



# GENERAL TERMS AND CONDITIONS

AS OF 1 JULY 2023

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General terms and conditions of the private limited liability company Zoontjens International B.V. – also trading under the names Zoontjens and Cityroofs – having its registered office and principal place of business in Tilburg, filed with the Chamber of Commerce under trade register number 18018922. These general terms and conditions are also available on the internet: [www.zoontjens.nl](http://www.zoontjens.nl).

## Article 1: General

These general terms and conditions (hereinafter referred to as "these Conditions") apply to all negotiations with, offers from, all orders to and contracts with Zoontjens with regard to contracting work, as well as with regard to (technical) consultancy (hereinafter referred to as "the Contract" or "Contracts").

- 1.1. Articles 2 to 11 and Article 25 (applicable law and disputes) of these Conditions are general clauses that apply to both Contracts of purchase/sale as well as the provision of technical advice and the contracting of work. The party that has contracted Zoontjens is referred to as "Customer" in that context. Articles 12 to 18 concern the Contract of purchase/sale. In the context in question, the Customer is qualified as 'Buyer', with Zoontjens acting in its capacity as seller. Article 19 contains special provisions with regard to technical consultancy. Articles 20 to 24 concern the contracting of work. In that context, the Customer is referred to as 'Client', with Zoontjens acting as contractor.
- 1.2. The applicability of (purchase) conditions of the Customer is expressly rejected.
- 1.3. Any derogation from these Conditions will only be valid if Zoontjens signs or, as the case may be, endorses it expressly in writing.
- 1.4. In the event of any conflicts between the special provisions (Articles 10-23) and the general provisions, the special provisions will take precedence.
- 1.5. In the event of any inconsistencies between the Dutch version of these Conditions and any translated version of these Conditions, the Dutch version will be binding.

- 1.6. Zoontjens is entitled to amend these Conditions. The amendments will take effect four weeks of their announcement or at a later date stated in the announcement.

## GENERAL CLAUSES APPLICABLE TO CONTRACTS OF PURCHASE/SALE, TECHNICAL CONSULTANCY AND CONTRACTING OF WORK

### Article 2: Quotes and offers

- 2.1 All quotes and offers by Zoontjens are free of obligation, unless the quote states an acceptance deadline. An offer will be valid for six months after the Customer is notified of the offer in writing. When this period has lapsed, Zoontjens will no longer be obliged to live up to its offer.
- 2.2 The quote or order confirmation is deemed to be a full and true representation of the scope of the Contract.
- 2.3 Zoontjens is entitled to supply different materials from the building materials ordered by the Customer, provided they are of the same quality, given the functionality of the property to be built, and Zoontjens will guarantee their equivalence to the Customer.
- 2.4 In deviation from the quote or Contract, Zoontjes is authorised to opt for a system other than the system initially proposed in order to safeguard quality and/or performance (for example, if the heights in practice turn out to be different from the drawing, or if the system turns out to be more heavily taxed than initially foreseen). This will never result in the client being entitled to terminate the Contract and/or to any form of compensation. Only if this new system would lead to a higher price will

- Zoontjes discuss this with the Customer and provide the Customer with a new quote for the contract variations.
- 2.5 The prices quoted by Zoontjes are target prices, exclusive of VAT. The offer stated in the quote, estimate and order confirmation will be based on the then applicable prices and specifications. The specifications of dimensions and weights, quantities as well as any dates indicated on illustrations and/or drawings are to be regarded as approximate.
- 2.6 Zoontjes will not be obliged to carry out the Contract at a price stated in the quote, order confirmation or Contract if this price is based on an apparent printing error, writing error or obvious calculation error.
- 2.7 A target price quoted by Zoontjes applies solely to the estimated scope of the Contract to be carried out. Such a target price is indicative and based on an amount of technical data, which the Customer has brought to Zoontjes' notice for the purposes of the quote. Zoontjes may issue a recommendation based on this technical data. This recommendation solely pertains to products to be supplied by Zoontjes. The Customer acknowledges that the technical advice is merely intended as sales information.

