

## General Terms and Conditions BRV Engineering

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### Article 1. Definitions

- Assignment: the acceptance by Client of the Quotation;
- Client: the natural or legal person commissioning the Project to Consultant to deliver the services and/or works or to whom Consultant makes an offer;
- Conditions: Consultant's General Terms and Conditions;
- Consultant: BRV Engineering, meaning the applicable entity of the BRV Engineering group, as referred to in the Quotation;
- Disclosing Party: the party supplying the confidential information;
- National Holiday: a national holiday in the country of Consultant;
- Party or Parties: Consultant and Client;
- Project: Project as stipulated in the Quotation and further queries following directly from the Work performed by Consultant on the Assignment;
- Quotation: formal offer of work by Consultant;
- Receiving Party: the party receiving the confidential information; and
- Work: commissioned work. Includes, but is not limited to designs, sketches, planning, input, and deliverables of Project as stipulated in the Quotation.

### Article 2. Applicability

2.1 These Conditions form part of all offers made by Consultant, all Projects assigned to Consultant, and all agreements concluded by Consultant with regard to Consultant providing services and/or executing Works and any commitments deriving from these agreements and pursuing (new) agreements between Consultant and Client built on that.

2.2 Insofar Parties have not expressly agreed otherwise by written agreement, these Conditions are fully and unconditionally effective between parties. Any reference by Client to its own or other Conditions, however named or during which stage of realisation of the agreement with Consultant this is done, is explicitly rejected.

2.3 Any derogation from these Conditions can only occur via a written agreement between Client and Consultant.

2.4 If any of these conditions are null or annulled, the other conditions will remain in full force and effect. In the event of a conflict between the conditions of the assignment agreed upon between the Client and Consultant and Conditions, the conditions in the written assignment will prevail.

2.5 In the event of contradictions between the Dutch text and translations of Conditions, the Dutch text will prevail.

### Article 3. Quotation

3.1 The Quotation shall be entirely without engagement and is valid during thirty (30) calendar days, unless explicitly agreed otherwise.

3.2 Consultant will base the Quotation on data, drawings and other information provided by the Client. Consultant may therefore assume their correctness and completeness.

### Article 4. Project

4.1 The Project starts upon the Assignment. The Project covers all that has been agreed upon between Client and Consultant. If no further written agreement exists, the Quotation will form the agreement.

4.2 Neither Party shall transfer or assign the Project to a third party without the other Party's written consent, which shall not be unreasonably withheld.

### Article 5. Price

5.1 The price of the Project will be calculated based on the number of hours worked multiplied by the hourly rate, unless explicitly agreed otherwise.

5.2 Costs for travel and accommodation are not included in the hourly rate and will be charged separately.

5.3 If Consultant purchases constructions, equipment and/or services of third parties upon request of Client, this will occur 10% cost-plus basis, unless specifically agreed otherwise.

5.4 All amounts mentioned by Consultant in the Quotation or elsewhere exclude any withholding taxes and/or sales tax owed. Any withholding taxes levied on Client or Consultant, shall be for the Client's account.

### Article 6. Adjusting and modifying the Project

6.1 In case changes are necessary to the Project, the Parties will discuss how to implement such changes including, if applicable, the price, planning, delivery, and conditions.

6.2 Examples of when the Project may be adjusted by the Parties include (without limitation):

- a. there are any changes to the basic principles that were determined at the foundation of the Project, or other circumstances occur that are related to the foundation of the Project;
- b. there are relevant changes in (government) regulations and/or decrees;
- c. there are relevant changes in the scope of work or planning of the Project;
- d. any changes required by the Client to Work or variations of Work that has already been approved or are part of a phase that has already been approved; and/or
- e. a requirement for additional Work during the execution of the Project becomes apparent.



## **Article 7. Delivery**

7.1 The delivery dates (regardless of how these are referred to) indicated by Consultants are never absolute, fatal, and/or definite mandatory delivery dates. Consultant therefore never owes any compensation for damage caused by exceeding the delivery date.

7.2 Consultant acknowledges Client's stake for timely delivery and will do its utmost best to meet the indicated delivery dates.

7.3 During the determination of the delivery dates Consultant assumes it is able to perform the Project under the circumstances known to it at that time. If there is additional Work, modifications, suspension, or circumstances other than known to Consultant at the time it determined the delivery dates, Consultant may, acting reasonably, extend the delivery dates with the time needed to complete the Project.

7.4 In the event of additional Work or suspension, the Work will be performed in all reasonableness when Consultant's planning allows for this.

## **Article 8. Obligations of Consultant**

8.1 Consultant shall act as a proper and diligent Consultant towards Client.

8.2 Consultant shall use reasonable endeavours to ensure that it has the required knowledge and skills to perform the Work. Consultant shall perform the Project properly and carefully, support Client independently and to provide its services to the best of its abilities and knowledge.

