

GENERAL CONDITIONS OF DURA VERMEER DIVISIE INFRA FOR EXECUTION OF WORK AND SUPPLY OF GOODS AND SERVICES

Article 1. Definitions

- a. **General Conditions:** These General Conditions for carrying out work activities, supplying goods or services and carrying out related activities by Dura Vermeer Divisie Infra BV or its affiliates (hereafter referred to as "Dura Vermeer"), on the understanding that only the legal person with which the Contract is concluded enters into obligations towards Client.
- b. **Client:** The natural or legal person with which Dura Vermeer concludes or has concluded a Contract, as defined in Article 1 c, or to which Dura Vermeer issues or has issued an offer for this purpose.
- c. **Contract:** A contract for work(s), or a contract for the provision of services or advice or the supply of goods, concluded between Dura Vermeer and Client.
- d. **Services:** The services to be provided and/or work activities to be carried out by or on behalf of Dura Vermeer pursuant to the Contract.
- e. **Goods:** The goods to be supplied by or on behalf of Dura Vermeer pursuant to the Contract.
- f. **Assignment:** The performance to be executed or result to be achieved by or on behalf of Dura Vermeer pursuant to the Contract.
- g. **Price Quotation:** An offer issued by Dura Vermeer with the aim of concluding a Contract, as defined in Article 1 c.
- h. **Work:** The design, execution and/or maintenance work activities to be carried out by or on behalf of Dura Vermeer pursuant to the Contract.

Article 2. Applicable conditions

- 2.1 The following conditions, in decreasing order of importance in the event of conflict between them, are applicable to every Assignment that Dura Vermeer receives or accepts, to every Price Quotation that Dura Vermeer offers and to every Contract that Dura Vermeer concludes:
 - a. the provisions set down in a Contract or an Assignment accepted by Dura Vermeer;
 - b. these General Conditions;
 - c. other conditions that have been declared applicable.
- 2.2 The applicability of Client's general terms and conditions, however described, is explicitly excluded by Dura Vermeer and such general terms and conditions are therefore not applicable to the Contract, unless explicitly agreed in the Contract as other conditions that have been declared applicable.
- 2.3 Dura Vermeer has the right to unilaterally make changes to these General Conditions. Changes will come into effect 30 calendar days after the date on which the changed conditions were sent to Client by Dura Vermeer. Changes and additions to these General Conditions are only valid if they have been agreed in writing between the Parties. In that case, the change and/or addition is only valid for the relevant Contract for which the change and/or addition was explicitly agreed.

Article 3. Laws and regulations

- 3.1 Client is deemed to be familiar with all legal and other regulations, conditions and provisions that are applicable to the Assignment given to Dura Vermeer, the Price Quotation issued by Dura Vermeer and the Contract with Dura Vermeer.
- 3.2 Client undertakes to observe and comply with the regulations, conditions and provisions referred to in Article 3.1 and Client makes these known before entering into a contract, unless it should be assumed that they are generally known. Amendments to the regulations referred to in Article 3.1, which come into effect after the date of the first Price Quotation or after the concluding of a Contract by Dura Vermeer, are at Client's expense and risk.

Article 4. Price Quotations

- 4.1 Dura Vermeer's Price Quotations are without obligation, unless otherwise explicitly stipulated in writing in the Price Quotation.
- 4.2 Dura Vermeer's Price Quotations are based on executing the Assignment in normal working hours, as stipulated in the Collective Labour Agreement for Construction & Infrastructure (*CAO Bouw & Infra*) that is applicable at the time when the Assignment is executed.
- 4.3 Dura Vermeer's Price Quotations are based on the prices of cost components, which should be understood to mean the following cost price factors: wages, social charges, prices of raw materials and consumables, fuels, taxes, levies and suchlike. If one or more of the cost price factors undergo an increase after the date of the Price Quotation, but before the Contract is concluded, then Dura Vermeer has the right to increase the price stated in the Price Quotation accordingly, in accordance with the provisions of Article 5.3.
- 4.4 All of Dura Vermeer's Price Quotations are based on the information supplied by or on behalf of the Client. If special requirements are imposed with respect to static, dynamic or other loads, then these requirements must be notified in writing by Client. If the measurements, calculations, drawings or other information supplied by or on behalf of Client turn out to be incomplete or incorrect at any time, then all the damage / costs arising therefrom, however described, will be at Client's expense.

