GENERAL TERMS OF DELIVERY OF INSTALLATION COMPANIES 2007 (ALIB 2007)

HUISMAN
ETECH EXPERTS

The following general terms have been translated from Dutch. In case of contradictions between the Dutch and English texts, as well as between the interpretation of these two texts, the Dutch text or interpretation shall prevail over the English text or interpretation. Only the Dutch version is definitive.

A. GENERAL TERMS AND CONDITIONS

Article 1 Scope and definitions

1. These general terms are applicable to all (legal) actions by the technical contractor, such as tenders, contracts or acceptance of orders as part of (master) agreements, and also prevail above the customer's general terms, if the technical contractor has not expressly rejected their applicability. A reference by the customer to their own conditions of purchase or tender, or other conditions, will not be accepted by the technical contractor.
2. Besides, and in addition to the provision in paragraph 1, these general terms are applicable if the customer has accepted their applicability in previous agreements with the technical contractor.
3. The customer accepts the applicability of these general terms to all future transactions of same nature with the technical contractor.
4. In these general terms, the following meanings are given to the following words with a capital letter:
   a) Agreement: the agreement between the customer and the technical contractor to which these general terms are applicable.
   b) Activities: the whole range of design, installation and maintenance activities – including the delivery of goods and services – that the technical contractor has to carry out in order to ensure that the technical installation meets the requirements arising from the Agreement, on delivery and, if so agreed, during the maintenance period.

Article 2 Tender

1. The technical contractor's tender is non-committal: he can revoke his tender until just after receipt of its acceptance, unless the tender includes a term for acceptance and that term has not yet expired.
2. The contents of all the tender documents, such as plans, descriptions or specifications, are as accurate as possible, but they are not binding.
3. The customer must deal confidentially with the information in the tender documents, and may not appropriate it for his own use or the use of third parties, or make it known to third parties. The provision in Article 4, paragraph 20 of these terms is applied similarly.
4. If, on the basis of the tender documents, no Agreement is drawn up, all these documents must be returned by the customer, for his own account and risk, to the technical contractor's address at the first request of the technical contractor.
5. If, on the basis of a tender from the technical contractor, no Agreement is drawn up, the technical contractor is entitled to payment from the customer for a reasonable reimbursement of the costs associated with his price quotation, such as the costs of designs or budgets, in accordance with Article 7:405 of the Netherlands Civil Code. Payment of the tender costs due will take place within 2 weeks of the date of the invoice concerned.

Article 3 Obligations of the technical contractor

1. Unless otherwise stipulated in the Agreement, the technical contractor must take out insurances, insofar as this is necessary and usual with regard to the nature and scope of the Activities and in accordance with the conventions in the branch, without prejudice to the provision in Article 5, paragraphs 1 and 2. The customer, his authorised representative and/or other third parties engaged by the customer are not included in the technical contractor's insurances.
2. If requested, the technical contractor will ensure that the customer receives, in good time, written proof of the existence and content of the insurances stated under paragraph 1.
3. The technical contractor is obliged to warn the customer if the specifications made by or on behalf of the customer, or order, or agreement, or the information, details or goods provided by the customer, or the changes given by the customer evidently show mistakes or deficiencies such that he would act in violation of the demands of reasonableness and fairness if he should continue along those lines in carrying out the Activities without warning.
4. The technical contractor is not obliged to do more than a rough check against the standards of the installation branch for the information, designs, plans, calculations and tenders provided by, or through the customer. The technical contractor's check of goods to be delivered by the customer will not consist of more than a visual inspection of outward damage, insofar as reasonably possible in the case of packaged goods, checking numbers and dimensions and, as far as possible, verifying the packing lists.
5. The technical contractor will make every effort to carry out the Activities to the best of his ability, but the scope of his obligations partly depends on the degree of contribution and influence of the customer and/or of the third parties engaged by, or on behalf of, the customer.
6. The technical contractor is obliged to do whatever is required by law, the demands of reasonableness and fairness or the use, in accordance with the Agreement.
7. The technical contractor will ensure that he is kept informed of the legal conditions and orders from authorities, and any special conditions, such as technical or industrial standards, that are relevant to the Activities.
8. The technical contractor is obliged to carry out the Activities in such a way that the installation meets the requirements arising from the Agreement. These requirements include requirements arising from the normal use for which the installation is intended, as well as the requirements arising from the particular use that is to be made of the installation, though in the case of the latter requirements only insofar as set out in writing in the Agreement.
9. On request, the technical contractor will inform the customer at any reasonable given time about the execution of the Activities and admit the customer to the places where they are being carried out at a time to be agreed. If that is agreed, the technical contractor will show that his Activities and the results of the Activities meet the requirements arising from the Agreement, by way of an approval plan, protocol, logbook or report.
10. The technical contractor will pay for any repair of damage to the installation or any part of it that has occurred during, and due to or in connection with, the execution of the Activities before delivery, unless this damage has not been caused by the technical contractor, or it is otherwise unreasonable that he should pay for this damage, without prejudice to the liability of parties pursuant to the Agreement or the law. Through an amendment pursuant to Article 13, the customer can order the technical contractor to repair damage to the installation, which will not be paid by the technical contractor.
11. On request, the technical contractor will provide, to the best of his ability and in good time, all the rights from guarantees provided to him by independent assistants with regard to the installation or parts of it.
12. On request, the technical contractor will ensure that the customer receives, in good time, information about the relation between wages and materials applied in his tender, and about his method of payment within the framework of the Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act and the reverse charge procedure for value added tax.
13. On request, the technical contractor will provide, to the best of his ability and in good time, instructions for starting up, shutting down and maintaining the installation.
14. The technical contractor is obliged to deal with all the customer's details in confidentiality, insofar as these details have been made known to the technical contractor in confidentiality, and to ensure that his personnel respect this confidentiality.

