

**UNIFORM ADMINISTRATIVE  
CONDITIONS FOR THE  
EXECUTION OF WORKS 1989**

**UAV 1989**

(Uniforme Administratieve Voorwaarden voor de  
uitvoering van werken 1989, UAV 1989)

8 1990, Stichting Instituut voor Bouwrecht  
(Netherlands Institute for Construction Law)  
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This translation of the *Uniforme Administratieve Voorwaarden voor de uitvoering van werken 1989* [UAV 1989] has been made for information purposes only and no liability is assumed for the accuracy thereof.

**MINISTERIE VAN VOLKSHUISVESTING, RUIMTELIJKE ORDENING EN MILIEUBEHEER [MINISTRY OF HOUSING, TOWN AND COUNTRY PLANNING AND THE ENVIRONMENT]**

Central Department of Legal Matters  
no. MJZ 25 889 007

The Minister of Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer [Housing, Town and Country Planning and the Environment], the Minister of Verkeer en Waterstaat [Transport and Communications], and the Staatssecretaris van Defensie [Secretary of State for Defence];

Whereas it is considered desirable to establish new Uniform Administrative Conditions for the Execution of Works;

Having heard a broad selection of representatives from organizations and institutions in the building industry;

**RESOLVE:**

To adopt the 1989 Uniform Administrative Conditions for the Execution of Works set out in the appendix hereto.

This Order shall be published in the Staatscourant [State Gazette] and a copy shall be sent to the Algemene Rekenkamer [Government Audit Department].

The Hague, 25 August 1989.

The Minister of Housing, Town and Country Planning and the Environment,

The Minister of Transport and Communications,

The Secretary of State for Defence.

## NOTES

In 1968, after lengthy consultation with the building industry, the Uniforme Administratieve Voorwaarden voor de uitvoering van werken [Uniform Administrative Conditions for the Execution of Works], hereinafter: UAV, were adopted by joint resolution of the Minister of Transport and Communications, the Minister of Defence and the Minister of Housing and Town and Country Planning. Originally intended to serve as standard conditions of building contracts of the government departments traditionally responsible for housing and public works, the UAV have become general conditions in the building industry. Not only the central government but also local authorities and private developers frequently apply the UAV as an integral part of their contracts.

The UAV have never been altered since 1968, but over the years there has been a growing need to adapt parts of the UAV to the views that have evolved in case law and legal publications. In this connection reference may be made to the recommendations of the "Standaardregelingen in de Bouw" Working Party in its report "Harmonisatie van standaardvoorwaarden in de bouw" and the recommendations of the "Orderingsthema's Aanbestedingswezen" Consultative Group in its report "Naar een ordening op de bouwmarkt". In order to give all parties involved in building and construction an opportunity for giving their views, a broad selection of representatives from the organizations and institutions in the building industry has been consulted on the reform, based on the draft revised UAV drawn up by the government departments mentioned above.

We are pleased that full agreement has been reached in these consultations on the UAV 1989. This consensus will serve to promote our ambition to realize the broadest possible practical application of the UAV in the building industry.

Our aim is to have the 1989 UAV take effect as soon as possible in the course of 1990.

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## **CHAPTER I. GENERAL**

### **Clause 1. Definitions**

1. For the purposes of these Conditions the following words shall be understood to mean:

Works: the work to be executed or the delivery to be made;

Employer: the individual or legal person awarding the contract to execute the Works;

Contractor: the individual or legal person undertaking the Works;

Specification: the description of the Works, the accompanying drawings, the conditions applicable to the Works, the summary of additional information and changes and the minutes of the pre-tender meeting;

Contract: the agreement for the execution of the Works entered into between the Employer and the Contractor;

Contract Sum: the sum for which the Contractor has agreed to execute the Works, not including turnover tax;

Materials: the materials, objects, parts, plant, machinery and equipment, soil of any type etc. to be incorporated in the Works;

Day: a calendar day;

Working day: any calendar day, unless it coincides with a public holiday or day recognized as a holiday at the place of execution of the Works, or a day designated by the Government or by or under the collective labour agreement as a day of rest, day of celebration or other non-individual holiday;

UAV: these Uniform Administrative Conditions 1989;

Civil Code: the Netherlands Civil Code (Burgerlijk Wetboek).

2. If in the Specification a separate time limit has been set for completion and acceptance of a specific part of the Works, for the purposes of Clause 6, paragraph 4 and Clauses 8, 9, 11, 12, 42 and 44 that part shall be considered as separate Works.
3. If in the Specification a separate time limit has been set within which the execution of the Works must have reached a specific stage before completion and acceptance take place, the provisions of Clauses 8, 9 and 42 shall apply mutatis mutandis.
4. If the Contract has been awarded without a prior tendering procedure, for the purposes of Clause 2, paragraph 2, Clause 6, paragraphs 11 and 13 and Clause 49, paragraph 2, the words "the tender date" shall be construed to mean "the date on which the Contractor submitted his quotation".

5. Where maintenance work has been awarded for a period of several years for a specific sum per annum, the words "Contract Sum" or "term of payment" shall mean the contract sum for the period of one year or the term of payment of the maintenance year concerned.

## **Clause 2. Applicable Regulations and Conflicting Provisions**

1. The provisions of these UAV shall apply unless expressly stated otherwise in the Specification.
2. The Specification is deemed to comprise, as if incorporated therein verbatim, the Dutch standards of Stichting Nederlands Normalisatie-Instituut [Netherlands Standards Institute], if declared applicable to the Works, as said standards are in force three months before the tender date.
3. The Contract shall be governed by Netherlands law.
4. If there is any discrepancy in or divergence between parts of the Specification the order of precedence of such parts, unless the context of the Specification shows otherwise, shall be determined by the following rules:
  - a) a later written document or drawing shall prevail over an earlier written document or drawing;
  - b) a description shall prevail over a drawing;
  - c) a special arrangement shall prevail over a general arrangement; it being understood that rule a) prevails over rules b) and c), and rule b) prevails over rule c).

If the application of these rules provides no solution, the conflicting provisions shall be construed, in fairness, to the disadvantage of the party by whom or on whose behalf the Specification has been drawn up.

5. The provisions of paragraph 4 shall not affect the Contractor's obligation to warn the Employer in the event of any obvious conflict between parts of the Specification.

## **CHAPTER II. REPRESENTATION OF THE PARTIES**

### **Clause 3. Employer's Agent**

1. The Employer may nominate one or several persons to act as his Agent or as assistants to the Agent, and may also replace any person so nominated by any other person.
2. If the Employer does not wish to nominate one or several persons to act as his Agent, he shall be required to give the Contractor written notice thereof before the commencement of the Works. If as a result of non-appointment or non-replacement of one or several persons to act as the Employer's Agent more shall be required of the Contractor than may reasonably be demanded of him, the Contractor shall be entitled to additional payment.
3. The Employer shall give the Contractor immediate written notice of any nominations not previously included in the Specification and of any modification or revocation of such nominations.
4. As long and insofar as the Employer has not in writing informed the Contractor otherwise, the Employer's Agent shall represent the Employer in all matters concerning the Works. However, in all cases where these UAV refer expressly to the Employer, he alone shall have authority.
5. If several persons have been nominated as the Employer's Agent, each of the persons so nominated shall be deemed to represent the Employer's Agent.
6. The Employer's Agent shall superintend the execution of the Works and compliance with the Contract.
7. Unless the Contractor has been notified otherwise in writing, any person nominated to assist the Employer's Agent shall bind the Employer's Agent.
8. The Employer's Agent shall have the right to determine that certain operations to be specified by him may not be carried out except in the presence of the Employer's Agent or persons nominated by him.
9. If and as long as the Employer has not exercised his right referred to in paragraph 1, he shall take the place of the Employer's Agent wherever these UAV refer to the Employer's Agent.

### **Clause 4. Contractor's Representative**

1. The Contractor may at any time, by power of attorney to be approved by the Employer's Agent, nominate one or several persons to act as his representative in matters concerning the Works. The same shall apply to any change in the aforesaid power of attorney.

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A specimen power of attorney is provided

2. A copy of the power of attorney, certified a true copy by the Contractor, shall be supplied to the Employer's Agent without delay.
3. The nomination of each representative shall apply during the execution of the Works or a specific part thereof.

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in appendix A.

## CHAPTER III. GENERAL OBLIGATIONS

### Clause 5. Employer's Obligations

1. The Employer shall ensure that there shall be at the Contractor's disposal in good time:
  - a. all permits and/or licences, exemptions or similar decisions required for the work as planned in accordance with the Specification;
  - b. the land or the water on or in which the Works are to be executed;
  - c. all necessary drawings and other information;
  - d. all supplies to be provided by the Employer under the Contract.

If the nature of the Works so requires, the Employer's Agent shall have a meeting with the Contractor and the operators of underground cables, pipes and mains before the commencement of the Works, at which meeting the Contractor shall be informed of the precise location of underground cables, pipes and mains situated in or near the Works or the Site and at which meeting it shall be decided what action is to be taken in respect of such cables, pipes and mains. If the Employer's Agent does not hold this meeting, the Contractor shall before the commencement of the Works request for such a meeting to be held. The Employer's Agent shall comply with such request.
2. The Employer shall be responsible for the constructions and construction methods prescribed by him or on his behalf, including the effect that soil conditions may have on such constructions and construction methods, as well as for the instructions and directions given by him or on his behalf.
3. If any materials or auxiliary plant and equipment supplied by the Employer are defective the Employer shall be liable for any damage thereby caused.
4. The Employer shall be liable for functional unfitness of:
  - a. any materials prescribed by him;
  - b. any materials to be procured from a supplier nominated by him, unless the Contractor had a choice in respect of such materials;

"Functional unfitness of materials" means inherent unfitness of the materials for the purpose for which they are intended according to the Specification.
5. The Employer shall be liable for non-delivery or delay in the delivery of:
  - a. materials to be procured from a nominated supplier;
  - b. any materials prescribed by the Employer, unless the Contractor had a choice in respect of the supplier of such materials,

provided that in each of these cases the Contractor shall have done all that is reasonably necessary to secure performance and/or compensatory damages.
6. If statutory regulations or governmental orders shall impose on the Works stricter requirements than those defined in the Contract, any modifications to the Works required to meet such requirements shall be settled as additional work.
7. The Employer shall pay any sum due to the Contractor in accordance with the terms of the Contract.
8. If the Site, the used materials recovered from the Works, or the materials made available by the Employer shall be contaminated, the nature and the extent of such

contamination, insofar as relevant to the execution of the Works, shall be stated in the Specification. The Works shall be planned in such a manner as to limit any damage to persons, property or the environment as much as possible.

