



Consultancy and engineering firms



## **GENERAL TERMS AND CONDITIONS**

**Consultancy and engineering bureaus and  
Consulting engineers**



**KONINKLIJKE VLAAMSE  
INGENIEURSVERENIGING**

## FOREWORD

ORI (the Belgian Organisation of Consulting engineers, Consultancy and engineering bureaus), the umbrella organisation, FABI (Royal Federation of Belgian Associations of Civil Engineers and Agricultural Engineers and Bioengineers) and KVIV (Royal Flemish Society of Engineers), engineers' associations, took the initiative in 2008 to cooperate with the objective of producing a common document comprising the general terms and conditions regarding the performance of consultancy and engineering bureaus and consulting engineers.

By respecting the contractual freedom of all parties, the general terms and conditions contain a balanced description of the rights and obligations of the parties involved.

Members may refer to these general terms and conditions in contractual relations with their clients; the aforementioned provisions can be consulted and may be downloaded from the ORI, FABI and KVIV websites.

A subsequent step in the cooperation is the development of common documents addressing the typical content of the various assignments and associated tasks associated with them.

# 1. DEFINITIONS

<b>Contractor:</b>	any natural or legal entity charged with the material execution of the project.
<b>Acceptance:</b>	any acceptance, either verbally or in writing, by the principal within the period of validity of the offer, possibly following negotiations concerning and/or amendments to the offer.
<b>Consultancy and engineering bureau:</b>	a natural or legal entity whose commercial activity comprises a complex of intellectual performances with the objective of optimising the project in all its forms and options, its design, its technical realisation and its management.
<b>General terms and conditions:</b>	the present conditions.
<b>Registered mail:</b>	a letter entrusted to the postal service after having been recorded by said service. In the event that registered mail is prescribed, this shall not only concern a need for proof but also proof of validity. If this criteria is not fulfilled, the transaction carried out shall be null and void as if it had never been delivered. If a piece of registered mail was provided for the calculation of the terms, only the postal date of the proof of issue of the registered item shall apply. A piece of registered mail is deemed to have been received by the addressee no later than on the third working day after the postal date of the dispatch of the registered item.
<b>Special conditions:</b>	conditions involving differences from or additions to the general terms and conditions and to which parties agree in the contract for the assignment in question.
<b>Contract:</b>	the agreement between the principal and the consultancy and engineering bureau in which the study and services of the latter are described along with the conditions associated with the execution of the assignment. In the absence of a separate document, the price request, general terms and conditions, offer and acceptance together with the contract.
<b>Days, weeks and months:</b>	all terms shall be calculated in calendar days.
<b>Fee:</b>	the remuneration agreed between the consultancy and engineering bureau with the principal for the provision of the agreed performance.
<b>Period of validity of offer:</b>	period during which the consultancy and engineering bureau is bound to the offer it has submitted to the principal, without it being possible to make any changes and/or additions.
<b>Index:</b>	the index of conventional salaries as announced at quarterly intervals by the Federal Public Service Employment, Labour and Social Dialogue ( <i>Federale overheidsdienst Werkgelegenheid, Arbeid en Sociaal overleg</i> ) <sup>1</sup> .
<b>Information:</b>	all pieces of information, plans and data relating to the assignment made available by the principal to the consultancy and engineering bureau, as well as all pieces of information, plans and data that a normal careful principal would make available to the consultancy and engineering bureau under similar circumstances.
<b>Cost price of the work:</b>	<p>the total investment cost that the principal must pay for the realisation of the project. This cost comprises the value of the manual labour, the materials and the equipment, the general costs and the contractor's profit, to the exclusion of:</p> <ul style="list-style-type: none"><li>• the procurement costs of the land;</li><li>• any remediation and refuse removal costs, unless they formed part of the study;</li><li>• the fee of the consultancy and engineering bureau and other potential parties involved that provide a service;</li><li>• the finance and insurance costs;</li><li>• the VAT.</li></ul> <p>If the assignment relates only to part of the project, the principal may not divide the cost price of the work and may not exclusively allocate certain costs to other parts of the project.</p>
<b>Tender:</b>	accurate and sufficiently detailed description of the project on the basis of which the contractor or supplier may draw up an offer. The tender comprises three sections: an administrative sections, a technical section and a tender form, with the possible addition of a takeoff list setting out the detailed price structure.

---

<sup>1</sup> index is published on [www.werk.belgie.be](http://www.werk.belgie.be) (Statistics/ Index of conventional salaries: development of the general index figure and conversion coefficients).

