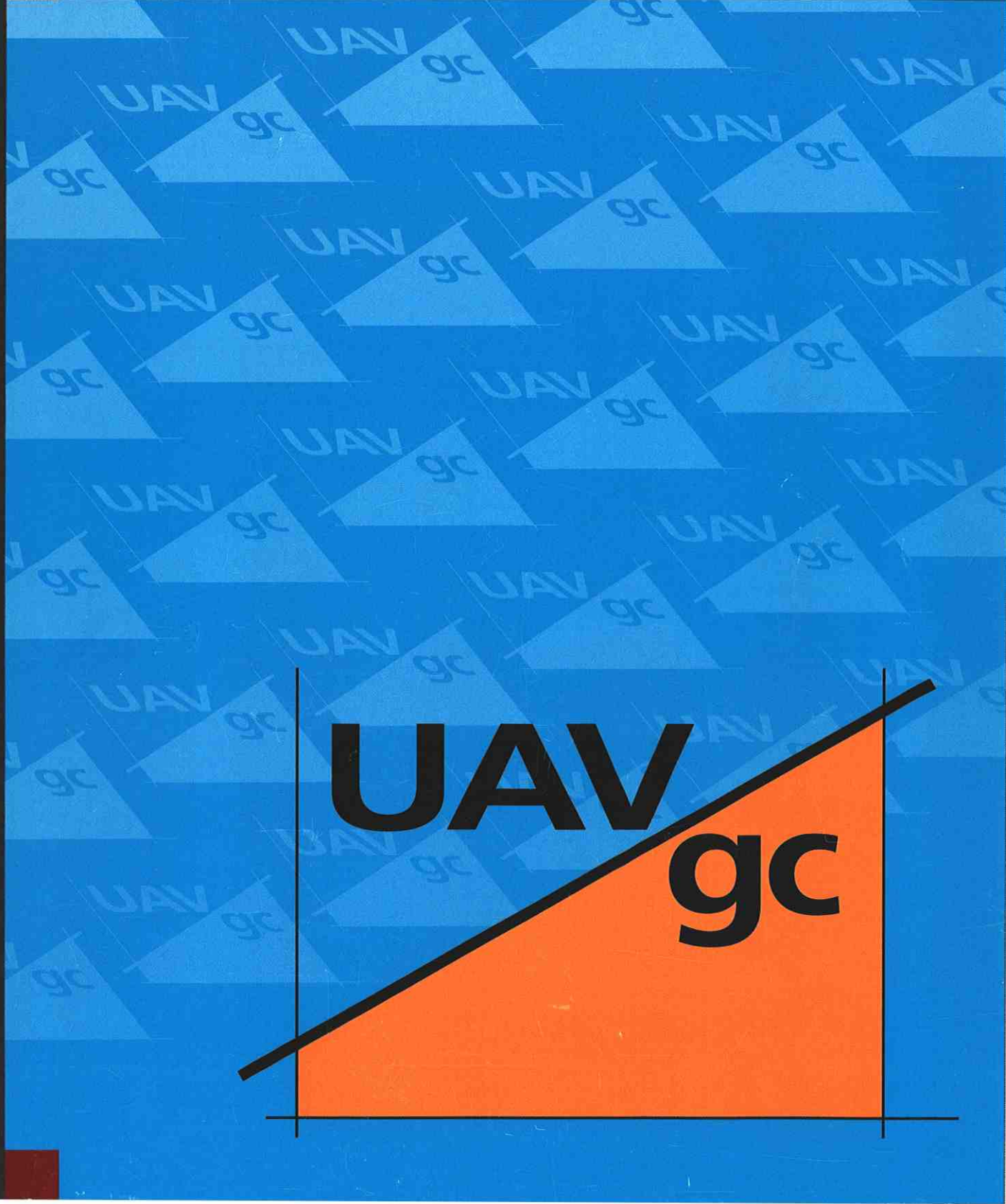


UAV-GC 2005

Model Agreement with corresponding
Uniform Administrative Conditions for integrated
contracts and General Explanatory Notes



UAV
gc

CROW is the national information and technology platform for infrastructure, traffic, transport and public space. This not-for-profit organisation develops, disseminates and manages practically applicable knowledge for policy preparation, planning, design, construction, management and maintenance. It works with all interested parties, including national, provincial and municipal governments, consultancies, construction companies active in civil engineering, suppliers and transport organisations. The knowledge, which usually consists of guidelines, recommendations and sets of systems, is transferred to the target groups via websites, publications, training courses and conferences. CROW has clustered its activities into seven themes:

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Model Agreement

**with corresponding Uniform Administrative Conditions for
integrated contracts (UAV-GC 2005)**

and General Explanatory Notes

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MODEL AGREEMENT

The parties:

