

## A. GENERAL PROVISIONS

### DEFINITIONS

Within these general conditions the following capitalised terms shall have the meaning as indicated below:

- a) GC: these general conditions.
- b) EI: Elektro Internationaal B.V., contracted party
- c) Client: Client.
- d) Parties: Elektro Internationaal B.V. and Client.
- e) Contract(s): the contract between parties that these general conditions apply to.
- f) Activities: all design, installation and maintenance activities, including delivery of goods and services, that EI must perform to ensure that on completion and, if agreed, during the maintenance period the technical installation complies with the requirements arising from the Contract.

### Article 1 Scope

1. These GC apply to all Contracts of EI with the Client and also prevail over any of the Client's general conditions in case EI has not explicitly rejected the applicability of these conditions. References by the Client to the Client's conditions shall not be accepted by EI.
2. In addition and supplemental to the provisions in paragraph 1, the GC apply if the Client accepted applicability of these conditions in previous contracts with EI.
3. The Client accepts applicability of these GC on all future transactions with EI.
4. If one or more conditions from the GC are not (strictly) applied by EI, it will not affect the applicability of the other conditions. The Client shall therefore not be able to rely on the GC not being applicable and/or that EI forfeited the right to demand strict compliance with the GC at a later date.
5. If, and insofar as, any provision in the Contract or the GC is not legally valid, this shall not affect the applicability of the Contract and the GC in any other respects. In this case, parties shall replace the relevant provision by a valid or enforceable provision that approaches the content and scope of the replaced stipulation as closely as possible.
6. Verbal notifications, undertakings, agreements as well as any revision, amendment or addition to the Contract and/or the GC are only valid insofar as these have been confirmed between parties in writing.
7. Acceptance of the GC occurs by accepting the Contract which states that the GC apply.

### Article 2 Offer

1. EI's offers are without any obligation: EI can still withdraw its offer shortly after receiving its acceptance, unless this offer includes a deadline for acceptance and the deadline has not yet expired.
2. The content of all offer documentation, such as drawings, models, pictures, descriptions or specifications, is as accurate as possible, but is not binding.
3. The Client must treat the information in the offer documentation confidentially and may not utilise this for his own benefit or the benefit of any third party or disclose this to any third parties. If the Client breaches this confidentiality, he will be liable to pay EI an immediate fine of € 10,000.00 for each breach without prejudice to EI's other rights under the law, the Contract or the GC.
4. If no Contract is formed on the basis of the offer documentation, the Client must immediately return all these documents and any copies to EI's address on EI's request, at the Client's expense and risk.

### Article 3 EI's obligations

1. Unless the Contract stipulates otherwise, EI must take out insurance insofar this is necessary and customary on the basis of the nature and extent of the Activities and according to the conventions in the sector, without prejudice to the provisions in article 5, paragraph 1 and 2. EI's insurance does not include the Client, his representative and/or other party engaged by the Client as co-insured parties.
2. EI shall ensure that the Client receives written proof of the existence and content of the insurance referred to in paragraph 1 in a timely manner, if so requested.
3. EI may reasonably rely on the accuracy of the information, designs, drawings, calculations and specifications provided by or on behalf of the Client according to the standards of the installation profession.
4. EI shall carry out the Activities to the best of its ability. The scope of its obligations is, however, also dependent upon the level of input and influence of the Client or any third parties engaged by or on behalf of the Client.
5. EI shall make every effort to be informed about the legal regulations and government orders related to the Activities, as well as regulations of a specific nature, such as technical or industrial standards.
6. EI is obliged to carry out the Activities in such a manner that the installation complies with the requirements arising from the Contract. The requirements referred to here include requirements arising from the normal use the installation is intended for, as well as the requirements that arise from the special purposes the installation will be used for, but only insofar as these latter requirements have been laid down in writing in the Contract.
7. If requested, EI shall inform the Client about the execution of the Activities at a reasonable time and provide access to the locations where these are carried out at a time and date yet to be agreed. If this has been agreed, EI will provide an inspection plan, protocol, log, report or record that will show that its Activities and results of the Activities comply with the requirements arising from the Contract.
8. EI shall, at its own expense, repair any damage to the installation or part thereof that was caused by or in connection with the execution of the Activities before completion, unless this damage was not caused by EI, there is intent or conscious negligence on the part of the Client or it would otherwise be unreasonable for this damage to be at the expense of EI, without prejudice to the liability of parties under the Contract or the law.
9. If requested, EI shall, to the best of its ability, provide all rights from guarantees that are provided to EI by independent auxiliary personnel with regard to the installations or parts thereof.
10. If requested, EI shall, to the best of its ability, provide instructions for putting the installation in or out of service and keeping it operational.
11. EI is obliged to treat all the Client's data confidentially, insofar as EI has been informed that these data are confidential, and to ensure that its personnel observes this confidentiality.