<b>Lots:</b>	various components in which the assignment of a consultancy and engineering bureau is divided and for which a separate tender must be drawn up for the appointment of a contractor for the execution of a certain piece of work. The consultancy and engineering bureau charged with carrying out the work of that studied by the bureau then takes the coordination tasks for the execution of these various contracts (lots).
<b>Offer:</b>	a document from the consultancy and engineering bureau containing a response to the request for quotation from the principal together with a calculation of the price for the requested services and possibly special conditions.
<b>Assignment:</b>	the complex of the agreed performance as determined in the contract between the parties.
<b>Principal:</b>	the party, which grants the assignment to the consultancy and engineering bureau to execute studies and services within the context of a contract concluded between it and the consultancy and engineering bureau.
<b>Force majeure:</b>	any unforeseen event that renders the execution of part or all of the contract (temporarily) impossible and which cannot be attributed to the party claiming said force majeure.
<b>Request for quotation:</b>	any request made by the principal, either verbally or in writing, containing the description of the requested services and/or the request to submit an offer.
<b>Project:</b>	the construction or object for which the consultancy and engineering bureau carried out the assignment.
<b>Damage:</b>	any loss suffered by a party with the exclusion of loss of use, loss of profit, loss of income or loss of interests, loss of product or any other indirect damage or consequential loss.
<b>Confidential information:</b>	data concerning the operation, composition etc. of parties or concerning the study assignment or the object thereof insofar as this information is not generally or publicly known.
<b>Full assignment:</b>	assignment in which the consultancy and engineering bureau is charged with both the design and follow-up of the work.
<b>Guarantee period:</b>	the period between the preliminary and definitive delivery useful for the execution and any trials and tests provided for by the contract, the control of installations and the establishment of potential hidden defects.

## 2. THE CONTRACTUAL DOCUMENTS

### 2.1 Entry into validity or force of the contract

The contract enters into validity or force:

- ◆ *either by the signing of the contract between the parties;*
- ◆ *or the acceptance by the principal of the offer of the consultancy and engineering bureau.*

If the offer was accepted verbally, as the contract between the parties has not yet been signed or accepted, and the consultancy and engineering bureau has already commenced execution of the assignment at the request of the principal, the contract is deemed to have been realised under the application of the present general terms and conditions.

### 2.2 Hierarchy of standards and documents

The following hierarchy of standards and documents applies in the relationship between the principal and the consultancy and engineering bureau:

- ◆ *the imperative legislation;*
- ◆ *the special conditions as included in the contract and insofar as they are not in conflict with the imperative legislation;*
- ◆ *the special conditions as evidenced from the acceptance and insofar as they are not in conflict with the imperative legislation or the contract;*
- ◆ *the special conditions as included in the offer and insofar as they are not in conflict with the imperative legislation, the contract or the acceptance;*
- ◆ *the special conditions as included in the request for quotation and insofar as they are not in conflict with the imperative legislation, the contract, the acceptance or the offer;*
- ◆ *the present general terms and conditions insofar as they are not in conflict with the imperative legislation, the contract, acceptance, the offer of the request for quotation;*
- ◆ *the general terms and conditions of the principal insofar as they are not in conflict with the imperative legislation, the contract, acceptance, the offer, the request for quotation or the present general terms and conditions;*
- ◆ *the supplementary legislation, insofar as the contract, acceptance, the offer, the request for quotation, the present general terms and conditions or the general terms and conditions of the principal do not depart from this.*

### 2.3 Period of validity of the offer

Except for different provisions in the request for quotation or in the offer, the period of validity of the offer is 60 days, commencing on the day after the meeting to open the offer or the date as indicated in the request for quotation for submission of the offer. If no meeting is held or if there is no indication in the request for quotation, the term commences on the day after the offer is submitted.

### 2.4 Language

All documents including all the texts, captions, etc. shall be drawn up in the language or one of the languages of the region in which the project is to be executed. Official papers and documents from third parties (e.g. technical sheets) shall be submitted in the language in which they were drawn up. Any translation request must be made expressly and associated costs shall be for the account of the principal.

## 3. RIGHTS AND OBLIGATIONS OF THE CONSULTANCY AND ENGINEERING BUREAU

### 3.1 Scope of the services

The services shall exclusively comprise the performance<sup>2</sup> as determined in the contract and, as the case may be, amendments and addenda subsequently expressly agreed between parties.