4.5 Information stated in catalogues, leaflets, drawings etc. of Dura Vermeer or made available by Dura Vermeer are not binding, except insofar as they have been explicitly included, referred to or appended in the Contract.

Article 5. The Contract

5.1 The Contract is created at the moment when the contract or written assignment confirmation, signed by Dura Vermeer, has reached Client, or at the moment when Client has already become cognizant in another way of the written assignment confirmation by Dura Vermeer.

5.2 If one or more provisions of the Contract are void, this Contract will not be void in its entirety, but the legally valid provisions will remain in force as a stand-alone Contract, while the Parties undertake to convert the content of the void provisions into legally valid form, insofar as possible.

5.3 If one or more of the cost price factors specified in Article 4.3 undergo an increase after the Contract has been concluded, then Dura Vermeer has the right to increase the agreed price accordingly if the price increase takes place outside of Dura Vermeer's influence. If this price increase takes place within Dura Vermeer's sphere of influence, then Dura Vermeer will not have this right until three months after the price increase occurred. If the said price increase takes place outside of Dura Vermeer's sphere of influence, Dura Vermeer has this right throughout the period for which the Contract continues.

Article 6. Additional work (upward contract variations) / changes

6.1 Additional work (upward contract variations) or changes are understood to mean all the work activities and supplies of goods and services that are desired by Client and are not included in the Contract, and all the changes that are desired by Client if they have the effect of increasing costs for Dura Vermeer.

6.2 After additional work or changes have been assigned in writing, and if Dura Vermeer intends to accept them, Dura Vermeer will confirm them in writing within 30 working days and will provide a price estimate for them, insofar as possible.

6.3 The contract to execute additional work or changes is subject to the same provisions as stipulated in the original Contract, unless otherwise agreed in writing by the Parties.

6.4 The fact that Dura Vermeer is not willing to execute additional work or changes cannot result in the original Contract being set aside.

Article 7. Delivery time / handover deadline

7.1 The starting date for calculating the delivery time or handover deadline is the latest of the following points in time:

- a. the date on which the Contract is created;
- b. the date on which Dura Vermeer receives the information needed for execution of the Assignment, permits, exemptions or suchlike decisions that are required for planning the Work;
- c. the date on which the formalities needed for commencement of the work activities have been fulfilled;
- d. the date on which Dura Vermeer can have access to the site or the water on which or in which the work activities must be carried out;
- e. the date on which Dura Vermeer has access to the required drawings and other information;
- f. the date on which Dura Vermeer receives the payment that must be made as advance payment, according to the Contract.

If the commencement date has not yet taken place within two months after the Contract was created, in accordance with Article 5.1, Dura Vermeer has the right to set aside the Contract, and the damage and/or costs will be compensated, in accordance with Article 20.2 and 20.3.

7.2 The delivery time or handover deadline is based on the working conditions applicable at the time when the Contract is concluded and on timely supply of the items required by Dura Vermeer for execution of the Work. If delay has occurred because one or more of the conditions specified in this paragraph has not been met, or because most of the personnel cannot work or most of the machines cannot be used for at least five hours per day, due to circumstances that are not Dura Vermeer's responsibility, then the delivery time or handover deadline will be extended by a reasonable period.

7.3 Any contractual penalty or compensation for damage imposed in the event of delay will not be payable if the delivery time or handover deadline is exceeded in consequence of *force majeure*, as defined in Article 13, or of a situation as specified in Article 7.2.

7.4 Dura Vermeer will report the Work ready for handover and will give Client the opportunity to inspect the Work. If Client has not informed Dura Vermeer in writing about whether or not the Work has been approved within fourteen days after Dura Vermeer reported that it was ready for handover, then the Work will be deemed to have been approved. If approval is given, the date of handover is the date on which Dura Vermeer reported that the Work was ready for handover. Minor defects may under no circumstances hinder the approval of the Work.

Article 8. Retention of title

8.1 All the Goods supplied by Dura Vermeer or materials used in the Work remain the property of Dura Vermeer until Client has fulfilled his payment obligations arising from the Contract in relation to Dura Vermeer. The retention of title also applies in the event that Dura Vermeer has claims against Client due to Client's failure to fulfil one or more of his obligations towards Dura Vermeer.

