



## Terms and Conditions for the Contracting of Foundation Works 2022 (AVAF 2022)

### Article 1. UAV 2012

1.1 With the declaration of applicability of the present terms and conditions, the Uniform Administrative Conditions for the execution of works and technical installation works 2012 (UAV 2012) are applicable as well, whereby the contractor will be considered contractor according to the UAV 2012 and the work contracted by the contractor as work, both in the sense of § 1 section 1 UAV 2012.

1.2 In case of contradictions between these terms and conditions and the UAV 2012, the present terms and conditions prevail.

### Article 2. Adoption and content of the agreement

2.1 The agreement is adopted by accepting the quotation of the contractor or by way of a written agreement. If the correctness of a written confirmation of a verbal order is not denied within eight business days after the receipt thereof by the client, parties are bound by it.

2.2 Unless established otherwise, the drawings, technical specifications, and conditions of the principal or the client are not applicable.

2.3 All activities not specified in the agreement are not a part of the agreement.

2.4 Unless established otherwise, the following activities and costs are borne by the client in any case:

- value added tax (VAT);
- the taking of all necessary traffic measures, the obtaining of possible permits, and the payment of municipal 'precario' taxes;
- insurance fees;
- connection charges, contract charges, and consumption costs for gas, water, and electricity;
- the inspection upon request of the client of building materials, material, and tools (the costs of these inspections are borne by the client);
- the execution of soil-related investigations, including, though not limited to, geo-technical, environmental technical, NGE (Non-detonated Explosives), and archaeological investigations;
- the making of calculations and drawings;
- (altitude) measurements, surveying, as well as the control and maintenance thereof during execution;
- necessary digging, demolition, slashing, propping, and repair activities on constructions;
- welding and burning work;
- the bringing to altitude of beam heads, walls, screens, and massifs with ground improvement;
- the conducting of all ground and dewatering works and the application of ancillary constructions required for the stabilisation of other constructions and the surroundings;
- the removal of all obstacles in, on, and above ground that may impede or cause damage to the execution of the work;
- the preparation in the design phase of the correct choices according to the occupational hygiene strategy to determine the foundation technique;
- the making of provisions or measures to prevent noise nuisance, disturbance and/or damage to the environment, adjacent areas, systems, information carriers, cables, conduits, and paving;
- client commission;
- piling supervision, vibration and acoustic measurement and monitoring, blow counting, trial burdening, acoustic measuring and the creation/testing of drill cores;
- the shielding and surveillance of the construction site;
- the provision of (waste) containers and the costs of dumping;
- the execution of a KLIC report, the marking of underground and above-ground cables and conduits and compliance with the other obligations flowing from the WIBON, BIBON, and CROW 500 guidelines;
- the provision of eating and sanitary facilities, in accordance with labour legislation on health and safety;
- the preparation of quality-, safety- and inspection plans.

- possible additional measures that are necessary on account of requirements from the construction ruling 'Bouwbesluit'.

### Article 3. Arrangement of risks, prices

3.1 The prices listed in the offer are based on the taxes, levies, wages, social security contributions, the costs of materials and raw materials, and other costs that are effective on the date of the offer. If after the date of the offer one or more of these cost categories undergo changes, the contractor has the right to adjust the established price in connection therewith.

3.2 If transfer pricing was applied by the contractor in the sense of § 38 section 1 juncto § 39 UAV 2012, this is only effective to the extent the work is carried out unaltered and the activities can be conducted without changes. If the manner of execution changes, the activities are charged by transfer pricing on the basis of § 36 UAV.

### Article 4. Obligations client

4.1 The client will adequately inform the contractor regarding the sections of the specifications, the pile plans, and other documents and knowledge he has that are relevant for the execution of the work. If said documents are entirely or partially a component of the agreement, then these terms and conditions prevail in case of contradictions between the present terms and conditions and said documents. The client guarantees the correctness and completeness of the information provided by him.

4.2 Without prejudice to what is established in § 5 UAV 2012, the client also makes sure that the contractor will timely have at his disposal the geo-technical, hydrological, archaeological, and undetonated explosives information that is relevant to the work or affects the price respectively, information about the contamination of the soil, old building material flowing from the work, and building material provided by the client, information about the structural state of adjacent objects, as well as changes to circumstances of work and/or the terrain that are known or should have been known to the client beforehand. The client guarantees the correctness and completeness of the information provided by him.

4.3 The client guarantees the orders and instructions that the principal gives to the contractor directly in the context of the piling supervision conducted by him.

4.4 If construction meetings are held between the principal and the client without the contractor attending, the client must inform the contractor about matters that have been addressed at the meeting, to the extent these regard the work assigned to the contractor. The client in such case provides the contractor with a copy of the relevant passages from the report of the construction meeting.

