


**General Conditions of Contract (GC-1)**  
**12 July 2018**

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## **1 Definitions and Interpretation**

### **1.1 Definitions**

In the CONTRACT the following words and expressions shall have the meanings hereby assigned to them except where the context requires otherwise:

- CLIENT means the party placing an order, being the legal entity as mentioned in the Purchase Order, as well as his legal successors in title
- CONTRACTOR means the person(s), firm or company employed by CLIENT to execute the WORKS and includes CONTRACTOR's representatives, successors and assigns (if permitted by CLIENT)
- ENGINEER means the party acting on behalf and for account of CLIENT.
- ENGINEER'S REPRESENTATIVE means a person appointed by the ENGINEER as the authorised representative on the SITE.
- WORKS means the supply of materials, equipment, documents and services and the execution of erection, installation and other work by CONTRACTOR, in accordance with the CONTRACT.
- CONTRACT means the documents as specified in clause 2 of these General Conditions of Contract.
- CONTRACT PRICE means the sum payable to CONTRACTOR as full and complete compensation for properly accomplishing the WORKS in accordance with the CONTRACT.
- FORM OF CHANGE means a preliminary instruction from ENGINEER to CONTRACTOR with respect to a CHANGE, as regulated in clause 3.
- CHANGE means an omission, decrease, increase or other change to the WORKS, as determined by ENGINEER using the procedure of clause 3.
- PLANT means all appliances or things of whatsoever nature required in or about the execution and completion of the WORKS, including but not limited to construction equipment and tools, as well as temporary facilities and structures, but does not include materials or other things intended to form or forming part of the WORKS.
- SITE means the lands and other places on, under, in or through which the WORKS are to be executed or carried out and any other lands or places provided by CLIENT for the performance of the CONTRACT together with such other places as may be specifically designated in the CONTRACT as forming part of the SITE.

### **1.2 Interpretation**

Words importing the singular only, also include the plural and vice versa where the context so requires.

The headings in these General Conditions shall not be deemed to be part thereof or be taken into consideration in the interpretation thereof.

### **1.3 Effectuation**

Unless explicitly stated otherwise the CONTRACT will become effective on the date of CLIENT's written order issued to CONTRACTOR.

### **1.4 Commitments**

Verbal agreements or agreements in writing concluded between CONTRACTOR and ENGINEER's and/or CLIENT's unauthorised staff will not bind CLIENT and/or ENGINEER.

## **2 Contract Documents**

### **2.1 Contract**

The CONTRACT consists of the Purchase Order signed by CLIENT, all contract documents listed in the Purchase Order and any special agreements made between CLIENT and CONTRACTOR.

### **2.2 Conflicts**

The contents of the Purchase Order shall prevail over all other contract documents. Where conflicts or obscurities occur between or within other contract documents, codes and/or regulations, the for CONTRACTOR most stringent and/or severe requirements will apply. In case of doubt ENGINEER, if requested, will indicate the condition applicable for the performance of the WORKS.

### **2.3 Changes, additions and deletions to contract documents**

ENGINEER may change, add and/or delete contract documents as he may consider necessary to define or to explain more clearly the WORKS. Such changes, additions and/or deletions shall be made in writing. They shall be considered as part of the CONTRACT unless CONTRACTOR objects in writing immediately after receipt.

### **2.4 Additional instructions with regard to contract documents**

Should the contents of the contract documents not sufficiently define the WORKS, CONTRACTOR is obliged to timely request, at least 20 days before commencement of the respective section of the WORKS, further instructions from ENGINEER.

### **2.5 Deviation from contract documents**

CONTRACTOR may not deviate in the WORKS from the contract documents, unless approved in writing by ENGINEER.

### **2.6 Errors and omissions in contract documents**

Should any errors or omissions appear in contract documents, CONTRACTOR shall report the same to ENGINEER for correction before proceeding with the WORKS. If CONTRACTOR fails to do so, any consequences shall be for his account. CONTRACTOR shall abide by and comply with all contract documents and their purport, and shall not avail himself of errors or omissions, should any exist, to the detriment of the WORKS.

### **3 Changes**

#### **3.1 Changes in general**

At any time ENGINEER shall be entitled to make any CHANGES to the WORKS that may in his opinion be necessary. He may omit, increase or decrease the quantity of any part of the WORKS and require CONTRACTOR to execute any additional work. Any CHANGES required by ENGINEER shall not invalidate the CONTRACT and shall in no way affect the rights and obligations of CLIENT, ENGINEER and CONTRACTOR.

#### **3.2 Forms of Change**

ENGINEER may order a CHANGE or additional work by ways of a FORM OF CHANGE. Such FORMS OF CHANGE shall always be in writing. The execution of CHANGES and/or additional work shall not be commenced without such a FORM OF CHANGE, except work to be carried out immediately in order to avoid any imminent damages or danger. A FORM OF CHANGE does not intend to regulate the CHANGE definitively.

#### **3.3 Purchase Order revisions**

FORMS OF CHANGE and other CHANGES to the WORKS and/or the CONTRACT shall after acceptance be confirmed by ENGINEER by means of Purchase Order revisions. Any sums due to CONTRACTOR with respect to a CHANGE shall in principle become payable after the issuing of this Purchase Order revision.

### **4 Schedule**

#### **4.1 Commencement of WORKS**

CONTRACTOR shall commence the WORKS immediately upon award of CONTRACT, which may take place by e-mail, telefax or letter. The exact date(s) that CONTRACTOR will move onto the SITE to establish temporary facilities and to commence SITE work shall be agreed by CONTRACTOR with ENGINEER'S REPRESENTATIVE.

#### **4.2 CONTRACTOR's working programme and resource schedule**

CONTRACTOR shall - within 3 weeks after award of the CONTRACT – furnish a detailed working programme in the form of a critical path schedule, showing the sequence in which he proposes to carry out the WORKS including design, manufacture, delivery on SITE, construction (incl. temporary facilities) and commissioning as specified.

Within the same period CONTRACTOR shall submit to ENGINEER a resource schedule indicating the number and disposition of all workmen and constructional PLANT as well as utility requirements during the various stages and phases of the WORKS.

As soon as ENGINEER has approved such programme and schedule, they shall contractually bind CONTRACTOR. In case of any failure by CONTRACTOR to meet a date or requirement set forth in the programme and schedule, CONTRACTOR shall automatically be in default, without a formal default notification being required.

#### **4.3 Extension of time**

If CONTRACTOR is delayed in the completion of the WORKS by an act or neglect attributable to CLIENT or by Force Majeure, then CONTRACTOR shall take measures to minimise such delay and inform ENGINEER immediately in writing. ENGINEER will grant a reasonable extension of time if he is of the opinion that the written information of CONTRACTOR justifies such an extension.

The time for completion will not be extended if increases and/or additions to the WORKS represent less than 20% of the original CONTRACT PRICE at time of award.

No claim for delay or hindrance shall be considered unless CONTRACTOR has notified ENGINEER in writing immediately after a delay or hindrance has occurred.

### **5 Contractor's Reports**

#### **5.1 General**

CONTRACTOR shall submit amongst others the reports as mentioned in clause 5.2 through 5.4, supported with curves or graphs as required by ENGINEER.

#### **5.2 Off-SITE activities (if any)**

Biweekly:

- a. Progress report showing actual progress against latest agreed schedule requirements.
- b. Updated fabrication and inspection programme.

#### **5.3 On-SITE activities**

- a. Daily manpower charts showing CONTRACTOR's employees being present on SITE (to be submitted before 10.00 a.m.).
- b. On a daily basis work records listing names, occupation and time of all workmen employed as well as the type of PLANT and the quantity of materials used for the indicated work on day work basis. ENGINEER will sign and return one copy of the day work records, corrected if necessary, to CONTRACTOR.
- c. Reporting of the regular (construction) meetings to be approved by ENGINEER and/or CLIENT.
- d. Weekly work plans showing:
  - work activities scheduled for the next week.
  - manpower and PLANT and utility requirements foreseen for the execution of such work.
- e. Weekly progress reports showing the work actually achieved during the preceding week.
- f. Monthly progress reports showing actual progress against latest agreed schedule requirements including trend analysis.
- g. Monthly cost reports showing actual expenditures including trend analysis. This report is not required in case of a lump sum contract.
- h. Monthly claims account listing CONTRACTOR's current and anticipated claims.
- i. Such other matters as may, from time to time, be reasonably required by ENGINEER.

