

**VISSER & SMIT HANAB B.V.**  
**GENERAL TERMS AND CONDITIONS GOVERNING**  
**PROCUREMENT AND OUTSOURCING**

Version: April 2013

Lodged with the Rotterdam Chamber of Commerce and Industry

The following terms bear the meaning assigned to them for the purposes of these general terms and conditions governing procurement and outsourcing ('Terms and Conditions'):

V&SH:	the private company with limited liability, Visser & Smit Hanab B.V., which has its registered office in Papendrecht, the Netherlands, and all of its associated legal entities and businesses in so far as those legal entities and businesses have declared that these Terms and Conditions will govern any agreement which they conclude;
Contractor:	any natural person, legal entity or business without legal personality with whom or which V&SH has entered into an Agreement or is conducting negotiations for this purpose;
Parties:	V&SH and a Contractor;
Agreement:	any agreement entered into between the Parties for the purposes of supplying goods to V&SH (which is deemed to include the performance of any work associated with such supply) and/or carrying out work at the behest of V&SH (which is deemed to include the performance of design work, the creation of tangible works and the provision of services), any addendum to and/or amendment of this agreement, as well as any <i>de facto</i> or legal act undertaken for the purposes of preparing for and executing the aforementioned agreement, which is deemed to include a request made by V&SH for the submission of a quotation and any offer made by a Contractor;
Building Contract:	an agreement entered into between V&SH and a Client;
Client:	the client pursuant to a Building Contract.

**Article 1 – Scope of application**

- 1.1 In so far as is not explicitly agreed otherwise, the following shall apply exclusively to all Agreements, which are deemed to include additional and subsequent agreements, as though they were literally incorporated in them:
- a. the specifications pertaining to a Building Contract in so far as they directly or indirectly relate to the relevant Agreement, as well as any addition to or amendment of the relevant part of those specifications, which is deemed to include any official report or list of designations, all always including any accompanying physical and electronic records;
  - b. these Terms and Conditions;

- c. all other physical and electronic documents that are binding on V&SH in relation to the Client concerned pursuant to the relevant Building Contract in so far as those documents directly or indirectly pertain to the Agreement in question.

In the event that V&SH fails to provide a Contractor with one (1) or more of the documents referred to in Subclause (a), (b) or (c) before or when the relevant Agreement is concluded, that Contractor shall have a duty to request those documents from V&SH in writing and the latter shall have a duty to comply with that request forthwith. Under no circumstances may the Contractor rely on its lack of knowledge of one (1) or more documents that are applicable pursuant to the foregoing. In the event of a conflict between what is stipulated in Subclause (a), (b) and/or (c) and the provisions of the relevant Agreement, the latter shall prevail. In the event of a conflict between the provisions of Subclauses (a), (b) and (c) those previously mentioned shall prevail over those that are subsequently mentioned, except in so far as these Terms and Conditions explicitly derogate from any provisions in the relevant specifications.

**1.2 Any general terms and conditions employed by a Contractor shall not apply and VS&H explicitly rejects them.**

- 1.3 Any derogation from an Agreement, these Terms and Conditions and/or any other applicable documents shall only be binding, provided that V&SH provides the relevant Contractor with written confirmation thereof, and shall only apply to the situation in question.

- 1.4 These Terms and Conditions have been drawn up in Dutch and English. In the event that there is a difference of opinion concerning the substance or purport of these Terms and Conditions, the Dutch version shall be binding.

**Article 2 – Offers and contracts**

- 2.1 A written offer addressed to V&SH shall be irrevocable and shall be binding on the Contractor concerned for four (4) weeks following the date of that offer or for as long as is mentioned in that offer.
- 2.2 Any costs that are associated with the submission of an offer, which are deemed to include any expenses that are incurred by or on behalf of a Contractor for advice, drawings and the like, shall be borne by that Contractor and shall not be paid for by V&SH.
- 2.3 A Contractor shall be required to sign any contract that has been sent to it without amending it, and to return it to V&SH within eight (8) days after the date on which the contract was sent.
- 2.4 An Agreement shall be concluded at such time as (a) V&SH accepts an offer made by a Contractor in written or electronic form within the term of validity of that offer, (b) V&SH receives a written copy of the written contract issued by it which has been signed by the relevant Contractor, or (c) a Contractor starts to execute a written contract awarded by V&SH.
- 2.5 A Contractor shall be deemed to be familiar with all legal and other regulations and standards governing the execution of the relevant Agreement.
- 2.6 An Agreement shall be entered into subject to the suspensive conditions that the Building Contract concerned is concluded, that V&SH obtains the relevant Client's

approval to engage the Contractor concerned, and that all of the work for which the contract has been awarded actually goes or can go ahead.

- 2.7 Where an Agreement is concluded with two (2) or more contractors, they shall always be entirely liable and shall be severally bound in relation to V&SH.