Article 4 Obligations of the customer

1. The customer will ensure that the technical contractor is provided in good time with all the (technical) information, details, decisions and changes that are necessary to enable the technical contractor to realise the Activities in accordance with the Agreement. The customer is responsible for the correctness and completeness of the information, details, decisions and changes.
2. The customer will ensure that the technical contractor is provided in good time with the goods that the Agreement expressly states should be provided by or on behalf of the customer. The customer is responsible if these goods are faulty or unsuitable.
3. The customer indemnifies the technical contractor against claims by third parties in connection with information, details, decisions, changes and goods referred to in paragraphs 1 and 2.
4. The customer will ensure that the technical contractor is provided in good time with the licences, exemptions, orders or approvals that are necessary for setting up the Activities or the use of the installation, and for which it has been agreed that they should be provided by or on behalf of the customer. To this end, the technical contractor will provide the necessary cooperation with the customer to the best of his ability. If the customer fails to comply with this obligation, the technical contractor can dissolve the Agreement in accordance with Article 11, paragraph 5, and claim damages.
5. The customer will ensure, in good time, that there is free access without charge to the site, the building and the location on which or in which the Activities are to be carried out, and for clean, safe and healthy conditions, as well as suitable storage space there.
6. The customer is responsible for the condition of the buildings/locations where, and the installations or parts of installations there, round which, under which, in which, or above which the Activities are to be carried out, as well as for the conditions that may hinder or seriously impede the execution of the Activities. The customer is obliged to warn the technical contractor and his personnel in good time of any dangerous situations.
7. The customer will ensure that at the locations where the Activities are to be carried out, the necessary (utility) services, such as electricity, (drinking) water, gas, compressed air, telecom or drainage installation, are made available to the technical contractor in good time, free of charge and with performance guarantee.
8. The customer is responsible for the connection of the installation to the public networks. The technical contractor will cooperate with the customer to the best of his ability insofar as is necessary for applying for this connection.
9. The customer will provide information, in good time, about the nature and content of the activities of sub-contractors and other third parties engaged by him, the expected time they are to be carried out, and the coordination of these activities, so that the technical contractor can take this information into account in his tender. The customer has sole responsibility for the coordination of these activities, unless it has been otherwise agreed.
10. The customer is responsible for delays and/or costs that are caused by the activities of sub-contractors, and for which the technical contractor cannot be held liable. Damage caused to the installation by the activities of sub-contractors is to be paid by the customer.
11. The customer is obliged to warn the technical contractor in writing and within due time, if he has actually noticed a failing on the part of the technical contractor, or should have been aware of it.
12. The customer is liable for (soil) contamination, and for pollutive substances and/or bacteria found during the execution of the Activities, such as asbestos or legionella. The customer can order the technical contractor to remove the contaminations, substances and/or bacteria found through an amendment pursuant to Article 13. Whether or not the technical contractor carries out this order, he is entitled to an extension of the term and/or compensation by virtue of Article 12.
13. The customer is responsible for the goods that he has prescribed or that are to be acquired from a prescribed supplier, as well as for them not being delivered, or not being delivered on time.
14. The customer is responsible for assistants, such as sub-contractors or suppliers that he has prescribed. The technical contractor is not obliged to contract these independent assistants, if the customer does not wish to accept the contractual conditions of these assistants. If the prescribed assistant does not perform, or does not perform well or on time, the technical contractor is entitled to an extension of the term and/or compensation by virtue of Article 12.
15. Outside the working hours of the technical contractor, the customer is responsible for the goods and property of the technical contractor, such as materials, machines or tools that have been brought to the work site.
16. The customer is responsible for delays and/or costs resulting from compliance with legal conditions and approvals from authorities, as well as exceptional conditions, such as technical and industrial standards, which are changed or brought into effect after the tender.
17. The customer is not permitted to give instructions to the technical contractor, his personnel or their assistants that are not connected to the Activities or that are contrary to the nature of the Agreement. The customer must disturb the technical contractor's Activities as little as possible.
18. The customer will permit the technical contractor to erect signs with his name and company or advertisements on them on fencing or railings that close off the building or the places where the Activities are to be carried out, or elsewhere on the work site.
19. The customer is obliged to receive all the goods of the technical contractor and his own goods that are to be delivered on the basis of the Agreement, as soon as they are made available to him.
20. The customer is obliged to deal confidentially with all the (business) details of the technical contractor and all the information received from the technical contractor in connection with the Agreement. The customer is prohibited from obtaining these details and information for his own use or for that of third parties, or to make them known to third parties. If the obligation set out in this paragraph is violated, the customer will have to pay a fine to the amount of € 100,000.00, which is immediately payable and not subject to judicial moderation, without prejudice to the technical contractor's right to claim damages.
21. The customer will pay the amounts he owes to the technical contractor in accordance with the agreed payment regulations, also when the customer is entitled to compensation for damages by virtue of Article 16.

