



## General Subcontracting Terms and Conditions

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### Article 1: Documents to be provided by the Subcontractor

The following documents must be sent to the Main Contractor no later than 11 a.m. on the day before the commencement of the Works:

- Legally signed copy of the order form and its appendices, failure to do so will result in these being deemed to have been accepted
- Basic safety certificate (VCA or equivalent) or exemption (in accordance with Royal Decree of 7 April 2023).
- Signed letter of intent regarding safety.
- Signed statement regarding the joint and several liability of the direct contractor for the payment of wages.
- ID card (front and back)/passport;
- Additional for self-employed persons: Proof of affiliation with social security fund and registration with the Crossroads Bank for Enterprises (CBE) for working partners.
- Additional for EEA or Swiss nationals:
  - Limosa stating the site address.
  - Official A1 certificate.
- Additional for third-country nationals:
  - Limosa stating the site address
  - Official A1 certificate
  - Residence permit from country of origin.
  - Work permit.

Additional upon request:

- Declaration of arrival/inscription.
- Copy of accreditation.
- Technical data sheet of the materials to be used.
- List of personnel and equipment to be used for the execution of the works.
- All inspection certificates for the tools, including the CE inspection.
- Detailed planning of the Works, drawn up in collaboration with the person responsible at the Main Contractor.
- Certificate of civil liability insurance and occupational accident insurance
- Additional safety documents (risk analysis, health and safety plan, etc.)
- An overview of the waste materials disposed of.
- All required certificates from the waste processing agencies he has used to process the waste generated by the Works.
- Certificate of applicable training courses (e.g. aerial work platform, asbestos removal, etc.).

It is the Subcontractor's duty to provide this information to the Main Contractor on its own initiative. The Main Contractor has no obligation or liability to obtain this information.

If the Main Contractor does not have all these documents at its disposal, at the latest at the time of commencement of the Works, the Subcontractor shall be obliged, without notice of default and solely by failing to submit all the documents referred to in this article, to pay the Main Contractor a non-refundable compensation of €200 per calendar day and per document that has not been submitted to the Main Contractor. The Main Contractor expressly reserves the right to deduct this compensation from the Subcontractor's invoices. This compensation does not affect the Main Contractor's right to higher compensation if the actual damage suffered exceeds the above compensation.

### Article 2: Price

#### 2.1. The Price is stated in the order form.

##### 2.1.1. Fixed Price

An absolute fixed Price covers all costs that are borne by the Subcontractor in accordance with the Agreement. This Price is a fixed and non-revisable Price unless otherwise stated in the order form. In this regard, the Subcontractor confirms that it has taken into account a fixed revision based on its own calculations and estimates. The existence of a bill of quantities and statements of unit prices do not affect the fixed nature of the fixed and non-revisable contract price.

##### 2.1.2. Unit price

The Works shall be carried out at the unit prices stated on the order form.

The unit prices are non-revisable unless otherwise stated in the order form.

In principle, these unit prices shall also remain valid in the event of a change in quantities.

**2.2.** The Price as stated on the order form cannot be deviated from, regardless of the expenses incurred to carry out the Works properly.

The Price includes, but is not limited to:

- all studies necessary for the proper execution of the Works,
- compliance with all formalities and procedures to comply with applicable laws and regulations, in particular, but not limited to, laws and regulations concerning the environment, soil, including the delivery of a soil management report; labour regulations and taxation,
- all requests for information about cables and pipes (including KLIP/KLIM),
- all materials and equipment,

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- all Personnel costs, including overtime, weekend and shift work if this proves necessary to carry out the Works within the execution period,
- all movements of Personnel, materials and equipment to and from the Site,
- general site costs, including the Subcontractor's own site facilities and safety equipment,
- attendance at all site meetings at the request of the Main Contractor,
- attending the health and safety coordination meetings at the request of the Main Contractor,
- all Works necessary to obtain provisional and final acceptance of the Works by the Client, as well as all Works necessary to bring the Works into full compliance to the complete satisfaction of the Main Contractor or the Client, in respect of which the Subcontractor takes the place of the Main Contractor,
- the preparation of an as-built file (digital in dwg format),
- all measures and provisions to ensure compliance with the provisions of the Safety and Health Plan of the Safety Coordinator and the safety requirements of the Main Contractor and the Client.

The Subcontractor declares that it considers itself to be fully informed about all details of the Site and the Works to be carried out. Days lost due to bad weather will not give rise to any additional costs.

Any deviation from the agreed Price can only be proven by means of an explicit and specific document, signed by a duly authorised person on behalf of the Main Contractor.

2.3 Additional work, less work or changes shall be regulated as stated in Article 6 of the General Terms and Conditions.

### Article 3: Invoicing obligations of the Subcontractor, statements of claim and final settlement

3.1. The Subcontractor can only be paid upon presentation of invoices that comply with all legal and regulatory provisions.

The following guidelines regarding invoices and credit notes must be followed in addition to the legally required information:

Invoices shall be sent monthly in accordance with the progress of the Works, together with the progress reports signed by our site manager/project manager in accordance with Article 3.2. below. Invoices without a previously approved progress report or with deviations from the progress reports shall be rejected.

- From 1 January 2026, invoices and credit notes between Belgian VAT payers may only be sent via the Peppol network.
- Invoices and credit notes received by other means will no longer be accepted and will by definition be considered as not received.
- Supporting documents must always be attached to the Peppol invoice as a PDF file.
- Invoices must include our PO number as a (Peppol) reference and state the site number, name of the project and the period to which the service or delivery relates.
- Non-Belgian entities and Belgian entities not subject to VAT should preferably send their invoices via Peppol. If this is not possible, the invoice must be sent together with the supporting documents as a single PDF file to [invoice@aertssen.be](mailto:invoice@aertssen.be).
- Invoices are payable according to the payment term stated on the order form (60 days after the invoice date)

3.2. All invoicing will be based on a progress report of claim drawn up on the basis of a statement of measurements signed by the Site Manager/Project Manager. This does not imply acceptance of the Works performed. If the Subcontractor wishes to invoice the execution of Works in accordance with unit prices that are not included or provided for in the Contractual Documents, the invoice must be accompanied by a measurement statement signed by the Site Manager/Project Manager with a written justification submitted by the Subcontractor to support the proposed quantities, unit prices and amounts.

The quantities or instalments charged by the Subcontractor in its statements of claim may never exceed those authorised by the Client to the Main Contractor for the Works in question, except in the event of an error on the part of the Main Contractor.

3.3. Any proposal for a final settlement, accompanied by a cumulative final statement, must be submitted to the Main Contractor within thirty (30) calendar days of provisional acceptance of the Works, or at any earlier date at the request of the Main Contractor.

By submitting its final invoice, the Subcontractor waives any other claim against the Main Contractor in relation to the Agreement, except for the release of the guarantee.

In the event of agreement on the final statement, the Subcontractor shall draw up a final invoice or credit note clearly marked 'final statement'.

If the Main Contractor does not agree with the final statement drawn up by the Subcontractor, the reasons for this shall be communicated to the Subcontractor within thirty (30) working days. The Subcontractor shall submit its counterproposal within fifteen (15) working days.

### Article 4: Payment

#### 4.1 Interest and set-off

In the event of late payment, the Main Contractor shall only owe default interest calculated from the fifteenth calendar day after receipt of the registered letter of default from the Subcontractor requesting payment. This default interest shall be calculated at the statutory interest rate as determined by the Act of 2 August 2002 on combating late payment in commercial transactions.

The Main Contractor is always permitted to offset the Subcontractor's invoices against any claims that the Main Contractor may have against the Subcontractor, regardless of the cause of such claims. The parties consider such different Agreements and sites to be parts of the same account. The set-off may be made against all amounts owed by the Subcontractor to the Main Contractor for any reason whatsoever, even if these claims of the Main Contractor are not certain, fixed and due, whereby the Parties expressly deviate from Article 1291 of the old Civil Code and Article 5.255 of the Civil Code. When both claims become mutually due and payable, the set-off shall take place immediately, automatically and by operation of law, even if the amounts owed by the Subcontractor to the Main Contractor are uncertain, disputed or not established.

#### 4.2 Payment does not imply approval of the invoiced services

The payment of an invoice does not imply any approval of the invoiced services, deliveries or, in general, the Works carried out by the Subcontractor, nor of the quantities charged. These payments are considered advances and will be deducted from the final invoice.

They do not in any way reduce the Subcontractor's liability.

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#### 4.3 Payment of the final invoice

Payment of the final invoice shall only be made after receipt of any required inspection reports, certificates, tests, technical data sheets, as-built files, warranty certificates, as well as all other documents mentioned in the Contractual Documents and those required by law and binding provisions.

