

# Contract risk management: an ounce of prevention is worth a pound of cure

Een praktijkgericht juridisch onderzoek naar het contract risk managementsysteem van de projecttak binnen Bosch Rexroth

## Bijlagen

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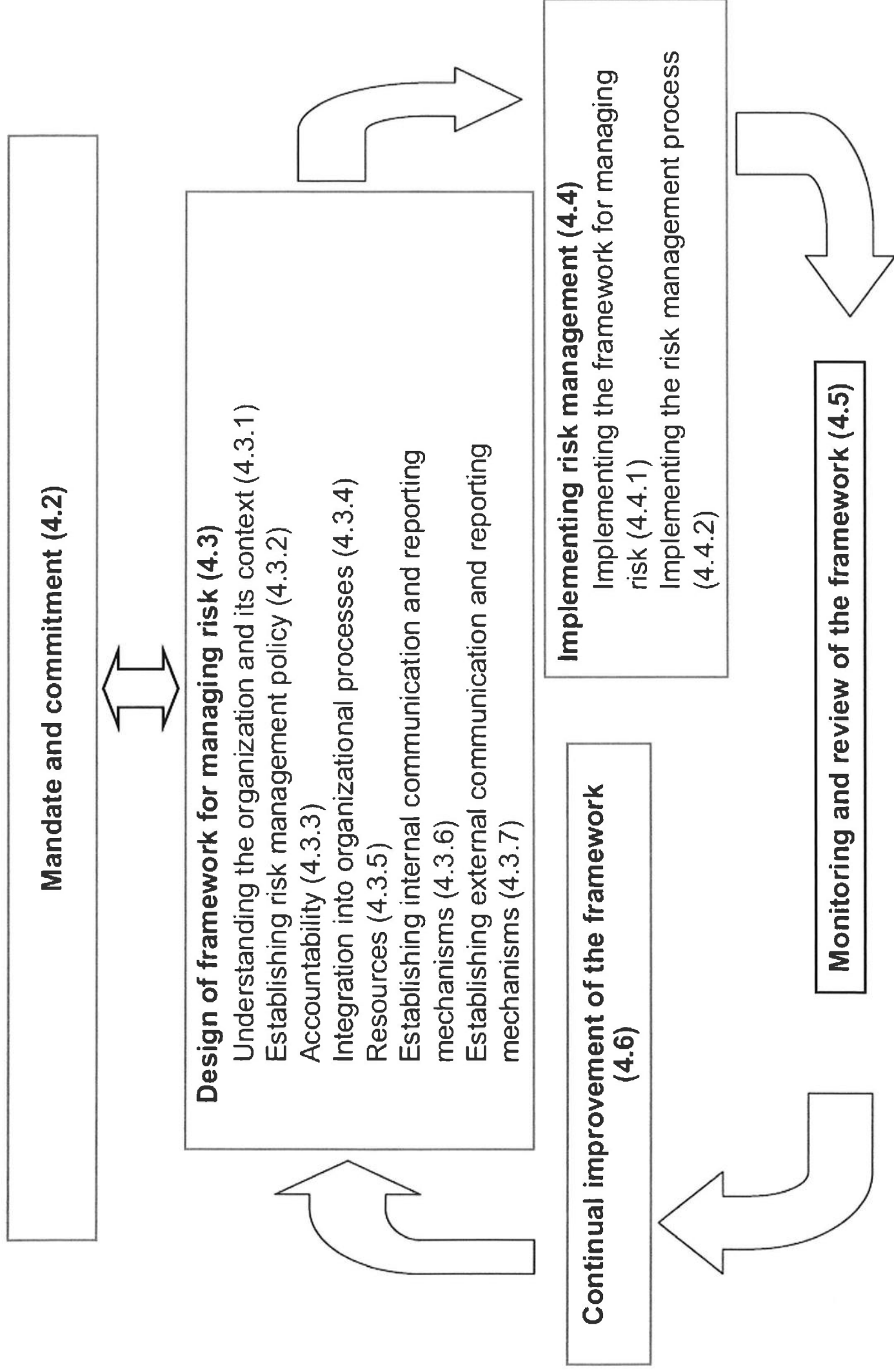
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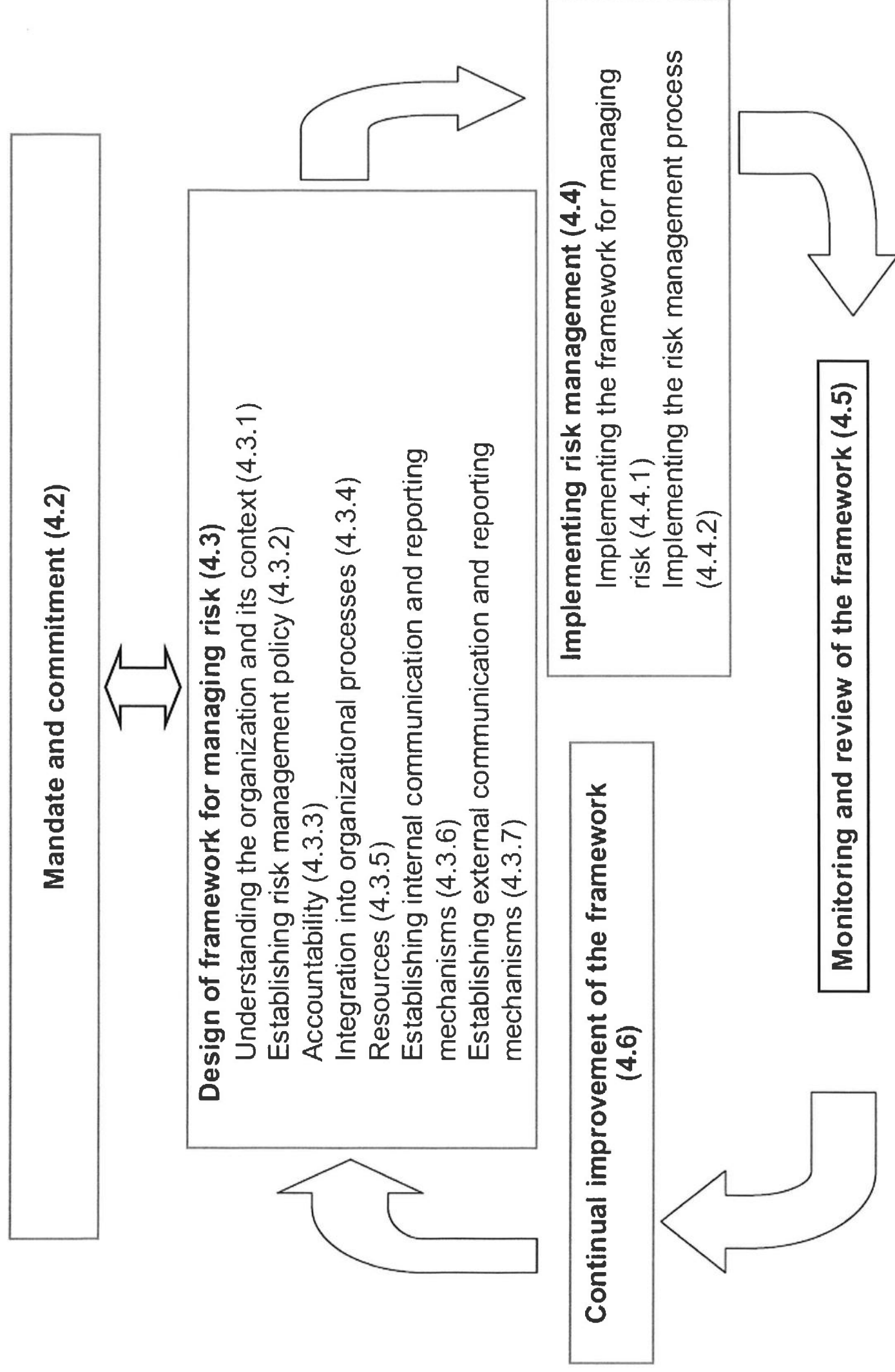


## Bijlage A: Schematische weergave framework ISO





**Figure 2 — Relationship between the components of the framework for managing risk**



**Figure 2 — Relationship between the components of the framework for managing risk**



## Bijlage B: 18344-005 Project Risk Management – Good-practice for custom driven project business



## Project Risk Management

Good-practice for customer-driven project business

Edition: 2016-04-12  
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Ref.-Edition: -

Main process

First edition

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### Preamble

Every project involves uncertainty and risk, which may cause negative or positive effect to the project itself or to the products or services it creates. The more complex a project is, the higher are the hazards but also the opportunities. Consequently, efficient and effective project risk management contributes to better decisions, better project outcomes and increased value, being a key success factor for international project business.

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## Application note

None

## Amendments

None

### 1 Aim

This good-practice provides the process for managing risks in customer driven projects.

PMBOK® Guide: *"The objectives of Project Risk Management are to increase the probability and impact of positive events, and decrease the probability and impact of negative events in the project."*

### 2 Scope

This good-practice is recommended as "Best Practices" for all projects in Customer Driven Project Business [CD08924-AN1] of Bosch Rexroth AG (including indirect assigned companies), its subsidiaries and regional subsidiaries.

This good-practice focuses specifically on the process and method to manage project risks (red box of Fig. 1), even when other processes, methods and tools also provides a valuable contribution to ensure the project results. The process for project risk management is basically the same for all project categories [CD08924-AN1, FR 18344-1]. However, the more complex a project is, the more intensively this process applies (deepness of analysis, frequency of review and communication, escalation process etc.).

### 3 Terminology and abbreviations

#### Terminology database

You will find DC-comprehensive abbreviations, terms and their definitions in the terminology database:  
<http://intranet.boschrexroth.com/locations/dc/en/standards/term/index.jsp>

#### Project Risk

*"an uncertain event or condition that, if it occurs, has a positive or negative effect on a project's objectives"<sup>1</sup>, such as time, cost, scope, or quality.*

- *"Note 1: Risk is often characterized by reference to potential events and consequences, or a combination of these.*
- *Note 2: Risk is often expressed in terms of a combination of the consequences of an event (including changes in circumstances) and the associated likelihood of occurrence.*
- *Note 3: Uncertainty is the state, even partial, of deficiency of information related to, understanding or knowledge of, an event, its consequence, or likelihood."<sup>2</sup>*

#### Project Risk Management

*"coordinated activities to direct and control an (project) organization with regard to risk."<sup>2</sup>*

*"Risk Management is to identify potential problems before they occur so that risk-handling activities can be planned and invoked as needed across the life of the product or project to mitigate adverse impacts on achieving objectives. Risk management can also apply to identify, evaluate, and maximize opportunities."<sup>3</sup>*

#### Project Risk Management Process

*systematic application of management policies, procedures and practices to the tasks of establishing the context, identifying, analyzing, evaluating, treating, monitoring and communicating (project) risk.<sup>2</sup>*

#### Project Risk Treatment

*process of selection and implementation of measures to modify (project) risk.*

- *Note 1: The term risk treatment is sometimes used for measures themselves.*
- *Note 2: Risk treatment measures may include avoiding, optimizing, transferring or retaining risk.<sup>2</sup>*

#### Project Risk List

*document specifying all the identified risks with their evaluation and measures for suitable treatment.*

- *Recommended form: [FR 18344-005 Project Risk-Tool](#)*

<sup>1</sup> PMBOK® Guide, 4<sup>th</sup> ed., 2008, p. 438.

<sup>2</sup> according to IEC 62198.

<sup>3</sup> CMMI®, 2<sup>nd</sup> ed., Mary B. Chrissis et al., 2007, p. 499.



Abbreviations

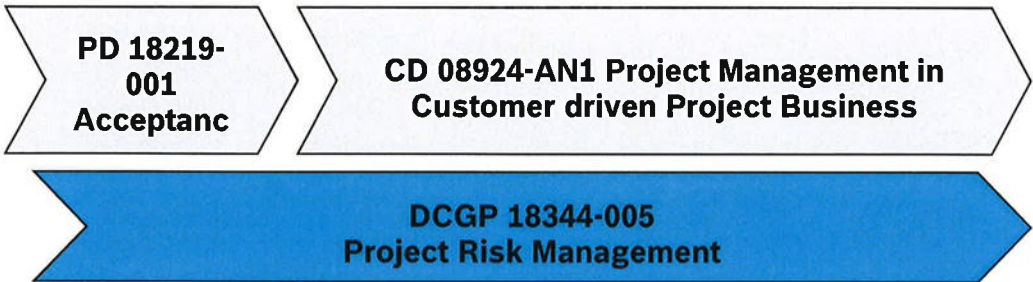
CD	=	Central Directive of DC
PD	=	Process instruction of DC
QG	=	Quality Gate

DC organizational units

DC	=	Division Drive and Control Technology
DC-IA	=	Industrial Applications, Business unit of DC
BU	=	Business Unit (DC-IA, DC-MA and DC-RE)
RG	=	Regional subsidiary of DC
DC-IA/SA1	=	Sales Processing Major Projects (S&E and Solar)
DC-IA/SPM	=	Sales Project Management Major Projects

**4 Responsibilities**

DC-IA/SPM is responsible for the preparation and care of this document, including implementation support.

<b>5 Process Map</b>	
<b>a) Brief description of process</b>	
<ol style="list-style-type: none"> <li>1. Project Risk Scope and Context (Planning)</li> <li>2. Project Risk Identification</li> <li>3. Project Risk Analysis</li> <li>4. Project Risk Evaluation</li> <li>5. Project Risk Treatment (Measures)</li> <li>6. Project Risk Communication and Consultation</li> <li>7. Project Risk Monitoring and Review</li> </ol>	
<b>b) Process overview</b>	
	
<b>c) Process initiator (Input)</b>	<b>d) Process result (Output)</b>
<ul style="list-style-type: none"> <li>• <u>Request for Quotation</u>: the sales department asks for support in quotation phase</li> </ul>	<ul style="list-style-type: none"> <li>• <u>Project Risk List</u>: the Project Manager and/or Project Risk Manager reports regularly to Project Sponsor and Review Committee about the project risks and their measures</li> </ul>
<b>e) Process key figures</b>	
<p>Project risk management performance is measured against project performance indicators (requirements):</p> <ol style="list-style-type: none"> <li>1. Time schedule</li> <li>2. Costs</li> <li>3. Quality</li> </ol> <p>under consideration of the project stakeholders (especially the customer, authorities and society). The project key figures are defined in the project charter, agreed with Project Sponsor and usually recorded by the Project Manager by means of the Project Status Reports (<a href="#">FR 18344-020</a>).</p>	

The process for project risk management covers all phases in the life cycle of projects (see chapter 6). To obtain maximum benefit of it, project risk management activities should be initiated at the earliest possible phase of a project (at Request for Quotation) and continued through subsequent phases. The process is scalable, so it can be used with both small and large projects (same approach, going deeper on demand).





### 5.1 Project Risk Scope and Context (Planning)

A clear definition of project scope, time schedule and quality requirements is needed for an efficient project risk management. Also an analysis of the context, where the project is located, is important.

- External context: such as the social and cultural, political, legal, financial, technological, economic, natural and competitive environment of the project, whether local, regional or international.
- Internal context: internal organization units involved in the project with their local goals, capabilities and resources, including internal procedures and decision making processes (internal supply).

During the project life cycle, important information is already collected (see Fig. 1) which should be considered especially for the definition of the scope for the project risk management.



**Fig. 1: Contributions of different methods in an organization to reduce project risks.**

#### Approach:

1. Prepare the inputs for the project risk management: collecting all the information already available about the project and defining the scope of project risk management (what should be considered by the team). The following documents may provide useful information:
  - Company business strategy:
    - Project release tool: first assessment if a request for quotation should be released for quotation according to the major risks (threads and opportunities) identified up to now.
  - Project management methods and tools:
    - Project stakeholders management: each stakeholder (such as users, contractor, financiers, insurers, regulators etc.), can be considered as source of possible project risks.
    - Project category: classification of a project according to its size, complexity and major risks.
    - Project charter: the objectives, scope and deliverables of the project.
    - Project requirements management: standards and regulations known? Certification needed?
    - Project financial management: negative cash flow possible? Financial penalties?
    - Project supply chain: are different suppliers involved? Production plants? Logistics?
    - Project site safety management: commissioning required? And local establishment?
2. Use the Project Risk-Tool (FR 18344-005) to document the project risk scope.
3. Select the project team members needed to cover all knowledge areas required for the project risk identification and treatment (such as sales, engineering, purchasing, and service) based on the results of the project risk scope and context. Please include enough qualified and experienced people in team. The project team can provide further inputs to prepare the project risk management.

### 5.2 Project Risk Identification

The purpose of project risk identification is to find, list and characterize risks that may affect the achievement of agreed project objectives, either positively or negatively. Risk identification should consider sources of risk,



areas of impacts, events and their causes with potential consequences. An extensive identification is essential, because a risk that is not identified at the beginning may not be considered later on.

Basically there are two main categories of risks for customer driven projects.

- Project Management risks: with a potential to make a project non-profitable (e.g. schedule, financial, commercial, technical feasibility). These are the main topics described in this DCGP. Nevertheless, the following topic has also to be considered.
- Product Safety & Environmental risks: technical issues with potential safety risks for mankind or the environment. These risks are handled according to the [CD 08926](#) Technical Safety Requirements.

#### **Approach:**

1. Collect information about previous experiences with similar projects ( lessons learned, service data)
2. Organize a brainstorming with the team to identify the project risks. The Project Risk-Tool ([FR 18344-005](#)) provides a list of possible project risks which can be used as “starting point”.
3. Review list of main identified risks with other experts (if needed) and with review committee.

### **5.3 Project Risk Analysis**

Project risk analysis involves developing an understanding on each risk, its causes and consequences and how and why they might occur. Factors that affect the consequences and likelihood for each risk should be identified. It is also important to consider the interdependence of different risks and their sources. All uncertainties related to a risk should be documented transparently as it can be improved by later reviews considering new information. While in the acquisition phase it is enough to roughly analyse the main risks qualitative to support the release decision, a quantitative analysis is fundamental in the quotation phase to estimate the related cost and time budgets (see Enclosure 1).

#### **Approach:** for each identified risk

1. Describe the risk qualitatively:
  - a. causes or conditions to occur
  - b. consequences with positive or negative impacts to the project goals (time, cost and quality) or any stakeholder interests.
  - c. uncertainties (assumptions, limitation on information, different opinions)
  - d. interdependencies to other related risks (could this risk activate another ones?)
2. Estimate its severity (how critical is this risk?)
3. Estimate its probability of occurrence (probability of cause and of consequence)
4. Quantify its impact financially: additionally, the risk can be translated into a monetary value (as good as possible) considering time and quality.
5. Document these results in the Project Risk-Tool ([FR 18344-005](#))

### **5.4 Project Risk Evaluation**

The purpose of risk evaluation is to assist in making decisions, based on the outcomes of risk analysis, about which risks need treatment and the priority for treatment implementation. Priorities for the risk treatment should be derived at least considering the severity and the probability of occurrence for a given risk. Enclosure 1 shows examples of criteria to evaluate a given project risk.

Decision if a given project risk is acceptable or not depends on the perception of the involved stakeholders (for legal aspects it is important to consider the state of the art). Some project risks may have a considerable impact on project results, requiring therefore immediate mitigation measures including a review of the project scope and contract with approval by the executive management. Some other risks may be accepted without special treatment as the normal procedures (such as quality management methods). These risks should be included in the project risk list so that effective monitoring can be carried out. Very low risks should not be documented to avoid losing focus.

#### **Approach:** for each identified risk

1. Classify its severity using the levels defined into Project Risk-Tool ([FR 18344-005](#), Enclosure 1)
2. Classify its probability using the levels defined into Project Risk-Tool ([FR 18344-005](#), Enclosure 1)
3. Use the risk index as base to decide with the project team, which risks should be treated.
4. Create a priority list according to the risk index
5. Document these results in the Project Risk-Tool ([FR 18344-005](#))

### **5.5 Project Risk Treatment**

Project risk treatment means the selection of suitable measures to bring a project risk under control (minimizing threats or maximizing opportunities). Risk treatment follows a cyclical process: following initial treatment actions, the project risk are assessed again to see whether they are now acceptable or new measures are still necessary.





Basically, three main strategies are considered in the risk treatment for threats (listed in accordance with priority):

1. Avoid or eliminate by removing the source of a risk: e.g. by stopping an activity or by design change.
2. Mitigate or reduce the risk probability or its impact: e.g. by using a redundant system.
3. Share the risk with other parts: e.g., by including risks in contracts and financing.

There are basically three main strategies in the risk treatment for opportunities:

1. Exploit: make the opportunity definitely happen
2. Enhance: seeking to strengthen the opportunities
3. Accept: accept risk with a low risk potential (low benefit) or high avoidance costs (effort).

The project team should consider if each risk can be appropriately treated with a reasonable effort. In some circumstances, the risk treatment can lead to a decision to undertake further analysis (such simulation and tests to better evaluate the influence of specific factors). When selecting the risk treatment options, the values and perceptions of stakeholders shall be considered (if the risk happens, would a given stakeholder agree with the selected measure?). If emergency situation may occur due to a project risk, suitable preparation measures shall be previously defined (for example for a given risk of environmental accident which immediate measures are needed). The implementation of risk treatment measures may also introduce new risks that should also be managed.

**Approach:** for each identified risk

1. Brainstorm with the project team, which measures can be applied to take it under control.
2. Select the most suitable measures considering also the stakeholders'/Review Committee's perception.
3. Plan the implementation, who is responsible for the implementation of each measure with deadlines.
4. Repeat the project risk analysis considering the scenario after the measures have been applied.
5. Repeat the project risk evaluation to verify if the residual risks are acceptable or if new measures are needed.
6. Document these results in the Project Risk-Tool ([FR 18344-005](#))

## 5.6 Project Risk Communication and Consultation

Communication and consultation with stakeholders is important as they make judgments about a given risk based on their perceptions (values, needs, assumptions and concerns), with a significant impact on the decisions made. Therefore, the review committee should be suitably informed during all stages of the project risk management process. In case of external stakeholders, the communication shall be previously approved by the review committee or project sponsor.

Project risk management reporting is integrated into the regular Project Status Reports, where the main project risks are presented with the proposed measures for risk treatment to be approved by review team.

If a critical project risk is later identified during the project execution, the project manager decides if it has to be immediately escalated to project review team. Furthermore, an up-to-date project risk lists is an essential input for the quality gates (QG).