#### **5.4 Quality**

Monthly reports showing that the WORKS are performed in accordance with the agreed quality standards, which are part of the quality manual approved by ENGINEER.

## **6 Subcontractors**

### **6.1 Assignment**

CONTRACTOR shall not assign, transfer, delegate or subcontract the whole or any part of the WORKS without the prior written approval of CLIENT. Such approval shall not release CONTRACTOR from any of his obligations or liabilities under the CONTRACT.

### **6.2 Nominated subcontractors**

If subcontractors are nominated to CONTRACTOR after award of the CONTRACT and if the equipment, materials and/or services supplied by such nominated subcontractors are more or less expensive than the equipment, materials and/or services initially included in the CONTRACT, CONTRACTOR and ENGINEER shall agree on the influence of such price differences on the CONTRACT PRICE and the CONTRACT PRICE shall be adjusted accordingly by way of a Purchase Order revision.

### **6.3 Subcontract conditions**

The conditions of the CONTRACT shall be extended to all contracts concluded between CONTRACTOR and subcontractors. Upon CLIENT's and/or ENGINEER's request CONTRACTOR will demonstrate compliance with this clause. Each subcontract shall provide for the right of assignment of the subcontract to CLIENT in the event that the CONTRACT is terminated.

## **7 Contractor's Responsibilities and Liabilities**

### **7.1 Compliance with the CONTRACT**

CONTRACTOR shall be solely responsible for the proper execution of the WORKS in accordance with the CONTRACT in an expeditious manner. He shall incorporate in the WORKS the latest and best technology and shall adhere to good engineering practices; he shall furthermore incorporate only new materials and equipment of the highest quality appropriate for its application or use and shall only utilise the best standard of workmanship.

### **7.2 CONTRACTOR's responsibilities**

CONTRACTOR shall be solely responsible for the proper execution, suitability and safety of work, temporary work and construction methods specified, proposed or applied by him. He shall in the same way be responsible for structures specified by CLIENT, ENGINEER or ENGINEER'S REPRESENTATIVE unsuitable for the actual SITE conditions, unless he timely informs ENGINEER in writing requesting the necessary adjustments. The risk for loss of and damage to the WORKS or any part thereof rests with CONTRACTOR until the Provisional Acceptance Certificate has been issued.

### **7.3 Liability and indemnification**

CONTRACTOR is liable for and indemnifies CLIENT and ENGINEER against all damages arising from his whole or partial non-compliance with the CONTRACT and indemnifies CLIENT and ENGINEER from all claims and demands of his employees arising there from or connected therewith. CONTRACTOR shall not be liable in case such non-compliance has been caused solely by CLIENT and/or ENGINEER.

### **7.4 CONTRACTOR's third party liability**

CONTRACTOR shall be liable for and shall indemnify, defend and save harmless CLIENT and ENGINEER from and against any claims, demands and causes of action brought by any persons or third parties, and against any judgements in respect thereto on account of personal injury or death and/or on account of property damage, destruction or loss arising out of any act or omission of CONTRACTOR. CONTRACTOR shall advise CLIENT of any claims, demands or actions brought against him related to the CONTRACT.

### **7.5 Rights of ENGINEER**

ENGINEER shall have the right to claim directly from CONTRACTOR such sums that ENGINEER himself may be entitled to under this CONTRACT, specifically such sums as he may be entitled to on the basis of, without limitation, clauses 7.3 and 7.4 of these General Conditions.

### **7.6 CONTRACTOR's documents**

Drawings, calculations and other documents supplied by CONTRACTOR shall be delivered to ENGINEER as required by the CONTRACT. Approval of such documents does not release CONTRACTOR from his exclusive responsibility for their accuracy and does not relieve CONTRACTOR from his obligation to comply fully with the CONTRACT.

All documents and reproducibles prepared by CONTRACTOR and/or his subcontractors, such as designs, drawings, plans, tables, lists, specifications, reports, know-how documents, manuals, contract documents etc. become the property of CLIENT at the moment CLIENT or ENGINEER receives such documents, or at the moment that CLIENT pays for them, whichever is the earlier.

### **7.7 Supplies by others**

In the event of CONTRACTOR being required to incorporate in the WORKS or to connect thereto or to hold on behalf of ENGINEER or CLIENT material or equipment which is supplied to CONTRACTOR directly or indirectly by ENGINEER or CLIENT, CONTRACTOR shall be fully responsible for any loss or damage whatsoever of or to the material or equipment as supplied to him from the moment it comes into his possession until the issuance of the Provisional Acceptance Certificate or until it comes into the possession of some other person to whom CONTRACTOR shall have been directed to deliver it.

### **7.8 Non-compliance with the CONTRACT**

If, in the opinion of ENGINEER, any work performed by CONTRACTOR or his subcontractor does not comply with the CONTRACT, is in any way defective, or CONTRACTOR has failed to correct shortcomings and/or damages, or CONTRACTOR has failed to fulfil his obligations to third parties, his personnel and/or his subcontractors in connection with the WORKS, or CONTRACTOR has failed to fulfil any other contractual obligations, ENGINEER will demand remedial action by CONTRACTOR in writing.

If CONTRACTOR upon receipt of such notice does not immediately undertake and proceed with due diligence to remedy the deficiencies, ENGINEER is entitled to outsource or to undertake the remedial actions himself at CONTRACTOR's expense. This notification is not required in case the agreed term for compliance with the CONTRACT has elapsed. CLIENT, in addition, reserves the right for further claims and/or indemnification.

## **7.9 CONTRACTOR's right of objection**

If, in the opinion of CONTRACTOR, instructions or defaults of CLIENT and/or ENGINEER could endanger the proper execution or quality of the WORKS, he shall immediately refer the matter to ENGINEER in writing. Failing to do so, shall waive the right of objection.

## **8 Laws and Regulations**

### **8.1 Laws, codes, regulations, etc.**

CONTRACTOR shall comply with all applicable national, state, municipal, local and other laws, codes and regulations and any requirements, ordinances, rules and regulations of any authorities having jurisdiction in connection with the WORKS in regard of but not limited to employees, social benefits, labour regulations, safety, environment, PLANT, taxes and technical requirements.

### **8.2 Authorisation documents and markings**

CONTRACTOR shall supply whatsoever Governmental or other authorisation documents and have whatsoever Governmental or other authorisation markings stamped on materials or equipment as are required to allow such material or equipment to be placed in operation.

### **8.3 Permits and licences**

CONTRACTOR shall obtain all permits and licences required for the proper execution of the WORKS except those, which according to the CONTRACT shall be provided by CLIENT.

### **8.4 Indemnification**

CONTRACTOR shall defend, indemnify and hold harmless CLIENT and ENGINEER from any liability or penalty which may be imposed on CLIENT and/or ENGINEER by reason of any violation or alleged violation of laws, codes, regulations, etc. by CONTRACTOR.

## **9 Insurance**

### **9.1 CONTRACTOR's insurance**

CONTRACTOR shall carry and maintain the following insurance in connection with the execution of the WORKS on the SITE, with companies and in terms satisfactory to ENGINEER. Nothing contained herein shall serve in any way to limit or waive CONTRACTOR's responsibility.