8.2 Any imposed attachments or other prejudgment legal measures relating to the Goods and/or materials referred to in Article 8.1 must be notified to Dura Vermeer by Client in writing by registered mail within fourteen days after the legal measures have been brought. Costs and/or losses in consequence of failure to give such notification will be at Client's expense.

Article 9. Carrying out the work activities / obligations of Client

- 9.1 Client is responsible for ensuring that Dura Vermeer has good accessibility of the Work and free disposal over the worksite at the start of the work activities and while carrying out the work activities. If Dura Vermeer is of the opinion that extra facilities are needed for good accessibility or free disposal of the Work or the worksite, these will be at Client's expense.
- 9.2 Client must ensure that Dura Vermeer can unload, set up and use its materials and equipment at or within a distance of 100 metres from the working location.
- 9.3 Client must ensure that the cranes, lifts and other auxiliary equipment that he makes available fulfil the applicable requirements.
- 9.4 Client is liable for any damage and/or loss of materials and equipment (including machines) belonging to or being used by Dura Vermeer. Client must make a suitable lockable space available for storing these items.
- 9.5 Client is liable for any damage to parts of the Work that have been completed, which are caused by himself, persons for whom he is responsible and/or third parties.
- 9.6 Client must ensure that Dura Vermeer, while carrying out the work activities, is not inconvenienced by work activities to be carried out by Client, his personnel, persons for whom he is responsible, other contractors and/or third parties.

Article 10. Extra costs

The Client will be charged for the following, as extra costs:

- a. costs of futile travelling, transport and other costs caused by the fact that execution of the Work cannot start on the agreed date or the fact that the Work cannot be organised or cannot be executed without interruption, due to a cause that is Client's responsibility;
- b. costs caused by the fact that information supplied by or on behalf of Client turns out to be incorrect or incomplete;
- c. transport costs, if the working place is not normally accessible for personnel, equipment and materials;
- d. costs incurred in consequence of forms of *force majeure*, as specified in Article 7.2 and Article 13, and also costs of a comparable nature, whose risk of arising is not a factor that should have been taken into account when creating the Contract, which are not attributable to Dura Vermeer and which increase the costs / price of the Work.

Article 11. Payments

- 11.1 Insofar as not otherwise agreed, explicitly and in writing, Dura Vermeer will send an invoice related to the status of the production or additional work or changes, on the basis of an instalment statement. Fixed instalments can also be agreed, which become payable on a specific date. The level of the instalment amount will be determined pro rata, based on the supplies of goods and services and work activities carried out within that instalment period. The final instalment will be paid after handover.
- 11.2 Unless otherwise explicitly agreed, the instalment amount according to Article 11.1 or the agreed amount as specified in the Contract, plus in particular any extra costs and plus the cost increases charged pursuant to Articles 4.3 and 5.3 and 10, will be paid within a payment term of 30 days after receipt of the invoice.
- 11.3 If Dura Vermeer receives clear indications before or while carrying out its work activities that Client has become less creditworthy, Dura Vermeer has the right, at its own choice, to suspend the supply, to set aside the Contract for the amount owing to it, or to not carry out any work activities or any more work activities. In that case, the amount for what has already been supplied or performed will become immediately due and payable, unless Client provides security within a period to be set by Dura Vermeer, in the form of an irrevocable bank guarantee in the amount of the supply / contract sum, for the correct and timely payment of what is and will be owed by Client.
- 11.4 If Client exceeds the payment term, Dura Vermeer has the right to suspend further supplies or continuation of the work activities relating to the Contract to which the overdue payment pertains. Client must pay interest to Dura Vermeer for the period by which the payment term has been exceeded, in the amount of the statutory interest under Article 6:119a of the Netherlands Civil Code, without written notice of default being required. All the judicial and extrajudicial costs connected with collection of the overdue payment are payable by Client.
- 11.5 In the situation of both Article 11.3 and Article 11.4, Dura Vermeer has the right to compensation for damage and an extension of the delivery time or handover deadline for the part of the Assignment or Contract that has not been executed.

Article 12. Prohibition of assigning and pledging

Client is not permitted to encumber or transfer any rights or obligations under this Contract, without Dura Vermeer's prior written permission.