### 3.2 Nature of the services

The assignment of the consultancy and engineering bureau involves the obligation to perform to the best of one's ability (obligation to employ one's best efforts). By accepting the assignment, the consultancy and engineering bureau undertakes to carry out the assignment to the best of its ability and insights and to endeavour to achieve a result that is usable for the principal. These obligations of the consultancy and engineering bureau can neither be considered a duty to achieve a given result nor a guarantee. The services are of a technical nature. The consultancy and engineering bureau is neither the principal's legal advisor nor the legal representative of the principal at the site.

### 3.3 Independence

The fee received from the principal by the consultancy and engineering bureau shall be the sole remuneration for the provision of the agreed performance. The consultancy and engineering bureau shall avoid everything that may jeopardise its independence. It is independent of contractors, suppliers or other service providers involved in the project. The consultancy and engineering bureau shall notify the principal immediately should any conflict of interest emerge.

### 3.4 Available funds

The consultancy and engineering bureau shall deploy sufficient resources so that the assignment is carried out in the appropriate manner, in accordance with the conditions and any terms agreed between the parties.

While the contract has not materialised, the consultancy and engineering bureau retains the right to deploy the (personnel) capacity referred to in its offer on other projects or principals.

### 3.5 Documents

If not specified in the contract, the consultancy and engineering bureau shall provide the principal with documents (plans, drawings, statements, reports etc.) in the following numbers:

- ◆ 5 copies of the tender file
- ◆ 3 copies of the other documents
- ◆ digital: one version in PDF format

The documents required to compile the file for licence applications or other permits to public or semi-public authorities (urban development licence, environmental licence, etc.) are submitted in the number of copies required for such licence applications or permits, plus one copy for the principal.

### 3.6 Standards

The consultancy and engineering bureau shall carry out its performance in accordance with the standards published by the Belgian Standards Bureau (*Bureau voor Normalisatie*) as they are in force when the contract is concluded.

## 4. TERMS

### 4.1 Commencement of performance

The consultancy and engineering bureau shall commence its performance within fifteen (15) days after the contract enters into force.

### 4.2 Deadlines

The execution deadlines or other deadlines provided for in the offer shall only be stipulated approximately and may, unless agreed otherwise, not prompt the payment of compensation or termination of the contract.

---

<sup>2</sup> See also the brochure titled "Omvang van diensten" (*Scope of services*) published by ORI.

#### **4.3 Penalties**

If parties agree to the strict observance of the deadlines and attach penalties to the late delivery of performance by the consultancy and engineering bureau, the total of said contractually provided penalties shall be limited to 5 per cent of the agreed fee for the assignment in question.

#### **4.4 End of the performance**

The services shall be deemed to have ended on the approval by the principal of the final performance provided for by the contract.

If the services also involve follow-up of the execution of the work, the services shall be deemed to have ended when one of the following first occurs:

- ◆ the end of the studied works;
- ◆ the date provided for in the tender for the termination of the execution of the works;
- ◆ the preliminary delivery of the studied works.

#### **4.5 Guarantee period**

Except for the follow-up of performance by the contractor expressly provided for in the tender during the guarantee period and for postponed works, the performance of the consultancy and engineering bureau shall be provided on a call-off basis for the principal during the guarantee period, and shall be reimbursed on the basis of hourly rates in accordance with the time spent. If no hourly rates have been provided for in the special conditions, parties shall agree on them on the commencement of the performance.

Such remuneration shall not be payable if it is established that this performance is exclusively the consequence of errors or mistakes in the study by the consultancy and engineering bureau.

## **5. RIGHTS AND OBLIGATIONS OF THE PRINCIPAL**

#### **5.1 Information**

Prior to the execution of the assignment, the principal shall provide the consultancy and engineering bureau with all the information necessary for the correct execution of the assignment and/or to facilitate this.

The consultancy and engineering bureau assumes that the information provided by the principal is complete, correct and reliable, even if the principal has made this information available from or via third parties. The principal is the sole party responsible for the accuracy, completeness and reliability of the information, even if the consultancy and engineering bureau has checked this information.

All costs that are the consequence of late, faulty or incomplete information on the part of the principal, including any compensation or other reimbursements that the consultancy and engineering bureau is required to pay, shall always be for the account of the principal, which shall indemnify the consultancy and engineering bureau for this in full.

Any specific internal technical company standards and project procedures of the principal shall only be applicable to the extent that they were made available to the consultancy and engineering bureau prior to realisation of the contract and do not imply any unacceptable complication of the agreed performance.