- a. Workmen's Compensation and Employer's Liability insurance or similar statutory social insurance in accordance with applicable legal requirements.
- b. General Third Party Liability insurance providing at least EUR 5,000,000.- coverage for each occurrence for injury and for loss of or damage to property.
- c. Comprehensive Automobile Liability insurance covering owned, non-owned, and hired automotive equipment at least as provided by the compulsory standard policy in accordance with applicable legal requirements.
- d. Construction-All-Risk and Transit insurance covering loss of or damage to the WORKS, as well as to equipment, materials and structures in transit and/or at the SITE, being supplied by CONTRACTOR, which are to be incorporated in the WORKS or used in accomplishing the WORKS, including PLANT owned by CONTRACTOR or his subcontractors, or rented items.

The sum insured under the C.A.R-insurance shall amount to the full value of the total project of which the WORKS form part. The relevant CONTRACTOR's policy will include CLIENT, ENGINEER and CONTRACTOR as insured as their interests may appear and will contain a waiver of underwriters right of subrogation with respect to CLIENT and ENGINEER.

CLIENT or ENGINEER shall have the right to take out a Construction-All-Risk insurance for the WORKS, in which case CONTRACTOR's CAR-insurance shall cease to apply and the CONTRACT PRICE shall be decreased by the amount of the premium saved. In case of a claim under the CAR-insurance, CONTRACTOR shall pay the deductible imposed by the insurance carrier, irrespective of who has taken out the CAR-insurance.

### **9.2 Insurance certificates**

If requested by ENGINEER, CONTRACTOR shall have his insurance carrier(s) furnish to ENGINEER insurance certificates specifying the types and amounts of coverage in effect and the expiration dates of each policy, and a statement that no insurance will be cancelled or materially changed while the WORKS are in progress without thirty (30) calendar days prior written notice to ENGINEER.

### **9.3 Period of insurance**

Insurance cover shall be provided, as applicable and as satisfactory to ENGINEER, during the whole period of execution of the WORKS until expiration of the guarantee period.

### **9.4 Failure to insure**

Should CONTRACTOR at any time neglect or refuse to provide any insurance required herein, or should any insurance be cancelled, CLIENT shall have the right to provide such insurance. In such case, the CONTRACT PRICE shall be reduced by an amount equal to the costs to CLIENT of such insurance.

## **10 Setting-out of the Works**

CLIENT or ENGINEER will establish the original points of the main lines and levels and its references for the execution of the work on the SITE. CONTRACTOR shall set out the WORKS in relation to these points, lines and levels. CONTRACTOR shall be responsible for the correct positioning of all parts of the WORKS.

## **11 Site Conditions and Regulations**

### **11.1 CONTRACTOR should take actions to be informed**

CONTRACTOR acknowledges to have inspected the SITE, to have compared it with the contract documents, to have carefully studied these documents, to have reviewed the area(s) allocated for his temporary site facilities and to have satisfied himself as to the conditions under which the WORKS have to be performed. No allowance shall subsequently be made to CONTRACTOR due to errors on his part or neglect or failure to acquaint himself with the conditions of the SITE and its surroundings. Any information of CLIENT or ENGINEER regarding the SITE, geological, soil, hydrological and other conditions are of indicative value only. CLIENT and ENGINEER are in no way liable for the correctness of such information.

### **11.2 Change of conditions**

Should CONTRACTOR during the execution of the WORKS meet unforeseen difficulties or obstacles (except difficulties resulting from weather conditions), which could not be foreseen by an experienced contractor, he shall inform ENGINEER immediately before the removal or change of such difficulties or obstacles. If the changed conditions are of an unforeseeable nature and sufficient reason for a price adjustment or an adjustment of the completion time, the CONTRACT shall be amended by means of a Purchase Order revision.

### **11.3 Materials recovered**

All materials of any kind recovered or produced on the SITE during construction such as overburden, gravel and sand, timber, materials from demolitions etc., shall be the property of CLIENT. For its re-use by CONTRACTOR special arrangements have to be made with CLIENT.

### **11.4 Obsolete structures**

Obsolete structures, of which materials are subject to possible re-use, shall be demolished carefully by CONTRACTOR.

### **11.5 Fossils, etc.**

All fossils, coins, articles of value or antiquity and structures and other things of geological or archaeological interest discovered on the SITE, are the property of CLIENT and CONTRACTOR shall take all necessary precautions to prevent his workmen or any other persons, from removing and/or damaging any such article or thing and shall immediately inform ENGINEER'S REPRESENTATIVE of such discovery and carry out (at the expense of CLIENT) ENGINEER'S REPRESENTATIVE's orders as to the disposal of same.

### **11.6 Unauthorised persons**

To keep unauthorised persons away from the SITE CONTRACTOR shall install and maintain signals, warning devices, fences, etc., if and where required.

### **11.7 Authorised persons**

CONTRACTOR shall arrange that persons authorised by CLIENT, ENGINEER or ENGINEER'S REPRESENTATIVE have free access to the SITE. These persons, however, shall be warned by CONTRACTOR of particular dangers resulting from entering the SITE.

### **11.8 Co-ordination with other contractors**

CONTRACTOR must be aware that at any time during all construction phases other contractors and suppliers will be working on the SITE. A relatively large number of construction works of different kinds and trades might be executed at the same time in a confined area and within partly or finally completed structures. A close co-operation with ENGINEER'S REPRESENTATIVE, for the coordination of the activities of the various contractors, is therefore necessary and essential. Hindrances, inconveniences and waiting times can result from time to time. Any such difficulties and hindrances shall not give CONTRACTOR a valid claim for extension of the completion date of the WORKS or financial compensation.

### **11.9 Working-hours/holidays**

CONTRACTOR shall execute the WORKS on SITE during normal working-hours as established for the SITE. CONTRACTOR shall work overtime if so instructed by ENGINEER, at no extra cost to CLIENT and/or ENGINEER, in the case in ENGINEER's opinion such overtime is required to complete the WORKS or part thereof on the date specified in the CONTRACT. CONTRACTOR shall have due regard in his dealings with his local employees to all officially recognised holidays and to religious or other customs.

### **11.10 Badges**

CONTRACTOR shall ensure that every person entering CLIENT's premises in connection with the WORKS can be identified by visibly worn badges, approved by ENGINEER.

### **11.11 Photographs**

Taking photographs on and/or of CLIENT's premises is forbidden unless written authorisation has been obtained from CLIENT.

### **11.12 Signboards**

Displaying signboards on CLIENT's premises is forbidden unless written authorisation is obtained from ENGINEER.

### **11.13 Parking**

Parking of vehicles is only allowed in the areas assigned by ENGINEER.

### **11.14 Maintenance and housekeeping of SITE**

During the execution of the WORKS the SITE has to be maintained in a clean and orderly state. CONTRACTOR shall immediately remove from CLIENT's premises any faulty or defective materials, as well as those materials which do not comply with the requirements of the CONTRACT.

### **11.15 Clearance of the SITE**

Upon completion of the WORKS, CONTRACTOR shall separately collect and remove all PLANT, waste, rubbish and surplus materials from the SITE and leave the whole of the WORKS and the SITE clean, safe and in a workmanlike condition to the satisfaction of ENGINEER.

**11.16 Environmental care**

During the execution of the WORKS, CONTRACTOR shall devote maximum care to the environment in general, apply as little as possible materials that may weigh upon the environment, safely store such materials at the SITE during construction and promptly remove all superfluous materials from the SITE in a responsible manner.

**12 Temporary Facilities**

**12.1 CONTRACTOR's obligations**

CONTRACTOR shall supply, construct, furnish, equip, operate, maintain and remove all PLANT of sufficient capacity and effectiveness, required to execute and complete the WORKS, in accordance with rules and regulations applicable to and on the SITE. Temporary buildings, including but not limited to offices, workshops, stores, accommodation and catering facilities, first aid facilities, change rooms, washrooms and toilets shall be located in the area assigned by ENGINEER.

**12.2 ENGINEER's approval**

All CONTRACTOR's PLANT and any changes thereto are subject to ENGINEER's prior approval. Such approval does not relieve CONTRACTOR from his above obligations.

