

General Terms and Conditions Governing Contracting Agreements for Business Clients 2023 (AVA Zakelijk 2023)



Adopted by the Governing Board of Koninklijke Bouwend Nederland on 7 December 2022.

Article 1: Quotation

- Except in pressing circumstances, quotations shall be issued in writing or in electronic form.
 - A quotation shall stipulate the following, amongst other things:
 - the place where the relevant work is to be performed;
 - a description of that work;
 - the drawings, technical descriptions, designs and calculations in accordance with which the work is to be performed;
 - the time when the work is to commence;
 - the deadline by when the works are to be handed over. The latter shall be stipulated by citing a specific date or a number of working days;
 - the pricing method that is to be employed for the purposes of the work to be performed: a contract fee or on a cost-plus basis. In the case of the contract fee pricing method, the contractor shall specify a fixed fee for the work described in the relevant quotation. In the case of the cost-plus pricing method, the contractor shall cite the relevant pricing factors (such as hourly rates, surcharges, mark-ups and unit prices for the requisite materials). Any value added tax payable shall be stipulated separately in a quotation;
 - whether payment of the contract fee shall occur in instalments;
 - whether a risk settlement mechanism is applicable and, if so, which one;
 - whether allowances have been made for provisional items and, if so, which ones;
 - whether any quantities will be reconcilable and, if so which ones;
 - whether these general terms and conditions will govern the quotation and any contracting agreement concluded pursuant to it.
- A quotation shall be dated and shall apply for thirty (30) days commencing on that date.
 - Any drawings, technical descriptions, designs and calculations which are produced by the contractor or at the latter's behest shall remain the contractor's property. They may not be handed to another party or disclosed with a view to obtaining a similar quotation. Nor may they be multiplied. In the event that no contract is awarded, such documents must be returned to the contractor at the relevant client's expense within fourteen (14) days after the contractor requests this.
 - Should a quotation not be accepted, the contractor shall be entitled to charge the person at whose request that quotation was issued for the costs involved in producing that quotation, provided that the contractor stipulates this when issuing that quotation.

Article 2: Agreement and contract documents

- An agreement shall be concluded by virtue of the relevant client timely accepting the quotation concerned.
- Where two (2) or more clients award a contract, they shall be severally liable and the contractor shall be entitled to seek full compliance from each.
- Subject to principles of equity and fairness, any discrepancy within or conflict between the relevant contract documents shall be interpreted to the disadvantage of the party who has drawn them up or on whose behalf that has been done. This shall not affect the parties' duty to alert each other to any apparent inconsistencies.

Article 3: A client's obligations

- Unless otherwise agreed, a client shall ensure that the contractor has timely:
 - disposal over the information and approvals (such as any consent under public or private law) required for the purposes of structuring the work, where necessary in consultation with the contractor;
 - access to the building, grounds or water in or on which the relevant work is to be performed;
 - opportunity to deliver, store and/or remove building and ancillary materials;
 - access to connections for electric machinery, lighting, heating, gas, pressurised air and water.
- If the use of a quality assurance agent is required, it is the client's responsibility to arrange one, unless otherwise agreed.
- Any electricity, gas and water required shall be supplied at the relevant client's expense.

- Without the contractor's consent, a client shall not be permitted to carry out any work or arrange for any other party to do so (or to arrange to have this done) on the day prior to that on which the works shall be deemed to have been handed over.
- In the absence of the contractor's prior consent in written or electronic form, a client shall not be permitted to assign their legal relationship with the contractor to a third party.

Article 4: A contractor's obligations

- The contractor shall have a duty to carry out the relevant work properly and thoroughly in accordance with the provisions of the agreement in question. The contractor shall carry out the work in such a manner that any resultant harm to any person, goods or the environment is limited as far as possible. Furthermore, the contractor shall have a duty to heed any orders and directions issued by or on behalf of the relevant client.
- The work must be performed in such a manner, so as to ensure that it is completed by the agreed deadline.
- In the event that the nature of the work constitutes grounds for doing so, the contractor shall familiarise himself with the location of cables and pipes before the work commences.
- The contractor shall be deemed to be aware of those provisions of the law and rulings of public authorities which are relevant for the purposes of performing the work concerned insofar as they apply on the date of the quotation concerned. The contractor shall be liable for the consequences of compliance with such provisions and rulings.
- The contractor shall have a duty to draw the relevant client's attention to any deficiency in the structures and methods stipulated by or on behalf of that client or any orders and directions issued by or on behalf of the latter, as well as any deficiency in the building and ancillary materials stipulated by the client insofar as the contractor is aware of same or may reasonably be expected to be.
- Where a cost-plus pricing method is agreed to, the contractor shall draw up weekly reports and submit them to the relevant client. Amongst other things, the time spent and materials used shall be recorded in such weekly reports. In the event that a client objects to the contents of a weekly report, they shall notify the contractor of this, citing reasons for doing so, as soon as possible but by no later than within one (1) week after receiving the relevant weekly report in writing or electronic form.