Article 5 Insurance of the customer

1. The customer is obliged to take out a customary CAR insurance or equivalent customary insurance(s) and to maintain it, which includes the technical contractor (including the sub-contractors and assistants to be engaged by the technical contractor for the execution of the Agreement) as co-insured party, if the Activities of the technical contractor are for the purpose of the customer's business operations, unless otherwise agreed in writing.
2. The customer is obliged – in the case of export of his products and installations, consisting partly of the goods developed and/or delivered by the technical contractor, to the US or Canada or to areas where the law of these countries is applicable – to inform the technical contractor of the export plans in good time and to take out the customary liability insurances and maintain them, also on behalf of all the parties involved in the development, construction or creation of these products and installations. The customer will not terminate or change these insurances without the prior written permission of the technical contractor.
3. The customer will ensure that the technical contractor receives written proof of the existence and content of the insurances referred to in paragraphs 1 and 2 as soon as possible.

Article 6 Ban on taking over personnel and seconded parties

1. For the duration of the Agreement and until one year after it is terminated, the customer is not permitted to employ the technical contractor's , or to use their services in any other way.
2. In the case of secondment, the customer is not permitted to employ these seconded parties for the duration of the secondment and until one year after it is terminated, or to use their services in any other way.
3. In the case of violation of the obligation referred to in paragraphs 1 and 2, the customer will have to pay a fine to the amount of 3 gross annual salaries of the employee concerned, which is immediately payable and not subject to judicial moderation.

Article 7 Retention of title

1. All the goods intended for the Activities, such as materials or components, will become the property of the customer after the customer has met all his financial obligations from the Agreement, including any that may be owed by the customer because of failing to meet his obligations.

Article 8 Terms

1. The technical contractor cannot be expected to commence the execution of his Activities before all the information, details and goods necessary for this, as referred to in Articles 4 and 5, are in his possession and he has received the instalment agreed on. He is authorised to commence and/or to deliver earlier, unless otherwise stated in the Agreement.
2. Unless expressly agreed otherwise, terms will be set in the best judgement and will be observed as far as possible. If a term is occasionally exceeded, the customer will not declare the technical contractor in default. If there is a danger of exceeding a term, the technical contractor and the customer must enter consultation as soon as possible.