Article 13. Force majeure

In addition to the provisions of Article 6:75 of the Netherlands Civil Code, *force majeure* is understood to mean any circumstance outside of Dura Vermeer's control and for which it is not responsible, which is of such a nature that Dura Vermeer cannot reasonably be required to perform the Contract, in full or in part. *Force majeure* is understood to include, among other circumstances: lack of raw materials, disruptions in the production process that did not arise due to the fault or negligence of either Dura Vermeer or its suppliers and/or subcontractors, strikes, lock-outs, quarantine, epidemics, mobilisation, state of siege or state of war, terrorist threat, hindered or closed shipping, abnormal weather conditions with e.g. flooding, attributable failure or appeal to *force majeure* of or by third parties that were engaged by Dura Vermeer for execution of the Contract, transport difficulties, fire, flood, spread of a (computer) virus or hacking of Dura Vermeer's software and communication systems and other serious disruptions in the operations of Dura Vermeer or of its suppliers and/or subcontractors, and all hindrances caused by government measures.

Article 14. Warranty and claims

14.1 From the date of handover, as defined in Article 7.4, Dura Vermeer gives Client a one-year warranty for the supplies made or work activities carried out by Dura Vermeer, subject to the limitations formulated in these Conditions, on the understanding that only defects which arise during normal use and which can be attributed to Dura Vermeer, as being work activities that were not properly carried out by Dura Vermeer or the use of inferior materials by Dura Vermeer, will be rectified free of charge by Dura Vermeer. Claims on the warranty are not valid:

- a. if different and/or heavier demands have been placed on the executed Work and/or the supply than were known when the Contract was created;
- b. if third parties have carried out repairs or work activities on the Work, without Dura Vermeer's written permission;
- c. if the supplied materials and executed Work are not being used and/or maintained in the intended way;
- d. if and insofar as the amounts claimed by Client exceed the warranties that Dura Vermeer received from its suppliers and/or subcontractors, with regard to the supply of items that Dura Vermeer obtained from third parties. The amount of Dura Vermeer's warranties will not exceed the amount of the warranties given to Dura Vermeer by suppliers, subcontractors and/or third parties;
- e. in the matter of or in consequence of errors in the design of the construction, if the design was produced by Client and/or third parties.

14.2 If Client does not comply with any obligation that arises for him from the Contract and has an effect on the warranty, or does not do this properly or in due time, then Dura Vermeer is not bound by any obligation, "however it is described".

14.3 If the date of first use of the supplied goods or executed Work is earlier than the date of handover, as defined in Article 7.4, the warranty period specified in Article 14.1 commences on the former date.

14.4 In the matter of the rectification work activities carried out by Dura Vermeer, warranty will only be given, unless explicitly otherwise agreed, on the proper carrying out of the rectification work activities for the same warranty period of a maximum of two years after being carried out.

14.5 An appeal to Dura Vermeer's failure to comply with its warranty obligations does not release Client from the obligations that arise for him from the Contract.

Article 15. Complaints and/or defects

15.1 Complaints and/or defects must be submitted to Dura Vermeer as soon as possible, but no more than three months after the handover, as defined in Article 7.4, in writing and with a clear and substantive description.

15.2 If the defect is a hidden defect, then the defect must be notified in writing to Dura Vermeer within five years after the handover, as defined in Article 7.4, but no more than three months after the Client became aware or should reasonably have become aware of the defects.

15.3 Claims of Client in consequence of defects will lapse two years after he has notified them to Dura Vermeer in accordance with this article.

15.4 Complaints and/or defects that are a consequence of settling of the foundations will not be accepted for handling by Dura Vermeer, unless the Parties have agreed otherwise with an explicit provision in the Contract.

15.5 Complaints and/or defects do not suspend Client's payment obligations. If a complaint and/or defect is discovered to be well-founded, this can not lead to anything other than rectification or a reduction in the contract sum.

15.6 In the case of rectification, minor height differences in the paved surface, as also stipulated in Article 15.4, are acceptable.

Article 16. Prohibition of acquiring personnel

For the duration of the Contract, and for one year after the ending thereof, Client will not in any way hire any employees of Dura Vermeer, or have them work for him in any other way, directly or indirectly. If Client acts in breach of this article, Client will be liable to pay an immediately due and payable penalty of € 10,000 for every breach, plus € 1,000 for every day that the breach continues, without prejudice to Dura Vermeer's other rights and claims, including Dura Vermeer's right to claim compensation for the damage it has actually suffered and to demand compliance.