### **Article 3 – Outsourcing and hiring of workers**

- 3.1 A Contractor shall not be permitted to outsource all or part of the execution of an Agreement without V&SH's prior written consent.
- 3.2 In the event that a Contractor outsources the execution of all or part of an Agreement, that Contractor shall be required to draw up a written agreement between it and such third party of which these Terms and Conditions shall constitute part and which shall also be 'back to back' with that Agreement in the sense that the Contractor shall assume the legal position of V&SH and the third party that of the Contractor.
- 3.3 Outsourcing shall not affect the undertakings given by a Contractor to V&SH.
- 3.4 A Contractor shall not have the power to use any workers placed at its disposal without V&SH's prior written consent.
- 3.5 In the case of outsourcing and/or hiring of workers a Contractor shall comply with all applicable provisions of the law and shall indemnify V&SH in full against the consequences of its failure to comply with those provisions.

### **Article 4 – Delivery time, delivery, ownership, risk and packaging**

- 4.1 Any agreed delivery or execution time, or agreed delivery or execution schedule ('delivery time') shall be binding on a Contractor, subject to the proviso that V&SH shall have the power to set a delivery time at a later stage or to fit it in as the work progresses without this conferring any entitlement on the Contractor to an adjustment of the relevant fee or any additional compensation.
- 4.2 A delivery time determined by V&SH whether at a later stage or otherwise shall be material. This shall also apply to any other deadlines for a Contractor to comply with its obligations. A Contractor shall be in default by operation of the law by virtue of it failing to meet a delivery time or any other aforementioned deadline.
- 4.3 As soon as a Contractor knows or ought to know that an Agreement will not be executed properly, on time or at all, it shall notify V&SH of this in writing immediately. In such a case V&SH shall have the power to engage other parties at that Contractor's expense in order to avoid or limit any delay in the execution of that Agreement.
- 4.4 A Contractor shall be liable for any direct or indirect loss that is suffered by V&SH as a result of its failure to meet a deadline.
- 4.5 For each day that delivery or execution ('delivery') is delayed V&SH reserves the right to impose a penalty, payable with immediate effect, amounting to the equivalent of 0.5% of the total amount of the relevant order on the Contractor concerned. The maximum penalty which a Contractor may forfeit in this respect shall amount to the equivalent of 25% of the total amount of the relevant order. Should it remain impossible to effect delivery, the maximum penalty shall be payable in its entirety with immediate effect. V&SH shall be entitled to such penalty subject to any other rights or claims, which are deemed to include but shall not be confined to its claim for compliance, its entitlement to the full or partial rescission of the relevant Agreement,

- and its right to compensation under the law. V&SH shall be entitled to set off such penalty or compensation against any amount owed by the relevant Contractor.
- 4.6 Subject to the relevant provisions of an Agreement, these Terms and Conditions and the law, the relevant Contractor may not effect suspension in any form whatsoever in so far as this could put the proper and timely performance of the work for which the relevant Client has contracted with V&SH at risk.
- 4.7 A Contractor shall be liable towards V&SH for any penalty and/or discount on the purchase price or contract fee which the relevant Client demands of V&SH on the grounds of the latter's late or improper delivery as a result of non-compliance on the part of that Contractor. V&SH shall be entitled to recover such penalty and/or discount from that Contractor, where necessary by withholding same from any payment which V&SH still owes the Contractor.
- 4.8 Delivery shall be effected at the place stipulated in the relevant Agreement or one determined by V&SH in accordance with Incoterm DDP (Delivery Duty Paid under the most recent version of Incoterms).
- 4.9 Delivery may only be effected outside V&SH's normal working hours with the latter's prior written consent.
- 4.10 Unless otherwise agreed to in writing, a Contractor shall not be entitled to effect part delivery. V&SH shall be entitled to return any part consignment that has not been agreed to at the relevant Contractor's risk and expense or to require that Contractor to repossess the relevant part delivery at its own risk and expense. In the event that V&SH rejects all or part of a part consignment, whether this is accompanied by a suspension of its duty to effect payment or not, the relevant Contractor shall not be entitled to suspend its duty to effect any further delivery.
- 4.11 In the case of an excess or shortfall in relation to a consignment or work, the relevant fees shall be raised or lowered proportionately as the case may be. Any excess delivered or worked shall only qualify for payment, where the relevant Contractor has presented a written offer in this respect and V&SH has accepted that offer in writing. Excess work shall at any rate not be deemed to include any additional work which a Contractor could or should have foreseen for the purposes of effecting performance as agreed or which is due to that Contractor's failure to comply with any of its obligations.
- 4.12 In the event that V&SH is unable to take delivery of goods that are to be delivered at a time that has been agreed or is subsequently stipulated for any reason whatsoever, the relevant Contractor shall store and secure those goods, and shall adopt all reasonable measures to prevent them from being damaged or their quality from being impaired. In a situation referred to here V&SH shall ensure payment of any reasonable additional costs which that Contractor can show to have reasonably incurred.
- 4.13 Ownership of goods shall pass to V&SH after they have been delivered and V&SH has approved them. Notwithstanding this, the Parties shall be entitled to agree that ownership of goods will pass to V&SH in full or in part before such delivery and approval occur, in which case the relevant Contractor shall have a duty to look after those goods, exercising due care when doing so, and to insure and continue to insure those goods against theft, embezzlement, loss and damage at its own expense. When first so requested by V&SH, the Contractor shall afford the latter an opportunity to verify that it has complied with its duty to take out insurance. Should the contractor