Article 9 Checking, acceptance and delivery

1. The customer is authorised to check whether the Activities and the results of Activities meet the requirements that arise from the Agreement, through checks, trials or tests.
2. Testing by or on behalf of the customer takes place, after consultation with the technical contractor, for the account and risk of the customer, unless otherwise agreed. The technical contractor will provide the customer with the necessary cooperation, within reasonable limits.
3. In exercising his testing authority, the customer will disrupt the Activities as little as possible. He is responsible for any delays and/or costs ensuing from the testing for which the technical contractor cannot be held liable. Damage caused to the installation by the testing must be paid for by the customer.
4. As soon as the technical contractor has made known that the results of the Activities are ready for acceptance and if the customer does not inspect them within the period set by the technical contractor, and whether or not he accepts them conditionally or rejects them on indication of the faults, the results of the Activities will be deemed to have been tacitly accepted.
5. Small faults that can be repaired before a following instalment can form no reason for rejection, providing they do not impede the use of the installation.
6. On acceptance, the results of the Activities will be regarded as delivered. The technical contractor is authorised to divide the delivery into a number of partial deliveries.
7. If the results of the Activities are (tacitly) accepted by the customer, the time of acceptance will be noted as the day of notice as referred to in paragraph 4.
8. At the request of the customer, the acceptance of the results of the Activities can also take place without the notice pursuant to paragraph 4. For this, the customer will inform the technical contractor in writing to regard the Activities as accepted. The sending date of this notification is noted as the time of acceptance.

Article 10 Taking into use earlier

1. If the customer wishes to take the installation, or parts of it, into use before the planned delivery, parties will follow the procedure set out in Article 13 (amendments).The customer must approve the Activities concerning the installation, or parts of it, that he wishes to use earlier and sign for their completion before the date they are taken into use earlier. If the customer fails to do so and takes the installation into use notwithstanding, the installation will be deemed to have been approved and completed.
2. With regard to Article 16 (liability), such earlier taking into use will be regarded as delivery. Damage caused to the installation by taking into use as referred to in paragraph 1 of this Article will be paid for by the customer.

Article 11 Suspension, dissolution and termination

1. The customer is authorised to suspend the Activities. He is obliged to inform the technical contractor of this in writing, giving reasons, and to enter consultation as soon as possible with the technical contractor concerning the consequences.
2. If the technical contractor has to make adjustments to arrangements or measures as a result of the suspension, he is entitled to an extension of the term and/or compensation by virtue of Article 12.
3. If the Activities, or any part of them, are suspended or delayed, and the technical contractor cannot be held responsible for this, the customer is obliged to compensate the technical contractor for all the Activities carried out, calculated according to the state of the Activities, as well as for all reasonable costs incurred and still to be incurred that arise from obligations already commenced by the technical contractor with a view to further fulfilment of the Agreement, calculated from the moment of commencement of the suspension or delay.
4. If the Activities are suspended or delayed for more than two months by the customer or by a Force Majeure event, the technical contractor is authorised to dissolve the Agreement.
5. If the customer has applied for a moratorium, has been declared bankrupt or has failed to comply with the Agreement, the technical contractor is authorised to dissolve the Agreement.
6. The customer is authorised to terminate the Agreement in whole or in part at all times, subject to reasonable prior notice.
7. In the cases referred to in paragraphs 4 – 6 inclusive, the customer is obliged to pay the fixed price as set out in the Agreement, reduced by the savings arising for the technical contractor from the termination. If the price was fixed on the basis of the costs actually incurred by the technical contractor, the price owed by the customer will be calculated on the basis of the costs incurred, the work carried out and the profits that would have been made by the technical contractor on the complete execution of the Activities.
8. The customer is also obliged to compensate the technical contractor for damage sustained, without prejudice to the technical contractor's obligation to limit that damage as much as possible, unless the damage results from a shortcoming for which the customer cannot be held responsible.

Article 12 Extension of the term and/or compensation

1. Except for the provisions in Article 13, the technical contractor is only entitled to an extension of the term and/or compensation if:
   a) these conditions expressly provide for this and under the condition that the delay and/or costs are caused by circumstances for which the technical contractor cannot be held responsible, or
   b) they are caused by circumstances for which the customer is responsible and which the technical contractor did not have to warn against in accordance with his obligation in Article 3, paragraph 3, or
   c) unforeseen circumstances occur such that the customer cannot expect in reasonableness and fairness that the Agreement can continue unaltered.
2. If the technical contractor is of the opinion that he is entitled to an extension of the term and/or compensation, he will inform the customer of this as soon as possible in writing, stating reasons. He will also state all the direct and indirect costs, as well as a reasonable charge for general costs, profits and risk. He will then inform the customer of the consequences with regard to the schedule.