### Article 3: Negotiations and Contracts

- 3.1 These Conditions also apply to all negotiations between Zoontjes and the Customer on the possible conclusion of a Contract (hereinafter referred to as "the Negotiations"). Zoontjes is entitled to terminate the Negotiations at any time without being liable for compensation or being obliged to continue the Negotiations.
- 3.2 If Zoontjes already starts carrying out a Contract at the Customer's request or with the Customer's knowledge before a Contract has been concluded in accordance with Article 3.3 and the Customer does not object against this in writing, the Customer will be obliged pay the fee(s) already agreed upon during the Negotiations or else the usual fee(s) calculated by Zoontjes. If no Contract is concluded, the Customer will pay Zoontjes for the work performed up to the moment Zoontjes halted the work. The work referred to will then only be carried out subject to these Conditions.

- 3.3 Contracts, including orders by telephone, will not have been concluded, including any amendments and additions, until Zoontjes has confirmed the same to the Customer in writing and the Customer has not protested against their contents by sending a written letter recorded delivery within three working days.
- 3.4 Zoontjes concludes each Contract on the condition precedent that the Customer's creditworthiness has proved to be satisfactory. While carrying out the Contract, Zoontjes will be entitled to request, at the Customer's expense, security for the Customer's creditworthiness, failing which Zoontjes will be entitled to suspend the performance of the work. The Customer will be liable for any standstill losses that Zoontjes may suffer.

### Article 4: Price changes

- 4.1 In the event of any changes – after the parties have concluded the Contract – in the prices of raw materials, taxes, wages, levies, any premiums whatsoever levied by the government, even if this is done as a result of any circumstances that could already be foreseen at the time of the offer, Zoontjes will be entitled to change the agreed price if and insofar as the changes impact on the fulfilment of the Contract and Zoontjes cannot be expected to continue carrying out the contract without increasing the price.
- 4.2 The cost-increasing circumstances referred to in the previous paragraph will in any event include frost or abnormal water levels.
- 4.3 If the aforementioned entitlement is exercised and Zoontjes wishes to increase the agreed price within three months of concluding the Contract, the Customer will be entitled to terminate the Contract subject to the applicable statutory provisions, while Zoontjes will not be obliged to pay the Customer any compensation in that case.

### Article 5: Force majeure

- 5.1 Zoontjes will not be liable for the non-fulfilment, overdue fulfilment or poor fulfilment of its obligations if and to the extent that this is due to force majeure.
- 5.2 Force majeure is understood to mean: any failure on the part of Zoontjes that cannot be attributed to Zoontjes. There is question of such a failure if it is not due to Zoontjes' fault, or if Zoontjes is not liable for it

according to the law, a juristic act or generally accepted standards. Situations of force majeure include: pandemics, war, war risk, martial law, mobilisation, flood, fire, explosions, sit-down strike, strike, frost, abnormal water levels, non-delivery or overdue delivery by Zoontjens' suppliers/producers – stipulated by the Customer or otherwise – transport issues, new legislation, schemes and/or decisions by the government which impede the production and/or delivery of goods intended for the Customer. In the event of force majeure, Zoontjens will have the right, at its discretion, to suspend the delivery until the force majeure situation has ended or to terminate the Contract in whole or in part, without court intervention and without being liable for any damages.

## Article 6: Terms of payment, retention of title

- 6.1 Payment of invoices for the delivery of goods must be made to Zoontjens into a bank account specified by the latter, without any discount or offset, within fourteen days of the invoice date, unless agreed otherwise.
- 6.2 If the Customer fails to meet its payment obligation or to do so on time, the Customer will be in default by operation of law, without any form of notice of default being required. In that event, the Customer will owe Zoontjens the statutory commercial interest of 3% on the outstanding invoice amount or a part thereof, calculated for each day that the Customer is in default.
- 6.3 By way of financial incentive to meet its payment promptly, if the Customer does not pay the amount due or does not pay it on time, the Customer will owe an immediately exigible, immitigable penalty of 10% of the outstanding principal, including VAT, subject to a minimum of three hundred fifty euros (€350), without prejudice to the right to full compensation.
- 6.4 In all cases in which the goods, services or work already delivered have not yet been paid for in full by the Customer, all goods will remain Zoontjens' property until the Customer has fully met all its obligations to Zoontjens. The above applies mutatis mutandis to all claims on account of any failure of the Customer to meet its obligations to Zoontjens under any such Contracts.