Article 17. Liability

In the matter of Dura Vermeer's possible liability, the following provisions apply:

- a. Dura Vermeer's liability pursuant to the Contract is explicitly limited to complying with the warranty obligation defined in Article 14 of these Conditions, and will never exceed the amount of the contract sum, including changes;
- b. any claim against Dura Vermeer in the matter of indirect loss and/or consequential loss, including trading loss, loss of sales and/or loss of profit and so on, is excluded;
- c. Dura Vermeer is not liable for costs, losses and interests that have arisen or might arise as a direct or indirect consequence of:
 - infringement of patents, licences or other rights of third parties in consequence of use of information supplied by or on behalf of Client;
 - contaminants that are found to be present before/after the handover, in and/or around the worksite, or in the construction materials that are released, made available, supplied and/or to be removed. Client indemnifies Dura Vermeer in the matter of the direct and indirect consequences of the contaminants described above;
 - exceeding the delivery time or handover deadline;
- d. Dura Vermeer has the right to appropriate materials that are released during the realisation of the Work for purposes of re-use in this work or in other work activities and/or applications;
- e. in the case of Dura Vermeer using its own design, then Dura Vermeer's liability in the matter is limited to the amount of the design costs in the contract sum. The loss or damage to be compensated will never include the costs that would have been involved in carrying out the work activities if the design had been correct from the outset;
- f. the provisions of this article do not apply insofar as there is demonstrable intent or gross negligence on the part of Dura Vermeer.

Article 18. Indemnification

Client is obliged to indemnify Dura Vermeer against all costs, losses or interests that arise as a direct or indirect consequence of legal actions that are brought by third parties against Dura Vermeer in connection with execution of the Contract. Client is obliged, pursuant to the Contract, to comply with an appeal to be impleaded in indemnification by Dura Vermeer.

Article 19. CAR insurance

Dura Vermeer will ensure that it is adequately insured for execution of the Work, unless the relevant insurances have been taken out by Client. At the request of the other party, the Parties will allow each other to inspect the relevant policies.

Article 20. Setting aside

20.1 Without prejudice to the legal termination possibilities and other rights, Contractor has in any case the right to immediately terminate or set aside the Contract concluded with Client by cancellation, without being obliged to pay compensation for damage and without Contractor being obliged to send any notice of default, if:

- a. Client is declared bankrupt, has applied for his bankruptcy or an application will be filed for this;
- b. Client has applied for (provisional) suspension of payment, this will be granted or Client is involved in winding-up proceedings;
- c. the control of Client comes to lie with a different party than at the time when the Contract was concluded;
- d. Client loses his legal personality, or fully or partly ceases his business or terminates and/or has terminated his activities;
- e. Client cannot fulfil his obligations towards Contractor in consequence of *force majeure*, and this *force majeure* situation continues for at least 20 calendar days;
- f. Client attributably fails to fulfil the obligations under the Contract of if Contractor has good grounds to fear that Client will fail to comply with his obligations under the Contract.

20.2 The Parties hereby explicitly exclude the applicability of Article 6:271 of the Netherlands Civil Code. In the event of setting aside, Dura Vermeer has the right to the contract sum, including additional work or changes and price increases in accordance with Article 5.3, plus the costs that Dura Vermeer had to incur in consequence of the setting aside, minus the costs saved by Dura Vermeer in consequence of not fully completing the Assignment.

20.3 Without prejudice to its right to set aside, Dura Vermeer has the right, if Client fails to comply with one or more of his obligations and Client is to blame for this failure to comply, to compensation for damage that has been suffered and will be suffered, immediately and without any notice of default or judicial intervention being required. A notice of default served on Client is then only required for creation of a right to compensation for damage for Dura Vermeer if it is plausible for Dura Vermeer that Client can still fully comply within a reasonable period of time.

Article 21. Applicable law and disputes

21.1 The Contract between Dura Vermeer and Client is governed by Dutch law.

21.2 All disputes, including those that are regarded as such by only one of the Parties, that may arise as a result of the Contract or of contracts that may be the consequence thereof, will be resolved by arbitration in accordance with the statutes of the Netherlands Arbitration Institute, as they read three months before the Contract was created.