#### 4.4 Deductions and suspensions

Errors or defects, omissions, poor workmanship, delays, damage to other Works, violation of legal, regulatory or conventional provisions (in the broadest sense of the word), etc. may give rise to the provisional withholding of all or part of the amounts owed to the Subcontractor until the identified shortcomings have been remedied in accordance with the rules of good practice and good workmanship.

The Main Contractor therefore reserves the right to formulate justified complaints at any time and to make payment dependent on the consequences of the complaint. Failure or refusal to respond to such complaints within five (5) calendar days of their notification may also give rise to a definitive withholding of the statement of claim and invoicing, or to a set-off in the final settlement.

All penalties, reductions in value and other compensation imposed on the Main Contractor by the Client and/or another third party (including the tax authorities and the National Insurance Institute) in connection with Work carried out by the Subcontractor shall be deducted from the payment to the Subcontractor or shall be paid by the Subcontractor upon first request.

If the Main Contractor has not been paid in full by the Client, partly as a result of an error/shortcoming (in the broadest sense of the word) which for one reason or another is attributable to the Subcontractor, the Main Contractor shall be entitled to suspend payments to the Subcontractor until and to the extent that it has been paid in full by the Client.

#### 4.5 No tacit acceptance of invoices possible

Under no circumstances may invoices be tacitly accepted by the Main Contractor.

### Article 5: Deposit

#### 5.1 Security deposit

For orders exceeding €50,000, the Subcontractor must provide proof 10 calendar days after the order was placed that a security deposit of five (5) % of the Contract Price has been provided, unless otherwise specified in the Special Conditions for Subcontracting.

The security deposit must cover the complete completion and maintenance of the Works. This also includes any additional or modification works entrusted to the Subcontractor during the performance of the Agreement, as specified in Article 6 of the General Terms and Conditions. The Main Contractor is entitled to an increase in the security deposit for any substantial increase in the Price and may use the estimated values of the additional or modification works for this purpose, as specified in Article 6 of the General Conditions. If the Main Contractor requests such an increase, the Subcontractor shall provide proof of the increase in its security deposit to the Main Contractor within ten (10) calendar days. This increase in the security deposit shall be at least proportional to the increase in the Price compared to the original Price.

If the guarantee is not provided in a timely manner, in full and in accordance with the provisions of this Article 5, the Main Contractor may, at its discretion and without any waiver of rights, opt to continue the Agreement, in which case the guarantee will be provided by withholding five (5) % of the Price from the amounts owed to the Subcontractor.

#### 5.2 Release of the guarantee

Half of the security deposit shall be released upon payment of the final invoice, provided that the Subcontractor has complied with the comments made by the Main Contractor and the Client in relation to its Works.

The balance of the security deposit or retention (50%) will be released, provided that the following cumulative conditions are met:

1. final acceptance of the Works by the Client;
2. where applicable, as soon as the Client and the Main Contractor deem that the Subcontractor has resolved all comments relating to the Works that were made in the context of the final acceptance.

Within thirty (30) calendar days of receipt of the request for release formulated by the Subcontractor, the Main Contractor shall grant (partial) release of the security deposit or, failing that, shall notify the Subcontractor within thirty (30) calendar days of the reasons for its total or partial refusal.

The released guarantee shall, where applicable, be reduced by all costs incurred by the Subcontractor, including, but not limited to, capital losses, delay penalties, administrative penalties, wages, social security debts, tax debts and the costs of compiling the as-built file.

### Article 6: Changes to the Works, additional works and reduced works

#### 6.1 Less work

Pursuant to Article 1794 of the old Civil Code, the Main Contractor may at any time, either on its own initiative or at the request of the Client, architect or others, cancel all or part of the Works without giving reasons. The Subcontractor shall only be entitled to compensation for the Works performed, to the exclusion of any adjustment of the Price or compensation for loss of profit. The foregoing shall apply regardless of the reason for the total or partial cancellation.

#### 6.2 Additional work or changes ordered by the Main Contractor

The Main Contractor may at any time, either on its own initiative or at the request of the Client, architect or others, make changes to the Works and, where appropriate, order additional works in writing.

Changes to the Works and/or additional work shall not entail any extension of the execution period, adjustment of the Price or compensation, unless the Main Contractor has given its prior written consent to the execution of the changes.

If the Subcontractor is entitled to compensation for these changes and/or additional work or an adjustment of the Price, this compensation or adjustment shall be determined on the basis of the unit prices as stated in the order form. If no unit prices are included or in the absence of a unit price for such Works, a new Price shall be determined in consultation between the parties prior to the implementation of the changes or additional works. In the absence of this, the prices shall be determined unilaterally by the Main Contractor, without prejudice to the rights of the parties.

Under no circumstances may a possible dispute regarding the new Price to be applied be invoked to justify a refusal by the Subcontractor to commence or continue the Works or additional works in question.

#### 6.3 Additional works or changes at the request of the Subcontractor

The Subcontractor is always entitled to propose changes and/or additional works, but may not carry out any changes and/or additional works without the prior written consent of the Main Contractor.

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Changes and/or additional works carried out without the prior written consent of the Main Contractor shall in no case give rise to an extension of the execution period or to an increase in the Price or to any other compensation in favor of the Subcontractor, and shall be deemed to have been carried out for the benefit of the Main Contractor and already included in the Price.

The Subcontractor shall only be entitled to an adjustment of the Price or the execution period if and insofar as these have been granted by the Client.

#### **6.4 Works on a cost-plus basis**

The Main Contractor reserves the right to instruct the Subcontractor to carry out work on a cost-plus basis in exceptional cases. These works must be subject to prior written agreement on the cost-plus rates.

The Subcontractor shall draw up a daily work order for the work on a cost-plus basis, the model of which shall have been accepted in advance by the Main Contractor's representative.

This work order shall state:

- the date of the intervention;
- the nature and location of the Works carried out;
- a breakdown of the hours worked and the materials or equipment supplied;
- the total Price for each item in accordance with the agreed hourly rates and unit prices.

The Subcontractor shall submit this work order in duplicate to the Main Contractor's representative on a daily basis for approval. An approved, but if necessary corrected, copy shall be returned to the Subcontractor, who shall attach it to his invoice. The Subcontractor may only receive remuneration for services for which the work order has been approved; he may therefore only invoice the approved amount. Such approval does not imply any acceptance or approval of the Works concerned.

### **Article 7: Commencement of the Works, execution period, planning and late execution**

#### **7.1 Commencement of the Works**

The Subcontractor shall notify the Main Contractor in good time of any information it still needs in order to be able to commence the Works according to the schedule. If, for the execution of the Works by the Subcontractor, the Client still has to make a specific choice of materials, the Subcontractor must take the necessary steps in good time to ensure that the Site schedule can be followed.

If the Main Contractor is unable to make the Site available to the Subcontractor on the scheduled date, the latter shall be granted a proportional extension of the deadline, but the Subcontractor shall not be entitled to any compensation for this. In addition, it shall make every effort to shorten the new end date as much as possible.

#### **7.2 Execution period**

##### **7.2.1**

The Works must be carried out in accordance with the schedule and must be fully completed within the execution period. The Subcontractor undertakes to comply strictly with the agreed execution period. This constitutes an obligation of result.

The Subcontractor shall maintain sufficient manpower and shifts during the execution period and shall continue the Works without interruption.

##### **7.2.2**

The execution period is determined taking into account all foreseeable and unforeseeable circumstances and risks that may arise. The

Subcontractor may only invoke cases of force majeure as described in Article 17 and bad weather, as accepted by the Client.

The Main Contractor reserves the right to postpone all or part of the Works to a later date, provided that it notifies the Subcontractor in writing within five (5) working days. If the Subcontractor does not agree to this, it must notify the Main Contractor in writing within five (5) working days.

If and insofar as the Client provides compensation for the additional costs of an extension of the execution period and actually pays this to the Main Contractor, and if this extension is exclusively due to actions or omissions on the part of the Client, the Subcontractor shall be entitled to proportional compensation based on the costs paid for the additional and proven deployment of equipment and Personnel at the Site. The Subcontractor may not use any dispute between the Main Contractor and the Client to suspend or delay the execution of the Works.

The Subcontractor cannot claim any compensation to cover general costs, risk or loss of profit.

#### **7.3 Planning of the Works**

The planning of the Works is in accordance with Article 5.2 of the Special Conditions.

This planning may be changed during the execution of the Works. The changes shall be communicated to the Subcontractor in good time. The Subcontractor shall immediately contact the Site Manager/Project Manager in order to jointly determine the new execution planning, in full coordination with any other work. Changes to the schedule due to circumstances beyond the control of the Main Contractor shall not result in an extension of the execution period or a change to the fixed Price or unit prices. The Subcontractor undertakes to adhere strictly to the newly agreed execution schedule.