#### **Clause 6. Contractor's Obligations**

1. The Contractor shall carry out the Works in accordance with the terms of the Contract without being entitled to claim any settlement, additional payment or compensatory damages, except in the cases where provision for this is expressly made or apparently implied.  
The Contractor shall perform all duties which by the nature of the Contract are required by law, in fairness or according to usage, or which relate to proper use of the materials.
2. The Contractor shall execute the Works in accordance with the drawings to be provided and approved by the Employer's Agent.  
He shall comply with the instructions and directions given to him by the Employer's Agent.
3. The Contractor's obligations shall also include:
  - a. the supply of the necessary materials and the performance of the necessary operations;
  - b. the provision of tools, plant and equipment, auxiliary materials, auxiliary plant and equipment and other facilities as required for the execution of the Works and the performance of the necessary auxiliary operations;
  - c. the payment of "precario"  
tax, connection costs for auxiliary pipes, cables, etc.
4. The Works and the execution thereof shall be for the account of the Contractor from the date of commencement, or from such earlier date as the Contractor may start the work pursuant to Clause 7, paragraph 2, until and including the date on which the Works are considered completed and accepted in accordance with Clause 10, paragraphs 1 or 2. The expression "the Works and the execution thereof" shall be understood to include the preparation of same, the delivery of materials to the Site, the execution of auxiliary works, and the efficiency and capacity of machinery, tools and equipment.
5. The execution of the Works must be such as to ensure their completion within the period of time as prescribed in the Specification pursuant to Clause 8, paragraph 1.
6. The manner of execution of the Works must be such as to cause no unnecessary hindrance to either the Employer or any third party. The Contractor shall execute the work in such a manner as to limit any damage to persons, property or the environment as much as possible.

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<sup>2</sup> Precario: a local tax levied in respect of objects extending from buildings over the public road (e.g. advertising or name signs) or (semi-)permanently placed on the public road (e.g. tables, chairs, displays of products).

7. Unsatisfactory work shall be remedied or replaced by the Contractor to the satisfaction of the Employer's Agent within a reasonable period of time to be set by the Employer's Agent. Any such remedy or replacement shall be carried out at the Contractor's expense, unless the unsatisfactory work results from a circumstance which is for the Employer's account.
8. The Contractor shall be liable for any damage to works of the Employer connected with or related to the Works or to other works and property belonging to the Employer, insofar as such damage has been caused by the execution of the Works and is attributable to negligence, lack of care, or incorrect actions by the Contractor, his staff and labour, his subcontractors or his suppliers.
9. The Contractor shall save the Employer harmless against any action, claim or demand by third parties for compensation for any damage, insofar as such damage has been caused by the execution of the Works and is attributable to negligence, lack of care or incorrect actions by the Contractor, his staff and labour, his subcontractors or his suppliers.
10. The Contractor shall obtain in due time any such permits and/or licences, exemptions and similar decisions as he may need or desire, insofar as these are not included among the permits, licences, exemptions or similar decisions to which the Employer shall attend pursuant to the provisions of Clause 5, paragraph 1, subparagraph a.
11. The Contractor shall be considered to have cognizance of all statutory regulations and government orders relating to the execution of the Works, insofar as in force on the tender date. The consequences attached to compliance with said regulations and orders shall be for the Contractor's account.
12. The consequences of compliance with any regulations of a special nature shall be for the Contractor's account, unless it must reasonably be assumed that he was not required to have knowledge of such regulations. In the latter case the Contractor shall be entitled to additional payment.
13. The consequences of compliance with any statutory regulations or government orders that come into force after the tender date shall be for the Employer's account, unless it must reasonably be assumed that on the tender date the Contractor could already have foreseen those consequences.  
However, if the Contract includes provisions concerning the settlement of changes in wages, salaries and social security charges or changes in prices, rentals and costs of carriage, the consequences thereof shall only be for the Employer's account if and to the extent that they arise from such provisions.
14. If the constructions, construction methods, instructions and directions referred to in Clause 5, paragraph 2, or the materials or auxiliary plant and equipment as referred to in Clause 5, paragraph 3, evidently contain or show such faults or defects that the Contractor would be in breach of good faith if he were to proceed to execute the part of the Works concerned without notifying the Employer's Agent of such faults or defects, he shall be liable for any prejudicial consequences caused by his failure to so notify the

Employer's Agent. The provisions of this paragraph shall apply mutatis mutandis to the cases referred to in Clause 5, paragraphs 4 and 5.

15. If the Contractor is of the opinion that, except for the Contract Sum and the payment of turnover tax and settlement in accordance with Clauses 35 through 39, he has still other claims against the Employer, he shall so notify the Employer in writing as soon as possible and in any case at such time as to enable the Employer's Agent to collect all the necessary data with respect to such claims. The Contractor shall assist in the collection of said data. The Employer or the Employer's Agent may require the Contractor to supply additional information relating to the claims of which he has notified them.
16. The Contractor shall ensure orderly conduct and safety on the Site and to provide such lighting as to ensure proper execution of the Works.
17. The Contractor shall be required if so requested by the Employer's Agent to cause the removal without delay of any unqualified or unfit persons present on the Site on his behalf or on behalf of any subcontractor or supplier.
18. During the execution of the Works the Contractor must be present on or close to the site where the work is being carried out, unless the Employer's Agent considers his presence unnecessary or unless the Contractor is represented in accordance with Clause 4.
19. The Contractor shall ensure that if he or his representative are not present on the Site, during the execution of the Works there shall always be present a person instructed to follow any instructions or directions given by the Employer's Agent and to communicate the same without delay to the Contractor or his representative.
20. The Contractor shall give access to the Works and the Site to any person authorized by the Employer or the Employer's Agent, insofar as he has no reasonable objections to such access.
21. Apart from staff and labour employed on the Site and any persons authorized on some other account, the Contractor may give other persons access to the Works and the Site as long as the Employer or the Employer's Agent do not voice any reasonable objections to such access.
22. The Contractor shall ensure that, insofar as not prohibited by reason of industrial secrecy, the Employer's Agent and persons nominated by the Employer's Agent shall have unrestricted access to the sites, factories, workshops and cabins of the Contractor and of any subcontractors and suppliers where operations for the purposes of the Works are carried out or where materials intended for the Works are stored, in order to inspect such operations and/or materials.
23. If by reason of industrial secrecy unrestricted access as referred to in the preceding paragraph cannot or not fully be given, notice thereof must be given:
  - a. at the time of submission of tender, where the authority to grant unrestricted access vests in the Contractor;
  - b. at the time of the request for approval of the subcontractor or supplier concerned, where such authority vests in one of them.



A notice as referred to under a. shall not be construed as a condition attached to the submission of tender.

24. Where two or more persons have contracted jointly, they shall be severally liable for the entire performance of the Contract. They shall be required to nominate one from their midst in writing to act as their representative in all matters.
25. Without the prior written approval of the Employer the Contractor shall not assign the Contract or any part thereof to a third party.
26. The Contractor may subcontract specific parts of the Works, provided he has obtained the prior written approval of the Employer's Agent for the choice of such parts and the subcontractors to be engaged for that purpose; nevertheless, the Contractor shall remain fully liable to the Employer in respect of such parts.
27. If the engagement of any particular subcontractor is or has been prescribed by or on behalf of the Employer, the Contractor's obligations to the Employer with respect to the work carried out by that subcontractor shall be limited to the obligations for which the Contractor can hold that subcontractor liable under the terms of the subcontract as accepted or approved by the Employer.  
If the nominated subcontractor fails to perform or does not perform within the agreed time or performs improperly and the Contractor has taken all reasonable steps in order to obtain performance and/or compensatory damages, the Employer shall reimburse the Contractor for the additional costs of execution incurred by him, insofar as the subcontractor has not compensated the Contractor for such costs. In consideration for such reimbursement the Contractor shall, forthwith upon request of the Employer, assign to the Employer his claim against the nominated subcontractor up to the sum so reimbursed by the Employer.
28. Where any part of the Works shall be executed under subcontract, the Contractor shall fully inform the subcontractor of the provisions of the Specification which may be of importance to that part of the Works and shall fully inform him of the manner of execution.
29. Any instructions and directions by the Employer's Agent concerning such parts shall be given only to the Contractor and shall be passed on by the Contractor to the subcontractor, unless the Contractor, after consultation with the subcontractor, shall request the Employer's Agent in writing to communicate such instructions and directions directly to the subcontractor as well.
30. For the purposes of the Contract the Contractor shall be required to have domicile in The Netherlands if he is not already established in The Netherlands.

**CHAPTER IV.  
COMMENCEMENT OF WORK, TIME FOR EXECUTION, COMPLETION AND  
ACCEPTANCE**

**Clause 7. Date of Commencement**

1. The date of commencement shall be the fifth working day after the date on which the Contract is awarded to the Contractor.
2. Unless otherwise provided in the Specification the Contractor shall be at liberty to start the work even before the date of commencement, provided the Employer's Agent has no objection.

**Clause 8. Time for Execution, Extension of Time for Completion and Acceptance**

1. The time within which the Works must be completed and accepted shall be expressed in the Specification:
  - a. in a number of workable working days; or
  - b. in a number of calendar days, weeks, or months; or
  - c. by stating a specific date.
2. If any period of time has been expressed in a number of workable working days, working days and half working days, respectively, shall be regarded as unworkable days when on such days or half-days, due to circumstances for which the Contractor is not liable, the majority of the workmen or the equipment have been unable to work for at least five hours or at least two hours, respectively.
3. If completion and acceptance of the Works would have to take place on a date which is not a working day the next working day following that date shall be the agreed completion date.
4. The time within which the Works must be completed and accepted may be extended by the Employer either of his own accord or in response to a request for extension from the Contractor. If the Contractor cannot be required to complete the Works within the agreed time due to force majeure, or due to circumstances for which the Employer is responsible, or due to changes made by or by order of the Employer in the Specification or in the execution of the Works, the Contractor shall be entitled to an extension of time.
5. A request for an extension of time by the Contractor shall be considered only if made in writing and - save for dispensation granted by the Employer's Agent - delivered to the Employer's Agent at least fourteen days before the applicable expiry date.