### Article 4 Client's obligations

1. The Client shall ensure that all (technical) information, data, decisions and amendments that are necessary for EI to be able to realise the Activities in accordance with the Contract, will be made available to EI in good time. The Client is responsible for the accuracy and completeness of this information, these data, decisions and amendments.
2. The Client shall ensure that all goods of which the Contract explicitly stipulates that these will be made available by or on behalf of the Client, will be made available to EI in good time. The Client is liable for any direct and indirect damage that is the result of the fact that these goods are not sound or not suitable.

3. The Client indemnifies EI against any claims by third parties for any damage suffered by them in connection with the information, data, decisions, amendments and goods referred to in paragraph 1 and 2.
4. The Client shall ensure that the licences, dispensations, dispositions or permissions that are necessary for the set-up of the Activities or the use of the installation and of which it has been agreed that these will be made available by or on behalf of the Client, will be made available to EI in good time. EI shall, to the best of its ability, give the Client the necessary cooperation to obtain these. If the Client fails to fulfil this obligation, EI may terminate the Contract and claim compensation without EI being obliged to pay the Client any compensation.
5. The Client shall ensure that the site, the building and the location where the Activities must be carried out are made available to EI for free access and use in good time, and shall provide clean, safe and healthy working conditions, as well as suitable storage space at the location.
6. The Client is responsible for the state of the buildings/locations where, and the installations or parts thereof around, underneath, inside or above which the Activities are carried out, as well as the circumstances that prevent or seriously hinder the execution of the Activities. The Client is obliged to give a timely warning to EI and its personnel about any dangerous situations.
7. The Client shall ensure that at the locations where the Activities are carried out the necessary (energy) supplies, such as electricity, (drinking) water, gas, compressed air, telecommunications and drains are made available to EI in good time, free of charge and with guarantee of supply.
8. The Client is responsible for the connection of the installation to the public networks. EI shall, to the best of its ability, lend the Client the necessary assistance to request this connection.
9. The Client shall, in a timely manner, provide information about the nature and content of the activities of his subordinates and/or his non-subordinates and/or contractors engaged by him, the estimated point in time these will be carried out, as well as the coordination thereof, so that EI can take this information into account in its offer. The Client is exclusively responsible for the coordination of these activities, unless this has been agreed otherwise.
10. The Client is responsible for any delays and/or costs caused by the activities of the Client and/or his subordinates and/or his non-subordinates and/or his auxiliary personnel and which cannot be attributed to EI. Any damage to the installation caused by the activities of his subordinates and/or his non-subordinates and/or his auxiliary personnel is at the expense of the Client.
11. The Client is obliged to inform EI in writing and within an adequate time period, of any shortcoming by EI he actually detected or should have been aware of.
12. The Client is responsible for the goods he prescribed or that must be obtained from a prescribed supplier, as well as for the non-delivery or not timely delivery of these goods.
13. The Client is responsible for auxiliary personnel and non-subordinates, such as subcontractors or suppliers he prescribed. EI is not obliged to contract this independent auxiliary personnel, if the Client does not want to accept the contract conditions of this auxiliary personnel. If the prescribed contractor fails to perform his tasks, or fails to do these in time or in a proper manner, EI shall have the right to an extension of deadlines and/or reimbursement of costs in accordance with article 12.
14. Outside EI's working hours the Client is responsible for EI's goods and properties, such as materials, equipment or tools that are used to carry out the Activities.
15. The Client is responsible for any delays and/or costs resulting from compliance with legal regulations and government orders, as well as regulations of a specific nature, such as technical or industrial standards that are amended or come into force after the offer was made.
16. The Client is not permitted to give EI, its personnel or its auxiliary personnel any instructions that are not related to the Activities or are in conflict with the nature of the Contract. The Client must keep any disturbances to EI's Activities to a minimum.
17. The Client shall allow EI to erect signs displaying its name and company or advertising on any fencing or railings that are used to close off the building or locations where the Activities are carried out and elsewhere on the site.
18. The Client is obliged to take delivery of all EI's goods and his own goods that must be delivered under the Contract as soon as these have been made available to him.
19. The Client is obliged to treat all (company) data of EI or all information received from EI in connection with the Contract in a confidential manner. The Client is not permitted to utilise these data and this information for his own benefit or the benefit of any third party or disclose this to any third parties. In the event of a breach of the obligation included in this paragraph, the Client must pay an immediately payable penalty, which is not subject to judicial mitigation, to the amount of € 100,000.00 without prejudice to EI's right to claim compensation.
20. The Client must pay any amounts he owes EI in accordance with the agreed payment arrangements, even if the Client is entitled to compensation.

