

**GREENV GENERAL TERMS AND CONDITIONS OF SALE, DELIVERY, AND CONTRACTING**

These General Terms and Conditions consist of:

**GENERAL SECTION**

A. General provisions: Clauses 1 to 22

**SPECIAL SECTION**

B. Goods: Clauses 23 to 24

C. Services: Clauses 25 to 27

D. Contracting of work: Clauses 28 to 37

E. Service and Maintenance: Clauses 38 to 39

**Applicability of sections**

All agreements entered into with the Contractor are subject to the General Section of these General Terms and Conditions. In addition, one or more parts of the Special Section of these General Terms and Conditions apply if and to the extent provided for in the Agreement or if it follows from the nature of the Agreement.

In case of a conflict between the General Section and the provisions in the Special Section, the provisions in the Special Section take precedence.

**GENERAL PROVISIONS**

**A. GENERAL PROVISIONS**

**Clause 1. Definitions and interpretations**

1. Where the following terms are capitalised, the following definitions apply:

- a) Offer: the written offer made by the Contractor to the Client pursuant to the Offer Documents;
- b) Offer documents: the documents prepared by the Contractor based on the information and data provided by the Client, such as drawings, descriptions, specifications, prospectuses, leaflets, artist impressions, catalogues, illustrations, drawings, weights, proofs (samples), dimensions, technical specifications, shipping documentation or other information material;
- c) General Terms and Conditions: these general terms and conditions of sale, delivery and contracting;
- d) Structure: a structure as referred to in Article 7:758(4) of the Dutch Civil Code;
- e) Services: the work to be performed by the Contractor under the Agreement, including consultancy, design, engineering, assembly, installation, construction, and assignments to be carried out;
- f) Goods: all goods and results of Services developed, delivered and/or made available by or on behalf of the Contractor in connection with the Agreement, including (the carriers of) software, designs, reports and other documentation, materials and information;
- g) Group companies: group companies within the meaning of Article 2:24b of the Dutch Civil Code;
- h) Intellectual Property Rights: rights to patents, trademarks, trade names, logos, designs and domain names, copyrights (including rights to software), portrait rights, personality rights, database rights, breeders' rights, (semi-conductor) integrated circuit topography rights, rights to know-how and any other intellectual property rights and rights and forms of protection to a similar effect, whether registered or unregistered, and including applications for rights, anywhere in the world;
- i) Client: the natural person or legal entity that issues an order to the Contractor regarding the delivery of Goods and/or performance of Services;
- j) Client Data: the data provided to the Contractor by or on behalf of the Client;
- k) Contractor: the group company or companies of GreenV B.V. with which the Agreement has been entered into;
- l) Agreement: the agreement concluded between the Client and the Contractor regarding the delivery of Goods and/or the provision of Services;
- m) Party and Parties: the Contractor and the Client individually and jointly;
- n) Service and Maintenance works: all activities, including the delivery of materials and goods, to be performed by the Contractor to ensure that the technical condition of the Work and the functions to be performed by the Work meet the requirements arising from the Agreement during the maintenance period;
- o) Malfunction: a sudden unexpected interruption of the performance of the Work;
- p) Work: the result of design, construction, installation and/or service- and maintenance works - including the delivery of goods and/or services - to be performed by the Contractor under the Agreement, including the performance period.

2. Unless provided otherwise in these General Terms and Conditions or in the Agreement:

- (i) "written" also includes electronic data traffic, such as communications by e-mail, and
- (ii) words used in the singular also refer to the plural and vice versa.

3. These General Terms and Conditions are an integral part of the Agreement. In the event of a conflict between the provisions of these General Terms and Conditions and the provisions of the Agreement (without the General Terms and Conditions), the provisions of the Agreement (without the General Terms and Conditions) will prevail. The Dutch text of these General Terms and Conditions is the only authentic text. In the event of a conflict between the Dutch text and a translation into a foreign language, the Dutch text will prevail.

4. The Contractor's rights and claims contained in these General Terms and Conditions and the Agreement will apply in addition to the Contractor's rights and claims under the law towards the Client.

**Clause 2. Applicability**

1. These General Terms and Conditions apply to all (legal) acts of the Contractor and also prevail over the general terms and conditions of the Client if the Contractor has not expressly rejected their applicability.

2. In addition to and as a supplement to the provisions of paragraph 1, these General Terms and Conditions will apply if the Client has accepted their application in previous agreements with the Contractor.

**Clause 3. Offers and conclusion of the Agreement**

1. Unless otherwise specified in the Offer, any Offer made by the Contractor to the Client will be without obligation. The Contractor may revoke any offer it has made shortly after receipt of the Client's acceptance. By receiving and retaining the Offer, the Client declares that it agrees to all the provisions of these General Terms and Conditions that pertain to the offer phase.

2. The contents of all Offer Documents are as accurate as possible and of an informative nature, but are not binding, and are based on the information and data provided by the Client.

3. The prices included in an Offer only relate to those Services or Goods, which are explicitly described in the Offer. The prices quoted by the Contractor in the Offer are expressed in euros, excluding government levies or taxes. The prices are further exclusive of insurance, travel, accommodation, packaging, storage and transport costs, costs for loading, stowage, unloading and cooperation with customs formalities.

4. Upon the Client's written request, the Contractor will, within a reasonable period, provide information on the wage/material ratio used in its Offer and its payment behaviour under the Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act and the turnover tax reverse-charge mechanism.

5. Unless otherwise specified in the Offer, an Offer does not include:

- a) groundwork, pile driving, cutting, breaking, foundation, masonry, carpentry, plastering, painting, wallpapering, repair work or any other construction work;
- b) installing connections of gas, water, electricity, internet or other infrastructure facilities;
- c) measures to prevent or limit damage to or theft or loss of property present at or near the workplace;
- d) disposal of materials, soil, construction materials or waste;
- e) vertical and horizontal transport;
- f) travel and accommodation expenses.

6. In case of conflicting provisions in the Offer Documents, the following applies:

- a) a newly written or signed document takes precedence over an old written or signed 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.

7. The Client treats the Offer Documents and the Offer as confidential and may not use these documents itself or authorise use by third parties or disclose them to third parties without written consent. The provisions of Clause 4(17) apply *mutatis mutandis*. The Offer and the Offer Documents are the property of the Contractor. If no agreement is concluded based on the Offer Documents, all these documents must be returned immediately by the Client and at its risk and expense to the Contractor's address upon the Contractor's first request. As far as digital documents are concerned, all such documents must immediately be removed or deleted by the Client and at its risk and expense upon the Contractor's first request.

8. Verbal promises or agreements by or with its personnel will not bind the Contractor except after and insofar as the Contractor has confirmed them in writing and through authorised representation.

9. Amendments to an Agreement can only be validly made if and insofar as the Contractor has confirmed them in writing and through authorised representation, and otherwise in accordance with the provisions of Clause 11.

10. If an Agreement is concluded under the condition precedent or condition subsequent of the Client obtaining financing and the Client invokes this provision, it is not at liberty to

award the contract, in whole or in part, to a third party for 18 months after the condition has been invoked. If the Client nevertheless does so, it will owe the Contractor a one-time and immediately payable penalty of 15% of the original contract sum or price.

**Clause 4. Obligations of the Client**

1. The Client will ensure that the Contractor is provided with the following in a timely manner and free of charge:

- a) all (technical) information (including prescribed constructions and working methods),
- b) data, decisions and changes; and
- c) materials and goods; as well as
- d) structures and facilities,

which the Contractor indicates are necessary or which the Client should reasonably understand are necessary for the performance of the obligations under the Agreement, and in such a way that the Contractor is able to perform or deliver the Services or Goods efficiently, safely and in accordance with the Agreement, failing which the Contractor will have the right - after notice of default by the Client - to suspend its obligations, to suspend the Work as referred to in Clause 8 and/or the Client will be obliged to reimburse the Contractor for the additional costs caused by this.

2. Without prejudice to its liability under the law, the Client is responsible for the accuracy, usefulness and completeness of the information and data referred to in paragraph 1 provided by it or on its behalf, decisions taken and changes ordered, as well as for the soundness and suitability of the items referred to in paragraph 1 made available by it or on its behalf to the Contractor, including materials, goods, constructions, measures, and the soil on which the Client has Services performed or a Work carried out. The Contractor is entitled to claim reimbursement of costs and/or extension of time under Clause 10 if the Client fails to perform in respect of its obligations under this paragraph.

3. The Client is also responsible and liable for the orders, instructions and directions given by it or on its behalf, and will inform the Contractor in writing and in good time of all (safety) regulations applicable at the site, building and location where the Contractor is to perform the Agreement. The Client will allow and offer the Contractor every opportunity to perform the Agreement safely and responsibly; this includes the timely and complete instruction and warning by or on behalf of the Client of its personnel and persons working or present on its behalf or for it on, in or around the premises, building and location where the Contractor performs the Agreement. The Client must also strictly comply with the safety regulations arising from or related to the Services performed or Goods delivered by the Contractor.