## **Clause 9. Inspection and Approval**

1. Inspection of the Works shall take place upon written application by the Contractor to the Employer's Agent, such application to state the date on which the Contractor expects the Works to be completed. The Employer's Agent may accept a verbal announcement, which shall be entered in the daily record or weekly report referred to in Clause 27.
2. The inspection shall be carried out as soon as possible and as a rule within eight days after the date referred to in paragraph 1. Written notice of the date and time of inspection shall be given to the Contractor timeously and if possible at least three days in advance. The Employer's Agent may require the Contractor or his Agent to attend at the inspection.
3. Within eight days after inspection of the Works the Contractor shall be given written notice stating whether the Works have or have not been approved. In the latter case such notice shall specify the defects by reason of which the approval has been withheld. If the Works are approved, the date of approval shall be the date on which the notice to that effect has been despatched to the Contractor.
4. If the Contractor so agrees, the written notice referred to in the preceding paragraph may be dispensed with and replaced by a corresponding entry in the daily record or weekly report, specifying the date of the entry. In that case, and if the Works are approved, the date of approval shall be the date of said entry.
5. If written notice to the Contractor, stating whether the Works have or have not been approved, is not despatched or, in the case referred to in paragraph 4, a corresponding entry in the daily record or weekly report is not made within eight days after the inspection, the Works shall be considered to have been approved on the eighth day following the inspection.
6. If the inspection is not carried out within fifteen days after the date referred to in paragraph 1, the Contractor may by registered letter send the Employer's Agent another application requesting inspection of the Works within eight days. If the Employer's Agent does not comply with that request the Works shall be deemed to have been approved on the eighth day following despatch of said letter.
7. Minor defects that are capable of being repaired before the due date of any subsequent payment instalment shall not constitute a reason for withholding approval, provided that the Works are in such a condition that they are capable of being used. The Contractor shall be required to repair as soon as possible any defects as referred to in this paragraph.
8. The preceding provisions shall apply mutatis mutandis in respect of any re-inspection to be carried out after approval has been withheld.
9. In the case of re-inspection, any defects other than the defects notified to the Contractor in accordance with paragraph 7 shall only constitute a reason for renewed withholding of approval if such defects have come to light after the previous inspection.

#### **Clause 10. Completion and Acceptance**

1. The Works shall be considered completed and accepted if they have been approved or are deemed to be approved in accordance with the provisions of Clause 9. The date on which the Works have been approved or are deemed to be approved shall be the date on which the Works are considered completed and accepted.
2. If the Contractor has not sent the Employer's Agent an application for inspection as referred to in paragraph 1 of Clause 9 but the Employer considers the Works completed, the Employer may so notify the Contractor in writing. In that case the date on which the Works are considered completed and accepted shall be the fifth day following despatch of said notice.
3. The Employer may elect to use or have others use the Works prior to completion, or to use or have others use any completed or uncompleted part of the Works, provided that such use shall not jeopardize satisfactory progress of the work. The Employer shall not proceed thereto until after he has given the Contractor written notice thereof and the Works or the part of the Works so to be occupied and used have been inspected. If as a result of such use more work shall be required of the Contractor than may reasonably be demanded of him, such work shall be settled as additional work. If any damage to the Works is caused as a result of such use, such damage shall not be for the account of the Contractor. The Works or the part concerned shall not be considered completed and accepted as a result of the use and the inspection of the Works as referred to in this paragraph.

#### **Clause 11. Defects Liability Period**

1. If a defects liability period is provided for in the Specification that period shall begin immediately after the date on which the Works are considered completed and accepted in accordance with the provisions of paragraphs 1 or 2 of Clause 10.
2. The Contractor shall be required to repair any defects which come to light during the defects liability period, with the exception, however, of defects for which the Employer is responsible under paragraph 2 of Clause 5 or for which he is liable under paragraph 3 of Clause 5.
3. Repairs as referred to in paragraph 2 shall be carried out for the account of the Contractor and to the satisfaction of the Employer's Agent and within a period of time to be set in fairness by the Employer's Agent.
4. Any damage to the Works occurring during the defects liability period shall be for the account of the Employer, with the exception, however, of any damage which is the result of unsatisfactory work done by the Contractor. In the latter case the provisions of paragraph 3 shall apply *mutatis mutandis*.
5. If, when so requested, the Contractor undertakes to repair any defects or damage to the Works which are not for his account, such repairs shall be settled as additional work.

6. Upon expiry of the defects liability period the Works shall be inspected again in order to ascertain whether the Contractor has fulfilled his obligations; the procedure to be followed for this purpose shall be as provided for in Clause 9.

**Clause 12. Contractor's Liability after Completion and Acceptance**

1. The Contractor's liability for any shortfall in the Works shall cease after the date on which the Works are considered completed and accepted in accordance with the provisions of paragraphs 1 or 2 of Clause 10.
2. An exception to the provision in paragraph 1 shall apply:
  - a. if the event referred to in Section 1645 of the Civil Code occurs;
  - b. if the Works or any part thereof contain any hidden defect caused through fault of the Contractor or his suppliers or subcontractors or his staff or labour and the Contractor is notified of such hidden defect within a reasonable period of time after it has been discovered.
3. Any defect as referred to under b in paragraph 2 shall be regarded as a hidden defect only if despite close supervision during the execution of the work or at the inspection of the Works as referred to in paragraph 2 of Clause 9 such defect could not reasonably have been discerned by the Employer's Agent.
4. Actions on account of hidden defects cannot be brought after five years have elapsed since the date referred to in paragraph 1.
5. If a defects liability period is provided for in the Specification, for the purposes of this Clause the date referred to in paragraph 1 shall be replaced by the day following the expiry of that period and "inspection of the Works" shall mean the inspection referred to in paragraph 6 of Clause 11.

**CHAPTER V.  
CHANGES IN COMPLETION DATES, SUSPENSION, TERMINATION IN  
UNFINISHED STATE**

**Clause 13. Changes in Completion Dates**

1. The Employer's Agent shall have the right:
  - a. if the Specification provides for a defects liability period as referred to in paragraph 1 of Clause 11, to postpone the execution of work of a subordinate nature until and during that defects liability period;
  - b. in the event of maintenance work which extends over several years, to require that the execution of Works which the Contractor has undertaken to carry out in a particular year shall be carried out in another year within the period of that maintenance.
2. If the above shall give rise to settlement of costs on account of variations, an arrangement therefore shall be made in accordance with the provisions of Clause 36.

**Clause 14. Suspension of the Works and Termination of Works in Unfinished State**

1. The Employer shall have the right to suspend the execution of the Works or any part thereof.
2. In an emergency, pending the Employer's decision, the Employer's Agent shall be provisionally entitled to order such suspension.
3. During the suspension:
  - a. the Contractor shall, in consultation with the Employer's Agent, take appropriate measures to prevent and limit any damage which might occur to the Works;
  - b. the Contractor shall refrain from doing anything which might result in damage to the Works or which might impede the subsequent resumption of work.
4. Provisions to be made by the Contractor as a result of the suspension shall be settled as additional work. The Contractor shall be compensated for any loss incurred by him by reason of the suspension.
5. If the suspension continues for more than one month the Contractor may further demand a pro rata payment for the part of the Works already executed. In determining the amount of such payment account shall be taken of the materials not yet used, to the extent that such materials have become the property of the Employer by virtue of Clause 19. Any materials ready for inspection and still unused shall first be inspected if so requested by the Contractor.
6. If the suspension of the whole of the Works continues for more than six months the Contractor shall have the right to terminate the Works in their unfinished state.

7. The Employer shall have the right to instruct the Contractor to terminate the Works in their unfinished state.
8. If the execution of the Works has been delayed for an uninterrupted period of more than two months by reason of circumstances which are for the Employer's account, the Contractor shall have the right to terminate the Works in their unfinished state.
9. In the cases referred to in paragraphs 6, 7 and 8 the Employer shall take over the Works as soon as possible after termination as aforesaid. Until the Works have been taken over by the Employer the Contractor shall be required to fulfil his obligations under paragraph 3.
10. Upon termination as aforesaid the Contractor shall be entitled to the Contract Sum, increased by the cost incurred by the Contractor by reason of the non-completion, and reduced by the cost he has saved by reason of the termination. Nothing in this Clause shall affect the rights of the Contractor and the Employer to whatever shall otherwise be due on account of the Contract.

## **CHAPTER VI. SITE, ADVERTISING**

### **Clause 15. Site**

1. Where land or water surfaces are designated in the Specification as the Site of the Works, the Contractor may use the same free of any charge for as long as this shall be necessary for the execution of the Works. The cost of use of any other land or water shall be for the Contractor's account.
2. After consultation with the Contractor, the Employer's Agent shall indicate which parts of the Site may be used for storage and for the installation of sheds, cabins, auxiliary works and other auxiliary plant and equipment.
3. Prior to commencement of the work the Contractor may require in writing that the state and condition of the Site be determined as accurately as possible; in that case the Employer's Agent shall carry out the survey as soon as possible in co-operation with and for the account of the Contractor. If the survey reveals any differences in comparison to the situation described in the Specification, the provisions of Clause 29, paragraph 3 shall apply.
4. After use and no later than on completion and acceptance of the Works the Site must be delivered up as much as possible in its original state to the satisfaction of the Employer's Agent.

### **Clause 16. Enclosure, Advertising**

1. If the Employer considers enclosure of the Works and the Site necessary, the type of enclosure shall be described in the Specification.
2. The Employer shall be entitled, in consultation with the Contractor, to affix advertisements or other notices to hoarding and fences serving to enclose the Works or the Site, as well as elsewhere on the Site or to the Works.
3. However, the Contractor shall be permitted to use part of the places as aforesaid to affix signs showing his name and business, provided that the location, design and dimensions of such signs have been approved by the Employer's Agent. If so requested by the Contractor, the Employer's Agent may grant the same facility to subcontractors and suppliers.



## **CHAPTER VII. MATERIALS**

### **Clause 17. Processing and Incorporation of Materials**

1. Subject to paragraphs 3, 4 and 5 of Clause 5, the Contractor shall guarantee the good quality of the materials, their fitness for their purpose, their conformity to the specified requirements, and their timely delivery.
2. The Contractor shall not be permitted to process or incorporate materials that have not been approved.
3. The Employer's Agent may require that approved materials be replaced even after they have been processed and/or incorporated, if any defects in them come to light after their inspection. Such replacement shall be carried out at the Employer's expense and shall be settled as additional work, without prejudice to the Contractor's right to compensatory damages if there are grounds therefor. However, if the defect is a hidden defect and one which is attributable to the fault of the Contractor, his supplier, his subcontractor or his staff or labour, the cost of such replacement shall be for the account of the Contractor.
4. The Employer's Agent shall be entitled to demand certificates of origin of materials.
5. If the Employer's Agent so agrees, the Contractor may supply other materials than those referred to by a manufacturer's name, provided they are of the same quality.