**12.3 Sufficient PLANT**

CONTRACTOR shall at all times keep sufficient PLANT on the SITE to guarantee execution of the WORKS in accordance with the CONTRACT.

**12.4 Temporary access roads**

Temporary roads including any structures required to provide access to the various working areas on the SITE are part of CONTRACTOR's obligations in so far as not provided for otherwise.

**12.5 Sewers**

Existing sewer-systems shall not be used by CONTRACTOR for disposal of any sewage or other matter without CLIENT's prior approval.

**12.6 Utilities**

CONTRACTOR shall ensure that the following utilities are available at a location indicated by ENGINEER:

- a. Electricity.
- b. Water for construction purposes.
- c. Potable water for drinking.
- d. Pressurised air

All costs involved shall be for CONTRACTOR'S account.

CONTRACTOR is responsible for lighting of the SITE as required to execute the WORKS.

**12.7 Telephone/Telefax/E-mail/Internet**

CONTRACTOR is responsible for telephone, telefax, e-mail and Internet connections required for the execution of the WORKS.

**12.8 Removal of PLANT**

CONTRACTOR shall not remove any of the PLANT unless agreed upon in writing by ENGINEER.

**13 Contractor's Representative**

**13.1 CONTRACTOR's superintendent**

CONTRACTOR shall designate with the approval of ENGINEER a competent superintendent as his representative who, on behalf of CONTRACTOR shall be completely in charge of the WORKS on the SITE. CONTRACTOR has to advise ENGINEER in writing the name, address and telephone number (day and night) of such designated superintendent and of any changes thereof.

During the absence of CONTRACTOR's superintendent from the SITE, any foreman in charge of the WORKS or any part thereof, or any workman working alone on the WORKS shall be deemed a representative of CONTRACTOR for the purpose of receiving and carrying out the orders of ENGINEER.

**13.2 Replacement of CONTRACTOR's representative**

CLIENT and/or ENGINEER shall have the right to require at any time the replacement of CONTRACTOR's representative on the SITE. CONTRACTOR will provide a capable replacement as soon as possible.

**14 Contractor's Employees on the Site**

**14.1 Skilled employees**

CONTRACTOR shall provide in time and in sufficient numbers and employ only such employees who are skilled, experienced and competent for the proper and timely execution of the WORKS. CONTRACTOR may not withdraw employees from the SITE, unless approval from ENGINEER'S REPRESENTATIVE has been obtained. All employees shall carry valid identification.

**14.2 Compliance with regulations**

CONTRACTOR shall comply fully with all legislation and regulations regarding Health, Safety & Environment (HSE), employment, labour recruitment, residential as well as labour permits, remuneration, working conditions, medical aid, etc. He is responsible for duly instructing his employees in such respects before commencing the WORKS.



**14.3 Personnel not to employ**

CONTRACTOR shall not employ personnel discharged by CLIENT, ENGINEER or other contractors on SITE without the permission of ENGINEER. In addition CONTRACTOR shall not engage personnel from CLIENT, ENGINEER or other contractors on SITE. ENGINEER may refuse a particular employee of CONTRACTOR or of his subcontractors admission to the SITE. In such case CONTRACTOR shall promptly exclude that employee and arrange for immediate replacement by an employee acceptable to ENGINEER.

**14.4 Language command**

All supervisory staff down to and including foreman level provided and employed by CONTRACTOR shall have a reasonable command of the local and the English language. During the progress of the WORKS there shall be on SITE a sufficient number of people provided by CONTRACTOR competent in the local language and in English to ensure transmission and comprehension of all instructions.

**14.5 Dutch Foreign Nationals (Employment) Act**

CONTRACTOR is obliged to comply with the Dutch Foreign Nationals (Employment) Act ("Wet arbeid vreemdelingen") and indemnifies CLIENT for penalties and/or sanctions imposed on CLIENT for violating this law.

**15 Safety Regulations**

**15.1 General**

CONTRACTOR is responsible for safety during the execution of the WORKS and shall undertake all measures required to protect the WORKS, his employees and other persons, as well as his own, CLIENT's, ENGINEER's and third parties properties, against injuries, illness, accidents, damage and/or destruction. CONTRACTOR shall comply with the safety and health plan (V&G-plan) applicable for the WORKS.

Before commencement of the WORKS, CONTRACTOR shall submit his Safety Certificate for Contractors (VCA-Certificaat / SCC-certificate) including accompanying reports to ENGINEER.

In case CONTRACTOR is not in possession of a current Safety Certificate for Contractors before commencement of the WORKS, CONTRACTOR shall inform ENGINEER in writing on which points his safety control system deviates from the VCA/SCC requirements. Additionally CONTRACTOR shall give a written statement to ENGINEER confirming that, at SITE, CONTRACTOR will at least comply with the applicable VCA/SCC requirements.

In case the safety coordination is allocated to CONTRACTOR, CONTRACTOR shall nominate a Safety Coordinator for the SITE prior to the start of the WORKS, to perform the duties regulated in the Dutch Working Conditions legislation. CONTRACTOR shall inform the ENGINEER in writing of such appointment.

**15.2 Employees to be informed**

CONTRACTOR shall ensure that his employees, employees of his subcontractors and as far as necessary employees of his subcontractors are notified of and observe and abide by the above regulations.

**15.3 Existing installations and structures**

Construction activities in the vicinity of underground pipelines and cables and in the vicinity of buildings, installations, structures, railways, public roads, etc. shall be undertaken with greatest care.

Damages to such utilities noticed, whether or not caused by CONTRACTOR and his personnel, shall be reported immediately to ENGINEER'S REPRESENTATIVE.

**15.4 Safety of PLANT**

CONTRACTOR shall ensure that all PLANT and any other items used in accomplishing the WORKS, whether provided by CONTRACTOR, CLIENT, ENGINEER or others, are in a safe, sound and good condition and fit for the execution of the WORKS.

**15.5 Protection**

It is CONTRACTOR's responsibility to safeguard the PLANT and the WORKS by adequate measures. CLIENT and ENGINEER are not liable for any damage resulting from theft, burglary, accidents, etc.

**15.6 Emergency actions**

In case of emergency (floods, equipment failure, etc.), ENGINEER or ENGINEER'S REPRESENTATIVE is entitled to instruct CONTRACTOR to take emergency actions which have to be taken immediately. CONTRACTOR shall be compensated for such actions according to the rates specified in the CONTRACT, provided CONTRACTOR is not responsible for the emergency.

**16 Inspection, Testing and Sampling**

**16.1 General**

All inspection(s), testing and sampling shall be performed as specified in the CONTRACT. ENGINEER and CLIENT have the right to inspect all material, equipment and work furnished under the CONTRACT to whatever extent they deem necessary at all reasonable times and places before, during and after manufacture.

**16.2 Inspection in CONTRACTOR's Workshops**

For material and/or equipment manufactured in CONTRACTOR's and/or subcontractor's workshops, which do not form part of CONTRACTOR's temporary facilities for the WORKS, CONTRACTOR will give ENGINEER at least five working-days written advance notice of any event requiring inspection.

**16.3 Defects**

ENGINEER will inform CONTRACTOR of any material and/or workmanship, which in its opinion does not conform to the CONTRACT. CONTRACTOR shall repair, replace and/or correct such deficiencies in accordance with the CONTRACT specifications at no extra cost and without delay.

**16.4 Joint inspection**

Upon the written request by CONTRACTOR, the completed WORKS on SITE, or in special cases also important and independent sections, shall be jointly and carefully inspected in detail by CONTRACTOR and ENGINEER.

**16.5 Additional samples and tests**

In addition to the sampling and testing specified in the CONTRACT, ENGINEER has the right but not the obligation to arrange or instruct CONTRACTOR to arrange for special tests and/or take samples or specimens of all materials at any time before or after their incorporation in the WORKS and submit them to appropriate tests. The costs of all such additional sampling and testing will be borne by CLIENT when the materials comply with the contractual requirements; otherwise the costs are for the account of CONTRACTOR.