- fail to take out insurance or fail to do so properly and in full, V&SH shall be entitled to take out such insurance in its own name at the Contractor's expense.
- 4.14 Any risk pertaining to goods shall pass to V&SH at such time as the latter takes receipt of them, unless it rejects them, in which case such risk shall be deemed to still remain with the Contractor and not to have passed to V&SH.
- 4.15 Simultaneous with the delivery of goods, a Contractor shall be required to hand over any related seal of quality, warranty, inspection test data, training and user manuals, drawings, specifications, technical and revision date, and where necessary, an EU statement of conformity and the relevant technical file, in the absence of which V&SH may suspend its duty to effect payment.
- 4.16 Unless agreed otherwise in writing, V&SH shall not be charged for any packaging. The relevant Contractor shall repossess any packing materials when first requested to do so in writing by V&SH. Any packing materials for which V&SH has been charged shall be repossessed by the relevant Contractor and any packaging costs shall be credited and refunded. Any environmentally harmful packing materials shall remain the property of the relevant Contractor, must be repossessed by the latter immediately after the relevant goods have been unpacked and must be removed at its expense. A Contractor (or the latter's staff shall be required to use appropriate personal protection equipment when unpacking, where it is necessary to do so or V&SH requires this.

#### **Article 5 – Contractor's duties**

- 5.1 A Contractor shall have a duty to notify V&SH immediately in writing of any deficiency, shortfall and/or uncertainty which it discovers or could reasonably have discovered with regard to any physical or electronic documents that it receives from V&SH, the relevant Client or another party for the purposes of the conclusion or execution of the Agreement concerned. A Contractor shall have a similar duty to raise an alert, should it discover or could have reasonably discovered that any item which has been placed at its disposal by V&SH, the relevant Client or another party for the purposes of the conclusion or execution of the Agreement concerned is deficient or unsuitable for the purpose for which it was envisaged. A contractor shall be liable for any loss which occurs as a result of its failure to comply with its duty to raise an alert.
- 5.2 Except in so far as V&SH notifies a Contractor in writing that the latter is required to heed any orders and directions given by or on behalf of the relevant Client (as well or otherwise), that Contractor shall only heed orders and directions issued by or on behalf of V&SH.
- 5.3 A Contractor shall refrain from directly or indirectly presenting quotations and/or offers to a Client, which is deemed to include any quotation and/or offer for an extension and/or change concerning the delivery of the goods and/or the performance of work in respect of which V&SH and that Client are conducting negotiations or have concluded a contract.
- 5.4 A Contractor shall have a duty towards V&SH to ensure strict compliance with its legal obligation to remit salary deductions pertaining to the work that it has been contracted to perform, and also with the applicable collective labour agreement.
- 5.5 V&SH may decide on the order in which a Contractor is to carry out work along with the time within which that is to occur. A contract shall at any rate be executed in accordance with any requirements that are stipulated – with regard to working hours,

amongst other things – in connection with the progress of the relevant work, such to occur at V&SH's discretion.

- 5.6 A Contractor shall be prohibited from employing V&SH's staff without the explicit written approval of V&SH.
- 5.7 Any staff deployed by a Contractor must be able to identify themselves at any time.

#### **Article 6 – Fees**

- 6.1 Unless the Parties agree otherwise in writing and irrespective of any provision stipulating otherwise in this respect in the relevant specifications, all fees shall be fixed and immutable, they shall not be indexed, and any changes in prices, salaries and wages, expenses, social insurance charges, taxes and any other factors determining fees shall occur and continue to occur at the relevant Contractor's expense, irrespective of the duration of the period that has elapsed between the date on which the relevant Agreement was concluded and its execution.
- 6.2 The fees shall be exclusive of VAT. For the rest, the fees shall be 'all-inclusive'.

#### **Article 7 – Goods, methods and materials**

- 7.1 Any goods and methods which a Contractor develops in collaboration with or at the behest of V&SH may not be provided to another party without V&SH's prior written consent. Any expertise which a Contractor acquires in connection with the aforementioned development of goods and methods, shall be placed solely at the disposal of V&SH and the Contractor shall not disclose same to any other party nor employ it for its own benefit and/or that of any other party, unless V&SH consents to this beforehand in writing.
- 7.2 Any goods which V&SH places at a Contractor's disposal – be it to treat them or otherwise – for the purposes of executing an Agreement, shall remain the property of V&SH under all circumstances, hence also following their eventual treatment. As long as a Contractor exercises control over the aforementioned goods, it shall affix an indelible reference to them indicating that they are the property of V&SH. That Contractor shall point out V&SH's proprietary rights to any party that wishes to effect recovery in relation to those goods. A contractor shall give its permission in advance for V&SH to enter (or arrange for this to be done) any area in which the goods referred to in this article are located and to repossess (or arrange for this to be done) or collect (or arrange for this to be done) them. A Contractor shall provide every assistance to enable V&SH to repossess (or arrange for this to be done) or collect (or arrange for this to be done) such goods. A Contractor shall waive any lien on such goods in advance and shall similarly explicitly waive any lien. A Contractor shall not arrange for any goods to be attached. A Contractor shall bear the risk of such goods being stolen, embezzled, lost or damaged and shall have a duty to take out insurance to cover this risk at its own expense. When first requested to do so by V&SH, a Contractor shall present V&SH with a copy of the relevant insurance policies and proof that the premiums have been paid in this respect. As soon as V&SH gives notice that it requires this, a Contractor shall pledge all of its entitlements against insurers pursuant to the aforementioned insurance policies to V&SH in the manner stipulated in Section 3:239 of the Civil Code to serve as additional security for V&SH's claims against that Contractor.