4. The Client indemnifies the Contractor and its Group Companies against claims by third parties in connection with the items, information, data, decisions, changes, orders, instructions, directions, structures, facilities, materials, goods and the soil referred to in paragraphs 1, 2 and 3.

5. The Client will ensure the good condition and unobstructed accessibility of the site, buildings/locations and systems or parts thereof around, on, under, in or above which the Services are performed or the Goods are delivered. The Client is liable for the circumstances that limit, prevent and/or impede the performance of the Services or delivery of the Goods. The Client is obliged to inform the Contractor and its personnel about working conditions in a timely manner and is obliged to warn of dangerous situations. The necessary H&S plans will be prepared by or on behalf of the Client, or at least the Contractor will prepare an H&S plan for the performance of the Agreement, if requested, for a fee.

6. The Client will ensure that, at the locations where the Services are performed or the Goods are delivered, the Contractor has timely access to the necessary (utility) facilities, such as electricity (mains voltage), (drinking) water, gas, compressed air, telecom and/or sewerage connection, free of charge and with a delivery guarantee.

7. The Client is responsible for timely connection to the public networks.

8. The Client will provide timely information on the nature and content of the work of third parties engaged by it, the anticipated time at which it will be performed, as well as its coordination. Changes to such information will entitle the Contractor to reimbursement of costs and/or extension of time pursuant to Clause 10. Only the Client is responsible for coordinating this work, unless otherwise agreed in the Agreement.

9. Without prejudice to its liability under the law, the Client is responsible for work carried out or deliveries made by it, or on its behalf by third parties. Damage caused by the work or deliveries of third parties to the Contractor, its employees or workers, materials or equipment, Goods or Services will be borne by the Client.

10. The Client is obliged to warn the Contractor in writing and in due time if it has become aware or could reasonably have become aware of an impending failure on the part of the Contractor.

11. The Client is liable for the (soil) contaminations, environmentally harmful substances and/or bacteria found during the performance of the Agreement, such as asbestos or legionella. The Client may instruct the Contractor to remove the contaminations, substances and/or bacteria found by means of a change pursuant to Clause 11. Whether or not the Contractor executes this order, it is entitled to reimbursement of costs and/or extension of time pursuant to Clause 10.

12. Without prejudice to its liability under the law, the Client will be liable for all damage or loss resulting from the constructions and working methods prescribed by it, including the influence exerted by the state of the soil, as well as for materials and goods prescribed by

it or to be procured from a prescribed supplier, and for their non-delivery, untimely delivery and/or faulty delivery.

13. Without prejudice to its liability under the law, the Client is responsible for independent auxiliary persons, such as subcontractors or suppliers, that it has prescribed. The Contractor is not obliged to contract these auxiliary persons if the Client does not wish to accept the contract terms of these auxiliary persons. In any case, the Contractor will not be liable towards the Client for more than that to which the Contractor can hold this auxiliary person liable under its contract terms. If the prescribed auxiliary person does not perform, or does not perform on time or properly, the Contractor will be entitled to an extension of time and/or reimbursement of costs pursuant to Clause 10. At the Client's first request, the Contractor will assign its claim against this auxiliary person to the Client.

14. Unless otherwise stipulated in the Agreement, the Client is responsible for all goods, such as materials, equipment or tools brought to the work (site), regardless of to whom these goods belong. The Client is also responsible for supplied equipment and goods and is obliged to take delivery of them.

15. The Client is responsible for delays and/or costs resulting from compliance with legal regulations and government decisions, as well as regulations of a special nature, such as technical and industrial standards, which are amended or come into force after the Offer, unless it must reasonably be assumed that the Contractor could have foreseen those consequences already on the day of making the Offer.

16. The Client will permit the Contractor to affix indications of its name and company or advertising on fences and fencing that serve to enclose the building, premises or places where the Goods are delivered and the Services are performed, as well as elsewhere on the work site. Advertising/marketing expressions by the Client using the Contractor's name must be approved in writing by the Contractor in advance.

17. The Client is obliged to treat all (business) data or any information received from the Contractor in connection with the Agreement as confidential. The Client is prohibited from using this data and information for its own use or use by third parties or disclosing it to third parties. In the event the obligation set out in this paragraph is violated, the Client will forfeit an immediately payable penalty of EUR 100,000.00 without prejudice to the Contractor's right to claim compensation.

18. The Client will pay the amounts owed by it to the Contractor in accordance with the agreed payment schedule, even if the Client is entitled to compensation under Clause 17. The Client is not entitled to suspension or set off.

19. The Client acknowledges and agrees that the Goods to be delivered and/or Services to be performed by the Contractor may be subject to applicable trade laws, rules, regulations and permits, including, but not limited to, those imposed by the United Nations (UN), the United States (US), the European Union (EU) and EU Member States. In this regard, the Client is obliged to provide the Contractor with all necessary information in writing on demand. The Client accepts that the above may constitute a valid (legal and/or contractual) basis for the Contractor to invoke *force majeure*. The Client guarantees that:

- (i) it will comply with all laws and/or regulations applicable to it in any form and, in particular, all UN, US and/or EU export controls and sanctions and
- (ii) that Goods delivered and/or Services performed are not directly or indirectly intended or likely to be intended for any country subject to sanctions under UN and/or US and/or EU regulations for the relevant goods, unless the Client has obtained a valid exemption or permit from the competent authority designated by the UN and/or US and/or EU.

20. The Contractor is entitled at any time to terminate the Agreement in whole or in part under Clause 9, or otherwise amend it under Clause 11, if there are specific indications that the Client is not complying with the laws and regulations set out in paragraph 19.

21. The Client indemnifies the Contractor and its Group Companies against any claim relating to the laws and regulations described in paragraph 19.

**Clause 5. Insurance of the Client**

1. The Client will ensure that the goods referred to in Clause 4(14) are adequately insured, including against fire, explosion and water damage, as well as against theft, embezzlement, disabling and/or destruction. The Client must also take all measures to obtain compensation from third parties insofar as these third parties can be held liable by the Client.

2. In case of export of products and (parts of) works that partly consist of Goods developed and/or delivered by the Contractor to the US, Canada or territories to which the laws of these countries have been declared applicable, the Client is obliged to inform the Contractor of the intention to export in good time. The Client must, in the event that the foregoing occurs, take out and maintain adequate and sufficient liability insurance to the Contractor's satisfaction.

3. The Client will ensure that the Contractor receives written proof of the existence, payment and content of the insurance referred to in paragraphs 1 and 2 as soon as possible.

**Clause 6. Obligations and rights of the Contractor**

1. The Contractor is under no obligation to warn the Client about, or independently investigate, any inaccuracies in the Agreement, defects and the unsuitability of items originating from the Client, including the ground on which the Client has the Contractor perform Services or has a Work performed, as well as errors or defects in information, data, plans, drawings, calculations, specifications or execution instructions provided by the Client.

Article 7:754 of the Dutch Civil Code does not apply.

2. The Contractor is not obliged to do more than visually inspect the materials and goods to be delivered by the Client.
3. The Contractor will make every effort to perform the Agreement, and to do so in accordance with the schedule prepared by the Contractor.
4. The Contractor will ensure that it is aware of the statutory regulations or government decisions and general technical and/or industrial standards relevant to the Services or Goods, as they have entered into force at the time the offer is made. If no specific standards or regulations have been agreed on, the Contractor will perform its Services and deliver its Goods in accordance with what the Contractor could reasonably assume when entering into the Agreement.
5. The consequences of compliance with regulations of a special nature are for the Contractor's account, unless it must reasonably be assumed that it did not need to be aware of these regulations. In that case, the Contractor will be entitled to an extension of time and/or reimbursement of costs under Clause 10.
6. The Contractor will make every effort to ensure that the Services or Goods comply with the Agreement.
7. The Contractor will, to the best of its ability and if requested, provide timely instructions for commissioning, decommissioning and keeping the Work in working order.
8. The Contractor is obliged to keep all the Client's data confidential to the extent that such data has been disclosed to the Contractor as confidential.
9. In the event that Goods, including software and hardware, are to be delivered by the Contractor as part of the performance of the Agreement and the supplier thereof applies general terms and conditions (which the Client would reasonably also have had to accept if it had contracted with that supplier itself), the Contractor will not be obliged, with regard to the delivery by that supplier towards the Client, to do anything more in terms of performance and liability than what the Contractor can hold that supplier to under the general terms and conditions as applied by the supplier towards the Contractor.
10. The Contractor will at all times be entitled to subcontract all or part of the performance of Services assigned to it or the delivery of Goods to third parties.