.....
.....
hereinafter referred to as: the Employer,

lawfully represented for the purpose of this document by:
.....
.....

and

.....
.....
hereinafter referred to as: the Contractor,

lawfully represented for the purpose of this document by:
.....

whereas¹

- (a) The Employer plans to have the following realised:
.....;
- (b) The Employer has therefore drafted/instructed the drafting of² the Employer's Requirements [*reference, date*];
- (c) The Employer has put the realisation of the Employer's Requirements out to tender in accordance with [*reference to tendering regulations as well as the specific procedure referred to in the said regulation*];
- (d) [*description of the purpose and the course of the tendering procedure*];
- (e) [*if applicable, insert: As part of this tendering procedure*] The Contractor has submitted a Tender [*reference, date*] to the Employer for the realisation of
.....;
- (f) Considering the Tender of the Contractor, the Employer intends to grant the Contractor the order for the said realisation of the Employer's Requirements;

Declare that they agree as follows:

1 If the Employer has not put the realisation of the Employer's Requirements out to tender and has requested the Contractor directly and exclusively to submit a Tender, whereas (c) and (d) will be omitted and replaced by a new whereas (c), stating: (c) the Employer has requested the Contractor to submit a Tender for the realisation of

Whereas (e) and (f) will then become (d) and (e), respectively.
2 Delete whichever is inapplicable.

ARTICLE 1 LEGAL NATURE OF THE CONTRACT, SUITABLE CONDITIONS

1. The parties declare that they regard this Contract as a contract for work on goods as referred to in Book 7, Title 12, Section 1 of the Dutch Civil Code.
2. The Agreement is governed by UAV-GC 2005. The parties declare that they are familiar with the contents of UAV-GC 2005.

ARTICLE 2 COMMISSION, THE WORKS, LONG-TERM MAINTENANCE, PRICE, DATE OF COMPLETION AND ACCEPTANCE

1. The Employer hereby commissions the Contractor, who declares that he accepts this commission, to realise on the basis of the Employer's Requirements and the Tender by means of Design and Construction Work of
.....
.....
hereinafter referred to as: the Works, in accordance with the provisions of this Contract.
2. The parties agree that⁴:
 - ☐ the Employer hereby commissions the Contractor, who agrees to accept this commission, to maintain the Works on the basis of the Employer's Requirements and the Tender by means of Maintenance Work, hereinafter referred to as: the Long-Term Maintenance, for a period of years⁵, counting from the actual date of completion and acceptance, hereinafter referred to as: the Long-Term Maintenance Period, in accordance with the provisions of this Contract.
 - ☐ the Employer does not commission the Contractor the Long-Term Maintenance.
3. With regard to the requirements referred to in clause 4 section 3 UAV-GC 2005, which are derived from the specific purpose for which the Works will be used, the parties conclude that they have discussed these requirements sufficiently prior to signing this Agreement and that the said requirements are stated in full in the Employer's Requirements.
4. Subject to the provisions of clause 3 section 9 UAV-GC 2005, the Employer shall pay the Contractor a total amount of EUR..... [in words:.....] (exclusive of VAT) for the realisation of the Works and, if agreed upon in section 2, for the realisation of the Long-Term Maintenance. The aforementioned amount is broken down as follows⁶:
.....

3 The description of the Works, to be drafted by the parties, should also address the purpose of the Works.

4 The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, realisation of the Long-Term Maintenance by the Contractor will not be considered to be part of the Agreement.

5 To be completed by the parties.

6 Yet to be detailed by the parties.

5. The Works shall be realised by the Contractor in accordance with the programme included in an annex to the Employer's Requirements, in such a manner that the Works will be ready for acceptance by the Employer in accordance with the provisions of clause 24 UAV-GC 2005 at last on⁷. The parties shall regard this date as the extreme date of completion and acceptance stated in the Agreement.
6. The following parts of the Works must be realised by the Contractor in such a manner that each part is ready for acceptance by the Employer in accordance with clause 24 section 8 UAV-GC 2005 at last on the respective dates stated for each individual part⁸:
 - (a) on
 - (b) on
 - (c) on
 - (e) on
 - (f) on
 - (g) on
 - (h) on

ARTICLE 3 CONTRACT DOCUMENTS

1. The following contract documents jointly represent the rights and obligations arising for the parties from the Contract:
 - (a) the Agreement completed and signed by the parties including the summaries of additional information and changes and the minutes of the pre-tender meeting;
 - (b) the Employer's Requirements;
 - (c) the annexes to the Employer's Requirements initialled by the parties regarding:
 - (I) the permits and/or licences, exemptions, orders and permissions to be obtained by the Employer;
 - (II) the programme;
 - (III) the acknowledgement plan;
 - (IV) the Design Work test plan;
 - (V) the materials released;
 - (VI) the overview of work to be carried out by other contractors as well as the times at which such work will be carried out;
 - (VII) the settlement of changes in wages, social security charges, prices, rent and carriage costs;
 - (VIII) the provisional sums;
 - (IX) the bank guarantee;
 - (X) the insurance;
 - (XI) the Dispute Adjudication Board rules.