**16.6 Inspection or failure to inspect**

Any inspection or failure to inspect by ENGINEER, CLIENT and/or any other authority shall not relieve CONTRACTOR of any responsibility or liability with respect to any part of the WORKS nor be interpreted in any way to imply acceptance thereof.

**16.7 Repetition of inspection**

If as a consequence of rejection or any other cause for which CONTRACTOR is responsible, inspection (in whole or in part) has to be repeated or has still to be performed, the extra costs for CLIENT and/or ENGINEER will be for the account of CONTRACTOR.

**17 Expediting and Suborders**

**17.1 Expediting**

CONTRACTOR shall expedite timely completion of the WORKS and any of his orders to subcontractors. If CONTRACTOR encounters delays in obtaining materials from his subcontractors, CONTRACTOR shall immediately advise ENGINEER in writing. ENGINEER reserves the right to visit CONTRACTOR's and his subcontractor's shops to expedite to whatever extent he deems necessary, without releasing CONTRACTOR from his obligations under the CONTRACT.

**17.2 Suborders**

CONTRACTOR shall supply ENGINEER with unpriced copies of his suborders to subcontractors and any requested shipping information as and when required by ENGINEER.

**18 Transfer of Title**

Title to materials and equipment supplied or to be supplied pursuant to the CONTRACT, shall at the latest pass to CLIENT after arrival at the SITE.

**19 Completion and Acceptance**

**19.1 Completion**

Final Acceptance of the WORKS shall be when the WORKS have been completed as specified in the CONTRACT and all defects, as far as discovered during the joint inspection, have been corrected.

**19.2 Provisional Acceptance**

A Provisional Acceptance Certificate (P.A.C.) will be issued if no major defects were found during the joint inspection. If major defects were found CONTRACTOR shall, after correcting such defects, request a second joint inspection for the purpose of issuing the P.A.C.

**19.3 Contents of the P.A.C.**

A P.A.C. shall be drawn-up and counter-signed by CLIENT and CONTRACTOR. The P.A.C. shall contain the following main points:

- a. Representatives of both parties.
- b. Inspection procedure.
- c. Complete list of those parts of the WORKS meeting the requirements for the P.A.C.
- d. Complete list of all discovered defects and of those parts of WORKS not meeting the requirements of the CONTRACT.
- e. Measures to be taken to make good the defects listed under d.
- f. Dates by which all outstanding defects will have to be corrected.

**19.4 Final Acceptance**

Final Acceptance shall be achieved as soon as CONTRACTOR has:

- a. satisfactorily remedied all defects listed in the P.A.C.;
- b. submitted all as-built documentation, which has subsequently been approved by ENGINEER;
- c. fulfilled all remaining obligations under the CONTRACT.

A Final Acceptance Certificate (F.A.C.) will be issued for the WORKS, stating the date of Final Acceptance.

**19.5 Penalties and/or discounts**

The issuance of a Provisional or Final Acceptance Certificate shall in no way invalidate or diminish the penalties and/or discounts that CLIENT and/or ENGINEER may be entitled to.

**19.6 Possession prior to completion**

Whenever it may be useful or necessary for CLIENT to do so, CLIENT shall be permitted to occupy or use any portion of the WORKS which has been either partially or fully completed by CONTRACTOR before Provisional Acceptance or Final Acceptance thereof, but such use or occupation shall not relieve CONTRACTOR of its guarantee of said WORKS nor of its obligation to make good at its own expense any defect in materials or workmanship which may occur or develop prior to Final Acceptance, unless such defect is caused by the negligence or misuse of the WORKS by CLIENT.

## **20 Guarantees**

### **20.1 General**

CONTRACTOR guarantees that the WORKS shall be in accordance with the CONTRACT and fit for the intended purpose. All items of the WORKS shall be of correct size and capacity and proper materials and equipment to fulfil in all respects the conditions specified.

### **20.2 Deficiencies**

CONTRACTOR guarantees that, if any part of the WORKS does not comply with the CONTRACT or is found defective or if any defect or fault originating from the design (if furnished by CONTRACTOR and/or subcontractor), materials, equipment, workmanship or operating characteristics arises, CONTRACTOR shall at his own expense promptly make such alterations, repairs and replacements as necessary so said part of the WORKS conforms to the CONTRACT and fulfils the preceding guarantees to ENGINEER or CLIENT's entire satisfaction or, at ENGINEER or CLIENT's option, refund the full CONTRACT PRICE and cost of removal and transport for the faulty part of the WORKS.

### **20.3 Duration**

The guarantee period will commence on the date of issue of the Final Acceptance Certificate (F.A.C.) and will expire one year after the entire project, of which the WORKS form part, has been accepted and placed in operation by CLIENT. Any guarantees given by the suppliers and/or subcontractors of CONTRACTOR for specific parts of the WORKS, which are valid for a longer period, shall be valid for that longer period.

For parts of the WORKS, which under the above guarantee conditions have been altered, repaired, replaced or substituted, a separate F.A.C. shall be issued. The guarantee period for such parts of the WORKS will be at least one year commencing on the date of the relevant F.A.C. but will not expire earlier than the guarantee for the total WORKS.

### **20.4 Hidden defects**

CONTRACTOR shall be liable for defects in the WORKS, which become apparent after expiration of the guarantee period during a period as stated in the applicable laws, but at least 5 years after expiration of the guarantee period.

### **20.5 Service**

If required CONTRACTOR will supply all maintenance and repair services and spare parts at fair prices during a period of ten years from expiration of the guarantee period.

## **21 Contract Price**

### **21.1 Total compensation**

As full and complete compensation for accomplishing the WORKS in accordance with the CONTRACT CONTRACTOR shall be paid the CONTRACT PRICE being the sum of:

- a. All lump sum prices for such items as specified in the CONTRACT.
- b. The amounts being the products of quantities of work measured and unit rates in accordance with the CONTRACT.
- c. The sum of amounts for changes and more or less work as described below.

### **21.2 Definition of prices**

The lump sum prices, unit rates and day work rates specified in the CONTRACT are firm and not subject to escalation and include, but are not limited to, the cost of all necessary material, equipment and documents, all cost of handling, transport, duties, taxes (V.A.T. excluded), insurances, permits, premiums, PLANT, supervision, HSE provisions, labour, reproduction, communication and all other components whether of a temporary or permanent nature required to complete the WORKS in accordance with the CONTRACT, as well as all fees, overhead and profit.

### **21.3 Pricing of changes**

The unit rates and/or day work rates specified in the CONTRACT shall be the basis for calculating the prices of changes, additions and/or deletions. If such rates are not available in the CONTRACT, CONTRACTOR shall prior to execution of the work immediately propose such rates for inclusion in the CONTRACT, which will be effected after ENGINEER's approval of same by means of a Purchase Order revision.

Day work rates will only be applied after approval by ENGINEER.

### **21.4 CONTRACTOR's claims**

If CONTRACTOR considers himself entitled to receive compensation in addition to the CONTRACT PRICE whether or not as a consequence of changes, he shall immediately inform ENGINEER thereof and issue a claim in writing giving full and detailed particulars. If CLIENT accepts CONTRACTOR's claim, such acceptance will be effected by a Purchase Order revision.

At the end of each month CONTRACTOR shall furnish to ENGINEER an account giving particulars of all current claims and of any circumstances that in CONTRACTOR's opinion may lead to a future claim.

Neither claims which have not been reported in accordance with the above, nor claims that are submitted after the date of issue of the F.A.C., will be taken into consideration.

## **22 Payments**

### **22.1 Terms of payments**

CONTRACTOR shall submit a separate invoice for each payment due in accordance with the payment conditions stated in the CONTRACT. Invoices will be paid in accordance with the payment terms included in the Purchase Order, or, in addition to or failing such payment terms, within 60 days computed from the date of CONTRACTOR's fulfilment of the specified conditions and the date of receipt of CONTRACTOR's invoice, provided such invoice is properly drawn and accompanied by the required supporting documents. If invoices and/or supporting documents require correction the time of payment will be computed from the date of receipt of the corrected invoice and/or documents.