Article 13 Amendments (more and less work)

1. The customer is authorised to charge the technical contractor with amendments in writing to the Agreement, Activities, results of the Activities, commissions, the work plan and the inspection plan.
2. The technical contractor is not obliged to carry out an amendment he is charged with if the amendment:
   a) is not charged in writing, or
   b) would lead to an unacceptable disruption of the Activities, or
   c) exceeds his knowledge and/or skills and/or capabilities, or
   d) is not in his interests, or
   e) if parties cannot reach agreement about the financial consequences and the consequences regarding the schedule and the work plan.
3. If the technical contractor is willing to carry out the amendment, he will send the customer a written quotation including the following details:
   a) the balance, formed by all the direct and indirect costs, profits and risks associated with the amendment, reduced by any savings as a result of executing the amendment, and
   b) the adjustment to the Activities, schedule and work plan, and
   c) the adjustment to the instalment statement or payment conditions.
4. The technical contractor is entitled to a reasonable compensation of the costs associated with the quotation referred to in paragraph 3, regardless of whether the parties agree on the quotation.
5. The technical contractor is authorised to propose amendments to the customer if he sees a reason for them and assuming that the Activities and the results of the Activities will be in accordance with the Agreement.
6. The customer can either accept the proposals for amendments referred to in paragraph 5 or refuse to accept them without stating reasons. In the former case, parties will follow the procedure set out in this Article.
7. If the procedure connected to the amendment is delayed by circumstances for which the technical contractor cannot be held responsible, the technical contractor is entitled to an extension of the term and/or compensation by virtue of Article 12.
8. The lack of a written order concerning the amendment will leave the technical contractor's claims to payment intact.

Article 14 Prices and payment

1. The amounts agreed between the parties and the amounts stated in these general terms do not include turnover tax. The customer reimburses the technical contractor for the turnover tax due within the framework of the Agreement.
2. All prices and rates are based on a normal working week from Monday up to and including Friday. All Activities that are carried out outside the normal working hours per calendar day will be settled according to the rates and bonuses set out in the Agreement, on the basis of the normal working hours of the technical contractor. All waiting hours and/or cancellation hours for personnel and/or material of the technical contractor caused by the customer are settled on the basis of the rates set out in the Agreement.
3. The settlement of changes to wages, social security charges, prices, rentals and cargoes will take place in accordance with the risk regulations for installation technology, unless otherwise agreed.
4. Parties will agree a payment scheme in instalments. The technical contractor is authorised to submit the invoice for the final settlement as soon as the results of the Activities have been delivered, or else on the day on which the Agreement has been terminated or dissolved by virtue of Article 11. Submission of the invoice does not imply a surrender of the right to further claims on the part of the technical contractor within the framework of the Agreement.
5. Payment will take place without deductions or settlements, insofar as not otherwise agreed, within 2 weeks of the date of the invoice concerned.
6. The customer is in no event entitled to make payments for or on behalf of the technical contractor to his independent assistants.
7. In the first place, a payment extends to a reduction on all the costs and interest owed and ultimately to a reduction on the longest standing invoices payable, even if the customer states that the payment concerns later invoices.
8. The technical contractor can transfer (assign) his right to payment in whole or in part, or pledge it.

Article 15 Default of the customer

1. If the customer does not cooperate on time with an inspection or acceptance of the Activities, or does not make a payment owed on time, the technical contractor is entitled to compensation of interest at the legal interest percentage, in accordance with Article 6:119a of the Netherlands Civil Code, starting on the day on which the cooperation should have been given or on the final due date of payment. In that case, the technical contractor is also authorised to suspend the Activities, subject to reasonable prior notice.
2. If the cooperation or payment does not take place within one month of the final day on which it should have done so, the technical contractor can claim compensation of interest at the legal interest percentage increased by two per cent, starting on the day on which this month has elapsed, without notice from the technical contractor. In this case, the technical contractor is also authorised to dissolve the Agreement by virtue of Article 11.
3. If the technical contractor suspects that the customer is not meeting his obligations, or will not meet them, the technical contractor is entitled to request satisfactory assurances from the customer, for the customer's account and risk, such as a bank guarantee. If the customer is in default with providing the requested assurances, the technical contractor is authorised to suspend the Activities or to dissolve the Agreement by virtue of Article 11.
4. If the customer does not meet, or will not meet, his obligation to collect goods on time from the agreed delivery place, the technical contractor is authorised to store these goods for the account and risk of the customer or to sell them in a suitable way and to recover what is owed to him from the proceeds, providing he has given notice to the customer to collect the goods within 5 working days. The technical contractor is authorised to pay the surplus payable to the customer by settlement, also during his moratorium or bankruptcy.
5. All the actual costs incurred by the technical contractor in order to attain payment of invoices due, both judicial and extrajudicial expenses, will be paid by the customer, unless the technical contractor decides to determine these costs at a fixed amount of 15% of the amount to be paid.