#### **Article 5 Client's insurance**

1. The Client is obliged to take out and maintain Contractors All Risk (CAR) insurance or comparable customary insurance which incorporates EI (including any subcontractors and auxiliary personnel engaged by EI for the execution of the Contract) as co-insured party if the Activities by EI are for the purposes of the Client's business operations, unless agreed otherwise in writing.
2. The Client is obliged, in the event of export of his products or installations that partly consist of goods developed and/or supplied by EI, to the US and Canada or areas where the laws of these countries apply, to report the intention to export to EI in writing and in a timely manner and to take out and maintain adequate liability insurance and the aforementioned insurance, also for the benefit of all parties involved in the development, manufacture or creation of these products or installations. The Client shall not cancel or amend these insurance policies without EI's prior written permission.
3. The Client shall ensure that EI will receive written proof of the existence and content of the insurance policies referred to in paragraph 1 and 2.

#### **Article 6 Ban on transfer of personnel and seconded persons**

1. During the term of the Contract and until one year after its termination, the Client is not permitted, to employ any EI employees that were involved in the execution of the Contract, or in any other way have these employees carry out work for the Client.
2. During the term of a secondment and until one year immediately after its termination, the Client is not permitted to employ these seconded persons, or in any other way have these seconded persons carry out work for the Client.
3. The Client shall be liable to pay an immediate fine, which is not subject to judicial mitigation, to the amount of 3 gross annual salaries of the relevant employee if the provisions of paragraph 1 or 2 are breached.

#### **Article 7 Retention of title and risk**

1. All goods intended to be used for the Activities, such as materials or parts, become property of the Client after he has fulfilled his financial obligations arising from the Contract, including what the Client may be liable to pay in the event he fails to fulfil his obligations.
2. If the Client has not fully complied with his obligations arising from the Contract, he is not authorised to use the delivered items, unless EI has given the relevant permission in writing. In the event the Client does not comply with this restriction, he will be liable to pay EI an immediate penalty of 50% of the price of the delivered items the Client used without authorisation. This is without prejudice to EI's other rights under the law, the Contract or the GC.
3. EI is, at all times, entitled and, insofar as this is necessary, irrevocably authorised to inspect and/or repossess the items in which the title is retained, both the originally supplied items and any newly created items, irrespective of the place where these items are located. If the items became the Client's property by accession, or have been used by the Client in the manufacture of another item or have been mixed with the Client's items, EI shall have the right to repossess a proportionate quantity of the delivered items or have the right to compensation.

4. The Client shall lend EI every assistance in order to give EI the opportunity to exercise the retention of title incorporated in paragraph 3 by repossessing items, including, if possible, any necessary disassembly.
5. Immediately after the items have been delivered by EI, the Client bears the risk for any damage that occurs to or by the items, unless this damage is caused by intent or gross negligence on the part of EI.
6. If the Client is in default of fulfilling his purchase obligations, EI will be entitled to charge the costs of storing the unpurchased items to the Client.

#### **Article 8 Deadlines**

1. EI shall not be obliged to start the execution of its Activities until EI has all necessary information, data or goods in its possession and EI has received the agreed instalment payment. EI is entitled to start and/or deliver sooner, unless stipulated otherwise in the Contract.
2. Unless explicitly agreed otherwise in writing, deadlines are set to the best of one's knowledge and shall be observed as much as possible. Deadlines are only target dates. This means that EI shall not be in default by failing to meet any stated deadlines. Nor shall EI be liable for any damage suffered by the Client as a result of exceeding a stated delivery time, unless this failure to meet the delivery time, even with due regard for the above, is unreasonable and is caused by intent or gross negligence on the part of EI. If there is a risk of a delivery time being exceeded, EI and the Client will liaise as soon as possible.