### **Clause 18. Inspection of Materials**

1. Before the materials are incorporated in the Works they shall be inspected by the Employer's Agent and - if approved - shall, if necessary, be marked as such. Materials supplied by the Employer shall be deemed to have been approved.
2. For the purpose of their inspection the samples and materials must be timeously delivered at the Works or the workshops. Samples supplied by the Contractor shall remain in the custody of the Employer's Agent for as long as the Employer's Agent shall deem necessary; however, those samples are for the account of the Contractor and shall remain accessible to him.
3. The Contractor shall give the necessary assistance in the inspection of the materials as well as in the marking of approved materials, for which purpose he shall make available labour and render other assistance of an auxiliary nature.
4. The Contractor shall be entitled to attend the inspection in person or by a representative; the Employer's Agent may require him to do so.
5. The Employer's Agent shall be entitled to have materials examined by a third party; the costs incidental thereto shall be for the account of the Employer, save as provided in Section 6 under d.
6. The Contractor shall bear the cost of:

- a. making available the materials required for inspection;
  - b. arranging for the composition of the materials in a form suitable for inspection;
  - c. packaging and transportation of any materials to be inspected elsewhere;
  - d. the examination referred to in paragraph 5, if that examination results in rejection, unless it concerns material indicated in the Specification by a manufacturer's name, or material the supplier of which has been nominated by or on behalf of the Employer;
  - e. the re-inspection as referred to in paragraph 12, if the expert upholds the rejection.
7. The costs referred to in the preceding paragraph shall, where necessary, be settled in accordance with Clause 42, paragraph 6.
  8. The inspection shall take place - at the option of the Employer's Agent - either on the Site or in the transportation vehicles or elsewhere, as soon as possible after the materials have arrived or have been completed. If, despite a written request for inspection of materials from the Contractor received by the Employer's Agent, the Contractor has not received written notification of the result of the inspection by a reasonable time stated in that request, the materials shall be deemed to have been approved. For the purposes of this paragraph the words "written request" and "notification" shall also mean notes in the daily record or weekly report referred to in Clause 27.
  9. Where the Contractor requests inspection to be carried out at a place other than that prescribed by the Employer's Agent, such request shall not be refused if granting it is not in conflict with the interests of good quality of the Works and effective inspection, and provided that the Contractor shall bear the extra cost thereof.
  10. The Contractor shall not be compensated for diminution of value and loss of materials used for the inspection.
  11. In the event that materials are rejected, both the Employer's Agent and the Contractor may require that samples, taken from those materials in mutual agreement, be kept until the dispute that may arise from the rejection has been settled. Such samples shall be marked by the Employer's Agent and the Contractor and shall be kept in a place to be designated in mutual agreement.
  12. In the event that materials are rejected, the Contractor shall be entitled to request re-inspection by an expert to be appointed in agreement with the Employer. The expert's decision shall be binding upon both parties, also in any subsequent dispute.
  13. Rejected materials shall be separated and removed from the Works as soon as possible, even if they have already been processed or incorporated.

### **Clause 19. Ownership of Materials**

1. All materials intended for the Works shall become the property of the Employer - without the Employer thereby becoming liable for any payments to suppliers or other rightful claimants - as soon as they have been approved and the Contractor has demonstrated, by submission of (a) statement(s) in the form as shown in Appendix B to the UAV, that the suppliers and any other rightful claimants have waived all rights and claims to those materials to the benefit of the Employer.
2. No transfer of ownership to the Employer, as referred to in paragraph 1, shall be deemed to have taken place:
  - a. if any creditor of the Employer shall seize the materials referred to in paragraph 1;
  - b. if the Employer is adjudged bankrupt or is put into liquidation [faillissement] or is granted a moratorium of payments [surséance van betalen] and neither the trustee-/liquidator [curator] nor the Employer and his trustee/administrator [bewindvoerder] shall continue the execution of the Works. An exception to the provisions of this paragraph shall apply, however, in respect of materials for which the Employer has paid the Contractor.
3. Any materials remaining unused after completion of the Works shall be returned to the Contractor and considered as not having been supplied, save in the event referred to in Clause 36, paragraph 8.

### **Clause 20. Care of Materials**

The Contractor shall be responsible for taking proper care of the approved materials and the materials supplied by the Employer as well as the used materials recovered from the Works. Save for the provisions of Clause 44, any loss or disappearance of or damage to any of these materials shall be for the Contractor's account.

### **Clause 21. Used Materials**

1. Any used materials recovered from the Works shall remain the property of the Employer, unless the Employer's Agent states that they are without value to the Employer.
2. Used materials that have been declared to be without value to the Employer shall become the property of the Contractor and must be removed; the Employer's Agent may require that said materials be removed within time limits to be set by him and to a distance of at least 200 metres from the Works.
3. The used materials that remain the property of the Employer shall be properly sorted - all timber to be cleared of nails, screws, etc. - and stored in places, at a distance of no more than 200 metres from the Works, to be designated by the Employer's Agent.

4. The Contractor shall not be responsible for the quality of used materials recovered from the Works, insofar as any deterioration of their quality is not attributable to the Contractor.

**Clause 22. Warranty for any Parts**

1. The provisions of this Clause shall apply unless the Specification provides otherwise.
2. If the Specification provides that one or several parts of the Works must be warranted, such warranty shall consist herein that the warrantor is bound, for his own account and forthwith upon being notified by the Employer, to remedy as soon as possible all defects occurring during the warranty period of which the Employer shows that it is plausible that they must most probably be attributed to less than sound quality or defective execution.
3. If the Specification provides that a part of the Works must be warranted by a subcontractor or a supplier, the Contractor shall procure that the subcontractor or supplier concerned furnishes such warranty to the Employer. If the subcontractor or supplier does not provide said warranty, a corresponding warranty shall be given by the Contractor.
4. Any warranty agreed under the terms of this Clause shall be valid from the date of completion or delivery of the warranted part and for the period stated in the Specification.

## **CHAPTER VIII. AUXILIARY PLANT AND EQUIPMENT**

### **Clause 23. Sheds and Other Auxiliary Plant and Equipment**

1. Timber and carpentry, insofar as not intended for use in the soil or in works of hydraulic engineering, and board, steel window frames and the like shall be stored in such a way, if necessary in sheds with waterproof roofs, that their shape, appearance and composition shall be preserved and that they shall not be affected by the sun, rain or rising damp.  
The same requirements shall apply to wall tiles, lime, trass, cement, gypsum, locks and hinges, non-ferrous metals, sanitary fittings, paints, wall covering and the like; the sheds intended as storage areas for these materials shall have waterproof walls and must be lockable.  
Furthermore, the interior of the sheds must be arranged and illuminated in such a way that the materials referred to in this paragraph can also be properly sorted and processed inside.
2. If the Specification provides that accommodation for the Employer's Agent is to be made available, the Contractor shall make such accommodation available to the Employer's Agent within ten working days of the commencement of the Works. Said accommodation must be accessible via a proper access road.  
The accommodation is to consist of rooms as described in the Specification with a minimum height of 2.30 metres, or, in the absence of such description, to consist of a room with a floor surface of approximately 12 square metres, as well as a washroom, lavatory, lockers and a draught portal.  
The accommodation must be of good appearance inside and outside, the exterior walls and the ceilings and roof to be made of waterproof double panels, and must be fitted with the necessary windows, a washbasin and water closet, curtains, a drawing table with lockable drawers, a drawing board, table, chairs, clothes rack, towels, soap, etc.  
If the Specification includes a telephone facility for the Employer's Agent, such facility, bypassing any switchboard, shall be provided for the exclusive use of the Employer's Agent; the cost of the telephone calls shall be borne by the Employer.  
The Contractor shall provide cleaning, heating and lighting of the accommodation and shall supply drinking water, coffee and tea.
3. All cabins, sheds, accommodation for the Employer's Agent, enclosures, service roads, scaffolding, equipment, tools and other auxiliary plant and equipment for the execution of the Works shall be maintained by the Contractor in a good state of repair for as long as they are needed for the Works. When they are no longer needed they shall be removed within a period to be set by the Employer's Agent and in any case before completion and acceptance of the Works, or, if the Specification prescribes a defects liability period, before the expiry of the defects liability period.

#### **Clause 24. Employer's Auxiliary Plant and Equipment**

1. If the Contractor is instructed or permitted to use any buildings, sites and auxiliary plant and equipment of the Employer, the cost of maintenance and repair thereof shall be for the account of the Contractor for the duration of such use.
2. In the event of loss of said property as a result of use as referred to in paragraph 1, the Contractor shall be required to pay compensatory damages for such loss.
3. As soon as the aforesaid property is no longer required for the execution of the Works, the Contractor shall deliver up that property to the Employer in a state of repair as nearly as possible equal to the state in which the Contractor received that property from the Employer, and the Contractor shall store the Employer's auxiliary plant and equipment in places to be designated by or on behalf of the Employer.

#### **Clause 25. Sunken Plant and Equipment**

1. If auxiliary plant and equipment used for the Works, such as vessels and plant, or materials intended to be incorporated in the Works, have sunk in waters that are the property of the Employer or under the Employer's control, the Contractor shall be required to raise and remove the same together with their cargo and accessories.
2. In the instances referred to in paragraph 1, the Contractor shall be required to affix at once the necessary markers and lights, and as soon as possible to take the initial measures for raising the sunken objects, such as by passing cables underneath the same, and to complete the raising in as short a time as possible.
3. The cost of the operations referred to in the preceding paragraphs shall be for the account of the Contractor, unless the sinking referred to in paragraph 1 has been caused by a circumstance for which the Employer is accountable.