Article 5: Inflationary circumstances

- Inflationary circumstances are circumstances that are of such a nature that, when the agreement is concluded, there is no need to take into account the chance that they might occur, which cannot be attributed to the contractor and which increase the costs of the work.
- Inflationary circumstances shall confer on the contractor entitlement to compensation for their consequences.
- Should the contractor be of the opinion that inflationary circumstances have occurred, he shall notify the relevant client of this in writing or electronic form as soon as possible. The parties shall then consult each other at short notice concerning the question as to whether inflationary circumstances have occurred and, if so, the extent to which compensation will be provided for any increase in expenses in accordance with principles of equity and fairness.
- Instead of consenting to compensation, the relevant client shall be entitled to limit, simplify or terminate the work. In this case the amount for which that client is liable shall be determined in accordance with principles of equity and fairness.

Article 6: Work excess and shortfalls

- Work excess and shortfalls shall be reconciled in the event that:
 - the relevant agreement is amended or the conditions governing its implementation change;
 - the value of any provisional item changes;
 - any discrepancy in reconcilable quantities occurs.
- In the event that a client requires that an agreement be amended or the conditions subject to which it is implemented be changed, the contractor may only seek an increase of the fee, provided that he gives that client timely notice of the need for a resultant

price increase, unless the client should themselves have understood the need for it.

- Except in pressing circumstances, any amendment of an agreement or variation of the conditions subject to which it is implemented must be agreed to in writing or in electronic form. The absence of a contract in written or electronic form shall not affect the entitlement of the contractor or the relevant client to the reconciliation of any work excess or shortfall. In the absence of a written contract, the party that claims such entitlement shall bear the onus of proving such amendment or variation.
- Provisional items refer to any amount mentioned in the agreement which constitute part of the relevant contracting fee and are intended to be used for
 - the procurement of building materials;
 - the procurement of building materials and their treatment;
 - the performance of any work which is not specified accurately enough on the date of their relevant agreement and which the client concerned needs to define in greater detail.A agreement shall stipulate what each provisional item refers to.
- When debiting expenditure to any provisional item, the relevant calculation shall be based on the costs incurred by the contractor. In the case of a gross provisional item, these costs shall be increased by a contractor fee of 10%. In the case of a net provisional item, only the costs incurred by the contractor for that provisional item shall be settled with the amount of the provisional item.
- Where a provisional item only concerns the procurement building materials, the costs of treating the latter shall be deemed to be included in the contract fee and shall not be settled separately. Nevertheless, those costs shall be debited to the provisional item employed to account for the procurement of building materials insofar as they exceed those which the contractor could reasonably have been expected to make allowances for based on the realisation of that provisional item.
- Where a provisional item covers the procurement of building materials and their treatment, the costs of treating them shall be deemed not to be included in the contracting fee and they shall be debited to that provisional item separately.
- Where an agreement includes reconcilable quantities and the latter turn out to be too large or too small to allow the work to be performed, any expenditure excess or shortfall arising pursuant to that discrepancy shall be reconciled.
- In the event that a client issues instructions for the performance of additional work, the contractor may charge the equivalent of 25% of the agreed sum by way of an advance. The contractor shall only be permitted to issue an invoice for the remaining sum when that additional work has been completed or when the invoice for the next scheduled instalment is issued. Unless otherwise agreed, the contractor shall reconcile any work shortfall when final settlement occurs.
- In the event that it appears when final settlement is effected for the work, that the total sum of any work shortfall exceeds that of any excess work, the contractor shall be entitled to an amount equivalent to 10% of the difference between those totals. The settlement of provisional items is not included in this.

Article 7: Payment

- Should it be agreed that payment shall occur in instalments, the contractor shall issue the relevant client with an invoice for the relevant instalment when or after it falls due. Any value added tax payable by a client to the contractor shall be mentioned separately.
- Payment of an invoice that has been issued must be effected by no later than fourteen (14) days after the relevant invoice date, subject to the proviso that all invoices issued for instalments and those pertaining to any agreed excess work must be paid upon handover subject to Article 12 and on condition that the contractor has issued those invoices in good time before the handover. The contractor shall be entitled to submit the invoice covering the instalment payable upon handover fourteen (14) days prior to the scheduled handover.
- The contractor shall issue the final settlement invoice within a reasonable period of time after the

date on which the works may be deemed to have been handed over.