#### **Article 9 Testing, acceptance and completion**

1. The Client is authorised to check by means of inspections, trials or tests whether the Activities and results of the Activities meet the requirements arising from the Contract.
2. Checks by or on behalf of the Client take place, after consultation with EI, at the expense and risk of the Client, unless agreed otherwise in writing. EI shall lend the Client the necessary relevant assistance within reasonable limits.
3. When exercising his right to carry out checks, the Client must keep interruptions to the Activities to a minimum. He shall be responsible for any resulting delays and/or costs which cannot be attributed to EI. Any damage caused by carrying out checks on the installation as well as any consequential damage, are at the expense of the Client.
4. As soon as EI has given notification of the fact that the results of the Activities are ready for acceptance and the Client does not check these within the time period set by EI or does not accept these subject to reservations, or rejects these on the basis of identified defects, the results of the Activities are deemed to have been tacitly accepted.
5. Any minor defects that can be rectified before a subsequent payment instalment, may not be reason for rejection, provided these do not hinder the introduction into service of the installation.
6. After acceptance, the results of the Activities will be considered as completed. EI is authorised to divide the completion into a number of part completions.
7. If the results of the Activities are (tacitly) accepted by the Client, the time of acceptance is deemed to be the date of the notification referred to in paragraph 4.
8. At the request of the Client the acceptance of the results of the Activities may also take place without the notification by virtue of paragraph 4. In this event the Client will send EI a written statement confirming that the Activities can be considered as accepted. The date this statement is sent serves as the acceptance date.

#### **Article 10 Early introduction into service**

1. If the Client wishes to use the installation or parts thereof ahead of the planned completion, the parties shall follow the procedure set out in article 13 (amendments). Before the date of this early introduction into service the Client must approve the Activities with regard to the installation or parts thereof he wishes to introduce into service early and sign for their completion. If the Client fails to do so and does introduce the installation into service, the installation is deemed to have been approved and completed.
2. With regard to article 16 (liability) such an introduction into service will be considered as completion. Any damage to the installation caused during the introduction into service as referred to in paragraph 1 of this article, as well as any consequential damage, is at the expense of the Client.

#### **Article 11 Suspension, termination and cancellation**

1. The Client is authorised to suspend the Activities. He is obliged to inform EI in writing stating the grounds and promptly liaise with EI regarding the consequences.
2. If, as a result of the suspension, EI must make appropriate arrangements or take appropriate measures, EI is entitled to an extension of deadlines and/or reimbursement of costs by virtue of article 12.
3. If the Activities or part thereof are suspended or delayed and this cannot be attributed to EI, the Client shall, on the basis of the state of the Activities, be obliged to pay EI for all the Activities that have been carried out, as well as all reasonably incurred and yet to be incurred costs, arising from the obligations EI is already committed to in view of the further execution of the Contract, calculated from the moment the suspension or delay commenced.
4. If the Activities are suspended or delayed for more than two months, EI shall be authorised to terminate the Contract without being liable to pay the Client any compensation.
5. If the Client has applied for a moratorium, been declared bankrupt, failed to comply with the Contract, or attachments have been made on one or more of the Client's assets, or the Client's company is wound up, all of EI's claims against the Client shall be immediately due and payable and EI shall be entitled to terminate the Contract without being liable to pay the Client any compensation.
6. In the instances referred to in paragraphs 4 and 5, the Client is obliged to pay the fixed price laid down in the Contract, less any savings for EI resulting from the termination. If the price was dependent on the costs actually incurred by EI, the price payable by the Client is calculated on the basis of incurred costs, performed labour and the profit EI would have made on full completion of the Activities.
7. The Client is also obliged to pay for any damage EI suffers due to the (partial) termination.
8. Termination can only be effected by means of registered mail and acknowledgement of receipt.

#### **Article 12 Extension of deadlines and/or reimbursement of costs**

1. With the exception of the provisions in article 13, EI is entitled to extension of deadlines and/or reimbursement of costs if:
  - a) this is explicitly provided for in these conditions and provided that the delay and/or costs are caused by a circumstance that cannot be attributed to EI.
  - b) these are caused by a circumstance the Client is responsible for and EI did not have to issue any warnings about in view of its obligations, or
  - c) an unforeseen circumstance occurs of such a nature that according to the standards of reasonableness and fairness, the Client may not expect the Contract to be maintained in unmodified form.
2. If EI is of the opinion that it is entitled to an extension of a deadline and/or reimbursement of costs, EI will inform the Client promptly in a written and reasoned statement. This statement will include all direct and indirect costs, as well as a reasonable surcharge for general costs, profit and risk. EI's statement will also include any consequences with regard to the schedule.