## **CHAPTER IX. EXECUTION OF THE WORKS**

### **Clause 26. General Time Schedule, Programme**

1. If so required under the terms of the Contract or if so instructed by the Employer's Agent after the award of contract, the Contractor shall as soon as possible prepare a general time schedule conforming to the nature of the Works. The general time schedule shall clearly state the manner and sequence in which, and the materials, plant and equipment with which the Contractor intends to execute the Works and each part thereof, as well as the amount of time which he considers necessary for the execution of each part. The general time schedule shall further indicate the dates by which whatever is to be provided under the Contract by the Employer or the Employer's Agent must be at the Contractor's disposal for the purposes of the progress of the Works and the sequence of the parts of the Works. The general time schedule must satisfy the requirements laid down in the Contract with respect to the execution of the Works, and shall be provided with adequate explanatory notes by the Contractor.
2. The Contractor shall present two dated and signed copies of the general time schedule to the Employer's Agent for approval no later than the fifteenth working day following the date on which the Contract was awarded or, as the case may be, on which the Employer's Agent requested a general time schedule.
3. The Employer's Agent shall decide on approval of the general time schedule as soon as possible and shall announce his decision to the Contractor in writing no later than the tenth working day after receipt of the general time schedule. Approval of the general time schedule shall only be withheld if the content of the schedule shows that the requirements under the Contract are not satisfied.
4. If approved, both copies of the general time schedule shall be dated and signed by the Employer's Agent and one copy shall subsequently be returned to the Contractor. If the general time schedule is not approved, written notice stating the reasons for withholding approval shall be given to the Contractor. In that case the Contractor shall as soon as possible, but no later than ten working days after said notice, present for approval to the Employer's Agent a revised general time schedule in which the objections of the Employer's Agent have been taken into account. Paragraph 3 shall apply mutatis mutandis in respect of the decision on the revised general time schedule.
5. The general time schedule shall serve as a guideline to the Contractor and shall not increase the Contractor's obligations under the Contract. The approval of the general time schedule and any alterations made therein with the approval of the Employer's Agent shall not relieve the Contractor of his obligations to execute the Works in accordance with the requirements under the Contract and to complete the Works on time.
6. If the Contractor is required to present to the Employer's Agent a detailed programme instead of or in addition to the general time schedule referred to in this Clause, a provision to that effect, stating the requirements to be satisfied by that programme, shall

be inserted in the Contract. Unless stated otherwise in the Contract, the provisions of paragraph 1 through 5 shall apply mutatis mutandis to the programme as aforesaid.

7. Any alterations made by the Employer's Agent in the approved general time schedule or approved detailed programme shall entitle the Contractor to claim additional payment if as a result of such alterations more shall be required of the Contractor than may reasonably be demanded of him.

#### **Clause 27. Daily Records, Lists, Reports**

1. The Employer's Agent shall draw up weekly reports, such reports to include notes concerning:
  - the progress and state of the Works;
  - any unworkable days and any granted extension of time for completion;
  - supply and removal and approval of materials;
  - supply and removal of plant and auxiliary plant and equipment;
  - changes in the Specification, additional work and omitted work, quantities used and processed, and provisional sums;
  - inspection and approval and completion and acceptance of the Works;
  - supply of drawings.
2. The notes referred to in paragraph 1 shall be inserted in the weekly report no later than on the fifth working day following the end of the working week to which the notes relate, said report to be signed by the Employer's Agent immediately after it has been drawn up.
3. The weekly report, signed by the Employer's Agent, shall be presented to the Contractor for his signature as soon as possible but no later than the fifteenth working day following the end of the working week to which it relates. Copies of the weekly reports shall be supplied to the Contractor.
4. If the Contractor agrees with the content of the weekly report he shall sign it, to mark his acceptance, no later than the fifth working day after the report has been presented to him.
5. If the Contractor disagrees with the content of the weekly report he shall still sign it no later than on the fifth working day after it has been presented to him, but he shall add to his signature a note stating the parts to which he objects and the reasons for his objection.
6. If the Employer's Agent does not only draw up weekly reports but keeps daily records as well, the provisions of paragraphs 1 through 5 shall apply mutatis mutandis to such daily records, except that no copy of the daily records shall be supplied to the Contractor unless at his specific request.
7. If so agreed in the Contract or if so instructed by the Employer's Agent after the award of contract, no later than the fifth working day following the end of each working week the Contractor shall present a list for the week concerned, such list to be dated and



signed by him and to contain information concerning staff and labour as well as such further information as the Employer's Agent may require.

8. If operations for the purposes of the Works are performed off the Site, the Employer's Agent may require the Contractor to present a report on such operations, that report to be signed by the Contractor and to be submitted to the Employer's Agent in duplicate no later than the fifth working day after the end of a working week. Said report is to include notes, as referred to in paragraph 1, relating to the operations carried out in the working week concerned.

**Clause 28.**

**Marking-out, Determining and Sounding of Levels, and Measuring**

The Contractor shall for his own account:

- a. measure out the Works, provide and place the necessary profiles, pickets or markers;
- b. make available to the Employer's Agent suitable labour and auxiliary equipment, such as row boats, sounding vessels, measuring instruments, levellings, sighting marks, etc., for the purposes of marking-out, determining of levels and measuring;
- c. properly maintain the pickets, profiles and other items used in measuring-out the Works for as long as the Employer's Agent shall deem necessary.

**Clause 29.**

**Variations in Dimensions or State of Existing Works and Sites**

1. If the dimensions stated in the description of the Works do not correspond with the dimensions shown in the drawings, the Contractor shall be required to notify the Employer's Agent of the discrepancy he has found, in order that the Employer's Agent, if he thinks fit, may decide to vary from the order of precedence referred to in Clause 2, paragraph 4. Such decision by the Employer's Agent shall be considered a change in the Specification.
2. If the dimensions stated in the Specification do not correspond with the dimensions existing in reality, the Contractor shall be required to notify the Employer's Agent of the discrepancy he has found, in order to consult with the Employer's Agent as to the steps to be taken, in view of such discrepancy, to ensure correct execution of the Works. Aside from the settlement of varied work, which may result from the Specification, the discrepancy as aforesaid shall entitle the Contractor to claim additional payment if it is of such a nature that its consequences should reasonably not be for the Contractor's account.
3. Any differences between the condition of existing buildings, works and sites appearing during the execution of the Works and their condition as described in the Specification shall, aside from the settlement of varied work which may result from the Specification, entitle the Contractor to claim additional payment if the differences are of such a nature that their consequences should reasonably not be for the Contractor's account. The Employer shall in any event be responsible for the accuracy of the data supplied by him or on his behalf.

The provisions of this paragraph shall also apply if no condition or data are mentioned in the Specification but the condition appearing during the execution of the Works varies from the condition which the Contractor might reasonably have expected.

**Clause 30.**

**Provisions for Dams, Embankments, Bulkheads, Water Passages and Traffic**

1. If the execution of the Works or any parts thereof might cause damage to dams, embankments, bulkheads or water passages, obstruction or interruption of or hindrance or danger to traffic on land, waterborne traffic or air traffic, the Contractor may execute the work concerned only if and as long as he has made the necessary provisions in respect of the interests concerned.
2. The provisions as referred to in paragraph 1 mean: temporary works, enclosures, warning signs, signals, notices, illumination, and such other safety measures as are prescribed by statutory regulations or as may be necessary on any other account.
3. As long as any hindrance to or interruption of traffic on land, waterborne traffic or air traffic shall exist the Contractor must provide the necessary assistance for the benefit of such traffic.
4. The cost of provisions and assistance referred to in this Clause shall be for the account of the Contractor, except that where significant temporary works or measures of a farreaching nature are concerned this provision shall apply only if such works or measures are described in the Contract.

**Clause 31. Connection with Other Works**

1. If various Works interconnect, that fact shall be stated in the Specification.
2. Unless provided otherwise in the Specification, the Employer's Agent shall co-ordinate interconnecting Works.
3. Without thereby being entitled to any other compensation than as referred to in the next paragraph, the Contractor shall allow third parties acting with permission of the Employer's Agent to work on the same site and at the same time.
4. The Contractor shall also allow such third parties to utilize already finished work and auxiliary works. The Contractor may claim additional payment for said use if as a result of such use more shall be required of the Contractor than may reasonably be demanded of him.

**Clause 32. Objects found on the Site**

The Contractor shall be required to report to the Employer's Agent immediately the discovery of any objects found during the execution of the Works which are of value or may be of historical or scientific interest, and where possible to hand over such objects to the Employer's Agent, unless provided otherwise in the Specification.

**Clause 33. Presumption of Unsatisfactory Work**

If the Employer's Agent suspects that the Works do not meet the requirements laid down in or by the Contract, the Contractor shall be required to take such measures or allow such measures to be taken as shall be necessary to ascertain whether or not this is the case. If the Works do not meet said requirements the cost of said measures shall be for the account of the Contractor. In the opposite case said cost as well as the cost of any repairs shall be settled as additional work and compensation shall be paid for any damage.

**Clause 34. Changes in the Execution of the Works**

Any changes made by the Employer's Agent in the execution of the Works shall entitle the Contractor to claim additional payment if as a result of such changes more shall be required of the Contractor than may reasonably be demanded of him.

## **CHAPTER X. ADDITIONS AND OMISSIONS**

### **Clause 35. Settlement of Additions and Omissions**

1. Any additional work and omitted work shall be settled:
  - a. if there are changes in the Specification (Clause 36);
  - b. if there are differences in provisional sums (Clause 37);
  - c. if there are differences in estimated quantities (Clause 38, paragraph 2)
  - d. if there are differences in adjustable quantities (Clause 39);
  - e. in cases in which settlement as additional work or omitted work is provided for by these UAV or by the Contract.

Nothing in this Clause shall affect the rights of the Contractor and the Employer to whatever shall otherwise be due on account of the Contract.

2. Additional work shall be settled by additional payment and omitted work shall be settled by deduction from the Contract Sum. The Employer and the Contractor shall agree the manner in which - by one payment or by payment in instalments - and when any additions and omissions or the balance thereof are to be settled.
3. If nothing has been agreed as to the method and date of settlement of additional work, such settlement shall be made by one payment upon completion of the additional work.
4. If nothing has been agreed as to the method and date of settlement of omitted work, such settlement shall be made, with due observance of what is stipulated in paragraph 7 of Clause 40, by one payment at the time of the final account of the Works.
5. If at the final account of the Works the total amount of omitted work already settled and still to be settled proves to be in excess of the amount of additional work already settled and still to be settled, the Contractor shall be entitled to an amount equal to 10% of the difference between these totals.

An exception to the provision in this paragraph shall apply to the extent that the omitted work is the result of a request by the Contractor to be allowed to execute less work than stipulated in the Contract.
6. For the purposes of the provisions of paragraph 5 the term "the work" shall mean:
  - a. in the case of contracting of several Works under one Contract, the several Works combined;
  - b. in the case of maintenance work extending over a period of several years, the Works executed in those several years combined.

