



Ministry of Defence

AVWD-2021

General Terms and Conditions for the Performance of Work on Goods for the
Ministry of Defence

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GENERAL PROVISIONS

The General Terms and Conditions for the Performance of Work on Goods for the Ministry of Defence consist of these general provisions and special provisions. The general provisions relate to all Contracts to which the General Terms and Conditions for the Performance of Work on Goods for the Ministry of Defence are declared to apply. The special provisions are applicable only in those cases where work is performed at locations managed by the Ministry of Defence.

I GENERAL

Article 1 Definitions

The following terms are written with initial capitals in these general terms and conditions and are defined as follows:

- 1.1 **Delivery:** the delivery of the Processed Good referred to in article 8.1 and 8.2;
- 1.2 **Delivery Period:** delivery date(s) and/or delivery period, dependent on what has been concluded in the Contract;
- 1.3 **Processed Good:** depending on the context, the good(s), or the part(s) of the good(s), that has/have been processed by the Contractor for the Contracting Authority under this Contract;
- 1.4 **Schedule:** a document attached to the Contract which, when initialed by both Parties, forms an integral part of the Contract;
- 1.5 **Documentation:** the manuals or other user instructions accompanying the Processed Good, in Dutch or another language agreed between the Parties;
- 1.6 **Parts:** the component parts of the good;
- 1.7 **Contracting Authority:** the State of the Netherlands as represented by the Minister of Defence;
- 1.8 **Contractor:** the counterparty of the Contracting Authority;
- 1.9 **Contract:** the written agreement between the Contracting Authority and the Contractor to which the Terms and Conditions are declared to apply;
- 1.10 **Party:** the Contracting Authority or Contractor, depending on the context;
- 1.11 **Contracting Authority's Staff:** the members of staff and/or assistants used by the Contracting Authority during the performance of the Contract;
- 1.12 **Contractor's Staff:** the members of staff and/or assistants used by the Contractor for the purpose of performing the Contract for whom the Contractor is responsible under the Contract;
- 1.13 **Return:** the return of the Processed Good referred to in article 8.3;
- 1.14 **Terms and Conditions:** these general terms and conditions, which apply to and form an integral part of the Contract;
- 1.15 **Working Day:** calendar day, except weekends and generally recognised public holidays within the meaning of section 3, subsection 1 of the General Extension of Time Limits Act;
- 1.16 **Work:** the work the Contractor is to perform for the Contracting Authority under the Contract.

Article 2 Application

Amendments or additions to the Contract or derogations from the Terms and Conditions (or parts of them) are binding only if they have been explicitly agreed in writing by the Parties.



II PERFORMANCE OF THE CONTRACT

Article 3 Guarantee

- 3.1 The Contractor guarantees that the Processed Good complies with the Contract. The Processed Good does not comply with the Contract if the Processed Good, partly in view of the nature of the Processed Good and the information provided thereon by the Contractor, does not have the characteristics that the Contracting Authority might expect under the Contract.
- 3.2 The Parties may agree a guarantee period. The right to guarantee cannot be exercised if the Contractor demonstrates that the faults or defects or non-compliance with the requirements are not the result of the Work performed and/or the Parts used by the Contractor under the Contract. The latter includes changes made to the Processed Good without the consent of the Contractor, unforeseen external causes, ordinary wear and tear, maintenance as prescribed in the Documentation not carried out, not carried out in time or carried out incorrectly, or incorrect or improper use by the Contracting Authority. If so requested, the Contracting Authority shall make available to the Contractor any relevant information concerning the use of the Processed Good at the Contracting Authority's disposal, in so far as the Contracting Authority is authorised to do so, and render the necessary cooperation to the Contractor, in so far as this is reasonable.
- 3.3 The Contractor shall be responsible for the performance of the Contract, even if a process has been prescribed or Parts have been provided or stipulated by the Contracting Authority for the performance of the Contract. The Contractor shall not be responsible if he has sent the Contracting Authority written warning of the unsuitability or defectiveness of processes and/or Parts provided or furnished by the Contracting Authority, nor if he proves that he could not in reason have detected the same.
- 3.4 Where no further specification has been given of the requirements to be met by the Processed Good, the Work and/or the Parts to be processed, these shall in any case at least satisfy the legal requirements and be of good quality and meet the customary standards concerning safety, health, the environment, soundness, fitness for purpose and workmanship, or be carried out professionally.
- 3.5 The Contracting Authority may no longer invoke the fact that the Processed Good does not comply with the Contract if it has not notified the Contractor accordingly in writing within 30 days of discovering this fact. The Contracting Authority must include a description of the problem in the notification. If the Contractor receives such a notification from the Contracting Authority, the Contractor shall rectify the defect or non-conformity within a period set by the Contractor Authority in accordance with the provisions of article 20.