## 5.7 Project Risk Monitoring and Review

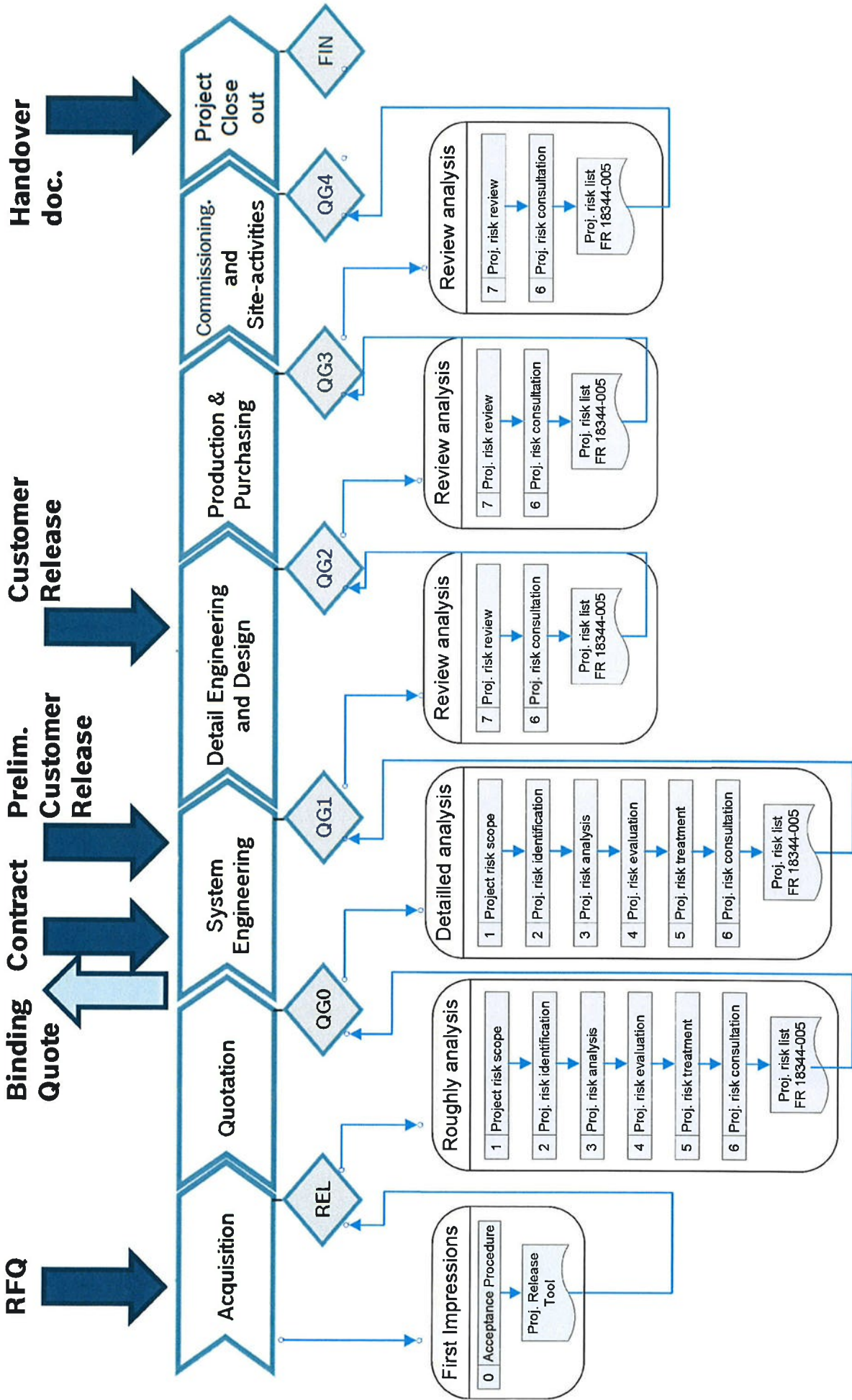
The project risk management can only support the project results, if the measures for risk treatment are effectively implemented and the risks are *continuously* updated during the whole project life cycle.

**Approach:**

1. Preparation: before project meeting, check the implementation state of the risk treatment measures.
2. Review all aspects of project risk management with project team, at least before each quality gate.
  - a. Project Risk Scope and Context: any changes regarding project scope, objectives or context?
  - b. Project Risk Identification: any new risk identified by the project team?
  - c. Project Risk Analysis: can this analysis be updated with newest information?
  - d. Project Risk Evaluation: do we need to change any decision (is residual risk still acceptable)?
  - e. Project Risk Treatment: are the measures being applied and effective acting?
3. Document this results in the Project Risk-Tool ([FR 18344-005](#))
4. Report the status of the main project risks to Review Committee using Project Status Reports.



6 Flowchart







**7 Table “Description of the process steps/process activities”**

**Legend:** R = Responsible      A = Approval      S = Support      I = to be informed      ( ) = if necessary, i.e. must be checked in individual case

All associates have to do the following with respect to project risk management:

- They avoid, within the scope of their duties and opportunities, project risks with negative impacts.
- They observe applicable design, production and quality standards.
- They report any identified risk (positive or negative) to the Project Manager and if needed to their supervisor or to the Project Quality Manager

No.	Process step / Process activity Explanation	Input, Condition	Result	Reference/ Relevance	Responsibilities				
					Project Sponsor	Proj. Review Committee <sup>4</sup>	Project Manager	Sales	Project Team <sup>5</sup>
<b>0</b>	<b>Acceptance Procedure</b> Describe roughly the five major threats and opportunities identified based on the first information provided by customer.	<b>Request for Quotation</b>	<b>Project Release Tool in</b> <a href="#">FR 18344-002</a>	<b>First impressions about project risks</b>	<b>A</b>			<b>R</b>	
<b>1</b>	<b>Project Risk Scope and Context</b> Definition of the scope to be covered by the project risk management (such as site management, export regulations,...)	<b>Project Release Tool in</b> <a href="#">FR 18344-002</a>	<b>Project Risk Scope in</b> <a href="#">FR 18344-005</a>	<b>All project categories</b> (different details level)	<b>I</b>	<b>A</b>	<b>S</b>	<b>R</b>	
<b>2</b>	<b>Project Risk Identification</b> Identification of the main risks which can cause negative or positive impacts to the project results	<b>Project Risk Scope in</b> <a href="#">FR 18344-005</a>	<b>Project Risk List in</b> <a href="#">FR 18344-005</a>	Application in project phases: a) Quotation: first draft b) System engineering: detailed version c) Further phases: review and update	<b>I</b>	<b>A</b>	<b>R</b>	<b>S</b>	<b>S</b>
<b>3</b>	<b>Project Risk Analysis</b> Analysis about the possible causes of a project risk, with their probability of occurrence and the possible impacts (negative or positive consequences) they may generate.	<b>Project Risk List in</b> <a href="#">FR 18344-005</a>	<b>Project Risk Analysis in</b> <a href="#">FR 18344-005</a>		<b>I</b>	<b>A</b>	<b>R</b>	<b>S</b>	<b>S</b>
<b>4</b>	<b>Project Risk Evaluation</b> Evaluation if a given project risk is acceptable or not considering the project goals and expectations of the different project stakeholders	<b>Project Risk Analysis in</b> <a href="#">FR 18344-005</a>	<b>Project Risk Evaluation in</b> <a href="#">FR 18344-005</a>		<b>I</b>	<b>A</b>	<b>R</b>	<b>S</b>	<b>S</b>
<b>5</b>	<b>Project Risk Treatment</b> Definition of suitable measures to treat a given project risk (avoidance of threats and optimization of opportunities)	<b>Project Risk Evaluation in</b> <a href="#">FR 18344-005</a>	<b>Project Risk Measures in</b> <a href="#">FR 18344-005</a>		<b>I</b>	<b>A</b>	<b>R</b>	<b>S</b>	<b>S</b>
<b>6</b>	<b>Project Risk Communication and Consultation</b> Information to the project review committee about the main project risks and approval about the measures for risk treatment	<b>Project Risk Measures in</b> <a href="#">FR 18344-005</a>	<b>Project Status Report in</b> <a href="#">FR 18344-020</a>	<b>All project categories</b> (different details level) min.: review committee	<b>I</b>	<b>A</b>	<b>R</b>		
<b>7</b>	<b>Project Risk Monitoring and Review</b> Monitoring if the measures for risks treatment are effective to control them and review if any additional circumstance can cause a new risk	<b>Project Risk Measures in</b> <a href="#">FR 18344-005</a>	<b>Project Risk Measures in</b> <a href="#">FR 18344-005</a>	<b>All project categories</b> (different details level): min.: before each QG	<b>I</b>	<b>A</b>	<b>R</b>	<b>S</b>	<b>S</b>

<sup>4</sup> For project with budget lower than 5 million Euros, also the head of department responsible for the project can approve all aspects related to the “project risk management”.  
<sup>5</sup> including Quality, Engineering, Logistic, Purchase, Contracting, Controlling...



## 8 Supporting documents

If no supporting documents are quoted, this section does not apply.

Column "Note": - = please consider document  
 worked in = document as regards content is worked in  
 Sect. x.x = please consider relevant section

Publication	Edition	Title	Note
<u>Central Department Directives</u>			
<a href="#">DCCD 08924-AN1</a>	-	<a href="#">Project Management in Customer driven Project Business</a>	worked in
<a href="#">DCCD 08926</a>	-	<a href="#">Technical Safety Requirement</a>	-
<a href="#">DCCD 08914-002</a>	-	<a href="#">Technical Risk Management Non-Automotive - DC-specific regulations</a>	-
<u>Process instructions</u>			
<a href="#">DCPD 18219-001</a>	-	<a href="#">Sales Organization Acceptance Procedure - in DC-IA Market Segment ME &amp; FA</a>	-
<u>Work instructions</u>			
<a href="#">DCWI 18245-014</a>	-	<a href="#">Project Sponsor</a>	-
<a href="#">DCWI 18245-009</a>	-	<a href="#">Review Committee Member</a>	-
<a href="#">DCWI 18245-001</a>	-	<a href="#">Project Manager</a>	-
<a href="#">DCWI 18245-016</a>	-	<a href="#">Project Risk Manager</a>	-
<a href="#">DCWI 18245-003</a>	-	<a href="#">Project Quality Engineer</a>	-
<u>Standards</u>			
<a href="#">IEC 62198</a>	2012-07	<a href="#">Project Risk Management</a>	worked in
PMBOK® Guide	2009-01	A Guide to the Project Management Body of Knowledge - 4th Edition, Project Management Institute, ISBN 1933890517	-
<a href="#">Handbook 10 Steps to PL</a>	2012-07	<a href="#">10 Steps to Performance Level: Handbook for the implementation of functional safety according to ISO 13849</a> , ISBN 3981487923, Bosch Rexroth AG	Sect. B-1
<u>Forms and Templates</u>			
<a href="#">DCFR 18344-001</a>	-	<a href="#">Project Category Tool</a>	-
<a href="#">DCFR 18344-005</a>	-	<a href="#">Project Risk-Tool</a> <a href="#">See also User-Manual and Web-Based Training in the ONE20 Bosch Connect</a>	-
<a href="#">DCFR 18344-020</a>	-	<a href="#">Project Status Report</a>	-
<a href="#">DCFR 18344-002</a>	-	<a href="#">Project Release Tool (REL)</a>	-

Via the [Quick search](#) in the DC area "Guidelines & Standards" the documents can be searched. You will find external standards and Bosch standards in the [NormMaster](#).





## Enclosure A:

### DC Project Risk Assessment Parameters

As defined in IEC 62198, project risk is often expressed in terms of a combination of the consequences of an event (**severity**) and the associated likelihood of occurrence (**probability**).

The following criteria can be applied to quantify a given project risk according to its severity and probability, which are implemented into Project Risk-Tool (FR 18344-005).

#### A.1 Probability of occurrence of a risk

This shows the overall probability of occurrence of a given risk, considering the probability of occurrence of the cause for that risk and the probability for its possible consequences (it includes the possibility to limit a damage).

Probability of occurrence of risk	P
Improbable	1
Low	2
Moderate	3
High	4
Very high	5

If necessary, detailed risk parameters can be used for a more precise evaluation of risks in a complex project. In machine safety (ISO 12100, IEC 62061, ISO 13849), the probability of occurrence of a harm is evaluated considering the exposure to the hazard, the probability of occurrence of a hazardous event and possibility to limit the harm.

For example, let's consider that a civil engineering project is to be commissioned in a region where regular floods could cause a project delay. Using the table above, one may consider there is a "high" probability of occurrence for that risk. By using a more detailed analysis:

- the exposure to the hazard: "flood only occurs during the spring time (3 months)"
- the probability of occurrence of a hazardous event: "flood typically occurs every 2 to 3 years"
- possibility to limit the harm: "looking to weather prognosis, preventive measures can be shortly decided."

the same risk can be considered with an overall "low probability of occurrence". Also the consequence of the project delay has to be considered. In case of a contract with "penalty for late delivery", the customer may rather ask for financial compensation as in a contract with "liquidated damage", if the delay does not impact the customer results. Other examples of risk parameters can be found at "Handbook 10 Steps to Performance Level" (chapter B-1).

#### A.2 Severity of a risk

The severity of the impact (consequence) of a given risk can be classified in the following levels:

Severity of risk	S	Health, Safety and Environmental <sup>6</sup>	Financial <sup>6</sup>	Time Schedule <sup>6</sup>
Negligible	-1	Reversible, requiring first aid	Damage < 0.1% of order volume	Delay < 0.1% of project duration
Marginal	-2	Reversible, requiring attention from a medical practitioner.	Damage < 0.5% of order volume	Delay < 0.5% of project duration
Critical	-3	Irreversible: broken limb, losing a finger. One person affected	Damage < 5% of order volume	Delay < 5% of project duration
Catastrophic	-4	Irreversible: death, losing an eye or arm. One or many persons affected	Damage > 5% of order volume	Delay > 5% of project duration

<sup>6</sup> Depending on the type of consequences, this classification can be used as orientation (examples).



### A.3 Parameters for risk evaluation and recommendations for actions

Based on the classification of each risk parameter (severity and probability), a priority list can be created (such as a risk index from 1 very critical to 20 irrelevant) with suggestions for mitigation measures.

			Probability (P)				
			Improbable	Low	Moderate	High	Very High
			1	2	3	4	5
Severity (S)	Catastrophic	-4	8	6	4	2	1
	Critical	-3	15	12	9	5	3
	Marginal	-2	17	16	13	10	7
	Negligible	-1	20	19	18	14	11

### A.4 Measures for Risk Treatment

The table below gives some suggestion how to proceed to define suitable measures for risk treatment:

Risk Priority Index		Measures	Mitigation measures
Very high	1	in principle unacceptable	M7: Reorganize project contract to the maximum extent possible.
	2-3	only acceptable by exception	M6: approval by executive management required. M5: Extensive protective measures are mandatory.
High	4-8	acceptable with mandatory mitigation	M4: Protective measures are mandatory. M2: Notification in project internal documentation.
Medium	9-11	acceptable with recommended mitigation	M3: Protective measures are recommended. M2: Notification in project internal documentation.
Low	12-15	acceptable	M2: Notification in project internal documentation.
Very low	16-20	in principle irrelevant	M1: Not notifiable.

In case of extreme high risks have been identified, a careful project review according to "Sector Release Strategy" shall be accomplished and a decision by executive management shall be taken, if the project has to be stopped or the project scope can be reduced to acceptable risk levels.

For all "high" and "very high" risks, risk reduction measures for threats are mandatory. In this case, the following priority shall be follow up.

1. Avoid or eliminate by removing the source of a risk
2. Mitigate or reduce the risk probability or its impact
3. Share the risk with other parts (customers, suppliers, end-users...)

### A.5 Residual Risks

A new analysis and evaluation of the risks shall be accomplished considering the application of the selected measures. The residual risks shall be reduced to "an acceptable level" before the project can continue.

The effectiveness of the risk treatment measures shall be follow up during the project execution and, if necessary, the risk evaluation shall be reviewed considering new informations.

### A.6 Opportunities (Positive Risks)

Project risks which may causes positive effects are important opportunities to be considered. Especially, if such opportunities can be identified at the beginning of a project, they already serve as "reserves" for negative risks which may be later discovered during project execution. Basically, the same procedure applies in this case, only the evaluation of the "severity" can be translated into "opportunity" (see example bellow). Also in this case, measures for risk treatment shall be applied with similar priorities.

Opportunity of risk	\$	Financial <sup>1</sup>	Time Schedule <sup>1</sup>
Negligible	+1	Cost save < 0.1% of order volume	Time save < 0.1% of project duration
Marginal	+2	Cost save < 0.5% of order volume	Time save < 0.5% of project duration
Positive	+3	Cost save < 5% of order volume	Time save < 5% of project duration





Excellent	+4	Cost save > 5% of order volume	Time save > 5% of project duration
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### A.7 Project Risk Budget

In order to take the project risks into consideration by the project calculation and cost control, it is important to translate the risks into a monetary value. Therefore, the severity (S) or opportunity (\$) of a given risk should be described by means of financial impacts (negative or positive). The probability of occurrence (P) can then be used to weight the importance of that financial impacts. By adding all financial impacts with their probability a project risk budget can be estimated. Once the risk treatment measures have been applied, the project risk budget can be reevaluated again.

			Probability (P)				
			Improbable	Low	Moderate	High	Very High
			5%	25%	50%	75%	95%
Severity (S) or Opportunity (\$)	- Financial impacts (penalty, damage)	-F	-F x 0.05	-F x 0.25	-F x 0.50	-F x 0.75	-F x 0.95
	+ Financial impacts (cost saving, bonus)	+F	+F x 0.05	+F x 0.25	+F x 0.50	+F x 0.75	+F x 0.95

*Project Risk Budget = Sum of financial impacts multiplied by the probability of occurrence for all project risks*

For example, a civil engineering project has a contractual penalty of 10.000,- € for each week of project delay regarding the commissioning date. However, if the project is finished before the agreed date, a 5.000,- € bonus will be paid per week of time saved.

The project is exposed during the commissioning phase to regular floods, which can cause a project delay of 10 weeks. The project team estimates it with a “high” probability of occurrence. Using this information, the following budget was estimated for this risk:

- Financial impacts (negative): - 10.000,- (€/week) x 10 (weeks) = - 100.000,- €
- Probability (P): high = 75%
- Risk budget: -100.000,- € x 0.75 = - 75.000,- €

As a measure to reduce this risk, the project team decided to mount a part of the system before commissioning phase, reducing the possible project delay to 8 weeks. This impacts in the risk budget:

- Financial impacts (negative): - 10.000,- (€/week) x 8 (weeks) = - 80.000,- €
- Probability (P): high = 75%
- Risk budget: -80.000,- € x 0.75 = - 60.000,- €

The production discovered a new welding approach, which could reduce the total delivery time of the system into 2 weeks. There is a high probability to have this approach available for the project execution phase. This can be seen as opportunity, impacting in the project budget as:

- Financial impacts (positive): + 5.000,- (€/week) x 2 (weeks) = + 10.000,- €
- Probability (P): high = 75%
- Risk budget: + 10.000,- € x 0.75 = +7.500,- €

By adding the budget for each risk, we can then calculate the overall project risk budget. In case of this example, we would consider - 60.000,- € + 7.500,- € = - 52.500,- € to be considered in the project calculation and cost control.

**Advice:** this method to calculate the project risk budget can only offer an “orientation” value. The final value should be proposed by the project team and approved by the Review Committee based on the available experiences.

**Good Practices:** the residual project risk budget (that means, after implementation of risk treatment measures) should not be bigger than an acceptable amount of Project Budget. If the project risk budget is considered as too high, additional measures should be defined with review committee (such as reduction of project scope up to a project stop, additional insurance, risk sharing with customer/supplier, consultancy with external experts) to achieve a sustainable level.



**Enclosure B:****Support of experts****B.1 Project Risk Manager**

The role and tasks of a Project Risk Manager are described in [WI 18245-016](#).

The basic of Project Risk Management is included in the Robert Bosch Kolleg Project Manager Qualification (RK PMQ) and in the Project Management Institute (PMI) training program. DC-IA/PMO and DC-IA/SPM can support the project team with coaching and best practices in Project Risk Management.

The following table gives a suggestion how a Project Risk Manager can support the Project Team based on Project Category. However, if a project has a high degree of novelty, a Project Risk Manager expert is recommended independent of Project Category.

Expert \ Category	A / B	C	D1 / D2
<b>Project Risk Manager</b> (can be combined with role of <b>Project Quality Manager</b> or <b>Project Manager</b> )	<b>Expert</b> is responsible as part of project team	<b>Project Manager</b> is responsible, <b>Expert</b> support is recommended	<b>Project Manager</b> is responsible, <b>Expert</b> can support on demand

**B.2 Product Safety Expert**

The tasks related to Product Safety are described in CD 08926.

DC/QM provides a qualification program for Safety Engineering, using the training offered by the Drives and Controls Academy. There are also external providers of Safety Technology Trainings (e.g. TÜV).

The following table gives a suggestion how a Product Safety Expert can support the Project Engineering Team:

Expert \ Category	A/B	C	D1/D2
<b>Product Safety Expert</b> (can be combined with role of <b>Project System Engineer</b> )	<b>Expert</b> is responsible as part of project team	<b>Project Engineer</b> is responsible, <b>Expert</b> support is recommended	<b>Project Engineer</b> is responsible, <b>Expert</b> can support on demand



## Bijlage C: Schema uitgewerkte contractsbepalingen



Niet-tijdige levering	Overmacht	Garantie
<p><b>UAV</b></p> <p><u>§ 36 Boetebeding en bonus</u></p> <p>Bij overschrijding van opgenomen 'mijlpaaldata' of opleverdatum, kan de opdrgever de opdrnemer zonder ingebrekestelling (lid 5) een boete opleggen, tenzij de overschrijding niet aan de opdrnemer kan worden toegerekend (lid 1). Er is niet één bedrag bij overschrijding, maar kan per mijlpaaldatum een boetebedrag overeen worden gekomen (lid 3). Wordt een mijlpaaldatum niet gehaald omdat een eerdere mijlpaaldatum is overschreden, kan hiervoor geen boete worden opgelegd, mits de bedoelde data met elkaar in verband staan (lid 4). De wijze van inning kan door het inhouden van het bedrag bij een betaling of op andere wijze (lid 6).</p>	<p>Geen bepaling die betrekking heeft op overmacht.</p>	<p>Bevat geen bepaling met een garantieverplichting van opdrachtnemer. Bepaling 13 heeft wel de functie van een garantie aangezien deze de bewijslast omkeert, maar bevat geen herstelverplichting. Wel kan ingevolge art. 7:759 BW, behoudens de uitzonderingen uit lid 2, herstel worden afgedwongen.</p>
<p><b>FIDIC</b></p> <p><u>8.7 Delay damages</u></p> <p>Bij te late levering verbeurt opdrnemer een boete voor elke dag dat hij te laat levert. Dit zal niet, wanneer overeengekomen, een maximumbedrag overschrijden. Slechts op grond van dit artikel kan er een boete worden verbeurd, met uitzondering van artikel 15.2. Deze boete bevrijdt opdrnemer niet van zijn verplichtingen onder het contract.</p>	<p><u>19 Force Majeure</u></p> <p>De definitie is gegeven in 19.1 alsmede een niet-limitatieve lijst van mogelijke overmachtssituaties. Binnen veertien dagen dient een overmachtssituatie gemeld te worden volgens 19.2. 19.3 verplicht beide partijen de vertraging te minimaliseren. 19.4 geeft de gevolgen van overmacht, opdrnemer krijgt de kosten gedurende overmacht vergoed en krijgt tijd verlenging. 19.5 heeft betrekking op overmacht bij de onderaannemer. 19.6 geeft aan wanneer er bij overmacht ontbonden mag worden (na 84 dagen of verschillende periode van in totaal 140 dagen) en geeft aan welke kosten vergoed worden. 19.7 geeft als laatste aan dat wanneer er sprake is van een situatie, waaronder overmacht, wat het uitvoeren van het contract onmogelijk maakt of 'unlawful' voor beide partijen is, worden beide partijen bevrijd van hun verplichtingen.</p>	<p>1.1.1.10 geeft de definitie van 'Schedule of Guarantees', en dat is een schema, wanneer die zijn opgenomen bij het contract, waarin de afgesproken garanties staan. Dit is dus niet verplicht opgenomen in de standaard bepalingen en dienen partijen zelf overeen te komen.</p>
<p><b>NEC3</b></p> <p><u>X7: Delay damages</u></p> <p>Iedere dag dat opdrnemer het werk later voltooid of iedere dag later dan de datum waarop opdrgever het werk over zou nemen betaald opdrnemer een boete (X7.1). Wanneer opdrgever slechts een gedeelte van het Werk over-</p>	<p><u>1 General, 19 Prevention</u></p> <p>Volgens de 'Guidance Notes' is dit in feite een overmachtsclausule. Het gaat namelijk over een situatie die beide partijen niet kunnen voorkomen en het werk niet voortgezet kan worden. Er kan ontbonden door opdrgever worden in een dergelijke situatie wanneer het overmacht is gemeld</p>	<p>Garanties zijn niet opgenomen in deze standaard bepalingen.</p>