### **Clause 36. Changes in the Specification**

1. "Changes in the Specification" means any alterations in the Specification or in the Works or in the terms of execution of the Works.
2. The Employer's Agent shall have the right to introduce changes in the Specification either before or during the execution of the Works. If and to the extent that the

Specification provides that such right is reserved to the Employer, any such changes in the Specification shall require written instruction from the Employer to the Contractor.

3. The Contractor shall carry out instructions for changes in the Specification, also if the volume of the work is thereby increased or reduced, provided that as a result of such changes the totals of the additional payments and the deductions each do not exceed 15% of the Contract Sum or, as the case may be, the balance of such additional payments and deductions does not exceed 10% of the Contract Sum.
4. Changes in the Specification shall be settled at rates or prices to be agreed between the Employer and the Contractor prior to the execution of such changes or, if the nature of the changes prevents such prior determination, as soon as possible thereafter. If the Employer's Agent considers the introduction of any change in the Specification and requests the Contractor to submit a quotation for that purpose, the Employer's Agent and the Contractor shall prior thereto at the Contractor's request consult together on the question whether and, if so, under what circumstances the Contractor may be entitled to reasonable compensation for the cost incidental to the preparation of such quotation.
5. Instructions for changes in the Specification shall be given in writing. The Contractor may accept a corresponding entry in the daily record or weekly report, in which case such entry shall be regarded as a written instruction. The absence of such written instruction or entry in the daily record or weekly report shall not affect the Contractor's and the Employer's rights to settlement of additional work and omitted work, respectively.
6. With respect to changes in the Specification a separate period within which the additional work is to be completed shall be agreed at the request of the Employer's Agent or at the request of the Contractor, such period to be stated in the written instruction.
7. In the case of specifications for maintenance work extending over several years, each maintenance year shall be taken separately for the purpose of determining the totals of additional payments and deductions referred to in paragraph 3.
8. The Employer shall take over or pay reasonable compensation for materials already delivered, materials already despatched, as shown by the waybill, and materials ordered solely for the purposes of the Works but redundant as a result of changes in the Specification, provided that such materials meet the applicable requirements.

#### **Clause 37. Provisional Sums**

1. "Provisional sums" means the amounts identified as such in the Specification which are included in the Contract Sum and against which expenditure as specified in the Specification is to be charged.
2. If the sum of the expenditure to be charged against a provisional sum proves to be higher or lower than the amount of such provisional sum the difference shall be settled accordingly.

3. The expenditure relating to the purchase of materials to be charged against provisional sums shall be calculated on the basis of prices composed of:
  - a. the net prices on the basis of freight-paid delivery to the Site on or in the transportation vehicle;
  - b. a contractor's remuneration of 10% of the net prices referred to under a.
4. Notwithstanding the provisions of paragraph 3, no separate contractor's remuneration shall be charged against provisional sums for:
  - a. sanitary equipment the price of which includes 10% commission for the Contractor and 10% commission for the plumber;
  - b. wall covering the price of which includes the customary commission.
5. The cost of packing material and the return thereof shall be for the account of the Contractor, save insofar as such cost, as a result of the use of the provisional sum, is higher than the amount the Contractor had reasonably to expect.
6. The cost of incorporating in the Works any materials purchased and charged against provisional sums is included in the Contract Sum and shall not be settled separately. However, such cost shall be settled against the provisional sum against which the purchase of such material is also to be charged, if said cost relates to incorporating in the Works items of equipment such as lifts, central heating and the like, or insofar as such cost, as a result of the use of the provisional sum, is higher than the amount the Contractor had reasonably to expect.
7. The purchase of materials for which provisional sums have been provided shall be made by the Contractor on further instruction of the Employer's Agent and, unless the Employer's Agent shall leave the choice at the Contractor's discretion, from such suppliers as the Employer's Agent shall nominate for that purpose.
8. The expenditure relating to the performance of work to be charged against provisional sums shall be calculated on the basis of prices composed of:
  - a. the net cost necessary for the execution of such work, to the extent that such cost is directly related to the execution;
  - b. a contractor's remuneration of 10% of the net cost referred to under a.  
The cost of general facilities, care and maintenance on the Site shall not be settled separately but is deemed to be included in the Contract Sum, save insofar as such cost, as a result of the use of the provisional sum, is higher than the amount the Contractor had reasonably to expect.
9. Work as referred to in paragraph 8 shall be carried out, on further instruction of the Employer's Agent, either by the Contractor or by such others as the Employer's Agent shall nominate for that purpose.
10. The expenditure relating to payments to third parties to be charged against provisional sums shall be calculated on the basis of amounts composed of:
  - a. the amount of the payment made to third parties, not including turnover tax;
  - b. a contractor's remuneration of 5% of the amount referred to under a.

11. Payments to third parties for which provisional sums have been provided shall be made by the Contractor on further instruction of the Employer's Agent.
12. Before charging any expenditure against a provisional sum the Employer's Agent may require the Contractor to present documentary proof thereof.

**Clause 38. Quantities**

1. "Adjustable quantities" means the quantities indicated as such in the Specification; any differences in such quantities shall be settled in accordance with the provisions of Clause 39.
2. "Estimated quantities" means the quantities mentioned in the Specification with the added words "by estimate" or "approximately" or similar indications. Any difference in estimated quantities shall be settled only if and to the extent that such difference is greater than 10% of the estimated quantity, unless this should create an unfair situation.
3. Differences in quantities other than those referred to in paragraphs 1 or 2 and requested or prescribed by the Employer's Agent shall be regarded as changes in the Specification and shall be settled in accordance with the provisions of Clause 36.
4. If quantities of materials are stated in the Specification such quantities shall mean, unless provided otherwise, quantities of materials measured in the Works.
5. The measuring of supplied or incorporated materials shall be done by the Contractor in the presence of the Employer's Agent and by a method to be approved by the Employer's Agent.

**Clause 39. Differences of Adjustable Quantities**

1. If adjustable quantities are stated in the Specification and such quantities prove to be too great or too small to realize the Works in accordance with the terms of the Specification or the nature of the Works, such differences in the adjustable quantities shall be settled against settlement prices agreed for that purpose at the making of the Contract.
2. If a settlement price for differences in any adjustable quantity stated in the Specification proves to be too high or too low, a modified settlement price shall be agreed between the Employer and the Contractor. Such price revision shall only take place, however, if more than 110% or less than 90% of the adjustable quantity stated in the Specification has been or will be used.
3. If pursuant to paragraph 2 any settlement price is modified, the difference in the adjustable quantity stated in the Specification shall be settled at that modified settlement price; provided such modification shall not alter the Contract Sum.
4. If the Specification states more than one adjustable quantity in respect of any particular material or any particular kind of work and if an identical settlement price applies to

such quantities, then for the purposes of paragraphs 2 and 3 the total of such quantities shall be regarded as the adjustable quantity stated in the Specification.

5. The settlement prices as referred to in this Clause shall be deemed to include all expenditure directly or indirectly required for the execution of the work, as well as a contractor's remuneration. The contractor's remuneration shall be deemed to include the Contractor's overheads and a normal contractor's profit margin.



**CHAPTER XI.  
PAYMENT, TURNOVER TAX, PENALTIES, PLEDGE OR CHARGE OR  
ASSIGNMENT**

**Clause 40. Payment**

1. The amount to which the Contractor is entitled under the Contract shall be the balance made up of the Contract Sum increased and reduced, respectively, by any other amounts to be paid to or by the Contractor in respect of the Contract.
2. If pursuant to the Contract the Contractor is entitled to payment by instalments, inspection of the completed part of the Works shall take place with a view to such an instalment becoming due.
3. At the inspection referred to in paragraph 2 account shall be taken of the value of approved but as yet unused materials, to the extent that such materials have become the Employer's property by virtue of Clause 19.
4. If the inspection referred to in paragraph 2 is not carried out within eight days after the Contractor has requested it, the Contractor may send the Employer's Agent another written application requesting such inspection within four days. If the Employer's Agent does not comply with that request the inspection shall be deemed to have taken place and the instalment stated by the Contractor in his request shall be paid in accordance with the provisions of paragraph 6.
5. If following an inspection as referred to in paragraph 2 the Employer's Agent fails to disclose the result of the inspection within four days of the Contractor's written request for such disclosure, the instalment stated by the Contractor in his request shall be paid in accordance with the provisions of paragraph 6.
6. Payment of any instalment shall be made within four weeks after the result of the inspection referred to in paragraph 2 has shown that the Contractor is entitled to payment of that instalment.  
If the Specification provides that payment of instalments is to be made only after the Contractor has presented a bill, such payment shall be made within four weeks after the Employer's Agent has duly received the bill. The bill shall be deemed to have been duly received by the Employer's Agent if within seven days of receipt thereof the Employer's Agent has not notified the Contractor that any documents necessary to judge the accuracy of the bill are missing from the bill. If the Employer's Agent has any objection to the bill he shall so inform the Contractor, stating the reasons for the objection, as soon as possible but no later than four weeks after receipt of the bill.
7. If an instalment becomes due the amount of which may be affected by the final account with respect to the whole of the Works, that instalment shall be set at the amount to which, in view of the progress of the work, the Contractor is without doubt entitled and that amount shall be paid to the Contractor.

8. If an instalment has not yet become due the Employer may nevertheless, if there is cause to do so, make part payment of that instalment.
9. If payment by instalments has not been agreed, then in anticipation of the final account the Contractor shall within four weeks after completion and acceptance of the Works receive the amount to which he is without doubt entitled.
10. The provisions of paragraph 6 shall apply mutatis mutandis to the payment of amounts not included in the Contract Sum or not included in the instalments of the Contract Sum.
11. The final account of the Works shall be drawn up as soon as possible after completion and acceptance of the Works or, if a defects liability period is provided for in the Specification, as soon as possible after that period has expired. The amount already previously paid shall be subtracted from the amount to which the Contractor is entitled in accordance with paragraph 1 and the balance shall be paid to him within four weeks thereafter. If the final account shows that the Contractor owes any amount to the Employer, the Contractor shall be required to pay that amount within four weeks.
12. If as a result of the Contractor's default or incapacity the Employer himself completes the Works or any part thereof or employs others to complete the Works or any part thereof, payment shall be suspended until it has been determined what amount is due to be paid by or to the Contractor in consequence thereof. Paragraphs 1 and 2 of Clause 45 shall not apply during the period of such suspension.
13. In the instances referred to in the preceding paragraph the Employer shall further have the right to pay, at the Contractor's expense, directly to subcontractors and suppliers a reasonable remuneration for the services and supplies for which they have not yet received payment. The Employer shall not do so, however, until after he has heard the Contractor or his legal representative on this subject.