Costs arising from items furnished and/or services rendered by CLIENT and/or ENGINEER will be charged to CONTRACTOR and the corresponding amounts will be deducted from the amount of CONTRACTOR's next invoice(s).

In case CONTRACTOR fails to pay his subcontractor(s) under the CONTRACT, CLIENT and/or ENGINEER is entitled to pay such subcontractor(s) directly and deduct such amount(s) from the next payment(s) due to CONTRACTOR.

### **22.2 Progress certificates**

In case of regular progress payments for SITE work, progress certificates shall be prepared by CONTRACTOR as required by ENGINEER. Such certificates shall contain the quantity of work executed during the preceding period, as jointly measured and/or agreed upon with ENGINEER, and the value of such work on the basis of the CONTRACT lump sum prices and/or unit rates. Progress certificates shall be delivered to ENGINEER not later than two weeks after the end of the relevant period.

### **22.3 Provisional acceptance retention**

Retention moneys due after provisional acceptance of the WORKS will be paid after:

- a. provisional acceptance of the complete WORKS;
- b. compliance by CONTRACTOR with all relevant CONTRACT conditions;
- c. all unsettled matters have been solved;
- d. CONTRACTOR has supplied to ENGINEER a release of all rights of lien in connection with the WORKS;
- e. CONTRACTOR has furnished proof satisfactory to ENGINEER that there are no outstanding claims against CLIENT and ENGINEER for injury to persons and damage to property and/or other claims in connection with the WORKS.

### **22.4 Guarantee retention**

Retention moneys due after expiration of the guarantee period will be paid after:

- a. Expiration of the guarantee period for the complete WORKS.
- b. Compliance by CONTRACTOR with all remaining CONTRACT conditions.
- c. All unsettled matters have been solved.

### **22.5 Withholding of payments**

CLIENT is entitled to withhold payment in addition to the retention moneys, to avoid losses to CLIENT arising amongst others from:

- a. Any costs, claim or lien for which CLIENT and/or ENGINEER might be or become liable due to CONTRACTOR's or any of his subcontractor's (alleged) failure to fulfil his obligations under the CONTRACT.
- b. CONTRACTOR not taking remedial action to correct defective work.
- c. Petition of bankruptcy or moratorium of or work stoppage by CONTRACTOR.
- d. Discount for late delivery, liquidated damages, etc.

As potential reasons of loss disappear the retained money will be released to CONTRACTOR.

### **22.6 General**

Payment by CLIENT shall not be construed as acceptance of any part of the WORKS and shall not limit CLIENT's rights for claims and/or indemnification.

### **22.7 Sureties**

Guarantees if required by the CONTRACT shall be in the form and shall be issued by a bank or insurance company as approved by ENGINEER. If the validity of such guarantee expires before the event, for which the guarantee was originally issued, has occurred, CONTRACTOR shall arrange for extension of the validity as required by ENGINEER. If such extension is due to circumstances caused by CLIENT and/or ENGINEER the additional cost thereof will be borne by CLIENT.

### **22.8 Balance**

CLIENT is entitled to balance all amounts due to CONTRACTOR under the CONTRACT with amounts to recover from CONTRACTOR under the CONTRACT or any other contract or legal obligation.

### **22.9 Derived liability**

CLIENT may pay social insurance premiums and wage tax related to the WORKS and owed by CONTRACTOR, into CONTRACTOR's "G"-(blocked) account as described in the "Wet Ketenaansprakelijkheid", (Derived liability Act). Such payments are made for amounts for which CLIENT may be held jointly and severally liable under said legislation.

### **22.10 Rules for diversion of V.A.T.**

CLIENT, instead of paying the V.A.T. owed by him for the WORK to CONTRACTOR, may pay the V.A.T. to the competent tax authorities. Consequently CONTRACTOR having been informed by CLIENT that V.A.T. is to be diverted, shall not state the V.A.T.-amount due on his invoices, but state "V.A.T. diverted".

## **23 Audit Rights**

### **23.1 Audit rights**

Except in case of a lump sum contract, CLIENT and ENGINEER shall have access at all reasonable times to CONTRACTOR's books, records, correspondence, instructions, plans, drawings, receipts, vouchers and any other CONTRACTOR's documents in connection with the WORKS for the purpose of auditing and verifying the cost of the WORKS or for any other reasonable purpose.

## **23.2 Preservation of documents**

CONTRACTOR shall preserve all documents in connection with the WORKS for a minimum of five years after expiration of the guarantee period for the WORKS or termination of the CONTRACT.

## **24 Intellectual Property**

### **24.1 Rights**

All intellectual property rights, created under the execution of the WORKS, the adjustments thereto, extensions thereto and/or relating (technical) information, documents, procedures, tasks, etc. are with CLIENT. As far as existing intellectual property rights on the WORKS and/or (technical) information, documents, procedures, etc. are with CONTRACTOR and/or third parties, CONTRACTOR will arrange an irrevocable and free use for the benefit of CLIENT.

### **24.2 Indemnification**

CONTRACTOR shall indemnify and/or hold harmless CLIENT and ENGINEER against any action, claim, demand, costs, charges and expenses arising from or incurred by reason of any infringement of trade name and/or other intellectual property rights of third parties in connection with the WORKS or parts thereof, including the use of material or equipment and sale of products manufactured with the WORKS.

### **24.3 Violation**

In the event of any claim being made or action brought against CLIENT and/or ENGINEER arising out of the matters referred to in this clause CONTRACTOR shall be promptly notified thereof and shall at his own expense conduct all negotiations for the settlement of the same and any litigation that may arise there from. CLIENT and/or ENGINEER shall at the request of CONTRACTOR afford all available assistance for any such purposes. They shall be reimbursed any expenses incurred in doing so.

## **25 Confidentiality and Publicity**

### **25.1 Confidentiality**

All engineering data, designs, drawings and other documents supplied to CONTRACTOR by CLIENT or ENGINEER are confidential and shall not, without the prior written approval of ENGINEER, be used for any purpose whatsoever other than for the due performance of CONTRACTOR's obligations under the CONTRACT.

### **25.2 Publicity**

Without CLIENT's prior written approval CONTRACTOR shall not make public any detail of the CONTRACT, the WORKS, the material, equipment or services to be supplied or the purpose for which any material or equipment to be supplied under the CONTRACT is to be used.

## **26 Force Majeure**

### **26.1 Definition**

Force Majeure is defined as any occurrence which cannot be reasonably foreseen, controlled and prevented by CONTRACTOR, which is impeding CONTRACTOR in part or in total to comply with his contractual obligations and which materially affects the execution of the WORKS. Such situation may be caused by:

- Outbreak of war (whether or not the state of war is declared).
- Revolution, insurrection, terrorism, riot, civil commotion or similar.
- Explosion and fire (provided such events are beyond CONTRACTOR's responsibility).
- Earthquake, tidal waves, floods.
- Epidemics.
- General strikes on SITE or in CONTRACTOR's or subcontractor's workshops off SITE, where major parts of equipment are manufactured, for which neither CONTRACTOR nor his subcontractors are responsible whatsoever.

### **26.2 Evidence of occurrences of force Majeure**

CONTRACTOR claiming an extension of time because of Force Majeure shall have the burden of proof that a condition affects the progress of the WORKS.

He shall notify ENGINEER in writing not later than 5 days after such situation comes into being, state its nature and foreseeable duration and the effects it is likely to have on the time of completion of the WORKS. Upon cessation of such situation CONTRACTOR shall immediately notify ENGINEER stating the actual effect of it and forwarding his claim for extension of time. Extra costs caused by Force Majeure and encountered by CONTRACTOR or his subcontractors will not be compensated.

