In such cases, the Contractor shall not be liable for defects to the extent that they are attributable to the construction by or on behalf of the Client.
5. The Client's right of use in respect of the software developed and delivered by the Contractor is non-exclusive. The Client may only use this software in its own company or organisation and only for the technical installation for which the right of use has been granted. The right of use may relate to several installations to the extent specified in the Agreement.
6. The right of use is not transferable. The Client is prohibited from making the software and the carriers on which it is recorded available to a third party in any way

or allowing a third party to use it. The Client is prohibited from reproducing or making copies of the software. The Client shall not modify the software other than in the context of remedying errors. The source code of the software and the technical information generated during its development shall not be made available to the Client, unless otherwise agreed.

7. The Contractor shall be entitled to apply for patents in its name and at its expense on inventions created during and through performance of the Agreement.
8. If the Contractor obtains a patent as referred to in paragraph 7, it shall grant to the Client, free of charge a right to use that invention that is non-transferable in principle. When specifically applying that right of use, the Client will seek permission from the Contractor, which permission can only be refused if the Contractor can demonstrate conflicting interests with its business.

#### Article 18 Applicable law and disputes

1. The Agreement and all agreements resulting from it shall be governed by Dutch law.
2. Any dispute between the parties shall be settled to the exclusion of the ordinary courts by arbitration in accordance with the statutes of the Arbitration Board for the Building Industry as they read on the day the Agreement was concluded.
3. Notwithstanding the previous paragraph, the Contractor shall be entitled to have the dispute settled by the (ordinary) court in the district of the Contractor's place of business.
4. The Client is obliged to establish operations in the Netherlands in respect of the Agreement, to the extent it is not already established in the Netherlands. Failing this, the Client shall be deemed to have established operations in The Hague.



## B. Special provisions concerning maintenance

The provisions in this chapter 'Maintenance' apply in addition to the General Provisions of these General Terms and Conditions if the Agreement explicitly provides that the Contractor will carry out maintenance work during the maintenance period.

### Article 19 Scope and definitions

1. Unless otherwise agreed, Maintenance work will only be carried out on installations effected in the Netherlands.
2. The following capitalised words used in this chapter are assigned their corresponding meanings:
  - a) Maintenance work: all activities, including the supply of goods, to be performed by the Contractor to ensure that the technical condition of the installation and the functions to be performed by the installation during the maintenance period meet the requirements arising from the Agreement.
  - b) Malfunction: a sudden unexpected interruption in the performance of the installation.

### Article 20 Performance of the Work

1. During the maintenance period, the Contractor will make reasonable efforts, in accordance with the work plan referred to in paragraph 3, to keep the probability of Malfunctions occurring at an acceptable level with preventive Maintenance Work and, insofar as agreed, to remedy Malfunctions with corrective Maintenance activities.
2. The Contractor is authorised to perform the Maintenance Work remotely by means of a connection to the installation established via telecommunication facility.
3. The Contractor shall, after the conclusion of the Agreement but before commencement of the Maintenance Work, prepare a work plan with a schematic overview of the Maintenance Work, the sequence and time period (week, month, annual schedule) in which it will be performed.
4. The work plan is based on the Client's description of the installation's malfunction behaviour, all tasks, frequencies of execution, materials, tools and any necessary skills, all for the purpose of carrying out the preventive Maintenance Work and making the corrective Maintenance Work manageable.
5. The work plan will come into effect after approval by the Client. If the work plan matches the description mentioned in paragraph 4, the Client cannot withhold its approval of the work plan.
6. The Contractor updates the work plan annually and, based on this, estimates all maintenance costs for the relevant year. The work plan can only be amended in the interim by an amendment pursuant to Article 13.
7. If agreed, the work plan shall contain the date of commencement and delivery of foreseen and intended orders for the performance of preventive and/or corrective Maintenance Work and/or other work.
8. The assignments referred to in paragraph 7 will be issued in writing by the Client on the basis of the work plan at least one month in advance. Assignments not included in the work plan will be given in writing at least two months in advance. Prior to the provision of an order, the Contractor must have issued its price for it.
9. When carrying out corrective Maintenance work, the Client must issue an order in writing in advance. If this is not possible due to circumstances, the order will be settled retrospectively based on the actual costs incurred by the Contractor.
10. Upon completion of the Maintenance Work, the Contractor shall request the Client to sign the order for completion. After signing, the Maintenance Work will be considered delivered.
11. If expressly agreed, the Contractor shall ensure that one copy of the technical information is present at the site or location where the Maintenance Work is carried out, that these documents can be consulted at all reasonable times and that the 'As Built' situation of the Maintenance Work carried out is incorporated into it at a fee stipulated in the Agreement.
12. If the performance, operational reliability and maintenance of the installation so require or the rules mentioned in Article 3, paragraph 4 so require, the Contractor will inform the Client about measures to be taken. The Client may, by means of an amendment under article 13, assign the Contractor the necessary modification of the structure or other (project-based) Work separately.
13. The Contractor shall inform the Client in advance of the time when the Maintenance Work will be performed. If the Work is not performed at the agreed time and this cannot be attributed to the Contractor, then the Contractor is entitled to an extension of the deadline and/or reimbursement of costs pursuant to Article 12.
14. If expressly agreed, the Contractor shall ensure that Malfunctions can be reported for 24 hours a day and seven days a week at a disclosed reporting point.
15. Without prejudice to the provisions of paragraph 9, the Contractor shall make every effort to remedy urgent Malfunctions following an order from the Client within 24 hours of their notification, unless another term has been agreed. Other Malfunctions will be remedied during the Contractor's normal working hours whenever possible.
16. The Contractor shall perform the Maintenance Work during the maintenance period specified in the Agreement, failing which a period of one year shall apply.
17. The maintenance period is tacitly renewed each time for the original period, unless one of the parties terminates the Agreement in writing with due observance of a notice period of three months before the end of the relevant period.
18. The Maintenance work carried out by the Contractor will be settled according to the rates, unit prices or as a fixed price set out in the Agreement, which will be indexed annually in accordance with the Risicoregeling Installatietechniek (Insurance against the risk of price increases for Installation Technology), unless something else has been agreed.



19. Payment of fees shall be made within 14 calendar days from the date of the relevant invoice.
20. When terminating an order to perform Maintenance Work, the Client must observe a notice period of at least one month.

### **Risk Regulations Installation Technology as part of ALIB 2024**

#### **Offsetting labour cost changes:**

$$(L2-L1)/L1 \times 100\% = \dots\%$$

L1: wage level as at date of offer

L2: wage level as at date of change

Pay level: CBS index of hourly negotiated wages including special remuneration, construction industry series

#### **Settlement of material prices:**

$$(M2-M1)/M1 \times 100\% = \dots\%$$

M1: price index as at date of supply

M2: price index as at date of change

Price index: CBS newly built houses cost index; input price index construction costs, material component