**Clause 7. Delivery time**

1. The Contractor cannot be obliged to start the performance of the Agreement until after the Agreement has been concluded, and after all necessary information, data, constructions, public and private law permissions, facilities, materials, goods and/or (proof of) insurance to be provided by the Client for that purpose, as mentioned in Clauses 5 and 35, are in its possession on time and it has received the agreed instalment payment. Exceeding the applicable deadlines will entitle the Contractor to reimbursement of costs and/or extension of time pursuant to Clause 10. The Contractor is authorised to commence and/or deliver earlier, unless the Parties have agreed otherwise in the Agreement.
2. Unless the Parties have agreed otherwise in the Agreement, the terms and dates applicable to the Contractor as stated in the schedule will be observed to the extent possible. These terms, including the delivery date, are determined in the expectation that the foreseeable circumstances at the time the Agreement was concluded will remain the same during performance thereof, and that the necessary materials of third parties will be delivered to the Contractor in good time, failing which the Contractor will be entitled to reimbursement of costs and/or an extension time pursuant to Clause 10.
3. Merely exceeding a term or date specified in the schedule does not constitute a default on the part of the Contractor. Exceeding a term will not entitle the Client to claim compensation or penalties of any kind or to dissolve the Agreement in whole or in part. After expiry of the agreed delivery term or delivery date, the Client will be entitled to give the Contractor notice of default in writing, stating reasons, to still deliver within a reasonable period, taking into account the delivery dates. If this term is exceeded, however, the Client will be entitled to dissolve the Agreement, without being entitled to claim compensation or penalties of any kind.
4. If a delivery term or date mentioned in the schedule is at risk of being exceeded, the Contractor and the Client will enter into consultations as soon as possible.

**Clause 8. Suspension**

1. Without prejudice to its statutory and other rights, the Contractor will in any case have the right, without notice of default and without court intervention being required, to suspend its obligations under the Agreement or to suspend the Work, in case of a situation as referred to in:
  - a) Clause 14(1) (late payment by the Client);
  - b) Clause 14(3) (failure of the Client to provide security);
  - c) Clause 19(2) (cases of *force majeure*).
2. If the Contractor suspends the performance of the Agreement, including the suspension of Services or the delivery of Goods, or suspends the Work, and later still performs it, the provisions of paragraph 5 will apply.
3. If the suspension exceeds one month, the Contractor will also be entitled to proportionate payment for the part of the Agreement that has been performed.
4. If the suspension as referred to in this clause lasts longer than 2 months, the Contractor will be entitled to terminate the Agreement pursuant to Clause 9.

5. In the cases referred to in the previous paragraphs, the Client is obliged to compensate the Contractor for any loss incurred, without prejudice to the Contractor's obligation to limit such loss as much as possible, unless the loss is the result of a failure for which the Client cannot be held responsible.

**Clause 9. Termination**

1. The Agreement will end by expiry of the agreed period or completion of what has been agreed. If it concerns a continuing performance contract, it may be terminated by the Contractor at any time, subject to a notice period of three (3) months. The notice of termination must be given by the end of the calendar month.
  2. Without prejudice to its statutory termination possibilities and other rights, the Contractor is in any event entitled, without notice of default and without judicial intervention being required, to dissolve the Agreement in whole or in part or to terminate it by notice, such as at the Contractor's discretion, if:
    - a) the Client is declared bankrupt or a bankruptcy petition is filed by or in respect of the Client;
    - b) the Client enters into a composition with its creditors, petitions for or is granted a (provisional) suspension of payments, or is subjected to a similar process;
    - c) the Client loses legal personality, or ceases, closes or transfers all or part of its business, passes away or is placed under guardianship or, if it concerns a company, is dissolved or liquidated;
    - d) all or part of the Client's assets are subject to post-judgment attachment;
    - e) the control of the Client changes compared to the situation at the time the Agreement was entered into;
    - f) the Client actually ceases its business or actually terminates and/or has terminated its business activities;
    - g) the Client attributably fails to perform the Agreement, or the Contractor has good reason to fear that the Client will fail to perform its obligations under the Agreement;
    - h) a situation as described in Clause 4(20) occurs.
  3. The Client is authorised at all times to terminate all or part of the Agreement, without prejudice to the provisions of Clause 3(10).
  4. In the cases referred to in paragraphs 2 and 3, the Client will be obliged to pay the contract price or fixed price stipulated in the Agreement, plus the costs incurred by the Contractor as a result of non-completion and less any savings to be proved by the Client that 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 Client will be calculated on the basis of the costs incurred, the labour performed and the profit that the Contractor would have made if the Agreement had been fully performed. Subject to proof to the contrary, the Contractor's calculation of the payment it is due under this paragraph will be binding on the Client.
  5. The Client is also obliged to compensate the Contractor for any loss incurred, without prejudice to the Contractor's obligation to limit such loss as much as possible, unless the loss is the result of a failure that is not attributable to the Client.
  6. Unless expressly authorised in writing by the Contractor, the Client will not be permitted to use the Contractor's Intellectual Property Rights in the event of termination as referred to in this clause, nor the ideas, concepts, know-how and techniques acquired or applied by the Contractor in the course of the provision of services.
  7. Any claim the Contractor has or obtains against the Client will, in the event of attributable failure on the part of the Client, be immediately due and payable.
  8. The parties hereby expressly exclude the effect of Article 6:271 of the Dutch Civil Code.
  9. Obligations under the Agreement and these General Terms and Conditions that by their nature are intended to continue even after the termination of the Agreement (on whatever grounds) will continue to exist after the termination of the Agreement.
- Clause 10. Time extension and/or reimbursement of costs**
1. In the case of Services qualifying as contracting of work, in addition to Article 7:753(1) of the Dutch Civil Code, the Contractor has the option to claim reimbursement of costs without judicial intervention being required.
  2. In addition to the provisions of paragraph 1 and Clause 11, the Contractor is in any case entitled to an extension of time and/or reimbursement of costs:
    - a) if these General Terms and Conditions expressly provide for this and under the condition that delays and/or costs are caused by circumstances not attributable to the Contractor, or
    - b) that are caused by a circumstance for which the Client is responsible, or
    - c) without prejudice to the provisions of Clause 19 concerning *force majeure* if, as a result of adverse weather conditions (such as rain, hail, hurricane, frost, snow, ice, mist or storm) or unworkable ground conditions at the work site in the period between entering into the Agreement and the delivery date, the Contractor and/or its subcontractors have been unable to install/work for days and, as a result, the Contractor's schedule has been disrupted, the delivery date will be extended by the same number of workable days, or
    - d) if an unforeseen circumstance occurs of such a nature that, according to standards of reasonableness and fairness, the Client cannot expect the Agreement to be upheld unchanged.
  3. If the Contractor believes that it is entitled to an extension of time and/or reimbursement of costs, it must notify the Client of this in writing as soon as possible, stating reasons.

This notification must include all direct and indirect costs as well as a reasonable surcharge for overheads, profit and risk. It must furthermore state the consequences in respect of scheduling.

**Clause 11. Amendments**

1. The Client is authorised to assign changes to the Agreement or the terms of performance to the Contractor.
2. The Contractor is not obliged to implement an assigned change if the change:
  - a) was not instructed in writing, or
  - b) would lead to an unacceptable disruption of the Services to be provided or delivery of Goods, or
  - c) exceeds its knowledge and/or abilities and/or capabilities, or
  - d) are not in its interest, or
  - e) if the Parties cannot reach consensus on the financial consequences and the consequences in terms of delivery time or planning.
3. If the Contractor is willing to implement the change, it will send the Client a written offer containing the following data:
  - a) the balance, made up of all direct and indirect costs, profit and risk, relating to the change, less any savings resulting from the change, and
  - b) the adjustment of the Services to be performed or Goods to be delivered, schedules and similar documents, and
  - c) the adjustment of the list of instalments or payment terms.
4. The Contractor is entitled to reasonable compensation of the costs connected to the offer referred to in paragraph 3, regardless of whether the Parties reach agreement on that offer.
5. The Contractor is authorised to submit proposals for amendments to the Client if it sees fit and provided that the Services or Goods will comply with the Agreement. However, the Contractor is in any event entitled to make such changes as the Contractor may reasonably deem necessary, useful or desirable insofar as they do not substantially affect or improve the functionality of the Services to be performed or Goods to be delivered or, in the case of contracting of work, the Work to be realised.
6. The Client may refuse or accept the proposals for changes as referred to in paragraph 5, first sentence, if there are reasonable grounds for doing so. In the latter case, the Parties must follow this clause.
7. If delays arise in relation to the changes due to a circumstance that cannot be attributed to the Contractor, the Contractor will be entitled to an extension of time and/or reimbursement of costs pursuant to Clause 10.
8. The Client must pay the price of the change at the Contractor's first request. The absence of a written contract with regard to the change will not affect the Contractor's claims for payment.