8.3 Consultant shall keep Client informed about the execution of the Project.

8.4 Consultant shall alert Client in case information provided by or on behalf of Client, or decisions made by or on behalf of Client evidently contain such errors or exhibit deficiencies, that it would act in breach of the demands of reasonableness if it would continue with this without warning during the execution of the Project.

## **Article 9. Obligations of the Client**

9.1 Client shall act as a proper and diligent Client towards Consultant.

9.2 Client shall be responsible for both the timely provision and the accuracy of the particulars, information, and decisions provided to Consultant by or on behalf of Client that are required to properly perform the Project. Client indemnifies Consultant from third party claims with respect to these particulars, information, and decisions.

9.3 Client shall warn Consultant in writing, as soon as reasonably possible and without undue delay in case it notices, or should have noticed, a flaw in Consultant's advice or should have been aware of it.

9.4 Client shall indemnify Consultant against claims by third parties, which are related to the execution of the Project. This leaves unaffected the liability of Consultant towards Client.

## **Article 10. Liability**

10.1 Consultant shall be liable to Client:

- a. in case of an attributable shortcoming in the execution of any of its obligations;
- b. Client has provided Consultant with a substantiated written notice of default swiftly, which shall be no later than 14 calendar days, after it discovered the shortcoming or should have reasonably discovered it, and has summoned Consultant to repair the consequences of the shortcoming within a reasonable time; and
- c. Consultant did not fulfil the notice of default as stipulated in Article 10.1b, or not in a timely manner.

10.2 If Consultant's liability can be demonstrated, Consultant's liability, for whatever reason, shall always be limited to direct damages.

10.3 Direct damages shall never include, without limitation: non-material damages, consequential damages, business interruption, loss of profit and/or loss of income, loss of production, demurrage, devaluation of goods, and amounts that would have been included in the implementation costs in the event that the Project would have been well executed from the start.

10.4 Notwithstanding what is stated in the preceding paragraphs, the damage to be compensated by Consultant for each Project shall be limited to an amount equal to the price of the Project, with a maximum of EUR 100000.

10.5 Any of Consultant's liability will expire after a period of three (3) years from the date on which (part of) the Project ends by completion or termination.

10.6 After a period of one (1) year after a written, motivated notice regarding an attributable shortcoming, any right for claims will expire.

10.7 Consultant shall not be liable for any damages resulting from any modifications to delivered Work.

10.8 Client's right to compensation of damages shall not diminish its payment obligations in accordance with the Project.

10.9 If and when Client has insured any risk associated to the Project, it is obliged to claim any damages from this insurance and to indemnify Consultant against recovery of claims from the insurance.

## **Article 11. Working on location/secondment**

11.1 In the event that a person employed by Consultant performs Work at the location of the Client and/or under the supervision of Client, Client shall be responsible for ensuring the well-being of that person and provide a safe working environment.

11.2 Client shall be liable for and shall indemnify Consultant with respect to any claims for compensation from Client or third parties caused by persons provided by Consultant to Client.

11.3 Client shall be liable for and shall indemnify Consultant with respect to any claims made by persons provided by Consultant to the Client in accordance with Article 10.1, for damages suffered by said person related to that person working under Client's supervision.



## **Article 12. Delivery of Goods**

12.1 This Article 12 shall only apply in case Consultant delivers tangible goods to Client.

12.2 Any goods that are to be delivered by Consultant to Client, shall be delivered Ex Works (Incoterms) at the place to be determined by Consultant, unless agreed otherwise.

12.3 In case of any defects to the goods, Consultant shall remedy such defects if:

- a. Client notified Consultant as soon as possible;
- b. the defect is attributable to Consultant;
- c. the defect in the good occurred a time after delivery, when the defect was reasonably expected to not have occurred, or 12 months after delivery, whichever is shorter (the "Defects Period"); and
- d. none of the exclusions mentioned in Article 12.4 are applicable.

12.4 Defects that are the result of the following matters are excluded:

- a. normal wear and tear;
- b. improper use;
- c. not or incorrectly performed maintenance;
- d. installation, assembly, modification or repair carried out by Client or by a third party;
- e. defects or unsuitability of goods, materials, or aids used or prescribed by Client; and
- f. the not or incorrectly following up of Consultant's instructions by the Client or any third party.

12.5 Client shall pay the following costs for Consultant, in case of a defect:

- a. all transport or shipping costs;
- b. costs for disassembly and assembly; and/or
- c. all travel and accommodation costs.

## **Article 13. Termination and suspension**

13.1 The Assignment may be terminated via a written notification of Client directed to Consultant, which shall include at least the reasons for the termination and the effective date of the termination.