- 6.5 The Customer is not allowed to pledge goods delivered subject to retention of title or to grant third parties any other right thereto.
- 6.6 If and insofar as necessary, the Customer is entitled to resell the goods delivered subject to retention of title only in the course of its normal business operations. The Customer is obliged to also deliver these goods subject to retention of title only under the provisions of this article. If the complete fulfilment of the Customer's obligations is reasonably no longer possible or likely, the Customer will be obliged to report any pending sale to Zoontjens in writing immediately.
- 6.7 If the Customer is in arrears with payment, Zoontjens will always be entitled to suspend the delivery of the work by exercising the right of retention until the Customer has met its obligations.
- 6.8 As regards the total amount owed by the Customer under the Contract concluded with Zoontjens, the internal accounts kept by Zoontjens in respect of the Contract will be binding, barring any proof to the contrary furnished by the Customer.

## Article 7: Warranty

- 7.1 With respect to all products purchased, Zoontjens warrants that they will meet their technical specifications for twelve months after their actual delivery to the Customer. After this period, the Customer will bear the risk associated with the products. In case of use outside of the Netherlands, the Customer itself must check whether the use is in accordance with the conditions and regulations applicable there. With respect to services performed by Zoontjens, Zoontjens warrants that they have been performed with due care.
- 7.2 The Customer will void the warranty in the event of improper or inexpert use of the products (including the storage and maintenance of the products), if the Customer and/or third parties have made adjustments to the products or have attached other items to the products (to the extent that this was not the intention according to the Contract) without Zoontjens' consent.
- 7.3 If the Customer invokes the warranty in a timely manner and for good reason, Zoontjens will, at its discretion, repair the

product or replace it (with an equivalent product). If it is established that a reliance on the warranty is unfounded, the Customer will bear all associated costs (including inspection costs).

- 7.4 The Customer can no longer invoke the warranty if the Customer has not invoked it vis-à-vis Zoontjens in writing with due speed, in any event not within ten working days after the Customer has detected or reasonably could have detected the underlying defect.

### Article 8: Indemnification

- 8.1 The Customer indemnifies Zoontjens against, and holds Zoontjens fully harmless with regard to all claims from third parties that may arise from the use of the processed goods delivered by Zoontjens as well as from the use of the technical advice provided by Zoontjens, all in the broadest sense.
- 8.2 The Customer will not be entitled to transfer its rights under the Contract with Zoontjens or its obligations under such Contracts to third parties and these rights and obligations are likewise not eligible for a transmission by operation of law without the express written permission of Zoontjens.

### Article 9: Intellectual property rights including indemnification

- 9.1 All intellectual property rights, including copyrights, to all products, advice, specifications, drawings, technical descriptions, designs and calculations delivered and/or produced by Zoontjens will remain vested in Zoontjens (or, if applicable, its licensors). The Customer is prohibited from – inter alia – providing or showing the aforementioned material to third parties with the aim of obtaining a similar quote or order or gaining any benefit for itself and/or for third parties. If no order is placed with Zoontjens, the documents and records made available must be returned to Zoontjens within fourteen days of a request having made therefor. In the event of an infringement, the Customer will owe Zoontjens compensation for any loss or damage ensuing from the infringement.
- 9.2 Zoontjens will indemnify the Customer against claims from third parties on account

of infringements of patents, copyrights and/or trade mark rights that are directly related to (the use of) the goods delivered to the Customer by Zoontjens under the Contract. Zoontjens' liability for the aforementioned infringements is completely and solely limited to the obligations outlined in Article 9.3.