#### **7.4 Compensation for non-compliance with deadlines**

##### **7.4.1**

As compensation for the damage suffered by the Main Contractor as a result of the Subcontractor's delay, the Subcontractor shall owe the Main Contractor a daily fixed compensation equal to 2/1000 of the total contract price for each calendar day of delay, with a minimum of €500 per calendar day of delay, automatically and by operation of law, without the need for prior notice of default, without prejudice to the Main Contractor's right to full compensation for all damage due to the delay attributable to the Subcontractor that would not be covered by this fixed compensation. The Subcontractor shall also fully compensate and indemnify the Main Contractor against any claims and demands from third parties, such as the Client, due to this delay.

##### **7.4.2**

The above compensation applies to non-compliance with the execution period, any partial deadlines and/or interim deadlines.

### **Article 8: Execution of the Works**

#### **8.1 Competence of the Subcontractor**

The Subcontractor is deemed to have the necessary skills, expertise and professional organisation to carry out the Works in accordance with the Contractual Documents and within the execution period.

The Subcontractor declares that it is fully and sufficiently aware of the Contractual Documents and of all other documents governing the Works, including the applicable technical regulations and standards for the execution of the Works. It declares that it is sufficiently familiar with the Site and the condition and nature of the soil, including the moisture content, and all existing and neighbouring structures. To this end, he

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has already visited the Site and carried out all the necessary preliminary measurements and soundings.

**8.2 The proper execution of the Works in accordance with the Contractual Documents**

**8.2.1**

The Subcontractor shall carry out the Works in accordance with:

- the Contract Documents,
- the instructions of the Main Contractor, the inspection agency and the safety coordinators, in accordance with Article 10.1,
- the applicable legislation and all other applicable regulations, in the broadest sense,
- commercial practices and customs, both in the sector and specifically customary between the parties, insofar as these are not deviated from in the Contractual Documents,
- the applicable technical regulations and standards,
- the rules of the art, good workmanship, contemporary techniques, taste and care for good appearance.

He shall carry out the Works in accordance with the written and oral explanations given by the Main Contractor during the execution of the Works, with regard to all execution details and all clarifications of the plans and the descriptive bill of quantities for the Works.

If certain execution details are not mentioned or are unclear in the plans, specifications or bill of quantities, the Subcontractor is deemed to be aware of them, as they form part of the rules of good workmanship specific to his profession. In any case, it is his responsibility to request clarification if necessary.

In carrying out the Works, it shall use materials of very high quality, in accordance with the various conditions and specifications set out in the Contractual Documents and in accordance with the reasonable requirements of the Main Contractor and the Client.

**8.2.2**

During the execution of the Works, the Main Contractor and the Client may at any time carry out all checks and undertake all tests and trials to ascertain whether the Works already executed and the materials supplied or used comply with the Contractual Documents.

If the checks, tests and trials are mentioned in the Contractual Documents, the costs thereof are included in the Price. These checks, tests and trials cannot give rise to additional compensation or an extension of the execution period and are carried out at the risk of the Subcontractor.

If the checks, trials and tests were not provided for in the Contractual Documents, the costs thereof shall be advanced by the Main Contractor or the Client who requested them. If these checks, trials and tests show that the checked Works do not meet the requirements of the Contractual Documents, these costs shall be borne by the Subcontractor. If the opposite is found to be the case, these costs shall be borne by the Main Contractor or the Client who requested them. In any case, these checks, trials and tests shall not give rise to any additional compensation or extension of the execution period.

The Subcontractor, the Main Contractor and the Client may request a counter-test. The costs of these counter-tests shall be advanced by the party requesting the counter-test. If this counter-test shows that the Works to which it relates do not meet the requirements of the Contractual Documents, these costs shall be borne by the Subcontractor. If the opposite is proven, these costs shall be borne by the Main Contractor or the Client who requested this counter-test, respectively. In any case, these additional tests shall not give rise to additional compensation or an extension of the execution period.

Neither the fact of the checks, tests or trials, nor their results, shall imply acceptance by the Main Contractor or the Client of the timely, proper or compliant execution of the Works.

Rejected Works or materials shall be removed and replaced as soon as possible by the Subcontractor on the simple instruction of the Main Contractor or the Client, as provided for in Article 13.2. This shall not give rise to any additional remuneration or extension of the Subcontractor's execution period.

**8.2.3**

Defects, omissions or contradictions in or between the Contractual Documents and the verbal or written orders of the Main Contractor or the Client which could lead to defects in the ultimately constructed structures, or to inferior solutions, must be reported immediately and in writing to the Main Contractor.

**8.3 Site organisation**

**8.3.1**

The Subcontractor undertakes to cooperate fully and perfectly with the other subcontractors and ancillary contractors on the Site and must immediately notify the Main Contractor in writing of any problems relating to these obligations.

**8.3.2**

The Subcontractor undertakes to participate in the site meetings (site, safety coordination meetings) and to be represented there by an authorised representative who is proficient in the language imposed on the Site, who has sufficient technical knowledge of the subject matter of the Works and who has the authority to bind the Subcontractor and provide the necessary explanations whenever this proves necessary.

The report or minutes of the meeting shall have the same evidential value for the Subcontractor as a registered letter.

**8.3.3**

The Subcontractor shall keep the Site clean. The Subcontractor undertakes to remove all construction waste (e.g. asphalt, concrete residues, etc.), rubble, waste, smears (cement slurry, etc.), contaminants and all unused or remaining materials, in accordance with all legal, regulatory and conventional provisions relating to safety, health and the environment and in an economically and ecologically responsible manner.

In the event that the Subcontractor fails to comply with the provisions of this sub-article, the Main Contractor is authorised to do so in its place, without prior notice of default, warning or agreement, at the expense and risk of the Subcontractor. The services provided in this regard will be deducted from the final settlement of the Works.

**8.4 Use of Subcontractors or third parties by the Subcontractor**

**8.4.1**

Pursuant to Article 184/1/5 of the Social Penal Code, the Subcontractor is prohibited from subcontracting the entire Works to another subcontractor. In this sense, it is also insufficient for the Subcontractor to retain sole responsibility for coordinating the execution of the Works.

The Subcontractor is prohibited from subcontracting part of the Works in turn, unless with the prior written consent of the Main Contractor and subject to compliance with the provisions in this regard, including in Articles 11 and 12.

This refusal may occur, among other things, but not exclusively, in the event of legal restrictions on vertical chains, in the event of suspected bogus self-employment of the subcontractor(s) concerned, or in the

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event of indications of technical incompetence of the subcontractor(s) concerned. He must obtain this agreement at least five (5) working days before the commencement of the Works by the Subcontractor.

This agreement, if granted, does not release the Subcontractor from its obligations towards the Main Contractor or the Client. The Subcontractor remains fully responsible for the proper execution of the Works.

The Subcontractor is solely responsible for communicating the identity of its Subcontractors to the Main Contractor for the purposes of the mandatory 'declaration of Works'. The Subcontractor expressly accepts that it must notify the Main Contractor in writing of each of its Subcontractors. It shall notify the identity of its Subcontractors to [Werfmeldingen@aertssen.be](mailto:Werfmeldingen@aertssen.be) no later than 11 a.m. on the day before they commence the Works. If it wishes to engage additional Subcontractors in the course of the execution of the Works, the Subcontractor shall again request prior permission from the Main Contractor and immediately provide the identity of this Subcontractor in writing to the Main Contractor.

If the Subcontractor fails to communicate the identity of one of its Subcontractors in writing to the Main Contractor, at the latest by 11 a.m. on the day before this Subcontractor commences the execution of its Works on the Site, it shall expressly indemnify the Main Contractor for all damage suffered by the Main Contractor as a result, and the Main Contractor shall even have the right to terminate this Agreement at the expense of the Subcontractor. The timely transfer of the Subcontractor's details and any RSZ declaration does not in any way imply the Main Contractor's agreement with regard to this subcontracting and does not release the Subcontractor from its liability towards the Main Contractor, which has no legal relationship with any subcontractor of the Subcontractor.

The Subcontractor guarantees that its own Subcontractor will comply not only with the obligations of the current Agreement, but also with all social, tax and labour regulations. In particular, the Subcontractor expressly accepts that it must indemnify the Main Contractor for all fines and costs of any kind imposed on the Main Contractor.

The Subcontractor further formally undertakes to prohibit its own Subcontractor from subcontracting further, except with the prior written consent of the Main Contractor, at least five (5) working days prior to the performance of the Subcontracting Agreement. This condition of consent applies to all links in the chain, from the first to the last level of subcontracting, so that the prior consent of the Main Contractor is always available for the entire chain.