Article 4 Quality assurance and supervision

- 4.1 The Contractor shall carry out all such tests as are necessary to ascertain whether the Processed Good meets the agreed requirements.
- 4.2 If the Contract stipulates quality assurance requirements, the Contractor shall use a quality-management system that meets these requirements.



- 4.3 If quality assurance requirements apply, the Contracting Authority shall be authorised to cause the execution of the Work to be supervised in conformity with the quality assurance requirements by one or more defence quality assurance representatives. When appointing quality assurance representatives, the Contracting Authority shall, with a view to the protection of industrial secrets and the preservation of peaceful labour conditions in the Contractor's business, take into account all reasonable wishes of the Contractor with respect thereto.
- 4.4 If a defence quality assurance representative finds that the agreed requirements are not being met, the Contractor shall immediately remedy the shortcoming and take measures to prevent recurrence.

Article 5 Testing and inspection

- 5.1 At the request of the Contracting Authority, the Contracting Authority or a third party designated by the Contracting Authority may test the Processed Good. This request shall be made in good time to allow the Contractor a reasonable period of time to fulfill its obligations in relation to testing. If the Processed Good is not tested by the Contracting Authority at Contractor's premises, it may inspect the Processed Good after Delivery for damage, dimensions, quantity, weight and the like.
- 5.2 If the Contracting Authority requests to test the Processed Good prior to its Delivery, then:
- a. the Contractor shall have the Processed Good ready for testing on a date which makes it possible for it to be tested before the expiry of the Delivery Period and the Contractor shall give the Contracting Authority due notice in writing of the said date;
 - b. the Contracting Authority shall commence the testing within two weeks after receipt of the notice referred to under paragraph a or, if this is later, within two weeks after the Processed Good becomes available for testing and it shall complete the tests within two weeks, on pain of forfeiting its right to test the Processed Good prior to its Delivery;
 - c. the Contractor shall, upon request and at no cost to the Contracting Authority, cooperate with the testing and provide the Contracting Authority with reasonable assistance in terms of staff and materials;
 - d. the Contractor shall, upon request and at no cost to the Contracting Authority, provide the Contracting Authority with a suitable location if the test takes place at the Contractor's premises or the premises of a third party called in by the Contractor;
 - e. the testing, if the Contractor so desires, shall take place in its presence or in the presence of an expert designated by it. The associated costs shall be borne by the Contractor;
 - f. the Contractor is obliged, if the Contracting Authority rejects the Processed Good, without prejudice to all other rights or claims of the Contracting Authority, to adjust the Processed Good without delay, at its own expense and risk, and present the Processed Good for a new test. In that case, the provisions of article 5 apply in full. Rejection shall not lead to an extension of the agreed Delivery Period.



- 5.3 If the Contracting Authority requests to test the Processed Good after its Delivery, then:
- a. the Contracting Authority shall complete the tests within four weeks after Delivery on pain of forfeiting its right to test the Processed Good.
 - b. the Contractor shall, upon request and at no cost to the Contracting Authority, cooperate with the testing and provide the Contracting Authority with reasonable assistance in terms of staff and materials;
 - c. the testing, if the Contractor so desires, shall take place in its presence or in the presence of an expert designated by it. The associated costs shall be borne by the Contractor;
 - d. the Contractor is obliged, if the Contracting Authority rejects the Processed Good, without prejudice to all other rights or claims of the Contracting Authority, to adjust the Processed Good without delay, at its own expense and risk, and present the Processed Good for a new test. In that case, the provisions of article 5 apply in full. Rejection during the first or previous test shall not lead to the agreed Delivery Period being extended.
- 5.4 If the Contractor fails in the performance of an act which he is bound to perform in contribution towards a test or inspection, the costs entailed thereby shall fall on the Contractor. If the Processed Good is tested under application of paragraph 2.f or paragraph 3.d of this article, the costs entailed thereby shall fall on the Contractor.
- 5.5 The approval of the Processed Good by or on behalf of the Contracting Authority does not entail any recognition that the Processed Good is in accordance with the provisions of article 3.
- 5.6 In case the Processed Good is rejected or found incorrect in accordance with this article, the Contracting Authority shall issue a copy of the inspection/acceptance report to the Contractor within 10 working days after the test/inspection.