- 9.3 If it is found at law that the use of the goods delivered by Zoontjens' or any part thereof infringes patents, copyrights and/or trademark rights of any third party and, consequently, Customer is denied the use (of a substantial part) thereof by or on behalf of the entitled party, Zoontjens will, at its expense and discretion:
- a) obtain the right for the Customer to continue the use of the products or services delivered or the relevant portion thereof;
  - b) replace the delivered goods or the relevant part thereof by goods that do not infringe any of the aforementioned rights;
  - c) modify the delivered goods in such a way that the infringement ends;
  - d) take back the delivered goods or the relevant part thereof in return for compensation to a reasonable amount established by Zoontjens.
- 9.4 A modification and/or replacement of the delivered goods or relevant part thereof made in accordance with Article 9.3, will, if possible, not lead to a substantial reduction in the potential uses of the delivered goods for the Customer.
- 9.5 The indemnification obligation referred to in this article will cease to apply if and insofar as the relevant infringement relates to modifications that the Customer has made or that the Customer has had third parties make to the delivered products without prior written permission from Zoontjens or if an infringement is otherwise imputable or attributable to the Customer.

### Article 10: Liability of Zoontjens

- 10.1 In all cases where Zoontjens is obliged to pay compensation for loss or damage, regardless of the statutory basis for the liability, and in all cases for each event or series of events with a common cause, it will be limited to compensation for the direct loss or damage up to the actual amount paid out under Zoontjens' applicable liability insurance in the relevant case. If for whatever reason no

payment is made under the insurance taken out for that purpose, Zoontjens' liability will be limited to compensation for the direct loss or damage up to 50% of the invoice value (plus VAT) corresponding to the delivery during which the damage has arisen. Direct loss or damage is understood to mean any loss or damage that is not indirect. Zoontjens will under no circumstances be liable for any indirect loss or damage such as lost profit, lost turnover, missed opportunities (including loss of orders), stagnation loss, delay in construction, penalties forfeited to third parties, charges incurred to preserve property from loss or to minimise loss, etc.

- 10.2 The liability limitations under this Article 10 will not apply in the event of an intentional act or omission intent and/or deliberate recklessness on the part of Zoontjens and/or its managerial subordinates.
- 10.3 Article 10 applies *mutatis mutandis* to the indemnities and warranties provided by Zoontjes.

### Article 11: Confidentiality

- 11.1 The Customer will do everything that can reasonably be expected of it to keep the confidential information received by Zoontjes confidential. Information is confidential if it 1) would be regarded as confidential information by an entrepreneur acting with due care, regardless of whether this information is designated as "confidential" or "property", and/or 2) in all reasonableness seems to be confidential or property in view of the circumstances of disclosure or the nature of the information itself.
- 11.2 All information provided by Zoontjes that is protected on the basis of the Trade Secrets Act (Wbb), with Zoontjes as the holder of said secrets, also expressly qualifies as strictly confidential information. The Customer will keep the Zoontjes trade secrets strictly confidential, only use them on a need to know basis and for the performance of the Contract, and the Buyer also will refrain from reverse engineering, or causing the reverse engineering of, the Zoontjes trade secrets. The aforementioned obligation will not apply in the event that one of the circumstances in Article 4 Wbb

occurs.

- 11.3 The duty of confidentiality applies throughout the term of the Contract and for a period of ten (10) years after the Contract has been terminated or ended, without prejudice to the Zoontjes' rights – which are not subject to any temporal restriction – under the Wbb.

## SPECIAL PROVISIONS REGARDING PURCHASE/SALE

### Article 12: Obligations of the Buyer

- 12.1 The Buyer will ensure that Zoontjens will have the data required for the performance of the work in good time and in accordance with the latter's instructions and will inform Zoontjens of any special government regulations, if and insofar as these should be relevant to Zoontjens.
- 12.2 The Buyer is obliged to notify Zoontjens immediately of what the Buyer considers to be manifest errors or defects in the constructions and working methods, (building) materials or tools, specifications, drawings or calculations that Zoontjens intends to deliver and apply respectively according to the documents with which it has provided the Buyer.