### Article 13 Amendments (more or less work)

1. The Client is authorised to instruct EI to make amendments in the Contract, Activities, results of the Activities, assignments, work plan and inspection plan.
2. EI is not obliged to carry out an instructed amendment if:
  - a) the amendment was not instructed in writing, or
  - b) the amendment would lead to an unacceptable disruption in the Activities, or
  - c) the amendment is beyond the knowledge and/or skills and/or capacities of EI, or
  - d) the amendment would not be in EI's interest, or
  - e) the parties cannot agree on the financial implications and the consequences with regard to the schedule and the work plan.
3. If EI is prepared to carry out the amendment, it will send the Client a written quotation stating the following information:
  - a) the balance, made up of all direct and indirect costs, profit and risk, in connection with the amendment, less any savings resulting from carrying out the amendment, and
  - b) the adjustment to the Activities, schedule and work plan, and
  - c) the adjustment to the list of payment instalments or the payment conditions.
4. EI is entitled to a reimbursement of costs involved in the quotation referred to in paragraph 3, irrespective of the question whether the parties agree on the quotation.
5. EI is authorised to offer the Client proposals for amendments if it sees a need to do this, provided that the Activities and the results of the Activities comply with the Contract.
6. The Client may either refuse to accept the proposals for amendments referred to in paragraph 5 without stating reasons, or accept them. In the latter case the parties shall follow the procedure as laid down in this article.
7. If the procedure in connection with the amendments is delayed by a circumstance that cannot be attributed to EI, EI shall be entitled to an extension of deadlines and/or reimbursement of costs by virtue of article 12.
8. The absence of a written instruction with regard to the amendment does not affect EI's claims for payment.

### Article 14 Price and Payment

1. Any amounts agreed between parties and any amounts stated in the GC do not include VAT. The Client pays the VAT payable by EI with regard to the Contract.
2. EI is authorised to pass on to the Client any taxes, import duties, levies or any other charges that are imposed.
3. EI is entitled to pass on to the Client any shipping and/or express costs above an amount of €25.00 excluding VAT.
4. EI is entitled to charge an amount of €30.00 for handling costs of orders that amount to less than €200.00.
5. All prices and rates are based on a normal working week from Monday to Friday, as referred to in the Dutch collective labour agreement for the technical installation industry (CAO Technisch Installatiebedrijf). Any Activities that are carried out outside normal working hours per calendar day are settled against rates and surcharges laid down in the Contract, based on EI's normal working hours. Any waiting hours and/or cancellation hours for personnel and/or equipment of EI caused by the Client are settled on the basis of rates laid down in the Contract.
6. The settlement of changes to wages, social security charges, prices, rentals and cargoes will take place in accordance with the Dutch Installation Technology Price Increases Sharing Agreement (Risicoregeling Installatietechniek), unless agreed otherwise.
7. Parties may agree a payment schedule in instalments. EI is entitled to submit the invoice for the final settlement as soon as the results of the Activities have been completed, or on the date the Contract has been terminated by virtue of Article 11. Submission of this invoice does not imply a surrender of the right to further claims on the part of EI with regard to the Contract.
8. Payment will take place without deductions or settlements, insofar as not agreed otherwise, within 30 days of the date of the relevant invoice.
9. Under no circumstances shall the Client be entitled to make payments for or on behalf of EI to EI's independent auxiliary personnel.
10. Payments will initially go to reduce all payable costs and interest and finally to reduce the longest standing payable invoices, even if the Client states that the payment relates to later invoices.
11. EI may fully or partially transfer (assign) its right to payment, or pledge it.
12. Payments may not be suspended, even if the Client believes to have a right of complaint and/or a credit note has been forwarded.