#### **5.2 Approval of the performance**

Except for the written rejection with legitimate justification of said rejection within fifteen (15) days, the principal is deemed to have accepted the performance. The aforementioned fifteen (15) days is calculated from the receipt of the documents of the study or parts thereof.

If the principal gives reasons for its rejection of the study or parts thereof, the consultancy and engineering bureau shall, to the extent that the rejection is based on reasonable grounds, make the improvements and/or additions considered necessary by the principal and shall resubmit them for approval. These adjustments shall not imply any supplementary fee.

In the case of an unfounded, wrongful or repeated rejection of the study, the consultancy and engineering bureau shall have the following options:

- ◆ *establish that the (repeated) rejection was not made on reasonable grounds, stand by the study and proceed to execute the next phase of the study;*
- ◆ *establish that the rejection was not made on reasonable grounds, stand by the study, and consider the study assignment as having been terminated in accordance with the relevant Article 11.*

When the fifteen (15) days for the principal's formulation of objections have lapsed or as soon as the consultancy and engineering bureau establishes that the rejection of the study was not made on reasonable grounds and

therefore stands by its study, the consultancy and engineering bureau is authorised to submit an invoice for the corresponding portion of its fee.

Adjustments to the study or to parts/phases thereof following approval of the aforementioned study or parts/phases, or performance which, for whatever reason, must still be provided following approval of the study or of parts/phases thereof, shall be considered as an amendment to performance already carried out and, in accordance with the present general terms and conditions, shall constitute the right to an additional remuneration and extension of the deadline.

## **6. LIABILITY**

### **6.1 General**

The consultancy and engineering bureau bears full responsibility for the quality of the services to be performed by the bureau and is liable for mistakes, negligence or errors made by the bureau. Within limits as determined in the contract and legislation of a compelling nature, the bureau shall reimburse the damage caused to the principal or third parties as the result of its mistakes, negligence or error.

The principal shall in no case be entitled to other compensation than provided for by the contract.

### **6.2 Time limitation**

The consultancy and engineering bureau shall remunerate the principal for and indemnify it against all damage attributable to careless and/or incorrect provision of its performance, after it has been declared to be in default and warned by the principal by registered mail to resolve the default within a reasonable deadline or to reimburse the principal for the damage incurred.

The principal shall be required to serve written notice of default within the following deadlines:

- ◆ for errors and shortcomings that are established when documents are submitted for approval, within fifteen (15) days after submission of such documents;
- ◆ for errors and shortcomings that could not be established when documents were submitted for approval, within the shortest of the following deadlines:
  - (i) fifteen (15) day after establishing the error or shortcomings or after the principal could have reasonably established them;
  - (ii) six (6) months after the end of the performance or the end of the contract.

### **6.3 Maximum remuneration**

After the principal has served notice of default on the consultancy and engineering bureau, the bureau will:

- ◆ supplement, adjust or provide again services that have been established as being in default, to make them correspond to the contractually agreed criteria, standards of good craftsmanship and/or according to the rules without the costs incurred for this by the consultancy and engineering bureau would be able to exceed the originally agreed fee for this performance; or
- ◆ pay for the damage caused directly by the faulty services. The remuneration for the damage incurred in this way shall comprise solely the additional costs that the principal must bear and this shall never include the costs that may be included in the building costs, purchase sum or development costs of the work if the assignment had been carried out correctly from the beginning.

The total maximum contribution of the consultancy and engineering bureau as a consequence of the careless and/or incorrect provision of its performance is determined according to previous paragraphs and shall be limited to the amount of the total fee, as agreed in the contract and any changes and/or supplements at a later date.

### **6.4 Ten-year liability**

Pursuant to Articles 1792 and 2270 of the Belgian Civil Code, the consultancy and engineering bureau shall remain liable for ten-years (from the preliminary transfer of the work) for defaults that jeopardise the stability of the (construction) work for which it carried out the study and which are the consequence of gross carelessness of the consultancy and engineering bureau. Only to the extent that its ten-year liability is established, shall it provide remuneration for the corresponding damage.

After the period of 10 years, as provided for by this legislation has lapsed, any demand in respect of liability vis-à-vis the consultancy and engineering bureau shall have lapsed.