	neemt, wordt de boete met een evenredig deel verminderd wanneer de rest tijdig wordt geleverd.	volgens 16, dit is beoordeeld a.d.h.v. de voorwaarden uit 19 en dit dertien weken voortduurt of verwacht wordt dat het dertien weken voortduurt.	
<b>LOGIC</b>	<p><u>35. Liquidated damages</u></p> <p>Wanneer opdrnemer de data van ingangsdatum of de completion date overschrijd, alsmede alle belangrijke data uit de Schedule of Key Dates, zal opdrnemer een boete verbeuren. De hoogte van de boete is opgenomen in het contract (35.1). De hoogte van deze boete is het goed geschatte verlies dat opdrgever leidt door het overschrijden van de data en is niet bedoeld als 'penalty'. Een dergelijke boete is de enige en exclusieve financiële remedie voor opdrgever bij het overschrijden van data (35.2).</p>	<p><u>15. Force Majeure</u></p> <p>Er moet aan vier voorwaarden zijn voldaan voor een geslaagd beroep op de overmachtsbepaling. Er moet een mededeling worden gedaan overeenkomstig bepaling 15.3, het moet buiten de controle van partijen liggen, zonder dat de partij in de fout of nalatig is en de partij moet niet in staat zijn zich er tegen te weren (15.1). Slechts bij de gebeurtenissen uit 15.2 is sprake van overmacht. De Key Dates worden aangepast wanneer er bij een partij sprake van overmacht is (15.4). Er zal tot aan hervatting van de werkzaamheden een herziene planning gemaakt worden en zal een variation order volgens bepaling 14 uitvoeren om de Key Dates aan te passen (15.5). Na de melding uit 15.3 komen partijen z.s.m. samen om een voor beide acceptabele werkwijze vast te stellen (15.6).</p>	<p><u>29. Defects correction</u></p> <p>Opdrnemer garandeert dat het Werk in overeenstemming met het contract en vrij van gebreken is (29.1). Mocht er voorafgaand aan het afgeven van het Completion Certificate gebreken zijn, dient opdrnemer deze te herstellen. Na het herstellen begint de garantieperiode opnieuw (29.2). Opdrgever kan bepalen om de gebreken zelf te herstellen op kosten van opdrnemer (29.3). De garantie geldt niet voor routine onderhoud en de vier redenen onder (b) (29.5).</p>
<b>IMCA</b>	<p><u>35 Liquidated damages</u></p> <p>Wanneer opdrnemer de data van ingangsdatum of de completion date overschrijd, alsmede alle belangrijke data uit de Schedule of Key Dates, zal opdrnemer een boete verbeuren na het verstrijken van de 'grace period'. De hoogte van de boete is opgenomen in het contract (35.1). De hoogte van deze boete is het goed geschatte verlies dat opdrgever leidt door het overschrijden van de data en is niet bedoeld als 'penalty'. Een dergelijke boete is de enige en exclusieve remedie voor opdrgever bij het overschrijden van data (35.2). Er wordt geen boete verbeurd als opdrnemer geen werkzaamheden kan verrichten doordat het moest wachten op het weer (35.3). Opdrnemer verbeurd geen boete wanneer het werkzaamheden verricht voor andere cliënten wanneer de overeenkomst met deze cliënten eerder is gesloten dan met opdrgever (35.4).</p>	<p><u>15 Force Majeure</u></p> <p>Er moet aan vier voorwaarden zijn voldaan voor een geslaagd beroep op de overmachtsbepaling. Er moet een mededeling worden gedaan overeenkomstig bepaling 15.3, buiten de controle van partijen, zonder dat de partij in de fout of nalatig is en de partij moet niet in staat zijn zich er tegen te weren (15.1). Slechts bij de gebeurtenissen uit 15.2 is sprake van overmacht. De Key Dates en contractsprijzen worden aangepast wanneer er bij een partij sprake van overmacht is (15.4). Na de melding uit 15.3 komen partijen z.s.m. samen om een voor beide acceptabele werkwijze vast te stellen. Ook wordt er bepaald of opdrnemer stand-by moet blijven of niet en of de materialen van de worksite op kosten van opdrgever worden verplaatst wanneer deze gevaar lopen of niet (15.5). Er zal tot aan hervatting van de werkzaamheden een herziene planning gemaakt worden en zal een variation order volgens bepaling 14 uitvoeren om de Key Dates aan te passen (15.6). Bij 'extraordinary' risico's, dat blijvende overmachtsituaties opleveren, wordt een variation order gemaakt. Voorbeelden van deze risico's staan in 15.7.</p>	<p><u>29 Defects correction</u></p> <p>Opdrnemer garandeert dat het Werk in overeenstemming met het contract en vrij van gebreken is en slechts deze garantiebepaling geldt en eerder overeengekomen garantiebepalingen vervallen (29.1). Mocht er voorafgaand aan het afgeven van het Completion Certificate gebreken zijn, dient opdrnemer deze te herstellen. Na het herstellen, op kosten van opdrnemer, begint de garantieperiode opnieuw voor zover deze de cumulatieve Defects Correction Period niet wordt overschreden (29.2). Opdrgever kan bepalen, wanneer opdrnemer onwilling of niet in staat is om de gebreken te herstellen, om de gebreken zelf te herstellen op kosten van opdrnemer (29.3). De garantie geldt niet voor routine onderhoud, de vier redenen onder (b), werk dat is gedaan door derden en de kosten voor herinstallatie van materiaal (29.5).</p>

Ontbinding en opschorting	Limitering van aansprakelijkheid	Gevolg schade
<p><b>UAV</b></p> <p><u>§ 16 Schorsing, ontbinding en opzegging</u></p> <p>Slechts de opdragever is bevoegd tot opschorting (lid 1). Gedurende deze opschorting dient de opdragever passende maatregelen te nemen om schade aan het Werk te voorkomen en te beperken en na te laten wat schade zou veroorzaken (lid 2). Als opdragever niet toerekenbaar tekort is gekomen (lid 6) en voorzieningen moet treffen, heeft hij recht op een kostenvergoeding en/of termijnsverlenging (lid 3) en duurt de schorsing langer dan één maand, dan kan opdragever betaling van verrichte werkzaamheden vorderen (lid 4) en na zes maanden ontbinding (lid 5). Opdragever mag na twee maanden ononderbroken vertraging ontbinden wanneer dit deze omstandigheden voor rekening van opdragever komen.</p> <p>Opdragever is te allen tijde bevoegd tot opzegging (lid 8). Opdragever heeft dan, en wanneer na zes of twee maanden ontbonden wordt, uitsluitend recht op:</p> <ul style="list-style-type: none"> <li>- het gedeelte van de overeengekomen prijs naar gelang de werkzaamheden zijn verricht</li> <li>- 5% van het resterende deel van de vergoeding wanneer het gehele Werk opgeleverd zou zijn</li> <li>- vergoeding van alle gemaakte en nog te maken kosten die voortkomen uit verplichtingen die de opdragever op het tijdstip van ontbinding/opzegging is aangegaan met het oog op uitvoering van de opdracht (lid 10).</li> </ul>	<p><u>§ 28 Aansprakelijkheid voor gebreken na de feitelijke datum van oplevering</u></p> <p>Na oplevering is opdragever niet meer aansprakelijk, tenzij:</p> <ul style="list-style-type: none"> <li>- de gebreken te wijten zijn aan schuld of krachtens de wet, rechtshandeling of in het verkeer geldende opvattingen voor rekening komen van opdragever; en</li> <li>- opdragever voortgaand aan de oplevering gebreken niet heeft opgemerkt; en</li> <li>- deze redelijkerwijs niet had moeten ontdekken (lid 1).</li> </ul> <p>De rechtsvordering hierop is niet ontvankelijk na verloop van vijf jaar of tien jaar wanneer het Werk ongeschikt dreigt te raken waarvoor het bedoeld is of op instorten staat en dit slechts te voorkomen is door het treffen van buitengewone en zeer kostbare voorzieningen (lid 2).</p> <p>De vergoeden schade is beperkt tot 10% van de overeengekomen prijs, maar indien het berekende bedrag lager is dan € 1,5 miljoen, dan bedraagt de schade ten hoogste € 1,5 miljoen (lid 3).</p>	<p>Geen bepaling die betrekking heeft op gevolgschade.</p>
<p><b>FIDIC</b></p> <p><u>Suspension of Work</u></p> <p>Slechts de opdragever mag opschorten volgens art. 8.8 en mag, wanneer hij de reden van opschorten vermeld, mogen artt. 8.9 (Consequences of suspension), 8.10 (Payment for Plant and Materials in Event of Suspension) en 8.11 (Prolonged Suspension) buiten toepassing laten. De consequenties zijn dat opdragever recht heeft op uitstel van deadlines en betaling van kosten die gemoeid zijn met de opschorting, mits de opschorting niet te wijten zijn aan opdragever. Wanneer de opschorting langer dan 84 dagen duurt mag opdragever toestemming vragen om de werkzaamheden te hervatten. Wanneer hij deze toestemming niet krijgt binnen 28 dagen, mag hij de overeenkomst ontbinden. 8.12 zegt dat wanneer de toestemming wél is gegeven, partijen samen onderzoeken wat de opschorting voor effect heeft gehad op de Works, Plant en Materials. Opdragever zal elke verslechtering herstellen</p>	<p><u>17.6 Limitation of liability</u></p> <p>Knock-for-knock m.b.t. schade van het Werk, winstverlies, gevolgschade of schade door het niet verkrijgen van andere contracten. De totale aansprakelijkheid is onder of in verband met het contract is beperkt tot een bedrag dat is vermeld in het contract. Dit alles heeft geen betrekking op fraude, opzettelijk wanpresteren of roekeloos handelen.</p>	<p>Gevolgschade is beperkt tot knock-for-knock (17.6)</p>

	<p>len.</p> <p><u>15 Termination by Employer</u></p> <p>Opdrnemer moet gebreken herstellen wanneer deze worden gemeld door opdrgever (15.1). In 15.2 staan gronden genoemd waarop ontbonden kan worden binnen 14 dagen, behalve bij faillissement en fraude, dan mag direct ontbonden worden. 15.5 zegt dat er ook ontbonden mag worden als er geen sprake is van een van de voorwaarden uit 15.2, echter is de ontbindingstermijn dan 28 i.p.v. 14 dagen. 15.3 en 15.4 bepalen dat er z.s.m. bepaalt wordt hoeveel er betaald dient te worden na ontbinding en hoe dit betaald dient te worden.</p> <p><u>16 Suspension and Termination by Contractor</u></p> <p>Opdrnemer mag het werk opschorten wanneer er niet binnen 21 dagen na mededeling aan opdrgever is voldaan aan betalingsvoorwaarden (bepaling 14.6, 2.5 en 14.7) totdat er wel betaald is en heeft in de tussentijd recht op extra tijd en vergoeding van de kosten die met de opschorting gemoeid zijn.</p> <p>In 16.2 staan de situaties wanneer ontbonden mag worden na 14 dagen ingebrekestelling. Deze termijn geldt niet bij insolventie en een verlengde opschorting. Wanneer er is ontbonden, dient opdrnemer te stoppen met het uitvoeren van de werkzaamheden, alle documenten en werken waarvoor hij betaald heeft gekregen dient hij over te dragen. Opdrgever dient opdrnemer te betalen volgens bepaling 19.6 en dient schade, winstderving en ander verlies te vergoeden wat is geleden door de ontbinding.</p>		
NEC3	<p><u>9 Termination</u></p> <p>Opdrnemer mag slechts ontbinden op een grond die vermeld staat in het contract en opdrgever mag voor elke reden ontbinden en de procedures die gevolgd moeten worden staan in de Termination Table (90.2). Binnen dertien weken na ontbinding vaardigt de opdrgever een laatste betaling uit naar of voor opdrnemer, bekend aan de hand van de verrichte werkzaamheden en de eerdere betalingen (90.4). de redenen voor ontbinding staan in 91, de procedures in 92 en de betalingen in 93.</p> <p>Opschorting is niet geregeld, omdat er slechts in een optionele bepaling wordt verwezen naar een Engelse wet die in Nederland niet geldt.</p>	<p><u>Limitation of liability X18</u></p> <p>Voor elk schade brengende event is de aansprakelijkheid beperkt tot het bedrag dat is vermeld (X18.2). Ook de aansprakelijkheid m.b.t. mankementen in het design is beperkt tot een bedrag (X18.3). De totale aansprakelijkheid onder of verband houdend met het contract, ook onrechtmatige daad en 'delict' onder het recht dat van toepassing is, is gelimiteerd tot een bedrag (X18.4). Opdrnemer is niet aansprakelijk wanneer opdrgever opdrnemer niet in kennis heeft gesteld van de schade voordat de termijn van aansprakelijkheid voorbij is.</p>	<p>De gevolgschade die opdrgever leidt door opdrnemer is gelimiteerd tot een bedrag (X18.1).</p>
LOGIC	<p><u>30. Termination</u></p> <p>Opdrgever mag ontbinden wanneer het hem schikt, wanneer opdrnemer in staat van faillissement (dreigt) te verkeren en, na ingebrekestelling volgens 30.2, bij gebreke van opdrnemer (30.1). Wanneer opdrgever geen termijn voor ontbinding</p>	<p><u>36. Limitations of liability</u></p> <p>Er zijn twee limiteringen van aansprakelijkheid, namelijk voor en na oplevering en beide zijn gecapt op een bepaald bedrag in het contract,</p>	<p><u>25 Consequential Loss</u></p> <p>Gevolgschade staat in 25 en betekent gevolgschade de onder Engels recht en</p>



<p>geeft, is de overeenkomst direct ontbonden en dient opdrgever (a) t/m (d) van 30.3 direct uit te voeren, alle tekeningen e.d. te overhandigen (op één kopie voor zichzelf na) (30.3). 30.4 en 30.5 regelt betaling na ontbinding. 30.7 geeft de rechten en verplichtingen die na ontbinding blijven bestaan.</p> <p><u>16. Suspension</u></p> <p>Opdrgever is bevoegd tot schorsing bij de redenen uit 16.1. Opdrnemer zal dan stoppen met de werkzaamheden en het werk naar behoren beschermen (16.2). Voordat er opgeschort kan worden dient er eerst een ingebrekestelling gestuurd te worden (16.3). Als de opschorting niet door een gebrek van opdrnemer komt, worden de Key Dates en prijs aangepast (16.4) en wanneer het wel door een gebrek komt, kan opdrgever eventuele bijkomende kosten voortvloeiend uit de opschorting verhalen op opdrnemer (16.5). Opdrgever mag opdrnemer instrueren de werkzaamheden te hervatten (16.6). Partijen dienen binnen zeven dagen bijeen te komen om een voor beide acceptabele werkwijze gedurende de opschorting overeen te komen (16.7). Wanneer er niet om een gebrek wordt opgeschort en de opschorting duurt langer dan de periode die in het contract is vermeld, mag opdrnemer vragen om door te gaan met de werkzaamheden. Wanneer er binnen veertien dagen geen toestemming wordt gegeven, mag dit gezien worden als een wijziging als bedoeld in bepaling 14 wanneer het gaat om een gedeelte van het werk en als ontbinding als het om het hele werk gaat (16.8).</p>	<p>met drie uitzonderingen die genoemd zijn in (i), (ii) en (iii) (36.1). De aansprakelijkheid eindigt op een termijn bepaald in het contract (36.2). De limitering geldt ook voor onrechtmatige daad of anderszins rechterlijke aansprakelijkheid (36.3).</p>	<p>verlies van productie, producten, etc. en niet te voorzien waren bij de ingangsdatum van het contract. Voor gevolgschade geldt het knock-for-knock principe.</p>
<p><b>IMCA</b></p> <p><u>30 Termination</u></p> <p>Opdrgever mag ontbinden wanneer het hem schikt, wanneer opdrnemer in staat van faillissement (dreigt) te verkeren en, na ingebrekestelling volgens 30.2, bij gebreke van opdrnemer (30.1). Wanneer opdrgever geen termijn voor ontbinding geeft, is de overeenkomst direct ontbonden en dient opdrgever (a) t/m (d) van 30.3 direct uit te voeren, alle tekeningen e.d. te overhandigen (op één kopie voor zichzelf na) (30.3). 30.4 en 30.5 regelt betaling na ontbinding. 30.7 geeft de rechten en verplichtingen die na ontbinding blijven bestaan. Opdrnemer mag ontbinden wanneer er bij opdrgever sprake is van 'material breach', een overmachtssituatie of een opschorting die het bepaalde aantal dagen overschrijdt (30.8). 30.9 zegt dat 30.8 geldt bij opschorting en 30.10 zegt dat 30.8 bij overmachtssituatie geldt.</p> <p><u>16 Suspension</u></p> <p>Opdrgever is bevoegd tot schorsing bij de redenen uit 16.1. Opdrnemer zal dan stoppen met de werkzaamheden en het werk naar behoren beschermen (16.2). Voordat er opgeschort kan worden dient er eerst een ingebrekestelling gestuurd te worden (16.3). Als de opschorting niet door een gebrek van opdrnemer komt, worden de Key Dates en prijs aangepast en redelijke kosten die direct zijn toe te wijzen aan de opschorting (16.4) en wanneer het wel door een gebrek komt, kan opdrgever eventuele bijkomende kosten voortvloeiend uit de opschorting verhalen</p>	<p><u>36 Limitations of Liability</u></p> <p>Onderhevig aan bepaling 22, 23 en 25 maar niet onder andere bepalingen in het contract zal de opdrnemer's totale cumulatieve aansprakelijkheid gelimiteerd zijn tot een percentage van de originele contractswaarde (36.1). De aansprakelijkheid eindigt op een termijn bepaald in het contract (36.2). De limitering geldt ook voor onrechtmatige daad of anderszins rechterlijke aansprakelijkheid of gerechtelijke procedures (36.3).</p>	<p><u>25 Consequential Loss</u></p> <p>Gevolgschade staat in 25 en betekent gevolgschade onder het toepasselijke recht en verlies van productie, producten, etc. en niet te voorzien waren bij de ingangsdatum van het contract. Voor gevolgschade geldt het knock-for-knock principe.</p>

<p>op opdrnemer (16.5). Opdrgever mag opdrnemer instrueren de werkzaamheden te hervatten (16.6). Partijen dienen binnen zeven dagen bijeen te komen om een voor beide acceptabele werkwijze gedurende de opschorting overeen te komen (16.7). Wanneer er niet om een gebrek wordt opgeschort en de opschorting duurt langer dan de periode die in het contract is vermeld, mag opdrnemer vragen om door te gaan met de werkzaamheden. Wanneer er binnen veertien dagen geen toestemming wordt gegeven, mag dit gezien worden als een wijziging als bedoeld in bepaling 14 wanneer het gaat om een gedeelte van het werk en als ontbinding als het om het hele werk gaat. Ondanks bovenstaande mag opdrnemer, wanneer de duur van de opschorting de maximale opschortingstijd overschrijd, zijn materiaal weghalen en dienen partijen een voor beide partijen acceptabel herplaatsingsschema te maken (16.8). Bij hervatting van de werkzaamheden zal opdrnemer een herziene planning maken om de effecten van de opschorting te minimaliseren.</p>		
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## Bijlage D: geanalyseerde bepalingen uit de NEC-voorwaarden





**Communications 13**

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

**The Project Manager and the Supervisor 14**

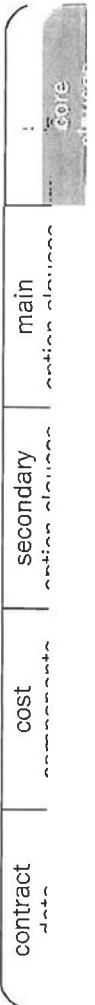
- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.
- 14.4 The *Employer* may replace the *Project Manager* or the *Supervisor* after he has notified the *Contractor* of the name of the replacement.

**Adding to the Working Areas 15**

- 15.1 The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the Works or used for work not in this contract.

**Early warning 16**

- 16.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could
- increase the total of the Prices,
  - delay Completion,
  - delay meeting a Key Date or
  - impair the performance of the works in use.



The *Contractor* may give an early warning by notifying the *Project Manager* of any other matter which could increase his total cost. The *Project Manager* enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.

16.2 Either the *Project Manager* or the *Contractor* may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.

16.3 At a risk reduction meeting, those who attend co-operate in

- making and considering proposals for how the effect of the registered risks can be avoided or reduced,
- seeking solutions that will bring advantage to all those who will be affected,
- deciding on the actions which will be taken and who, in accordance with this contract, will take them and
- deciding which risks have now been avoided or have passed and can be removed from the Risk Register.

16.4 The *Project Manager* revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the *Contractor*. If a decision needs a change to the Works Information, the *Project Manager* instructs the change at the same time as he issues the revised Risk Register.

**Ambiguities and  
Inconsistencies 17**

17.1 The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The *Project Manager* gives an instruction resolving the ambiguity or inconsistency.

**Illegal and impossible  
requirements 18**

18.1 The *Contractor* notifies the *Project Manager* as soon as he considers that the Works Information requires him to do anything which is illegal or impossible. If the *Project Manager* agrees, he gives an instruction to change the Works Information appropriately.

**Prevention 19**

19.1 If an event occurs which

- stops the *Contractor* completing the works or
- stops the *Contractor* completing the works by the date shown on the Accepted Programme,

and which

- neither Party could prevent and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.



## 9 Termination

### Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

**TERMINATION TABLE**

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21	P1 and P2	A1, A2 and A4
	R1–R15 or R18	P1, P2 and P3	A1 and A3
	R17 or R20	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
The <i>Contractor</i>	R1–R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

### Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
    - presented his petition for bankruptcy (R1),
    - had a bankruptcy order made against him (R2),
    - had a receiver appointed over his assets (R3) or
    - made an arrangement with his creditors (R4).
  - If the other Party is a company or partnership and has
    - had a winding-up order made against it (R5),
    - had a provisional liquidator appointed to it (R6),
    - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
    - had an administration order made against it (R8),
    - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking assets (R9) or
    - made an arrangement with its creditors (R10).

- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).
  - Not provided a bond or guarantee which this contract requires (R12).
  - Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).
- 91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Employer* or Others (R14).
  - Substantially broken a health or safety regulation (R15).
- 91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
- 91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
  - the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
  - either Party may terminate if the instruction was due to any other reason (R20).
- 91.7 The *Employer* may terminate if an event occurs which
- stops the *Contractor* completing the works or
  - stops the *Contractor* completing the works by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks,
- and which
- neither Party could prevent and
  - an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

**Procedures on termination 92**

- 92.1 On termination, the *Employer* may complete the works and may use any Plant and Materials to which he has title (P1).
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Employer* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*.
- P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the works. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* notifies him that the *Employer* no longer requires it to complete the works.
- P4 The *Contractor* leaves the Working Areas and removes the Equipment.

**Payment on termination 93**

**93.1 The amount due on termination includes (A1)**

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials
  - within the Working Areas or
  - to which the *Employer* has title and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole of the works,
- any amounts retained by the *Employer* and
- a deduction of any un-repaid balance of an advanced payment.

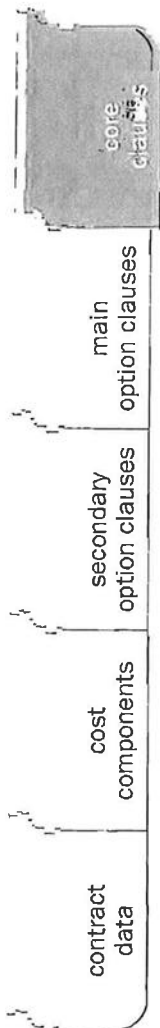
**93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.**

**A2** The forecast Defined Cost of removing the Equipment.

**A3** A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the works.

**A4** The *direct fee percentage* applied to

- for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or
- for Options E and F, any excess of the first forecast of the Defined Cost for the works over the Price for Work Done to Date less the Fee.