### Article 15 Default of the Client

1. If the Client does not cooperate with an inspection or acceptance of the Activities in a timely manner, or does not make an outstanding payment on time, EI shall be entitled to reimbursement of interest at the legal interest percentage, in accordance with Article 6:119a of the Dutch Civil Code, starting on the date the cooperation should have been given or on the final due date of payment. In this case EI shall also be authorised to suspend the Activities.
2. If the cooperation or payment does not take place within one month of the final date it should have taken place, EI shall be entitled to reimbursement of interest at the legal interest percentage increased by two per cent, starting on the date this month has elapsed, without EI being required to give notice. In this case EI shall also be authorised to terminate the Contract by virtue of article 11.
3. EI is, at all times, entitled to demand security from the Client for the correct, timely and full compliance with his payment obligations. EI is entitled to suspend compliance with its obligations until the Client has provided adequate security. If the Client fails to provide the required security, EI shall be authorised to suspend the Activities or terminate the Contract by virtue of Article 11.
4. If the Client does not, or will not, meet his obligation to collect goods on time from the agreed place of delivery, EI shall be authorised to store these goods at the expense and risk of the Client or to sell these in an appropriate manner and to recover what is owed to him from the proceeds, providing EI has given notice to the Client to collect the goods within 5 working days. EI is authorised to pay the surplus payable to the Client by means of set-off, including during the Client's moratorium or bankruptcy.
5. All actual costs incurred by EI in order to obtain payment of outstanding invoices, both judicial and extrajudicial costs, are at the expense of the Client, unless EI decides to determine these costs at a fixed amount of 15% of the amount to be paid.

### Article 16 Liability and Guarantee

1. EI is not liable for any defects, unless:
  - a) these defects are attributable to EI, and furthermore
  - b) the Client did not notice these defects prior to completion, and furthermore
  - c) the Client could not reasonably be expected to discover these defects at the time of completion.
2. If EI is liable by virtue of the provisions in paragraph 1, EI is only liable for the direct material damage sustained by the Client, which damage is the direct and exclusive result of intent or conscious negligence. Therefore, EI is not liable for:
  - a. infringement on patents, licences or any other third-party rights as a result of using information supplied by or on behalf of the Client;
  - b. damage or loss, by whatever cause, of the raw materials, semi finished goods, designs, tools and/or any other items made available by the Client.

- c. damage as a result of an interruption or delay in the production process;  
d. lost profits, missed savings, damage due to business interruption and any other form of indirect damage and/or consequential damage.
3. Without prejudice to the provisions in this Article, EI guarantees to repair the faults for which it is liable at EI's own expense, or to limit or counteract the damage, during the period referred to in paragraph 8 [sic]. If the costs of repair are not proportionate to the interests of the Client in the case of repair instead of compensation, and in the case that the installations were not erected in the Netherlands, the Client is not entitled to demand repair, but EI will pay compensation. Any components replaced by EI will become its property. Fulfilling this guarantee obligation by EI shall be considered as sole and full compensation. The Client is not entitled to any other claims for compensation, except in the case of intent or gross negligence on the part of EI.
4. All costs exceeding the single obligation as provided for in paragraph 3, including but not limited to costs of destruction, administrative costs, compensation for customers, transport and accommodation costs, as well as costs of disassembly and assembly, are at the expense of the Client.
5. EI's guarantee obligation will lapse if the Client uses the delivered product for a different purpose than normal business purposes or if, in EI's opinion, another than EI has handled or maintained the delivered product in an improper manner. Not included in the guarantee are defects that occur as a result of:
- a. non-observance of instructions or operational and maintenance regulations;
  - b. normal wear and tear;
  - c. applicability of any government regulation with regard to the nature or quality of the applied materials;
  - d. materials applied or used, or items or requested constructions in consultation with and on instructions from the Client;
  - e. inspections, advice and similar obligations executed in consultation with the Client, except defects that occurred due to intent or gross negligence on the part of EI.
6. If the Client or a party on behalf of the Client, without EI's prior written consent, disassembles, repairs or carries out any other relevant activities, any claims in respect of the guarantee shall lapse.
7. In the case of Activities that are for the Client's business operations, EI is only liable for damage that is covered by its insurance policies, without prejudice to the provisions in this Article.
8. If and insofar as the Client has insured any risk connected with the Contract, he is obliged to claim any damage through this insurance and to indemnify EI against claims for redress from the insurer.
9. The extent of the damage to be compensated by EI is primarily restricted to the amount of the price set out in the Contract or, if no price was determined on concluding the Contract, as in the case of cost-plus contracts, to the amount of the presumptive price. In the case of maintenance contracts with a duration of more than one year, the price is set at the total of payments for one year.
10. In no case, however, shall the compensation amount to more than the total of the amounts of the excess of EI's insurance and the payment made by the insurer to a maximum of € 1,000,000.00.
11. Any liability on the part of EI will lapse, unless agreed otherwise, when six months have elapsed from the time at which the Contract ended, due to completion, dissolution or termination.
12. A legal claim on account of a defect is not admissible in legal proceedings if the Client, after he has discovered the defect or after he could reasonably be expected to discover the defect, has not promptly informed EI of the defect by means of a reasoned written statement.
13. The claim on account of a defect for which EI is liable by virtue of paragraph 1 is not admissible in legal proceedings if it is made later than six months from the date the Contract ended due to completion, dissolution or termination, unless agreed otherwise.
14. EI is not liable for compensation of damage to the Client or third parties that is (partly) caused by a person or persons on secondment.
15. The Client indemnifies EI against any claims by third parties concerning (product) liability resulting from a defect in a product or installation delivered by the Client to a third party and that partly consisted of goods developed and/delivered by EI, except if and insofar as the Client can prove that the damage is caused by those goods.
16. Insofar as not ensuing from the law or from the Contract, EI is in any case not liable if a shortcoming on the part of EI is the result of a circumstance beyond EI's control which prevents, hinders or in any other way affects the normal execution of the Contract. In any case, circumstances beyond EI's control include but are not limited to:
- \* industrial action by third parties or own personnel;
  - \* shortcomings of auxiliary personnel;
  - \* transport problems;
  - \* fire and loss of components to be processed;
  - \* measures taken by any domestic, foreign or international body, such as import bans or trade bans;
  - \* acts of violence or armed acts;
  - \* disruptions to energy supplies, communication links or equipment or software belonging to EI or any third parties.
- In the event of circumstances referred to in this paragraph, EI will, for the purpose of restricting adverse consequences for the Client, take those measures that can reasonably be expected of EI.
17. The Client indemnifies EI against any claims by third parties for compensation of damage, insofar as this damage remains at the expense of the Client by virtue of these GC.