⁷ To be completed by the parties.

⁸ To be completed by the parties.

- (d) the Uniform Administrative conditions for integrated contracts (UAV-GC 2005);
 - (d) the Tender;
 - (e) the Documents as referred to in clause 1 subsection d UAV-GC 2005, to the extent that the Contractor has notified the Employer of the same.
2. In the case of conflicts between contract documents, the order of preference of the documents shall be as follows, unless the Contract provides otherwise:
- (a) the Agreement;
 - (b) the Employer's Requirements;
 - (c) the annexes to the Employer's Requirements;
 - (d) the UAV-GC 2005;
 - (e) the Tender;
 - (f) the Documents as referred to in clause 1 subsection d UAV-GC 2005, to the extent that the Contractor has notified the Employer of the same.
- If, however, the quality of the Works offered exceeds the quality stipulated in the Employer's Requirements or if the Contractor offers to complete the Works at an earlier time than the time stipulated in the Employer's Requirements, the Tender shall take preference over all other contract documents, except for the Agreement.
3. The Contractor is responsible for the contents of Documents, for any conflicts between two or more Documents, as well for any conflicts between the various parts of any single Document.
4. The Employer is responsible for any conflicts between requirements in the Employer's Requirements, as well for conflicts in the information provided by the Employer. The provisions of this section shall also apply to conflicts between the annexes to the Employer's Requirements.
5. The provisions of section 4 shall not affect the obligation of the Contractor to warn the Employer in the event of an apparent conflict as referred to in that section.

ARTICLE 4 MEANING OF THE TERM 'DAY'

1. 'Day' as used in this Contract shall be understood to mean⁹:
- ☐ calendar day.
 - ☐ calendar day, unless it coincides with a public holiday, or day recognised as a holiday generally or locally in the region of the Works or a day designated by the government or by or under the collective labour agreement as a day of rest, day of celebration or other non-individual holiday.
 - ☐ other, viz.:

⁹ The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, they shall be deemed to have selected the option of 'calendar day'.

ARTICLE 5 DESIGN WORK¹⁰

1. The Employer's Requirements consist of:
 - ☐ the conceptual design.
 - ☐ the conceptual design and the preliminary design.
 - ☐ the conceptual design, the preliminary design and the basic design.
2. Under this Contract, the Contractor shall perform the following Design Work:
 - ☐ developing the conceptual design into a preliminary design, a basic design and a final design.
 - ☐ developing the conceptual design and the preliminary design into a basic design and a final design.
 - ☐ developing the conceptual design, the preliminary design and the basic design into a final design.

ARTICLE 6 PERMITS AND/OR LICENCES, EXEMPTIONS, ORDERS AND PERMISSIONS

1. The Employer's Requirements shall be accompanied by an annex including a list of the permits and/or licences, exemptions, orders and permissions that the Employer must have obtained for the purpose of the planning and the use of the Works or that are otherwise required for the Works and, if agreed upon, for the purpose of the realisation of the Long-Term Maintenance.
2. The annex referred to in section 1 specifies for each individual permit and/or licence, exemption, order and permission the final date by which the Employer must have obtained them.
3. The permits and/or licences, exemptions, orders and permissions referred to in clause 10 section 1 UAV-GC 2005 that are not listed in the annex referred to in section 1 must be obtained by the Contractor by

ARTICLE 7 INFORMATION AND GOODS PUT AT THE DISPOSAL OF THE CONTRACTOR

1. In so far as information is not yet included in the Employer's Requirements, and given the provisions of clause 3 section 1 subsection a UAV-GC 2005, the Employer undertakes to place the following information at the disposal of the Contractor:
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)

¹⁰ The parties are expected to tick one of the options given in both sections to indicate their choice. The option selected in the first section is inextricably connected to the option selected in the second section. If option 1 is selected in section 1, it must also be selected in section 2, and so on.

- (f)
2. In so far as this is not yet included in the Employer's Requirements, and given the provisions of clause 3 section 1 subsection c UAV-GC 2005, the Employer undertakes to place the following goods at the disposal of the Contractor:
- (a)
- (b)
- (c)
- (d)
- (e)
- (f)

ARTICLE 8 MATERIALS RELEASED

To the extent that the Employer is aware of the present of materials that will be released during the Construction and Maintenance Work, he shall specify in the annex to the Employer's Requirements what must be done with those materials. If any materials are released during the Work in respect of which nothing has been stipulated in the said annex, the Employer shall determine within a reasonable period what must be done with them. In that case, the Contractor will be entitled to compensation of cost and/or extension of time, subject to the provisions of clause 44 section 1 subsection a UAV-GC 2005.