### Article 13: Liability of the Buyer

- 13.1 The Buyer is responsible for the constructions and working methods prescribed by it or on its behalf, for the orders and instructions issued by it or on its behalf, as well as for the data provided by it or on its behalf, including but not limited to the drawings, calculations, specifications and draft designs provided.
- 13.2 Prior to processing the materials purchased from and delivered by Zoontjens, they must be checked for technical specifications, quantities, etc.
- 13.3 The Buyer is obliged to have the materials that have been delivered by Zoontjens processed by a third party with a process certificate in accordance with the requirements of good and sound craftsmanship. The Buyer also has the obligation to place the documentation listed in the Contract by Zoontjens at the Buyer's disposal, including sales information, processing and installation guidelines,

product information, maintenance instructions or specific user information.

- 13.4 The third party to be managed by the Buyer must check and examine the technical preconditions assumed by Zoontjens in the work itself by means of testing and using all the techniques and tools that, according to the state of the art, are current in the sector at the time they are processed.
- 13.5 When planning on a deviation from the technical advice, the Buyer must notify Zoontjens immediately before being permitted to implement the change.
- 13.6 If the standards of good craftsmanship require the processing of greater or different amounts of building materials than stated in the quote or if they require the use of more or different types of labour and equipment than calculated by the Buyer, the latter will be fully responsible therefor, to the exclusion of Zoontjens.
- 13.7 Where Zoontjens actually learns that the Buyer has processed the building materials delivered by Zoontjens contrary to the technical advice, Zoontjens has the right to halt any further deliveries without the Buyer thereby becoming entitled to compensation for reasons such as but not limited to any increase in construction time, any increase in building site costs, unproductivity, and penalties forfeited to third parties.

#### **Article 14: Obligations of Zoontjens**

- 14.1 Zoontjens guarantees that the product is of good quality and meets the requirements stipulated in the Contract.
- 14.2 Zoontjens guarantees compliance with the government regulations and decrees that are relevant to the delivery at the time of the quote. Zoontjens is, however, not liable for the consequences of compliance with special government regulations, unless the Buyer has informed Zoontjens of these regulations in writing in advance.

#### **Article 15: Delivery times**

- 15.1 Although delivery times are expressly not to be considered deadlines for Zoontjens, Zoontjens will make express efforts to complete its performance by the delivery date requested by the Buyer.
- 15.2 However, the Buyer will not be entitled to any form of compensation in the event the

specified delivery date is exceeded, unless this is expressly agreed in writing or if the delivery date is exceeded as an immediate and direct result of intent and/or wilful recklessness on the part of Zoontjens.

- 15.3 If Zoontjens exceeds the delivery date, this will not entitle the Buyer to cancel the order, refuse to take delivery or suspend payment.

#### **Article 16: Delivery and risk**

- 16.1 Zoontjens works with multiple suppliers. The products supplied by these suppliers may be offered for sale under a private label. Because of this, the eventual packaging may deviate from the names on the products supplied or the Buyer will receive the product from the relevant supplier under the latter's brand. This will never entitle the Buyer to terminate the Contract and/or to any form of compensation.
- 16.2 If delivery carriage paid is agreed upon, the goods will travel at Zoontjens' expense and risk. In all other cases, the goods will travel at the Buyer's expense and risk.
- 16.3 Zoontjens will choose the means of transport.
- 16.4 If in the event of transport at Zoontjens' risk any damage and/or defects that could have been detected upon arrival of the goods are not immediately noted on the accompanying consignment note, delivery receipt or similar document to be returned, Zoontjens will not be liable for the same.
- 16.5 The risk associated with the goods will pass to the Buyer:
  - a. in the event of delivery ex warehouse, as soon as the goods have been loaded into or onto the means of transport;
  - b. in the event of delivery carriage paid, as soon as the goods have been supplied and unloaded on site.
- 16.6 In the event of delivery carriage paid, Zoontjens will only have to transport the goods up to the point that the vehicle can reach across terrain that is reasonably passable and safe (or that has been rendered safe). The actual delivery will always be made next to the relevant means of transport, and the Buyer will be obliged to take delivery of the goods there immediately.
- 16.7 If delivery carriage paid is agreed upon, the carrier will note down the time at which the goods arrive at the site. In the event of delivery carriage paid, it is assumed that the goods can be unloaded in one operation; if any delay has arisen, the carrier will record the unloading hours on the consignment note, delivery receipt or similar document to be handed over and the Buyer will be charged for the same.