### **Article 17 Intellectual Property**

1. The intellectual and industrial property rights to all the goods, data and (technical) information delivered to the Client remain with EI. EI has sole rights to the publication, realisation and copying of these goods, data and information, and the Client only has rights of use in respect of these.
2. The documents provided by EI to the Client, such as designs, drawings, technical descriptions or specifications become the property of the Client and can be used by him, subject to the rights resulting from the regulations with regard to intellectual and industrial property, after the Client has met his financial obligations towards EI.
3. The Client is not permitted to construct a copy of the installation, in whole or in part, that has been realised on the basis of EI's design, without EI's explicit written permission and without prejudice to the provisions in paragraphs 5 and 6. EI is authorised to attach conditions to this permission, including the payment of a fee. The provisions in this paragraph also apply to goods manufactured on the basis of EI's design.
4. The Client is only authorised to have the installation realised on the basis of the EI's design by a third party, without EI's intervention and approval, if the Contract has been terminated on account of a shortcoming which can be attributed to EI. In this case, EI shall not be liable for defects insofar as these can be traced back to the installation by or on behalf of the Client.
5. The Client's right of use concerning the software developed and provided by EI is non-exclusive. The Client may only use this software in his own company or organisation and only for the technical installation for which the right of use has been granted. The right of use may concern several installations, insofar as that has been set out in the Contract.
6. The right of use is not transferable. The Client is not permitted to provide the software and the carriers on which it is recorded to a third party or to let it be used by a third party in whatever manner. The Client is not permitted to reproduce or copy the software. The Client will not change the software, other than for the purpose of fixing errors. The source code of the software and the technical information produced in its development will not be provided to the Client, unless agreed otherwise.
7. EI is entitled to apply for a patent for inventions that have been created during and through execution of the Contract, in its own name and at its own expense.

8. If EI obtains a patent as referred to in paragraph 7, EI will grant the Client free right of use to the invention that is non-transferable in principle. In the actual application of that right of use, the Client will request permission from EI, which permission can only be refused if EI can demonstrate a conflict of interests with its operations.

#### **Article 18 Applicable law and disputes**

1. The Contract and all contracts ensuing from it shall be governed by Dutch law.
2. Disputes between Parties shall be settled by the (usual) legal competent court in the district where EI's business address is located.
3. With regard to the Contract, the Client is obliged to elect domicile in the Netherlands, insofar as he is not already established in the Netherlands.