Article 6 Transport and risk transition

- 6.1 The good to be processed or the Processed Good, as the case may be, shall be transported by and at the risk of the Contracting Authority to the Contractor (or to third parties engaged by the Contractor) and vice versa. If, however, it has been stipulated in the Contract that the Contractor shall arrange for the transport, such shall be at the Contractor's risk; the transportation costs incurred by the Contractor shall be reimbursed by the Contracting Authority.
- 6.2 The good to be processed shall be at the risk of the Contractor from the moment that it arrives on the Contractor's premises or the premises of third parties engaged by the Contractor until the moment after the Processed Good has left the premises of the Contractor or the third parties engaged by the Contractor. Unless agreed otherwise, the good shall be unloaded and loaded at the expense and risk of the Contractor.
- 6.3 By signing a transfer protocol in conformity with the transfer protocol annexed to the Contract on behalf of the Contracting Authority and the Contractor, it shall be confirmed that the good has been provided. The ownership of the good shall remain with the Contracting Authority. The Contractor shall sign the protocol for receipt as soon as possible with one copy of the protocol bearing an original signature of the Contractor being



sent to the Contracting Authority. The Contractor is responsible for the storage and administration of a copy of the protocol and shall set up the administration in such a way that both Parties are able to consult it quickly at all times. The return of the Processed Good shall be confirmed by the signature of both Parties on the transfer protocol.

- 6.4 If the Processed Good does not comply with the provisions of article 3 and, as a consequence thereof, the Processed Good has to be repaired by the Contractor or a third party engaged by the Contractor and, as a result thereof, the Processed Good needs to be transported, the Processed Good shall be transported by and at the expense and risk of the Contractor. Paragraph 3 of this article shall apply accordingly.

Article 7 Management of the good by the Contractor

- 7.1 The Contractor shall be responsible for the proper storage and the usual user maintenance of the good to be processed/Processed Good and for implementing safe and suitable security measures for it for the time it has been provided to him. The Contractor shall make lockable and suitable rooms and/or grounds available for storage and maintenance of the good to be processed/Processed Good. All costs entailed thereby shall be for the Contractor's expense.
- 7.2 The Contractor undertakes to account for the good to be processed/Processed Good in the books as the property of the Contracting Authority, to mark it as such and to store it separately. Furthermore, the Contractor undertakes to make every effort to preserve the rights of the Contracting Authority in respect of the good to be processed/Processed Good, and further to notify the Contracting Authority without delay of everything and anything which may be relevant to the Contracting Authority in connection with the good to be processed/Processed Good and the preservation of the rights of the Contracting Authority, including, if applicable, of the Contractor's bankruptcy, the filing of a petition for a moratorium or attachment of property; in these cases the Contractor shall show the Contract to the receiver, administrator or process server serving the writ of attachment.
- 7.3 The Contractor shall not use the good to be processed/Processed Good for any purpose other than those set out in the Contract nor transfer them to third parties whether for nothing or for a consideration, nor encumber them and/or give the use thereof to third parties, nor perform any act in respect of the good to be processed/Processed Good which may be detrimental to the interests of the Contracting Authority.
- 7.4 The Contracting Authority shall be authorised at any time to carry away the good to be processed/Processed Good or to move the same or cause it to be moved to a place to be chosen by the Contracting Authority. If the agreed Delivery Period is exceeded as a result of the provisions of this paragraph, this shall not be for the Contractor's expense. If it is demonstrated to the satisfaction of the Contracting Authority that costs have arisen for the Contractor as a result of the provisions of this paragraph, such costs shall fall on the Contracting Authority.
- 7.5 After announcing their visit to the Contractor and with due observance of the security regulations, persons designated by the Contracting Authority shall at any time have free access to all rooms and/or grounds where the



good to be processed/Processed Good is located in order to satisfy themselves that it is present and in good condition.

Article 8 Delivery and Return

- 8.1 Delivery of the Processed Good by the Contractor shall take place within the agreed Delivery Period at the delivery location as agreed with the Contracting Authority.
- 8.2 The agreed Delivery Period is considered to be fixed and final. If no Processed Good conforming to the Contract has been delivered at the agreed location within the Delivery Period, the Contractor shall be in default without notice of default being required.
- 8.3 The Return of the Processed Good has taken place:
- a. if the Processed Good is tested or inspected by the Contracting Authority after its Delivery and the Contracting Authority completes the testing or inspection within four weeks after Delivery: at the time when the Processed Good is approved or found correct;
 - b. if the Processed Good is not tested or inspected by the Contracting Authority with due observance of the provision of paragraph a: four weeks after Delivery of the Processed Good.

Article 9 Packing

- 9.1 The Contractor shall pack the Processed Good in a suitable manner, if possible in the packing material, if any, used by the Contracting Authority for transporting the good to be processed.
- 9.2 In case the packing material that was used is not suited for reuse, the Contractor shall pack the Processed Good in the customary commercial packaging, suitable for transport, storage and transfer and use environmentally harmful packing material as little as possible.

Article 10 Parts to be disposed of

- 10.1 The Contractor shall treat and/or dispose of all Parts produced by the Work with due observance of all the applicable legislation. The Contractor shall indemnify and hold the Contracting Authority harmless from claims of third parties with respect thereto.
- 10.2 If expressly so agreed, the Parts produced by the Work shall be placed at the disposal of the Contracting Authority. In this case the Contractor shall keep such Parts for the Contracting Authority for a reasonable time without making any charges therefor.