ARTICLE 9 CONNECTION WITH OTHER WORKS

- The nature of the work referred to in clause 8 section 1 UAV-GC 2005, as well as the expected time at which it will be performed are described in an annex to the Employer's Requirements.
- ☐ This work must be co-ordinated¹¹ by the Contractor.
 - ☐ This work must be co-ordinated¹² by the Employer.
 - ☐ This work must be co-ordinated¹³ in accordance with the co-ordination agreement included in the above-mentioned annex to the Employer's Requirements.
 - ☐ Not applicable; as yet, no work is expected to be carried out by other contractors.

11 The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, the employer shall be responsible for co-ordination.

12 The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, the employer shall be responsible for co-ordination.

13 The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, the employer shall be responsible for co-ordination.

ARTICLE 10 SETTLEMENT OF CHANGES IN WAGES, SALARIES, SOCIAL SECURITY CHARGES, PRICES, RENT AND CARRIAGE COSTS

Settlement of the changes in wages, salaries, social security charges or of prices, rent and carriage costs referred to in clause 11 section 3 UAV-GC 2005¹⁴

- ☐ shall occur in accordance with the regulations included in an annex to the Employer's Requirements,
- ☐ shall not occur.

ARTICLE 11 DESIGN WORK TEST PLAN

A Design Work test plan shall be appended as an annex to the Employer's Requirements, providing:

- (a) a list of the Design Documents that the Contractor has to submit to the Employer for testing;
- (b) the terms within which the Design Documents referred to in subsection a must be submitted;
- (c) a description of the details that the Contractor must add to the Design Documents to be submitted; and
- (d) the specific parts of the Design Work in respect of which the Employer wishes to test whether they are performed by employees and subcontractors of the Contractor who possess the required qualifications.

ARTICLE 12 ACKNOWLEDGEMENT PLAN

An acknowledgement plan shall be appended to the Employer's Requirements, providing:

- (a) a list, to be submitted by the Contractor for Acknowledgement, of Documents, representatives and subcontractors that the Contractor intends to designate or involve in the Contract, as well as specific Work or results of Work;
- (b) the times at which the Contractor shall submit the Documents, subcontractors, Work and results of Work referred to in subsection a for Acknowledgement;
- (c) the Documents that the Contractor must submit each time when an Acknowledgement request is submitted;
- (d) the objectivised criteria that the Documents, representatives, subcontractors, Work and results of Work have to satisfy in order to qualify for Acknowledgement; and
- (e) the term within which the Employer has to notify the Contractor whether the Documents, representatives, subcontractors, Work or results of Work referred to here are deemed accepted.

14 The parties are expected to tick one of the options given to indicate their choice. If they fail to do so, no settlement will occur.

ART. 13 ONUS OF PROOF IN CASE OF DEFECTS OR FAILURES

1. Contrary to the provisions of clause 28 section 1 subsection a UAV-GC 2005, if a defect is discovered in one or more parts of the Works after the actual date of completion and acceptance, the Contractor must prove that he is not to blame for the defects, nor that he is accountable for the same by law, by a juristic act or according to generally accepted standards¹⁵:
 - (a)
 - (b)
 - (c)
 - (e)
 - (f)
 - (g)
 - (h)
2. Contrary to the provisions of clause 32 section 1 subsection a UAV-GC 2005, if, after the Long-Term Maintenance Period, a failure is discovered in one or more parts of the Long-Term Maintenance carried out, the Contractor must prove that he is not to blame for the defects, nor that he is accountable for the same by law, by a juristic act or according to generally accepted standards¹⁶:
 - (a)
 - (b)
 - (c)
 - (e)
 - (f)
 - (g)
 - (h)

ARTICLE 14 PAYMENT PROCEDURE

1. The address referred to in clause 33 section 6 UAV-GC 2005 is:
.....
.....
2. The details referred to in clause 33 section 6 UAV-GC 2005 are:
 - (a)
 - (b)
 - (c)
 - (d)
 - (e)
 - (f)

15 To be completed by the parties.

16 To be completed by the parties.

ARTICLE 15 PROVISIONAL SUMS

With regard to the provisions of clause 34 section 1 UAV-GC 2005, the parties agree that¹⁷

- ☐ the provisional sums are specified in the overview included in an annex to the Employer's Requirements;
- ☐ there are no provisional sums.