## Option X6: Bonus for early Completion

### Bonus for early Completion X6

- X6.1 The *Contractor* is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of
- Completion and
  - the date on which the *Employer* takes over the works
- until the Completion Date.

## Option X7: Delay damages

### Delay damages X7

- X7.1 The *Contractor* pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of
- Completion and
  - the date on which the *Employer* takes over the works.
- X7.2 If the Completion Date is changed to a later date after delay damages have been paid, the *Employer* repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.
- X7.3 If the *Employer* takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The *Project Manager* assesses the benefit to the *Employer* of taking over the part of the works as a proportion of the benefit to the *Employer* of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.

## Option X12: Partnering

### Identified and defined X12

- terms X12.1 (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
- (2) An Own Contract is a contract between two Partners which includes this Option.
- (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.
- (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.
- (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.



## Option X16: Retention (not used with Option F)

### Retention X16

X16.1 After the Price for Work Done to Date has reached the *retention free amount*, an amount is retained in each amount due. Until the earlier of

- Completion of the whole of the *works* and
- the date on which the *Employer* takes over the whole of the *works*

the amount retained is the *retention percentage* applied to the excess of the Price for Work Done to Date above the *retention free amount*.

X16.2 The amount retained is halved

- in the assessment made at Completion of the whole of the *works* or
- in the next assessment after the *Employer* has taken over the whole of the *works* if this is before Completion of the whole of the *works*.

The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

## Option X17: Low performance damages

### Low performance X17

damages X17.1 If a Defect included in the Defects Certificate shows low performance with respect to a performance level stated in the Contract Data, the *Contractor* pays the amount of low performance damages stated in the Contract Data.

## Option X18: Limitation of liability

### Limitation of liability X18

X18.1 The *Contractor's* liability to the *Employer* for the *Employer's* indirect or consequential loss is limited to the amount stated in the Contract Data.

X18.2 For any one event, the liability of the *Contractor* to the *Employer* for loss of or damage to the *Employer's* property is limited to the amount stated in the Contract Data.

X18.3 The *Contractor's* liability to the *Employer* for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.

X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the *law of the contract*.

The excluded matters are amounts payable by the *Contractor* as stated in this contract for

- loss of or damage to the *Employer's* property,
- delay damages if Option X7 applies,
- low performance damages if Option X17 applies and
- *Contractor's* share if Option C or Option D applies.

X18.5 The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.

core  
clauses

main  
option clauses

secondary  
option clauses

cost  
components

contract  
data





## Bijlage E: geanalyseerde bepalingen uit de UAV-voorwaarden



voorkomende geval dat die toetsing of Acceptatie in het toetsingsplan Ontwerpwerkzaamheden, het keuringsplan Uitvoeringswerkzaamheden, het keuringsplan Onderhoudswerkzaamheden of het acceptatieplan zijn vastgelegd, of voorzover de Opdrachtgever daarover anderszins nog niet is geïnformeerd.

2 Indien de Opdrachtgever de in lid 1 genoemde keuzen, Documenten, gemachtigden, zelfstandige hulppersonen, Werkzaamheden en resultaten van Werkzaamheden reeds heeft getoetst op basis van het toetsingsplan Ontwerpwerkzaamheden, het keuringsplan Uitvoeringswerkzaamheden of het keuringsplan Onderhoudswerkzaamheden, of indien hij daarover anderszins is geïnformeerd, is de Opdrachtnemer slechts gerechtigd de desbetreffende Wijzigingen uit te voeren, onder de voorwaarde dat hij die Wijzigingen ter toetsing aan de Opdrachtgever heeft voorgelegd met inachtneming van het bepaalde in § 20, § 21 en dat de Werkzaamheden, het Werk en het Meerjarig Onderhoud zullen beantwoorden aan de bepalingen van de Overeenkomst.

3 De Opdrachtnemer is verplicht, met inachtneming van de in § 23 vastgelegde acceptatieprocedure, elk voorstel ter Acceptatie voor te leggen dat een Wijziging beoogt van:

- (a) de eisen opgenomen in de Overeenkomst, of
- (b) de gemachtigden, of
- (c) de in lid 1 genoemde en door de Opdrachtgever reeds op basis van het acceptatieplan geaccepteerde keuzen, Documenten, gemachtigden, zelfstandige hulppersonen, Werkzaamheden en resultaten van Werkzaamheden. De Opdrachtgever kan dit voorstel weigeren te accepteren indien de voorgestelde Wijziging tot gevolg zou hebben dat de Werkzaamheden, het Werk en/of het Meerjarig Onderhoud niet zullen beantwoorden aan de bepalingen van de Overeenkomst.

4 De Opdrachtgever neemt de door de Opdrachtnemer ter Acceptatie voorgelegde Wijzigingen als bedoeld in lid 3 sub a in beschouwing, maar kan deze, zonder opgaaf van redenen, weigeren te accepteren.

#### § 16 Schorsing, ontbinding en opzegging

1 De Opdrachtgever is bevoegd Werkzaamheden te schorsen.

2 Gedurende de schorsing is de Opdrachtnemer verplicht:

- (a) in overleg met de Opdrachtgever passende maatregelen te nemen om schade te voorkomen en te beperken die aan het Werk zou kunnen ontstaan;
- (b) na te laten wat schade aan het Werk zou kunnen veroorzaken of wat de latere voortzetting van het Werk of het Meerjarig Onderhoud zou kunnen bemoeilijken.

3 Indien de Opdrachtnemer ten gevolge van de schorsing voorzieningen moet treffen, heeft hij recht op kostenvergoeding en/of termijnsverlenging met inachtneming van het bepaalde in § 44 lid 1 sub a.

4 Als de schorsing langer dan één maand duurt, kan de Opdrachtnemer vorderen dat betaling van alle verrichte Werkzaamheden plaats heeft, voorzover dat niet reeds heeft plaatsgevonden krachtens de termijnstaat.

5 Als de schorsing van alle Werkzaamheden langer duurt dan zes maanden, is de Opdrachtnemer bevoegd de Overeenkomst te ontbinden.

6 Het bepaalde in de leden 3 tot en met 5 is niet van toepassing, indien een toerekenbare tekortkoming van de Opdrachtnemer in de nakoming van de Overeenkomst ten grondslag ligt aan de schorsing.

7 Wanneer door omstandigheden die voor rekening van de Opdrachtgever komen, alle Uitvoeringswerkzaamheden gedurende meer dan twee maanden ononderbroken zijn vertraagd, is de Opdrachtnemer bevoegd de Overeenkomst te ontbinden.

8 De Opdrachtgever is te allen tijde bevoegd de Overeenkomst op te zeggen.

9 Doet een van de gevallen als bedoeld in de leden 5, 7 en 8 zich voor tijdens de realisatie van het Werk, dan zal de Opdrachtgever onverwijld na ontbinding of opzegging het Werk overnemen. De Opdrachtnemer is tot aan de overneming van het Werk gehouden de in lid 2 bedoelde verplichtingen na te komen.

10 In de gevallen bedoeld in de leden 5, 7 en 8 heeft de Opdrachtnemer uitsluitend aanspraak op:

- (a) vergoeding van de in de Basisovereenkomst vastgelegde prijs, exclusief BTW, berekend naar de stand van de Werkzaamheden op het moment van de ontbinding of opzegging;
- (b) vergoeding van 5% van het resterende deel van de in de Basisovereenkomst vastgelegde prijs, exclusief BTW, dat de Opdrachtgever verschuldigd zou zijn geweest bij volledige uitvoering van de Werkzaamheden;
- (c) vergoeding van alle gemaakte en nog te maken kosten, voortvloeiend uit verplichtingen die de Opdrachtnemer op het tijdstip van ontbinding of opzegging reeds is aangegaan met het oog op de uitvoering van de Overeenkomst.

## **Hoofdstuk 8 – Werkterrein, reclame**

### § 17 Werkterrein

1 De Opdrachtnemer heeft de kosteloze beschikking over de in de Vraagspecificatie als werkterrein aangeduide oppervlakten van grond of water, zolang de uitvoering van de Werkzaamheden dit nodig maakt. Gebruik van een ander terrein of water als werkterrein is voor rekening van de Opdrachtnemer.

2 De Opdrachtgever wijst aan, na overleg met de Opdrachtnemer, welke gedeelten van het werkterrein in gebruik mogen worden genomen als opslagplaatsen en voor het plaatsen van keten, loodsen en andere zaken die de Opdrachtnemer voornemens is te gebruiken voor de uitvoering van de Overeenkomst.

3 Indien de Overeenkomst uitsluitend de realisatie van een Werk betreft, moet het werkterrein na gebruik en uiterlijk op de feitelijke datum van oplevering zoveel mogelijk weer in de oorspronkelijke toestand worden opgeleverd.

4 Indien de Overeenkomst de realisatie van het Meerjarig Onderhoud omvat, moet het werkterrein zo spoedig mogelijk na de uitvoering van Onderhoudswerkzaamheden zoveel

of onderdeel daarvan heeft plaatsgevonden. De Opdrachtnemer heeft in geval van vervroegde ingebruikneming van het Werk of een onderdeel daarvan recht op kostenvergoeding en/of termijnsverlenging, met inachtneming van het bepaalde in § 44 lid 1 sub a. Schade die door de ingebruikneming aan het Werk ontstaat, komt niet voor rekening van de Opdrachtnemer. Door de in deze paragraaf bedoelde ingebruikneming en keuring wordt het Werk dan wel dat onderdeel niet geacht te zijn aanvaard door de Opdrachtgever.

#### § 27 Onderhoudstermijn

1 Het bepaalde in de leden 2 tot en met 8 is van toepassing, tenzij in de Basisovereenkomst is bepaald dat de Opdrachtnemer het Meerjarig Onderhoud zal realiseren.

2 Indien in de Vraagspecificatie een onderhoudstermijn is voorgeschreven, gaat deze terstond in na de feitelijke datum van oplevering.

3 De Opdrachtnemer is gehouden gebreken, die in de onderhoudstermijn aan de dag treden, te herstellen, met uitzondering van gebreken waarvoor de Opdrachtgever op grond van de Overeenkomst verantwoordelijk of aansprakelijk is.

4 Het in lid 3 bedoelde herstel geschiedt voor rekening van de Opdrachtnemer binnen een door de Opdrachtgever in billijkheid te stellen termijn.

5 In de onderhoudstermijn optredende schade aan het Werk is voor rekening van de Opdrachtgever, met uitzondering van schade, die het gevolg is van door de Opdrachtnemer verrichte onvoldoende Werkzaamheden. In het laatste geval is het bepaalde in lid 4 van overeenkomstige toepassing.

6 Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van niet voor zijn rekening komende gebreken of schade aan het Werk, volgen partijen de procedure die is vastgelegd in § 45.

7 De Opdrachtnemer zendt ten minste 20 dagen vóór het einde van de onderhoudstermijn een schriftelijk verzoek tot aanvaarding van het Werk aan de Opdrachtgever.

8 De Opdrachtgever is bevoegd binnen 10 dagen na ontvangst van het in lid 7 genoemde verzoek het Werk wederom te keuren om te constateren of de Opdrachtnemer aan zijn verplichtingen heeft voldaan, waarbij wordt gehandeld overeenkomstig het bepaalde in § 24.

#### § 28 Aansprakelijkheid voor gebreken na de feitelijke datum van oplevering

1 Na de feitelijke datum van oplevering is de Opdrachtnemer niet meer aansprakelijk voor gebreken in het Werk of in enig onderdeel daarvan, tenzij:

- (a) die gebreken te wijten zijn aan zijn schuld, of krachtens wet, rechtshandeling of de in het verkeer geldende opvattingen voor zijn rekening komen, en bovendien
- (b) de Opdrachtgever voorafgaande aan de oplevering die gebreken niet heeft opgemerkt, en bovendien

(c) de Opdrachtgever die gebreken op het tijdstip van de feitelijke datum van oplevering redelijkerwijs niet had moeten ontdekken.

2 De rechtsvordering uit hoofde van een gebrek waarvoor de Opdrachtnemer krachtens lid 1 aansprakelijk is, is niet ontvankelijk indien zij wordt ingesteld na verloop van:

(a) vijf jaren na de in lid 1 bedoelde dag, of

(b) tien jaren na de in lid 1 bedoelde dag, indien het Werk hetzij geheel of gedeeltelijk dreigt in te storten hetzij het Werk ongeschikt is geraakt of ongeschikt dreigt te geraken voor de bestemming waarvoor het blijkens de Overeenkomst bedoeld is en dit slechts kan worden verholpen of kan worden voorkomen door het treffen van buitengewone en zeer kostbare voorzieningen.

3 De in totaal op grond van het eerste lid door de Opdrachtnemer te vergoeden schade is beperkt tot 10% van de in de Basisovereenkomst vastgelegde prijs voorzover die prijs verband houdt met de realisatie van het Werk door middel van Ontwerp- en Uitvoeringswerkzaamheden. Indien het aldus berekende bedrag lager is dan 1.500.000 Euro, bedraagt de aan de Opdrachtgever te vergoeden schade ten hoogste 1.500.000 Euro.

4 Indien in de Vraagspecificatie een onderhoudstermijn is voorgeschreven, treedt voor de toepassing van deze paragraaf de dag na het verstrijken van die termijn in de plaats van de in lid 1 bedoelde dag.

## **Hoofdstuk 11 – Meerjarig onderhoud**

### [§ 29 Meerjarig Onderhoud](#)

1 Het in dit hoofdstuk bepaalde is van toepassing, voorzover in de Basisovereenkomst is bepaald dat de Opdrachtnemer Meerjarig Onderhoud zal realiseren. In dat geval zijn ook alle overige in de Overeenkomst opgenomen bepalingen met betrekking tot het Meerjarig Onderhoud, de Onderhoudswerkzaamheden, de Onderhoudsdocumenten, de Meerjarige Onderhoudsperiode en het keuringsplan Onderhoudswerkzaamheden van toepassing.

2 De Opdrachtnemer is verplicht, met inachtneming van de overige bepalingen van de Overeenkomst, het Meerjarig Onderhoud zodanig te realiseren dat het Werk gedurende de Meerjarige Onderhoudsperiode aan de uit de Overeenkomst voortvloeiende eisen voldoet. Voldoet het Werk gedurende de Meerjarige Onderhoudsperiode niet aan deze eisen, dan zal de Opdrachtnemer die tekortkoming onverwijld voor eigen rekening en risico herstellen, tenzij die tekortkoming hem niet kan worden toegerekend. Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van een niet voor zijn rekening komende tekortkoming, volgen partijen de procedure die is vastgelegd in § 45.

3 De Opdrachtnemer zal een gebrek in het Werk dat in de Meerjarige Onderhoudsperiode aan de dag treedt, indien en voorzover hij op grond van het bepaalde in § 28 lid 1, 2 en 3 daarvoor aansprakelijk kan worden gehouden, onverwijld voor eigen rekening en risico herstellen. Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van een niet voor zijn rekening komend gebrek, volgen partijen de procedure die is vastgelegd in § 45.

4 Indien de in lid 2, tweede volzin bedoelde toestand van het Werk het gevolg is van in



(c) 5% voor zover deze prijzen of kosten enkel betrekking hebben op betalingen aan derden, de omzetbelasting daarin niet begrepen.

4 De uitvoering van Werkzaamheden, waarvoor stelposten zijn opgenomen, geschiedt door de Opdrachtnemer volgens nadere opdracht van de Opdrachtgever. Alvorens een uitgave ten laste van een stelpost te brengen, kan de Opdrachtgever van de Opdrachtnemer overlegging van bewijsstukken verlangen.

5 Indien de Opdrachtgever de uitvoering van Werkzaamheden waarvoor stelposten zijn opgenomen, heeft opgedragen, kan de Opdrachtnemer de Opdrachtgever om afgifte van een prestatieverklaring ter zake van die Werkzaamheden verzoeken, zodra die Werkzaamheden zijn voltooid. Het bepaalde in § 33 is van toepassing.

#### § 35 Omzetbelasting

1 De over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting is niet begrepen in de tussen Opdrachtgever en Opdrachtnemer overeengekomen of overeen te komen bedragen en prijzen, maar het bedrag daarvan wordt wel door de Opdrachtnemer in zijn prijsopgaven afzonderlijk vermeld.

2 De Opdrachtgever vergoedt de Opdrachtnemer de over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting.

3 De Opdrachtnemer ontvangt geen vergoeding van de over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting, voorzover deze van de Opdrachtgever wordt geheven.

4 De berekening van hetgeen de Opdrachtnemer ingevolge de Overeenkomst toekomt, geschiedt met inachtneming van bedragen en prijzen waarin de omzetbelasting niet is begrepen; de berekening van de door de Opdrachtgever aan de Opdrachtnemer te vergoeden omzetbelasting geschiedt afzonderlijk.

5 De vergoeding van omzetbelasting aan de Opdrachtnemer geschiedt gelijktijdig met de aan hem te verrichten betalingen.

#### § 36 Boetebeding en bonus

1 Behoudens het bepaalde in lid 3 kan de Opdrachtgever, bij overschrijding van een in de bij de Vraagspecificatie gevoegde annex opgenomen planning opgenomen mijlpaaldatum of van de in de Basisovereenkomst vastgelegde datum van oplevering, de Opdrachtnemer een boete opleggen, tenzij de overschrijding niet aan de Opdrachtnemer kan worden toegerekend.

2 De in de Basisovereenkomst vastgelegde datum van oplevering wordt voor de toepassing van deze paragraaf geacht een in de bij de Vraagspecificatie gevoegde annex opgenomen planning opgenomen mijlpaaldatum te zijn.

3 Het bedrag van de boete die kan worden opgelegd, is voor elke mijlpaaldatum opgenomen in de Basisovereenkomst. Indien in de Basisovereenkomst geen boetebedrag is opgenomen voor een bepaalde mijlpaaldatum, is de Opdrachtnemer bij overschrijding daarvan geen boete verschuldigd.

4 Geen boete wordt opgelegd wegens overschrijding van een mijlpaaldatum, indien en voorzover deze overschrijding het gevolg is van overschrijding van een eerdere mijlpaaldatum waarvoor reeds een boete is opgelegd, mits de bedoelde data met elkaar in verband staan.

5 Boetes worden verbeurd enkel ten gevolge van het verschijnen van de mijlpaaldatum, zonder dat deswege een ingebrekestelling nodig is.

6 Boetes en andere bedragen die de Opdrachtnemer krachtens de Overeenkomst verschuldigd is, worden bij de eerstvolgende betalingstermijn en zo nodig bij volgende termijnen ingehouden of op andere wijze op de Opdrachtnemer verhaald.

7 De Opdrachtgever kan een bonus toekennen voor elke dag dat de feitelijke datum van oplevering eerder plaatsvindt dan de in de Basisovereenkomst vastgelegde datum van oplevering. Het bedrag van de bonus is opgenomen in de Basisovereenkomst. Is in de Basisovereenkomst geen bonusbedrag opgenomen, dan is de Opdrachtgever geen bonus verschuldigd, als de feitelijke datum van oplevering eerder plaatsvindt dan de in de Basisovereenkomst vastgelegde datum van oplevering.

#### [§ 37 Verpanding en cessie](#)

De Opdrachtnemer kan het recht op het saldo, bedoeld in § 3 lid 9 geheel of gedeeltelijk cederen of in pand geven.

### **Hoofdstuk 13 – Zekerheidstelling, verzekering**

#### [§ 38 Zekerheidstelling](#)

1 De Opdrachtnemer is verplicht zekerheid te stellen voor de nakoming van zijn verplichtingen met betrekking tot de realisatie van het Werk en voor de nakoming van zijn verplichtingen met betrekking tot de realisatie van het Meerjarig Onderhoud. De zekerheid dient te worden gesteld in de vorm van een bankgarantie

1). De waarde van de zekerheid is in de Basisovereenkomst vermeld. Op de bankgarantie is Nederlands recht van toepassing.

1) Een Model zekerheidstelling is als bijlage B opgenomen bij deze UAV-GC 2005.

2 Indien de Opdrachtgever voornemens is de zekerheid in te roepen, geeft hij de Opdrachtnemer daarvan bij aangetekende brief kennis. De Opdrachtgever is gerechtigd de zekerheid in te roepen, tenzij de Raad van Arbitrage voor de Bouw dan wel de Raad van Deskundigen anders beslist in een door de Opdrachtnemer binnen 14 dagen na de verzending van de in dit lid bedoelde kennisgeving aanhangig te maken geschil.

3 De zekerheid die is gesteld voor de nakoming van de verplichtingen met betrekking tot de realisatie van het Werk, blijft van kracht tot en met de feitelijke datum van oplevering, met dien verstande dat, indien sprake is van kleine gebreken als bedoeld in § 24 lid 7, de zekerheid van kracht blijft tot het tijdstip waarop de Opdrachtnemer deze gebreken heeft hersteld. Indien § 27 van toepassing is en in de Vraagspecificatie een

voorkomende geval dat die toetsing of Acceptatie in het toetsingsplan Ontwerpwerkzaamheden, het keuringsplan Uitvoeringswerkzaamheden, het keuringsplan Onderhoudswerkzaamheden of het acceptatieplan zijn vastgelegd, of voorzover de Opdrachtgever daarover anderszins nog niet is geïnformeerd.

2 Indien de Opdrachtgever de in lid 1 genoemde keuzen, Documenten, gemachtigden, zelfstandige hulppersonen, Werkzaamheden en resultaten van Werkzaamheden reeds heeft getoetst op basis van het toetsingsplan Ontwerpwerkzaamheden, het keuringsplan Uitvoeringswerkzaamheden of het keuringsplan Onderhoudswerkzaamheden, of indien hij daarover anderszins is geïnformeerd, is de Opdrachtnemer slechts gerechtigd de desbetreffende Wijzigingen uit te voeren, onder de voorwaarde dat hij die Wijzigingen ter toetsing aan de Opdrachtgever heeft voorgelegd met inachtneming van het bepaalde in § 20, § 21 en dat de Werkzaamheden, het Werk en het Meerjarig Onderhoud zullen beantwoorden aan de bepalingen van de Overeenkomst.

3 De Opdrachtnemer is verplicht, met inachtneming van de in § 23 vastgelegde acceptatieprocedure, elk voorstel ter Acceptatie voor te leggen dat een Wijziging beoogt van:

- (a) de eisen opgenomen in de Overeenkomst, of
- (b) de gemachtigden, of
- (c) de in lid 1 genoemde en door de Opdrachtgever reeds op basis van het acceptatieplan geaccepteerde keuzen, Documenten, gemachtigden, zelfstandige hulppersonen, Werkzaamheden en resultaten van Werkzaamheden. De Opdrachtgever kan dit voorstel weigeren te accepteren indien de voorgestelde Wijziging tot gevolg zou hebben dat de Werkzaamheden, het Werk en/of het Meerjarig Onderhoud niet zullen beantwoorden aan de bepalingen van de Overeenkomst.

4 De Opdrachtgever neemt de door de Opdrachtnemer ter Acceptatie voorgelegde Wijzigingen als bedoeld in lid 3 sub a in beschouwing, maar kan deze, zonder opgaaf van redenen, weigeren te accepteren.

#### § 16 Schorsing, ontbinding en opzegging

1 De Opdrachtgever is bevoegd Werkzaamheden te schorsen.

2 Gedurende de schorsing is de Opdrachtnemer verplicht:

- (a) in overleg met de Opdrachtgever passende maatregelen te nemen om schade te voorkomen en te beperken die aan het Werk zou kunnen ontstaan;
- (b) na te laten wat schade aan het Werk zou kunnen veroorzaken of wat de latere voortzetting van het Werk of het Meerjarig Onderhoud zou kunnen bemoeilijken.