## **7. INSURANCE**

### **7.1 Insurance of the consultancy and engineering bureau**

The consultancy and engineering bureau has taken out the following insurance policies:

### 7.1.1 Statutory insurance

Insurance policies that are required under Belgian law, in particular:

- ◆ *an insurance policy for "Industrial Accidents" (Arbeldsongevallen) in accordance with Belgian legislation to cover accidents in the workplace and accidents on the roads leading to and from the work of its personnel.*
- ◆ *an insurance policy for "Third-party liability - vehicles" (Burgerlijke Aansprakelijkheid Auto) to cover all registered vehicles that are admitted to the principal's premises.*

### 7.1.2 Civil liability for a commercial enterprise/professional liability

An insurance policy for "Civil liability for a commercial enterprise/professional liability" (*Burgerlijke Aansprakelijkheid Uitbating/professionele aansprakelijkheid*) that insures against the financial consequences of the contractual liability of the consultancy and engineering bureau, as well as the extra-contractual liability that is the consequence of the contractual liability. The minimum coverage per damage amounts to:

- EUR 1,000,000 for damage deriving from physical injury;
- EUR 500,000 for all the material and immaterial damage;
- EUR 10,000 for the items entrusted to the consultancy and engineering bureau.

## 7.2 Attestations

At the request of the principal, the consultancy and engineering bureau shall submit an insurance certificate of the aforementioned insurance policy within fifteen days.

## 7.3 Insurance of the principal

The principal can take out insurance in respect of the building project in the form of a All Construction Site (*Alle Bouwplaatsrisico's*, ABR) insurance. The consultancy and engineering bureau shall be included as an insured party in such an insurance.

The principal may also take out audit insurance.

Before the commencement of the building work, the principal must do everything in its power to ensure that adequate levels of insurance have been put in place for the risks of fire and associated hazards, explosions, storm, hail, pressure of snow and ice, water damage, broken glass, etc., as well as natural disasters.

The principal notifies the consultancy and engineering bureau of its intention to take out such insurance and/or to impose this obligation on the contractor in the tender.

The costs associated with this insurance shall be for the account of the principal.

# 8. FINANCIAL PROVISIONS

## 8.1 Fee

### 8.1.1 General

The remuneration for the performance of the consultancy and engineering bureau can be calculate in various ways, depending on the nature and conditions of the assignment or the accuracy with which the assignment or part therefore can be described, ...

The agreed fee is exclusive of VAT and other levies that (may) be imposed by the government. It is exclusive of reimbursed costs determined in the following.

If after the realisation of the contract and before the assignment is entirely complete, the market conditions change or the execution deadline of the assignment is extended through the principal or third parties, as the result of which the cost-effectiveness of the assignment is jeopardised, the previously agreed fee or rate shall be revised at the request of the consultancy and engineering bureau.

If at the request of the principal the project realisation is divided into various undertakings (lots) or non-consecutive phases, each of which constitute the object of a tender (tender file), the remuneration must be increased as follows:

- if there are more than 3 different undertakings (lots), the fee calculated in this way will be increased by 2% for each additional tender;
- in the case of a phased execution, the calculated fee is increased by 10%.

### 8.1.2 Remuneration on the basis of a percentage

Under this method, the fee or part thereof is calculated according to a percentage of the cost price of the work, either on the basis of the definitive total cost price for the realisation of the project or on the basis of the estimated cost price in the event of the non-execution of the studied work.

### 8.1.3 Remuneration according to time spent

Under this method, the remuneration for the performance is determined on the basis of the time spent according to the following formula:

$$P = \Sigma (N \times T)$$

where:

*P* = the remuneration to which the consultancy and engineering bureau is entitled

*T* = the hourly rate for a particular position or job category

*N* = the number of hours during which the service provider acted in the fulfilment of the assignment

The time spent comprises, in addition to the time needed for the execution of the actual assignment:

- ◆ the time needed for the preparatory work;
- ◆ the time needed for travel, movements from the office of the service provider to the location where the assignment is being executed and vice versa;
- ◆ the time needed for compiling reports and documents with regard to the assignment;
- ◆ the time needed to take part in meetings associated with the assignment.

If certain performances are to be carried out outside office hours, the consultancy and engineering bureau is entitled to adjust its rates by the usual increases.

### 8.1.4 Lump-sum remuneration

The lump-sum fee comprises all foreseen performances. It may only be used if the nature of the assignment and/or the precise description in the request for quotation enables the consultancy and engineering bureau to estimate the scope of the performance with the requisite level of accuracy and to establish the correct estimation of the fee for this.

The lump-sum fee does not comprise the reimbursement of the costs indicated below.