If the Subcontractor, with the consent of the Main Contractor, subcontracts part of the Works, the Subcontractor shall impose the obligations applicable under the provisions of this Agreement on its (sub)Subcontractor.

The Main Contractor reserves the right to deny the (sub)Subcontractor access to the Site if the prior consent of the Main Contractor regarding this (sub)Subcontractor has not been obtained.

The Subcontractor remains fully liable for the performance of the Works in accordance with the Contractual Documents if it entrusts the performance of its obligations in whole or in part to third parties. The Subcontractor shall be liable for all errors or omissions committed by its Subcontractors and for all adverse consequences resulting, directly or indirectly, from the actions, deeds or omissions of these Subcontractors.

The Subcontractor shall fully indemnify the Main Contractor for any damage and all other adverse consequences resulting, directly or indirectly, from a direct claim by the Subcontractor's Subcontractors against the Main Contractor on the basis of Article 1798 of the old Civil Code. The Subcontractor shall fully reimburse the Main Contractor for all costs directly or indirectly caused by this, including the costs of technical and legal assistance.

#### **8.5 Temporary interruption**

The Main Contractor may at any time impose the suspension of all or part of the execution of the Works if certain circumstances so require, such as, but not limited to, cases of force majeure as described in Article 17. The Subcontractor shall take all necessary measures to protect and maintain the Site and the Works already carried out during the suspension and to protect them against theft and damage caused by weather conditions or malicious intent. This suspension shall only entail an extension of the execution period or compensation for the Subcontractor if the Main Contractor has received at least a proportional equivalent value from the Client. The Main Contractor's responsibility is limited to forwarding the Subcontractor's requests, insofar as they are reasonable. The Subcontractor is obliged to inform the Main Contractor as soon as possible, but no later than eight (8) calendar days after notification of a suspension. The Works shall be resumed as soon as notification of this has been given.

#### **8.6 Measurement**

The measurement code complies in all respects with the Contractual Documents.

In the case of lump sums, measurement does not apply and these will be reimbursed as they are gradually carried out.

The estimated quantities are indicative and may be subject to fluctuations without this resulting in any change in the unit prices or the award of any compensation. After completion, the estimated quantities will be subject to a contradictory measurement on site, in accordance with the measurement code used in the order form or the order documents. Only the quantities accepted by the Client can be taken into account.

The result of the measurement shall be delivered by the Subcontractor after the measurement. This document must be attached to the invoice, as indicated in Article 3. In the event of disagreement about the quantities carried out, a joint measurement will be carried out by an expert appointed by the Main Contractor, against which the Subcontractor has not objected in writing within three (3) working days of the Main Contractor providing the contact details of the expert. The parties expressly declare that they will accept this measurement as the only correct one.

#### **8.7 Monitoring and use of each other's materials and tools**

The Subcontractor is responsible for the surveillance and safekeeping of its own goods, materials and Works and of those parts of the construction site that it uses.

All goods and materials stored and placed on the Site by the Subcontractor shall be adequately protected by the Subcontractor itself and shall remain under its full responsibility. The Main Contractor can therefore never be held liable for any damage to or loss of these goods and materials, including theft or vandalism.

Unless otherwise agreed, the Subcontractor is prohibited from using tools, equipment or materials belonging to the Main Contractor.

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#### **Article 9: Obligation to provide information**

The Subcontractor shall immediately inform the Main Contractor of any difficulty that arises during the execution of the Works and that is of such a nature as to disrupt the punctual execution and the proper and proportionate coherence thereof.

#### **Article 10: Safety, health and the environment**

##### **10.1 Obligations of the Subcontractor**

When carrying out the Works, the Subcontractor shall be responsible for ensuring compliance with all legal, regulatory and contractual provisions relating to occupational safety (safety, health, environment, etc.) as laid down, inter alia, in the Welfare Act of 4 August 1996, its amendments and implementing decrees, the Codex, the ARAB, the AREI, the environmental legislation in force and, more specifically, in the Royal Decree of 25 January 2001 and its amendments concerning temporary or mobile construction sites.

When carrying out the Works, the Subcontractor is responsible for compliance with the provisions of the Safety and Health Plan of the safety coordinator, the Site Regulations, the specific safety guidelines of the Main Contractor or those of the Client for itself, its Personnel, any Subcontractors and temporary workers.

Under no circumstances may the collective protective equipment be removed, moved or modified by the Subcontractor.

All representatives and employees of the Subcontractor are obliged to use the required and necessary personal protective equipment on the Site, which the Subcontractor shall provide at its sole responsibility. Under no circumstances can the Main Contractor be held responsible for unforeseen, defective or unsuitable personal protective equipment or individual protective equipment.

The Subcontractor is obliged to comply without delay with the comments made by the safety coordinator, prevention advisor, Site Manager and Project Manager in the field of safety, health or the environment. Under no circumstances shall the possible suspension of the Works entail additional costs or compensation or an extension of the execution period.

In accordance with the provisions of the Welfare Act, the Codex and the ARAB, the Subcontractor is obliged to communicate the instructions in the field of safety, health and the environment to all its Personnel members who are charged with the execution of the works, its possible Subcontractors, suppliers, temporary workers and appointees in a language they can understand.

The Subcontractor, its Personnel, any Subcontractors and temporary workers undertake to deploy only medically fit and sufficiently qualified persons on the Site who are aware of the risks associated with their profession and the preventive safety measures to be followed to remedy those risks. If it appears that a member of staff is not familiar with the existing instructions, they may be refused access to the Site. Every employee employed by the Subcontractor who holds a safety position must be suitable for this task, including any Subcontractors and temporary workers. This must be substantiated by a valid medical certificate.

The Subcontractor accepts the contents of the Site Regulations, a copy of which can be found as an appendix to the order form. The Subcontractor shall act in full accordance with these regulations and shall also ensure that its Subcontractors, suppliers and Personnel do the same. Before the Works commence, the Subcontractor must return the completed and signed letter of intent to the Main Contractor. It also agrees to attend the Health and Safety coordination meeting held on site.

Upon simple request, the Subcontractor, or its subcontractors, if any, shall submit the necessary safety documents, certificates and inspection certificates for the hazardous products, work equipment and/or machinery used.

The Subcontractor, its Personnel, any Subcontractors, their Personnel and its temporary workers are obliged in all circumstances to always provide a team leader on the Site who understands and speaks Dutch when foreign-language employees of the Subcontractor are deployed on the Site. Naturally, the team leader speaks and understands the language of his foreign-language colleagues. This person must always be present when the Subcontractor's Personnel are present on the Site. The Subcontractor is obliged to translate the welcome brochure, the Site Regulations, the specific safety guidelines, toolbox meetings and other communication documents relating to well-being on the Site into the language of its Personnel, and that of any Subcontractors and temporary workers who will be deployed on the Site.

The Main Contractor declines all responsibility for accidents that occur as a result of the use by the Subcontractor, its any Subcontractors and temporary workers, of the Main Contractor's equipment (scaffolding, ladders, etc.). Before allowing its Personnel to use it, the Subcontractor shall ensure that the equipment fully complies with the applicable regulations, standards, provisions, customs and practices. The Subcontractor waives the right to invoke defects in the equipment made available.

The Subcontractor shall actively and effectively cooperate with all common protection and safety measures on the entire Site and shall ensure that these are strictly complied with by its Personnel.

The Subcontractor must at all times take all necessary measures to prevent environmental violations, incidents and disasters. All costs for this are included in the Price.

The Subcontractor is obliged to immediately notify the Main Contractor and the respective official authorities of any environmental infringements, incidents and disasters that, despite the previous paragraph, nevertheless occur as a result of the execution of the Works. Where applicable, it is also obliged to immediately take the necessary measures to prevent further damage and to draw up an action plan with corrective and preventive measures, which, however, can only be implemented after approval by the respective authorities and by the Main Contractor. All costs arising from or related to any environmental infringements, incidents and disasters occurring as a result of the execution of the Works shall be borne entirely by the Subcontractor.

##### **10.2 Accidents at work**

In accordance with Article 94ter§2 of the Act of 4 August 1996, the Subcontractor undertakes to appoint, prior to the commencement of the Works, a prevention advisor who will be responsible for investigating any serious accidents that may occur during the execution of the Works.

The Subcontractor is obliged to immediately notify the Main Contractor of all incidents and accidents at work involving one of its own employees or one of its Subcontractors' employees, and to provide the Main Contractor with the number of days lost as a result of accidents at work on a monthly basis.

The Subcontractor is obliged to send the accident report form to its insurance company by e-mail for notification to the Main Contractor's site management.