**Clause 12. Retention of title, transfer and pledge of claims**

1. All Goods delivered by the Contractor, including in this regard the materials and products which the Goods are composed of, built from or otherwise connected with, will remain the Contractor's property until the Client has fulfilled all its financial obligations towards the Contractor. This includes the obligations of the Client towards the Contractor due to the Contractor's failure to perform one or more of its obligations towards the Contractor. Payments made by the Client will be allocated first and foremost, and as far as possible, to claims of the Contractor that are not subject to retention of title.
2. The Client is obliged to separate and keep the Goods delivered under retention of title with due care and recognisable as property of the Contractor.
3. The Client is obliged to take out and maintain insurance in respect of the Goods against fire, explosion and water damage as well as theft for the duration of the retention of title, and must make proof of the existence, payment and content of such insurance available to the Contractor for inspection upon the Contractor's first request. All claims of the Client against the insurers of the goods under the said insurance policies will, at the Contractor's first request, be pledged to it by the Client in the manner indicated in Article 3:239 of the Dutch Civil Code, as additional security for the payment of the Contractor's claims against the Client.
4. If the Client fails to perform its obligations towards the Contractor or the Contractor has good reason to fear that it will fail to perform those obligations, the Contractor will be entitled to take back the Goods delivered under retention of title.
5. After taking back the Goods, the Client will be credited for the then applicable market value, up to a maximum of the original purchase price, less any costs incurred by the Contractor in taking back the Goods. This provision applies only if the Goods taken back are marketable and can be reused or sold by the Contractor.
6. If Goods have not been purchased after the expiry of the applicable delivery date, they will remain at the Contractor's disposal and will be stored by or on behalf of the Client at the risk and expense of the Client, without prejudice to the Contractor's authority to sell or reuse marketable Goods, and without prejudice to its rights on account of failure in the performance by the Client.
7. The Client undertakes not to assign, transfer or pledge to third parties any claims it obtains against its customers in respect of the Services provided or Goods delivered by the Contractor without the Contractor's prior written consent. The Client further undertakes, if so requested by the Contractor, to pledge the aforementioned claims to it

in the manner provided in Article 3:239 of the Dutch Civil Code, as additional security for payment of the claims which it may have against the Client on any basis whatsoever.

**Clause 13. Pricing and payment**

1. Any agreed amounts and amounts mentioned in these General Terms and Conditions are exclusive of turnover tax. The Client will reimburse the turnover tax payable by the Contractor in the context of the Agreement. Payment will be made according to the instalment schedule of the Agreement. If no instalment schedule has been agreed, the Contractor will invoice monthly as per the first of the month or as much earlier as is reasonable in the light of the Agreement.
2. The Contractor is entitled to change or adjust prices without prior notice up to 14 days after the conclusion of the Agreement if cost-determining factors change or are changed. The Contractor will notify the Client of this price increase, stating reasons, as soon as possible. Payment of any price increase on the basis of this paragraph will be made in accordance with the provisions of Clause 11. If the aforementioned price increase totals more than 20% of the agreed price excluding turnover tax, the Client will be entitled to terminate the Agreement (prematurely) by notice as referred to in Clause 9, provided that it notifies the Contractor in writing immediately after becoming aware of this. The Client is not entitled to compensation in case of termination.
3. All prices and rates are based on a continuous work process and a normal working week from Monday to Friday. Any Services performed or any Goods delivered outside normal working hours on business days will be set off at the rates and surcharges set out in the Agreement, based on the Contractor's normal working hours. All waiting hours and downtime for the Contractor's personnel and equipment, respectively, that are attributable to the Client will be set off based on the rates set out in the Agreement.
4. The set-off of changes in wages, social security charges, prices, rents and shipments takes place in accordance with the BDB index for utility construction, unless the Parties have agreed otherwise in the Agreement.
5. Insofar as, in the event of a lump-sum payment, the relevant invoice is not already also the invoice for the final settlement, the Contractor may submit the invoice for the final settlement if and as soon as the Goods have been delivered and/or the Services have been performed, or on the day on which the Agreement has been terminated, terminated in an incomplete state or dissolved pursuant to Clause 9. Submission of this invoice does not imply a waiver of the Contractor's right to further claims under this Agreement.
6. Payment will be made without deductions or set off and within 14 calendar days from the date of the relevant invoice, unless the Parties have agreed otherwise in the Agreement.
7. In the event that an invoice is not paid on time or in full, the Client will, without notice of default being required, be in default and all of the Client's payment obligations will become immediately due and payable, without prejudice to the Contractor's other rights. This is also the case if the Client is declared bankrupt or petitions for or is granted a suspension of payments.
8. The Client is not entitled to make payments for or on behalf of the Contractor to its independent auxiliary persons.
9. A payment will first be applied to reduce all costs and interest due and finally to reduce the longest outstanding payable invoices, even if the Client states that the payment relates to other invoices.

**Clause 14. Consequences of late payment by the Client**

1. If the Client fails to pay on time, the Contractor will be entitled to compensation of interest in accordance with Article 6:119a of the Dutch Civil Code with effect from the date on which payment should have been made. In that case, the Contractor is also authorised to suspend its obligations under the Agreement, or suspend the Work as referred to in Clause 8.
2. If payment is not made within one month of the date on which payment should have been made at the latest, the Contractor will be entitled to compensation of interest at the statutory rate increased by two percentage points as from the day on which this month has passed, without a reminder by the Contractor being required. When calculating the interest, part of a month is considered a full month. In such a case, the Contractor will also be authorised to dissolve the Agreement pursuant to Clause 9.
3. The Contractor will at all times be entitled to require from the Client adequate security (such as a bank guarantee) for the risks incurred by the Contractor by virtue of the performance of the Agreement. If the Client remains in default with regard to the provision of the required security, the Contractor will be entitled to suspend its obligations pursuant to the Agreement, suspend the Work as referred to in Clause 8 or dissolve the Agreement pursuant to Clause 9.
4. All actual costs incurred by the Contractor to obtain payment of the invoices due, both judicial and extrajudicial costs, will be borne by the Client, unless the Contractor chooses to fix these costs at 15% of the amount to be claimed.

**Clause 15. Complain and claims of the Client**

1. The legal claim on account of a defect in Services provided will be inadmissible if the Client, in a timely manner after it has discovered or reasonably should have discovered said defect, has not given the Contractor notice of default in writing, stating reasons and providing a reasonable term, taking into account delivery times, to enable the Contractor to respond adequately.

2. The legal claim on account of an incorrect, defective or incomplete delivery of Goods will be inadmissible if the Client, within seven calendar days after it has discovered or reasonably should have discovered said failure, has not given the Contractor notice of default in writing, stating reasons and providing a reasonable term, taking into account delivery times, to enable the Contractor to respond adequately. Without prejudice to the provisions of the previous sentence, the legal claim on account of externally visible defects will also be inadmissible if the Client has not had the alleged incorrect or incomplete delivery noted on the waybill or proof of delivery immediately upon receipt of the Goods.

3. With regard to the dimensions and weights and/or quality and soundness of the Goods, the Contractor always reserves the usual deviations and tolerances as are customary with the manufacturers responsible for the manufacture of these Goods.

4. The right of claim on account of any defect in Services performed, or on account of incorrect, defective or incomplete delivery of Goods will lapse upon expiry of one month from the expiry of the reasonable term specified in a written and substantiated notice of default.

5. If the Client disagrees with an invoice from the Contractor, it must, on pain of repealed rights, complain to the Contractor about it in writing within the payment term. If the payment term exceeds 30 days, the Client must have complained in writing no later than 30 days from the invoice date. After expiry of this period, the contents of the invoices will serve as exclusive evidence regarding the (value and proper execution of the) performances rendered thereunder, subject to proof to the contrary.

6. Payment by the Contractor as a result of a claim by the Client will be made net of any due and payable claims of the Contractor against the Client.

#### Clause 16. Warranty

1. Unless otherwise provided in these General Terms and Conditions or in the Agreement, the Contractor warrants, as detailed in the following paragraphs, for a period of 12 months after delivery, or after commissioning if earlier, the proper performance of the following specific Services or Goods, or parts thereof:

- (i) window breakage, to the extent that it is the direct and exclusive result of a performance error by the Contractor;
- (ii) expressly and specifically agreed performance requirements in terms of service life, water consumption, energy consumption, climate control, manufacturing or processing numbers, and (software-related) process improvement.

2. The Client must cooperate fully, free of charge, with any investigation by or on behalf of the Contractor of a claim under the warranty made by the Client, failing which all rights of the Client in connection with that complaint will lapse.

3. If the Client has rejected a claim under the warranty on proper grounds, the Client must reimburse the Contractor for all costs reasonably incurred in connection with investigating the complaint.

4. If the agreed Services or Goods have not been properly performed or delivered, respectively, the Contractor will determine whether, based on the warranty, it will

- (i) still properly perform the Services or deliver the Goods, or
- (ii) replace all or part of the delivered Goods, or
- (iii) credit the Client for a reasonable portion of the contract price.

5. If the Contractor chooses to still properly perform the Services or replace all or part of the Goods delivered, the Client will in all cases give it the opportunity to do so. The Contractor itself will determine the manner and time of the performance. If the agreed Services or Goods (partly) consisted of altering material supplied by the Client, the Client must supply new material at its own risk and expense.