3 Indien de Opdrachtnemer ten gevolge van de schorsing voorzieningen moet treffen, heeft hij recht op kostenvergoeding en/of termijnsverlenging met inachtneming van het bepaalde in § 44 lid 1 sub a.

4 Als de schorsing langer dan één maand duurt, kan de Opdrachtnemer vorderen dat betaling van alle verrichte Werkzaamheden plaats heeft, voorzover dat niet reeds heeft plaatsgevonden krachtens de termijnstaat.

5 Als de schorsing van alle Werkzaamheden langer duurt dan zes maanden, is de Opdrachtnemer bevoegd de Overeenkomst te ontbinden.

6 Het bepaalde in de leden 3 tot en met 5 is niet van toepassing, indien een toerekenbare tekortkoming van de Opdrachtnemer in de nakoming van de Overeenkomst ten grondslag ligt aan de schorsing.

7 Wanneer door omstandigheden die voor rekening van de Opdrachtgever komen, alle Uitvoeringswerkzaamheden gedurende meer dan twee maanden ononderbroken zijn vertraagd, is de Opdrachtnemer bevoegd de Overeenkomst te ontbinden.

8 De Opdrachtgever is te allen tijde bevoegd de Overeenkomst op te zeggen.

9 Doet een van de gevallen als bedoeld in de leden 5, 7 en 8 zich voor tijdens de realisatie van het Werk, dan zal de Opdrachtgever onverwijld na ontbinding of opzegging het Werk overnemen. De Opdrachtnemer is tot aan de overneming van het Werk gehouden de in lid 2 bedoelde verplichtingen na te komen.

10 In de gevallen bedoeld in de leden 5, 7 en 8 heeft de Opdrachtnemer uitsluitend aanspraak op:

- (a) vergoeding van de in de Basisovereenkomst vastgelegde prijs, exclusief BTW, berekend naar de stand van de Werkzaamheden op het moment van de ontbinding of opzegging;
- (b) vergoeding van 5% van het resterende deel van de in de Basisovereenkomst vastgelegde prijs, exclusief BTW, dat de Opdrachtgever verschuldigd zou zijn geweest bij volledige uitvoering van de Werkzaamheden;
- (c) vergoeding van alle gemaakte en nog te maken kosten, voortvloeiend uit verplichtingen die de Opdrachtnemer op het tijdstip van ontbinding of opzegging reeds is aangegaan met het oog op de uitvoering van de Overeenkomst.

## **Hoofdstuk 8 – Werkterrein, reclame**

### § 17 Werkterrein

1 De Opdrachtnemer heeft de kosteloze beschikking over de in de Vraagspecificatie als werkterrein aangeduide oppervlakten van grond of water, zolang de uitvoering van de Werkzaamheden dit nodig maakt. Gebruik van een ander terrein of water als werkterrein is voor rekening van de Opdrachtnemer.

2 De Opdrachtgever wijst aan, na overleg met de Opdrachtnemer, welke gedeelten van het werkterrein in gebruik mogen worden genomen als opslagplaatsen en voor het plaatsen van keten, loodsen en andere zaken die de Opdrachtnemer voornemens is te gebruiken voor de uitvoering van de Overeenkomst.

3 Indien de Overeenkomst uitsluitend de realisatie van een Werk betreft, moet het werkterrein na gebruik en uiterlijk op de feitelijke datum van oplevering zoveel mogelijk weer in de oorspronkelijke toestand worden opgeleverd.

4 Indien de Overeenkomst de realisatie van het Meerjarig Onderhoud omvat, moet het werkterrein zo spoedig mogelijk na de uitvoering van Onderhoudswerkzaamheden zoveel

of onderdeel daarvan heeft plaatsgevonden. De Opdrachtnemer heeft in geval van vervroegde ingebruikneming van het Werk of een onderdeel daarvan recht op kostenvergoeding en/of termijnsverlenging, met inachtneming van het bepaalde in § 44 lid 1 sub a. Schade die door de ingebruikneming aan het Werk ontstaat, komt niet voor rekening van de Opdrachtnemer. Door de in deze paragraaf bedoelde ingebruikneming en keuring wordt het Werk dan wel dat onderdeel niet geacht te zijn aanvaard door de Opdrachtgever.

#### § 27 Onderhoudstermijn

1 Het bepaalde in de leden 2 tot en met 8 is van toepassing, tenzij in de Basisovereenkomst is bepaald dat de Opdrachtnemer het Meerjarig Onderhoud zal realiseren.

2 Indien in de Vraagspecificatie een onderhoudstermijn is voorgeschreven, gaat deze terstond in na de feitelijke datum van oplevering.

3 De Opdrachtnemer is gehouden gebreken, die in de onderhoudstermijn aan de dag treden, te herstellen, met uitzondering van gebreken waarvoor de Opdrachtgever op grond van de Overeenkomst verantwoordelijk of aansprakelijk is.

4 Het in lid 3 bedoelde herstel geschiedt voor rekening van de Opdrachtnemer binnen een door de Opdrachtgever in billijkheid te stellen termijn.

5 In de onderhoudstermijn optredende schade aan het Werk is voor rekening van de Opdrachtgever, met uitzondering van schade, die het gevolg is van door de Opdrachtnemer verrichte onvoldoende Werkzaamheden. In het laatste geval is het bepaalde in lid 4 van overeenkomstige toepassing.

6 Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van niet voor zijn rekening komende gebreken of schade aan het Werk, volgen partijen de procedure die is vastgelegd in § 45.

7 De Opdrachtnemer zendt ten minste 20 dagen vóór het einde van de onderhoudstermijn een schriftelijk verzoek tot aanvaarding van het Werk aan de Opdrachtgever.

8 De Opdrachtgever is bevoegd binnen 10 dagen na ontvangst van het in lid 7 genoemde verzoek het Werk wederom te keuren om te constateren of de Opdrachtnemer aan zijn verplichtingen heeft voldaan, waarbij wordt gehandeld overeenkomstig het bepaalde in § 24.

#### § 28 Aansprakelijkheid voor gebreken na de feitelijke datum van oplevering

1 Na de feitelijke datum van oplevering is de Opdrachtnemer niet meer aansprakelijk voor gebreken in het Werk of in enig onderdeel daarvan, tenzij:

- (a) die gebreken te wijten zijn aan zijn schuld, of krachtens wet, rechtshandeling of de in het verkeer geldende opvattingen voor zijn rekening komen, en bovendien
- (b) de Opdrachtgever voorafgaande aan de oplevering die gebreken niet heeft opgemerkt, en bovendien

(c) de Opdrachtgever die gebreken op het tijdstip van de feitelijke datum van oplevering redelijkerwijs niet had moeten ontdekken.

2 De rechtsvordering uit hoofde van een gebrek waarvoor de Opdrachtnemer krachtens lid 1 aansprakelijk is, is niet ontvankelijk indien zij wordt ingesteld na verloop van:

- (a) vijf jaren na de in lid 1 bedoelde dag, of
- (b) tien jaren na de in lid 1 bedoelde dag, indien het Werk hetzij geheel of gedeeltelijk dreigt in te storten hetzij het Werk ongeschikt is geraakt of ongeschikt dreigt te geraken voor de bestemming waarvoor het blijkens de Overeenkomst bedoeld is en dit slechts kan worden verholpen of kan worden voorkomen door het treffen van buitengewone en zeer kostbare voorzieningen.

3 De in totaal op grond van het eerste lid door de Opdrachtnemer te vergoeden schade is beperkt tot 10% van de in de Basisovereenkomst vastgelegde prijs voorzover die prijs verband houdt met de realisatie van het Werk door middel van Ontwerp- en Uitvoeringswerkzaamheden. Indien het aldus berekende bedrag lager is dan 1.500.000 Euro, bedraagt de aan de Opdrachtgever te vergoeden schade ten hoogste 1.500.000 Euro.

4 Indien in de Vraagspecificatie een onderhoudstermijn is voorgeschreven, treedt voor de toepassing van deze paragraaf de dag na het verstrijken van die termijn in de plaats van de in lid 1 bedoelde dag.

## **Hoofdstuk 11 – Meerjarig onderhoud**

### § 29 Meerjarig Onderhoud

1 Het in dit hoofdstuk bepaalde is van toepassing, voorzover in de Basisovereenkomst is bepaald dat de Opdrachtnemer Meerjarig Onderhoud zal realiseren. In dat geval zijn ook alle overige in de Overeenkomst opgenomen bepalingen met betrekking tot het Meerjarig Onderhoud, de Onderhoudswerkzaamheden, de Onderhoudsdocumenten, de Meerjarige Onderhoudsperiode en het keuringsplan Onderhoudswerkzaamheden van toepassing.

2 De Opdrachtnemer is verplicht, met inachtneming van de overige bepalingen van de Overeenkomst, het Meerjarig Onderhoud zodanig te realiseren dat het Werk gedurende de Meerjarige Onderhoudsperiode aan de uit de Overeenkomst voortvloeiende eisen voldoet. Voldoet het Werk gedurende de Meerjarige Onderhoudsperiode niet aan deze eisen, dan zal de Opdrachtnemer die tekortkoming onverwijld voor eigen rekening en risico herstellen, tenzij die tekortkoming hem niet kan worden toegerekend. Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van een niet voor zijn rekening komende tekortkoming, volgen partijen de procedure die is vastgelegd in § 45.

3 De Opdrachtnemer zal een gebrek in het Werk dat in de Meerjarige Onderhoudsperiode aan de dag treedt, indien en voorzover hij op grond van het bepaalde in § 28 lid 1, 2 en 3 daarvoor aansprakelijk kan worden gehouden, onverwijld voor eigen rekening en risico herstellen. Indien de Opdrachtnemer zich desgevraagd verbindt tot herstel van een niet voor zijn rekening komend gebrek, volgen partijen de procedure die is vastgelegd in § 45.

4 Indien de in lid 2, tweede volzin bedoelde toestand van het Werk het gevolg is van in



(c) 5% voor zover deze prijzen of kosten enkel betrekking hebben op betalingen aan derden, de omzetbelasting daarin niet begrepen.

4 De uitvoering van Werkzaamheden, waarvoor stelposten zijn opgenomen, geschiedt door de Opdrachtnemer volgens nadere opdracht van de Opdrachtgever. Alvorens een uitgave ten laste van een stelpost te brengen, kan de Opdrachtgever van de Opdrachtnemer overlegging van bewijsstukken verlangen.

5 Indien de Opdrachtgever de uitvoering van Werkzaamheden waarvoor stelposten zijn opgenomen, heeft opgedragen, kan de Opdrachtnemer de Opdrachtgever om afgifte van een prestatieverklaring ter zake van die Werkzaamheden verzoeken, zodra die Werkzaamheden zijn voltooid. Het bepaalde in § 33 is van toepassing.

#### § 35 Omzetbelasting

1 De over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting is niet begrepen in de tussen Opdrachtgever en Opdrachtnemer overeengekomen of overeen te komen bedragen en prijzen, maar het bedrag daarvan wordt wel door de Opdrachtnemer in zijn prijsopgaven afzonderlijk vermeld.

2 De Opdrachtgever vergoedt de Opdrachtnemer de over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting.

3 De Opdrachtnemer ontvangt geen vergoeding van de over het Werk en het Meerjarig Onderhoud verschuldigde omzetbelasting, voorzover deze van de Opdrachtgever wordt geheven.

4 De berekening van hetgeen de Opdrachtnemer ingevolge de Overeenkomst toekomt, geschiedt met inachtneming van bedragen en prijzen waarin de omzetbelasting niet is begrepen; de berekening van de door de Opdrachtgever aan de Opdrachtnemer te vergoeden omzetbelasting geschiedt afzonderlijk.

5 De vergoeding van omzetbelasting aan de Opdrachtnemer geschiedt gelijktijdig met de aan hem te verrichten betalingen.

#### § 36 Boetebeding en bonus

1 Behoudens het bepaalde in lid 3 kan de Opdrachtgever, bij overschrijding van een in de bij de Vraagspecificatie gevoegde annex opgenomen planning opgenomen mijlpaaldatum of van de in de Basisovereenkomst vastgelegde datum van oplevering, de Opdrachtnemer een boete opleggen, tenzij de overschrijding niet aan de Opdrachtnemer kan worden toegerekend.

2 De in de Basisovereenkomst vastgelegde datum van oplevering wordt voor de toepassing van deze paragraaf geacht een in de bij de Vraagspecificatie gevoegde annex opgenomen planning opgenomen mijlpaaldatum te zijn.

3 Het bedrag van de boete die kan worden opgelegd, is voor elke mijlpaaldatum opgenomen in de Basisovereenkomst. Indien in de Basisovereenkomst geen boetebedrag is opgenomen voor een bepaalde mijlpaaldatum, is de Opdrachtnemer bij overschrijding daarvan geen boete verschuldigd.



4 Geen boete wordt opgelegd wegens overschrijding van een mijlpaaldatum, indien en voorzover deze overschrijding het gevolg is van overschrijding van een eerdere mijlpaaldatum waarvoor reeds een boete is opgelegd, mits de bedoelde data met elkaar in verband staan.

5 Boetes worden verbeurd enkel ten gevolge van het verschijnen van de mijlpaaldatum, zonder dat deswege een ingebrekestelling nodig is.

6 Boetes en andere bedragen die de Opdrachtnemer krachtens de Overeenkomst verschuldigd is, worden bij de eerstvolgende betalingstermijn en zo nodig bij volgende termijnen ingehouden of op andere wijze op de Opdrachtnemer verhaald.

7 De Opdrachtgever kan een bonus toekennen voor elke dag dat de feitelijke datum van oplevering eerder plaatsvindt dan de in de Basisovereenkomst vastgelegde datum van oplevering. Het bedrag van de bonus is opgenomen in de Basisovereenkomst. Is in de Basisovereenkomst geen bonusbedrag opgenomen, dan is de Opdrachtgever geen bonus verschuldigd, als de feitelijke datum van oplevering eerder plaatsvindt dan de in de Basisovereenkomst vastgelegde datum van oplevering.

#### [§ 37 Verpanding en cessie](#)

De Opdrachtnemer kan het recht op het saldo, bedoeld in § 3 lid 9 geheel of gedeeltelijk cederen of in pand geven.

### **Hoofdstuk 13 – Zekerheidstelling, verzekering**

#### [§ 38 Zekerheidstelling](#)

1 De Opdrachtnemer is verplicht zekerheid te stellen voor de nakoming van zijn verplichtingen met betrekking tot de realisatie van het Werk en voor de nakoming van zijn verplichtingen met betrekking tot de realisatie van het Meerjarig Onderhoud. De zekerheid dient te worden gesteld in de vorm van een bankgarantie

1). De waarde van de zekerheid is in de Basisovereenkomst vermeld. Op de bankgarantie is Nederlands recht van toepassing.

1) Een Model zekerheidstelling is als bijlage B opgenomen bij deze UAV-GC 2005.

2 Indien de Opdrachtgever voornemens is de zekerheid in te roepen, geeft hij de Opdrachtnemer daarvan bij aangetekende brief kennis. De Opdrachtgever is gerechtigd de zekerheid in te roepen, tenzij de Raad van Arbitrage voor de Bouw dan wel de Raad van Deskundigen anders beslist in een door de Opdrachtnemer binnen 14 dagen na de verzending van de in dit lid bedoelde kennisgeving aanhangig te maken geschil.

3 De zekerheid die is gesteld voor de nakoming van de verplichtingen met betrekking tot de realisatie van het Werk, blijft van kracht tot en met de feitelijke datum van oplevering, met dien verstande dat, indien sprake is van kleine gebreken als bedoeld in § 24 lid 7, de zekerheid van kracht blijft tot het tijdstip waarop de Opdrachtnemer deze gebreken heeft hersteld. Indien § 27 van toepassing is en in de Vraagspecificatie een

## Bijlage F: geanalyseerde bepalingen uit de FIDIC-voorwaarden





## **General Conditions**

### **1 General Provisions**

#### **1.1 Definitions**

In the Conditions of Contract ("these Conditions"), which include Particular Conditions and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

##### **1.1.1 The Contract**

- 1.1.1.1 "**Contract**" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Employer's Requirements, the Schedules, the Contractor's Proposal, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.
- 1.1.1.2 "**Contract Agreement**" means the Contract Agreement (if any) referred to in Sub-Clause 1.6 [Contract Agreement].
- 1.1.1.3 "**Letter of Acceptance**" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such Letter of Acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.
- 1.1.1.4 "**Letter of Tender**" means the document entitled Letter of Tender, which was completed by the Contractor and includes the signed offer to the Employer for the Works.
- 1.1.1.5 "**Employer's Requirements**" means the document entitled Employer's Requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope, and/or design and/or other technical criteria, for the Works.
- 1.1.1.6 "**Schedules**" means the document(s) entitled Schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include data, lists and Schedules of payments and/or prices.
- 1.1.1.7 "**Contractor's Proposal**" means the document entitled proposal, which



these revised methods cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

### **8.7 Delay Damages**

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Appendix to Tender, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Appendix to Tender.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

### **8.8 Suspension of Work**

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

### **8.9 Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [*Suspension of Work*] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.



The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [*Suspension of Work*].

#### **8.10 Payment for Plant and Materials in Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

#### **8.11 Prolonged Suspension**

If the suspension under Sub-Clause 8.8 [*Suspension of Work*] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [*Variations and Adjustments*] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

#### **8.12 Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension.

## 15 Termination by Employer

### 15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

### 15.2 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- (b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- (c) without reasonable excuse fails:
  - (i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
  - (ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,
- (d) subcontracts the whole of the Works or assigns the Contract without the required agreement,
- (e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- (f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:





(i) for doing or forbearing to do any action in relation to the Contract, or  
(ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract,  
or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **15.3 Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 15.2 [*Termination by Employer*] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [*Determinations*] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.



#### **15.4 Payment after Termination**

After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:

- (a) proceed in accordance with Sub-Clause 2.5 [Employer's Claims],
- (b) withhold further payments to the Contractor until the costs of design, execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination].  
After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

#### **15.5 Employer's Entitlement to Termination**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release].

## 16 Suspension and Termination by Contractor

### 16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost plus reasonable profit, which shall be included in the Contract Price.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### 16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:



- (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements],
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- (c) the Contractor does not receive the amount due under an Interim Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]),
- (d) the Employer substantially fails to perform his obligations under the Contract,
- (e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],
- (f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- (g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

### **16.3 Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 15.5 [Employer's Entitlement to Termination], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,



- (b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

#### **16.4 Payment on Termination**

After a notice of termination under Sub-Clause 16.2 [*Termination by Contractor*] has taken effect, the Employer shall promptly:

- (a) return the Performance Security to the Contractor,
- (b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.



- (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- (b) a result of any Works being used by the Employer:

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the Contractor's design, manufacture, construction or execution of the Works, (ii) the use of Contractor's Equipment, or (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

#### **17.6 Limitation of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 16.4 [Payment on Termination] and Sub-Clause 17.1 [Indemnities].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employers Equipment and Free-Issue Material], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum stated in the Particular Conditions or (if a sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.





## 19 Force Majeure

### 19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) which is beyond a Party's control,
- (b) which such Party could not reasonably have provided against before entering into the Contract,
- (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
- (iv) munitions of war, explosive Materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- (v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.





### **19.2 Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **19.3 Duty to Minimise Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **19.4 Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in the case of sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost.

After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **19.5 Force Majeure Affecting Subcontractor**



If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

### **19.6 Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

- (a) the amounts payable for any work carried out for which a price is stated in the Contract;
- (b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Works;
- (d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

### **19.7 Release from Performance under the Law**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their



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contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- (b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

## Bijlage G: geanalyseerde bepalingen uit de LOGIC-voorwaarden



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The COMPANY has the right, but not the obligation, to witness any test or inspection carried out by the CONTRACTOR. The CONTRACTOR shall notify the COMPANY in adequate time in order that the COMPANY may exercise this right.

The COMPANY has the right, but not the obligation, to inspect, test and examine all things provided by the CONTRACTOR for the purposes of the WORK, including but not limited to materials and equipment, together with all documentation relating thereto.

- 13.3 No part of the WORK shall be put out of view or covered up without the consent of the COMPANY. The CONTRACTOR shall provide reasonable notice to the COMPANY in order to permit the inspection of any part of the WORK which is about to be put out of view or covered up. The COMPANY shall give its consent without undue delay.

Notwithstanding the foregoing, the COMPANY shall have the right at any time to require the CONTRACTOR to uncover or open up any part of the WORK and to reinstate such uncovered or open part following inspection and testing by the COMPANY.

- 13.4 The COMPANY shall have the right to reject any part of the WORK or rework which does not comply with any requirement or requirements of the CONTRACT, including, but not limited to, faulty workmanship, services, materials or equipment. Upon receiving notice of rejection the CONTRACTOR shall immediately commence to reperform, repair or replace the defective part of the WORK and shall carry out such inspections and/or tests on other parts of the WORK as the COMPANY may require to ensure that there are no similar parts of the WORK that fail to comply with the requirements of the CONTRACT.
- 13.5 Where reperformance, repair, replacement, uncovering, reinstating, testing and inspection are additional to the requirements of the CONTRACT and are not the result of failure by the CONTRACTOR to conform with the CONTRACT on some other similar part of the WORK and do not reveal failure to comply with the CONTRACT, such WORK shall be at the expense of the COMPANY.
- 13.6 Neither failure on the part of the COMPANY to inspect the WORK or witness or test or to discover defects nor failure to reject work performed by the CONTRACTOR which is not in accordance with the CONTRACT shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.
- 13.7 In case of default on the part of the CONTRACTOR in carrying out its obligations under Clause 13.4, the COMPANY, having given prior notice to the CONTRACTOR, shall be entitled to undertake the CONTRACTOR's responsibilities in this respect. The COMPANY shall be entitled to recover from the CONTRACTOR all costs reasonably incurred by the COMPANY in carrying out such responsibilities.

## **14. VARIATIONS**

- 14.1 Right of the COMPANY to issue instructions
- (a) The COMPANY has the right to issue instructions to the CONTRACTOR at any time to do any of the following;
- (i) make any revision to the WORK which may include additions, omissions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method of construction specified by the COMPANY;

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- (ii) revise elements of the WORK already completed in accordance with the CONTRACT;



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- (iii) accelerate the WORK within limits of practicality in order to recover all or part of any delay in respect of which the CONTRACTOR would otherwise have been entitled to a revision to the SCHEDULE OF KEY DATES in accordance with Clause 14.5;
  - (iv) reprogramme the WORK and reschedule its resource within the limits of practicality in order to complete the WORK or any part thereof in accordance with any amendment to the SCHEDULE OF KEY DATES the COMPANY may require.
- (b) An instruction under Clause 14.1(a) will constitute a VARIATION. When required by the COMPANY, on receipt of any such VARIATION, the CONTRACTOR shall proceed immediately as instructed even though the amount of any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES may not have been determined.

### 14.2 VARIATIONS Generally

- (a) Prior to instructing or authorising any VARIATION, the COMPANY may require the CONTRACTOR to submit estimates as described in Clause 14.4.
- (b) The CONTRACT PRICE and/or SCHEDULE OF KEY DATES shall be subject to adjustment only as a result of a VARIATION.
- (c) The CONTRACTOR shall not be entitled to receive a VARIATION to cover any instruction, decision or act of the COMPANY which may be made or given in order to ensure that the CONTRACTOR complies with any of its obligations under the CONTRACT.
- (d) A VARIATION shall in no way affect the rights or obligations of the parties except as expressly provided in that VARIATION. Any VARIATION shall be governed by all the provisions of the CONTRACT.