In the event of a serious accident within the meaning of the Royal Decree of 24 February 2005 and if a detailed report has to be drawn up,

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the Subcontractor is obliged to submit this report to the Main Contractor's Site Management for review at least two (2) working days before sending it to the competent authorities. When the Subcontractor submits the final detailed report to the competent authorities, it shall provide a copy to the Main Contractor. The definition of a 'Serious Accident at Work' is described in Article 26 of the Codex Title I, Chapter 3.

**10.3 Failure to comply with these obligations**

Failure by the Subcontractor itself, its Personnel, any Subcontractors, their Personnel and temporary workers to comply with their health and safety obligations means that the Main Contractor, after giving notice of default to the Subcontractor, take all measures at the Subcontractor's expense pursuant to Article 29 of the Welfare Act of 4 August 1996 to ensure compliance with the health and safety obligations, without prejudice to the Main Contractor's right to terminate the current Agreement at the Subcontractor's expense.

In the event of serious and imminent danger, the Main Contractor shall be exempt from the notice of default referred to in the previous paragraph.

In the event of a breach of the safety rules by a specific person, that person may be immediately denied access to the Site, without this giving rise to an increase in the Price or any other additional compensation, nor to an extension of the execution period.

**Article 11: Subcontractor's personnel**

**11.1 Personnel: general**

**11.1.1 Electronic attendance registration**

In accordance with Section 4, Chapter IV (Articles 31bis to 31sexies) of the Act of 4 August 1996 on the welfare of employees, the Subcontractor and its Subcontractors are obliged to record daily all data concerning the attendance at the Site of every person carrying out the Works on their behalf, before that person enters the Site. The Subcontractor undertakes to record this information accurately and correctly, in accordance with the instructions of the Main Contractor, and to transfer this information to the RSZ database. This obligation applies to all levels of subcontracting. In this regard, the Subcontractor is reminded that Article 280 of the Act of 30 July 2018 on the protection of natural persons with regard to the processing of personal data must be complied with.

The Subcontractor is obliged to compensate the Main Contractor for all possible costs and losses (including fines incurred by the Main Contractor) resulting from non-compliance with the aforementioned legislation concerning the registration of attendance by the Subcontractor, by its Subcontractors, by any subsequent Subcontractor or by any person entering the site where the Works referred to in this Agreement are being carried out on behalf of one of them.

**11.1.2 Competence**

The Subcontractor undertakes to deploy only suitable and competent Personnel in sufficient numbers, taking into account the possibilities of the Site, to ensure the execution of the Works in accordance with the Contractual Documents. The Main Contractor may, at any time, refuse Personnel whom it considers to be insufficiently competent, without this giving rise to any form of compensation to the Subcontractor or to an extension of the execution period. In the event of refusal of Personnel by the Main Contractor, the Subcontractor must immediately replace them with sufficiently competent Personnel.

The Subcontractor also undertakes to employ only Personnel on the Site for whom all legal, regulatory and conventional provisions and collective labour agreements regarding general working conditions and taxation and social security (wages, social/tax charges, insurance,

working hours, safety, hygiene, , etc.) are complied with and to ensure that these are also complied with by any Subcontractors and by any person who makes Personnel available to it.

**11.1.3 Wages**

The Subcontractor undertakes, on its own responsibility, to pay its Personnel wages and allowances in accordance with the regulations in force for the subcontracting work in question and, more generally, to comply with all tax and social legislation, as well as the labour regulations applicable to the Personnel it employs in the context of the execution of the Works.

The Subcontractor confirms that it complies and will continue to comply with its obligation to pay the wages owed to its employees on time. It also ensures that its Subcontractors or the third parties it engages comply with this obligation.

The Main Contractor informs the Subcontractor that the necessary information regarding the wages due can be found on the website: <http://www.werk.belgie.be> (theme "social consultation" > "Minimum wages" and, specifically for a foreign Subcontractor, theme "secondment" > "working conditions"). The Subcontractor confirms that it has received the Main Contractor's notification regarding the website on which the information concerning the wages due is included and shall ensure that its Subcontractors or third parties it engages are also made aware of this website.

To this end, the Subcontractor and the Main Contractor shall sign the appendix to the order form, entitled "Declaration concerning the joint and several liability of the direct contractor for the payment of wages", and the same remuneration package, valid in the country where the service is provided – including through laws or generally binding collective labour agreements/sectoral collective labour agreements – be respected.

**11.1.4 Instructions**

In exceptional circumstances, the Subcontractor's Personnel shall follow the instructions of the Main Contractor on the Site insofar as these are necessary for the specific performance of the Works. These technical or practical instructions relate exclusively to the planning of the Agreement to be performed; the circumstances, procedures and practices of the Client that must be taken into account for the performance of the assignment; the specific characteristics, properties and requirements of the assignment and the Site; access to the Client's locations and/or facilities necessary for the performance of the Agreement; use of the Client's goods, facilities and/or infrastructure necessary for the performance of the Agreement and everything relating to health and safety. These instructions do not in any way imply an erosion of the Subcontractor's authority as employer and do not in any way affect the Subcontractor's liability.

In accordance with Article 31, § 1, second and third paragraphs of the Act of 24 July 1987 on temporary work, temporary employment and the provision of workers for the benefit of users, the parties acknowledge and accept that the Main Contractor's compliance with its obligations regarding well-being at work, as well as the instructions it may give for the provision of services and/or products by the Subcontractor, cannot be considered as any exercise of authority by it over the Personnel that the Subcontractor may deploy for the provision of the services and/or products.

In order to allow the Main Contractor to give any instructions that fall within the provisions of the Act of 24 July 1987, the Subcontractor shall designate a person as a contact person for the Main Contractor (the "Central Contact Person"). This Central Contact Person shall then provide instructions to the Subcontractor's Personnel regarding the

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correct delivery of the services and/or products. If this person is unavailable, the Subcontractor shall immediately inform the Main Contractor and shall designate a replacement Central Contact Person.

The Subcontractor shall ensure that any subcontractor(s) it may use has its own responsible person on site as a contact person.

Any breach by the Subcontractor of the obligations described in this article shall entitle the Main Contractor at all times to terminate the cooperation and to terminate all Agreements concluded between the parties with regard to the delivery of the services and/or products, without the Main Contractor being obliged to pay any compensation.

In the case of work carried out on a time and materials basis, the hours worked shall be checked solely for invoicing purposes.

**11.2 Non-Belgian companies – Limosa notification – posting form (A1)**

**11.2.1**

For work performed in Belgium, the foreign Subcontractor must comply with the labour, wage and employment conditions laid down by Belgian legislative, administrative or conventional provisions that are subject to criminal penalties. These are essential provisions that guarantee the protection of the rights of (including posted) workers in Belgium.

If the Subcontractor or one of its Subcontractors is a non-Belgian company, organisation, employer or self-employed person, the Limosa notification obligation applies, as do, without reservation, the legal texts of Chapter 8 of Title IV of the Programme Law of 27 December 2006 (Articles 139 to 164), published in the Belgian Official Gazette on 28 December 2006 and confirmed by the Royal Decree of 20 March 2007, published in the Belgian Official Gazette on 28 March 2007.

The Subcontractor declares that it has been informed of this and is aware of its obligations in this regard. It declares that it is aware of the document "Administrative Instructions", which can be found in four (4) languages on the website [www.limosa.be](http://www.limosa.be) under the item "Obligation to report". The Subcontractor expressly accepts that these obligations constitute obligations of result.

For each foreign Employee/self-employed person employed by or through the Subcontractor on the Site, the Subcontractor must send a copy of the Limosa receipt-1 to the Main Contractor at the email address [Werfmeldingen@aertssen.be](mailto:Werfmeldingen@aertssen.be), together with a general receipt with an overview of all reported employees and the A1 posting certificate, no later than eleven (11) hours on the day before the start of the Works. This obligation also applies to any extension of the initial execution period, on the understanding that a new notification and submission of the receipt are required no later than forty-eight (48) hours before the start of the extension.

The Subcontractor undertakes to ensure that all its non-Belgian Personnel are in possession of the following at all times during the execution of the Works:

- their personal secondment form (A1),
- their personal Limosa receipt (L-1),
- their identity card or passport.

The Subcontractor undertakes to cooperate at all times with any identity checks necessary to verify the authenticity of these documents.

If the Subcontractor is unable to present one of these documents, the Main Contractor will deny the Subcontractor and its Personnel access to the Site.

**11.2.1**

The Subcontractor expressly declares that it does not (and will not) employ any Personnel residing illegally in Belgium, nor will it (or will it not) engage Subcontractors who employ people residing illegally in Belgium. The Subcontractor shall ensure that any Subcontractors also expressly declare that they do not (and will not) employ Personnel residing illegally in Belgium, nor do they (and will not) engage Subcontractors who employ people residing illegally in Belgium.