#### **Clause 41. Turnover Tax**

1. The turnover tax due in respect of the Works shall not be included in the charges and prices agreed or to be agreed between the Employer and the Contractor, but the amount of the turnover tax shall be stated separately in the Contractor's quotations.
2. The Employer shall pay the Contractor the turnover tax due in respect of the Works.
3. However, the Contractor shall receive no payment of turnover tax due in respect of the Works if and to the extent that such tax is levied from the Employer.
4. The amount to which the Contractor is entitled under the Contract shall be calculated on the basis of charges and prices which do not include turnover tax; the turnover tax to be paid by the Employer to the Contractor shall be calculated separately.
5. The payment of turnover tax shall be made to the Contractor simultaneously with the payments to be made to him in respect of the Works.

#### **Clause 42. Penalties**

1. In the event of late completion of the Works the Employer may impose reductions on the Contract Sum by way of penalty upon the Contractor on account of such late completion. For the purposes of this paragraph the completion date shall be the date stated by the Contractor pursuant to paragraph 1 or, in the case of re-inspection after approval has been withheld, pursuant to paragraph 8 of Clause 9, provided that the Works were subsequently approved or considered to have been approved.
2. The amount of the penalties shall be set in the Specification. In the absence of such set amount the penalty shall be 75 guilders per day.
3. No penalty shall be imposed in respect of days expired after the time for completion which are not working days. Neither shall any penalty be imposed in respect of the number of days, whether during or after said period, by which completion has been delayed through force majeure, insofar as no allowance therefor has been made in any granted extension of time. Any delay in the progress of the work caused by interruption of operations or - if the time for completion has not been expressed in workable working days - resulting from unworkable days shall be regarded as force majeure only insofar as such delay has been of unusually long duration.
4. No penalty shall be imposed on account of a delay if and to the extent that such delay is the result of a previous delay in respect of which a penalty has already been imposed, provided that the periods concerned are connected to each other.
5. Penalties shall be forfeited by the mere arrival of the stipulated date, without any notice of default being required for that purpose.
6. Penalties and other amounts due by the Contractor under the Contract shall be deducted from the next following instalment or if necessary from subsequent instalments of payment, or shall be recovered from the Contractor in some other way.

#### **Clause 43. Pledge or Charge or Assignment by Contractor to Third Parties**

1. The Contractor may pledge or charge or assign the whole or any part of the benefit of the balance referred to in paragraph 1 of Clause 40.
2. If notice of an assignment has been served on the Employer the Contractor shall be required, if the Employer so desires, to submit the deed of assignment to the Employer.

## CHAPTER XIA. SECURITY, INSURANCE

### Clause 43a. Security

1. The provisions of this Clause shall apply unless provided otherwise in the Specification.
2. Subject to the provisions of paragraph 7 the Employer shall be entitled to require the Contractor to furnish security for the due performance of his obligations under the Contract; if security is so to be furnished by the Contractor the provisions of paragraphs 3 through 6 of this Clause shall apply.
3. The value of the security shall be equal to 5% of the Contract Sum and the security must be furnished in the form of a bank guarantee.
4. If the Employer intends to call on the bank guarantee he shall so notify the Contractor by registered letter. The Employer shall have the right to call on the bank guarantee unless decided otherwise in first instance by the Court of Arbitration for the Netherlands Building Industry [Raad van Arbitrage voor de Bouwbedrijven in Nederland] in proceedings in an "urgent dispute" (as defined in the Regulations of the Court of Arbitration) to be filed by the Contractor within ten working days from despatch of the notice as referred to in this paragraph.
5. The security shall continue in force until the date on which the Works are considered completed and accepted, always provided that if there is a case of minor defects as referred to in paragraph 7 of Clause 9 the security shall continue in force until the date when the Contractor has repaired such defects. If a defects liability period is provided for in the Specification the security shall continue in force until in accordance with paragraph 6 of Clause 11 it has been ascertained that the Contractor has fulfilled his obligations.
6. After the date on which the Works are considered completed and accepted, or, if a defects liability period has been provided for, after expiry of the defects liability period, the Contractor shall be entitled to furnish substitute security to such amount as shall reasonably be required to cover repair of the defects which are for the account of the Contractor.  
The Employer shall be required to return the original security after he has accepted and received the substitute security.
7. The Employer shall not be entitled to require the Contractor to furnish security for the due performance of his obligations if it has been agreed that payment of the Contract Sum will be fully or partly withheld. Such withholding of payment shall be the case if - disregarding the period of time referred to in the first sentence of paragraph 6 of Clause 40 - the Contractor is paid less than the amount corresponding to the sum of the value of the Works already completed and the value of the materials approved and not yet used which have become the property of the Employer.
8. The Contractor shall be entitled to require the Employer to furnish adequate security if any amount to be paid by the Employer to the Contractor under the Contract remains

unpaid or is overdue, or if the Contractor has well-founded reasons to assume that the Employer will not or not timeously pay any amount to which the Contractor is entitled. If the Employer is in default of furnishing such adequate security demanded by the Contractor, the Contractor shall have the right either to suspend the execution of the Works or to terminate the Works in an unfinished state. The provisions of Clause 14 shall apply mutatis mutandis to such suspension or termination in unfinished state. The provisions of paragraph 4 above shall apply mutatis mutandis to the security referred to in this paragraph.

**Clause 43b. Insurance**

1. Unless provided otherwise in the Specification, the Contractor shall be required to take out insurance policies in which the Employer and the Employer's Agent are included as co-insured, insofar as such insurances and inclusion as aforesaid are necessary and customary according to the nature and volume of the Works.  
The Contractor shall ensure that documentary proof of the existence and content of such insurances as aforesaid shall be supplied to the Employer's Agent as soon as possible.
2. If insurance policies relating to the Works have been or will be taken out by the Employer, the terms and conditions of such insurance policies shall be appended to the Specification and the Employer shall ensure that the documentary proof of the existence and content of such insurances as aforesaid shall be supplied to the Contractor as soon as possible.

## **CHAPTER XII. DAMAGE TO THE WORKS**

### **Clause 44. Damage to the Works**

1. For the purposes of this Clause, damage to the Works means any damage to the whole or any part of the structures built or made by Contractor for the Employer, to any of the auxiliary works, to any of the materials used or stored on or at the Site and to any of the auxiliary plant and equipment needed for the Works. Damage to materials also means the loss of materials.
2. The Contractor shall notify the Employer's Agent of any damage to the Works as soon as possible and in any case within one week after such damage has been or could have been discovered by the Contractor.
3. Without prejudice to the liability of the parties under the Contract or by Law, any damage to the Works shall be for the account of the Contractor unless such damage is the result of exceptional circumstances against the prejudicial consequences of which, in view of the nature of the Works, the Contractor needed not to have taken appropriate measures and it would be unreasonable to have him take the damage for his account.
4. When damage to the Works has occurred the Contractor shall be bound to take timely and appropriate measures to limit the damage. If the Employer's Agent is present the Contractor shall take such measures subject to the approval of the Employer's Agent.
5. Any damage to the Works caused as a result of failure to fulfil the obligations under paragraphs 2 or 4 shall be for the account of the Contractor.
6. Any damage which is for the Contractor's account shall be repaired by the Contractor within such period of time as the Employer's Agent may set, unless the Contractor cannot reasonably be required to make the repairs himself. In that case, and also if the Employer cannot reasonably be required to have the Contractor carry out the repairs, the Employer may demand financial compensation from the Contractor in lieu of such repairs.
7. If the Employer so desires and if the Contractor may reasonably be required to do so, any damage to the Works which is not for the account of the Contractor shall be repaired by the Contractor, likewise within such periods of time as the Employer's Agent may set. In that case such repairs shall be settled as additional work.

**CHAPTER XIII.  
DEFAULT, INCAPACITY OR DEATH OF ONE OF THE PARTIES**

**Clause 45. Employer's Default, Incapacity or Death**

1. If any of the payments to be made by the Employer under the Contract is overdue and the delay is not caused by any circumstance for which the Contractor is responsible, the Contractor shall be entitled to payment of interest at the statutory rate accruing from the date on which payment should have been made at the latest. The Contractor's claim for interest shall in no event include compound interest.
2. If no payment has been made upon the expiry of two weeks since the due date of payment and if a subsequent written demand for payment by the Contractor has not resulted in payment within fourteen days thereafter, the rate of interest referred to in paragraph 1 shall be increased by 2 percent after expiry of said period of fourteen days and, provided he has made an announcement to that effect in the notice demanding payment, the Contractor shall have the right either to suspend the execution of the Works until the Employer has paid the outstanding amount, or to terminate the Works in their unfinished state. As regards such suspension or termination as aforesaid the provisions of Clause 14 shall apply mutatis mutandis.
3. The provisions of paragraph 2 on suspension and termination in unfinished state shall not apply if the Contractor's claim relates to a payment concerning which the Employer has filed proceedings in an "urgent dispute" (as defined in the Regulations of the Court of Arbitration).
4. If the Employer is adjudged bankrupt or is put into liquidation [faillissement] the Contractor may summon the trustee/liquidator [curator] to state within eight days whether he is prepared to have the work continued, furnishing such adequate security as the Contractor has demanded in said summons.  
If the trustee/liquidator states that he is prepared to have the work continued he shall be required to furnish the demanded security when making such statement. If the trustee-/liquidator is not prepared to have the work continued, the Contractor shall be entitled to terminate the Works in their unfinished state. As regards such termination the provisions of Clause 14 shall apply mutatis mutandis.
5. If the Employer is placed under compulsory guardianship [curatele] the provisions of paragraph 4 shall apply mutatis mutandis. If the Employer is granted a suspension of payments [surséance van betalen] or suffers compulsory admission to a psychiatric hospital the provisions of paragraph 4 shall likewise apply mutatis mutandis, except that "the trustee/ liquidator" [curator] shall read "the Employer and the trustee/administrator" [bewindvoerder] or, as the case may be, "the provisional trustee/administrator or the special guardian".
6. In the event of the Employer's death the Contract shall not be dissolved by reason of his death. In that case the provisions of paragraph 4 shall apply mutatis mutandis, except that "the trustee/liquidator" shall read "the Employer's heirs". If the Contractor so

demands the Employer's heirs shall be required to appoint one from their midst or a third party to represent them for all purposes of the Contract.