Article 11 Use of Contracting Authority' property

The Parties may agree that, in performing the Work, the Contractor may make use of property belonging to the Contracting Authority, which the Contracting Authority has lent for use or consumption to the Contractor for this purpose. The Contracting Authority may attach conditions to this loan for use or consumption.

Article 12 Subcontracting

- 12.1 In performing the Contract, the Contractor may engage third-party' services only after it has obtained the Contracting Authority's consent in



writing. The Contracting Authority shall not withhold its consent without good reason. It may attach conditions to its consent. To the extent that such conditions concern third parties, the Contractor shall stipulate the same conditions vis-à-vis such third parties on behalf of the Contracting Authority.

- 12.2 The fact that the Contracting Authority has given its consent does not affect the Contractor's own responsibility and liability for performing the obligations imposed on it under the Contract, and for performing the obligations imposed on it as an employer under tax and social insurance law.

Article 13 Processing of personal data

- 13.1 In so far as the Contractor, as a processor within the meaning of the General Data Protection Regulation, processes personal data for the Contracting Authority in the framework of the implementation of the Personal Data Agreement, the Contractor guarantees the application of appropriate technical and organisational measures, so that processing meets the requirements of the General Data Protection Regulation and the protection of the data subjects is ensured. The Contractor shall process personal data only for and on the basis of written instructions from the Contracting Authority, barring statutory rules to the contrary.
- 13.2 The Parties shall regulate the processing of personal data by the Contractor for the Contracting Authority by means of an agreement.

III RELATIONSHIP BETWEEN PARTIES AND SUPERVISION

Article 14 Method of notification

- 14.1 Notifications given by one Party to the other, including undertakings and further agreements, that are relevant to the performance of the Contract are binding on the Parties only if they are given or confirmed in writing by an authorised person.
- 14.2 'In writing' is understood to include 'electronically', provided:
- the notification can be consulted by the addressee;
 - the authenticity of the notification is sufficiently guaranteed; and
 - the identity of the sender can be determined with sufficient certainty.

Article 15 Confidentiality

- 15.1 Without prejudice to other stipulations in the Contract, in performing the Contract, the Parties shall not divulge in any way any information received from the other Party which they know or may reasonably be assumed to know is confidential, except in so far as they are compelled to divulge such information under a statutory regulation or court ruling.
- 15.2 The Parties shall impose the same duty of confidentiality on their Staff and guarantee that they shall fulfil it.
- 15.3 The Contractor shall not divulge to third parties in any way the results of the Work performed or provide any information on the results to third parties without the Contracting Authority's express consent. The Contracting Authority may attach conditions to such consent.



- 15.4 The Contractor must hand over to the Contracting Authority, within 10 Working Days of the completion of the work, all information (i.e. written documents, computer files, etc.) that the Contractor has in its possession for the purpose of performing the Contract, with the exception of information that the Contractor is required to have in its possession on the basis of legislation and/or generally accepted professional rules applicable to the Contractor.
- 15.5 If the Contractor breaches its duty of confidentiality, the Contracting Authority may impose a penalty, as laid down in the Contract. Payment of a penalty that is payable immediately does not discharge the Contractor from its liability for indemnifying any damage caused by the breach.

IV FINANCIAL PROVISIONS

Article 16 Price

The price is fixed, unless otherwise agreed. The price shall comprise all costs entailed by the execution of the Contract, the profit, duties and taxes (with the exception of turnover tax).

Article 17 Invoicing

- 17.1 After Return, the Contractor shall invoice the Contracting Authority for the Work at the agreed prices. The Contractor shall send the invoice to the address specified by the Contracting Authority, stating the date and number of the Contract, the VAT amount and other details requested by the Contracting Authority.
- 17.2 The Contractor shall send the invoice electronically so that it can be received and processed electronically, in accordance with the specifications issued by the Contracting Authority.

Article 18 Payment

- 18.1 The Contracting Authority shall pay the Contractor the amount owing under the Contract no later than 30 days of receiving the relevant invoice, provided it satisfies the provisions of the Contract.
- 18.2 If the Contracting Authority fails without good reason to pay an invoice within the time limit stipulated in paragraph 1 of this article, it shall automatically be liable to pay:
- a. compensation as referred to in article 6:96, paragraph 4 of the Dutch Civil Code, and
 - b. statutory interest as referred to in article 6:119b, paragraph 1 of the Dutch Civil Code.
- The compensation and interest shall be payable on demand.
- 18.3 The Contractor is not entitled to suspend or terminate the Work on account of the Contracting Authority's failure to pay an invoice within the stipulated time limit, or if the Contracting Authority does not pay an invoice because it suspects that the invoice is inaccurate or because the Work has not been properly performed.



- 18.4 Payment of an invoice by the Contracting Authority does not entail any recognition that the Processed Good is in accordance with the provisions of article 3.
- 18.5 The Contracting Authority has the right to offset invoice amounts owed against amounts that the Contractor owes the Contracting Authority.