- Subject to the provisions of Article 12, the amount stipulated in the final settlement invoice that is payable to the contractor must be paid by no later than thirty (30) days after the date on which the contractor has issued that final settlement invoice.

Article 8: Handover and period of maintenance

- The works shall be deemed to have been handed over once the contractor has given notice that the works are ready to be handed over and the relevant client has accepted them. A handover report shall be drawn up on the occasion of the handover and shall be signed by both parties. Any deficiency noticed by the relevant client which the contractor does not acknowledge shall be mentioned in the handover report as such.
- In the event that the contractor gives notice in writing or electronically that the works are ready to be handed over and the client concerned fails to disclose within eight (8) days that they have or have not accepted them, the works shall be deemed to have been handed over.
- Should the relevant client reject the works, they shall give notice of this in writing or electronic form stating the deficiencies which constitute the grounds for such rejection. Any minor defects which can be properly remedied during the relevant period of maintenance shall not constitute grounds for rejection, provided that they do not pose an obstacle to them being put into service.
- In the event that a client occupies the relevant works, the latter shall be deemed to have been handed over.
- Should the parties establish that there can be no reasonable question of any handover given the nature or scope of the relevant deficiencies, the contractor shall stipulate a new date in consultation with the client concerned when the works will be ready to be handed over.
- The relevant client shall be liable for any risks associated with the works following the date on which they may be deemed to have been handed over.
- Any deficiencies acknowledged as such by the contractor shall be remedied as soon as possible.
- A period of maintenance of thirty (30) days shall commence after the date on which the work may be deemed to have been handed over.

Article 9: Construction time, postponement of handover and compensation on the grounds of late handover

- Where the period within which the works are to be handed over is expressed in working days, a working day shall be deemed to constitute a calendar day, unless it coincides with a general day of rest, public or other holiday, a non-individual day off, or one which is acknowledged as such in the place where the work is performed, or which is designated as such by the relevant public authorities or in or pursuant to a collective labour agreement. Any working day or half of such day shall be deemed to be one on which no work can be performed where circumstances beyond the contractor's control render it impossible for the bulk of the relevant workers or machines to work for no less than five (5) or two (2) hours respectively.
- The contractor shall be entitled to an extension of the deadline by when the works are to be handed over where the contractor cannot be expected to hand over the works by the agreed deadline due to force majeure, any circumstances for which the relevant client is responsible or as a result of any work excess or shortfall.
- In the event that the agreed construction time is exceeded, the contractor shall be liable for the payment of fixed compensation to the relevant client amounting to EUR 50.00 in the case of each working day until the date on which the works are handed over to that client, except insofar as the contractor is entitled to an extension of that construction time. For the purposes of the application of this clause, the date of handover shall be deemed to be that on which the contractor is of the opinion that the works were ready to be handed over, provided that they are then deemed to have been handed over, or the date on which the relevant client puts the works into service.
- Such fixed compensation shall be payable in the absence of any notice of default and may be set off against whatever is still payable to the contractor.
- The fixed compensation amounts to no more than 10% of the contract fee.
- In the event that the commencement or progress of the work is delayed by factors for which the relevant client is responsible, the latter shall be required to

compensate the contractor for any loss suffered or expenses incurred as a result.

Article 10: Default on the part of a client

- In the event that a client is in default of payment of what they owe the contractor pursuant to the relevant agreement, they shall be liable to pay the statutory commercial interest thereon as of the due date. In the event that payment is not effected within fourteen (14) days after the due date, the interest rate referred to in the foregoing sentence shall be increased by two (2).
- Should a client fail to effect timely payment, the contractor shall be entitled to proceed with the collection of the relevant debt, provided that it has reminded that client in writing or electronic form to effect payment within fourteen (14) days and payment is not forthcoming. In the event that the contractor proceeds with collection, the client concerned shall be liable for any extrajudicial expenses involved, provided that the value thereof is stipulated in the reminder. The contractor shall be entitled to charge an amount in accordance with the Extrajudicial Debt Collection Costs (Compensation) Decree [Besluit vergoeding voor buitengerechtelijke incassokosten] for this purpose.
- In the event that a client fails to pay what the contractor is entitled to in accordance with the relevant agreement or fails to do so on time, or the contractor has good reason to assume that a client will not pay what the contractor is entitled to or will not do so on time, the contractor shall be entitled to require satisfactory security from that client.
- Should a client fail to comply with any obligation that they have, the contractor shall be entitled to suspend work until such time as that client complies with such obligation or to cease incomplete work, provided that the contractor has notified that client beforehand in writing or electronic form of the consequences of such default. The provisions of the foregoing sentence shall not affect the contractor's entitlement to compensation for any loss, expenses and interest.
- In the event that a client is declared bankrupt, applies for a moratorium on payments or a third party arranges a legally valid attachment at their expense - unless such attachment is lifted within one (1) month, whether or not this occurs in return for security being tendered - the contractor shall be entitled to suspend work or to cease working without completing it in the absence of any further reminder.
- Where such suspension or cessation in incomplete condition occurs pursuant to this article, the provisions of Article 13 shall apply.

