

## **GENERAL DRAFTING AND ENGINEERING CONDITIONS 2019**

General terms and conditions of **Brabetech B.V.** in **Boekel-NL**.

### **Article 1: Applicability**

- 1.1 These conditions apply to all offers made by **Brabetech B.V.**, to all agreements concluded by him/her and to all agreements that may ensue from it.
- 1.2 **Brabetech B.V.** is referred to as the contractor. The other party is referred to as the client.

### **Article 2: Offers**

- 2.1 All offers are without obligation.
- 2.2 If his offer is not accepted, the contractor will be entitled to charge the client for all costs he had to incur in order to prepare the offer.

### **Article 3: Intellectual property rights**

- 3.1 Unless agreed otherwise, the contractor reserves the copyrights and all industrial property rights on his offers, his designs, drawings, sketches and all other images of his design, scale models, (test) models, calculations, software, etc.
- 3.2 The rights to the data referred to in article 3.1 remain vested in the contractor, regardless of whether the client has been charged for the creation thereof. This data may not be copied, used or disclosed to third parties without the explicit written consent of the contractor.
- 3.3 The client owes the contractor an immediately due and payable penalty of €25,000 for each violation of article 3.2. This penalty can be claimed in addition to compensation by virtue of the law.

### **Article 4: Execution period**

- 4.1 The execution period is stipulated by the contractor by approximation.
- 4.2 When stipulating the execution period, the contractor assumes he will be able to execute the instruction under the conditions known to him at that time.
- 4.3 The execution period does not commence until an agreement has been reached on all technical and commercial details, until all necessary information is in the possession of the contractor, the agreed payment (or instalment) has been received and the necessary conditions for the execution of the instruction have been met.
- 4.4 In the event of circumstances other than those known to the contractor at the time he stipulated the execution period, the contractor will be entitled to extend the execution period to the extent needed to execute the instruction under these circumstances. If the work cannot be scheduled into the timetable of the contractor, it will be carried out once his timetable allows it.
- 4.5 Exceeding the agreed execution period does in any case not constitute a right to compensation unless agreed in writing.

### **Article 5: Remuneration**

- 5.1 The extent of the remuneration due to the contractor for his work is determined by the parties in writing prior to the instruction being concluded if so desired. The remuneration is calculated by one of the methods given in articles 5.2 and 5.3, another standard to be agreed on by the parties or a combination thereof.
- 5.2 If the parties agree on calculating the remuneration on the basis of time spent, the remuneration is calculated by multiplying the rate per time unit agreed on by the parties by the number of time units spent by the contractor on executing the instruction.
- 5.3 If the parties agree on a fixed remuneration amount, this amount will be agreed on in writing upon conclusion of the instruction. The fixed amount is expected to serve only as remuneration in return for the activities detailed in the instruction in terms of scope and duration.
- 5.4 The client must pay a separate fee for changes to be implemented by the contractor.

- 5.5 If the changes referred to in article 5.4 are the result of an imputable shortcoming on the part of the contractor, the client, in derogation from article 5.4, will only owe a separate fee insofar as these costs are based on work that would have been necessary even if the instruction had been fulfilled correctly.
- 5.6 The remuneration is reviewed in joint consultation in the event of changes to the instruction pursuant to article 7.

#### **Article 6: Impracticability of the instruction**

- 6.1 The contractor is entitled to suspend fulfilment of his obligations if the contractor, due to circumstances which could not have been foreseen at the time of conclusion of the agreement and which are outside his sphere of influence, is temporarily unable to fulfil his obligations.
- 6.2 Circumstances which could not have been foreseen by the contractor and which are outside his sphere of influence include suppliers and/or subcontractors of the contractor not fulfilling their obligations or not fulfilling them in time, weather conditions, earthquakes, fire, loss or theft of tools, the loss of materials, road blocks, strikes or walkouts and import and trade restrictions.
- 6.3 The contractor is no longer entitled to suspend if the temporary impossibility to perform has lasted for more than six months. The agreement can only be dissolved after the expiry of this term and only for those obligations not yet fulfilled. In that case, the parties are not entitled to compensation for any damage or loss suffered or to be suffered as a result of the dissolution.