ARTICLE 16 PENALTY CLAUSE AND BONUS

1. The amounts of the penalties referred to in clause 36 section 3 UAV-GC 2005 shall be the following:
 - (a) Milestone date: EUR..... per day;
 - (b) Milestone date: EUR..... per day;
 - (c) Milestone date: EUR..... per day;
 - (d) Milestone date: EUR..... per day;
 - (e) Milestone date: EUR..... per day;
 - (f) Milestone date: EUR..... per day.
2. The amount of the penalties that may be imposed on the Contractor pursuant to section 1 in conjunction with clause 36 section 3 UAV-GC 2005 shall total a maximum of EUR.....¹⁸
3. The amount of the bonus referred to in clause 36 section 7 UAV-GC 2005 shall be EUR..... per day.
4. The amount of the bonus that may be paid to the Contractor pursuant to section 3 in conjunction with clause 36 section 7 UAV-GC 2005 shall total a maximum of EUR.....¹⁹

ARTICLE 17 SECURITY

The parties agree that²⁰:

- ☐ the Contractor is under an obligation to provide the security referred to in clause 38 section 1 UAV-GC 2005 for the fulfilment of his obligations regarding the realisation of the Works as referred to in article 2 section 1, in accordance with the bank guarantee included in an annex to the Employer's

17 The parties are expected to tick one of the options to indicate their choice. If they fail to do so, no provisional sums shall have been agreed upon.

18 If no maximum amount is entered, the total amount of the penalties payable by the Contractor shall not be contractually limited.

19 If no maximum amount is entered, the amount of the bonus that may be paid to the Contractor shall not be contractually limited.

20 The parties must make a choice and shall be free to select the first two options jointly. If no option is ticked, the Contractor will not be required to provide security. If it is agreed in article 2 section 2 that the Contractor does not undertake to perform the Long-Term Maintenance, ticking the second option in the present article will not result in any obligations for the Contractor.

- Requirements. The value of the security to be provided shall equal% of the price stated in article 2 section 4²¹.
- the Contractor is under an obligation to provide the security referred to in clause 38 section 1 UAV-GC 2005 for the fulfilment of his obligations regarding the realisation of the Long-Term Maintenance as referred to in article 2 section 2, in accordance with the bank guarantee included in an annex to the Employer's Requirements. The value of the security to be provided shall equal% of the price stated in article 2 section 4²².
 - security as referred to in clause 38 section 1 UAV-GC 2005 is not required.

ARTICLE 18 DISPUTE ADJUDICATION BOARD

- The parties shall submit their disputes, as described in clause 47 section 2 UAV-GC 2005, to the Dispute Adjudication Board, with due observance of the dispute adjudication rules laid down in the annex to the Employer's Requirements.
- The parties shall not submit their disputes to the Dispute Adjudication Board.²³

21 Percentage to be entered by the parties. If they fail to do so, no provision of security shall be agreed upon.

22 Percentage to be entered by the parties. If they fail to do so, no provision of security shall be agreed upon.

23 The parties are expected to tick one of the options given to indicate their choice. If they do not submit the said disputes to the Dispute Adjudication Board, the disputes referred to may be submitted to the Court of Arbitration for the Building Industry pursuant to clause 47 section 2 UAV-GC 2005.

**UNIFORM ADMINISTRATIVE CONDITIONS FOR INTEGRATED
CONTRACTS (UAV-GC 2005)**

CHAPTER 1

GENERAL

Clause 1 Definitions

The following words used in the Contract and starting with a capital letter are given the corresponding meaning by the parties:

- (a) Tender: the contract document by which the Contractor expresses that he is willing to realise the Works and, if so desired, the Long-Term Maintenance in accordance with the provisions of the Contract on payment of the price stated in the Agreement.
- (b) Acknowledgement: a written notice addressed to the Contractor by which the Employer declares that he has no objection against the Documents, subcontractors, Work, results of Work or Variations as referred to in clause 15 section 3, submitted for Acknowledgement by the Contractor.
- (c) Agreement: the Model Agreement completed and signed by the parties.
- (d) Documents: all data produced by or on behalf of the Contractor as part of Work, irrespective of the nature of the data carrier on which or in which this data is stated.
- (e) Long-Term Maintenance: the Long-Term Maintenance of the Works referred to in the Agreement which the Contractor shall realise on the basis of the Employer's Requirements and the Tender by means of Maintenance Work.
- (f) Long-Term Maintenance Period: the time period referred to in the Agreement in which the Contractor shall realise the Long-Term Maintenance.
- (g) Maintenance Documents: Documents produced by or on behalf of the Contractor as part of Maintenance Work.
- (h) Maintenance Work: all activities, including the supply of goods, that have to be carried out by the Contractor in order to realise the Long-Term Maintenance, next to and in addition to Design and Construction Work.
- (i) Design Documents: Documents produced by or on behalf of the Contractor as part of Design Work.
- (j) Design Work: the Work stated as such in the Agreement that shall be realised by the Contractor.
- (k) Employer: the individual or legal person mentioned in the Agreement who orders the Contractor to realise the Works and, if agreed upon, the Long Term Maintenance.
- (l) Contractor: the individual or legal person mentioned in the Agreement who has been ordered to realise the Works and, if agreed upon, the Long-Term Maintenance.
- (m) Contract: the contract for work on goods agreed upon by the Employer and the Contractor.
- (n) UAV-GC 2005: Uniform Administrative conditions for integrated contracts 2005.
- (o) Construction Documents: Documents produced by or on behalf of the Contractor as part of Construction Work.