Article 11: Default on the part of a contractor

- In the event that the contractor fails to comply with his obligations in relation to the commencement or continuation of the work and the relevant client wishes to remind him to do so, the client shall send it a reminder in written or electronic form to commence or continue the work as soon as possible.
- A client shall have the power to arrange for another party to perform or continue the relevant work in the event that the contractor remains in default following the expiry of the deadline referred to in the reminder, provided that the gravity of that default constitutes grounds for this and subject to the condition that the client stipulates this in the reminder. In this case the client concerned shall be entitled to compensation for any loss suffered or expenses incurred as a result of the contractor remaining in default.
- The client shall ensure that any costs to be incurred by the contractor pursuant to the application of the foregoing clause shall remain within reasonable bounds.

Article 12: Suspension of payment

In the event that the work that is performed does not comply with the relevant agreement, the client concerned shall be entitled to suspend all or part of any payment. The suspended amounts must be reasonably proportionate to the default. A client shall notify the contractor in writing or by electronic means of such suspension and the reason for it.

Article 13: Suspension, cessation of incomplete work and cancellation

- A client shall be entitled to suspend performance of all or part of the relevant work. The contractor shall be compensated for any arrangements which it needs to make and any loss that it suffers as a result of such suspension.
- In the event that the works are damaged during such suspension, the contractor shall not be liable for this,

provided that he has drawn the relevant client's attention to this possible consequence of suspension beforehand in writing or by electronic means.

- Where such suspension lasts for more than fourteen (14) days, the contractor may also seek payment in proportion to that part of the work that has already been performed. In this respect allowances shall be made for any building materials which have been delivered to the works but have not yet been treated yet have been paid for by the contractor.
- In the event that a suspension of work lasts for longer than one (1) month, the contractor shall be entitled to cease any incomplete work. In that case settlement shall be effected in accordance with the following clause.
- A client shall be entitled to cancel all or part of an agreement at any time. In that case the contractor shall be entitled to the contract fee plus any expenses which he has had to incur due to incompleteness less any costs saved as a result of cessation. The contractor shall be entitled to charge 10% of the value of the incomplete section of the work instead of the foregoing entitlement. The contractor shall issue a client with a detailed final settlement invoice setting out what that client owes as a result of cancellation.

Article 14: A client's liability

- A client shall be responsible for ensuring that any information provided by them or on their behalf is accurate.
- Any discrepancy between any existing buildings, works and grounds, on the one hand and the situation which the contractor could reasonably expect, on the other, which becomes evident in the course of construction shall confer entitlement on the contractor to compensation for any costs incurred as a result.
- Should it appear after an agreement has been concluded that the relevant building site is or any building materials released from the works are polluted, the relevant client shall be liable for the implications which this has for the performance of the work.
- A client shall be responsible for the structures and methods stipulated by them or on their behalf, which is deemed to include the effect which the condition of the ground has on them, as well as any orders and directions issued by them or on their behalf.
- A client shall be liable for the consequences of any building or ancillary materials which it has provided or stipulated being unsuitable or defective.
- In the event that a client stipulates a subcontractor or supplier and either fails to effect performance or to do so appropriately or on time, that client shall be liable for the consequences.
- A client shall be liable for any damage to the works and any loss which the contractor suffers or delay that the latter experiences as a result of any work performed or deliveries made by that client or by any other party at their behest.
- A client shall be liable for the consequences of complying with any provisions of the law or rulings issued by the relevant public authorities which come into effect after the date of the relevant quotation, unless it must be reasonably assumed that the contractor could have foreseen those consequences on the date of that quotation.
- If a file must be provided to the competent authority before the work can be taken into use, the client is responsible for creating, maintaining and timely provision of this file with the correct content.

Article 15: A contractor's liability

15.1 Design liability

- In the event that a design is deficient, the contractor shall only be liable for such deficiency insofar as he may be held to be culpable for it.
- Any legal action based on culpable default shall be inadmissible if it is instituted more than five (5) years after the expiry of the relevant maintenance period.

