

General Terms of Contracting Installing Companies (ALIB '92)

The following general terms have been translated from Dutch. In case of contradictions between the Dutch and the 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.

Determined by the: Association of Electrotechnical Contractors – Uneto, The Netherlands Association of Installing Companies (VNI), The Netherlands Association for the Lift Industry (NVL).

I General stipulations

Applicability

- 1 These general terms are applicable to all offers formulated by the contractor and to any agreement which has been closed between the latter and the client. They also apply to all obligations arising from agreements which have been closed at a later date between contracting parties. The application of any general terms which are appealed to by the client, is specifically refused.

Definition

- 2 By work as referred to in these terms, is understood the agreed activities in their entirety (including any possible designs) and / or deliveries.

II Offer

- 3 The offer is free of engagement, includes a statement of the method of payment and gives an indication of the price and the price-making method: fixed price contract or cast-plus.
- 4 The documents which form a part of the offer (such as drawings, technical descriptions and the like) are of accurate a nature as possible, are not binding, however, and remain the (intellectual) property of the contractor. They are not permitted to be used, copied or handed over to a third party or made public in any other manner, without his consent.
- 5 Be it the case, that the client does not accept the offer, he is obliged to immediately- by return to the contractor, all the information referred to in the previous section.
- 6 The contractor is entitled to charge the costs involved in the offer, provided that he has supplied the client in advance, with a written indication of these casts.

III The coming about of the agreement

- 7 Be it the case, that the offer of the contractor is accepted, the agreement only comes into being at the moment when the contractor:
 - either confirms the acceptance within a reasonable period of time;
 - or commences the execution of the work.
- 8 The contractor can only be required to commence work, after he has gained possession of all the information necessary for this purpose and the agreed payment (instalment) has been received by him.

IV Execution of the agreement

Obligations on the part of the contractor

- 9 The contractor is obliged to cover his liability risk by way of insurance, in accordance with what is common practice in the sector. To this end, he shall at least take out a liability insurance policy for businesses (A VB policy) with an insured amount of at least one million guilders per incident, in case of which a series of related events is considered as one incident.

- 10 On request by the client, the contractor shall submit the documents which show that he has taken out this insurance policy.
- 11 With the execution of the work, the contractor shall take into account those regulations which have been declared applicable. Any possible financial consequences of alterations to these regulations which may take place between the time of the offer and the date of completion of the work, shall be insured as additional work.
- 12 In those cases necessary, the contractor shall inform and instruct the client or the person appointed by the latter, on the subject of the setting into action and keeping operable of the work delivered. The extent, date of commencement and duration of the obligations referred to, shall be determined in reasonableness by the contractor.

Obligations on the part of the client

- 13 The client is obliged towards the contractor to make possible the execution of the work within the normal working hours of the contractor and under those conditions which meet the legal safety requirements and any other government regulations.
- 14 The client shall ensure that the contractor has at his disposal on time, the documents of approval required for the work (such as permits and exemptions) and the information to be provided by him for the benefit of the work.
- 15 The client shall make available on time, 'the provisions for connection for the benefit of the power required for the work and the testing thereof. The client is responsible for the costs of the required power.
- 16 The client is responsible for the application for connection of the installations to the mains of the utility company concerned, or otherwise to the various public transmission mains. The connection charges are to be made to the client: The contractor shall provide instructions with regard to this matter within his field of profession.
- 17 The client is obliged to ensure, that all activities to be performed by a third party (such as those of a constructional nature): and /or those deliveries which do not form a part of the work of the (contractor), are executed in such a manner, that the completion of the work is not subjected to any delay which may result from this. Be it the case, that a delay as referred to in this section nevertheless occurs, the client is obliged to inform the contractor of this matter immediately.
- 18 Be it the case, that the commencement and the progress of the work are delayed due to circumstances for which the client bears responsibility (of the kind referred to in section 17, for example), the resulting damage suffered by the contractor is to be compensated for by the client.
- 19 The client is responsible for the being available on time of the proper and safe auxiliary appliances for the horizontal and vertical shifting of any heavy components required for the work and for the accessibility of the place of execution of the work, as well as for the suitability of the paths of access to the place of work.
- 20 The client shall bear the risk for any damage to and loss of materials, components or tools which have been brought in to the place of work, if and insofar as he is responsible for the guarding thereof.

- 21 The client shall bear the risk for any damage which is caused by the faulty or unfit nature of any objects which belong to him or, as the case may be, the use of which has been prescribed, or which are to be obtained from a particular supplier, and for the failure to deliver or failure to deliver on time, of the objects referred to.
- 22 The client shall bear the risk for any damage which is caused by any errors or defects in relation to the drawings, calculations, constructions, work specifications and work instructions which have been supplied by him.
- 23 The client shall bear the risk in case of inadequate compliance with the agreement, which is to be attributed to the assistant workers whom he requires to be employed.
- 24 The client shall bear the risk for any damage which can be attributed to the wrongful acts of additionally employed contractors and their assistant workers.
- 25 The client shall bear the risk for the design which has been drawn up by the contractor, if and insofar as it has been approved by him.
- 26 The client shall indemnify the contractor from all third-party claims for damages, which remain payable by the client by virtue of these terms, including any damages resulting from infringements on intellectual and industrial rights of ownership.
- 27 The client shall permit the contractor the application of any indication of name or advertising at the work site or on the work itself.