- (p) Construction Work: all activities, including the supply of goods, that have to be carried out by the Contractor in order to realise the Works, next and in addition to Design Work.
- (q) Employer's Requirements: the contract document stated as such in the Agreement, and which has been prepared by or on behalf of the Employer, on the basis of which the Contractor prepared and offered the Tender.
- (r) Works: the works described in the Agreement, which the Contractor shall realise on the basis of the Employer's Requirements and the Tender by means of Design and Construction Work.
- (s) Work: all Design, Construction, and Maintenance Work, which the Contractor shall carry out in order to ensure that the Works are in accordance with requirements of the Contract on the date of completion and acceptance stated in the Agreement and, if agreed upon, during the Long-Term Maintenance Period.
- (t) Variation: every variation as referred to in clause 14 section 1, clause 15 section 1, clause 15 section 2, and clause 15 section 3.

Clause 2 Representation of the parties

- 2-1 The Employer may designate one or several persons to act as his representative in matters concerning the Works and the Long-Term Maintenance, and may also replace any person or persons so designated by any other person or persons.
- 2-2 The Employer may designate one or several persons to act as assistants to the Employer's representative, and may also replace any person or persons so designated by any other person or persons.
- 2-3 The Employer shall give the Contractor without delay written notice of any designations pursuant to sections 1 and 2, if this was not effected in the Employer's Requirements, and shall give notice of any change or withdrawal of such designation.
- 2-4 The Employer's representative shall represent the Employer in so far as the Contractor has been expressly notified of the representative's authority in writing.
- 2-5 The provision of section 4 does not prejudice the authority of the Employer's representative to represent the Employer in urgent cases.
- 2-6 Any persons designated to act as assistants to the Employer's representative shall be binding on the Employer, unless the Contractor has been expressly notified to the contrary in writing beforehand. The authority of such assistants does not exceed the authority of the Employer's representative pursuant to section 4.

- 2-7 The Contractor shall, by power of attorney to be acknowledged by the Employer, designate a person to act as his representative in all matters concerning the Works and the Long-Term Maintenance. The acknowledgement procedure referred to in clause 23 applies.
- 2-8 The Contractor shall, by power of attorney to be acknowledged by the Employer, designate a person to act as a substitute for the Contractor's representative in case of the latter's absence or premature replacement. The acknowledgement procedure referred to in clause 23 applies.

CHAPTER 2

GENERAL OBLIGATIONS OF THE PARTIES

Clause 3 Obligations of the Employer

- 3-1 The Employer shall ensure that the following are at the Contractor's disposal in good time:
- (a) all information in the possession of the Employer, in so far as the provision thereof is necessary in order to enable the Contractor to execute the Works and the Long-Term Maintenance in accordance with the Contract;
 - (b) the land and/or the water described in the Employer's Requirements, on, in and/or under which the Works and the Long-Term Maintenance are to be executed;
 - (c) all goods of which it is expressly stated in the Agreement that they shall be put at the Contractor's disposal by or on behalf of the Employer.
- 3-2 The Employer is responsible for the contents of all information he provided to the Contractor pursuant to section 1 subsection a as well as for the goods put at the Contractor's disposal pursuant to section 1 subsection c.
- 3-3 The Employer is responsible for the contents of the Employer's Requirements, possibly completed and changed after the formation of the Contract under a Variation as referred to in clause 14 section 1.
- 3-4 The Employer is responsible for the contents of Variations ordered by him pursuant to clause 14 section 1.
- 3-5 If the supply of goods by the Contractor is prescribed in the Employer's Requirements, the Employer shall be responsible if such goods are functionally unfit as a result of requirements listed in the Employer's Requirements.
- 3-6 Goods as referred to in section 5 shall be functionally unfit if they are inherently unsuitable for the purpose for which they are intended according to the Contract.