**11.3 Additional costs and penalties**

All the above obligations also apply to any Subcontractors of the Subcontractor and will be imposed on them by the Subcontractor. Penalties imposed on the Main Contractor for non-compliance by a Subcontractor of the Subcontractor with these obligations will be recovered from the Subcontractor.

All costs and penalties resulting from non-compliance with the legal provisions, including the various implementing decrees, of the above provisions shall be borne by the defaulting Subcontractor. The latter is therefore obliged, upon simple request, to reimburse the Main Contractor for all possible costs and penalties. The Main Contractor is also entitled to offset all amounts of such costs and penalties against all amounts owed to the Subcontractor and thus also to deduct them from the invoices.

**Article 12: Recognition, tax and social security debts**

**12.1 Recognition of the Subcontractor**

The Subcontractor declares that it is recognised in the context of a public contract in the class and category or subcategory corresponding to the Works. The Subcontractor shall also ensure that any Subcontractors and any Subcontractors of its Subcontractors have the recognition corresponding to the nature and scope of the Works entrusted to them.

**12.2 Tax and social security debts**

The Subcontractor also declares that it or any of its Subcontractors or any of the Subcontractors' Subcontractors has no social security or tax debts within the meaning of Article 30bis of the Act of 27 June 1969 and Articles 53 – 59 of the Act of 13 April 2019 on the amicable and enforced recovery of tax and non-tax debts, and that it does not act in contravention of current labour regulations. He shall provide proof of this by submitting a recent extract from the publicly accessible database of the RSZ or the tax authorities, stating that there is no obligation to withhold tax due to social security or tax debts. Upon conclusion of the contract and upon each invoicing, the Subcontractor is obliged to provide this proof and to submit a certificate from its Subcontractors and the Subcontractors of its Subcontractor.

If, during the execution of the Works, social security or tax debts in the aforementioned sense arise on the part of the Subcontractor or one of its Subcontractors or their Subcontractors, the Subcontractor must immediately inform the Main Contractor of this by registered letter. In any case, the Subcontractor shall immediately report any irregularities on the part of its Subcontractors or one of its Subcontractors in writing to the Main Contractor and inform the competent authorities.

If the Subcontractor has social security or tax debts, the Main Contractor shall deduct the amounts calculated in accordance with the applicable legislation and regulations from the payments to the Subcontractor and transfer these amounts to the competent authorities. The Subcontractor shall also do so if one of its Subcontractors has such debts. The Subcontractor shall provide proof of this deduction to the Main Contractor.

In addition to the statutory deductions referred to in this article, the Subcontractor shall be obliged to reimburse the Main Contractor for all

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possible costs incurred as a result of non-compliance with the obligations referred to in this article.

In the event that, through the actions of the Subcontractor or one of its Subcontractors or their Subcontractors, a situation arises that could lead to the application of Article 30bis §3/1 of the RSZ Act or Article 54 of the Act of 13 April 2019 on the amicable and enforced recovery of tax and non-tax debts, concerning joint and several liability for social security or tax debts of Subcontractors or sub-subcontractors, the Main Contractor shall be entitled to immediately deduct from the Subcontractor's credits all amounts that may be claimed by the RSZ or the tax authorities in application of these articles.

The Main Contractor also reserves the right to terminate this Agreement immediately and without notice in the above cases at the expense of the Subcontractor.

The Subcontractor indemnifies the Main Contractor against all claims, including for outstanding wages, tax and/or social security debts, submitted to the Main Contractor by the RSZ administration, the tax authorities, the Subcontractor's personnel, the personnel of the Subcontractor's subcontractors or any other competent authority. If any claim, in any form whatsoever, is brought against the Main Contractor, the Main Contractor shall be entitled to withhold all payments to the Subcontractor.

#### **Article 13: Contractual default**

##### **13.1 Determination and assessment of contractual shortcomings**

The Subcontractor shall be deemed to be in breach of its contractual obligations in the following circumstances, among others:

- if the Subcontractor fails to perform the Agreement in accordance with the provisions of the Agreement as laid down in the Contractual Documents or fails to meet all other requirements imposed on it, either expressly or in accordance with commercial practice, more specifically, but not limited to, in accordance with the rules of good practice and workmanship, whereby even the slightest contractual error shall be taken into account,
- if the Works are not completed within the execution period,
- if the Subcontractor does not carry out, comply with or enforce the regular instructions given by the Main Contractor in a timely and correct manner,
- in the event of a breach by the Subcontractor of the applicable legal and regulatory provisions, in particular the applicable social, labour and tax regulations,
- failure to comply with the conditions for recognition,
- employment of persons residing illegally in the country,
- if the Subcontractor fails to comply with the insurance obligations as set out in Article 16.

In particular, but not exclusively, any failure that causes or threatens to cause the completion of the Main Contractor's contract to be delayed, including in terms of the execution period, or when the Client is unlikely to accept the Main Contractor's deliveries or services, shall be considered a contractual failure.

The Subcontractor's failure to perform may be regularly established, among other things, by notification to the Subcontractor by the Main Contractor by registered letter.

As soon as the Subcontractor receives a registered letter from the Main Contractor establishing its default, the Subcontractor must, within five (5) calendar days of the dispatch of this letter, communicate its full and adequately substantiated defence by registered letter to the Main

Contractor, making all relevant comments. In this letter, the Subcontractor may make proposals to rectify its shortcomings.

In the absence of a defence from the Subcontractor in this sense and sent within the above-mentioned period after dispatch of the above-mentioned letter from the Main Contractor, date as stamped by the Belgian post office, the Subcontractor shall be deemed to have irrefutably agreed to the content of the notice of default. This shall be considered as an acceptance of its default.

The formalities imposed above do not apply in the event of the employment of illegally residing third-country nationals by the Subcontractor and do not prevent proceedings from being brought before the court of summary jurisdiction in urgent cases.

The Subcontractor shall immediately notify the Main Contractor in writing of any fact or circumstance that could constitute a default on its part.

##### **13.2 Means of action available to the Main Contractor**

If, after inspection, the Works do not appear to meet the requirements set out in the Contractual Documents or those attributed to them by the Subcontractor, the Subcontractor shall, within five (5) working days of the Main Contractor's determination and notification thereof, ensure the immediate repair or replacement of the Works. This shall not give rise to any compensation for the Subcontractor or an extension of the execution period. If the Subcontractor fails to comply with this obligation, the Main Contractor shall be entitled to have the necessary Works carried out by a third party, or to take measures itself or have measures taken by a third party, all at the expense and risk of the Subcontractor.

The Subcontractor also remains obliged to leave the equipment, tools and aids that it has supplied and that are necessary for the execution of the Works on site at the Worksite until the Works have been fully executed, even if these are carried out by the Main Contractor or by a third party. The Main Contractor may exercise a right of retention for the entire duration of the remaining Works.

The Subcontractor is obliged to compensate the Main Contractor for all direct or indirect costs and damage resulting from the non-performance of the Agreement or the Subcontractor's breach of any of the legal and/or regulatory provisions in the broadest sense of the word. The Main Contractor is entitled to deduct the relevant sums from any amounts it still owes to the Subcontractor for any reason whatsoever. The Subcontractor shall be solely responsible, both to the Main Contractor and to third parties, including the Client, for the quality of the Works performed as described in the Contractual Documents. It shall indemnify the Main Contractor against all consequences if the Works do not meet the requirements set out in the Agreement.

In the event of contractual failure by the Subcontractor, the Main Contractor also always has the option of terminating the Agreement at the expense of the Subcontractor in accordance with Article 14.3.

#### **Article 14: Termination of the Agreement**

##### **14.1 Concurrence and apparent inability**

In the event of death, bankruptcy or liquidation or in the event of any other form of insolvency of the Subcontractor, the Main Contractor shall have the right to choose either to terminate the Agreement or to continue it through the heirs, legal representatives or legal successors in accordance with the terms and conditions of the Agreement.

##### **14.2 Termination by the Client of its Agreement with the Main Contractor**

If the Agreement between the Client and the Main Contractor is terminated for any reason whatsoever, without another person or

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company taking the place of the Client for the Site, the Agreement shall also be terminated by operation of law. In any case, the Main Contractor shall be entitled, subject to compliance with a reasonable notice period, to terminate the Agreement in accordance with this article if the Agreement between the Client and the Main Contractor is terminated for any reason whatsoever.

The Main Contractor shall only be liable to pay compensation to the Subcontractor if the Main Contractor has received at least a proportional equivalent value from the Client.

**14.3 Contractual shortcoming**

If the Subcontractor fails to perform the Works as set out in Article 13.1 of the General Terms and Conditions, the Main Contractor shall be entitled to terminate the Agreement without further notice of default and without prior authorisation from the Court.