#### **Article 17: Complaints**

- 17.1 A consignment note, delivery receipt or transport document will be deemed to state the quantity and the correct type of building materials. Complaints relating to visible imperfections in the delivered goods or imperfections that are easy to establish or check must be reported to Zoontjens in writing immediately upon receipt of the goods, that is within two working days, on penalty of losing the right to complain.
- 17.2 Minor deviations in dimensions, colour, surface, structure, any plaster stains and any other small defects found will not be cause for rejection.
- 17.3 The Buyer has the obligation to inspect or have a third party inspect the building materials delivered by Zoontjens with respect to the technical specifications, the quantities as well as whether the order delivered corresponds with the material ordered by the Buyer, before introducing the building materials into the works.
- 17.4 If the goods are delivered subject to submission of a quality certificate within the meaning of Section 1 of the Housing Act and/or CE mark, the goods will be deemed to be sound, unless the Buyer provides (technical) proof to the contrary.
- 17.5 If and insofar the Buyer has introduced building materials into the works and has completely or partially processed the same, the delivered goods will be deemed approved, unless the Buyer provides proof to the contrary.
- 17.6 Given the nature of and purpose of the delivered goods, any complaints about hidden defects therein must be reported to Zoontjens in writing immediately upon their detection, at least within two working days, to enable the latter to have the consignment examined by means of a laboratory test.
- 17.7 If a complaint is founded, Zoontjens will, at its discretion, redeliver or replace products free of charge or refund the purchase price for the relevant non-conforming products.

#### **Article 18: Termination**

- 18.1 The Contract of purchase/sale will immediately end prematurely by operation of law if the Buyer goes bankrupt, is granted a moratorium, is placed under administration, its assets are seized, or

ceases its occupation or business operations, in which cases Zoontjens will have an immediately exigible claim against the Buyer commensurate with the state of fulfilment of the Contract for the purchase of products, without prejudice to Zoontjens' right to compensation.

- 18.2 If the work assigned to the Buyer, for which the delivery by Zoontjens is intended, is suspended or temporarily halted, Zoontjens will be entitled to compensation for the (stagnation) loss incurred during the suspension.
- 18.3 If the work, for which the delivery Zoontjens is intended, is terminated in an incomplete state, the Buyer will be entitled to terminate this Contract in whole or in part. In that case, Zoontjens will be entitled to the price, plus the costs it has had to incur as a result of the incompleteness and minus the costs it has saved as a result of the termination. The above will not prejudice Zoontjens' right to compensation, including but not limited to any costs due to unproductivity and idle capacity.

### **SPECIAL PROVISIONS WITH REGARD TO (TECHNICAL) CONSULTANCY**

#### **Article 19: (Technical) Consultancy**

- 19.1 By way of service, Zoontjens will give the Customer advice as part of the sales information.
- 19.2 Zoontjens will prepare the advice based on a number of technical assumptions and/or preconditions, including compressive strength of the soil, with the Customer guaranteeing the accuracy of the data it has provided.
- 19.3 Although Zoontjens will endeavour to name all relevant technical matters that are important for carrying out the project in accordance with the state of the art as of the date of the advice, the advice that Zoontjens gives will be entirely free of obligation and Zoontjens will not be liable for any inaccuracies and/or omissions regarding the documentation, advice, dimensions stated, technical labels, samples, inspections and calculation advice.