- 3-7 If the Employer prescribes the supply of goods by the Contractor in the Employer's Requirements and the Contractor has no reasonable choice in respect of the supplier of such goods, the supplier shall be deemed to have been nominated as well. Responsibility for these goods shall in that case be judged on the basis of clause 6 sections 3 to 6, unless the Employer is responsible pursuant to section 5.
- 3-8 The provisions of sections 1 to 7 shall not affect the Contractor's duty to warn pursuant to clause 4 section 7.
- 3-9 The Employer shall pay any amount due to the Contractor in accordance with the Contract. The amount to which the Contractor is entitled under the Contract shall be the balance made up of the price stated in the Agreement, increased and reduced, respectively, by any other amounts to be paid to or by the Contractor in respect of the Contract.

Clause 4 Obligations of the Contractor

- 4-1 The Contractor shall carry out Design Work and Construction Work in such a manner that, on the date of completion and acceptance stated in the Agreement, the Works will be in accordance with the requirements of the Contract. If the Works are not in accordance with the said requirements, this amounts to a defect.
- 4-2 In addition to section 1, if it is stated in the Agreement that the Contractor shall realise the Long-Term Maintenance, he shall carry out Maintenance Work in such a manner that, during the Long-Term Maintenance Period, the Works will be in accordance with the requirements of the Contract.
- 4-3 The requirements referred to in sections 1 and 2 include requirements resulting from the ordinary use for which the Works are intended as well as the requirements resulting from the specific purpose for which the Works will be used, only in so far as the requirements resulting from the specific purpose are stated in the Employer's Requirements.
- 4-4 The Contractor shall realise the Works and the Long-Term Maintenance in accordance with the terms of the Contract without being entitled to claim any settlement, cost compensation or compensatory damages, except in cases where provision for this is expressly made or apparently implied.
- 4-5 The Contractor shall perform all duties which by the nature of the Contract are required by law, good faith or usage.

- 4-6 The Contractor shall carry out Work in such a manner that neither the Employer nor third parties suffer unnecessary hindrance and damage to persons, property or environment shall be limited as far as possible.
- 4-7 The Contractor shall warn the Employer in writing without delay if:
- (a) the Employer's Requirements; or
 - (b) the annexes to the Employer's Requirements; or
 - (c) the Agreement; or
 - (d) information provided to the Contractor by the Employer pursuant to clause 3 section 1 subsection a; or
 - (e) the land and/or the water put at the Contractor's disposal by the Employer pursuant to clause 3 section 1 subsection b; or
 - (f) goods put at the Contractor's disposal by the Employer pursuant to clause 3 section 1 subsection c; or
 - (g) any measure taken by the Employer pursuant to clause 43 sections 1 and 2; or
 - (h) any Variation ordered by the Employer to the Contractor pursuant to clause 14 section 1;
- evidently contain or show such faults or defects that the Contractor would be in breach of the requirements of good faith if he were to continue Work without issuing any warning about such faults or defects.
- 4-8 If the Contractor fails to perform his obligation referred to in section 7, he shall be liable for any damaging consequences caused by his failure.
- 4-9 Subject to clause 28, the Contractor shall be responsible for any defect in the Works that cannot be attributed to the Employer pursuant to law, the Contract or opinions prevailing in society.
- 4-10 The Contractor shall be liable for any damage to works of the Employer connected with or related to the Works or to other works and property belonging to the Employer, in so far as such damage has been caused by Work and is attributable to any fault of the Contractor, his representatives or employees and subcontractors, or to any cause that shall be for the Contractor's account pursuant to law or opinions prevailing in society.
- 4-11 The Contractor shall indemnify and save the Employer harmless against any action, claim or demand by third parties for compensation for any damage, in so far as such damage has been caused by Work and is attributable to any fault of the Contractor, his representatives or employees and subcontractors, or to any cause that shall be for the Contractor's account pursuant to law or opinions prevailing in society.

- 4-12 The Contractor is obligated to transfer to the Employer all claims under guarantees issued to him by independent auxiliary persons in relation to parts of the Works and, if so agreed, parts of the Long-Term Maintenance.
- 4-13 For the purpose of the Contract the Contractor shall be required to have domicile in the Netherlands if he is not already established in the Netherlands.

CHAPTER 3

ASSIGNMENT AND SUBCONTRACTORS

Clause 5 Assignment

Subject to the provisions of clause 37, the Contractor shall not assign his rights and/or obligations under the Contract or any part thereof to a third party without the prior written approval of the Employer.