### **26.3 Ordinary hazards**

Normal risks like weather circumstances, availability of labour or material or transport, rejection of materials, price or wage fluctuations or the correction of defects in the WORKS, strikes other than general as referred to in clause 26.1 above, shall not be considered as Force Majeure and do not justify an extension of time and/or compensation for financial claims.

## **27 Suspension of the Works**

### **27.1 Suspension because of CONTRACTOR's Default**

Should CONTRACTOR, after ENGINEER's demand for remedial action, in the opinion of ENGINEER not execute the WORKS or part thereof in accordance with the CONTRACT, then ENGINEER may suspend execution of the WORKS or any part thereof.

### **27.2 Suspension for other reasons**

ENGINEER may at any time suspend execution of the WORKS or any part thereof for any reason whatsoever.

**27.3 Notice of suspension**

ENGINEER will suspend execution of the WORKS or any part thereof by written notice to CONTRACTOR and CONTRACTOR shall cease all work on such part of the WORKS on the date stated. CONTRACTOR shall continue to execute any unsuspended part of the WORKS.

**27.4 Resumption of suspended WORKS**

ENGINEER may at any time authorise resumption of all or any part of the suspended work by giving notice to CONTRACTOR and CONTRACTOR shall resume the execution of such work promptly after receipt of such notice.

**27.5 Suspension consequences**

Suspension of execution of the WORKS or part thereof shall not limit or waive any of CONTRACTOR's obligations originating from or in connection with the CONTRACT. In case the suspension is attributable to CONTRACTOR, CLIENT and/or ENGINEER shall not be liable for any additional costs due to suspension of execution of the WORKS.

In the case of WORKS suspension because of reasons beyond CONTRACTOR's control CLIENT shall issue a change order making the necessary adjustments to the schedule of the WORKS.

**28 Termination of Contract**

**28.1 Termination due to default of CONTRACTOR**

Should CONTRACTOR, after ENGINEER's or CLIENT's demand for remedial action, in the opinion of ENGINEER or CLIENT not execute the WORKS or part thereof in accordance with the CONTRACT, then CLIENT may terminate the CONTRACT or any part thereof. If CONTRACTOR becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him or if a winding up petition is submitted, CONTRACTOR is also considered to be in default. In such case CLIENT may immediately (partially) terminate the CONTRACT.

**28.2 Termination for other reasons**

CLIENT may at any time terminate the CONTRACT or any part thereof for any reason crucial to CLIENT.

**28.3 Notice of termination**

CLIENT will terminate the CONTRACT or any part thereof by written notice to CONTRACTOR and CONTRACTOR shall cease all work or such part of the WORKS on the date stated by CLIENT. CONTRACTOR shall continue to execute any part of the WORKS not terminated.

**28.4 Termination consequences**

In the case of termination of the CONTRACT or part thereof any rights and obligations according to the CONTRACT shall remain in force in regard of work already performed and the part of the WORKS still to be executed by CONTRACTOR.

Upon termination of the CONTRACT or part thereof by CLIENT due to default of CONTRACTOR:

- a. CLIENT and/or ENGINEER may take over the SITE and expel CONTRACTOR there from, and may employ any other person or persons to complete the WORKS.
- b. the WORKS whether wholly or partially executed, and all other things dedicated therefore which are then upon the SITE (other than CONTRACTOR's PLANT) shall automatically be the property of CLIENT; CLIENT or ENGINEER may take possession of, and have the free use of, such CONTRACTOR's PLANT for the purpose of completing the WORKS and without being responsible for fair wear and tear thereof and to the exclusion of any right of property of CLIENT or ENGINEER.
- c. all rights of ownership (if any) held by CONTRACTOR relating to documents for the execution of the WORKS and the performance of his obligations under the CONTRACT shall automatically be assigned to CLIENT, and CONTRACTOR shall deliver to CLIENT or ENGINEER all documents including plans, drawings, specifications, and data prepared by CONTRACTOR or subcontractors in connection with the CONTRACT and all documents supplied to CONTRACTOR by CLIENT and/or ENGINEER in connection with the CONTRACT.
- d. CONTRACTOR will at CLIENT's request assign to CLIENT - to the extent required by CLIENT - the subcontracts to the CONTRACT entered into by CONTRACTOR.

In case of termination not due to a default of CONTRACTOR, CLIENT shall make payment to CONTRACTOR for all work executed prior to such termination on the basis of the prices and rates specified in the CONTRACT. If the CONTRACT does not provide for such basis, payment will be made of all costs incurred prior to the termination reasonably allocable to the CONTRACT under recognised accounting practice, together with a reasonable allowance for overhead and profit. Any disposal or retention value and payments made will be deducted from such payment. In the case of termination due to a default of CONTRACTOR no payments will be made on account of overhead and profit.

CLIENT and/or ENGINEER shall not be liable for any damage or loss of anticipated profits due to termination other than as mentioned above.

**29 Assignment**

CLIENT may at any time assign any or all of his rights and obligations under this CONTRACT to a third party.

**30 Notices**

Any notice by ENGINEER to CONTRACTOR shall be mailed to CONTRACTOR at his office address stated in the CONTRACT or delivered personally to CONTRACTOR's representative on the SITE.

Any notice by CONTRACTOR to ENGINEER shall be mailed to ENGINEER at its office address stated in the CONTRACT or delivered personally to ENGINEER'S REPRESENTATIVE on the SITE.

**31 Language**

All correspondence, drawings and documents in connection with the CONTRACT shall be in the English language.

**32 Validity**

Any part of the CONTRACT becoming void, voidable or unenforceable shall not affect the validity of the CONTRACT as a whole. The parties shall replace the invalidated part with one expressing similar legal and economic intent.

**33 Governing Law**

The CONTRACT shall be construed, interpreted and applied in accordance with the laws of the Netherlands. The "United Nations Convention on Contracts for the International Sale of Goods" (Vienna, 11 April 1980) will not be applicable. Interpretation of the delivery terms as stipulated in the CONTRACT will be in accordance with the latest version of the "Incoterms" as published by the International Chamber of Commerce (ICC).

**34 Disputes**

**34.1 Settlement**

All disputes arising in connection with the CONTRACT shall be finally settled by the competent civil court in The Hague or, in CLIENT's option, by three arbitrators in accordance with the rules of the Netherlands Arbitration Institute ("Nederlands Arbitrage Instituut"), with exclusion of the possibility of binding advice as mentioned in said rules. Upon CONTRACTOR's request CLIENT will inform CONTRACTOR within one month of his choice.

**34.2 Place of arbitration**

In case of arbitration, place of arbitration shall be The Hague, the Netherlands.

**34.3 Judgement by court of law**

Judgement upon the arbitration award rendered may be entered into any court of law having jurisdiction. Application may be made to such court for judicial acceptance of the award and/or an order of enforcement respectively, as the case may be.

**34.4 CONTRACTOR not to delay or suspend the WORKS**

Unless expressly agreed in writing by ENGINEER, CONTRACTOR shall not for reason due to disputes and/or proceedings delay or suspend the execution of the WORKS.

**34.5 Right of retention**

By starting with the execution of the WORKS, CONTRACTOR shall be deemed to have waived the right to retain (part of) the WORKS.

**35 Compliance with Bilfinger Vendor Declaration**

CONTRACTOR shall comply with the Bilfinger Vendor Declaration. A current version of the Bilfinger Vendor Declaration is attached to the CONTRACT and is available on the Bilfinger website. The Bilfinger Vendor Declaration sets the minimum standards that must be applied. However, to the extent the Bilfinger Vendor Declaration conflicts with the laws of the Netherlands, the law of the Netherlands shall apply.

CLIENT may change the Bilfinger Vendor Declaration if there is a change of legal, regulatory or institutional requirements, case law or ethical business standards relevant to the content of the Bilfinger Vendor Declaration.