## 8.2 Reimbursed costs

Reimbursed costs are directly linked to the execution of the assignment and are not included in the fee. They are calculated at cost price, possibly increased by a percentage for the coordination and responsibility of the assignment.<sup>3</sup>

The following non-exhaustive list of costs are considered as reimbursed costs:

- ◆ travel and residential costs abroad, approved by the principal, including costs for visas, transport, accommodation and meals;
- ◆ postal and transport costs outside the European Union;
- ◆ post and transport costs for express parcels and/or large packages;
- ◆ translation costs;
- ◆ reprographic and other copying costs not expressly anticipated in the contract;
- ◆ costs for publications and announcement of assignments;
- ◆ studies and performance that the consultancy and engineering bureau entrusts to third parties with the prior of the principal, such as:
  - topographic measurements;
  - soil mechanical investigations;
  - laboratory tests;
  - creation of models;
  - acoustic studies.

## 8.3 Revision of the fee and the costs

Except for other revision formulas in the contract, the consultancy and engineering bureau's fee will be revised in accordance with the following conditions:

### 8.3.1 Remuneration on the basis of percentage

If the cost price of the work that serves as the basis for calculating the fee does not contain the price revision of the work and insofar as the period between the signing of the contract and the invoicing exceeds 3 months, the fee of the consultancy and engineering bureau shall be revised in accordance with the following formula:

$$R = 0.2 + 0.8 \times sm/So$$

where:

*R* = the revision coefficient to be applied to the base amount of the invoiced fee bracket.

---

<sup>3</sup> (see also ORI's brochure titled 'Omvang van de diensten' (Scope of the services))

*sm* = general index for employees' salaries (index is published on [www.werk.belgie.be](http://www.werk.belgie.be) (statistics) that corresponds to the month of the invoice.

*So* = same index of employees' salaries that corresponds to the month prior to the date of the contract.

If the cost price of the work which serves as the basis for calculating the fee does contain the price revision of the work, it is assumed that no additional revision of the fee should be applied.

#### 8.3.2 Remuneration according to time spent

Any hourly and/or other rates provided for in the special conditions shall apply in the calendar year in which the contract was concluded and are revised each year in January on the basis of the revision formula as determined in the previous point,

where:

*sm* = general index for employees' salaries ([www.werk.belgie.be](http://www.werk.belgie.be) (statistics)) that correspond to the month of December prior to the invoice date.

*So* = same index of employees' salaries that corresponds to the month of December of the year prior to the realisation of the contract.

#### 8.3.3 Lump-sum remuneration

The lump-sum fee or the lump-sum part thereof is fixed and unalterable during the period of validity of the offer and the first three months of the assignment insofar as the assignment is allocated within the period of validity of the offer. Subsequently, this lump-sum fee is revised in accordance with the formula determined above,

where:

*sm* = general index for employees' salaries ([www.werk.belgie.be](http://www.werk.belgie.be) (statistics)) that corresponds to the date of the invoice.

*So* = same index of employees' salaries that corresponds to the month prior to the realisation of the contract.

### 8.4 Terms of payment

#### 8.4.1 Invoicing

If the contract provides for different invoicing methods, the fee will be invoiced in a separate document on the basis of the separate components of the study. If several months are required for these separate components of the study or for the follow-up to its execution, the fee will be invoiced in monthly tranches in proportion to the deadline for the execution of these study components.

Reimbursed costs may be invoiced on a monthly basis.

#### 8.4.2 Payment

If the contract provides for the submission of a claim for payment prior to invoicing, the term of payment shall be 50 days counting immediately from the submission of the claim for payment. The principal must formulate its comments regarding the claim for payment in writing within 20 days after the submission of the claim for payment. If no comments were formulated within this term, the consultancy and engineering bureau is authorised to submit the corresponding invoice to the principal for payment.

Invoices remain payable within 30 days of the invoice date.

If no payment is effected on the due date, interest arrears shall be payable in respect of the outstanding amounts *ipso jure* and without prior notice of default or any requirements, which arrears shall be equal to the statutory rate of interest pursuant to the Belgian Control of Payment Arrears Act (*Wet op de bestrijding van betalingsachterstand*) of 2002, from the due date until the moment that full payment is made.

In addition, all collection charges, both judicial and extrajudicial, shall be for the account of the principal. The extrajudicial collection charges shall be fixed at 10% of the sum total.

In the event of an assignment granted collectively, the principal shall be severally bound to pay the full amount of the invoice.

### 8.5 Currency

Unless expressly agreed otherwise, payments shall be made exclusively in Euros.

### 8.6 Security

The principal may demand a security as a guarantee for the correct execution of the study. This security may be no more than 5% of the total fee for the assignment in question.