#### **Article 7: Changes to the instruction**

- 7.1 The parties will consult each other about changes to the instruction if:
  - changes occur in the basic assumptions or other circumstances that formed the basis of the instruction; and/or
  - the proper execution of the instruction requires extra work to be carried out.
- 7.2 The instruction may, in any case, be changed:
  - in the event of relevant changes to (government) regulations or decrees;
  - in the event of relevant changes to the schedule of requirements or the original instruction;
  - in the event the client requires changes or alternatives to work that has already been approved, or to work that forms part of a phase that has already been approved;
  - if it emerges during the execution of the instruction that extra work needs to be carried out.

#### **Article 8: Execution of the instruction**

- 8.1 The contractor will make every effort to execute the instruction correctly and to look after the interests of the client to the best of his abilities.
- 8.2 The contractor will keep any information disclosed to him by the client confidential to the extent he is aware of its confidentiality or to the extent the contractor knows or reasonably should know that this information is confidential.
- 8.3 The contractor keeps the client informed of the execution of the instruction. When asked, the contractor will to the best of his ability provide all information, including information about the progress of the instruction, changes to (government) regulations or decrees, and changes in relation to the financial aspects of the instruction.
- 8.4 The instruction is executed in accordance with the agreed time schedule. Unless explicitly agreed otherwise by the parties, the deadlines given in the agreed time schedule are not final deadlines.
- 8.5 The contractor will not start on the next phase until the client has granted his consent in that respect. This consent is deemed to include the consent of the previous phases, except when the client has explicitly refrained from consenting to some elements of the work.

- 8.6 The contractor is obliged to warn the client when information and/or data provided by or on behalf of the client or decisions taken by or on behalf of the client seem to contain errors or faults that would cause the contractor to violate the standards of reasonableness and fairness if he were to rely on them without warning when executing the instruction.
- 8.7 The client cannot derive any rights from advice and information received from the contractor, if not directly related to the actual instruction.
- 8.8 The contractor is authorised to instruct others to carry out work under his supervision and to leave the management of some elements to others, without prejudice to his responsibility for correct fulfilment of the instruction.
- 8.9 Unless explicitly agreed otherwise in writing, the aesthetic value is disregarded when assessing the correct fulfilment of the instruction. This does not change the fact that reasonable requirements must be met in that respect.

#### **Article 9: Obligations of the client**

- 9.1 The client conducts as a proper and meticulous client towards the contractor. He is obliged to keep all information from the contractor confidential to the extent he is aware of its confidentiality or to the extent the client knows or reasonably should know that this information is confidential.
- 9.2 The client is responsible for both the prompt provision and the correctness of the information, data and decisions provided by or on behalf of him in order to properly execute the instruction. He indemnifies the contractor against third-party claims regarding such information, data and decisions.
- 9.3 The client will promptly assess documents prepared by the contractor as part of the execution of the instruction and, if so required, certify them after approval.
- 9.4 The client is obliged to warn the contractor promptly when he notices a shortcoming on the contractor's part in the advice.
- 9.5 The client will pay the amounts he owes the contractor no later than the dates agreed on in the payment schedule or indicated on the contractor's invoices.

#### **Article 10: Liability**

- 10.1 The contractor is liable for the damage suffered by the client only when such damage is the direct and exclusive result of a shortcoming that can be attributed to the contractor.
- 10.2 In these conditions, an attributable shortcoming is taken to mean a shortcoming which a correctly and prudently acting consultant with the required expertise and resources could and should have avoided under the circumstances in question and when he had exercised normal caution.
- 10.3 The following do not qualify for compensation:
  - a. trading loss such as business interruption loss, production loss, loss of turnover and/or profits, a decrease in value of products and amounts that would have been included in the execution costs if the instruction had been executed correctly from the start. The client must take out insurance against this damage, if so desired;
  - b. damage as a result of intent or wilful recklessness by auxiliary staff or non-managerial subordinates of the contractor.
- 10.4 Following consultation with the client, the contractor is entitled to remedy any shortcomings he is liable for at his own expense or to reduce or cancel out the damage that ensues from those shortcomings.
- 10.5 If the contractor uses another person for the fulfilment of the instruction, the contractor, without prejudice to the provisions of article 10.3, is liable for the shortcomings of this person in the same way he is liable for his own shortcomings, unless this person was assigned by the client.
- 10.6 If an assigned person as referred to in article 10.5 does not perform or fails to do so properly or in time and the contractor has done everything reasonably possible to secure fulfilment and/or compensation, the client will pay the contractor the additional costs or expenses, insofar as these are not paid by this person. On the client's

demand, the contractor will assign his claim against this person to the client up to the amount paid to the contractor by the client.