#### **B. SPECIAL CONDITIONS REGARDING MAINTENANCE**

The conditions in this 'Maintenance' section are applicable, alongside the general provisions of these GC, if the Contract sets out that EI will realise maintenance work during the maintenance period.

#### **Article 19 Scope and definitions**

1. Unless agreed otherwise, Maintenance Work will only be carried out on installations erected in the Netherlands.
2. In this section the following capitalised terms shall have the meaning as indicated below:
  - a) Maintenance Work: all activities, including delivery of goods, which EI must carry out in order to ensure that the technical condition of the installation and the functions to be fulfilled by the installation meet the requirements arising from the Contract during the maintenance period.
  - b) Malfunction: a sudden, unexpected disruption in the performance of the installation.

#### **Article 20 Execution of the Activities**

1. During the maintenance period EI will make every effort to keep the risk of Malfunctions occurring at an acceptable level through preventive Maintenance Work and, insofar as agreed, to counteract Malfunctions through corrective Maintenance Work.
2. EI is authorised to carry out the Maintenance Work remotely, by means of a link to the installation established through a telecommunication device.
3. After drawing up the Contract, but before the Activities commence, EI will make a work plan with a schematic overview of the Maintenance Work, and the order and period of time (weekly, monthly, annual schedule) in which it will be carried out.
4. The work plan is based on the Client's description of the malfunction behaviour of the installation, all tasks, frequency of execution, materials, tools and any necessary skills, all for the execution of the preventive Maintenance Work and for controlling the corrective Maintenance Work.
5. The work plan will come into effect following approval by the Client. If the work plan fits the description given in paragraph 4, the Client cannot withhold his approval of the work plan.
6. EI will adjust the work plan annually and, on the basis of this, will make an estimate of all the maintenance costs for the year concerned. The work plan can only be adjusted in the interim through an amendment by virtue of Article 13.
7. If agreed, the work plan will include the date of commencement and completion of foreseen and intended assignments for the execution of preventive and/or corrective Maintenance Work and/or other activities.
8. The assignments referred to in paragraph 7 will be issued in writing by the Client, on the basis of the work plan, at least 1 month in advance. Assignments not included in the work plan will be issued in writing at least 2 months in advance. Prior to an assignment being issued, EI will have issued a price for it.
9. In the case of corrective Maintenance Work, the Client must issue a written assignment in advance. If circumstances prevent this, the assignment must be issued in arrears on the basis of the costs actually incurred by EI.
10. On completion of the Maintenance Work, EI will request the Client to sign the assignment for completion. After signing, the Maintenance Work is considered as completed.
11. If explicitly agreed, EI will ensure that one copy of the technical information is present at the site or the location where the Maintenance Work is carried out, and that these documents can be consulted at any reasonable time and that these include the 'As Built' situation of the Maintenance Work carried out for a payment set out in the Contract.
12. If required for the performance, operational reliability and maintainability of the installation, or if prescribed in the regulations referred to in Article 3(6), EI will inform the Client about the measures to be taken. The Client can issue a separate assignment to EI for the necessary structural changes or for other (project-based) activities, through an amendment by virtue of Article 13.
13. EI will inform the Client in advance of the point in time the Maintenance Work will be carried out. If the Maintenance Work is not carried out at the agreed time and EI cannot be held responsible for this, EI is entitled to an extension of deadlines and/or reimbursement of cost by virtue of Article 12.
14. If explicitly agreed, EI will ensure that Malfunctions can be reported to a dedicated help desk 24 hours a day and seven days a week.
15. Without prejudice to the provision in paragraph 9, EI will make every effort to counteract any urgent Malfunctions by order of the Client within 24 hours of it being reported, unless another deadline has been agreed. Other Malfunctions will be repaired, where possible, within EI's normal working hours.
16. EI will carry out the Maintenance Work during the maintenance period set out in the Contract or, where this has not been set out, for a period of one year.
17. Each time, the maintenance period will be tacitly extended for the original period, unless one of the parties terminates the Contract in writing, with due observance of a notice period of three months before the end of the relevant period.
18. The Maintenance Work carried out by EI is settled in accordance with the rates or unit prices set out in the Contract or as a fixed price that is indexed annually in accordance with the Dutch Installation Technology Price Increases Sharing Agreement (Risicoregeling Installatietechniek), unless agreed otherwise.
19. Payment of the fees will take place within 30 days of the date of the relevant invoice.