V NON-PERFORMANCE

Article 19 Potential delays

- 19.1 If there is any possibility of the Work being delayed, the Contractor shall immediately notify the Contracting Authority, explaining the reasons for and the consequences of the potential delay. The Contractor shall also propose measures to avoid further delay.
- 19.2 Within 14 days of receiving the notification referred to in paragraph one of this article, the Contracting Authority shall notify the Contractor whether or not it agrees with the proposed measures and the consequences described by the Contractor. Agreement does not imply any acceptance by the Contracting Authority of the cause of the potential delay, and does not affect any other rights or claims accruing to the Contracting Authority under the Contract and legislation.

Article 20 Non-performance

- 20.1 If the provisions of article 3 are not complied with, the Contracting Authority shall be entitled to demand that the Contractor fulfills its obligations as yet. The associated costs shall be borne by the Contractor.
- 20.2 If the Contractor, after receiving a written demand from the Contracting Authority, within the reasonable period stipulated therein, fails to comply with a requirement as referred to in article 20.1, , the Contracting Authority has the right, without prior recourse to the courts, to choose between:
- cause the fulfillment of the obligations by a third party at the Contractor's expense and risk;
 - cancellation of the Contract in accordance with the provisions of article 23 and, in consequence, crediting of (however much of) the price that has already been paid for the Processed Good.
- 20.3 The provisions of articles 20.1 and 20.2 do not affect other rights and claims that the Contracting Authority may derive from non-performance, subject to the provisions of article 22.

Article 21 Penalty

- 21.1 If the Processed Good has not been delivered within the time limit agreed, or if the Processed Good does not comply with the terms of the Contract, the Contractor shall owe the Contracting Authority an immediately payable penalty of 0.1% of the price plus turnover tax in question for the processing of the goods still to be delivered for every day the failure persists, subject to a maximum of 10% of that price. If the fulfillment of an obligation has become permanently impossible for reasons other than force majeure, the Contractor shall immediately be liable for the full penalty.
- 21.2 The penalty is payable to the Contracting Authority without prejudice to all its other rights or claims, including:



- a. its right to claim performance of the obligation for Delivery of the Processed Good that conforms to the Contract (in so far as this has not become permanently impossible);
- b. its right to compensation, in so far as the damage exceeds the amount of the penalty.

21.3 The penalty shall be set off against the amounts owed by the Contracting Authority, irrespective of whether the rights to such amounts have been assigned to a third party.

Article 22 Liability

22.1 A Party that imputably fails to fulfill its obligations is liable to the other Party for any loss incurred by the other Party. This liability is limited to the following amounts:

- € 150,000,- per event and € 300,000,- for each year or part of a year that the Contract has been in force for Contracts with a total value of less than € 50,000,-;
- Three times the value of the Contract with a maximum of € 1,000,000,- per event and six times the value of the Contract with a maximum of € 2,000,000,- for each year or part of a year that the Contract has been in force for Contracts with a total value between € 50,000,- and € 500,000,-;
- Twice the value of the Contract with a maximum of € 1,500,000,- per event and four times the value of the Contract with a maximum of € 3,000,000,- for each year or part of a year that the Contract has been in force for Contracts with a total value between € 500,000,- and € 1,000,000,-;
- The value of the Contract with a minimum of € 1,500,000,- per event and two times the value of the Contract with a minimum of € 3,000,000,- for each year or part of a year that the Contract has been in force for Contracts with a total value of € 1,000,000,- or more.

The limitation of liability referred to above shall not apply:

- a. in the event of third-party claims for compensation in respect of death or personal injury;
- b. in the event of intent or gross negligence on the part of the other Party the Contractor's Staff or the Contracting Authority's Staff;
- c. in the event of a breach of intellectual property rights;
- d. in the event of an agreement concluded between the Parties under article 13, paragraph 2: to claims for compensation in relation to failure to comply with that agreement, including any fines imposed by the supervisory authority.

22.2 A Party who imputably fails to fulfill its obligations indemnifies the other Party against all third-party claims for damages resulting from a failure as referred to in article 22.1.

22.3 If, in performing the Work, the Contractor makes use of property belonging to the Contracting Authority as referred to in article 11, the Contractor is liable for any damage caused to such property, unless the cause of this damage can be attributed to the Contracting Authority. The liability amounts set out in article 22.1 apply accordingly.



- 22.4 If damage of whatever nature is caused to the Contractor and/or third parties as a result of the presence of goods which are the Contracting Authority's property at Contractor's premises for the purpose of performing the Contract, the Contractor shall bear the full expense and risk. Where necessary, the Contractor shall indemnify the Contracting Authority against third-party claims.
- 22.5 A Party can never be held liable for consequential loss or any other indirect loss. Consequential loss or any other indirect loss is defined as loss which was not reasonably objectively foreseeable, resulting from acts or omissions of the Party to whom the damage can be attributed. This limitation does not apply in case of intent or gross negligence on the part of that Party.