In particular, the Main Contractor shall be entitled to terminate the Agreement immediately if the RSZ reports to the Main Contractor any irregularities relating to wages/illegality at the Subcontractor or one of its Subcontractors, as well as when a breach of the essential safety requirements as set out in Article 10 is established.

If the Main Contractor terminates the Agreement in accordance with the above conditions, it may have the Works carried out by a third party at the expense and risk of the defaulting Subcontractor, without prejudice to its rights to compensation for the damage actually suffered.

**14.4 Lump sum compensation**

If the Main Contractor terminates the Agreement due to a contractual breach by the Subcontractor as set out in Articles 13 and 14, the Main Contractor shall be entitled to fixed compensation of ten (10) % of the Price, subject to the right to higher compensation if the Main Contractor can prove that the actual damage is greater. The parties acknowledge and agree that, in such a case, due to the circumstances justifying unilateral termination, the Subcontractor shall be deemed to be in serious, definitive and irrevocable default in fulfilling its obligations under the Agreement.

Before the Works are continued by a third party, the following shall be complied with:

- The parties shall draw up a joint statement of the Works already carried out and proceed to estimate their value on the basis of the prices proposed by the Subcontractor, within five (5) working days of the written request of one of the parties.
- The Main Contractor must notify the defaulting Subcontractor of the Price demanded by the third party for the further execution of the unfinished Works, as specified in the terminated Agreement. The Subcontractor is obliged to notify any objections within five (5) working days of this notification.

**Article 15: Liability and guarantees**

**15.1 Liability**

The Subcontractor has an obligation of result for all obligations it has entered into.

The Subcontractor shall be liable, and shall fully indemnify the Main Contractor, for all damage resulting from or related to the performance of the Works, whether physical, material or immaterial damage, whether contractual or non-contractual damage, whether direct or indirect damage, whether foreseeable or unforeseeable damage, whether in respect of third parties or in respect of the Main Contractor, whether or not caused by the actions of the Personnel, a (sub)contractor, a supplier and/or the Subcontractor's equipment. The Subcontractor is also liable for damage caused by the materials used in

the Works, as well as for damage caused by the equipment used by him, his (sub)subcontractors or his appointees. The Subcontractor is also liable for any damage to trenches, pipes, cables, wire or pipe networks, sewers and, in general, all neighbouring installations, both underground and above ground.

The Subcontractor also assumes the liability arising from Articles 1792 and 2270 of the old Civil Code. This ten-year period shall commence from the date of final completion, as specified in Article 18.3.5., and in any case not before the commencement of the period of the Main Contractor's liability towards the Client. The Subcontractor fully indemnifies the Main Contractor against any claim or demand by the Client or third parties for defects in the Works for as long as the Main Contractor can be held liable by the Client or third parties.

The Subcontractor shall also be liable for any hidden defects in the Works carried out by it, which affect the Works, as well as for any consequential damage resulting therefrom.

The Subcontractor shall make every effort to rectify the consequences of its errors, defects, imperfections, miscalculations, omissions, negligence, delays and other contractual breaches as quickly and carefully as possible, at its own expense and risk. This shall not give rise to an extension of the execution period, an increase in the Price or any other additional compensation.

Neither the possible successful outcome of inspections, tests, checks, approvals, etc., nor the fact that the Main Contractor or an authorised third party has made adjustments to the Works carried out by the Subcontractor shall affect the Subcontractor's liability.

The Subcontractor shall be liable for any nuisance or damage caused directly or indirectly by him, his (sub)subcontractors and/or his appointees to third parties, including neighbouring properties, and he shall indemnify the Main Contractor in full in this respect. The Subcontractor hereby assumes the liability arising from Articles 1382 to 1386 of the old Civil Code. The Subcontractor hereby also assumes full liability for nuisance to neighbours within the meaning of Article 544 of the old Civil Code / Article 3.101 of the Civil Code. He is personally liable for disturbing the balance with neighbouring properties and will be responsible for restoring this balance at his own expense and risk and for paying any compensation for this.

**15.2 Indemnification and intervention in proceedings**

The Subcontractor also indemnifies the Main Contractor, the companies affiliated with the Main Contractor as defined in Article 1:20 of the Companies and Associations Code, as well as their respective directors, representatives, appointees or implementing agents, against any claim by third parties arising from damage caused by the Subcontractor, its Personnel or the items under the Subcontractor's supervision in the performance of the Agreement.

The Subcontractor shall intervene at the first request in judicial and extrajudicial proceedings involving, with or against the Main Contractor when the Subcontractor's liability could possibly be compromised. It shall be obliged to compensate, indemnify and defend the Main Contractor against all claims, demands, (procedural) claims, losses, costs and expenses, which are directed at the Main Contractor by the Client or a third party.

**Article 16: Insurance**

The Subcontractor undertakes to take out occupational accident insurance to cover all its Personnel.

The subcontractor with self-employed status declares that he/she has valid insurance covering personal accidents during the performance of work on the site. This insurance must cover all risks arising from

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activities on the site. The subcontractor indemnifies the client against any liability for damage or injury that he/she himself/herself incurs during the performance of the work.

All vehicles used by the Subcontractor are covered by WAM insurance. The Subcontractor shall also take out appropriate insurance to cover the equipment and materials it uses on the Site.

The Subcontractor also undertakes to take out civil liability insurance covering its civil liability towards third parties, including the Main Contractor and the Client and any other party present on the Site that is considered a third party, as well as to cover damage caused to entrusted goods and nuisance to neighbours within the meaning of Article 544 of the old Civil Code / Article 3.101 of the Civil Code. The amount of cover shall be at least €2,500,000 per claim for material, physical and immaterial damage combined. The Subcontractor's public liability insurance will always intervene in the first instance, even if the claim is also insured under an A.B.R. policy.

The Subcontractor accepts this extension of its usual liability. The Subcontractor accepts that it must compensate for all direct and indirect damage caused by it, its Personnel, its business and its Works.

The premiums, excess and exclusions relating to insurance to be taken out by the Subcontractor are included in the Price and are payable by the Subcontractor.

The policies also contain a clause whereby the insurer undertakes to notify the Main Contractor of any cancellation, suspension, modification or reduction of the insurance cover or in the event of non-payment by the Subcontractor. The establishment, suspension, modification or reduction of insurance cover shall, where applicable, take effect at the earliest fifteen (15) days after the insurer has sent the notification.

At the first request of the Main Contractor, the Subcontractor shall provide a certificate of adequate cover and regular payment of premiums by its insurer for the various insurance policies it has taken out. These certificates shall state the insured amounts and the applicable exemptions.

The Subcontractor shall impose the provisions of this article on any (sub)subcontractors.

In the event that the insurance of the Main Contractor and/or the Client intervenes in a claim caused by the Subcontractor or one of its (sub)subcontractors, the Subcontractor shall bear the burden of all exemptions, any exclusions and insufficient cover, additional premiums and premium surcharges.

In the event of bankruptcy, liquidation, dissolution or any other form of insolvency of the Subcontractor, the Subcontractor shall transfer to the Main Contractor all rights it has in relation to the insurers. The Subcontractor shall ensure that such a transfer of rights is included in the policy. The existence or non-existence of insurance cover for damage or liability does not release the Subcontractor from its liability.

The Subcontractor shall indemnify the Main Contractor against any liability claim, of whatever nature and at whatever time, in connection with the performance of this Agreement and originating from the Client, the Client's legal successors in a special or general capacity, or other third parties.

The fact that the Subcontractor is or is not insured, as well as the extent of the coverage of these insurance policies, shall have no influence whatsoever on the Subcontractor's liability towards the Main Contractor, the Client and third parties.

The policies taken out by the Subcontractor in connection with the current Subcontract Agreement (including, but not limited to, the aforementioned insurance policies relating to occupational accidents, insurance relating to the use and transport of machinery used on the Site and civil liability insurance contain a clause waiving recourse against the Main Contractor, its representatives, appointees or implementing agents, as well as against the Client, its representatives and appointees, architect and other advisory and/or supervisory bodies. If no waiver of recourse has been agreed, the Subcontractor must fully indemnify the Main Contractor against all claims that its insurer(s) may assert against the Main Contractor on behalf of its Personnel and their beneficiaries.

#### **Article 17: Force majeure**

On pain of forfeiture, the Subcontractor must report any fact or circumstance that may exempt it from its contractual or legal liabilities or that may result in the Subcontractor being temporarily or permanently unable to perform its obligations or suspending their performance within forty-eight (48) hours of the event or circumstance occurring and the Subcontractor becoming aware of it or reasonably should have become aware of it. This period is a limitation period. The notification must then be confirmed to the Main Contractor by registered letter within three (3) calendar days.