- 19.4 The Customer is aware of the fact that the relevant technical advice is project-specific and based on the purchase and processing of the building materials produced by Zoontjens. The Customer is prohibited from using Zoontjens' technical advice for the purpose of processing materials from third parties.
- 19.5 The Customer is aware that Zoontjens generally issues the technical advice to the Customer during the design phase, which means that technical assumptions are mainly based on documentation, and the assumed preconditions of the work may actually deviate, which may affect any quoted target price referred to in Article 2.6 ff. of these Conditions.

- 20.5 The Client will be responsible if the construction site, the old building materials from the work or the building materials supplied by the Client appear to be contaminated. The old building materials from the work will remain the Client's property. Zoontjens will not be responsible for the quality of the building materials from the work.
- 20.6 The Client will be responsible for the timely and correct coordination of the work carried out by other contractors.
- 20.7 The Client is at all times responsible for the correctness of data, orders and instructions issued by it or on its behalf.
- 20.8 The Client is responsible for ensuring that the designated construction site is suitable for storage and is protected against theft.
- 20.9 The Client is responsible for having taken all the necessary safety measures and other precautions and to maintain the same during the performance of the work.
- 20.10 The Client will provide, free of charge, construction power, process water required for processing and applying materials to the work, and the necessary sanitary facilities.

## SPECIAL PROVISIONS REGARDING THE CONTRACTING OF WORK

### Article 20: Obligations of the Client

- 20.1 The Client will ensure that Zoontjens will have the following at its disposal in good time:
- a) the permits, exemptions or the decrees that may be required for setting up the work;
  - b) the site or the water where the work is to be carried out;
  - c) the required up-to-date drawings, documents and other data storage media;
  - d) the provisions that the Client makes under the Contract.
- 20.2 The Client is responsible for the constructions and working methods prescribed by it or on its behalf, including the influence exerted by them on the soil conditions, as well as for the orders and instructions issued by it or on its behalf.
- 20.3 If the building materials or tools made available by the Client should contain any defects, the Client will be liable for any ensuing direct and indirect loss or damage.
- 20.4 If any statutory regulations or decrees should place higher demands on the work than provided for in the Contract, any changes to the work required to meet the higher demands will be charged for as additional work.

### Article 21: Obligations of Zoontjens

- 21.1 Zoontjens is obliged to carry out the work in accordance with the provisions of the Contract and to do everything that, according to the nature of the Contract, is required by law, by the standards of reasonableness or by custom or that is part of a proper use of building materials.
- 21.2 Zoontjens will be deemed to be familiar with the statutory regulations and decrees applicable to the performance of the work. Zoontjens will carry out the work in accordance with the requirements of good craftsmanship, and Zoontjens will be allowed to have all the work or parts thereof carried out by subcontractors, but Zoontjens will remain accountable to the Client for any work performed by subcontractors.
- 21.3 If a certain subcontractor is stipulated by or on behalf of the Client and this subcontractor fails to perform or to do so in good time or properly and Zoontjens has done everything it reasonably could to obtain fulfilment and/or compensation, the Client will compensate Zoontjens for the

ensuing additional operating costs, if and insofar as the subcontractor did not pay Zoontjens therefor. At the Client's request, Zoontjens, in turn, will assign its claim against the stipulated subcontractor up to the amount received from the Client.

- 21.4 If the constructions, working methods, orders and instructions referred to in Article 20(2) evidently contain such errors or display such defects that Zoontjens would not be acting in good faith by, without notifying the Client in writing, carrying out the relevant part of the work, it will be liable for any detrimental consequences of its default, expressly excepting any consequential loss or damage.
- 21.5 The precontractual warning obligation under Section 7:754 of the Dutch Civil Code only applies to Zoontjens if, in the tender and/or calculation phase, it detects any conflicts in the data provided by the Client, if and insofar as that data was important for calculating the contract price.