Article 23 Cancellation

- 23.1 Without prejudice to all other rights or claims, the Contracting Authority is entitled to cancel the Contract in full or in part by written statement, if:
- a. the Contractor fails to fulfill an obligation under the Contract, unless the failure does not warrant this dissolution and the associated consequences, considering the special nature or minor importance of the failure;
 - b. the fulfillment of an obligation due and payable under the Contract on the part of the Contractor becomes permanently or temporarily impossible;
 - c. the Contractor is declared bankrupt, or if the Contractor is granted a suspension of payments, whether temporary or not.
- 23.2 If the Contract is cancelled based on the provisions of paragraph 1 of this article, the Contractor shall repay any amounts already paid by the Contracting Authority, plus the statutory interest on those amounts from the date on which they were paid. If the Contract is partially cancelled, the Contractor only has to repay payments relating to the part of the Contract that has been cancelled.
- 23.3 The Contracting Authority is also entitled to suspend the performance of the Contract in full or in part, or to cancel the Contract in full or in part in cases other than those provided for by law or in paragraph 1 of this article, provided that the Contracting Authority pays compensation for any ensuing damages incurred by the Contractor.
- 23.4 In case of a framework agreement and when the Contracting Authority has demanded the originally estimated value or the intended quantity, the Contracting Authority may terminate the Contract by giving notice of termination in writing. In that case, the Contracting Authority is not obliged to compensate the Contractor in any way.

Article 24 Retention of right to demand performance

The fact that one of the Parties omits to demand the performance of any provision of the Contract within a time limit set by the Contract does not affect its right to demand performance at a later date, unless the Party in question has expressly agreed to the non-performance in writing.



VI MISCELLANEOUS

Article 25 Assignment of rights and obligations under the Contract

- 25.1 The Parties may not transfer their rights and obligations under the Contract to third parties without the consent of the other Party. The other Party shall not withhold its consent without good reason. The Parties may attach conditions.
- 25.2 Paragraph 1 of this article does not apply to the establishment of limited rights, such as a right of pledge.

Article 26 Insurance

- 26.1 The Contractor has taken out and shall retain adequate and customary insurance cover in accordance with generally accepted standards in respect of the following risks:
- a. business liability, including liability for damage caused to persons or the Contracting Authority's property;
 - b. loss of or damage to business property (including as a result of fire or theft), including items of property owned by the Contracting Authority.
- 26.2 At the Contracting Authority's request, the Contractor shall immediately present (a certified copy of) the policies or insurance certificates and proof of the payment of premium for the insurances referred to in paragraph 1 of this article or a statement from the insurer to the effect that these policies exist and the premium has been paid. The insurance premiums owed by the Contractor are deemed to be included in the agreed prices.

Article 27 Employment conditions

- 27.1 In performing the Work, the Contractor shall comply with the applicable legislation on employment conditions and with the collective labour agreement applicable to it and its staff.
- 27.2 The Contractor shall record all agreements on employment conditions made for the purpose of the performance of the Work in a clear and accessible manner.
- 27.3 Upon request, the Contractor shall immediately grant competent authorities access to these agreements on employment conditions and cooperate with any inspections, audits or salary validations.
- 27.4 Upon request, the Contractor shall immediately grant the Contracting Authority access to the agreements on employment conditions referred to in paragraph 2 of this article if the Contracting Authority considers this necessary to prevent or deal with a salary claim concerning work carried out for the purpose of the performance of the Work.
- 27.5 The Contractor shall impose the obligations arising from the previous paragraphs in full on all parties with which it enters into contracts for the purpose of the performance of the Work and shall also stipulate that these parties impose these obligations in full on all parties with which they, in turn, enter into contracts for the purpose of the performance of the Work.



Article 28 Bribery and conflict of interests

- 28.1 The Parties shall not offer to each other or to third parties, or ask for, accept or obtain a promise of, from each other or third parties, whether for themselves or for any other party, any gift, reward, compensation or benefit of any form whatsoever if this could be construed as constituting an illicit practice. Such a practice may constitute grounds for cancelling the Contract either in full or in part.
- 28.2 Should it transpire that a member of the Contracting Authority's Staff is also in the Contractor's employment, regardless of whether or not such employment is paid, or was in the Contractor's employment at the time when negotiations took place on the formation of the Contract, and that the Contracting Authority was not informed of this prior to the signing of the Contract, the Contracting Authority may cancel the Contract with immediate effect, without being required to give any notice of default or to pay any compensation.
- 28.3 During the term of the Contract and for a period of one year thereafter, the Contractor shall refrain from engaging in any unsolicited sales-oriented activities for his own benefit or that of other organisations on the basis of information obtained or received when performing the Contract. The Contractor shall ensure that its Staff shall also refrain from engaging in such unsolicited sales-oriented activities.