Activities for which the agreement fails to provide

- 28 The client shall not be entitled to order any of the persons who have been called in by the contractor to assist in the completion of the work, to perform activities which are not related to the work.

The taking into account of additional or less work

- 29 Additional or less work shall be taken into account:
- if there are changes in the specifications (alterations to work specifications, the work itself or the conditions with regard to the execution of the work);
 - if there are differences in provisional sums, estimated quantities and/or adjustable quantities;
 - in those cases, as have been determined under these terms.
- Each one of the totals, or else the balance of the additional payments and deductions resulting from alterations to the work plan, must not exceed to more than 15 or 10% of the contract sum.
- 30 The additional work shall be taken into account by lump sum, on the occurrence of the next term of payment. Should an instalment plan not have been agreed to, on completion thereof.
- 31 The less work shall be taken into account by lump sum in the final payment.
- 32 Be it the case, that the sum total of the less work should exceed that of the additional work, the contractor shall be entitled to a sum equal to 15% of the difference between these two sums.
- 33 The absence of a written order for additional work shall leave intact the right to the taking into account thereof on the part of the contractor.

Cost-increasing circumstances

- 34 On the occurrence of cost-increasing circumstances, the contractor is obliged to inform the client of this matter as quickly as possible.
- 35 Cost-increasing circumstances, for which the contractor cannot be held responsible shall be taken into account as additional work.

Force Majeure

- 36 In case of force majeure, the contractor is qualified without judicial intervention to either suspend the execution of the work for six months at the longest, or to cease work at a stage of non-completion, without

his being liable for any damages. All expenses having been incurred by the contractor up to that time, shall be claimable at once and fully.

- 37 Understood by force majeure are those circumstances which could not, in fairness, have been required to be anticipated by the contractor at the time of the closing of the agreement and which were not known to him either included in these circumstances are, amongst other things, the failure to meet obligations by the suppliers of the contractor, problems with transport, fires, strikes or work stoppages, loss of the parts to be processed, import or trade embargoes.

Completion and Acceptance

- 38 The agreed time of completion shall be observed as much as possible, though shall never be considered to be a deadline. In case the time of completion is exceeded, the contractor shall enter into consultation with the client.
- 39 The work shall be considered completed and accepted:
- either, when the contractor has informed the client that the work has been completed, tested and is ready for operation and the work has been approved or accepted by the latter;
 - or, when a term has expired of eight days at the most, after the contractor has submitted a written declaration to the client, stating that the work has been completed, tested and is ready for operation and the latter has neglected to approve or else accept the work within this term;
 - or, when the client brings the work into operation (prematurely), on the understanding that by putting a part of the work into operation (prematurely), this part shall be considered as delivered.
- 40 Minor defects which can be repaired within the period of guarantee and which are of no influence on the proper functioning of the work, shall not stand in the way for withholding approval.
- 41 On completion, the contractor is relieved of all liability for any defect which should, in fairness, have been discovered by the client at that point in time.
- 42 As a result of completion, the risk in relation to the work is transferred from the contractor to the client.

Rescission

- 43 Without prejudice to the rights to which he is further entitled, the contractor is qualified without judicial intervention and without proof of default, to either suspend the execution of the work, or cease work at a stage of non-completion, if the client:
- has applied for a moratorium, or if the latter has been granted to him;
 - has been declared to be in a state of bankruptcy or has submitted an application to this effect;
 - has failed to meet a certain obligation or if it is to be foreseen by the contractor that he shall fail in this respect.
- Cessation and suspension shall take place by means of a declaration in writing, without the contractor's being liable for the payment of any damages or the awarding of any guarantee.
- 44 All possible claims against the contractor, which the client may have or may arrive at in those cases, shall be payable at once and fully.

V Payment

Security

- 45 After the agreement has been entered into, the contractor is entitled to demand sufficient security from the client, if he has proper reason to fear that the client shall fail to meet his obligation to payment. Section 43 shall apply in a corresponding manner, should the client fail to provide the security demanded by the contractor.

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46 All prices are VAT extra and are to be charged in accordance with the 'Installation price adjustment system' *. The installer shall inform the client in that case, about the ratio of wages to material which is used in the offer.

Payment

47 Payment by the client shall take place in instalments, in proportion to the progress (cost-plus) or duration (contracting) of the work, without his being eligible for any discount or deduction.

48 With the cost-plus method, payment must always take place within thirty days at the most, after the invoice date. Payment in advance shall take place within seven days at the most, after the making of the agreement.

49 With the fixed price contract, payment shall take place as follows:

- 30% within seven days at the most, after the making of the agreement;
- 30% within thirty days at the most, after the expiry of 30% of the total duration of the work;
- 30% within thirty days at the most, after the expiry of 60% of the total duration of the work;
- 10% within thirty days at the most, after completion of the work.