### 14.3 CONTRACTOR'S Right to Request a VARIATION

- (a) If the CONTRACTOR considers that an occurrence has taken place for which it is entitled to receive a VARIATION, the CONTRACTOR, before proceeding with any work affected by such occurrence, shall request without delay in writing that the COMPANY issue a VARIATION. Any such request shall include details of the occurrence including any relevant dates and the Clause or Clauses of the CONTRACT under which the CONTRACTOR considers itself to be entitled to a VARIATION. Such occurrences shall include but not be limited to the following:
  - (i) an instruction from the COMPANY, whether contained in drawings or specifications issued by the COMPANY or not, which in the opinion of the CONTRACTOR constitutes a revision to the WORK;
  - (ii) matters arising under any Clause of the CONTRACT including Clause 14.6 in respect of which it is specifically stated that a VARIATION will be authorised by the COMPANY.
- (b) If the CONTRACTOR fails to submit requests for VARIATIONS in accordance with Clause 14.3 (a) when it considers or should reasonably have considered that an occurrence has taken place for which it is entitled to receive a VARIATION and/or fails to provide supporting estimates in accordance with Clause 14.4, the CONTRACTOR shall, at the sole discretion of the COMPANY,

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forfeit any right to receive such VARIATIONS and any rights concerning adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES.

- (c) The COMPANY shall within a reasonable time of having received a request for a VARIATION and the supporting estimates give notice to the CONTRACTOR stating either:
- (i) that the proposed VARIATION or part thereof is accepted in principle in which case the COMPANY will issue such VARIATION; and/or
  - (ii) that what is requested or part thereof is included in the obligations undertaken by the CONTRACTOR under the terms of the CONTRACT and that the request is accordingly rejected; and/or
  - (iii) that the request or part thereof is rejected for other stated reasons.

Should the CONTRACTOR wish to pursue any request for a VARIATION or part thereof which has been rejected by the COMPANY it shall proceed in accordance with the provisions of Clause 14.7.

### 14.4 CONTRACTOR'S Estimates

Within seven (7) days of having been requested by the COMPANY in accordance with Clause 14.2 (a) or the CONTRACTOR having requested a VARIATION in accordance with Clause 14.3 (a) or such longer time as the COMPANY shall agree where reasonable for any specific VARIATION the CONTRACTOR shall submit to the COMPANY fully detailed estimates prepared on a basis as directed by the COMPANY.

Such estimates shall include:

- (i) a description of the work to be varied under the VARIATION;
- (ii) a detailed schedule for the execution of the VARIATION showing the resources to be employed;
- (iii) the effect (if any) on the CONTRACT PRICE;
- (iv) the effect (if any) on the PROGRAMME and SCHEDULE OF KEY DATES.

### 14.5 Adjustments to CONTRACT PRICE and SCHEDULE OF KEY DATES

Adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES relating to any VARIATION shall be made as follows:

Wherever possible the effect (if any) of a VARIATION on CONTRACT PRICE and SCHEDULE OF KEY DATES shall be agreed before the instruction is issued or before work starts, using the estimates prepared by the CONTRACTOR in accordance with Clause 14.4.

Failing agreement on the basis of the CONTRACTOR's estimate, the COMPANY shall determine the effects of VARIATIONS in accordance with the following principles:

- (a) where work is of a similar nature and carried out under similar conditions to work priced in the CONTRACT it shall be valued at the appropriate rates and prices included in the CONTRACT.

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In the event that rates and prices for delay and/or adjustments to the SCHEDULE OF KEY DATES are included in Section III - Remuneration; then such rates and prices shall be used where appropriate;

- (b) where work is not of a similar nature or is not carried out under similar conditions to work priced in the CONTRACT or there are no appropriate rates or prices in the CONTRACT then a fair valuation shall be made;
- (c) with respect to effect on the SCHEDULE OF KEY DATES a fair and reasonable adjustment shall be made taking into account all relevant factors including any acceleration instructed under Clause 14.1(a).

Except insofar as the CONTRACTOR can demonstrate that adjustments (including nil adjustments) to the CONTRACT PRICE and /or SCHEDULE OF KEY DATES determined for a VARIATION are incorrect due to factors which could not have been foreseen by the CONTRACTOR at the time of such determination, any such adjustments shall not be subject to renegotiation and shall be deemed to include any cumulative effect of the VARIATION and the determined effect of any and all other previously authorised VARIATIONS on the CONTRACT PRICE and the SCHEDULE OF KEY DATES.

Should factors arise which could not have been foreseen as described, no alteration shall be made to any agreed VARIATION but a new VARIATION shall be issued to deal with any additional effects of such factors.

### 14.6 VARIATIONS in respect of delay and/or additional cost

The COMPANY shall authorise a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred cost as a direct result of any of the following:

- (a) failure of the COMPANY to comply with relevant CONTRACT provisions in respect of drawings and/or specifications and/or other information;
- (b) failure of the COMPANY to comply with relevant CONTRACT provisions in respect of Section X - Materials, Services and Facilities to be provided by the COMPANY;
- (c) information supplied by the COMPANY for which the COMPANY is liable under the terms of the CONTRACT and which is incorrect, provided the CONTRACTOR has complied with its obligations under Clause 7.1.

Under any such VARIATION and notwithstanding the provisions of Clause 14.5 (a), the CONTRACTOR will be entitled to such adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES as are fair and reasonable taking into account all relevant factors including the following:

- (i) any acceleration ordered by the COMPANY to overcome all or part of any delay in accordance with Clause 14.1(a);
- (ii) that the CONTRACTOR is entitled to recover necessary direct additional cost which includes any necessary additional overheads but not profit.

In the event that specific rates and prices for delay and/or extension to the SCHEDULE OF KEY DATES are included in Section III - Remuneration, then such rates and prices shall be used where appropriate to evaluate any adjustment to the CONTRACT PRICE under the provisions of this Clause and shall be deemed to represent direct additional cost to the CONTRACTOR as defined herein.

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### 14.7 Disputed VARIATIONS

- (a) If at any time the CONTRACTOR intends to claim any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES additional to that previously determined by the COMPANY for a VARIATION issued by the COMPANY or requested by the CONTRACTOR, the CONTRACTOR shall give notice in writing of such intention without delay after the happening of the events giving rise to such claim.

Such events shall include but not be limited to the following:

- (i) rejection by the COMPANY of a request for a VARIATION made by the CONTRACTOR;
- (ii) any VARIATION where effect on CONTRACT PRICE and/or SCHEDULE OF KEY DATES cannot be determined at the time.

Upon the happening of such events the CONTRACTOR shall keep such contemporary records as may reasonably be necessary to support any claim it may subsequently wish to make.

- (b) Upon receipt by the COMPANY of any such notice of claim, and without necessarily admitting any liability, the COMPANY may instruct the CONTRACTOR to keep such contemporary records or further contemporary records as the case may be as are reasonable and may be material to the claim of which notice has been received and the CONTRACTOR shall keep such records, copies of which shall be supplied to the COMPANY as and when the COMPANY may direct.
- (c) The CONTRACTOR shall send to the COMPANY at the end of every month an account giving particulars, as full and detailed as possible, of all such claims.
- (d) If the CONTRACTOR does not give notices and/or does not submit records and accounts in accordance with the provisions of Clauses 14.7(a), 14.7(b) and 14.7(c) the CONTRACTOR shall, at the sole discretion of the COMPANY, forfeit any right to receive any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES in respect of any such claims.
- (e) Where any matter in respect to adjustments to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES has not been finalised and without prejudice to the rights of either the COMPANY or the CONTRACTOR, the COMPANY having taken into account the relevant provisions of the CONTRACT and all other relevant factors, will make such adjustments as it considers to be fair and reasonable. The COMPANY will inform the CONTRACTOR of decisions reached in this respect and will make appropriate payments in accordance with such decisions.

### 14.8 Discretionary Provision

If the CONTRACTOR has forfeited the right to receive any VARIATION under the provisions of Clause 14.3 (b) and/or 14.7 (d) in respect of any occurrence which it considers would otherwise have entitled it to receive a VARIATION, the CONTRACTOR shall nevertheless have the option at any time to discuss such matters with the COMPANY. The COMPANY shall, at its sole discretion, decide whether to issue a VARIATION in respect of any such matters.

## 15. FORCE MAJEURE

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- 15.1 Neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause 15 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.
- 15.2 For the purposes of this CONTRACT only the following occurrences shall be force majeure.
- (a) Riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power;
  - (b) Ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radio-active, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - (c) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
  - (d) Earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity;
  - (e) Strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its subcontractors or its suppliers and which affect a substantial or essential portion of the WORK;
  - (f) Maritime or aviation disasters;
  - (g) Changes to any general or local Statute, Ordinance, Decree, or other Law, or any regulation or bye-law of any local or other duly constituted authority or the introduction of any such Statute, Ordinance, Decree, Law, regulation or bye-law.
- 15.3 In the event of a force majeure occurrence, the party that is or may be delayed in performing the CONTRACT shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 15.4 If either party is delayed in performing the CONTRACT by a force majeure occurrence, the SCHEDULE OF KEY DATES but not the CONTRACT PRICE, except as otherwise expressly provided in the CONTRACT, shall be adjusted in accordance with Clause 14 and Clause 15.5.
- 15.5 Upon cessation of any force majeure occurrence the CONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the WORK so as to minimise the effects of the delay and having made due allowance for any instruction to accelerate the WORK given in accordance with Clause 14, the COMPANY shall authorise a VARIATION to adjust the SCHEDULE OF KEY DATES in order to take into account any remaining effects of such delay.
- 15.6 Following notification of a force majeure occurrence in accordance with Clause 15.3, the COMPANY and the CONTRACTOR shall meet without delay with a view to

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agreeing a mutually acceptable course of action to minimise any effects of such occurrence.

## 16. SUSPENSION

- 16.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the WORK or any part thereof to the extent detailed in the notice, for any of the following reasons:
- (a) subject only to Clause 16.3, in the event of some default on the part of the CONTRACTOR; or
  - (b) in the event that suspension is necessary for the proper execution or safety of the WORK, or persons; or
  - (c) to suit the convenience of the COMPANY.
- 16.2 Upon receipt of any such notice, the CONTRACTOR shall, unless instructed otherwise:
- (a) discontinue the WORK or the part of the WORK detailed in the notice, on the date and to the extent specified; and
  - (b) properly protect and secure the WORK as required by the COMPANY.
- 16.3 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of a notice to suspend the WORK or any part thereof the COMPANY shall give notice of default to the CONTRACTOR giving details of such default. If the CONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 16.1.
- 16.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACT PRICE and SCHEDULE OF KEY DATES shall be adjusted in accordance with the relevant provisions of Section III - Remuneration or, in the absence of such provisions, in accordance with Clause 14.
- 16.5 If suspension results from default on the part of the CONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable by the COMPANY from the CONTRACTOR.
- 16.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified.
- 16.7 In the event of any suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 16.8 If the period of any suspension not arising as a result of default on the part of the CONTRACTOR exceeds the period stated in Appendix 1 to Section I - Form of Agreement the CONTRACTOR may serve a notice on the COMPANY requiring permission within fourteen (14) days from the receipt of such notice to proceed with the WORK or that part thereof subject to suspension. If within the said fourteen (14) days the COMPANY does not grant such permission the CONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:
- (a) where it affects part only of the WORK, an omission of such part under Clause 14; or
  - (b) where it affects the whole of the WORK, termination in accordance with Clause 30.1(a).



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- (b) by any negligent act or omission of the COMPANY GROUP, and/or
- (c) by a force majeure occurrence as defined in Clause 15 hereof.

Before the issue of the HANDOVER CERTIFICATE or the COMPLETION CERTIFICATE as applicable, in the event of loss or damage to the PERMANENT WORK being occasioned by any of the foregoing, the CONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same, and the COMPANY shall issue a VARIATION in accordance with Clause 14 in respect of such reconstruction, repair or replacement.

- 24.3 The COMPANY shall arrange Construction All Risks insurance, a summary of which (including deductibles) is set out in Appendix 1 to Section I - Form of Agreement. Liability for deductibles payable under such insurance relative to the WORK shall be for the account of the CONTRACTOR but the size of such deductibles shall not be increased without the prior consent of the CONTRACTOR. The COMPANY agrees that the insurance shall be properly placed and be maintained on the same terms for the benefit of all parties mentioned as assureds for the period set out in Appendix 1 to Section I - Form of Agreement. The provisions of this Clause 24 shall in no way limit the liability of the CONTRACTOR under the CONTRACT.
- 24.4 The insurances arranged under Clause 24.3 shall include the CONTRACTOR, SUBCONTRACTORS and its and their respective AFFILIATES as additional assureds and shall be endorsed to require the underwriters to waive any rights of recourse including in particular subrogation rights against the CONTRACTOR, SUBCONTRACTORS and its and their respective AFFILIATES. Such insurance shall provide that the CONTRACTOR shall be given not less than thirty (30) days notice of cancellation of or material change to cover.
- 24.5 Notwithstanding Clause 24.3, the COMPANY may decide, at its discretion, not to arrange Construction All Risks insurance under Clause 24.3, in which case the COMPANY shall advise the CONTRACTOR accordingly and shall provide an indemnity to the CONTRACTOR, its SUBCONTRACTORS and its and their respective AFFILIATES in lieu of such insurance, always provided that such indemnity shall be expressed in full in Appendix 1 to Section I – Form of Agreement, and such indemnity shall apply in excess of the amount(s) set out in Appendix 1 to Section I – Form of Agreement.

## **25. CONSEQUENTIAL LOSS**

For the purposes of this Clause 25 the expression “Consequential Loss” shall mean:

- (i) consequential or indirect loss under English law; and
- (ii) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (i), and whether or not foreseeable at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT.

Notwithstanding any provision to the contrary elsewhere in the CONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the CONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP’s own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR GROUP’s own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

## **29. DEFECTS CORRECTION**

29.1 The CONTRACTOR warrants and guarantees that it has performed and shall perform the WORK in accordance with the provisions of the CONTRACT, and that the PERMANENT WORK will be free from defects.

29.2 In the event that the COMPANY notifies the CONTRACTOR of any defects in the WORK prior to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof or subsequent to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof and within the relevant Defects Correction Period or Periods specified in Appendix 1 to Section I - Form of Agreement, the CONTRACTOR shall, subject to the operational requirements of the COMPANY and to the provisions of Clause 29.3, carry out all works necessary to correct any defects in the WORK arising from any default of the CONTRACTOR GROUP.

In the event that any of the WORK is reperformed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 29, this Clause 29 shall apply to the portion so reperformed, rectified or replaced. The Defects Correction Period or Periods specified in Appendix 1 to Section I - Form of Agreement in respect of such work, shall commence on the date upon which such reperformance, rectification or replacement was completed in accordance with the CONTRACT.

29.3 The COMPANY may decide that the carrying out by the CONTRACTOR of work necessary to correct defects will be prejudicial to its interests. In such cases the COMPANY may undertake the CONTRACTOR's responsibilities described in Clause 29.2. The COMPANY shall notify the CONTRACTOR in such cases and shall be entitled to recover from the CONTRACTOR all additional costs reasonably incurred by the COMPANY as a direct result of carrying out such responsibilities.

29.4 For the purpose of Clauses 29.2 and 29.3 the CONTRACTOR shall not be liable to the COMPANY for the costs of helicopter transport of personnel between the shore-based heliport and offshore or for the costs of offshore accommodation and messing.

29.5 Notwithstanding the provisions of Clauses 29.2 and 29.3 the CONTRACTOR shall be responsible for correcting any defect in the PERMANENT WORK prior to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof or subsequent to the issue of a COMPLETION CERTIFICATE in accordance with Clause 28 hereof and within the relevant Defects Correction Period when so instructed by the COMPANY. However the CONTRACTOR shall not be liable for:

- (a) the costs of routine maintenance of the PERMANENT WORK; or
- (b) the costs of correcting any such defects which result from the following:
  - (i) incorrect operation by the COMPANY;
  - (ii) the reasonable actions of the CONTRACTOR in relying on TECHNICAL INFORMATION;
  - (iii) actual operating conditions being different from those specified in the CONTRACT or in any VARIATIONS;
  - (iv) defects in materials or equipment supplied by the COMPANY which could not reasonably have been discovered by the CONTRACTOR.

## **30. TERMINATION**

30.1 The COMPANY shall have the right by giving notice to terminate all or any part of the WORK or the CONTRACT at such time or times as the COMPANY may consider necessary for any or all of the following reasons:

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- (a) to suit the convenience of the COMPANY; or
  - (b) subject only to Clause 30.2 in the event of any default on the part of the CONTRACTOR; or
  - (c) in the event of the CONTRACTOR becoming bankrupt or making a composition or arrangement with its creditors or a winding-up order of the CONTRACTOR being made or (except for the purposes of amalgamation or reconstruction) a resolution for its voluntary winding-up being passed or a provisional Liquidator, Receiver, Administrator or Manager of its business or undertaking being appointed or presenting a petition or having a petition presented applying for an administration order to be made pursuant to Section 9 Insolvency Act 1986, or possession being taken by or on behalf of the holders of any debenture secured by a Floating Charge of any property comprised in or subject to the Floating Charge, or any equivalent act or thing being done or suffered under any applicable law.
- 30.2 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the WORK or the CONTRACT, the COMPANY shall give notice of default to the CONTRACTOR giving the details of such default. If the CONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 30.1.
- 30.3 In the event of the COMPANY giving the CONTRACTOR notice of termination of all or any part of the WORK or the CONTRACT, such notice shall become effective on the date specified therein (or in the absence of any specified date at the date of receipt of the notice) whereupon the CONTRACTOR shall immediately:
- (a) cease performance of the WORK or such part thereof as may be specified in the notice;
  - (b) allow the COMPANY or its nominee full right of access to the WORKSITE to remove and/or take over the WORK or the relevant part of the WORK so far completed together with all materials and equipment which are the property of the COMPANY;
  - (c) assign to the COMPANY, or its nominee, to the extent desired by the COMPANY all or the relevant parts of the rights, titles, liabilities and SUBCONTRACTS relating to the WORK which the CONTRACTOR may have acquired or entered into;
  - (d) except as required under Clause 30.3(b), remove all the equipment or materials, of the CONTRACTOR from the immediate area in which the WORK or the relevant part thereof is being performed unless otherwise instructed by the COMPANY.

Within thirty (30) days of the effective date of termination the CONTRACTOR shall deliver to the COMPANY all the relevant parts respectively of the TECHNICAL INFORMATION and originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, erection plans, schedules, computer tapes, discs and other essential recording matter and all other data and documents prepared by the CONTRACTOR or any SUBCONTRACTOR.

Notwithstanding the above the CONTRACTOR may retain one copy of any such documents while admitting that the COMPANY has title to all such documents.

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In the event of termination under Clause 30.1(b) or 30.1(c) the COMPANY shall have the right to obtain completion of the WORK or the relevant part of the WORK by other contractors.

- 30.4 In the event of termination under Clause 30.1(a) the CONTRACTOR shall be entitled to payment as set out in Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT together with such other payments and fees as may be set out in that Section or, in the absence of such provisions, such reasonable costs as agreed between the parties at the time of termination.
- 30.5 In the event of termination of part of the WORK in accordance with Clause 28.6 or Clause 30.1(b) the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK performed in accordance with the CONTRACT. Any additional costs reasonably incurred by the COMPANY as a direct result of such termination shall be recoverable from the CONTRACTOR.
- 30.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 30.1(b) or Clause 30.1(c) the following conditions shall apply:
- (a) the CONTRACTOR shall cease to be entitled to receive any money or monies on account of the CONTRACT until the expiration of the Defects Correction Period specified in Clause 29 (assuming that the COMPLETION DATE in respect of the whole of the WORK would have been the date specified in the SCHEDULE OF KEY DATES) and thereafter until the costs of COMPLETION and all other costs arising as a result of the CONTRACTOR's default or other events giving rise to the termination have been finally ascertained;
  - (b) thereafter and subject to any deductions that may be made under the provisions of the CONTRACT the CONTRACTOR shall be entitled to payment only as set out in Section III - Remuneration for the part of the WORK completed in accordance with the CONTRACT up to the date of termination; and
  - (c) any additional costs reasonably incurred by the COMPANY as a direct result of the CONTRACTOR's default or other events giving rise to termination shall be recoverable from the CONTRACTOR.
- 30.7 (a) In the event of termination of the CONTRACT the rights and obligations of the parties included in the following Sections and Clauses shall remain in full force and effect:
- (i) Section I - Form of Agreement;
  - (ii) Section II a) - Conditions of Contract Clauses 4, 5, 8, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 34, 36, 37 and 38;
  - (iii) Such additional Clauses and Special Conditions of Contract (if any) as are set out in Appendix 1 to Section I - Form of Agreement.
- (b) In the event of termination of all or any part of the WORK the whole of the CONTRACT shall remain in full force and effect.

## **31. AUDIT AND STORAGE OF DOCUMENTS**

- 31.1 During the course of the WORK and for a period ending two (2) years after the SCHEDULED COMPLETION DATE included in the SCHEDULE OF KEY DATES, the COMPANY or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the CONTRACTOR's

### **35. LIQUIDATED DAMAGES**

- 35.1 If the CONTRACTOR fails to complete any of the items listed in Appendix 1 to Section I - Form of Agreement in accordance with the relevant date included in the SCHEDULE OF KEY DATES and/or fails to achieve the requirements of the CONTRACT in respect of any other items listed under the heading Clause 35.1 - Liquidated Damages in the said Appendix 1, the CONTRACTOR shall be liable to the COMPANY for Liquidated Damages. The amounts of such Liquidated Damages shall be as specified in the said Appendix 1.
- 35.2 All amounts of such Liquidated Damages for which the CONTRACTOR may become liable are agreed as a genuine pre-estimate of the losses which may be sustained by the COMPANY in the event that the CONTRACTOR fails in its respective obligations under the CONTRACT and not a penalty. Such Liquidated Damages shall be the sole and exclusive financial remedy of the COMPANY in respect of such failure.

### **36. LIMITATIONS OF LIABILITY**

#### **36.1 Limitation of Liability**

- (a) Limitation of Liability before the COMPLETION DATE in respect of the whole of the WORK

Before the COMPLETION DATE in respect of the whole of the WORK, the CONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the CONTRACT shall be limited to the sum specified in Appendix 1 to Section I – Form of Agreement or, in the absence of such sum the CONTRACT PRICE.

- (b) Limitation of Liability after the COMPLETION DATE in respect of the whole of the WORK

After the COMPLETION DATE in respect of the whole of the WORK, the CONTRACTOR's total cumulative liability to the COMPANY arising out of or related to the performance of the CONTRACT shall be limited to the sum specified in Appendix 1 to Section I – Form of Agreement or, in the absence of such sum the CONTRACT PRICE.

Provided however, that :

- (i) the above limitation under Clause 36.1(a) shall not apply to any liabilities assumed by the CONTRACTOR under Clause 29;
- (ii) the above limitations under Clause 36.1(a) and Clause 36.1(b) shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 18, 20, 23, 24, 27 and 32, or to any indemnity given by the CONTRACTOR under Clause 22; and
- (iii) the above limitation under Clause 36.1(b) shall not apply to any costs arising from any cause of action of the COMPANY notified to the CONTRACTOR before the COMPLETION DATE in respect of the whole of the WORK.

#### **36.2 Limitation Period**

The CONTRACTOR's liability under the CONTRACT shall cease at the end of the period described in Appendix 1 to Section I - Form of Agreement, provided, however,

## *CONSTRUCTION*

that the provisions of this Clause 36.2 shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 18, 20, 23, 24, 27 and 32, or to any indemnity given by the CONTRACTOR under Clause 22.