## 9. AMENDMENT, SUSPENSION OF THE ASSIGNMENT

### 9.1 Suspension

The principal is entitled to suspend execution of part or all of the assignment by means of registered mail to the consultancy and engineering bureau.

If the principal asks the consultancy and engineering bureau in writing to resume the assignment after more than 120 days, the consultancy and engineering bureau has the option:

- ◆ *to resume the assignment;*
- ◆ *to refuse resumption and consider the (sub)assignment as having ended, without being required to give any reason for this and without being required to pay any compensation to the principal.*

If the consultancy and engineering bureau opts to resume the assignment, the principal shall be required to pay fixed compensation of 5% of the agreed total fee in remuneration of the organisational efforts the suspension has cost the consultancy and engineering bureau.

In addition to this fixed rate of compensation, the consultancy and engineering bureau is entitled to the revision of its fees on the basis of the current market prices and interim index adjustments of employees' salaries.

Any necessary adjustments to a submitted and approved study are parts thereof shall be additional performance. They shall be considered as an amendment to already executed performance and therefore constitute an entitlement to an additional remuneration and extension of the deadline.

If parties fail to agree on the revision of the fees or the consultancy and engineering bureau refuses to resume the assignment, the assignment shall be considered to have ended in accordance with the relevant article below.

### 9.2 Amendments

The principal is entitled to make changes to the assignment of the project, to impose additional work and/or demand a revision of the work already carried out.

The consultancy and engineering bureau shall study every request from the principal for changes, additional work or revision. A cost estimate of the performance and its influence on the agreed execution deadlines shall be notified to the principal within reasonable terms.

If the requested amended and/or the expansion of the assignment is not executed, the work carried out for determining the cost estimate for the performance and the estimate of the influence of the requested change and/or expansion on the timetable shall be reimbursed.

All performances that for whatever reason are the consequence of amendments and/or expansions of the assignment or the project - including the drawing up of additional or amended plans and documents - must be remunerated by the principal.

Performances as the consequence of the contractor being in default, in whatever way, shall be considered as additional work and also constitute a right to remuneration on the basis of time spent. For example, the performances to be provided by the consultancy and engineering bureau in the event of the bankruptcy of the contractor or associated with the principal's taking of official measures, including any retendering.

The consultancy and engineering bureau is entitled to reject any amendment to the assignment that is unreasonable or unfair or which involve performances or responsibilities that are professionally unacceptable.

The consultancy and engineering bureau is entitled to make limited changes to the project that are necessary or useful during the study or the execution of the work but which have no essential influence on the cost price of the work. Changes affecting the price by more than 10% are considered as substantial changes and shall always require the prior consent of the principal.

## 10. FORCE MAJEURE

The party invoking force majeure must notify the other party of this immediately in writing, unless force majeure itself makes this impossible. Such notification shall contain a brief description of the force majeure and an estimate of the anticipated delay.

If the condition of force majeure subsides, the party in question will again notify the other party in question to that end.

If a condition of force majeure persists during a period of more than 120 calendar days following written notification, both parties are entitled to terminate the contract. The termination of the contract by one party shall be effected by means of a written notification to the other party. The effective final date of the contract is

14 days after the receipt of this written notification, assuming the condition of force majeure still exists at that time.

## 11. PREMATURE TERMINATION

### 11.1 Article 1794 of the Belgian Civil Code

Pursuant to Article 1794 of the Civil Code, the principal may terminate the contract at any time. Such termination must be effected by registered mail. Further to Article 1794 of the Civil Code, it is agreed that the remuneration for the foregone fee shall be fixed at 30% of the lost portion of the fee.

### 11.2 Termination in the event of default

Parties are entitled to consider the assignment as dissolved if one of the parties fails to observe one of the provisions of the contract, provided observance of the following conditions:

- ◆ the party that establishes that the other party is not observing certain undertakings, is required to notify the other party of this by registered mail. This registered mail must indicate the provisions of the contract that are not being observed;
- ◆ within 15 days of receiving this registered mail, the other party must rectify the determined breach, or demonstrate force majeure as the case may be, and must notify the party that has determined the breach by means of registered mail.

If the party responsible for the breach:

- fails to respond in due time,
- or if it is determined that the alleged resolution of the breach does not correspond to reality,
- or the alleged force majeure situation is actually not force majeure,

the party that has identified the breach is authorised to terminate the contract with immediate effect. This must be confirmed by registered mail.