Article 16 Liability and guarantee

1. After the time of delivery, the technical contractor is no longer liable for faults, unless:
   a) is found responsible for those faults, and furthermore,
   c) the customer could not reasonably discover those faults at the time of delivery.
2. If the technical contractor is liable by virtue of the provision in paragraph 1, he is only obliged to refund the direct material damage sustained by the customer as a result of the fault(s).
3. Direct material damage is never understood to mean: consequential loss, loss consequential on business interruption, loss of production, loss of turnover or profits, or decrease in value or loss of products or sums that would have been included in the operational costs if the Activities had been carried out well from the start.
4. Without prejudice to the provisions in this Article, the technical contractor guarantees to repair the faults for which he is liable at his own cost, or to limit or counteract the damage, during the period referred to in paragraph 10. If the costs of repair are not proportionate to the interests of the customer in the case of repair instead of compensation, and in the case that the installations were not erected in the Netherlands, the customer is not entitled to demand repair, but the technical contractor will pay compensation. Components replaced by the technical contractor become his property.
5. For the compensation of any other damage than that referred to in this Article, the technical contractor will only be liable if and insofar as the customer can prove that it is due to negligence or intentional misconduct of the technical contractor.
6. In the case of Activities that are for the customer's business operations, the technical contractor is only liable for damage that is not covered by the insurance(s) referred to in Article 5, paragraph 1, and in the case of Activities that concern products and installations that are to be exported by the customer to the US and Canada, the technical contractor is only liable for damage that is not covered by the insurance(s) referred to in Article 5, paragraph 2, without prejudice to the provisions in this Article.
7. If and insofar as the customer has insured any risk connected with the Agreement, he is obliged to claim any damage through this insurance and to indemnify the technical contractor against recourse claims from the insurer.'
8. The extent of the damage to be compensated by the technical contractor is restricted to the amount of the price set out in the Agreement or, if no price was determined on concluding the Agreement, as in the case of a cost-plus agreement, to the amount of the presumptive price. In the case of maintenance contracts with a duration of more than one year, the price is set at the total of payments for one year.
9. In no case, however, shall the compensation amount to more than the total of the amounts of the deductable of the insurance of the technical contractor and the payment made by the insurer to a maximum of € 1,000,000.00.
10. Any liability on the part of the technical contractor will lapse, unless otherwise agreed, when six months have elapsed from the time at which the Agreement has been ended, by delivery, dissolution or termination.
11. The legal claim on account of a fault cannot be brought if the customer has not informed the technical contractor of the fault in writing and stating reasons with reasonable speed after he has discovered the fault or after he had reasonably been expected to discover the fault.
12. The legal claim on account of a fault will lapse when one month has elapsed after the written notification of the fault with reasons.
13. The legal claim on account of a fault for which the technical contractor is liable by virtue of paragraph 1 cannot be brought if it is made later than six months from the day on which the Agreement was ended, by delivery, dissolution or termination, unless otherwise agreed.
14. The technical contractor is not liable for compensation of damage to the customer or third parties that is caused (wholly or in part) by a person or persons on secondment, as referred to in Article 6, paragraph 2.
15. The customer indemnifies the technical contractor against all claims by third parties concerning (product) liability resulting from a fault in a product or installation delivered by the customer to a third party that consisted (in whole or in part) of goods developed and/or delivered by the technical contractor, except if and insofar as the customer can prove that the damage is caused by those goods and without prejudice to the provision in paragraph 7 of this Article.
16. Insofar as not ensuing from the law or from the Agreement, the technical contractor is in any case not liable if a fault on the part of the technical contractor is the result of:
   - labour irregularities on the part of third parties or the technical contractor's own personnel;
   - shortcomings on the part of assistants;
   - transportation problems;
   - fire and loss of components to be processed;
   - measures taken by any domestic, foreign or international body, such as import bans or trade bans;
   - acts of violence or armed acts;
   - disruptions to the power supply, to communication links or to equipment and software belonging to the technical contractor or to third parties. In the event of circumstances referred to in this paragraph, the technical contractor will take those measures – for the purpose of restricting adverse consequences for the customer – that can be expected of him in reasonableness.
17. The customer indemnifies the technical contractor against claims by third parties for compensation of damage, insofar as this damage is for the account of the customer by virtue of these general terms.