- 7.3 Should a Contractor fail to file a complaint with V&SH within two (2) working days after receiving goods supplied to it by V&SH, those goods shall be deemed to have been provided to that Contractor without any defects.
- 7.4 A Contractor shall be required to use any goods that are placed at its disposal with due care and to maintain them properly.

#### **Article 8 – Inspections, trials and tests**

- 8.1 V&SH and/or the relevant Client shall always be entitled to inspect, trial and/or test (or to arrange for this to be done) any goods which have been or are to be delivered or work that has been or is to be performed, hence also during production, manufacture or storage. A Contractor shall provide every assistance to make all requisite facilities available.
- 8.2 Where such inspection, trial or test occurs prior to the delivery of the relevant goods or the handover of the works, V&SH shall not have a duty to lodge a complaint as stipulated in Sections 6:89 and 7:23 of the Civil Code. Following the delivery of goods or the handover of works V&SH shall have a period of thirty (30) working days within which to inspect, trial and/or test those goods and/or the works (or to arrange for this to be done). Where any goods and/or works are required to possess properties whose presence cannot be determined immediately after their delivery or handover but only, for example, after those goods have been assembled or installed, or after the final handover of the property of which the works constitute part, V&SH shall have a period of thirty (30) working days following such assembly, installation, final handover and the like, within which to (again or otherwise) inspect, trial and/or test those goods and/or works (or to arrange for this to be done). In the event that V&SH establishes that the goods and/or the works do not comply with the relevant Agreement in any manner whatsoever within the aforementioned periods of thirty (30) working days, it shall be entitled to reject those goods and/or works by means of a written notice addressed to the relevant Contractor within a period of thirty (30) working days after establishing same as mentioned above. In the absence of such written notice the goods or the works shall be deemed to have been approved. Such approval shall not discharge the Contractor from any warranty or liability pursuant to the relevant Agreement, these Terms and Conditions, and the law. The approval of any goods that are delivered shall be confined to their quantity and external appearance. Where goods are delivered in packaging or bundles, such approval shall be confined to the quantity and external appearance of the packages.
- 8.3 The Parties shall bear their own costs incurred for the purposes of the aforementioned inspections, trials or tests. Nevertheless, the relevant Contractor shall be liable for those costs in the event that the goods and/or works are rejected by V&SH and/or the Client concerned. That Contractor shall also be liable for the costs incurred for any new inspection, trial or test.
- 8.4 In the event that V&SH rejects any goods that are delivered or works that have been produced, the relevant Contractor shall have a duty to repair or replace them – such at the discretion of V&SH – free of charge within a reasonable period of time stipulated by V&SH or to perform the work in accordance with the Agreement concerned. Should the Contractor fail to comply with this duty or to do so to the satisfaction of V&SH and within the stipulated period of time, V&SH shall be entitled to ensure that

the relevant goods are repaired or replaced (or to arrange for this to be done) or that the work is carried out properly. V&SH shall be entitled to set off any costs incurred against any amount owed to the Contractor. Subject to what is stipulated above, in the event of a rejection V&SH shall be entitled to seek compensation and/or to rescind all or part of the relevant Agreement.

#### **Article 9 – Warranty**

- 9.1 Unless a different period of time is agreed to, a Contractor shall warrant that any goods supplied or works produced are of good quality and are free of any design, structural, material or manufacturing defects and any other encumbrance or limitation, that the goods supplied or the works produced satisfy all applicable requirements that are stipulated in the law and/or any other regulations issued by a public authority in the Netherlands or those countries in which the goods are delivered or the works produced, which are in effect at the time when those goods are delivered or the final handover of the works occurs, that the goods delivered or works produced accord with the agreed specifications and properties or, in the absence of any explicit agreement in this respect, those specifications and properties to which the Parties are accustomed, or which are at any rate customary in the relevant commercial sector, that the goods delivered or works produced are suitable for the purpose for which V&SH intends to use them, and that the goods delivered or works produced also comply with the relevant Agreement.
- 9.2 In the event that V&SH notifies a Contractor that any goods delivered and/or works produced fail to comply with the foregoing, that Contractor shall immediately ensure that repair or replacement occurs – such as V&SH’s discretion – in such a way that the goods which have been supplied or the works that have been produced again comply with the relevant Agreement in every respect. The Contractor shall be liable for any costs which are directly or indirectly associated with such repair or replacement, or where the goods and/or the works constitute part of a larger entity, with putting that entity into service again. In the case of repair or replacement the term of the warranty of three (3) years shall commence again at such time as the relevant replacement goods are delivered or the final handover of the relevant replacement works occurs. The return of any goods to the Contractor shall occur at the latter’s risk and expense.
- 9.3 In the event that a Contractor fails to comply with the terms of the warranty stipulated in this article, as well as in any urgent situation which does not permit of any delay, V&SH shall be entitled to perform whatever is necessary or to arrange for a third party to do this at the Contractor’s risk and expense. V&SH shall be entitled to set off any costs incurred against any amount owed to that Contractor.
- 9.4 Should V&SH exercise its rights pursuant to this article, this shall not affect its other entitlements.