Article 29 Invalidity

If one or more provisions of the Terms and Conditions or the Contract are found to be invalid or are nullified by a court of law, the remaining provisions shall retain their legal force. The Parties shall consult on the former provisions in order to make an alternative arrangement. The alternative arrangement must not undermine the purpose and the purport of the Terms and Conditions or the Contract.

Article 30 Publicity

The Contractor may not refer to the Contract either implicitly or explicitly in publications (including press releases) or advertisements and may use the Contracting Authority's name as a reference only with the Contracting Authority's consent.

Article 31 Long-term provisions

Provisions which by their nature are intended to persist after the Contract has been performed shall remain in force after the expiry of the Contract. These obligations include in any event the provisions on guarantee (article 3), confidentiality (article 15), liability (article 22), bribery and conflict of interests (article 28.3), disputes and applicable law (article 32).

Article 32 Disputes and applicable law

- 32.1 Any dispute between the Parties in relation to the Contract shall be submitted only to the competent court in the district of The Hague, unless the Parties agree on an alternative means of settlement at the time a dispute arises.
- 32.2 The Contract is governed by Dutch law.



SPECIAL PROVISIONS

The provisions in this part apply, together with the general provisions, in so far as not stated otherwise below, in case the Contractor performs the Work on locations controlled by the Ministry of Defence.

Article 33 Amendments to the general provisions

Article 6 (Transport and risk transition), article 7 (Management of the good by the Contractor) and article 9 (Packing) do not apply.

Article 34 Working conditions

- 34.1 The Contractor is responsible for ensuring that the Contractor's Staff is familiar with the working conditions regulations of the Contracting Authority.
- 34.2 The Contractor is responsible for ensuring that the Contractor's Staff complies with the working condition regulations in force;
- 34.3 The Contractor is required to inform the Contracting Authority of any circumstances that violate the working condition regulations in force;
- 34.4 The Contractor shall indemnify the Contracting Authority for damages caused by the failure of the Contractor or the Contractor's Staff to comply with the working condition regulations of the Contracting Authority or the failure of the Contractor to notify the Contracting Authority in good time of any violations of the working conditions regulations.

Article 35 Parts, tools and clothing

- 35.1 If specific clothing, Parts or tools are required with respect to executing the Contract, the Contractor is responsible for providing them;
- 35.2 The Contracting Authority is authorised to inspect and test the goods as referred to in paragraph 1 of this article. Such an inspection or testing or the lack thereof does not absolve the Contractor of its responsibilities for performance of the Contract or compliance with legislation;
- 35.3 The Contractor is only authorised to store its Parts, tools and clothing at the location controlled by the Contracting Authority where such storage is necessary in the opinion of the Contracting Authority. The Contractor bears all risk with respect to the goods stored by the Contractor on the location controlled by the Contracting Authority and the Contractor indemnifies the Contracting Authority against all liability with respect to those goods.

Article 36 Order and security

- 36.1 The Contractor shall ensure that the Contractor's Staff is familiar with the Contracting Authority's regulations pertaining to order and security. The Contracting Authority shall inform the Contractor in good time about these regulations.
- 36.2 The Contractor shall notify the Contracting Authority about the arrival of the Contractor's Staff at least three Working Days before they start the execution of the Work.



- 36.3 The Contractor shall ensure that the Contractor's Staff involved in the performance of the Services on the Contracting Authority's premises, possess one of the following documents:
- a. a valid certificate of good conduct issued by Justis. This certificate of good conduct:
 1. must be no more than four years old, calculated from the date of issuance, during the performance of the work;
 2. must be issued on the basis of an application from which the purpose of the application reflects that it concerns work at the Ministry of Defence or the government of the Netherlands and the requested screening profile must be aimed at the provision of services and other features, if any, that are connected with the work performed under the Contract on the Contracting Authority's premises by the person concerned;
 3. must be kept in the Contractor's possession until one year after the work has ended and must be presented immediately to the Contracting Authority at the Contracting Authority's request.
 - b. a certificate of no objection issued by the Minister of Defence in the context of another contract, insofar as:
 1. this certificate of no objection is not older than five years, calculated from the date of issuance, during the performance of the work;
 2. the contract for which the certificate of no objection has been issued has not ended yet;
 3. the person engaged for the performance of this work is in employment with the same Contractor during the period of validity of the certificate of no objection;
 4. the work that is performed in the context of the other contract is deemed similar by the Contracting Authority to the work that is performed under this Contract.
- 36.4 The Contractor designates from the Contractor's Staff one or more persons as supervisor and informs the Contracting Authority about this decision. The supervisor should possess a "Defensiepas type 4" or "Defensiepas type 2", unless specified otherwise in the Contract. The supervisor shall be informed by the Contracting Authority about the regulations pertaining to order and security, referred to in paragraph 1 of this article, and must ensure that the Contractor's Staff complies with these regulations. The supervisor shall immediately inform the Contracting Authority if the Contractor's Staff does not comply with these regulations pertaining to order and security.
- 36.5 The Contractor is responsible for ensuring that his presence or that of the Contractor's Staff on the location controlled by the Contracting Authority does not hinder the undisturbed progress of the daily operations of the Contracting Authority, unless otherwise agreed.
- 36.6 If, for any reason whatsoever, a person who belonged or respectively belongs to the Contractor's Staff and in that capacity visits locations of the Contracting Authority no longer works or shall no longer work for the Contractor, the Contractor shall immediately notify this to the Contracting Authority's contact.