6. The Client must send any items to be repaired or replaced by the Contractor to the Contractor. Transport, shipping and disassembly and assembly will be at the Client's risk and expense. In addition, travel costs (including travel hours) and accommodation costs will be at the Client's expense. The Contractor is authorised to require security or advance payment for these costs.

7. The Contractor need not execute the warranty until the Client has fulfilled all its obligations.

8. After repair or replacement in the context of this warranty arrangement, the warranty period will not be renewed and the warranty will end when the original warranty period would have ended.

9. a. The warranty is excluded for defects that are wholly or partially the result of facts and circumstances that are at the Client's risk and expense under the Agreement or these General Terms and Conditions.

b. Warranty is in any case excluded for defects resulting wholly or partly from:

- normal wear and tear;
- improper use;
- negligence;
- the performance of improper maintenance or a failure to perform maintenance;
- Installation, disassembly, assembly, alteration or repair by the Client or by third parties;
- defects in or unsuitability of items, materials or tools originating from, or prescribed by, the Client;
- any government regulation on the nature or quality of the materials used.

c. Warranty is excluded for deviations that are technically reasonably unavoidable, that imply a qualitative improvement or that do not significantly limit the functionality of the item given the purpose for which the Client uses the item in the normal conduct of its business.

d. No warranty will be given on:

- Goods delivered that were not new at the time of delivery;
- the inspection, repair and overhaul of Goods;
- Goods under manufacturer's warranty;
- Services or Goods for which a warranty has been granted to the Client by third parties.

10. The provisions in paragraphs 2 to 9 of this clause apply *mutatis mutandis* to any claims by the Client on the basis of breach of contract, non-conformity or any other basis whatsoever.

#### Clause 17. Liability

1. If the Contractor is liable for any reason, such liability will at all times be limited as provided in the following paragraphs.

2. If the Contractor is liable towards the Client, it will only be obliged to pay compensation for the direct tangible harm suffered by the Client as a result, if and insofar as that harm could not be mitigated by the Client and is not remedied as referred to in paragraph 5.

3. Direct tangible harm will under no circumstances include: all forms of damage or loss other than those referred to in the previous paragraph, such as damage to property in the care, custody or control of, but not owned by the insured, as well as consequential harm, such as - but not limited to - loss of production, loss of profits (such as loss of turnover) or depreciation or loss of products - nor amounts that would have been included in the execution costs if the Services or Goods had been properly performed or delivered, respectively, from the start.

4. In addition, the Contractor will never be liable for:

- a) crop damage, including but not limited to damage caused by the use of pesticides and/or cleaning materials, cleaning, maintenance or extension work, infectious diseases, or any other external or internal calamity;
- b) glass damage, including but not limited to damage caused by hail, storm, cleaning, maintenance, or extension work, or any other external or internal calamity;
- c) damage resulting from (design) drawings or advice provided by it, including, but not limited to advice with regard to the configuration of systems, the parameters for sampling, or making a mock up.

5. Without prejudice to the provisions of this clause, the Contractor undertakes at its own expense to restore the defects for which it is liable as well as is reasonably possible during the period referred to in paragraph 11. In the event that the costs of repair are not in reasonable proportion to the Client's interest in restoration and in the event that the Work is not performed in the Netherlands, the Client's right to restoration will be converted into compensation to be paid by the Contractor as referred to in paragraph 2. Parts replaced by the Contractor become its property.

6. The Contractor will only be liable for compensation of damage or loss other than as referred to in this clause if and to the extent that the Client proves that it can be attributed to malicious intent or deliberate recklessness on the part of the Contractor itself or its executive employees, i.e. not on the part of independent auxiliary persons or non-management subordinates of the Contractor.

7. Without prejudice to the provisions of this clause, in the case of Services or Goods that serve in the exercise of the Client's profession or business, the Contractor will only be liable for damage or loss not covered by the insurance referred to in Clause 35. In the case of Services or Goods relating to products, goods and works exported by the Client to the US 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 damage or loss not covered by the insurance referred to in Clause 5.

8. If and to the extent that the Client has insured any risk associated with the Agreement, it will be obliged to claim compensation for any damage or loss under that insurance and to indemnify the Contractor and its Group Companies against recourse claims by the insurer.

9. The extent of the damage or loss to be compensated by the Contractor will be limited to the amount of the contract price or price stipulated in the Agreement, or if no price was stipulated when the Agreement was concluded, as in the case with a cost-plus agreement, to the amount of the probable price for Services actually performed and Goods actually delivered. For maintenance contracts with a term of more than one year, the price is set at the total amount of the fees for one year.

10. If the Contractor has taken out any insurance covering its liability towards the Client, the compensation will in no case exceed the total amount of the Contractor's insurance excess and the payouts actually made by the Contractor's insurers.

11. Unless the Parties have agreed otherwise in the Agreement or unless otherwise provided in these General Terms and Conditions, any liability of the Contractor, on any ground, as well as any (legal) claim of the Client on account of any failures on the part of the Contractor will lapse by the expiry of one year from the time of (i) delivery or termination in an unfinished state or (ii) the date when the Agreement has been terminated by dissolution or termination.

12. All defences which the Contractor may derive from the Agreement concluded with the Client in defence of its liability may also be invoked against the Client by its personnel and

third parties engaged by it in the performance of the Agreement, as if its personnel and the aforementioned third parties were themselves parties to the Agreement.

13. Any conditions limiting, excluding or determining liability that may be relied on by third parties against the Contractor may also be relied on by the Contractor against the Client to the same extent.

**Clause 18. Indemnification**

1. The Client indemnifies the Contractor and its Group Companies against all third-party claims for (product) liability resulting from defects in a product or work delivered by the Client to a third party and which partly consisted of Goods developed and/or delivered by the Contractor, except if and in so far as the Client proves that the damage or loss was caused by those Goods and without prejudice to the provisions of Clause 17.8.

2. The Client indemnifies the Contractor, its group companies and (by way of a third-party clause) their relevant personnel and the (auxiliary) persons engaged by them in the performance of their obligations against all claims from third parties on account of damage or loss incurred by those third parties arising from or connected with the Contractor's performance of the Agreement, the Contractor's exceeding of a delivery time or term, the Client's use of the Goods delivered by the Contractor, the Work realised and/or the Services performed, unless the loss resulting in the relevant claims was caused by the deliberate recklessness or malicious intent of the Contractor or its executive employees.

3. The Client indemnifies the Contractor and its Group Companies against third-party claims for compensation for damage or loss, to the extent that such damage or loss remains for the Client's expense pursuant to these General Terms and Conditions.

**Clause 19. Force Majeure**

1. Insofar as it does not already follow from the law or the Agreement, the Contractor will not be liable if a failure on the part of the Contractor is the result of force majeure, which in any event includes:

- industrial action at third parties or among its own staff, including strikes or work interruptions, and staff shortages;
- the performance of the Contractor's supplier as referred to in Clause 6(9);
- transport problems, such as roadblocks, blockades of rail and waterways or airports;
- delivery problems with regard to materials and/or commodities, including of third parties engaged by the Contractor such as suppliers, subcontractors and transporters, or of other parties on which the Contractor depends;
- epidemics, pandemics, and resulting government measures or recommendations;
- natural disasters, extreme weather conditions;
- wilful damage;
- fire, explosion, water damage and (partial) loss of parts to be processed;
- measures taken by any domestic, foreign or international government, such as import, export or trade restrictions;
- violent or armed actions, such as (civil) war, terrorism, riots and riots;
- theft or loss of tools, materials or information, breakdown of machinery;
- sabotage or cybercrime;
- grid congestion, including insufficient capacity in energy facilities;
- failures in the energy supply, in communication channels, in the digital infrastructure or in equipment or software of the Contractor or third parties.

2. If a circumstance as referred to in paragraph 1 arises, the Contractor will - in order to limit any adverse consequences arising therefrom for the Client - take such measures as can reasonably be required of it. The Contractor has the right to suspend the performance of its obligations under the Agreement, or to suspend the Work as referred to in Clause 8. If the circumstance referred to in paragraph 1 has ended, the Contractor will fulfil its obligations as soon as its schedule permits.

3. The Contractor will be entitled to payment for what has already been performed by the Contractor in the performance of the relevant Agreement before the circumstances beyond one's control became apparent. The Contractor is also entitled to invoke force majeure if the circumstance causing the force majeure occurs after the Contractor should have already rendered the performance.

4. If any circumstance occurs as referred to in paragraph 1 and performance is or becomes permanently impossible, or the circumstance as referred to in paragraph 1 has lasted for more than six months, the Contractor will be authorised to dissolve the Agreement in whole or in part with immediate effect, without prejudice to its further rights. In the cases referred to in the previous sentence, the Client is authorised to dissolve the Agreement with immediate effect, but only for that part of the obligations that have not yet been fulfilled by the Contractor. The Parties are not entitled to compensation for the damage or loss incurred or to be incurred as a result of the suspension or dissolution within the meaning of this clause due to the circumstance referred to in paragraph 1.