### 36.3 Extent of exclusion or limitation of liability

Any exclusion or limitation of liability under the CONTRACT shall exclude or limit such liability not only in contract but also in tort or otherwise at law.

### 36.4 Precedence

Subject to the provisions of Clause 25, this Clause 36 shall apply notwithstanding any provisions to the contrary elsewhere in the CONTRACT.

## **37. RESOLUTION OF DISPUTES**

37.1 Any dispute between the COMPANY and the CONTRACTOR in connection with or arising out of the CONTRACT or the WORK shall be resolved by means of the following procedure:

- (a) the dispute shall initially be referred to the COMPANY REPRESENTATIVE and CONTRACTOR REPRESENTATIVE who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- (b) if no agreement is reached under Clause 37.1(a) the dispute shall be referred to the two persons named in Appendix 1 to Section I - Form of Agreement. Such persons are nominated one by the COMPANY and one by the CONTRACTOR. Such persons may be replaced by the party which nominated them by notice to the other party;
- (c) if no agreement is reached under Clause 37.1(b) the dispute shall be referred to the Managing Directors of the COMPANY and the CONTRACTOR.

37.2 If no agreement is reached under Clause 37.1(c) above, the parties may attempt to settle the dispute by a form of Alternative Dispute Resolution to be agreed between the parties.

37.3 In the absence of any agreement being reached on a particular dispute either party may, subject to Clause 37.4, take appropriate action in the Courts to resolve the dispute at any time.

37.4 It shall be a condition precedent to the referral of a dispute to the Courts under Clause 37.3 that the party which intends to commence proceedings in relation to the dispute first uses its reasonable endeavours to follow and complete the procedures set out in Clauses 37.1(a), (b) and (c).

37.5 Where any claim or counter claim in connection with or arising out of the CONTRACT is made, the party making the claim or counter claim shall ensure that such claim or counter claim contains, without limitation, the following information:

- (a) a clear summary of the facts on which the claim or counter claim is based; and
- (b) the basis on which the claim or counter claim is made, including the principal contractual terms and/or statutory terms relied on; and
- (c) the nature of the relief claimed; and





## Bijlage H: geanalyseerde bepalingen uit de IMCA-voorwaarden



#### 34.9 Mitigation of Loss

Both the COMPANY and the CONTRACTOR shall take all reasonable steps to mitigate any losses resulting from any breach of CONTRACT by the other party.

#### 34.10 Invalidity and Severability

If any provision of this CONTRACT shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability shall not affect the other provisions of this CONTRACT and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The COMPANY and the CONTRACTOR agree to attempt to substitute, for any invalid or unenforceable provision, a valid or enforceable provision which achieves to the greatest possible extent, the economic, legal and commercial objectives of the invalid or unenforceable provision.

### 35 Liquidated Damages

- 35.1 If the CONTRACTOR fails to complete any of the items listed in Appendix I to Section I – Form of Agreement in accordance with the relevant date included in the SCHEDULE OF KEY DATES and/or fails to achieve the requirements of the CONTRACT in respect of any other items listed under the heading Clause 35.1 – Liquidated Damages in the said Appendix I, the CONTRACTOR shall be liable to the COMPANY for Liquidated Damages, upon expiry of a grace period as specified in Appendix I to Section I – Form of Agreement. The amounts of such Liquidated Damages shall be as specified in the said Appendix I.
- 35.2 All amounts of such Liquidated Damages for which the CONTRACTOR may become liable are agreed as a genuine pre-estimate of the losses which may be sustained by the COMPANY in the event that the CONTRACTOR fails in its respective obligations under the CONTRACT and not a penalty. Such Liquidated Damages shall be the sole and exclusive remedy of the COMPANY in respect of such failure.
- 35.3 If the CONTRACTOR can show that it has suffered delay as a direct result of the number of “waiting on weather (including tide or current) days” exceeding the number of such days specified in Appendix I to Section I – Form of Agreement, then, subject to Clause 14, the COMPANY shall issue a VARIATION to adjust the SCHEDULE OF KEY DATES to take into account any such delay. Except as otherwise provided in the CONTRACT, no adjustments to the CONTRACT PRICE shall be made in respect of any such delay, except for extraordinary weather conditions such as but not limited to tidal, eddy or loop currents or fog which prevent the CONTRACTOR to continue with the WORK, the CONTRACTOR shall be allowed an adjustment to the CONTRACT PRICE and the SCHEDULE OF KEY DATES. In the event these extraordinary weather conditions exceed the time period as referenced in Clause 15.5, the CONTRACTOR shall be allowed to leave the WORKSITE in order to fulfil any obligations it may have under other contracts. Any intermediate demobilisation and mobilisation fees shall be for the COMPANY’s account.
- 35.4 The CONTRACT Schedule is based on the principle that the CONTRACTOR’s commitments to other clients, entered into prior to the effective date of fixed date commitments made under the CONTRACT, take priority over the WORK. If such other commitments delay the WORK, then any liability the CONTRACTOR may have for delay will be waived. Both parties will continuously monitor the progress of their respective commitments and keep each other informed in order to optimise the schedule considering the CONTRACTOR’s other commitments and the COMPANY’s schedule requirements.

### 36 Limitations of Liability

#### 36.1 Limitation of Liability

Subject to Clause 22, 23 and 25 but notwithstanding any other provision of the CONTRACT to the contrary, the CONTRACTOR GROUP’s total cumulative overall liability shall be limited to the percentage as specified in Appendix I to Section I – Form of Agreement of the original CONTRACT PRICE.

### 36.2 Limitation Period

The CONTRACTOR's liability under the CONTRACT shall cease at the end of the period described in Appendix I to Section I – Form of Agreement, provided, however, that the provisions of this Clause 36.2 shall not apply to any liabilities assumed by the CONTRACTOR under Clauses 18, 20, 23, 27 and 32, or to any indemnity given by the CONTRACTOR under Clauses 22 and 25.

### 36.3 Extent of Exclusion or Limitation of Liability

Any exclusion or limitation of liability under the CONTRACT shall exclude or limit such liability not only in contract but also in tort or otherwise at law, or any other legal proceeding.

### 36.4 Precedence

Subject to the provisions of Clause 25, this Clause 36 shall apply notwithstanding any provisions to the contrary elsewhere in the CONTRACT.

## 37 Resolution of Disputes

37.1 Any dispute between the COMPANY and the CONTRACTOR in connection with or arising out of the CONTRACT or the WORK shall be resolved by means of the following procedure:

- a) the dispute shall initially be referred to the COMPANY REPRESENTATIVE and the CONTRACTOR REPRESENTATIVE who shall discuss the matter in dispute and make all reasonable efforts to reach an agreement;
- b) if no agreement is reached under Clause 37.1(a) within thirty (30) days, the dispute shall be referred to the two persons named in Appendix I to Section I – Form of Agreement. Such persons are nominated one by the COMPANY and one by the CONTRACTOR. Such persons may be replaced by the party which nominated them by notice to the other party;
- c) if no agreement is reached under Clause 37.1(b) within thirty (30) days, the dispute shall be referred to the two further persons named in Appendix I to Section I – Form of Agreement. Such persons are nominated one by the COMPANY and one by the CONTRACTOR. Such persons may be replaced by the party which nominated them by notice to the other party.

37.2 If no agreement is reached under Clause 37.1(c) within thirty (30) days, either party may refer the dispute to arbitration. The rules applicable to and the place of arbitration shall be as specified in Appendix I to Section I – Form of Agreement.

37.3 The dispute resolution mechanism set out in Clauses 37.1 and 37.2 is the exclusive remedy of the parties in the event of a dispute arising out of the CONTRACT or the WORK.

37.4 It shall be a condition precedent to the referral of a dispute to the arbitration under Clause 37.2 that the party which intends to commence proceedings in relation to the dispute first uses its reasonable endeavours to follow and complete the procedures set out in Clauses 37.1(a), (b) and (c).

37.5 Where any claim or counter claim in connection with or arising out of the CONTRACT is made, the party making the claim or counter claim shall ensure that such claim or counter claim contains, without limitation, the following information:

- a) a clear summary of the facts on which the claim or counter claim is based; and
- b) the basis on which the claim or counter claim is made, including the principal contractual terms and/or statutory terms relied on; and
- c) the nature of the relief claimed; and
- d) where a claim or counter claim has been made previously and rejected by the other party, and the party making the claim or counter claim is able to identify the reason(s) for such rejection, the grounds of belief as to why the claim or counter claim was wrongly rejected.

37.6 Whilst any matter or matters are in dispute, the CONTRACTOR shall proceed with the execution and completion of the WORK and both the CONTRACTOR and the COMPANY shall comply with all the provisions of the CONTRACT.

30.3 In the event of the COMPANY giving the CONTRACTOR notice of termination of all or any part of the WORK or the CONTRACT, such notice shall become effective on the date specified therein (or in the absence of any specified date at the date of receipt of the notice) whereupon the CONTRACTOR shall immediately:

- a) cease performance of the WORK or such part thereof as may be specified in the notice;
- b) allow the COMPANY or its nominee full right of access to the WORKSITE to remove and/or take over the WORK or the relevant part of the WORK so far completed together with all materials and equipment which are the property of the COMPANY;
- c) assign to the COMPANY, or its nominee, to the extent desired by the COMPANY all or the relevant parts of the rights, titles, liabilities and SUBCONTRACTS relating to the WORK which the CONTRACTOR may have acquired or entered into;
- d) except as required under Clause 30.3(b), remove all the equipment or materials of the CONTRACTOR from the immediate area in which the WORK or the relevant part thereof is being performed unless otherwise instructed by the COMPANY.

Within thirty (30) days of the effective date of termination the CONTRACTOR shall deliver to the COMPANY all the relevant parts respectively of the TECHNICAL INFORMATION and originals, copies and reproductions of all drawings, specifications, requisitions, calculations, programme listings, erection plans, schedules, computer tapes, discs and other essential recording matter and all other data and documents prepared by the CONTRACTOR or any SUBCONTRACTOR.

Notwithstanding the above the CONTRACTOR may retain one copy of any such documents while admitting that the COMPANY has title to all such documents.

In the event of termination under Clause 30.1(b) or 30.1(c) the COMPANY shall have the right to obtain completion of the WORK or the relevant part of the WORK by other contractors.

30.4 In the event of termination under Clause 30.1(a) the CONTRACTOR shall be entitled to payment as set out in Section III – Remuneration for the part of the WORK performed in accordance with the CONTRACT together with such other payments and fees as may be set out in that Section or, in the absence of such provisions, such reasonable costs as agreed between the parties at the time of termination.

30.5 In the event of termination of part of the WORK in accordance with Clause 30.1(b) the CONTRACTOR shall be entitled to payment only as set out in Section III – Remuneration for the part of the WORK performed in accordance with the CONTRACT. Any additional costs reasonably incurred by the COMPANY as a direct result of such termination shall be recoverable from the CONTRACTOR.

30.6 In the event of termination of all of the WORK or the CONTRACT in accordance with Clause 30.1(b) or Clause 30.1(c) the following conditions shall apply:

- a) the CONTRACTOR shall cease to be entitled to receive any money or monies on account of the CONTRACT until the expiration of the Defects Correction Period specified in Clause 29 (assuming that the COMPLETION DATE in respect of the whole of the WORK would have been the date specified in the SCHEDULE OF KEY DATES) and thereafter until the costs of COMPLETION and all other costs arising as a result of the CONTRACTOR's default or other events giving rise to the termination have been finally ascertained;
- b) thereafter and subject to any deductions that may be made under the provisions of the CONTRACT the CONTRACTOR shall be entitled to payment only as set out in Section III – Remuneration for the part of the WORK completed in accordance with the CONTRACT up to the date of termination; and
- c) any additional costs reasonably incurred by the COMPANY as a direct result of the CONTRACTOR's default or other events giving rise to termination shall be recoverable from the CONTRACTOR.

30.7 a) In the event of termination of the CONTRACT the rights and obligations of the parties included in the following Sections and Clauses shall remain in full force and effect:

- i) Section I – Form of Agreement;

- ii) Section II a) – Conditions of Contract Clauses 4, 5, 8, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31, 32, 34, 36, 37 and 38;
  - iii) Such additional Clauses and Special Conditions of Contract (if any) as are set out in Appendix I to Section I – Form of Agreement.
- b) In the event of termination of all or any part of the WORK the whole of the CONTRACT shall remain in full force and effect.
- 30.8 The CONTRACTOR shall have the right by giving notice to suspend or terminate all or part of the WORK or the CONTRACT at such time or times as the CONTRACTOR may consider necessary in the event of:
- a) material breach on the part of COMPANY;
  - b) a force majeure cumulatively exceeding the number of days as stated in Appendix I to Section I – Form of Agreement;
  - c) suspension exceeding the number of days specified in Appendix I to Section I – Form of Agreement.
- In the event of default on the part of the COMPANY and before the issue by the CONTRACTOR of an order of termination or suspension of all or any part of the WORK or the CONTRACT, the CONTRACTOR shall give notice of default to the COMPANY giving the details of such default. If the COMPANY upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the CONTRACTOR to remedy such default the CONTRACTOR may issue a notice of termination or suspension in accordance with the provisions of this Clause 30.8.
- 30.9 In the event of suspension by the CONTRACTOR under this clause 30.8 the provisions governing suspension at the convenience of the COMPANY shall apply.
- 30.10 In the event of termination by the CONTRACTOR under this clause 30.8 the provisions governing termination at the convenience of the COMPANY shall apply.

### 31 Audit and Storage of Documents

- 31.1 During the course of the WORK and for a period ending two (2) years after the SCHEDULED COMPLETION DATE included in the SCHEDULE OF KEY DATES, the COMPANY or its duly authorised representative shall have the right to audit at all reasonable times and, upon request, take copies of all of the CONTRACTOR's records (including data stored on computers), books, accounts, correspondence, memoranda, receipts, vouchers and other papers of every kind relating to;
- a) all invoiced charges made by the CONTRACTOR on the COMPANY; and
  - b) any provision of this CONTRACT under which the CONTRACTOR has obligations the performance of which is capable of being verified by audit.
- In this respect the COMPANY shall not be entitled to investigate the make up of rates and lump sums included in the CONTRACT.
- 31.2 The CONTRACTOR shall co-operate fully with the COMPANY and/or its representatives in the carrying out of any audit required by the COMPANY. The COMPANY will conduct any audit in a manner which will keep to a reasonable minimum any inconvenience to the CONTRACTOR.
- 31.3 The CONTRACTOR shall obtain equivalent rights of audit to those specified above from all SUBCONTRACTORS and will cause such rights to extend to the COMPANY.
- 31.4 The COMPANY and the CONTRACTOR shall keep all documents and data, including that which is stored on computers related to this CONTRACT for a period of six (6) years after the SCHEDULED COMPLETION DATE included in the SCHEDULE OF KEY DATES.

- 27.4 The CONTRACTOR shall assist the COMPANY with the importation into the TERRITORY of all materials, goods, tools, equipment, supplies required for the WORK including, but not limited to any vessel(s), whether provided by the COMPANY GROUP, the CONTRACTOR GROUP or a third party and the PERMANENT WORK.

## 28 Completion

- 28.1 When the CONTRACTOR considers that the whole or any part of the WORK for which a separate time for completion is specified in Appendix I to Section I – Form of Agreement (or where the COMPANY has terminated the whole of the WORK or the CONTRACT under Clause 30.1(a)) has been substantially completed and has satisfactorily passed any final test that may be prescribed in the CONTRACT, the CONTRACTOR shall so notify the COMPANY and request the issue of a COMPLETION CERTIFICATE.

- 28.2 The COMPANY shall promptly and in any case within thirty (30) days of receipt of such notice either:
- a) issue to the CONTRACTOR a COMPLETION CERTIFICATE in respect of the whole or the relevant part of the WORK; or
  - b) notify the CONTRACTOR of any defects in the WORK or the relevant part of the WORK, arising from any default of the CONTRACTOR,

save that where the WORK involves provision of a vessel(s) by the CONTRACTOR, the COMPANY shall respond to the CONTRACTOR as above within the period specified in Appendix I to Section I – Form of Agreement or in the absence of any period being specified, within thirty (30) days.

In the event where the WORK involves provision of a vessel(s) by the CONTRACTOR, the CONTRACTOR shall be entitled to demobilise its marine spread within 24 hours of providing the COMPANY with notification from the CONTRACTOR that the WORK has been substantially completed.

- 28.3 Any notice issued under Clause 28.2(b) shall include details of the specific nature of each defect and shall specify the part or parts of the CONTRACT containing the obligations which the CONTRACTOR has failed to meet.

The CONTRACTOR shall on receipt of any such notice, promptly correct all defects. When it has completed such correction it shall notify the COMPANY in accordance with clause 28.1.

## 29 Defects Correction

- 29.1 The CONTRACTOR warrants and guarantees that it has performed and shall perform the WORK in accordance with the provisions of the CONTRACT, and that the CONTRACTOR's WORK will be free from defects.

The warranty expressed in this Clause is in lieu of any other warranty, express or implied, of design, materials or workmanship and all such warranties, including any of merchantability, fitness for purpose or workmanlike performance, are excluded from this CONTRACT. All defects in the WORK, whether arising in contract, tort (including negligence), strict liability, product liability or otherwise, shall be subject to the agreements and limitations of this Clause. The CONTRACTOR shall not be liable for any latent defects in the CONTRACTOR'S work.

- 29.2 In the event that the COMPANY notifies the CONTRACTOR of any defects in the WORK prior to or subsequent to the COMPLETION DATE in accordance with Clause 28 hereof and within the relevant Defects Correction Period or Periods specified in Appendix I to Section I – Form of Agreement, the CONTRACTOR shall, subject to the operational requirements of the COMPANY and to the provisions of Clause 29.3, carry out all works necessary to correct any defects in the WORK arising from any default of the CONTRACTOR GROUP at its sole cost and expense.

In the event that any of the WORK is reperfomed, rectified or replaced by the CONTRACTOR under the provisions of this Clause 29, this Clause 29 shall apply to the portion so reperfomed, rectified or replaced. The Defects Correction Period or Periods specified in Appendix I to Section I – Form of



Agreement in respect of such work, shall commence on the date upon which such reperformance, rectification or replacement was completed in accordance with the CONTRACT provided that the cumulative Defects Correction Period shall not exceed the period stated in Appendix I to Section I – Form of Agreement.

- 29.3 In cases where the CONTRACTOR is unwilling or unable to perform work necessary to correct defects in a time which is reasonable in all the circumstances, the COMPANY may decide that the carrying out by the CONTRACTOR of work necessary to correct defects will be prejudicial to its interests. In such cases the COMPANY may undertake the CONTRACTOR's responsibilities described in Clause 29.2.

The COMPANY shall notify the CONTRACTOR in such cases and shall be entitled to recover from the CONTRACTOR all additional costs reasonably incurred by the COMPANY as a direct result of carrying out such responsibilities.

- 29.4 For the purpose of Clauses 29.2 and 29.3 the CONTRACTOR shall not be liable to the COMPANY for the costs of any items which are specified in the CONTRACT to be provided by the COMPANY.

The CONTRACTOR shall have the right to free use of the COMPANY's facilities offshore (including but not limited to helicopter transport to and from the offshore location, accommodation, messing, boarding, lodging, use of cranes) for the performance of warranty work offshore and Hook Up and Commissioning work

- 29.5 Notwithstanding the provisions of Clauses 29.2 and 29.3 the CONTRACTOR shall not be liable for:
- a) the costs of routine maintenance of the PERMANENT WORK; or
  - b) the costs of correcting any such defects which result from the following:
    - i) incorrect operation by the COMPANY
    - ii) the reasonable actions of the CONTRACTOR in relying on TECHNICAL INFORMATION
    - iii) actual operating conditions being different from those specified in the CONTRACT or in any VARIATIONS
    - iv) defects in materials or equipment supplied by the COMPANY which could not reasonably have been discovered by the CONTRACTOR;
  - c) work carried out by the COMPANY GROUP or third parties under Clause 29.3 including any defects in that work;
  - d) the cost of retrieval and re-installation of any equipment or materials supplied by the COMPANY for incorporation into the PERMANENT WORK.

### 30 Termination

- 30.1 The COMPANY shall have the right by giving notice to terminate all or any part of the WORK or the CONTRACT at such time or times as the COMPANY may consider necessary for any or all of the following reasons:

- a) to suit the convenience of the COMPANY; or
- b) subject only to Clause 30.2 in the event of any default on the part of the CONTRACTOR; or
- c) in the event of the CONTRACTOR becoming insolvent, or making a composition or arrangement with its creditors (except for the purposes of amalgamation or reconstruction), or receivership, insolvency or bankruptcy proceedings are commenced against the CONTRACTOR or any equivalent act or thing being done or suffered under any applicable law.

- 30.2 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of an order of termination of all or any part of the WORK or the CONTRACT, the COMPANY shall give notice of default to the CONTRACTOR giving the details of such default. If the CONTRACTOR upon receipt of such notice does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of termination in accordance with the provisions of Clause 30.1.

right to demobilize its equipment for other commitments. The COMPANY and the CONTRACTOR shall discuss a mutually acceptable remobilization schedule, taking the CONTRACTOR's other commitments and the COMPANY's schedule requirements into consideration. Any intermediate demobilisation and mobilisation fees shall be for the COMPANY's account.

- 16.9 Upon cessation of any suspension period the CONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the WORK so as to minimise the effects of the delay. Providing however that if, in accordance with Clause 16.9, the CONTRACTOR has left the WORKSITE as a result of suspension, the CONTRACTOR may allow in such revised PROGRAMME any necessary time for completion of any operations on which it is engaged at the date of cessation of the suspension occurrence.

## **17 Terms of Payment**

- 17.1 For the performance and completion of the WORK, the COMPANY shall pay or cause to be paid to the CONTRACTOR the amounts provided in Section III – Remuneration at the times and in the manner specified in Section III and in this Clause.
- 17.2 Except where it is expressly provided that the COMPANY shall carry out an obligation under the CONTRACT at its own cost, all things to be supplied or performed by the CONTRACTOR under the CONTRACT shall be deemed to be included in the rates and prices included in Section III – Remuneration.
- 17.3 The CONTRACTOR shall submit to the COMPANY an invoice within thirty (30) days after the end of such stages as are specified in and showing the amount calculated in accordance with Section III – Remuneration. Any failure by the COMPANY to pay or cause to be paid in accordance with the provisions of this Clause, save where the COMPANY disputes an invoice in accordance with the provisions of Clause 17.8, shall be deemed a material breach of the CONTRACT, entitling the CONTRACTOR to terminate the CONTRACT if payment of an otherwise undisputed invoice is not made within the days specified in Appendix I to Section I – Form of Agreement and to receive compensation as if such termination was a termination for convenience by the COMPANY.
- 17.4 To the extent that payments to be made under the CONTRACT attract Sales Tax which for the purpose of this Clause 17.4 shall mean any Sales Tax on goods or services including but not limited to Value Added Tax, the CONTRACTOR shall issue to the COMPANY a proper Sales Tax invoice, which shall detail separately the proper amount of such Sales Tax payable. Sales Tax shall be added to the CONTRACT PRICE as appropriate.
- 17.5 Accompanying any invoice submitted by the CONTRACTOR after COMPLETION shall be a schedule of all items for which, in the opinion of the CONTRACTOR, payment is due under the CONTRACT but for which, at the date of issue of the said invoice, payment in part or in full has not been received. Such items shall be limited to those for which previous notification has been given by the CONTRACTOR to the COMPANY pursuant to Clauses 14.3 and 14.7. The schedule shall include estimates of cost against each item fully supported by necessary documentation as described in Clauses 14.4 and 14.7.
- 17.6 Each invoice shall show separately the individual amounts under each of the headings in Section III – Remuneration, and shall quote the COMPANY Contract Reference Number, Title and such other details as may be specified in the CONTRACT.
- Each invoice shall be forwarded to the address specified in the CONTRACT.
- 17.7 Within thirty (30) days from the COMPANY's receipt of a correctly prepared and adequately supported invoice, the COMPANY shall make payment in the manner specified in Section III – Remuneration of the due amount in the currency specified in Section III – Remuneration. Where the CONTRACTOR has incurred expenditure in a different currency, the CONTRACTOR shall be entitled, at its request to receive payment in such currency.
- 17.8 If the COMPANY disputes any items on any invoice in whole or in part or if the invoice is prepared or submitted incorrectly in any respect, the COMPANY shall notify the CONTRACTOR of the reasons and request the CONTRACTOR to issue a credit note for the unaccepted part or whole of the invoice

events the indemnity provided by the COMPANY to the CONTRACTOR GROUP under Clause 24.1 shall apply and shall cover all matters which would otherwise have been covered under Clauses 23.6 and 23.7 as a minimum.