#### **Article 10 – Liability, indemnification and insurance**

- 10.1 A Contractor shall be liable for any direct or indirect loss which V&SH and/or any other party may suffer as a result of a culpable failure on the part of that Contractor to comply with any obligation or as a result of any culpable, unlawful act or omission on the part of that Contractor itself or any of its representatives, subordinates or non-subordinates.

- 10.2 A Contractor shall indemnify V&SH in full against any claim made by a third party, such as but not confined to the relevant Client, the Contractor's insurers, public authorities, future owners and users and V&SH staff, seeking compensation for any loss referred to in Clause (1) of this article. A Contractor shall compensate V&SH for any reasonable costs in mounting a defence against the aforementioned claim.
- 10.3 A Contractor shall insure and continue to insure its liability for any loss referred to in Clause (1) of this article to V&SH's satisfaction while the relevant Agreement is executed. In this respect a Contractor shall have at least have the duty to do the following:
- a. the Contractor shall take out primary liability insurance which shall at all times enjoy priority over other insurance policies, as part of which V&SH shall be cited as a co-insured, and pursuant to which the insurers shall pay out any claim directly to V&SH. The insurers shall be required to waive their right of recourse and/or subrogation against all the co-insured. The insured sum shall be equal to no less than the amount mentioned in either the relevant Agreement or specifications, in the absence of which it shall amount to EUR 2,500,000.00 in the case of each occurrence. The excess shall amount to no more than EUR 10,000.00 in the case of each occurrence;
  - b. where design and/or engineering work is carried out, the Contractor shall take out professional liability insurance. The insurers shall pay out any claim directly to V&SH and shall waive their right of recourse and/or subrogation against V&SH. The insured sum must be equal to no less than either the amount mentioned in the relevant Agreement or specifications, in the absence of which it shall amount to EUR 2,500,000.00 in the case of each occurrence. The excess shall amount to no more than EUR 5,000.00 in the case of each occurrence;
  - c. unless otherwise stipulated in the relevant Agreement, where works of a material nature are produced and/or work pertaining to a delivery is carried out, the Contractor shall take out primary all-risk insurance providing cover subject to conditions that are customary in the market and shall maintain such insurance while that Agreement is executed. The insured sum (in the case of each occurrence) mentioned in Part I (damage inflicted on the works) shall be equal to no less than the amount that is mentioned in either the relevant Agreement or specifications, or the contract fee plus the value of any materials which are to be supplied by V&SH and/or any other party and are to be treated by the Contractor. Such an all-risk insurance policy must also provide Part III cover (damage inflicted on the client's existing property) with an insured primary risk sum (in the case of each occurrence) amounting to no less than EUR 2,500,000.00. Furthermore, the all-risk insurance policy must provide 'full guarantee' maintenance cover throughout the term of maintenance and the excess applicable in all parts must amount to no less than EUR 2,500,000.00 (in the case of each occurrence);
  - d. where motor vehicles or other rolling stock are or is delivered or used, the Contractor shall insure the risk of legal liability for any harm occasioned to V&SH or another party in accordance with the relevant legal requirements (WAM – Civil Liability Insurance (Motor Vehicles) Act [*Wet aansprakelijkheidsverzekering motorrijtuigen*]) and subject to the provisions of

- the relevant Agreement and specifications. V&SH shall be cited as a co-insured. The insured sum shall be equal to no less than the amount mentioned in either the relevant Agreement or specifications, in the absence of which it shall amount to EUR 2,500,000.00 in the case of each occurrence. The excess shall amount to no more than EUR 5,000.00 in the case of each occurrence. The motor vehicle, machinery and equipment insurance may not contain any exclusions with regard to the risks associated with the work and/or damage inflicted on underground assets, such as cables and pipes;
- e. the insurance policies shall cite V&SH as the insured and shall also preclude recovery by the insurers from V&SH pursuant to recourse and/or subrogation;
  - f. when first requested by V&SH to do so, the Contractor shall present the former with a copy of the relevant insurance policies and proof that it has paid the premiums in that respect.
- 10.4 Under no circumstances shall V&SH be liable towards a Contractor on any grounds whatsoever for any indirect and/or consequential loss, loss due to delay, the disruption of business or a standstill, loss of earnings, foregone savings, a loss of customers, impaired goodwill or harm to one's reputation.