- 36.7 The Contracting Authority always has the right to refuse the Contractor's Staff access to a location controlled by the Contracting Authority for reasons the Contracting Authority deems appropriate.

Article 37 Work planning

- 37.1 If the Contracting Authority considers it to be necessary, the Contractor shall, before commencing the Work, submit a plan for the performance of the Work that complies with the working-time regulations of the Contracting Authority.
- 37.2 The plan is valid only after having been approved by or on behalf of the Contracting Authority. The approval of the plan does not absolve the Contractor of the Contractor's responsibilities with respect to the performance of the Contract.
- 37.3 Working days and working hours for the Contractor shall be the normal working days and hours that apply on the location controlled by the Contracting Authority. If the Contracting Authority so desires, the Contractor's Staff shall use a time card, badge or other means of control;
- 37.4 The Contractor or its designee shall always be present in the immediate vicinity of the Work. Absence is coordinated with an authorised representative of the Contracting Authority.

Article 38 Employment relationship of the Contractor's Staff

- 38.1 The Contractor shall ensure that the Contractor's Staff is able to present documentation signed by the Contractor to show that they are employed by the Contractor; the presentation of such proof of employment is to be done whenever the Contracting Authority so asks.
- 38.2 The Contractor shall notify the Contracting Authority if it wants, for the performance of the Contract, to engage personnel who is not in its employ. The Contracting Authority is entitled to refuse any such personnel. If the Contracting Authority does not object to such personnel, the Contractor shall ensure that such personnel is in possession of a written, signed proof of employment stating the name of the company that such personnel is employed by.

Article 39 Permits

- 39.1 If the Contractor is required by law or regulation to have a permit authorising it to carry out the Work, the Contractor is required to inform the Contracting Authority of that fact and to provide a copy of the permit to the Contracting Authority before commencing the Work. The Contractor is responsible for ensuring that any steps required to retain such permit are taken. The Contractor is required to inform the Contracting Authority of any change related to such permit. The Contractor shall inform the Contracting Authority of anything that could result in a violation of the law or regulation with respect to the permit.
- 39.2 If any member of the Contractor's Staff who is involved in the performance of the Contract is required by law or regulation to have a permit to carry out such work, the Contractor is required to inform the Contracting Authority of that obligation and to provide a copy of the permit to the Contracting Authority before commencing the Work. The Contractor is



responsible for ensuring that any steps required to retain such permits are taken. The Contractor shall not employ any personnel to carry out the Work if they do not have a required permit or no longer have such a permit. The Contractor shall inform the Contracting Authority of anything that could result in a violation of the law or regulation with respect to the permit.

- 39.3 If, with respect to the performance of the Work, the Contracting Authority is designated by or pursuant to law or regulation as a co-employer or is assigned a responsibility as the Contracting Authority, it does not absolve the Contractor of its responsibilities with respect to complying with this regulation. The Contractor shall indemnify the Contracting Authority from claims in this regard.

Article 40 Obligations arising from anti-abuse legislation

- 40.1 The Contracting Authority is entitled to ask the Contractor and any third parties engaged by the Contractor to provide a statement concerning and allow inspection of its payment behaviour vis-à-vis the tax authorities and the social security administration agency.
- 40.2 The Contractor shall, at the Contracting Authority's first request, allow the Contracting Authority to conduct a full inspection of the administration that it is required by law or regulation to maintain with respect to the performance of the Contract.
- 40.3 The Contractor indemnifies the Contracting Authority against claims by the tax authorities or the social security administration agency with respect to the performance of the Contract.

Article 41 Deferral of turnover tax:

If article 24b of the turnover tax Implementation Decree 1968 applies, the Contractor shall not invoice turnover tax and shall state "turnover tax deferred" on the invoice. If a difference of opinion arises between the Contracting Authority and the Contractor with respect to the implementation of this regulation, a ruling shall be requested from the tax inspector with responsibility for the Contractor. The parties shall act as if the regulation were applicable until a ruling has been issued. The Contracting Authority is discharged by paying the said sums insofar as these sums are concerned.