Article 17 Intellectual property

1. The intellectual and industrial property rights to all the goods, details and (technical) information delivered to the customer remain with the technical contractor. The technical contractor has sole rights to the publication, realisation and copying of these goods, details and information, and the customer has sole rights of use of them.
2. The documents provided by the technical contractor to the customer, such as designs, plans, technical descriptions or tenders become the property of the customer and can be used by him, subject to the rights resulting from the regulations in the area of intellectual and industrial property, after the customer has met his financial obligations towards the technical contractor.
3. The customer is not permitted to construct a copy of the installation (in whole or in part) that has been realised on the basis of the technical contractor's design, without the express written permission of the technical contractor and without prejudice to the provisions in paragraphs 5 and 6. The technical contractor is authorised to attach conditions to this permission, including the payment of a fee. The provisions in this paragraph also apply to goods manufactured on the basis of the technical contractor's design.
4. The customer is only authorised to have the installation realised on the basis of the technical contractor's design by a third party, without the intervention and approval of the technical contractor, if the Agreement has been dissolved on account of a shortcoming for which the technical contractor can be held responsible. In that case, the technical contractor is not liable for faults insofar as they can be traced back to the installation by or on behalf of the customer.
5. The customer's right of use concerning the software developed and provided by the technical contractor is non-exclusive. The customer may only use this software in his own company or organisation and only for the technical installation for which the right of use has been granted. The right of use may concern several installations, insofar as that has been set out in the Agreement.
6. The right of use is not transferable. The customer is forbidden to provide the software and the carriers on which it is recorded to a third party in any way, or to let it be used by a third party. The customer is forbidden to make copies of the software. The customer will not change the software, other than for the purpose of fixing errors. The source code of the software and the technical information produced in its development will not be provided to the customer, unless otherwise agreed.
7. The technical contractor is authorised to apply for a patent for inventions that have been created during and through execution of the Agreement, in his own name and for his own account.
8. If the technical contractor obtains a patent as referred to in paragraph 7, he will grant the customer free right of use to the invention, that is non-transferable in principle. In the actual application of that right of use, the customer will request permission from the technical contractor, which permission can only be refused if the technical contractor can demonstrate a conflict of interests with his company.

Article 18 Applicable law and disputes

1. The law of the Netherlands is applicable to the Agreement and all agreements ensuing from it.
2. Every dispute between the technical contractor and the customer will be settled to the exclusion of the usual court by arbitration in accordance with the charter of the Stichting Raad van Arbitrage voor Metaalnijverheid en - Handel (Foundation Board of Arbitration for Mechanical Engineering Industry and Trade), in The Hague, as it stands three months before the date on which the Agreement is concluded.
3. With regard to the Agreement, the customer is obliged to elect domicile in the Netherlands, insofar as he is not already established in the Netherlands. In the absence of such domicile being elected, the customer will be regarded as having elected domicile in The Hague.

B. SPECIAL CONDITIONS REGARDING MAINTENANCE

The conditions in this section 'Maintenance' are applicable, alongside the General Conditions of these general terms, if an agreement sets out that the technical contractor will realise maintenance work during the maintenance period.

Article 19 Scope and definitions

1. Unless otherwise agreed, Maintenance Work will only be carried out on installations erected in Monaco.
2. In this section, the following meanings are given to the following words with a capital letter:
   a) Maintenance Work: all activities, including delivery of goods, which the technical contractor must carry out in order to ensure that the technical condition of the installation and the functions to be fulfilled by the installation meet the requirements pursuant to the Agreement during the maintenance period.
   b) Malfunction: a sudden, unexpected disruption to the performance of the installation.