CLIENT will inform CONTRACTOR of any changes or amendments to the Bilfinger Vendor Declaration. CONTRACTOR shall comply with the latest version including the changes as far as it has been informed thereof.

**36 Business Conduct Clauses**

**36.1 Compliance Obligation**

CONTRACTOR shall comply with all applicable laws and regulations including but not limited to anti-corruption, anti-money laundering, anti-terrorism, export control, economic sanction and anti-boycott laws, regulations and administrative requirements applicable to CONTRACTOR or its services.

CONTRACTOR hereby represents and warrants that it and/or all of its shareholders, directors, officers, employees and subcontractors who will perform services under this CONTRACT are knowledgeable about the laws, restrictions and principles stated above and agrees to take appropriate steps to ensure compliance by any such persons with respect to the services to be performed under this CONTRACT.

**36.2 Anti-Corruption Obligation**

CONTRACTOR hereby represents and warrants that neither payments nor any other advantages or favours have been or shall be, directly or indirectly, offered, promised, or provided to: (i) a private party, which as a result could lead to an improper advantage in relation to the business of CLIENT; or (ii) a public official, member of the judicial system or any other government-related or state-owned entity or person ("Public Official") for himself or herself or another person or entity, in order to influence official action, or any Public Official.

**36.3 No Public Official**

CONTRACTOR hereby represents and warrants that (a) if CONTRACTOR is an individual, neither CONTRACTOR nor any close relative of CONTRACTOR: (1) is a Public Official or (2) has any personal or business relationship or association with any Public Official who is or will be in a position to affect or influence the award of business or other advantages to CLIENT in any country in which CONTRACTOR will provide services to CLIENT pursuant to this CONTRACT; and (b) if CONTRACTOR is an entity, no director, officer, or shareholder, and no employee who will perform services under this CONTRACT is a Public Official or has any close personal or business relationship or association with any Public Official who is or will be in a position to affect or influence the award of business or other advantages to CLIENT in any country in which CONTRACTOR will provide services to CLIENT.

**36.4 Notification Duty**

If, during the term of this CONTRACT, CONTRACTOR becomes aware that the representations and warranties set forth in clause 36.2 and 36.3 are no longer true and correct, CONTRACTOR shall notify CLIENT in writing within fifteen (15) working-days. Whether or not notification within the fifteen (15) working-days is received, if CLIENT determines that the changed circumstances provide good cause to terminate this CONTRACT, the CONTRACT may be terminated in CLIENT's sole discretion.

**36.5 Engagement of Business Partners**

CONTRACTOR shall only be permitted to appoint subcontractors, intermediaries or other persons or entities with regard to CLIENT's business ("Business Partners") in case of prior written approval by CLIENT such approval shall not unreasonably be withheld. If permitted, CONTRACTOR has to select Business Partners with regard to CLIENT's business with specific care. CONTRACTOR shall take appropriate steps to ensure that Business Partners comply with all applicable laws as stated in clause 36.1 "Compliance Obligation" and the Bilfinger Vendor Declaration.

**36.6 Books and Records**

CONTRACTOR shall keep full records in relation to the performance of the CONTRACT. The content of these records shall include, but not be limited to full and accurate description of performance of CONTRACTOR and its subcontractors (e.g. details of service providers, timesheets, and relevant correspondence or summaries thereof), all expenditures, all payments made and any other documents created or received in connection with the CONTRACT with CLIENT.

CONTRACTOR shall keep these records at least for the statutory retention period or a period of ten (10) years after full completion of this CONTRACT, whichever is longer.

**36.7 Payment Details**

All payments to CONTRACTOR by CLIENT will be made only after receipt of an invoice referring to the CONTRACT and setting out details of the services provided and/or products delivered, by transfer to a bank account in CONTRACTOR's name in the country where the services are to be provided or where CONTRACTOR has established or maintains its principal place of business.

**36.8 Report of Unlawful Conduct**

CONTRACTOR shall promptly (within seven (7) working-days) report to CLIENT any alleged unlawful conduct by itself or by one of its shareholders, directors, officers, employees and subcontractors, if this conduct occurred in relation to business of CLIENT. CLIENT and/or Bilfinger will have the right to conduct its own internal investigation to the extent the allegation potentially relates to the business of CLIENT.

CONTRACTOR shall disclose immediately (within one (1) working-day) upon awareness of any initiated internal investigations and investigations by authorities related to business of CLIENT.

**36.9 Cooperation in Investigation**

CONTRACTOR shall fully and in a timely manner cooperate with any investigation performed by Bilfinger and/or CLIENT into alleged breaches of these Business Conduct Clauses, including responding accurately and completely to all inquiries and providing any requested documents. This may include, but is not limited to, provide access to documents and personnel.

**36.10 Right to Audit**

CLIENT shall be entitled, with the help of external advisers if deemed necessary, to audit all books, accounts, records, invoices, and accompanying documentation of the CONTRACTOR in order to verify compliance by the CONTRACTOR with these Business Conduct Clauses. CONTRACTOR agrees that it and its controlling shareholders, directors, officers, employees and subcontractors will cooperate fully with CLIENT and its advisers in any such audit. Each party shall bear its own costs incurred in connection with such audits.

Business and trade secrets are excluded from audit, unless the audit is conducted by an Audit Firm with confidentiality obligations. Paragraphs containing business and trade secrets may therefore be redacted before documents are made available to CLIENT.

CLIENT or its designated representatives shall have the right to access, audit and review the books and records, costs and expenses related to this CONTRACT, and to keep copies thereof, to the extent relevant to this CONTRACT, at any time during and within ten (10) years after termination of this CONTRACT.

The audit provisions of the CONTRACT will survive any termination or expiration of the CONTRACT.

For as long as any information requested by CLIENT in connection with an audit is not provided by CONTRACTOR, CLIENT may withhold payments or refuse any other contractual performance.

**36.11 Termination Right**

CONTRACTOR acknowledges and agrees that any breach of the Business Conduct Clauses set out in this CONTRACT will be deemed a material breach of contract entitling CLIENT to terminate the CONTRACT at any time and with immediate effect, without any obligation to pay any outstanding fees or make any other payment. CLIENT shall not be obliged to compensate any loss suffered by the CONTRACTOR as the result of termination under this clause 'Termination Right'. To the extent not consistent with the foregoing, the provisions on termination for cause as set out in this CONTRACT shall apply.

**36.12 Refund of Payments**

If CLIENT reasonably believes, and except to the extent that CONTRACTOR proves to the contrary, that the event given rise to such a termination under clause 36.11 above (Termination Right) also constitutes a violation of the U.S. Foreign Corrupt Practices Act or any other applicable Anti-Bribery Laws, any claims for payment by CONTRACTOR with regard to this CONTRACT shall be automatically terminated and all payments previously made shall be immediately refunded to CLIENT by CONTRACTOR.

**36.13 Compensation for Damages**

In case of any breach of this Business Conduct Clauses, CLIENT shall be entitled to compensation for damages. CONTRACTOR shall indemnify and hold harmless CLIENT, its affiliates, parent company (jointly "Bilfinger") or its employees, for any and all claims of third parties and all penalties, fines, sanctions, confiscation, forfeiture or disgorgement imposed upon Bilfinger, or its employees, in connection with any breach of this Business Conduct Clauses by CONTRACTOR.

**36.14 Annual Financial Statements**

CONTRACTOR must certify annually to CLIENT its ongoing financial stability and liquidity, and agrees to provide CLIENT, on an annual basis, its audited financial statements.

**36.15 Training and Certification**

CONTRACTOR agrees to participate in any and all training required by CLIENT covering its commitments under the terms of this CONTRACT particularly in relations to the Compliance Obligation and the Anti-Corruption Obligation in clauses 36.1 to 36.2, at all reasonable times and with reasonable advance written notice. Where CONTRACTOR has an equivalent Compliance program to Bilfinger, CONTRACTOR shall provide annual confirmation that management and key staff in relation to this CONTRACT have undergone appropriate anti-bribery and corruption training.