#### **Article 11 – Invoicing and payment**

- 11.1 All of a Contractor's invoices shall be addressed to the V&SH accounts payable department. An invoice shall (i) comply with all legal requirements, (ii) cite the relevant V&SH order number, (iii) be accompanied by a copy of the supply slip which V&SH has given the Contractor, and (iv) be properly detailed. V&SH reserves the right to decline to deal with any invoice which does not comply with these requirements and to return it to the relevant Contractor.
- 11.2 Payment shall be made within sixty (60) days after receiving an appropriate, comprehensive invoice or, where the relevant goods are received and approved or the works concerned are handed over and approved at a later stage, within sixty (60) days after those goods have been received and approved or the relevant works have been handed over and approved.
- 11.3 Payment shall not entail an acknowledgement that any goods delivered or works produced comply in full with the relevant Agreement, shall not discharge the relevant Contractor from any duty under the warranty or liability, and shall not affect V&SH's rights pursuant to that Agreement, these Terms and Conditions, and the law.
- 11.4 Where payment is made in advance, V&SH shall be entitled to require that the relevant Contractor tender appropriate security to ensure compliance with its obligations. Should the Contractor fail to do so by the stipulated deadline, it shall be in default. In this case V&SH shall be entitled to cancel all or part of the relevant Agreement and to recover any loss from the Contractor. In the event of non-compliance on the part of a Contractor, V&SH shall also be entitled – subject to its other rights – to require that Contractor to tender appropriate security to ensure compliance with its obligations. 'Appropriate security' shall at any rate be deemed to refer to an irrevocable bank guarantee, payable when first requested by V&SH, from a first-class Dutch bank equivalent to 110% of any amount paid in advance or 110% of the value of the performance in arrears (100% of the amounts and value cited plus a

surcharge of 10% by way of interest), the costs of that bank guarantee to be borne by the Contractor.

- 11.5 V&SH shall at all times be entitled to set off any amount which it owes a Contractor or any legal entity or business associated with it on any grounds whatsoever against any amount which V&SH or any legal entity or business associated with it may claim from that Contractor or any legal entity or business associated with it on any grounds whatsoever. The power of setoff referred to here shall also apply, where payment of such claim is not yet enforceable.

#### **Article 12 – Non-disclosure**

- 12.1 Any confidential information, which for the purposes of this article is deemed to refer to (i) the existence and substance of an Agreement, (ii) any drawings, models, structures, schedules, design and data, computer files, and any other documents and information which a Contractor directly or indirectly receives from V&SH, and (iii) any other information which that Contractor may reasonably be assumed to realise is secret or confidential, which includes but is not confined to any business information concerning V&SH and any know-how which the Contractor directly or indirectly acquires through V&SH, shall not be used by the Contractor for any purpose other than to ensure compliance with its obligations pursuant to that Agreement.
- 12.2 Without V&SH's prior written consent, a Contractor shall not make any disclosure to a third party concerning confidential information, nor disclose or replicate such confidential information in some other way either during the term of the relevant Agreement or following its termination.
- 12.3 Without V&SH's prior written consent, a Contractor shall refrain from publishing any photographs or other illustrations of any goods which it supplies or has supplied at the behest of V&SH or of any works which it produces or has produced at the behest of V&SH, from using same for promotional purposes or from presenting same in public in some other way, and a Contractor shall not mention V&SH's name as a reference.
- 12.4 A Contractor shall also impose the duty of non-disclosure set out in this article on its own staff, as well as any other party who is involved in the execution of the relevant Agreement in any way whatsoever. A Contractor shall guarantee and warrant that its staff and the aforementioned other parties will comply with this duty of non-disclosure.
- 12.5 The physical and electronic documents referred to in Clause (1) of this article shall at all times remain the property of V&SH and shall be returned to V&SH together with any copies made thereof when this is first requested by V&SH, the latter being entitled to suspend its duty to effect payment should this not occur. This right of suspension shall not affect any other entitlements of V&SH pursuant to the relevant Agreement, these Terms and Conditions, and the law.
- 12.6 For every failure to comply with its duty pursuant to this article, a Contractor shall be liable to pay V&SH a penalty, payable with immediate effect, equivalent to 10% of the overall amount of the relevant order subject to a minimum of EUR 10,000.00 and V&SH's entitlement to seek compensation under the law. V&SH shall be entitled to set off such penalty and compensation against any amount that it owes the relevant Contractor.