Any claims or demands based on such facts or circumstances shall only be admissible and enforceable insofar as those facts or circumstances have been recognised and accepted by the Client.

Force majeure shall in any case never be understood to include the following non-exhaustive events:

- the bankruptcy or apparent insolvency of a Subcontractor of the Subcontractor,
- a strike and lock-out at the Subcontractor, its Subcontractors or its suppliers.

#### **Article 18: Acceptance and delivery of the Works**

##### **18.1 Applicable provisions**

The delivery of the Works shall take place in accordance with the conditions and within the time limits laid down in the Agreement between the Main Contractor and the Client, or in the special specifications accompanying this Agreement. If the delivery is not regulated therein, or if the provisions of this article impose additional and supplementary conditions and obligations, the provisions of this article shall apply to the delivery of the Works.

##### **18.2 Time of completion**

The provisional and final acceptance of the Works cannot take place before the provisional and final acceptance of the entire Works on the Site, respectively. The provisional and final acceptance of the Works shall, in principle, take place together with the provisional and final acceptance of the entire Works on the Site, respectively, unless expressly stipulated otherwise. At the simple request of the Main Contractor, the Subcontractor shall be present at the activities relating to the provisional and final acceptance of all the Works at the Site, and shall be legally represented there.

The complete "as-built" files and plans shall be handed over by the Subcontractor in good time at the simple request of the Main Contractor, so that the provisional or final acceptance can take place.

##### **18.3 Completions**

###### **18.3.1**

With a view to provisional completion, or, where applicable, final completion, the Subcontractor shall clean the Works and bring them into a state of completion.

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If it fails to do so, the Main Contractor shall send it a reminder by registered letter to do so. If no appropriate action is taken within five (5) calendar days of this notice of default, the Main Contractor shall be entitled to clean the Works and prepare them for completion at the Subcontractor's expense and risk. These costs shall be charged to the Subcontractor at the rate of invoicing of wages on a time and materials basis.

#### 18.3.2

At the written request of the Main Contractor, the Subcontractor shall, at its own expense, carry out the tests required by the Main Contractor or the Client. If it fails to do so within five (5) working days of being invited to do so in writing by the Main Contractor, the Main Contractor shall be entitled, without further notice of default, to carry out the tests at the Subcontractor's expense and risk.

#### 18.3.3

If no comments are made in relation to the Subcontractor's Works during the only scheduled handover or during the provisional handover of the Works of the main contract, these Works shall be deemed to have been provisionally handed over or, in the case of any scheduled handover, definitively handed over.

If the Works of the main contract are subject to double acceptance, the final acceptance of the main contract shall entail the final acceptance of the Works, provided that the Subcontractor complies with any comments made in relation to the Works.

#### 18.3.4

If comments are made regarding the Works carried out during the provisional acceptance of the Works, the Subcontractor undertakes to immediately carry out all Works necessary to remedy these comments and to bring the Works to a state of final acceptance and to maintain them in that state.

If, within a period of five (5) calendar days after a notice of default has been sent by registered letter, the Subcontractor fails to carry out the Works to remedy the comments, the Main Contractor shall be entitled by operation of law to carry out those Works itself or have them carried out by a third party, at the Subcontractor's expense and risk.

Recourse to the measure referred to in the previous paragraph constitutes a contractual breach on the part of the Subcontractor within the meaning of Article 13.1 of the Agreement. This breach shall, unless proven otherwise, be presumed to be a contractual breach on the part of the Subcontractor.

With regard to the delivery of the Works, the Subcontractor shall comply fully with the decisions that have been or will be taken between the Main Contractor and the Client.

#### 18.3.5

The warranty period for hidden defects is ten (10) years from the final delivery, unless otherwise specified in the Agreement between the Client and the Main Contractor or in the specific or general specifications, and in any case may never commence before the commencement of the ten-year period of liability for hidden defects of the Main Contractor towards the Client.

#### 18.3.6

If the final or provisional acceptance, as the case may be, cannot take place immediately after completion of the Works, a joint statement of findings shall be drawn up between the Main Contractor and the Subcontractor. The drawing up of this statement shall not constitute final or provisional acceptance.

#### 18.3.7

The Works shall never be tacitly accepted. It is expressly agreed between the parties that neither taking possession of the Works, nor putting them into use, nor the absence of complaints during a certain period, nor full payment for the Works, can be invoked as tacit acceptance.

#### Article 19: Confidentiality and Publicity

The exchange of information or data, including but not limited to plans, schedules, correspondence and documents relating to the subject matter of the Agreement or its implementation, shall be considered confidential, regardless of whether such communication is made verbally or by any other means. The parties may only use this information for the performance of their contractual obligations.

The Subcontractor is expressly prohibited from transferring this data or these documents to third parties or making copies thereof, including in digital form, unless this is strictly necessary for the performance of the Agreement and only after the express, prior written consent of the Main Contractor and the Client.

If the Agreement is terminated, in any manner or for any reason whatsoever, all documents containing confidential information or data, as well as all plans and schedules, including all copies of these documents made by the recipient, shall be returned to the Main Contractor.

The Subcontractor's publicity panels or advertising boards may only be placed on the Site after prior written approval by the Main Contractor and the Client and in accordance with the specifications.

#### Article 20: Suspensive condition

This Agreement is concluded subject to and under the suspensive condition of the Client's acceptance of the Subcontractor, the proposed materials, technical data sheets and drawings, stability studies, implementation methods, etc. for the Works. Non-approval or non-acceptance shall in no case give rise to any compensation by the Main Contractor to the Subcontractor.

#### Article 21: Disputes, applicable law and competent court

##### 21.1 Applicable law

The Agreement shall be governed exclusively by Belgian law, to the exclusion of the provisions of private international law or other rules that declare the law of another jurisdiction outside Belgium to be applicable.

Unless expressly agreed otherwise in writing in advance, foreign legislation and the Vienna Sales Convention 1980 (CISG) shall not apply to the Agreement.

Any reference to legislation is purely indicative. The most recent legislation must be applied at all times.

##### 21.2. Competent court

Any and all disputes relating to the conclusion, validity, interpretation and/or performance of the Agreement shall be subject to the exclusive jurisdiction and competence of the courts and tribunals of the district of Antwerp, Antwerp division.

##### 21.3. Disputes

If the Main Contractor is held liable by the Client or third parties for matters that may be related to the Works carried out by the Subcontractor, the Subcontractor shall, at the first request of the Main Contractor, voluntarily intervene in this dispute as a party, regardless of whether this dispute is pending before a court, an arbitration committee or the Construction Conciliation Committee, and even if

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proceedings between the Main Contractor and the Subcontractor are already ongoing.

In turn, the Subcontractor agrees to incorporate the content of this article into the contracts it concludes with its suppliers and subcontractors for the purpose of performing the Agreement.

**Article 22: General provisions**

**22.1. Transfer of the Agreement**

The Subcontractor is prohibited from transferring all or part of the rights and obligations arising for it from the Agreement to third parties without the prior written consent of the Main Contractor.

**22.2. Illegality, invalidity, nullity or unenforceability of a provision**

If one or more provisions of the applicable terms and conditions are declared unlawful, invalid, void or unenforceable, in whole or in part, for any reason whatsoever, this unlawfulness, invalidity, voidness or unenforceability shall not extend to the other terms and conditions. In such a case, the Parties shall negotiate in good faith and to the best of their ability to replace this provision with a lawful, valid, non-void and enforceable provision with a similar economic effect.

**Article 23. Protection of personal data**

The Parties undertake to comply with the applicable data protection legislation, in particular the General Data Protection Regulation ("GDPR") 2016/679, and to ensure that their staff and subcontractors also comply with this legislation.

Both Parties collect and process the personal data they receive from each other for the purposes of performing the agreement, supplier management, accounting, any disputes and direct marketing activities.

The legal grounds are the performance of the agreement, the fulfilment of legal and regulatory obligations and/or legitimate interest.

Both Parties have taken appropriate measures to guarantee the privacy and security of personal data. Both Parties will only pass on this personal data to processors, recipients and/or third parties insofar as this is necessary in the context of the aforementioned purposes for processing.

Both Parties are responsible for the accuracy of the personal data they provide to each other, guarantee that they have sufficient legal grounds to transfer the personal data and undertake to comply with the General Data Protection Regulation with regard to the data subjects whose personal data has been transferred, as well as with regard to any personal data that the Parties may receive from each other's employees.

The Subcontractor undertakes to provide this information about the processing to the data subjects, including a reference to the Data Protection Notice.

The Subcontractor confirms that it has been adequately informed about the processing of its personal data and about its rights of access, rectification, erasure and objection. For more information, please consult the Privacy Policy on our website.

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