Article 20 Execution of the Activities

1. During the maintenance period, the technical contractor will make every effort to keep the risk of Malfunctions occurring at an acceptable level through preventive Maintenance Work and, insofar as agreed, to counteract Malfunctions through corrective Maintenance Work.
2. The technical contractor is authorised to carry out the Maintenance Work at a distance, through a link to the installation created via means of telecommunication.
3. After drawing up the Agreement, but before the Activities commence, the technical contractor will make a work plan with a schematic overview of the Maintenance Work, and the order and period of time (weekly, monthly, annual schedule) in which it will be carried out.
4. The work plan is based on the customer's description of the malfunction behaviour of the installation, and of all the tasks, frequency of execution, materials, tools and any necessary skills, and everything for the execution of the preventive Maintenance Work and for controlling the corrective Maintenance Work.
5. The work plan will come into effect following approval by the customer. If the work plan fits the description given in paragraph 4, the customer cannot withhold his approval of the work plan.
6. The technical contractor will adjust the work plan annually and, on the basis of this, will make an estimate of all the maintenance costs for the year concerned. The work plan can only be adjusted in the interim through an amendment by virtue of Article 13.
7. If agreed, the work plan will include the date of commencement and delivery of foreseen and intended orders for the execution of preventive and/or corrective Maintenance Work and/or other activities.
8. The orders referred to in paragraph 7 will be given in writing by the customer, on the basis of the work plan, at least 1 month in advance. Orders not included in the work plan will be given in writing at least 2 months in advance. Prior to an order being given, the technical contractor will have stated his price for it.
9. In the execution of corrective Maintenance Work, the customer must give a written order in advance. If circumstances prevent this, the order must be given in arrears on the basis of the costs actually incurred by the technical contractor.
10. On completion of the Maintenance Work, the technical contractor will request the customer to sign the order for completion. After signing, the Maintenance Work is considered delivered.
11. If expressly agreed, the technical contractor will ensure that one copy of the technical information is present at the site or the location where the Maintenance Work is carried out, and that these documents can be consulted at any reasonable time and that the 'As Built' situation of the Maintenance Work carried out is included in them for a payment set out in the Agreement.
12. If required for the performance, operational safety and maintainability of the installation, or if outlined in the regulations referred to in Article 3, paragraph 7, the technical contractor will inform the customer about the measures to be taken. The customer can give a separate order to the technical contractor for the necessary constructional adjustment or for other (project-based) activities, through an amendment by virtue of Article 13.
13. The technical contractor will inform the customer in advance of the time at which the Maintenance Work will be carried out. If the Maintenance Work is not carried out at the agreed time and the technical contractor cannot be held responsible for this, he is entitled to an extension of the term and/or compensation by virtue of Article 12.
14. If expressly agreed, the technical contractor will ensure that Malfunctions can be reported 24 hours a day and seven days a week to a help desk to be made known.
15. Without prejudice to the provision in paragraph 9, the technical contractor will make every effort to counteract an urgent Malfunction by order of the customer within 24 hours of it being reported, unless another period has been agreed. Other Malfunctions will be repaired, where possible, within the normal working hours of the technical contractor.
16. The technical contractor will carry out the Maintenance Work during the maintenance period set out in the Agreement or, where this has not been set out, for a period of one year.
17. Each time, the maintenance period will be tacitly extended again for the original period, unless one of the parties terminates the Agreement in writing, with a period of notice of three months before the end of the period concerned.
18. The Maintenance Work carried out by the technical contractor is settled in accordance with the rates or unit prices set out in the Agreement or as a fixed price that is indexed annually in accordance with the risk regulations for installation technology, unless otherwise agreed.
19. Payment of the fees will take place within 2 weeks of the date of the invoice concerned.
20. Termination of the Agreement by the customer by virtue of Article 11, paragraph 6, requires written notification. In the case of termination of the whole Agreement, the customer must observe a period of notice of at least 6 months, and for termination of an order to carry out Maintenance Work, a period of notice of at least 1 month.

Risk Regulations Installation Technology as part of ALIB 2007

Settlement of wage cost adjustments: (L2-L1)/L1 x 100%= ...% L1: wage level as of date of tender L2: wage level as of date of adjustment Wage level: CBS index wages per hour according to the Collective Labour Agreement, including special remuneration, series relating to construction industry

Settlement of material prices: (M2-M1)/M1 x 100%= ...% M1: price-index figure as of date of tender M2: price-index figure as of date of adjustment Price-index figure: the material index figure set by the Commissie Risicoregeling Woning- en Utiliteitsbouw (Risk Regulations Committee for Residential, Commercial and Industrial Building)