### **Article 13 – Chain and interim staff hirers’ liability**

- 13.1 In so far as the provisions of the law governing chain and interim staff hirers’ liability are applicable, the provisions below shall apply in addition to the other provisions of these Terms and Conditions.
- 13.2 A Contractor shall have a duty towards V&SH to:
- a. structure its administrative apparatus in accordance with the law and also to ensure strict compliance with all of its legal obligations;
  - b. show V&SH its record of registration in the companies register if requested to do so, as well as its industrial insurance board registration number, its VAT number and its business permit number in so far as such a permit is required;
  - c. present a daily timesheet to V&SH every week, which timesheet shall include, amongst other things, the name, date of birth, address, and citizen service and social insurance numbers of all of the staff engaged by that Contractor for the purposes of the work, together with copies of valid identity documents for all of those staff and, in so far as is applicable, a copy of valid work permits and A1 declarations, along with an hourly timesheet;
  - d. allow V&SH to inspect the relevant payslips if it so requests;
  - e. ensure strict compliance with its obligations in respect of the staff whom it puts to work;
  - f. show V&SH a recent, original payments history statement issued by the Tax and Customs Administration office every three (3) months or as often as V&SH more frequently requests;
  - g. heed any other request which V&SH makes with regard to its potential chain and interim staff hirers’ liability;
  - h. indemnify V&SH in full in respect of its liability towards the relevant Client and/or any other party due to that Contractor’s failure to comply with its obligations pursuant to the Agreement in question, these Terms and Conditions, and the law.
- 13.3 A Contractor shall be required to have a blocked account (‘guarantee account’). V&SH shall always have the power to pay a Contractor – by depositing the relevant amount into its ‘guarantee account’ – any amount for which V&SH is severally liable under the law for the work, namely, salary deductions and in the case of the hire of interim staff, salary deductions and value added tax. Subject to the provisions of the foregoing sentence, V&SH shall at all times be entitled to withhold the aforementioned amounts from the relevant contract fee (or subcontract fee) and remit them directly to the Tax and Customs Administration office, as a result of which V&SH shall be discharged from its liability towards that Contractor in so far as those sums are involved.
- 13.4 In the event that V&SH is required to pay the salary deductions, value added tax, debt collection interest and/or costs pursuant to chain and/or interim staff hirers’ liability, V&SH shall be entitled to recover from the Contractor concerned all of the relevant amounts plus legally stipulated interest as of the time of payment by V&SH and any expenses incurred by the latter.
- 13.5 In the event that a Contractor fails to comply with its obligations pursuant to the applicable collective labour agreement and V&SH is held liable for compliance with those duties, V&SH shall be entitled to recover from the Contractor concerned all of

the relevant amounts plus legally stipulated interest as of the time of payment by V&SH and any expenses incurred by the latter.

#### **Article 14 – Prohibition of assignment and pledges**

Without V&SH's prior written consent, a Contractor shall not be permitted to assign, pledge, otherwise encumber, or transfer all or part of any claim against V&SH which it has derived or may derive pursuant to the relevant Agreement.

#### **Article 15 – Suspension and cancellation**

- 15.1 Subject to any other rights which V&SH has under the relevant Agreement, these Terms and Conditions, and/or the law, V&SH shall have the power to suspend its obligations or to cancel all or part of that Agreement by means of a written notice addressed to the relevant Contractor without the need for any notice of default or judicial intervention, and to contract with one (1) or more other parties to execute the Agreement at the Contractor's risk and expense in the event that:
- a. the Contractor fails to comply with any obligation which it has pursuant to the Agreement, these Terms and Conditions, and/or the law, or fails to do so properly or on time;
  - b. V&SH has good grounds to fear that the Contractor will fail to comply with one (1) or more of its obligations;
  - c. the Contractor is declared bankrupt, an application is filed for its bankruptcy, it is granted a moratorium on payments (provisional or otherwise) or an application has been filed for same, a legally stipulated debt rescheduling programme is declared to be applicable in relation to the Contractor, or an application is filed for same;
  - d. the Contractor is placed in the care of a guardian;
  - e. the Contractor dies;
  - f. the Contractor's business is liquidated;
  - g. the Contractor ceases to do business or transfers control of its business to some other party;
  - h. goods belonging to the Contractor are subject to provisional or executory attachment, which is not lifted within one (1) month following the date of attachment;
  - i. the Contractor directly or indirectly offers or presents staff of V&SH or the relevant Client with a gift or undertaking which is unacceptable to V&SH;
  - j. the relevant Client cancels the contract that it has awarded to V&SH and for the purposes of which the latter has entered into an agreement with the Contractor on the grounds of *force majeure*, which is deemed to include the occurrence of such a far-reaching change in political and/or economic conditions, that the Client cannot reasonably be expected to continue to be party to that contract.
- 15.2 In the event that a Contractor is only in default pursuant to the law, the relevant Agreement and these Terms and Conditions after being given notice that it is in default, V&SH shall not proceed with the full or partial cancellation of that Agreement in the circumstances referred to in Clause (1)(a) of this article, until it has sent the Contractor