50 Payment for the additional work shall take place in accordance with section 48.

51 Be it the case, that payment has failed to take place on time, the client is considered to be in default and the contractor shall be qualified to suspend work and discontinue the guarantee, without prejudice to any further rights to which he has a claim.

52 After the client has come to be in default, the contractor is qualified without further proof of default, to proceed with the collection of the amount payable to him. All legal and non-legal expenses involved are to be charged to the client, unless the contractor prefers to determine these expenses by way of a lump sum, at 15% of the amount payable.

53 For the period of time, during which the client has made default in payment, the contractor may charge interest on the amount payable to him. On an annual basis, this interest shall equal the legal rate of interest, increased by 2 %.

54 A payment made by the client shall in the first place, be deducted from all costs payable and interest due and shall finally be deducted from the bills claimable, which have been outstanding for the longest time, even if the client states that the payment applies to later bills.

Conditions of ownership

55 The contractor shall remain to be the owner of all objects (such as materials and components), as long as the client has failed to meet his obligations to payment by virtue of this agreement, including that which the client may come to be owed in connection with his being remiss in his obligations.

VI Guarantee

56 The contractor undertakes, within the limits of the following stipulations, to repair free of charge any defects which were already present at the time of completion but only became apparent within six months after completion.

57 This obligation only extends to defects which in fairness, could not be perceived at the time of completion and which become apparent under normal operating circumstances and with the proper use of the work. It does not extend to any defects which are the result of insufficient maintenance by the client, of alterations having been applied without the written permission of the contractor or of repairs having been performed by the client, or to the normal wear and tear or those defects for which the client is responsible in pursuance of sections 21 to 23 inclusive.

58 In order to be able to appeal to the rights deriving from section 56, the client is obliged:

- to inform the contractor forthwith, in writing of the defects having been detected;
- to make a reasonable case to the contractor that the defects are to be attributed to the lesser quality or inadequate completion of the work, if and insofar as the contractor is responsible for the design of the work, that they are the direct result of an error for which the contractor is to blame, without prejudice to the stipulations of section 25;
- to render full assistance to the contractor, in order to enable him to remove the defects within a reasonable period of time.

59 The faulty components having been replaced by the contractor, become the property of the latter.

60 Be it the case, that in the opinion of the contractor, the costs of repair bear no relation to the interests involved on the part of the client in the repair, the client is entitled to damages.

VII Liability on the part of the contractor

Before completion

61 The contractor shall repair at his own expense, any damage to the work which has occurred prior to the completion of the work, unless he is not responsible for the cause of this damage or it is unreasonable on any other grounds that this damage is to be charged to him, without prejudice to the stipulations of section 20.

62 The contractor is liable for any damage which has been suffered by the client to either persons or objects other than the work, insofar as this damage was brought about through the execution of the work and is to be blamed on the contractor or on persons employed by him, if and insofar as this liability is covered by his insurance.

63 The two previous sections both apply in a corresponding manner, if the contractor performs any activities under the terms of the guarantee which he is obliged to provide in pursuance of section 56.

After completion

64 After completion, the contractor is only liable for defects concerning the work, insofar as the fulfilment of his obligation to the provision of guarantee, as described in sections 56 to 60 inclusive, is concerned.

65 The contractor is only liable for damage which has been suffered by the contractor as a result of defects as referred to in section 56, if and insofar as this liability is covered by his insurance.

Amount of damages

66 Be it the case, that in pursuance of sections 62 and 65, the contractor is liable for compensation of the dama-

* Installation price adjustment system

Adjustment modifications to labour costs: $(L2-L1)/L1 \times 100\% = \dots \%$
L1: Wage level as of date of offer;
L2: Wage level as of date of modification
Wage level: Wages per hour, in accordance with Central Statistics Office regulations, construction and installation companies

Adjustment material prices $(M2-M1)/M1 \times 100\% = \dots \%$
M1: Price-index figure as of date of offer;
M2: Price-index figure as of date of modification
Price-index figure: Central Statistics Office index figures of seller's prices domestic sales

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ge which is suffered by the client, this compensation shall amount to no more than the sum total of the excess amounts of his insurance and the payment made by the insurance.

- 67 For any damage other than referred to in the previous sections, which could be suffered by the client, the contractor can never be held liable,
- 68 The restrictions included in the previous sections do not apply if the damage is caused by intent or gross guilt on the part of the contractor or his subordinates in charge,
- 69 All claims to compensation or repair for damages suffered before or after completion are cancelled, if they not have been made known on the day of completion or on the day on which the period of guarantee expires, at the latest.
- 70 The legal claim to damages or to repair of client towards the contractor in pursuance of these terms, becomes prescribed when one year has passed after the client has issued a protest regarding a certain matter,

VIII Final stipulation

- 71 To the agreement and to any agreement arising from it, Dutch law applies exclusively.
- 72 Every dispute between contractor and client, shall be settled to the exclusion of the ordinary judge by the Court of Arbitration for the Metal Industry and Trade (Raad van Arbitrage voor de Metaalnijverheid en -Handel).
- 73 The contractor is qualified, in contravention to the previous section, to let the dispute be settled by the common courts of law in the town or district in which the contractor is established.