**Clause 20. Intellectual Property**

*General*

1. Unless otherwise agreed by the Parties in the Agreement, no Intellectual Property Rights of a Party will be transferred, assigned, licensed or otherwise assigned to another Party under the Agreement.

2. All Intellectual Property Rights in respect of the Goods are vested exclusively in the Contractor and/or its licensors, no matter whether they were created at the Client's direction, request and/or expense.

3. To the extent that the Intellectual Property Rights in respect of the Goods are vested in the Contractor, the Contractor will grant to the Client – subject to the full and timely performance by the Client of its payment obligations and other obligations under the Agreement – a non-transferable, non-exclusive and non-sublicensable licence to use such Goods within its own organisation for the duration of the Agreement. To the extent that the Intellectual Property Rights relating to the Goods are not vested in the Contractor, the Contractor will make reasonable efforts to support the Client in obtaining a licence or sublicense to use such Goods. Unless and to the extent expressly stated otherwise in this Agreement, the Client acknowledges and agrees that the licences and sublicenses mentioned in this paragraph 3 are granted *as-is, where is*, that the Contractor may impose further conditions and that the Client will comply with these further conditions.

4. The Client will only use the Goods and Services in accordance with the Agreement and the Contractor's user manuals and instructions, as well as in accordance with all applicable laws and regulations. The Client will refrain from the following, either directly or indirectly, alone or in cooperation with a third party:

- a) applying for any protection or filing an application for protection of Intellectual Property Rights anywhere in the world in respect of the Goods or Services;
- b) reverse engineering, decompiling, disassembling or otherwise analysing Goods, in any way whatsoever, for the purpose of obtaining knowledge of their design, architecture, composition, functionality or underlying production processes;
- c) using the Intellectual Property Rights embodied in the Goods and Services to develop similar or competing products or services; or
- d) changing or removing any indications of origin of the Contractor or third parties (including trademarks, logos and trade names) affixed to or on the Goods without the Contractor's prior written consent.

5. The Contractor is and remains entitled to develop products or services that compete with or are similar to the Goods and Services provided under the Agreement. The Contractor is furthermore allowed to use Intellectual Property Rights, as well as ideas, concepts, know-how and techniques acquired or applied in the course of providing the services.

*Client Data*

6. The Client is responsible for and remains entitled to the Client Data. The Client hereby grants to the Contractor, for the duration of the Agreement, a non-exclusive right to access to and use of the Client Data to the extent necessary for the performance of the Contractor's obligations under this Agreement. The Client furthermore agrees that the Contractor may use and continue to use Client Data at an aggregated level to improve its products and services.

7. Upon termination or expiry of the Agreement, the Contractor will, upon written request from the Client within 30 days of the termination or expiry of the Agreement, transfer to the Client or a third-party service provider designated by the Client all Client Data in its possession in a structured, common and machine-readable format. The format will enable the Client to re-use the data and, where technically feasible, will comply with relevant industry standards. The transfer referred to above will be free of charge for the Client, subject to reasonable costs necessary to carry out the transfer, which costs will be shared with the Client in advance.

8. The Client will indemnify the Contractor and its Group Companies against all third-party claims for compensation for damage caused or otherwise related to the Client Data, unless the damage was caused by malicious intent or conscious recklessness of the Contractor.

*Infringement claims*

9. The Client will immediately notify the Contractor as soon as it becomes aware of a claim that the Goods, or any part thereof, infringe the Intellectual Property Rights of a third party. The Client will allow the Contractor to conduct all negotiations and legal proceedings to settle such claim, will not make any acknowledgement of such claim without the Contractor's prior written consent, and will immediately cease any use of the Goods in question, or parts thereof, upon the Contractor's written request.

10. If it is alleged or determined that the Goods, or any part thereof, infringe the Intellectual Property Rights of a third party, the Contractor will be entitled, at its own discretion, to take one or more of the following measures:

- a) endeavour to obtain the right for the Client to continue using the allegedly infringing parts; or
- b) modify or replace the allegedly infringing parts in order to prevent the infringement.

The Contractor's obligations under this paragraph will constitute the Client's sole remedy for infringement claims relating to the Goods or parts thereof.

11. The Contractor has no obligations under paragraph 10 if the Client has not fully complied with its obligations under paragraph 9, or if the (alleged) breach is caused by:

- a) any use of the Goods by the Client or third parties in breach of the conditions of the Agreement, or
- b) any use of the Goods in combination with equipment, software or other resources not supplied by the Contractor, or
- c) any use of the Goods in a manner for which they were not designed.

**Clause 21. Personal Data**

The parties will mutually enable each other to comply with their obligations under applicable laws and regulations regarding the protection of personal data. If and to the extent required by these laws and regulations, the Parties will enter into further agreements regarding the processing of personal data.

**Clause 22. Applicable law and disputes**

1. The Agreement and all agreements resulting from it are governed by Dutch law, with the exclusion of the U.N. Convention on Contracts for the International Sale of Goods.
2. Any dispute between the Parties will be settled by the ordinary court in the district of the Contractor's place of business.
3. In deviation from the previous paragraph, the Contractor will be entitled to have the dispute settled by arbitration in accordance with the articles of the Arbitration Board for the Building Industry, as they read on the day the Agreement was concluded.
4. The Client will elect domicile in the Netherlands in respect of the Agreement, in so far as it is not already established in the Netherlands. Failing this, the Client will be deemed to be domiciled in The Hague.

-----**SPECIAL SECTION**-----

**B. GOODS**

**Clause 23. Method of delivery**

1. Unless the Parties have agreed otherwise in the Agreement, delivery of Goods will be "ex-factory of the Contractor" in accordance with Incoterms 2020.

**Clause 24. Place of delivery**

1. In the case of a purchase agreement, if part of the order is ready, the Contractor is free to choose to deliver this part or wait until the entire order is ready. If it has not been expressly agreed that delivery will be made from stock, the Contractor will be entitled to deliver from third-party stock.
2. Upon expiry of the delivery time, the Client is obliged to actually take delivery of the Goods that are the subject of the Agreement at the agreed place.
3. If delivery "at work" is agreed, the Goods will be delivered on a means of transport, at the location stated in the Agreement. If no such location has been agreed, delivery will be made at a depot at the construction site, or at least as close to it as possible. The Contractor need not transport the Goods further than to where the vehicle can reach a proper unloading point over a properly accessible terrain. The Client will ensure that sufficient space is available for delivery and unloading. The Client will provide all cooperation free of charge to enable the Contractor to deliver.
4. Goods not taken delivery of by the Client will be stored at the expense and risk of the Client. The provisions of Clause 12(7) will apply mutatis mutandis if the Client does not take delivery within 2 months of the original delivery date.
5. In the event of a trade-in and the Client, while awaiting delivery of the new Goods, will continue to bear the risk regarding the Goods to be traded-in until the Goods are in the possession of the Contractor. If the Client is unable to deliver the Goods to be traded-in in the condition they were in when the Agreement was concluded, the Contractor may dissolve all or part of the Agreement as referred to in Clause 9.
6. In the event of violation of the provisions of paragraph 2 or 3 of this clause, the Client, after the Contractor has declared it to be in default, will owe the Contractor a penalty of EUR 250 per day for each violation with a maximum of EUR 25,000. This penalty can be claimed in addition to compensation under the law.

**C. SERVICES**

**Clause 25. Services**

1. The Contractor will observe a duty of care that can be expected from a prudent contractor when performing the Services. Unless the result is sufficiently determinable in writing and expressly agreed in the Agreement, the Services are best efforts obligations.
2. The Contractor is entitled to replace the person(s) deployed in the Services with another person(s) with the same or similar qualifications.
3. If the Contractor performs the Services on the basis of data to be supplied by the Client, such data will be prepared by the Client in accordance with the conditions to be set by the Contractor and supplied at the risk and expense of the Client.
4. The Contractor provides no warranties for Services consisting solely of design work or best-efforts obligations.

**Clause 26. Insurance**

1. If and to the extent the Contractor provides Services under the Agreement, the Contractor will not provide for insurance unless otherwise provided for in the Agreement.
2. If the Agreement indeed provides otherwise, the Contractor will ensure that the Client receives written proof of the existence, payment and content of the insurance referred to

in paragraph 1 as soon as possible. The contributions of insurances to be taken out by the Contractor are not included in the price, unless expressly agreed otherwise.