## **24 Care of the Permanent Work**

- 24.1 Subject to the provisions of Clause 24.2 but without prejudice to the CONTRACTOR's other obligations under the CONTRACT, the CONTRACTOR shall be responsible for the PERMANENT WORK from the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT until the COMPLETION DATE of the relevant part of the PERMANENT WORK, at which date or dates responsibility shall pass to the COMPANY. Before the said COMPLETION DATE in the event of loss or damage to the relevant part of the PERMANENT WORK, the CONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same.

The COMPANY shall save, defend, indemnify and hold harmless the CONTRACTOR GROUP from and against any loss of or damage to the PERMANENT WORK as well as any costs whatsoever in respect thereof, irrespective of cause, except that the CONTRACTOR shall be liable for such loss of or damage to the PERMANENT WORK for the amount contained in Appendix I to Section I - Form of Agreement if such loss or damage is caused by negligence of the CONTRACTOR GROUP.

- 24.2 Notwithstanding Clause 24.1, the CONTRACTOR shall not be liable for loss or damage to the PERMANENT WORK which is occasioned:

- a) by War Risks as defined in the London Market Standard Fire Policy, or Nuclear Risks as defined in the London Market Standard Nuclear Exclusion Clause; and/or
- b) by any negligent act or omission of the COMPANY GROUP; and/or
- c) by a force majeure occurrence as defined in Clause 15 hereof; and/or
- d) by any act or omission of third party.

In the event of loss or damage to the PERMANENT WORK being occasioned by any of the foregoing before the COMPLETION DATE, the CONTRACTOR shall, if instructed by the COMPANY, reconstruct, repair or replace the same, and the COMPANY shall issue a VARIATION in accordance with Clause 14 in respect of such reconstruction, repair or replacement.

## **25 Consequential Loss**

For the purposes of this Clause 25 the expression "Consequential Loss" shall mean:

- a) consequential or indirect loss under the applicable law of the CONTRACT; and
- b) loss and/or deferral of production, loss of product, loss of use, loss of revenue, profit or anticipated profit (if any), in each case whether direct or indirect to the extent that these are not included in (a), and whether or not foreseeable at the EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT.

Notwithstanding any provision to the contrary elsewhere in the CONTRACT and except to the extent of any agreed liquidated damages (including without limitation any predetermined termination fees) provided for in the CONTRACT, the COMPANY shall save, indemnify, defend and hold harmless the CONTRACTOR GROUP from the COMPANY GROUP's own Consequential Loss and the CONTRACTOR shall save, indemnify, defend and hold harmless the COMPANY GROUP from the CONTRACTOR GROUP's own Consequential Loss, arising from, relating to or in connection with the performance or non-performance of the CONTRACT.

## **26 Confidentiality**

- 26.1 The CONTRACTOR shall at no time without the prior agreement of the COMPANY either:
- a) make any publicity releases or announcements concerning the subject matter of the CONTRACT;
  - or

15.4 If either party is delayed in performing the CONTRACT by a force majeure occurrence, the SCHEDULE OF KEY DATES and the CONTRACT PRICE, except as otherwise expressly provided in the CONTRACT, shall be adjusted in accordance with Clause 14 and Clause 15.6.

15.5 Following notification of a force majeure occurrence in accordance with Clause 15.3, the COMPANY and the CONTRACTOR shall meet without delay with a view to agreeing a mutually acceptable course of action to minimise any effects of such occurrence and shall thereafter meet and discuss at such intervals as the parties may agree.

Subject to the provisions of this Clause and always subject to the CONTRACTOR agreeing that it is safe and practical in the circumstances of the force majeure occurrence to do so, the COMPANY may instruct the CONTRACTOR to remain on stand-by at the WORKSITE in which event the CONTRACTOR shall be entitled to payment at the relevant stand-by rates set out in Appendix I to Section I – Form of Agreement. In the event that the COMPANY does not elect to retain the CONTRACTOR on stand-by at the WORKSITE or, having elected to retain the CONTRACTOR, the delay due to force majeure exceeds the time period specified in Appendix I to Section I – Form of Agreement, then subject to Clause 15.6, the CONTRACTOR shall be allowed to leave the WORKSITE in order to fulfil any obligations it may have under other contracts. Any intermediate demobilisation and mobilisation fees shall be for the COMPANY's account.

If, as a result of such a force majeure occurrence, the CONTRACTOR GROUP encounters a backlog of materials, goods, tools, equipment, supplies or the PERMANENT WORK at any WORKSITE then the CONTRACTOR may, at its sole discretion but at the COMPANY's sole cost, move such materials, goods, tools, equipment, supplies or the PERMANENT WORK to another site or WORKSITE and/or to store such materials, goods, tools, equipment, supplies or the PERMANENT WORK and to charge the COMPANY a market rate for such storage.

15.6 Upon cessation of any force majeure occurrence the CONTRACTOR shall prepare a revised PROGRAMME to include for rescheduling of the WORK so as to minimise the effects of the delay. Providing however that if, in accordance with Clause 15.5, the CONTRACTOR has left the WORKSITE as a result of such occurrence, the CONTRACTOR may allow in such revised PROGRAMME any necessary time for completion of any operations on which it is engaged at the date of cessation of the force majeure occurrence.

Having made due allowance for any instruction to accelerate the WORK given in accordance with Clause 14, the COMPANY shall authorise a VARIATION to adjust the SCHEDULE OF KEY DATES and CONTRACT PRICE in order to take into account any remaining effects of such delay.

15.7 Extraordinary Risk

The COMPANY recognises that CONTRACTOR may encounter local conditions which may fall within the definition of force majeure situations, following the provisions of Clause 15.1, but given that these local conditions are permanent, actual and ongoing they shall be treated in accordance with this provision.

Notwithstanding Clause 15.1 the CONTRACTOR shall be allowed an extension of time and is compensated and the COMPANY shall authorise a VARIATION to adjust SCHEDULE OF KEY DATES and CONTRACTOR PRICE, in the event that it experiences delay or additional costs as a result of any actual or threatened conflict, political tension or bureaucratic uncertainties at the WORKSITE or within the TERRITORY where the WORK is being performed. For example, due to:

- a) lack of timely and reliable clearance of materials and equipment through ports and customs, or safe and secure storage of materials and equipment;
- b) security services necessary to protect the CONTRACTOR GROUP and the WORK;
- c) unavailability of suitably trained or willing personnel, or should people/companies leave site and/or country where the WORK is being performed and fail/refuse to return;
- d) war, insurrection, civil strife, community action, civil commotion, political and terrorists' activity, piracy, ambush, sabotage, kidnap or indigenous action or any of the foregoing;
- e) threats of use of explosives and ordnance, unexploded ordnance, land and water mines, explosives in ports, waters and rivers, the WORKSITE and environment;
- f) acts of government, rulers of people, approvals, permits, military interference or necessity;

- g) lack of insurance availability, cost, continued coverage and/or withdrawal of cover by underwriters;
- h) lack of availability or access to backup equipment, spares, and "operational contingency apparatus", as a result of any of the risks as identified herein.

Should equitable adjustment to the CONTRACT not be forthcoming, the CONTRACTOR should reserve the right to terminate the CONTRACT, whereupon the CONTRACTOR should be released from further performance and the CONTRACT shall terminate without liability to the CONTRACTOR and Clauses 30.4 and 30.7 shall apply.

## 16 Suspension

- 16.1 The COMPANY shall have the right, by notice to the CONTRACTOR, to suspend the WORK or any part thereof to the extent detailed in the notice, for any of the following reasons:
  - a) subject only to Clause 16.3, in the event of some default on the part of the CONTRACTOR; or
  - b) in the event that suspension is necessary for the proper execution or safety of the WORK or persons; or
  - c) to suit the convenience of the COMPANY.
- 16.2 Upon receipt of any such notice, the CONTRACTOR shall, unless instructed otherwise:
  - a) discontinue the WORK or the part of the WORK detailed in the notice, on the date and to the extent specified; and
  - b) properly protect and secure the WORK as required by the COMPANY.
- 16.3 In the event of default on the part of the CONTRACTOR and before the issue by the COMPANY of a notice to suspend the WORK or any part thereof the COMPANY shall give notice of default to the CONTRACTOR giving details of such default. If the CONTRACTOR, upon receipt of such notice, does not commence and thereafter continuously proceed with action satisfactory to the COMPANY to remedy such default the COMPANY may issue a notice of suspension in accordance with the provisions of Clause 16.1.
- 16.4 Unless the suspension arises as a result of default on the part of the CONTRACTOR, the CONTRACT PRICE and SCHEDULE OF KEY DATES shall be adjusted in accordance with the relevant provisions of Section III – Remuneration or, in the absence of such provisions, in accordance with Clause 14 plus reasonable documented costs directly attributable to the incident.
- 16.5 If suspension results from default on the part of the CONTRACTOR, any additional costs reasonably incurred by the COMPANY as a direct result shall be recoverable by the COMPANY from the CONTRACTOR.
- 16.6 The COMPANY may, by further notice, instruct the CONTRACTOR to resume the WORK to the extent specified. If the suspension was made under Clause 16.1(b) or 16.1(c), such resumption of WORK will be subject to the CONTRACTOR's other existing contractual commitments.
- 16.7 In the event of any suspension, the COMPANY and the CONTRACTOR shall meet at not more than seven (7) day intervals with a view to agreeing a mutually acceptable course of action during the suspension.
- 16.8 If the period of any suspension not arising as a result of default on the part of the CONTRACTOR exceeds the period stated in Appendix I to Section I – Form of Agreement the CONTRACTOR may serve a notice on the COMPANY requiring permission within fourteen (14) days from the receipt of such notice to proceed with the WORK or that part thereof subject to suspension. If within the said fourteen (14) days the COMPANY does not grant such permission the CONTRACTOR, by a further notice, may (but is not bound to) elect to treat the suspension as either:
  - a) where it affects part only of the WORK, an omission of such part under Clause 14; or
  - b) where it affects the whole of the WORK, termination in accordance with Clause 30.1(a).

Notwithstanding the above, if suspension cumulatively exceeds or is anticipated to exceed the number of days specified in Appendix I to Section I – Form of Agreement, the CONTRACTOR shall have the

#### 14.5 Adjustments to CONTRACT PRICE and SCHEDULE OF KEY DATES

Adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES relating to any VARIATION shall be made as follows:

Wherever possible the effect (if any) of a VARIATION on CONTRACT PRICE and SCHEDULE OF KEY DATES shall be agreed before the instruction is issued or before work starts, using the estimates prepared by the CONTRACTOR in accordance with Clause 14.4.

Failing agreement on the basis of the CONTRACTOR's estimate, the COMPANY and the CONTRACTOR shall mutually agree the effects of VARIATIONS in accordance with the following principles:

- a) where work is of a similar nature and carried out under similar conditions to work priced in the CONTRACT it shall be valued at the appropriate rates and prices included in the CONTRACT;  
In the event that rates and prices for delay and/or adjustments to the SCHEDULE OF KEY DATES are included in Section III – Remuneration, then such rates and prices shall be used where appropriate;
- b) where work is not of a similar nature or is not carried out under similar conditions to work priced in the CONTRACT or there are no appropriate rates or prices in the CONTRACT then a fair valuation shall be made;
- c) with respect to effect on the SCHEDULE OF KEY DATES a fair and reasonable adjustment shall be made taking into account all relevant factors including any acceleration instructed under Clause 14.1(a).

Except insofar as the CONTRACTOR can demonstrate that adjustments (including nil adjustments) to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES determined for a VARIATION are incorrect due to factors which could not have been foreseen by the CONTRACTOR at the time of such determination, any such adjustments shall not be subject to renegotiation and shall be deemed to include any cumulative effect of the VARIATION and the determined effect of any and all other previously authorised VARIATIONS on the CONTRACT PRICE and the SCHEDULE OF KEY DATES.

Should factors arise which could not have been foreseen as described, no alteration shall be made to any agreed VARIATION but a new VARIATION shall be issued to deal with any additional effects of such factors.

#### 14.6 VARIATIONS in respect of delay and/or additional cost

The COMPANY shall authorise a VARIATION if the CONTRACTOR can show that it has suffered delay and/or incurred cost.

Under any such VARIATION and notwithstanding the provisions of Clause 14.5(a), the CONTRACTOR will be entitled to such adjustments to the CONTRACT PRICE and SCHEDULE OF KEY DATES as are fair and reasonable taking into account all relevant factors including the following:

- i) any acceleration ordered by the COMPANY to overcome all or part of any delay in accordance with Clause 14.1(a);
- ii) that the CONTRACTOR is entitled to recover necessary direct additional cost which includes any necessary additional overheads and profit.

- 14.1 In the event that specific rates and prices for delay and/or extension to the SCHEDULE OF KEY DATES are included in Section III – Remuneration, then such rates and prices shall be used where appropriate to evaluate any adjustment to the CONTRACT PRICE under the provisions of this Clause and shall be deemed to represent direct additional cost to the CONTRACTOR as defined herein.

#### 14.7 Disputed VARIATIONS

- a) If at any time the CONTRACTOR intends to claim any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES additional to that previously determined by the COMPANY for a VARIATION issued by the COMPANY or requested by the CONTRACTOR, the CONTRACTOR shall give notice in writing of such intention without delay after the happening of the events giving rise to such claim.

Such events shall include but not be limited to the following:

- i) rejection by the COMPANY of a request for a VARIATION made by the CONTRACTOR;
- ii) any VARIATION where effect on CONTRACT PRICE and/or SCHEDULE OF KEY DATES cannot be determined at the time.

Upon the happening of such events the CONTRACTOR shall keep such contemporary records as may reasonably be necessary to support any claim it may subsequently wish to make.

- b) Upon receipt by the COMPANY of any such notice of claim, and without necessarily admitting any liability, the COMPANY may instruct the CONTRACTOR to keep such contemporary records or further contemporary records as the case may be as are reasonable and may be material to the claim of which notice has been received and the CONTRACTOR shall keep such records, copies of which shall be supplied to the COMPANY as and when the COMPANY may direct.
- c) The CONTRACTOR shall send to the COMPANY at the end of every month an account giving particulars, as full and detailed as possible, of all such claims.
- d) Where any matter in respect to adjustments to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES has not been finalised and without prejudice to the rights of either the COMPANY or the CONTRACTOR, the COMPANY having taken into account the relevant provisions of the CONTRACT and all other relevant factors, will make such adjustments as it considers to be fair and reasonable. The COMPANY will inform the CONTRACTOR of decisions reached in this respect and will make appropriate payments in accordance with such decisions.

## 15 Force Majeure

- 15.1 Except as provided for in Clause 21.3 (CHANGES IN LAW), neither the COMPANY nor the CONTRACTOR shall be responsible for any failure to fulfil any term or condition of the CONTRACT if and to the extent that fulfilment has been delayed or temporarily prevented by a force majeure occurrence, as hereunder defined, which has been notified in accordance with this Clause 15 and which is beyond the control and without the fault or negligence of the party affected and which, by the exercise of reasonable diligence, the said party is unable to provide against.
- 15.2 For the purposes of this CONTRACT only the following occurrences shall subject to clause 15.7 below be force majeure:
- a) war, insurrection, civil strife, community action, civil commotion, political and terrorists' activity, piracy, ambush, sabotage, kidnap or indigenous action or threat of any of the foregoing;
  - b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
  - c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
  - d) earthquake, flood, fire, explosion and/or other natural physical disaster, but excluding weather conditions as such, regardless of severity. Notwithstanding the foregoing, named tropical storms, typhoons, eddy, loop or eddy driven currents and any other weather conditions as specified in Appendix I to Section I - Form of Agreement shall be compensated in excess of the number of days as provided for in Appendix I to Section I - Form of Agreement;
  - e) strikes at a national or regional level or industrial disputes at a national or regional level, or strikes or industrial disputes by labour not employed by the affected party its contractors or its suppliers and which affect a substantial or essential portion of the WORK;
  - f) maritime or aviation disasters;
  - g) any other event beyond each party's control and not specifically covered otherwise under the CONTRACT.
- 15.3 In the event of a force majeure occurrence, the party that is or may be delayed in performing the CONTRACT shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.



workmanship, services, materials or equipment. Upon receiving notice of rejection the CONTRACTOR shall immediately commence to reperform, repair or replace the defective part of the WORK and shall carry out such inspections and/or tests on other parts of the WORK as the COMPANY may require to ensure that there are no similar parts of the WORK that fail to comply with the requirements of the CONTRACT.

- 13.5 Where reperformance, repair, replacement, uncovering, reinstating, testing and inspection are additional to the requirements of the CONTRACT and are not the result of failure by the CONTRACTOR to conform with the CONTRACT on some other similar part of the WORK and do not reveal failure to comply with the CONTRACT, such WORK shall be at the expense of the COMPANY.
- 13.6 Neither failure on the part of the COMPANY to inspect the WORK or witness or test or to discover defects nor failure to reject work performed by the CONTRACTOR which is not in accordance with the CONTRACT shall relieve the CONTRACTOR from any liability or obligation under the CONTRACT.
- 13.7 In case of default on the part of the CONTRACTOR in carrying out its obligations under Clause 13.4, the COMPANY, having given prior notice to the CONTRACTOR, shall be entitled to undertake the CONTRACTOR's responsibilities in this respect. The COMPANY shall be entitled to recover from the CONTRACTOR all costs reasonably incurred by the COMPANY in carrying out such responsibilities.

Notwithstanding the foregoing provision of Clause 13.7, the CONTRACTOR shall not carry any risk or be responsible for work performed by the COMPANY GROUP or third parties.

## 14 Variations

- 14.1 Right of the COMPANY to issue instructions
- a) The COMPANY has the right, subject to the CONTRACTOR's other existing contractual commitments, to issue instructions to the CONTRACTOR at any time to do any of the following:
    - i) make any revision to the WORK which may include additions, substitutions and changes in quality, form, character, kind, position, dimension, level or line and changes in any method of construction specified by the COMPANY;
    - ii) revise elements of the WORK already completed in accordance with the CONTRACT;
    - iii) after commencement of the WORK, accelerate the WORK or any part thereof in order to recover all or part of any delay in respect of which the CONTRACTOR would otherwise have been entitled to a revision to the SCHEDULE OF KEY DATES in accordance with Clause 14.5;
    - iv) reprogramme the WORK and reschedule its resource in order to complete the WORK or any part thereof in accordance with any amendment to the SCHEDULE OF KEY DATES the COMPANY may require.
  - b) An instruction under Clause 14.1(a) will constitute a VARIATION. When safety requires or when both parties agree, on receipt of any such VARIATION, the CONTRACTOR shall proceed immediately as instructed even though the amount of any adjustment to the CONTRACT PRICE and/or SCHEDULE OF KEY DATES may not have been determined.
  - c) Notwithstanding the provisions of Clause 14.1(b), any instruction given by the COMPANY under Clause 14.1(a) requiring the CONTRACTOR to perform work within 500 metres of any permanent oil and gas production facilities and pipelines, where such are not identified in the CONTRACT under the provisions of Clause 22.2(d), will constitute a VARIATION, save that the CONTRACTOR shall not be obliged to proceed as instructed until the COMPANY and the CONTRACTOR have agreed the following terms in respect of said VARIATION, namely:
    - i) amount of any adjustment to the CONTRACT PRICE, and/or
    - ii) specific amendment to the CONTRACT for the COMPANY providing an indemnity to the CONTRACTOR GROUP in respect of Clause 22.2(d), and/or
    - iii) specific amendment to the CONTRACT for the COMPANY limiting the CONTRACTOR's liability in respect Clause 22.2(d).

- d) Notwithstanding anything to the contrary the COMPANY has no right to order VARIATIONS which cumulatively exceed that which the parties could reasonably have expected when the CONTRACT was entered into. Further the CONTRACTOR shall not be obliged to proceed with VARIATIONS which exceed the amount specified in Appendix I to Section I - Form of Agreement where agreement on the consequences of the VARIATIONS including that of amendment of the CONTRACT PRICE and/or PROGRAMME have not been agreed by both parties.

#### 14.2 VARIATIONS Generally

- a) Prior to instructing or authorising any VARIATION, the COMPANY may require the CONTRACTOR to submit estimates as described in Clause 14.4.
- b) The CONTRACT PRICE and/or SCHEDULE OF KEY DATES shall be subject to adjustment only as a result of a VARIATION.
- c) A VARIATION shall in no way affect the rights or obligations of the parties except as expressly provided in that VARIATION. Any VARIATION shall be governed by all the provisions of the CONTRACT.

#### 14.3 CONTRACTOR's Right to Request a VARIATION

- a) If the CONTRACTOR considers that an occurrence has taken place for which it is entitled to receive a VARIATION, the CONTRACTOR, before proceeding with any work affected by such occurrence, shall request without delay in writing that the COMPANY issue a VARIATION. Any such request shall include details of the occurrence including any relevant dates and the Clause or Clauses of the CONTRACT under which the CONTRACTOR considers itself to be entitled to a VARIATION. Such occurrences shall include but not be limited to the following:
  - i) an instruction from the COMPANY, whether contained in drawings or specifications issued by the COMPANY or not, which in the opinion of the CONTRACTOR constitutes a revision to the WORK;
  - ii) matters arising under any Clause of the CONTRACT including Clause 14.6 in respect of which it is specifically stated that a VARIATION will be authorised by the COMPANY.
- b) The COMPANY shall within a reasonable time of having received a request for a VARIATION and the supporting estimates give notice to the CONTRACTOR stating:
  - i) that the proposed VARIATION or part thereof is accepted in principle in which case the COMPANY will issue such VARIATION; and/or
  - ii) that what is requested or part thereof is included in the obligations undertaken by the CONTRACTOR under the terms of the CONTRACT and that the request is accordingly rejected; and/or
  - iii) that the request or part thereof is rejected for other stated reasons. Should the CONTRACTOR wish to pursue any request for a VARIATION or part thereof which has been rejected by the COMPANY it shall proceed in accordance with the provisions of Clause 14.7.

#### 14.4 CONTRACTOR's Estimates

Within seven (7) days of having been requested by the COMPANY in accordance with Clause 14.2(a) or the CONTRACTOR having requested a VARIATION in accordance with Clause 14.3(a) or such longer time as the COMPANY shall agree where reasonable for any specific VARIATION the CONTRACTOR shall submit to the COMPANY fully detailed estimates prepared on a basis as directed by the COMPANY.

Such estimates shall include:

- i) description of the work to be varied under the VARIATION;
- ii) a detailed schedule for the execution of the VARIATION showing the resources to be employed;
- iii) the effect (if any) on the CONTRACT PRICE;
- iv) the effect (if any) on the PROGRAMME and SCHEDULE OF KEY DATES.

## Bijlage I: Dashboard integrale beoordeling