4.5 The client makes sure that the contractor has at his disposal timely before the start of the activities the approvals and permits required for the execution of the work. The client carries out the necessary payments of levies and rates that may be due for the use of the terrain or the execution of the (foundation) works.

4.6 The client provides safety and health facilities in order to comply with the applicable legislation and regulations.

4.7 The client will take all necessary measures to prevent nuisance to the surroundings, damage to adjacent objects and to the environment.

4.8 The client bears responsibility for the order prescribed by him or on his behalf for the activities to be conducted, the prescribed pile systems or dam wall profiles and foundation techniques, also including the impact that may be exerted thereupon by the condition of the soil or by hydrological causes, the state and positioning of cables, conduits and constructions or obstacles in the subsoil, information not or not correctly provided that the client is obliged to provide pursuant to the agreement, as well as for orders and instructions given by him or on his behalf.

4.9 Without prejudice to the other obligations of the client, in derogation to § 5 section 4 UAV 2012, he guarantees the overall suitability of the building material prescribed by him and for building material that must be purchased from a supplier prescribed by him, unless the contractor had options regarding these building materials.

### Article 5. Construction site

5.1 The client takes care of the proper accessibility and practicability of the construction site, or in case of water works of navigability to and at the construction site, for the purpose of the transport of material, materials, and staff and for the purpose of the execution of activities by contractor. The costs of such facilities as may be required to render the site accessible and suitable for the execution of the activities by the contractor are borne by the client.

5.2 The construction site will be sufficiently inspected and maintained by or on behalf of the client and will, where necessary, be restored in such a manner that the bearing strength required for the execution of the activities will remain assured during the implementation of the activities. If necessary, a new site layout plan is prepared to such effect by or on behalf of the client, including associated bearing strength calculations. The client will thereby observe the guideline for the accessibility of construction sites that is current on the date of the assignment.

5.3 The client is responsible for the prior removal of obstacles that are located above ground at the surface that negatively affect the activities of the contractor or the quality of the work or that cause damage to it.

5.4 The client makes sure that there is sufficient space around the location of the activities of the contractor and his material, including sufficient space for the protection of adjacent activities and the property of third parties. The client makes sure that the construction safety zone, the hoisting zone, and the hoisting area will be compliant at least with the guidelines for construction and demolition that are current on the date of the assignment. The free space required as a minimum is mutually established if necessary.

5.5 The client procures sufficient parking facilities for contractor and his sub-contractors and staff, free of charges for contractor.

5.6 The client takes care of the construction and maintenance of suitable access options from the public road to the construction site and the storage site.

5.7 The client takes care of suitable general lighting and the direct lighting of the construction site to enable safe working and safe access and exit and to make the execution of the work of the contractor easier.

5.8 The client takes care of the supply of sufficient electricity and water on the job and on the site where the activities are conducted.

5.9 The client takes care of the direction or redirection of road, railway, or shipping traffic and of the placement, maintenance, and removal of all necessary traffic signs and other traffic measures.

5.10 The client procures spaces for breaks and sanitary facilities, (also) for the benefit of the contractor in conformity with the law on labour conditions 'Arbeidsomstandighedenwet'.

5.11 The client must permanently provide and maintain appropriate and efficient rescue equipment, including rescue boats and skippers where required.

5.12 The contractor has the right to separate his work by way of fences. In case he fences off his work, only the contractor is authorised to be present there.

5.13 The contractor is entitled to expense allowances and/or the extension of terms in case the execution of the activities of the contractor is delayed or if he incurs damage otherwise because the client does not comply with his obligations on grounds of this article, unless the costs and/or delay derive from a circumstance that can be attributed to the contractor.

## Article 6. Soil

- 6.1 The client is responsible for the prior removal of obstacles that are located underground that may negatively affect the activities of the contractor or the quality of the work or that may cause damage to it. The client takes care of the removal of obstacles (whether or not man-made, including archaeological objects) that are discovered during the execution of the activities.
- 6.2 The client procures an adequate facility for the removal of, the packaging of, or the protection against poisonous or harmful materials found in the soil. If the contractor must take safety measures upon the execution of the work in connection with the discovery of objects or substances as intended in § 6 section 16a UAV 2012, the obligations or costs flowing therefrom are compensated to him as additional work.
- 6.3 The client makes sure that the obligations on grounds of the WIBON, BIBON, and CROW 500 guidelines are complied with. The client takes care, e.g., of the KLIC report on cables and conduits and the indicating, marking, or sign-posting clearly and in detail of existing obstacles, cables, and conduits under or above ground. He provides drawings on which the exact position and the exact level thereof with respect to the work of the contractor are indicated. He takes care of the sound instruction of the manager of the contractor.
- 6.4 The contractor is entitled to the compensation of costs and/or the extension of terms in case the execution of the activities of the contractor is delayed or if he incurs damage otherwise because the client does not comply with his obligations on grounds of this article, unless the costs and/or delay derive from a circumstance that can be attributed to the contractor.