15.2 Liability during the performance of the work

- The contractor shall be responsible for the work and its performance as of the time of its commencement until the date on which the works are or may be deemed to have been handed over.
- Subject to the parties' liability pursuant to the relevant agreement or the law, the contractor shall be liable for any damage to the works, unless such damage is due to extraordinary circumstances against which the contractor was not required to adopt appropriate measures given the nature of the

works and it would be unreasonable for him to be held liable for that damage.

3. The contractor shall be liable for any damage inflicted on a client's other works and property insofar as it is caused by the performance of work and is due to negligence, carelessness or inappropriate action on the part of the contractor, or the latter's staff, subcontractors or suppliers.
4. The contractor shall indemnify a client against any claim made by another party for compensation for any loss insofar as it is occasioned by the performance of the work and is due to negligence, carelessness or inappropriate action on the part of the contractor, or the latter's staff, subcontractors or suppliers.

15.3 Liability after handover

1. The contractor shall no longer be liable for any deficient work after the date on which the works may be deemed to have been handed over.
2. The provisions of Clause (1) shall be subject to an exception in the event that there is any question of a defect which:
 - a. comes to light during the period of maintenance and which the relevant client could not reasonably have been expected to acknowledge as such upon handover, unless the contractor can show that it is reasonable to assume that there is a large degree of probability that the defect must be attributed to circumstances for which that client may be held to be culpable;
 - b. comes to light after the period of maintenance and which the relevant client could not reasonably have been expected to acknowledge as such upon handover, unless the contractor can show that it is reasonable to assume that there is a large degree of probability that the defect must be attributed to circumstances for which that client may be held to be culpable.
3. Any legal action based on the default referred to in Clause (2)(a) shall be inadmissible if it is instituted more than two (2) years after the expiry of the relevant maintenance period.
4. Any legal action based on the default referred to in Clause (2)(b) shall be inadmissible if it is instituted more than five (5) years after the expiry of the relevant maintenance period. Any legal action based on a defect referred to in Clause (2)(b) shall be inadmissible if it is instituted more than five (5) years after the expiry of the maintenance period. A defect may only be deemed to be serious where all or part of the works have collapsed, are in danger of collapsing, or have become or are in danger of becoming unsuitable for their intended use in accordance with the relevant agreement and this can only be remedied or prevented by making highly expensive arrangements.

15.4 Other provisions

1. In the situations referred to in Articles 15.1 to 15.3 the relevant client shall have a duty to notify the contractor of such defect within a reasonable period of time after it is discovered and, unless compliance is permanently impossible, to afford the contractor an opportunity to remedy or repair any culpable default and or defect for which the contractor is liable at the latter's expense within a reasonable period of time.
2. In the event that the costs involved in remedying or repairing any culpable default or defect for which the contractor is liable are not reasonably proportionate to the interest which the relevant client has in such remedy, the contractor may suffice with the payment of reasonable compensation to that client instead of remedying the situation.
3. The contractor's liability pursuant to Article 15.1 shall be confined to the amount agreed to for the performance of the design work. Where no amount has been agreed to, the contractor's liability shall be confined to 10% of the relevant contract fee.
4. The contractor's liability under Articles 15.2 and 15.3 is limited to an amount equal to 10% of the contract fee in the event of culpable indirect damage. If a business liability insurance contract taken out by the contractor provides cover for a higher amount, this liability is capped at the amount to be paid out. Indirect damage is understood to mean, among other things, trading loss, loss of production, loss of turnover and/or profit, depreciation of products and costs that would be involved in the performance of the work if the work had been performed properly from the start.
5. The limitation of liability pursuant to Articles 15.1 to 15.4 shall not apply where any loss is due to a wilful act or omission, or gross negligence on the part of the contractor.

Article 16: Disputes and applicable law

1. Any dispute of any nature – which is deemed to include any which only either party deems to be such – including any that may arise pursuant to this contracting agreement or any contract concluded pursuant to it between a client and the contractor shall be adjudicated by means of arbitration before the Arbitration Board for construction disputes [Raad van Arbitrage in bouwgeschillen] in accordance with the provisions of the latter's arbitration regulations as they read three (3) months before an agreement is concluded, except insofar as some other form of a dispute resolution applies pursuant to the following clauses.
 2. The parties expressly waive their right to invoke the intervention of the regular court.
 3. In derogation from Clauses (1) and (2), any dispute which falls within the jurisdiction of a sub-district court may be brought before such court for adjudication by the contractor.
 4. Any contracting agreement or any contract concluded between a client and the contractor pursuant to it shall be governed by and construed in accordance with the law the Netherlands.