- a written reminder stipulating a reasonable period of time for compliance to occur but no compliance is forthcoming within that period.
- 15.3 In the circumstances referred to in Clause (1)(j) of this article a Contractor may only claim compensation from V&SH, if and in so far as the latter can claim compensation from the relevant Client in respect of that part of the work contracted with the Contractor. With the exception of the aforementioned circumstances, V&SH shall not be liable for any compensation, howsoever it may be called, in the event that all or part of the relevant Agreement is cancelled.
- 15.4 In the event of full or partial cancellation all of V&SH's claims against the relevant contractor shall fall due in full with immediate effect.
- 15.5 Unless there is non-compliance or any circumstances for which a Contractor cannot be held culpable, in the event of the full or partial cancellation of the relevant Agreement, the Contractor shall forfeit a penalty equivalent to 10% of the entire order fee subject to a minimum of EUR 10,000.00 and V&SH's entitlement to compensation under the law. Any non-compliance (culpable or otherwise) by suppliers or any other assistants to the Contractor, strikes, lack of staff or sick personnel shall under no circumstances constitute *force majeure* on the part of the Contractor.
- 15.6 Subject to its other rights and acting at its own discretion, in the event of full or partial cancellation V&SH may:
- a. acting at the relevant Contractor's expense, return to the latter any goods that have already been supplied or demolish any works that have already been produced, and seek a refund of any payment which has already been made for those goods or works;
  - b. decide not to return any goods that have already been supplied nor to demolish any works that have already been produced, and to assume responsibility itself or to arrange for one (1) or more other parties to assume responsibility for the further execution of the relevant Agreement utilising the building and other materials used by the relevant Contractor, as well as ancillary equipment, such as scaffolding, hoisting machinery, industrial lorries and the like, be that in return for reasonable compensation to be agreed to subsequently or not.

#### **Article 16 – Intellectual property rights**

- 16.1 A Contractor shall warrant that any goods which it supplies or works which it produces to not infringe any other party's intellectual and/or industrial property or other rights.
- 16.2 A Contractor shall indemnify V&SH against any claim that is made pursuant to any actual or alleged infringement of the rights referred to in Clause (1) of this article.

#### **Article 17 – Disputes**

- 17.1 Any dispute – including any which only one (1) of the Parties deems to constitute such – that may arise pursuant or in relation to the relevant Agreement or any contract entered into by the Parties pursuant thereto shall be adjudicated by arbitration in accordance with the arbitration regulations of the Raad van Arbitrage voor de Bouw [Construction Arbitration Tribunal] as applicable three (3) months prior to the date on which that Agreement was concluded.

- 17.2 Contrary to the provisions of Clause (1) of this article, in the event that V&SH acts in the capacity of the plaintiff, it shall have the power to bring a dispute before a normal court of law and, where such dispute falls within the jurisdiction of the civil division of a district court, before a competent judge in the District Court of Rotterdam, subject to V&SH's power to bring a dispute before any other court that enjoys jurisdiction under the law.
- 17.3 Contrary to the provisions of Clause (1) of this article, in the event that V&SH acts as an impleaded plaintiff, it shall have the power to bring a dispute before the normal court of law or arbitration tribunal before which the substantive proceedings have been brought.

#### **Article 18 – Governing law**

- 18.1 The Parties' legal relationship with each other shall be governed by and construed in accordance with the law of the Netherlands.
- 18.2 The Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) shall not apply.

#### **Article 19 – Partial nullity**

- 19.1 In the event that any provision of an Agreement and/or these Terms and Conditions may not be invoked for any reason whatsoever, a meaning which approximates it as closely as possible and which may be invoked shall be assigned to that provision.
- 19.2 The possible nullity or unenforceability of any part of an Agreement and/or these Terms and Conditions shall not affect the validity and scope of application of the remaining part of that Agreement and/or these Terms and Conditions

#### **Article 20 – Probity and other entrepreneurial principles**

- 20.1 V&SH associates economic principles with core values, such as social responsibility, probity, transparency and sustainability. To this end Guiding Principles have been formulated, which may be found under *Integriteit* on the website at [www.vshanab.nl](http://www.vshanab.nl). With regard to probity V&SH also abides by the VolkerWessels Code of Conduct, compliance with which is demanded of all employees of Koninklijke Volker Wessels Stevin N.V. and its subsidiaries. The VolkerWessels Code of Conduct may be found under *Corporate Governance/Integrity* on the website at [www.volkerwessels.com](http://www.volkerwessels.com). A Contractor may familiarise itself with the aforementioned principles and code of conduct, and may comply with their substance. A Contractor shall guarantee and warrant that these principles and the code of conduct – or the Contractor's own code of conduct, provided that it accords with the code of conduct developed by Stichting Beoordeling Integriteit Bouwnijverheid [Foundation for the Assessment of Probity in the Building Industry] (SBIB) – will apply to all of its staff, as well as any workers, consultants, contractors, suppliers and other assistants whom the Contractor engages.
- 20.2 A Contractor shall guarantee and warrant that its tenders are drawn up legitimately, so as to ensure that there is no question of any agreement or collusion with fellow tenderers, subcontractors and/or any other parties which seek, have sought, result in or have resulted in unfair, diminished or limited competition and/or that fees are or will be raised unlawfully.

20.3 Should it have a serious suspicion of any conduct which infringes the Guiding Principles, the VolkerWessels Code of Conduct and/or a Contractor's own code of conduct as referred to in Clause (1) of this article, V&SH shall be entitled to arrange for an independent forensic accountant to conduct an investigation. The relevant Contractor shall provide every assistance in this respect.