## Article 7. Start of the work; duration of implementation

- 7.1 The client will prepare a realistic planning in consultation with the contractor. § 7 section 1 UAV 2012 is not applicable.
- 7.2 The client must make available the construction site on the first day of the established week in consultation with the contractor. It is determined in consultation between parties on what day of the established week the work is started.
- 7.3 If it is not possible that the contractor starts his activities in the established week, the client will warn the contractor as early as possible, though at the latest two weeks before the start, or as many workdays as is established by parties, before the established starting date.
- 7.4 If the activities cannot start in the established week through the fault of the client, a new starting week will have to be agreed upon with the contractor that fits within the planning of the contractor.
- 7.5 If the start or the progress of the work assigned to the contractor is delayed by force majeure, by circumstances that are the responsibility of the client, or by a change to the agreement or to the conditions for implementation, the damage flowing therefrom for the contractor must be compensated by the client.
- 7.6 The client will refund the stagnation costs, business damage, and consequential damage that the contractor incurs as a result of not, not timely, or not properly carrying out the activities and/or deliveries to be conducted by the client and by third parties, or of other circumstances that are borne by the client, to the contractor.
- 7.7 By force majeure is intended: any cause independent of the will and/or control of the contractor that is not at his risk as a result of which the contractor is prevented from fulfilling his obligations. By force majeure is intended in any event: abnormally high or low water levels, icy conditions, unworkable weather, work strikes, riots, acts of God, and delays in activities and deliveries to be carried out by the client and/or third parties that lie outside of the responsibility of the contractor.
- 7.8 If the contractor is hindered by changed circumstances, force majeure, or suspension of the activities from carrying out or from completely carrying out the agreement, he has the right to modify the implementation of the agreement. The contractor will thereby take into account the legitimate interests of the client.
- 7.9 Without prejudice to what is established in § 14 UAV 2012, the modified implementation as a result of the circumstances referred to in article 7.8 will be at off as additional or reduced work respectively.

## Article 8. Insurance

- 8.1 In derogation to § 43b section 1 UAV 2012, the client insures the work as from the start of the work through the end of the maintenance term, if established, or at least through the moment of completion, by way of a CAR insurance or a business liability insurance, against all material damage, loss, or destruction, due to any cause whatsoever, with a waiver of article 951 and to the extent required of article 932 Volume 7 BW (Civil Code), against such an amount that the costs of clearing, restoral, or replacement of what was damaged or lost can be settled from the compensation of damages. Contractor must be registered as co-insured party on this policy, and no provisions may be stipulated that restrict accession. This insurance provides primary coverage and the insurer waives any right of claim to insurances of contractor pending elsewhere.
- 8.2 The CAR policy will establish that in every case of damage, the disbursement of the insurance sums will occur to the party to which the matters belong. Deductions in connection with a deductible for contractor can never exceed 1% of his contract price per event. The client will not set off any possible damage against the contract price of the contractor.
- 8.3 The insurance will be in accordance with the sectorial standard 'Nederlands Beurspolis voor Bouw- en Montagewerken' (NBBM 2013) or will be a business liability insurance and will cover at least:  
- the damage that arises as a result of the loss and/or material damaging of (a part of) the work, as well as all concomitant works, additional work, modifications, all materials and building material intended for the work, constructions, components, and furthermore all temporary and/or ancillary works, ancillary materials and all other objects to be used for the purpose of the work;  
- liability for damage that is the result of or is related to the execution of the work at the construction site and/or in the direct vicinity thereof, also including the damage that is caused by work material that is subject to motorised transport obligations ('WAM'), with the exception of the damage that is the result of participation of the motorised vehicle in traffic on the construction site or in the immediate vicinity thereof,  
- material damaging and/or loss of property of the principal, that is caused by the activities.
- 8.4 If a dam wall clause and/or pile-formed-in-the-ground clause applies to the policy of the client and the contractor has acted in conformity with the conduct of a reasonably acting colleague, this does not relieve the client of covering for the financial damage or the restoral respectively.
- 8.5 The client will stipulate that all parties involved in the execution of the work and their employees will be designated in the policy as third parties vis-a-vis each other.
- 8.6 Without prejudice to the responsibility of the client to comply with the obligations of this article, the client is obliged before the start of the work to provide the policy, the general policy terms, and the clauses. The client is furthermore obliged upon request of the contractor to prove that there is factual coverage.
- 8.7 Without prejudice to what is established in article 8.1, the client, in any capacity whatsoever, and/or his employees will never count as co-insured parties under the insurance policies of the contractor.
- 8.8 The client safeguards contractor against claims for the compensation of damages for which the CAR insurance does not confer entitlement to a disbursement as a result of the falling short of the client with the obligations on grounds of this article.