- 10.7 The contractor is liable for compensation for damage other than referred to in this article only if and insofar as the shortcoming can be attributed to intent or gross negligence on the part of the contractor.
- 10.8 Without prejudice to the provisions of the previous paragraphs, the contractor is, in the case of instructions that relate to the execution of an object, liable only for damage that is not covered by customary CAR insurance, assembly insurance or similar types of insurance. The client has to make sure that such insurance is taken out.
- 10.9 If and insofar as the client has insured any risk attached to the instruction, he is obliged to claim any damage under that insurance and indemnify the contractor against claims for recovery by the insurer.

### **Article 11: Extent of the compensation**

- 11.1 For each instruction the damage to be compensated by the contractor is limited to an amount that is equal to the remuneration due to the contractor for fulfilment of the agreed performance, subject to a maximum of €1,000,000.
- 11.2 In derogation from article 11.1, the damage to be compensated amounts to a maximum of €75,000 for instructions for which the client is a consumer and the contract price for each instruction is less than €75,000.

### **Article 12: Indemnity period and expiry**

- 12.1 Any liability of the contractor will lapse by the passage of five years from the day on which the instruction has ended on account of completion or termination.
- 12.2 A legal claim based on an attributable failure will not be actionable if the client has failed to promptly declare the contractor in default in writing, stating the reasons, within a reasonable time after he discovered or could reasonably have discovered the failure.
- 12.3 The right to claim pursuant to an attributable failure will lapse two years after submission of the written and reasoned notice of default.
- 12.4 The legal claim pursuant to an attributable failure will not be sustainable if it is brought more than five years after the end date of the instruction on account of completion or termination.
- 12.5 For the application of articles 12.1 and 12.4, the day on which the instruction has ended is regarded as the day on which the contractor has notified the client in writing that the instruction has ended. The invoice for the final instalment in relation to the instruction will be regarded as such notification.

### **Article 13: Payment**

- 13.1 Payment is made at the place of business of the contractor or into a bank account designated by the contractor.
- 13.2 Regardless of the agreed payment terms, the client, at the request of the contractor and at his discretion, is obliged to provide sufficient security for payment. If the client fails to do so within the set term, he will automatically be in default. In that case, the contractor is entitled to dissolve the agreement and recover any damage incurred from the client.
- 13.3 The client's right to set off his claims against the contractor is excluded unless the contractor has gone bankrupt.
- 13.4 The claim for full payment becomes immediately due and payable if:
  - a. a payment term has been exceeded;
  - b. the client has gone bankrupt or has applied for a moratorium;
  - c. goods or claims of the client are seized;
  - d. the client (legal entity) is dissolved or wound up;
  - e. the client (natural person) is allowed to participate in a debt management scheme, is placed under guardianship or dies.
- 13.5 If payment is not made within the agreed payment term, the client owes the contractor interest immediately. The interest stands at a minimum of 12% per year, yet is

equal to the statutory interest rate should that be higher. When calculating the interest rate, part of a month is regarded as a full month.

- 13.6 If payment is not made within the agreed payment term, the client owes the contractor all judicial and extrajudicial costs, subject to a minimum of €75.00.

These costs are calculated on the basis of the following table:

On the first €3,000	15%
in excess of the above, up to €6,000	10%
in excess of the above, up to €15,000	8%
in excess of the above, up to €60,000	5%
in excess of the above, from €60,000	3%

If the extrajudicial costs effectively incurred are higher than what follows from the above calculation, the costs effectively incurred will be due.

- 13.7 If during legal proceedings the decision is made in favour of the contractor, all costs incurred by him in relation to these proceedings will be payable by the client.

#### **Article 14: Applicable law and competent court**

14.1 Dutch law applies.

14.2 The Vienna Sales Convention (C.I.S.G.) does not apply, nor does any other international regulation allowed to be excluded.

14.3 Only a Dutch civil court with jurisdiction in the contractor's place of business will hear any disputes, unless this is in conflict with mandatory law. The contractor may deviate from this jurisdiction rule and apply the statutory jurisdiction rules.