If the contract is terminated by a breach on the part of the principal, it must remunerate the consultancy and engineering bureau for all damage incurred including the foregone fee. As a component of the damage, the foregone fee is determined as a component of the damage at a fixed amount of 30% of the foregone portion of the fee on account of the termination.

### 11.3 Incapacity - bankruptcy

If the principal during the execution of the assignment should become insolvent or be placed in a state of bankruptcy, the contract, including any current subassignments, may be dissolved by the consultancy and engineering bureau *ipso jure* and without notice of default, without prejudice to the right of this party to demand compensation. The consultancy and engineering bureau shall notify the principal of the establishment of the termination of the contract by registered mail.

## 12. INTELLECTUAL PROPERTY

The consultancy and engineering bureau retains all the intellectual property rights with respect to all the intellectual performances it carries out, or the fruits thereof, even if they were developed within the context of the of the execution of the assignment or on behalf of the principal.

The principal shall refrain from reproducing, publishing or exploiting products such as computer programs, accounting notes, methods, recommendations, (model) contracts and other pieces of intellectual property of the consultancy and engineering bureau, with or without calling on the services of third parties.

The principal gains ownership of the results of the study and the documents for which the fee was paid. It is authorised to reproduce these documents for use within its own organisation, insofar it fits within the aims of the assignment or the project.

The above is also applicable for the premature termination of the contract, for whatever reason.

The consultancy and engineering bureau has the consent of the principal to use the assignment or the project as a (project) reference, to use drawings, photos and other illustration material as reference material, provided the name of the principal is mentioned.

Divulging the main points of the work carried out to (potential) clients of the consultancy and engineering bureau is not considered as an infringement of the duty of confidentiality.

Provided it has obtained the prior consent of the principal, the consultancy and engineering bureau is entitled to publish descriptive articles with or without illustrations of the assignment. The principal may only withhold its consent in this regard on reasonable grounds.

## **13. MISCELLANEOUS PROVISIONS**

### **13.1 Confidentiality**

Unless any statutory provision, regulation or any other (professional) rule obliges them, both the consultancy and engineering bureau and the principal and the employees deployed by them are obliged to maintain confidentiality vis-à-vis third parties in respect of all confidential information they receive from each other.

Except for written consent of the party in question, neither party is authorised to use the confidential information they obtain for another purpose than for which it was obtained. The consultancy and engineering bureau is bound by a duty of professional confidentiality. It shall refrain from divulging information or technical secrets, the results of investigations, tests and research or which it has learned for the execution of its assignment, to third parties without the permission of the principal.

### **13.2 Transfer**

The principal is not permitted to transfer (any obligation from) the contract to third parties except for the aforementioned express agreement on account of the consultancy and engineering bureau.

The consultancy and engineering bureau is authorised to attach conditions to said permission.

In the case of full or partial transfer, the principal undertakes to impose all the relevant (payment and other) obligations from the contract to the third party/party taking over the contract. However, the principal as well as said third party/party taking over the contract shall at all times remain liable to observe the obligations deriving from the contract, unless parties explicitly agree otherwise.

### **13.3 Waiver of rights**

The failure to immediately enforce any right or any power by a party shall not affect or limit the rights and powers of said party. Waiver of right of any provision or stipulation of the contract shall only enter into effect if said waiver is made in writing.

### **13.4 Divisibility**

If an article of these general terms and conditions and/or the contract is declared to be null and void in whole or in part, this invalidity shall not affect the validity of the other provisions. If such an invalid article affects the very nature of the contract, each of the parties shall take efforts immediately and in good faith to negotiate a valid article to replace the article that is null and void.

### **13.5 Disputes package**

In the event of a conflict concerning the interpretation, execution of the contract or the provision of services, parties undertake to do everything in their power and not to refrain from doing anything to endeavour to achieve an amicable settlement of this conflict.

Every conflict concerning the validity, interpretation or execution of the contract and the associated agreement about which no amicable settlement can be reached between parties, shall be settled by the courts of law of the district where the project is located in Belgium.

If the project is located outside Belgium, the courts of law of the judicial district of Brussels shall be competent.

### **13.6 Applicable law**

Only the laws of the Kingdom of Belgium shall be applicable.

## **ORI VZW**

Kolonel Bourgstraat, 105 - 1030 BRUSSELS

Tel.: +32 (0)2/706.05.70 - Fax: +32 (0)2/706.05.79

e-mail: [info@ori.be](mailto:info@ori.be) - Web: [www.ori.be](http://www.ori.be)