## Article 9. Liability of parties

- 9.1 In case the contractor does not comply with the obligations he is subject to and the client declares his default on such account, the default notice will occur in writing and the client will thereby set a reasonable term for the contractor to still comply with his obligations.
- 9.2 The contractor does not accept any liability:  
a. for the wrong positioning of piles and (dam) walls, unless demonstrably caused by gross negligence and this is timely reported in writing by the client;

- b. for damage caused to constructions, cables under and above ground, pipes, or conduits, culverts, sewers, etc., unless the client has sufficiently informed him by way of drawings regarding the positioning and the positioning corresponds with the information provided;
- c. for damage as a result of errors in the design, unless it is clearly evinced by the agreement that the contractor is responsible for the design of the entire work or for that part in which the error has occurred.
- d. For damage due to vibrations and/or setting caused to adjacent objects, constructions, cables, pipes or conduits, culverts, sewers etc. under- and above ground, unless the damage can be blamed on wilful intent or gross fault.
- 9.3 The obligation of the contractor to pay compensation of damages, on any grounds whatsoever, is limited at all times to the amount of the contract price.
- 9.4 Without prejudice to what is established in article 9.3, the obligation of the contractor to pay compensation of damages is limited to the amount that the CA insurance, the WAM insurance, or the business liability insurance taken out by or in the (shared) interest of contractor grants entitlement to payout to in such case as may occur.
- 9.5 If the insurances as intended in article 9.4, for any reason whatsoever, in the matter of damage for which the contractor is addressed do not confer the right to a disbursement, the liability of the contractor ultimately is limited to 10% of the contract price, with a maximum of € 225,000,.
- 9.6 If the case as intended in article 9.5 occurs, damage the work in the sense of § 44 section 1 UAV 2012 is deemed to be borne by the client, unless the damage can be attributed to the contractor.
- 9.7 If the case as intended in article 9.5 occurs, the contractor does not accept any liability for damage to works of the client connected to the work, and to other works and property of the client or of third parties, unless the damage was caused by the execution of the work and can be blamed on the wilful intent or gross fault of the contractor, his staff, his contractors, or his suppliers.
- 9.8 The client safeguards the contractor against all claims of third parties on account of damage for which the contractor pursuant to the agreement between client and contractor is not liable.

## Article 10. Completion

- 10.1 The contractor will notify the client when the work in his opinion is completed. A final instalment or final bill submitted is considered the completion of the activities conducted to such effect.
- 10.2 The client will inspect the work in connection with its completion and successively announce to the contractor whether the work is approved or not, possibly with indication of the completion items that must be resolved still.
- 10.3 The work is considered completed if it is approved by the client or if the client has not communicated in writing within fourteen days after the day on which the work according to the notification of the contractor was completed that he does not approve the work. The work is also considered completed if it is commissioned by the client, whereby must be understood as well the further conducting of activities on that work by client.
- 10.4 Considered the day of completion is the day on which the work was completed according to the notification of the contractor, on condition the work subsequently can be considered completed according to article 10.3.

## Article 11. Retention of title

- 11.1 As long as the client has not provided for full settlement of what is due in the matter of the agreement, the delivered materials continue to fall to the expense and risk of the client and remain, either processed or unprocessed, the property of the contractor.
- 11.2 This retention of title also covers the materials already paid by the client, if and to the extent other materials, also those delivered later on, remain unpaid by the client.

## Article 12. Disputes

- 12.1 Unless parties have established otherwise in the agreement, all disputes - also including those that are only considered such by one of the parties - that may arise in connection with the agreement or with agreements that are the result thereof between client and contractor, are settled through arbitration in accordance with the regulation of the council for arbitration in construction 'Raad van Arbitrage voor de Bouw' as effective on the day the assignment is granted or of the order confirmation respectively.
- 12.2 The contractor has the right instead of appealing to the dispute mechanism as stated in article 12.1 to submit a dispute to the competent court of law in the district of the contractor.
- 12.3 If a provision of these conditions is qualified by any court or arbiter completely or in part as void or unreasonably onerous, it is deemed to have been converted into a provision that, to the extent possible with retention of the content and tenor thereof, cannot be designated as such.

Deposited with the registrar of the Court of Midden Nederland on 7 April 2022 under number 22-58

### Prevailing Language

The Dutch language version of these general conditions shall be controlling in all respects and shall prevail in case of any inconsistencies with translated versions.