13.2 Client may order Consultant to suspend the Project. Client shall communicate this in writing and with a statement of the reasons. After the notification as stipulated in Article 13.1, Client and Consultant shall discuss forthwith the impact of the suspension. After 30 consecutive days of suspension, or 45 days in the aggregate over the course of the Project, Consultant is entitled to terminate the Assignment, in which case Article 13.3 shall apply as if Client has terminated the Project.

13.3 If the Project is terminated or suspended Client shall be obliged to pay Consultant's invoice(s), calculated according to the progress of the Works. This will include but is not limited to all costs already incurred and any reasonable future costs arising from commitments Consultant has already made for further fulfilment of the Project, calculated from the moment of the termination or suspension.

## **Article 14. Payment**

14.1 Consultant will send Client a monthly invoice based on actual time and expenses, unless agreed otherwise.

14.2 Client shall pay Consultant's invoice within 30 days of invoice date and on the bank account assigned by Consultant.

14.3 If Client disputes (part of) the accuracy of an invoice in a substantiated and written manner, it shall remain obliged to make timely payment of the undisputed part. Contesting an invoice must be done in writing and within seven (7) calendar days after the invoice date. If the disputed invoice proves to be owed, Consultant shall be entitled to charge the statutory (commercial) interest from the date on which the payment should have been made. Consultant may suspend its activities in the event that Client has suspended its payment obligations on unfair or unjustified grounds.

14.4 Late payment of an invoice entitles Consultant to charge the Client statutory (commercial) interest as well as to suspend its activities until payment occurs. All actual costs Consultant incurred to obtain payment, both judicial and extrajudicial costs, shall be borne by Client.

## **Article 15. Obligation of confidentiality**

15.1 Receiving Party shall refrain from reproducing, publishing, or providing to third parties any confidential information received from the Disclosing Party and shall maintain strict confidentiality with respect to such information. This obligation shall expire five (5) years after completion of the Project.

15.2 Information in this context shall include any confidential information, know-how, data, technical reports, drawings or any written or oral information of a similar nature.

15.3 Confidential Information shall not include any information which the Receiving Party can demonstrate:

- a. was lawfully in the Receiving Party's and/or its advisers' possession prior to such disclosure, as evidenced by its or its advisers' written record and which was not acquired directly and/or indirectly from the Disclosing Party;
- b. was independently developed by the Receiving Party other than in connection with this Agreement;
- c. was at the time of disclosure to the Receiving Party and/or its advisers in the public domain or, after such disclosure, becomes generally available to third parties by publication or otherwise through no fault of the Receiving Party and/or its advisers; or
- d. was disclosed to the Receiving Party by a third party who, to the best of the Receiving Party's knowledge after due inquiry, is not prohibited from disclosing such information by virtue of a nondisclosure obligation to the Disclosing Party.

## **Article 16. Intellectual property**

16.1 Consultant retains exclusive ownership over all intellectual property rights to any offers he made and provided designs, illustrations, drawings, models, software, or the like.

16.2 Consultant shall provide Client with a perpetual, global, non-exclusive, transferable licence of the Works delivered under the Assignment. Notwithstanding the foregoing, Consultant is entitled to revoke this licence in case Client is in breach of any of its obligations.

16.3 Parties will retain ownership over their Intellectual Property created prior to this agreement or outside the scope of the Assignment and Quotation.



#### **Article 17. Data protection**

17.1 Parties may collect, process, and share personally identifiable information about employees of Consultant or Client or third parties insofar necessary for the execution of the obligations under the Agreement or other legal obligations.

17.2 Any personally identifiable information disclosed by Consultant or Client shall be removed if no longer necessary for the purpose of the execution of the Agreement or other legal obligations.

17.3 Upon request, any personal identifiable information disclosed by Consultant or Client may be accessed by the data subjects of the other Party.

17.4 In the event of the activities described in 17.1, Parties shall act as data controllers. Parties acknowledge their obligations as data controller and recognise the rights of the employees of Consultant, Client, and/or third parties as data subjects. Parties acknowledge that any personal identifiable information disclosed by Consultant and Client about employees is protected by European data protection legislation.

#### **Article 18. Applicable legislation**

18.1 On these Conditions and on the Project for which these Conditions apply, the Dutch law is applicable.

18.2 The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 1980 (CISG) is excluded.

18.3 Disputes between the Client and Consultant will be resolved amicably, as much as possible, including mediation by appointing a registered mediator.

18.4 If no amicable solution can be reached in accordance with Article 17.3, the dispute shall be, in case Client is registered in a state participating to the Brussels Ibis Regulation 1215/2012, submitted to the District Court of Rotterdam.

18.5 In case Client is not registered in a state participating to the Brussels Ibis Regulation 1215/2012, the dispute shall be submitted for arbitration to the Netherlands Arbitration Institute (NAI) in Rotterdam.