## Article 22: Additional payment

- 22.1 'Additional payment' is understood to mean Zoontjens' right to claim not only the contract price plus the turnover tax due thereon but also financial compensation as a result of factors such as:
- a) all cases in which due to circumstances attributable to the Client (all cases referred to in Article 20 of these Conditions) or due to amendments made to the Contract or to the performance of the work by or on behalf of the Client, Zoontjens cannot be required to complete the work within the agreed period;
  - b) all cases in which Zoontjens fulfilled its warning obligation referred to in Article 20(4) of these Conditions in writing and the performance of the work will be delayed.
  - c) all cases where any differences between, on the one hand, the condition of the existing buildings, works and sites apparent during the project and, on the other, the condition outlined in the Contract and the technical documents forming part of it, are of such a nature that, by the standards of reasonableness, Zoontjens cannot be held liable for the consequences thereof;
  - d) all other cases where the work stagnates, is suspended or halted by government authorities, or where other contractors working on behalf of the Client do not act on time;
  - e) In all cases of cost-increasing circumstances of such a nature that there was no reason to take into account the risk that these would occur and which increase the costs of the work considerably. This will be the case if each cost category increases by 10% in relation to the agreed contract price.
- 22.2 In all cases referred to in Article 22.1, Zoontjens will notify the Client in writing as soon as possible, in any event at such a time that the Client will be able to collect the data necessary for the purpose. Zoontjens will assist in collecting this data.
- 22.3 Where Zoontjens may claim additional payment, Zoontjens will be entitled to suspend the performance of its work until the Client has agreed in writing to the amount of the additional payment.
- 22.4 In case the Client and Zoontjens fail to reach agreement on the amount of the additional payment, both parties will attempt to settle the financial dispute out of court by instructing a third-party expert member of the Dutch Association of Construction Engineers who, having examined the parties for the purpose, will issue a binding opinion.
- 22.5 The Client is entitled to make reasonable and feasible changes to the Contract, the work or the conditions of execution in writing. Zoontjens will follow instructions for changes, even if they increase or reduce the scope of the work, wherefore the aggregates of the additional payments will not amount to more than 15% each of the contract price or the balance of the additional payments, and deductions will not amount to more than 10% of the contract price, not including turnover tax.

## Article 23: Project records

- 23.1 Zoontjens will keep records of the project, which will include notes regarding:
- progress and status of the work;
  - days on which work cannot be performed and the postponement of completion granted;
  - supply and removal and approval of building materials;

- changes in work, quantities processed, timesheets;
- inspection, approval and completion of the work;
- written notices in accordance with Articles 21(4) and 22(2) of these Conditions.

discretion choose to have the aforementioned disputes settled by the competent regular court.

- 23.2 Zoontjens' project records will constitute binding evidence for the parties, barring proof (to the contrary) furnished by the Client.

## **Article 24: Liability when contracting work**

- 24.1 Notwithstanding Section 7:761(2) of the Dutch Civil Code, the right of action on account of a defect in the completed work will expire 5 years after completion. The provisions of Section 7:761(1) of the Dutch Civil Code will remain fully effective.
- 24.2 Zoontjens' work will have been completed if the Client has signed the completion protocol drawn up by Zoontjens. In all cases where the Client has started using the work, the work will be deemed completed. From the completion date, the Client is required to have the work insured.
- 24.3 Apart from the liability under paragraph 1 of this article, Zoontjens may be liable under a warranty it has issued as referred to in Article 7 of these Conditions.

## **Article 25: Applicable law and disputes**

- 25.1 All Contracts concluded with Zoontjens and all arrangements between the parties following from them are governed by Dutch law, with the exception of the rules regarding the choice of applicable law pursuant to the rules of private international law. The applicability of the Vienna Sales Convention (the United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.
- 25.2 Any and all disputes, including those that are regarded as such by only one of the parties, that may arise between the parties will be settled by means of arbitration in accordance with the rules described in the regulations and constitution of the Arbitration Board for the Building Industry in the Netherlands, as they apply at the time the dispute is submitted. In deviation from the foregoing, Zoontjens may at its sole