**Clause 27. Delivery of Services**

1. If the Parties have not agreed that an acceptance test will be carried out, the Client accepts the results of the Services in the condition they are in at the time of delivery ("as is"), with all visible and invisible defects.
2. In case an acceptance test has been agreed, the Client must immediately notify the Contractor in writing, stating reasons, of any rejection of the results of the Services. The parties hereby agree that acceptance of the results of the Services may not be withheld:
  - (i) on grounds unrelated to the specifications expressly agreed between the Parties; and
  - (ii) due to the existence of minor defects, being defects that do not reasonably prevent operational or productive commissioning of the results of the Services, without prejudice to the Contractor's obligation to remedy these minor defects as soon as reasonably possible.
3. The results of the Services are considered to be delivered at the time when one of the events below first occurs:
  - (i) the results of the Services have been put into use;
  - (ii) the Client has approved or tacitly approved the results of the Services, whether under paragraph 2 or otherwise; or
  - (iii) the Client – in case an acceptance test has been agreed – has not approved or rejected the results of the Services within fourteen (14) calendar days of the Contractor's notification that the acceptance test can be performed.

**D. CONTRACTING OF WORK**

The provisions of this chapter apply in addition to the General Conditions of these General Terms and Conditions if the Agreement is qualified as contracting of work.

**Clause 28. Obligations of the Client**

1. The Client will ensure that the Contractor has timely access to, free of charge:
  - (i) the permits, exemptions, decisions and consents necessary for the set up and/or use of the Work, in the obtaining of which the Contractor will provide the necessary cooperation to the best of its ability;
  - (ii) free access to the grounds, building and site itself on which, at which, above which, or in which the Work is to be performed;
  - (iii) clean, safe and healthy conditions, as well as suitable storage and site hut on the premises, the building and site;
  - (iv) proper opportunity in the immediate vicinity of the construction site for the supply, storage and/or removal of construction materials and resources.
2. Unless the Parties have agreed otherwise in the Agreement, the Client will be regarded as the initiator within the meaning of the Act governing Quality Assurance for the Building Sector, and will engage a quality assurance contractor at its own risk and expense, if and to the extent required. The Client is responsible for acting correctly and in a timely manner, as well as for any omissions of the quality assurer, including orders, directions and instructions given by the quality assurer.
3. If the Act governing Quality Assurance for the Building Sector requires a file to be provided to the competent authority before the Work may be put into use, the Client is responsible for creating, maintaining and providing this file in a timely manner.
4. If the Client fails to perform the obligations mentioned in paragraph 1, the Contractor will be entitled to compensation for costs and/or extension of time under Clause 10, or the Contractor may terminate the Agreement under Clause 9 and claim compensation.
5. The Client warrants that, to the extent applicable, work and/or deliveries to be carried out by others, which do not form part of the Contractor's Work, will be carried out in such a way and in such a timely manner that the performance of the Contractor's Work will not be delayed or otherwise hindered thereby.
6. To the extent relevant, the Client is obliged to inform the Contractor in writing of the presence and location of cables and pipes, and other types of underground infrastructure, such as wells, tanks, and basins, prior to commencement of the Work.
7. The Contractor may rely on the authority of representatives of the Client to represent the Client, unless the Client expressly states that a representative is not authorised. In that case, such limitation will apply only after the Contractor has received such a statement in writing.

**Clause 29. Term of execution**

1. The term of execution, within which the Work will be delivered, may be determined by agreeing on a specific date or determined in business days, without prejudice to the provisions of Clause 7. Unless expressly provided otherwise, the term of execution is not a deadline.
2. In these General Terms and Conditions, a business day means a calendar day, unless it falls on a day of rest or holiday that is recognised generally or at the place where the Work is to be realised, or prescribed by the government or by or pursuant to a collective labour agreement, holiday or other non-individual day off.

3. Business days are considered unworkable if, due to circumstances not for the Contractor's account, the majority of the workers or machines cannot work for at least five hours on that day.

4. If delivery of the Work should take place on a day that is not a business day as defined in paragraph 2, the next business day will be the agreed day of delivery.

**Clause 30. Reviewing and inspection**

1. The Client is authorised to test, through inspections, tests or trials, whether the Work complies with the Agreement.

2. The Client is authorised to inspect the materials, objects, components, installations or parts thereof, soil of all kinds, and the like to be used in the Work by the Contractor, and to engage a third party to do so. If and to the extent that the Agreement stipulates that construction materials must be inspected, the Contractor may not process them before they have been approved. The Client is authorised to require proof of origin of construction materials. The Contractor is entitled to supply other construction materials instead of those designated by a factory name, provided they are of corresponding quality.

3. Building materials made available by the Client will be deemed to have been approved.

4. Review and inspection by or on behalf of the Client is done at the Client's risk and expense. The Contractor will provide the Client with the necessary cooperation in this regard within reasonable limits if a review plan has been agreed and the plan provides for it.

5. In the event construction materials are rejected, both the Client and the Contractor may demand that a sample drawn from those construction materials in mutual consultation be retained until after the dispute arising from such rejection has been settled. These samples will be authenticated by the Parties. Storage will be at a place to be determined in mutual consultation.

6. In the event construction materials are rejected, the Contractor will have the authority to request re-inspection by an expert to be appointed in agreement with the Client, whose decision the Parties will be bound by even in a later dispute.

7. Rejected construction materials will be placed apart and removed from the work site as soon as possible.

8. When exercising its authority to review and inspect, the Client should strive to disrupt the Work as little as possible. The Client is responsible for any delay and/or costs incurred as a result that cannot be attributed to the Contractor. Damage caused to the Work as a result of exercising this authority to review and inspect will be borne by the Client.

**Clause 31. Approval and delivery**

1. Once the Contractor has given written notice that the Work is ready for approval and the Client does not inspect it within the time limit set by the Contractor, the Work will be deemed to have been tacitly approved.

2. Minor defects, which can be remedied before a subsequent instalment, must not constitute reason for refusing approval of the Work, provided they do not prevent the commissioning of the Work.

3. After the approval or tacit approval, the Work is considered delivered. The Contractor is authorised to divide the delivery into a number of partial deliveries.

4. If the Work is accepted or tacitly accepted by the Client, the time of delivery will be deemed to be the day of the notification referred to in paragraph 1.

5. At the Client's request, approval of the Work may also take place without the notification under paragraph 1. In this respect, the Client will notify the Contractor in writing that the Work can be considered as having been accepted. The date the notice is sent will be construed as the time of delivery.

6. Unless the Parties have agreed otherwise in the Agreement, the handover file to be supplied to the Client by the Contractor pursuant to Article 7:757a of the Dutch Civil Code in respect of the Structure will comprise exclusively the following documents (to be supplied digitally):

- (i) drawings and calculations relating to the constructed Structure and its installations, and a description of the materials and installations used, as well as the uses of the Structure;
- (ii) data and records required for use and maintenance of the Structure;
- (iii) data and documents relating to warranties.

The Contractor undertakes to provide the handover file to the Client at the time of the notification referred to in paragraph 1.

7. If the Client inspects the Work within the period set by the Contractor, but the Client does not accept the Work, the Client is obliged to notify the Contractor of this in writing by means of an official report within two business days of the inspection, stating the reasons, failing which the Work will be deemed to have been approved. The Client must give the Contractor the opportunity to remedy the defects found within a reasonable period to be agreed in mutual consultation. After rectification of defects found by the Client, a new inspection will take place.

8. In case of a second inspection, defects other than those found on the first inspection may not constitute grounds for renewed withholding of approval.

9. The Work will be deemed to have been delivered immediately after the second inspection by the Contractor and approval of such inspection by the Client and/or after the Work has been commissioned by the Client.

**Clause 32. Early commissioning**

1. If the Client wishes to commission the Work or parts thereof before delivery, the Parties will mark that as a change and the Parties will follow Clause 11. In each case, the payment terms will thereby be adjusted in such a way that the Client will pay to the Contractor what it would owe on delivery by virtue of such early commissioning or the relevant parts thereof at the time of earlier commissioning. Any other payment obligations will be adjusted proportionally over time.

2. For the Client to be entitled to early commissioning, the following three cumulative conditions must be met:

- (i) acceptance by the Client of the Contractor's offer as referred to in Clause 11(3), and
- (ii) the Client has approved and signed for completion the Work or parts of it that it wishes to commission earlier; and
- (iii) the Client has taken all safety, precautionary and other measures and has taken measures to allow safe and responsible early commissioning, including for the benefit of the Contractor.

3. In the event that the Client fails to follow the procedure referred to in Clause 11 and the preceding paragraphs and/or fails to approve the Work and sign for completion and nevertheless commissions the Work or parts thereof, the Contractor will be entitled, as of the date of early commissioning, whether in whole or in part, to lump-sum payment of the entire price or contract sum, which will then become immediately due and payable, and the Work will be deemed to have been approved and completed in its entirety. If the early commissioning, whether in whole or in part, results in damage and/or disruption and/or delay of the Contractor's work, any financial and time consequences thereof will be borne by the Client, the Contractor's statement to that effect being presumed to be reasonable and correct subject to evidence to the contrary by the Client.

4. Early commissioning of the Work, whether in whole or in part, by the Client will count as the date of full or partial delivery.

5. Early commissioning of the Work, whether in whole or in part, by the Client will trigger any agreed warranty and/or maintenance period as well as any prescription and expiry periods in respect of the Work, or part of the work, taken into use.