#### **Clause 46. Contractor's Default, Incapacity or Death**

1. If the Contractor fails to perform any of his obligations and the Employer gives notice of default, such notice shall be given in writing and shall allow the Contractor a reasonable amount of time within which his default may be remedied.  
In urgent cases the Employer shall be entitled, even before the stated period of time has expired, to take such measures at the Contractor's expense as the Employer may deem appropriate for the benefit of the Works.  
If the Contractor continues to default in the performance of his obligations the Employer shall be entitled to complete or have others complete the Works at the Contractor's expense, without prejudice to the Employer's right to compensatory damages.
2. If the Contractor employs insufficient labour or insufficient auxiliary plant and equipment, or inferior or defective auxiliary plant and equipment, which in the opinion of the Employer's Agent will result in unacceptable delay in the execution of the Works, the Employer's Agent shall instruct the Contractor in writing to expedite the execution of the Works. If the Contractor fails to comply with that instruction the Employer's Agent shall be entitled to take such measures at the Contractor's expense as the Employer's Agent may deem appropriate to ensure expeditious completion of the Works.
3. If the Contractor is adjudged bankrupt or is put into compulsory liquidation [faillissement] the Employer may summon the trustee/liquidator [curator] to state within eight days whether he is prepared to continue the work, furnishing such adequate security as the Employer has demanded in said summons.  
Pending the decision on continuation of the work, in urgent cases the Employer shall be entitled to take such measures at the Contractor's expense as the Employer may deem appropriate for the benefit of the Works.  
If the trustee/liquidator states that he is prepared to continue the work he shall be required to furnish the demanded security when making such statement.  
If the trustee/liquidator is not prepared to continue the work, the Employer shall be entitled to complete or have others complete the Works at the Contractor's expense, without prejudice to the Employer's right to compensatory damages.
4. If the Contractor is placed under compulsory guardianship [curatele] the provisions of paragraph 3 shall apply mutatis mutandis. If the Contractor is granted a suspension of payments [surséance van betalen] or suffers compulsory admission to a psychiatric hospital the provisions of paragraph 3 shall likewise apply mutatis mutandis, except that "the trustee/liquidator" [curator] shall read "the Contractor and the trustee/administrator" [bewindvoerder] or, as the case may be, "the provisional trustee/administrator or the special guardian".
5. In the event of the Contractor's death the Contract shall not be dissolved by reason of his death. In that case the provisions of paragraph 3 shall apply mutatis mutandis,



except that "the trustee/liquidator" shall read "the Contractor's heirs". If the Employer so demands the Contractor's heirs shall be required to appoint one from their midst or a third party to represent them for all purposes of the Contract.

6. The Employer shall ensure that the Contractor's expenses arising out of the enforcement of the provisions of this Clause shall remain within reasonable limits.
7. If pursuant to the provisions of this Clause the Employer takes measures for the benefit of the Works or completes or employs others to complete the Works, the Employer shall be entitled for that purpose to use or have others use all such auxiliary plant and equipment as are available to the Contractor.
8. The Employer shall be required to maintain or have others maintain the auxiliary plant and equipment as referred to in the preceding paragraph in a good state of repair and to make the same available to the Contractor again as soon as they are no longer needed for the work. Any damage caused to said plant and equipment during use as aforesaid shall be for the account of the Employer, unless he proves that such damage is not attributable to any fault on his part or on the part of persons whom he has employed in the work.

## **CHAPTER XIV. COST-INCREASING CIRCUMSTANCES**

### **Clause 47. Cost-increasing Circumstances**

1. For the purposes of this Clause, cost-increasing circumstances means circumstances or events the nature of which is such that when the Contract was made the possibility of their occurrence needed not to have been anticipated, and which circumstances or events cannot be attributed to the Contractor, and cause a substantial increase in the cost of the Works.
2. If cost-increasing circumstances as defined in paragraph 1 do occur the Contractor shall be entitled to additional payment, in such manner as described in the next paragraph and subject to the provisions of paragraph 4.
3. If the Contractor is of the opinion that cost-increasing circumstances have occurred he shall so notify the Employer in writing as soon as possible. Upon receipt of such notice the Employer shall within a reasonably short period of time consult with the Contractor about whether cost-increasing circumstances have indeed occurred, and if so to what extent the Contractor is to be fairly and reasonably compensated for the increase of cost.
4. Instead of agreeing to compensation as referred to in paragraph 3 the Employer may elect to limit, reduce, or terminate the work; in that event the sum required to be paid by the Employer shall be determined by principles of fairness and reasonableness.
5. If these UAV or the Contract contain special rules concerning cost-increasing or exceptional circumstances, this Clause shall not apply with respect to the cases provided for in such rules.

**CHAPTER XV.  
RECORDING THE STATE OR CONDITION, SETTLEMENT OF DISPUTES**

**Clause 48. Inspection of State or Condition**

1. If during the progress of the Works the Employer's Agent or the Contractor wishes to record the state or condition of any part of the Works at some particular time, or any other fact or series of facts concerning the execution or preparation of the Works, the Employer's Agent or the Contractor, as the case may be, may give written notice requiring a joint inspection of such state or condition, or a joint verification of such fact or series of facts, to be carried out and to be recorded in a report to be signed by both the Employer's Agent and the Contractor.
2. Should the Employer's Agent or the Contractor, as the case may be, fail to comply with the demand referred to in paragraph 1, the other party may instruct others to record the state or condition as aforesaid in a report in accordance with the Regulations of the Court of Arbitration for the Netherlands Building Industry, entirely without prejudice to the other party's right to carry out the required inspection and verification himself in the presence of witnesses and to record the same in a report to be signed by him and by the witnesses. The decision as to the probative value of the report shall lie with the arbitrator(s) appointed by the said Court of Arbitration.
3. The report as referred to in paragraphs 1 and 2 shall be drawn up in duplicate, the Employer's Agent and the Contractor each to receive one copy.

**Clause 49. Settlement of Disputes**

1. With respect to the settlement of disputes as referred to in this Clause the parties expressly waive their right to seek the intervention of the common courts of law.
2. Any dispute whatsoever - including any disagreement which only one party considers to be a dispute - which may arise between the Employer and the Contractor in connection with or as a result of the Contract or any subsequent agreements arising out of the Contract shall be settled by arbitration in accordance with the rules defined in the Regulations of the Court of Arbitration for the Netherlands Building Industry, such as these are in force three months before the tender date.
3. If, after the Employer has given the Contractor written notice of his definitive decision in respect of the final account, a dispute concerning the final account is submitted by the Contractor to the aforesaid Court of Arbitration, the Contractor's action shall be non-suited to the extent that his claim is for more or different relief than the amount stated in that final account, if the Contractor institutes the proceedings in the dispute later than six months after the Employer, by registered letter, has drawn the Contractor's attention to this term, unless the claim arises from an event which has manifested itself only after the expiry of said term.

4. If by a final and binding judgment of a court of law an arbitration award or any part thereof is declared null and void, either party shall have the right to submit the dispute in question once more to arbitration in accordance with this Clause, if and insofar as the dispute has remained unresolved as a result of such judgment. The action shall not be admissible, however, if it is brought before the aforesaid Court of Arbitration later than three months after the judgment of the court has become final and binding. The person who as arbitrator or secretary has taken part or assisted in the nullified award shall not be permitted to take part or assist in the new arbitration on the dispute.
5. If both parties so prefer by mutual agreement, the rules referred to in paragraph 2 shall be replaced by the rules given in the Regulations of the Court of Arbitration for the Metal Trade and Industry [Raad van Arbitrage voor Metaalnijverheid- en Handel], it being understood that in addition to said rules it shall be provided that the arbitrators do not have the authority to make any alteration in the arrangements agreed between the parties.

#### **Clause 50. Continuation of the Work**

1. Pending an award in the dispute the Contractor shall be required, if the Employer's Agent so demands, to continue working in accordance with the instructions of the Employer's Agent, unless otherwise decided by the Court of Arbitration in proceedings in an "urgent dispute" (as defined in its Regulations) and without prejudice to the Contractor's rights which may result from the said award.
2. Insofar as payment of any instalment should suffer delay in connection with any dispute pending in arbitration, the Employer shall make such payment as is appropriate in view of the progress of the Works and the respective claims of the parties. Such payment cannot be used in the arbitration proceedings as proof of the Employer's recognition of any right of the Contractor.

**APPENDIX A - SPECIMEN POWER OF ATTORNEY**

**Power of Attorney**

I/we .....  
.....1), .....5)  
contractor(s) of .....  
.....2)  
do hereby appoint .....3)  
my/our attorney in fact for and in my/our name, place and  
stead, to do and perform any and all acts concerning  
.....  
.....4)  
  
.....19.... Contractor(s)  
.....19....  
  
.....19.... Approved by  
.....19.... Employer's Agent,  
  
.....

- 1) Surname(s) and forename(s) of the contractor(s), if (an) individual(s), or trade or corporate name, if (a) legal person(s).
- 2) Indication of the works contracted.
- 3) Surname and forename(s) of the attorney in fact.
- 4) Description of works or relevant part of the works, as well as special conditions, if any.
- 5) If the contractor is himself the attorney in fact of joint contractors, insert: 'attorney in fact authorized to represent the'.

**FORM B - WAIVER OF TITLE**

I/we ....., 1)  
of ....., 2)

Whereas:

1. ...., 3)  
of ....., 4)  
hereinafter referred to as 'the Employer',  
has contracted ....., 5)  
of ....., 6)  
hereinafter referred to as 'the Contractor'  
to execute:  
....., 7)  
which contract is governed by the Uniform Administrative Conditions for the Execution  
of the Works 1989;
2. the Contractor intends to incorporate in the Works the materials stated in the List of  
Materials below;

do hereby declare:

that I/we waive all rights and claims to the said materials and, after said materials have been  
approved, shall consider them the property of the Employer pursuant to Clause 19, paragraph  
1 of the aforesaid Uniform Administrative Conditions.

List of Materials: 8),  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)  
 .....)

-.....19.....9)  
 .....10)

- 1) Name of the supplier or holder of rights to the materials.
- 2) Full address.
- 3) Name of the Employer.
- 4) Full address.
- 5) Name of the Contractor.
- 6) Full address.
- 7) Brief description of the works.
- 8) Itemization of the materials concerned.
- 9) Place and date of signature.
- 10) Signature of the supplier or holder of rights to the materials.