6. Any damage caused at or by early commissioning as referred to in paragraph 1, for example to the Work, will be borne by the Client. Delays occurring in the Work during or as a result of commissioning as referred to in this Clause will be borne by the Client, and will give the Contractor right to reimbursement of costs and/or extension of time as referred to in Clause 10.

**Clause 33. Suspension by the Client**

1. The Client is authorised to suspend the performance of all or part of the Services or the Work. The Client is obliged to substantiate this in writing and consult directly with the Contractor about the consequences.

2. If the Contractor has to take appropriate measures or take action as a result of the suspension, it will be entitled to reimbursement of costs and/or an extension of time under Clause 10. If damage occurs to the Work during the suspension, it will not be borne by the Contractor.

3. If the Work or any part thereof is suspended or delayed and this is not attributable to the Contractor, the Client will be obliged to reimburse the Contractor for all the work performed, calculated according to the state of the Work, as well as, but not limited to, 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 authorised to discontinue the Work in an unfinished state.

5. In the case referred to in paragraph 4, the Client will be obliged to pay the fixed price set out in the Agreement, plus the costs incurred by the Contractor as a result of non-completion and minus any savings, to be proven by the Client, resulting from the termination for the Contractor. If the price was dependent on the actual costs to be incurred by the Contractor, the price payable by the Client will be calculated on the basis of the costs incurred, the labour performed and the profit that the Contractor would have made if the Agreement had been fully performed. Subject to proof to the contrary, the Contractor's calculation of the payment it is due under this paragraph will be binding on the Client.

6. The Client is also obliged to compensate the Contractor for any damage or loss suffered, without prejudice to the Contractor's obligation to limit such damage or loss as much as possible.

**Clause 34. Contract Variations**

1. This Clause applies in addition to, and is without prejudice to, the provisions of Clause 11.

2. Contract variations will in any event be settled:

- (i) in case of changes to the Agreement or the conditions for execution;
- (ii) if there are any deviations from the amounts of the provisional sums;
- (iii) if there are any deviations from adjustable quantities;

- (iv) in cases where contract variations have been agreed between the Parties or if this is apparent from the actual performance of the Agreement.
3. If the final settlement of the Work shows that the total amount of the contract reductions exceeds the total amount of the contract extras, the Contractor will be entitled to an amount equal to the actual value of the difference of those totals.
4. Provisional sums are amounts specified in the Agreement, which are included in the contract sum and are intended for:
- procurement of construction materials, or
  - procuring construction materials and processing them, or
  - the performance of work, which on the day of the Agreement have not been sufficiently specified and which must be specified by the Client.

In respect of each provisional sum, the Agreement will specify to which it relates.

5. Expenditures to be charged to the provisional sums will be calculated on the basis of prices charged to the Contractor or the costs incurred by it, in each case increased by a reasonable contractor's fee of at least 10%.
6. If a provisional sum relates exclusively to the purchase of construction materials, the costs of processing them are included in the contract sum and are not settled separately. However, these costs will be settled against the provisional sum, against which the purchase of those construction materials will be settled to the extent that they are higher than the costs which the Contractor reasonably had to take into account due to the substantive interpretation given to the provisional sum.
7. If a provisional sum relates to the purchase of construction materials and their processing, the costs of processing are not included in the contract sum and are set off separately against the provisional sum.
8. If the Agreement includes adjustable quantities, and these quantities turn out to be too high or too low to realise the Work, set off will take place for the contract variations resulting from that deviation.

**Clause 35. CAR Insurance of the Client, and insurance of the Contractor**

1. The Client is obliged to take out and maintain customary CAR (Construction All-risk) insurance or equivalent customary insurance(s) in which the Contractor (including subcontractors, suppliers and auxiliary persons) is included as a co-insured, unless the Parties have agreed otherwise in the Agreement.
2. The Client will ensure that the Contractor receives written proof of the existence, payment and content of the insurance referred to in paragraph 1 as soon as possible.

**Clause 36. Damage to the Work**

1. In the event of any damage to the Work or any part thereof occurring during and by or in connection with the execution of the Work prior to completion, the Contractor will repair it at its own expense, unless the damage was not caused by it or it is otherwise unreasonable for it to be held liable for such damage, without prejudice to the Parties' liability under the Agreement or by law.
2. Upon request, the Contractor assigns to the Client all rights from warranties given to it by independent auxiliary persons in respect of the Work or parts thereof.

**Clause 37. Liability after delivery**

1. Subject to the provisions of Clause 16, after the time of delivery the Contractor will only be liable for defects:
- that are attributable to it, and in addition
  - that the Client did not notice prior to the delivery, and in addition
  - that the Client should not reasonably have discovered until and at the time of delivery, and of which
  - the Contractor was notified within a reasonable period after discovery.
2. In deviation from the first paragraph, if and insofar as there is contracting of a Structure (as referred to in Clause 1.4 under d), the Contractor will be liable for defects as referred to in Clause 7:758 paragraph 4 of the Dutch Civil Code which were not discovered upon delivery of the Structure, unless these defects are not attributable to the Contractor and except in the event that this is deviated from in the Agreement and/or the Contractor's offer.
3. In all cases where the Agreement or these General Terms and Conditions do not provide otherwise, the Client's right of claim in respect of a failure will be repealed no later than 5 years after either commissioning, delivery or the end of the Agreement, whichever circumstance occurs first.

**E. SERVICE AND MAINTENANCE**

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

**Clause 38. Scope of application**

1. Unless otherwise agreed, Service and Maintenance Work will only be carried out in the Netherlands.

**Clause 39. Performance of the Service and Maintenance Work**

1. During the maintenance period, the Contractor will make every reasonable effort, in accordance with the work plan referred to in paragraph 3, to keep the probability of the occurrence of Failures at an acceptable level by means of preventive Service and Maintenance work and, insofar as agreed, to eliminate Malfunctions by means of corrective Service and Maintenance work.
2. The Contractor is authorised to perform the Service and Maintenance work remotely by means of a connection established via telecommunication facility to the Goods delivered or Services performed.
3. The Contractor will, after the conclusion of the Agreement but before commencement of the Service and Maintenance Work, prepare a work plan with a schematic overview of the Service and Maintenance Work the order 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 malfunctional behaviour of Goods delivered or Services performed, of all tasks, frequencies of execution, materials, tools and any necessary skills, all for the purpose of carrying out the preventive Service and Maintenance work and making the corrective Service and Maintenance work manageable.
5. The work plan will come into effect after approval by the Client. If the work plan fits 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, on this basis, estimates all maintenance costs for the relevant year. Interim amendments to the work plan can only be made by means of an amendment under Clause 11.
7. If agreed, the work plan will include the date of commencement and delivery of foreseen and intended orders for the performance of preventive and/or corrective Service and Maintenance work and/or other work.
8. The assignments referred to in paragraph 7 will be given 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 issued in writing at least two months in advance. Prior to issuing an order, the Contractor must have issued its price for it.
9. When carrying out corrective Service and Maintenance work, the Client must issue an order in writing in advance. If this is not possible due to certain circumstances, the order will be issued retrospectively based on the actual costs incurred by the Contractor.
10. Upon completion of the Service and Maintenance work, the Client is required to sign the contract for completion. After signing, the Service and Maintenance Work will be considered delivered.
11. If expressly agreed, the Contractor will ensure that one copy of the technical information is present at the site or location where the Service and Maintenance Work is performed, that these documents can be consulted at all reasonable times and that the 'As Built' situation of the Service and Maintenance Work performed is incorporated therein at a fee set out in the Agreement.
12. If the performances, operational reliability and maintenance of the Work so require or the rules mentioned in Clause 6.4., the Contractor will inform the Client about measures to be taken. The Client may, by means of an amendment under Clause 11, separately instruct the Contractor to carry out the necessary construction change or other project-based work.
13. The Contractor shall notify the Client in advance of the time when the Service and Maintenance work will be performed. If the work is not performed at the agreed time and this is not attributable to the Contractor, the Contractor will be entitled to an extension of the deadline and/or reimbursement of costs pursuant to Clause 10.
14. If expressly agreed, the Contractor will ensure that Malfunctions can be reported for 24 hours a day and seven days a week at a disclosed reporting centre.
15. Without prejudice to the provisions of paragraph 9, the Contractor will make every effort to remedy urgent Malfunctions following the Client's contract within 24 hours of their notification, unless a different deadline has been agreed. Other Malfunctions will be remedied during the Contractor's normal working hours whenever possible.
16. The Contractor will perform the Service and Maintenance work during the maintenance period specified in the Agreement, failing which a period of one year will apply.
17. The maintenance period will be tacitly renewed each time for the original period, unless one of the Parties terminates the Agreement in writing with three months' notice before the end of the relevant period.
18. The Service and 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 according to the BDB index for utility construction, unless otherwise agreed.
19. Payment of the fees will be made within 14 calendar days from the date of the relevant invoice.
20. When terminating a contract to perform Service and Maintenance work, the Client must observe a notice period of at least three months.