Clause 6 Subcontractors

- 6-1 The Contractor may subcontract parts of Work. Nevertheless, he shall remain fully responsible to the Employer in respect of such parts.
- 6-2 If and in so far as the acknowledgement plan states that the Contractor is allowed to subcontract one or more parts of Work upon acknowledgement of the subcontractor by the Employer only, the parties shall follow the acknowledgement procedure stated in clause 23. The provision of the second sentence of section 1 shall apply in full.
- 6-3 The Employer's Requirements may prescribe that the Contractor shall subcontract a specified part of Work to a nominated subcontractor. In that case, the contract terms of this subcontractor shall be deemed to be stated in the acknowledgement plan as a Document to be acknowledged by the Employer. Parties shall follow the acknowledgement procedure stated in clause 23 with respect to these contract terms, prior to the Contractor entering into a contract with this subcontractor.
- 6-4 The Contractor shall be under no duty to contract with a subcontractor nominated by the Employer in the Employer's Requirements, if the Employer refuses to acknowledge the contract terms of this subcontractor.
- 6-5 With respect to Work carried out by a subcontractor nominated in the Employer's Requirements, the Contractor's obligations shall be limited to the subcontractor's obligations to the Contractor under the subcontractor's contract terms as acknowledged by the Employer. If the subcontractor fails to perform or does not

perform within the agreed time or performs improperly and the Contractor has taken all reasonable steps in order to obtain performance and/or compensatory damages from the subcontractor, the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a. In consideration for such compensation the Contractor shall, upon request of the Employer, assign to the Employer his claim against the nominated subcontractor up to the amount so compensated by the Employer.

- 6-6 If the Contractor has contracted with a subcontractor nominated in the Employer's Requirements without the Employer's prior acknowledgement of that subcontractor's contract terms, the Contractor shall not oppose these contract terms against the Employer.
- 6-7 If any part of Work shall be executed by a subcontractor, the Contractor shall fully inform that subcontractor in writing of the provisions of the Employer's Requirements and the Documents, in so far as these may be of importance for the execution of this part of the Work.

CHAPTER 4

PROGRAMME AND CO-ORDINATION

Clause 7 Programme

- 7-1 When performing the Contract, the Contractor shall observe both the programme stated in an annex to the Employer's Requirements as well as the agreed milestone dates.
- 7-2 If and in so far as this is stated in the acknowledgement plan, the Contractor shall submit a detailed programme based on the programme to the Employer for Acknowledgement. The detailed programme shall relate to the period of time stated in the acknowledgement plan. The provisions of clause 23 apply.
- 7-3 The Contractor shall update the detailed programme as often as stated in the acknowledgement plan. The provisions of section 2 shall apply.

Clause 8 Connection with other works

- 8-1 If in the course of the performance of the Contract, work is carried out on the orders of the Employer by other contractors that may influence the Works and/or the Long-Term Maintenance, the Employer shall state in an annex to the Employer's Requirements the nature of this work, the time at which it will be executed as well as the co-ordination thereof.

- 8-2 When carrying out Work, the Contractor shall take into account the work of other contractors as referred to in section 1.
- 8-3 The Contractor shall allow other contractors to carry out work as referred to in section 1 at the time referred to in that section. He shall allow other contractors to use the results of Work.
- 8-4 In his Tender, the Contractor shall be deemed to have taken into account the fact that work as referred to in section 1 shall be executed by other contractors. However, in addition to this, he shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

CHAPTER 5

PERMITS AND/OR LICENCES, EXEMPTIONS, ORDERS AND PERMISSIONS; STATUTORY REGULATIONS

Clause 9 Permits and/or licences, exemptions, orders and permissions: obligations of the Employer

- 9-1 The Employer shall ensure that permits and/or licences, exemptions, orders or permissions mentioned in an annex to the Employer's Requirements shall be available at the times stated in that annex. In so far as it lies within his powers, the Contractor shall provide the Employer with all necessary co-operation in order to obtain such permits and/or licences, exemptions, orders or permissions.
- 9-2 In so far as the annex referred to in section 1 does not mention permits and/or licences, exemptions, orders or permissions, the Employer shall not be considered under an obligation to obtain such permits and/or licences, exemptions, orders or permissions.
- 9-3 If the Employer fails to fulfil his obligation under section 1, the Contractor shall have the statutory right to institute legal action with due observance of the relevant statutory provisions and subject to the provisions of sections 4 up to and including 8.
- 9-4 If the Employer's failure referred to in section 3 should entitle the Contractor to damages, the amount of damages must be calculated in accordance with the provisions of clause 16 section 10 subsection b en subsection c.
- 9-5 If any permit and/or licence, exemption, order or permission as referred to in section 1 has not been obtained or has not been obtained in due time, the

Employer may notify the Contractor in writing within a reasonable period of time that he:

- (a) orders a Variation in the Contract subject to the provisions of clause 14; or
- (b) cancels the Contract in accordance with the provisions of clause 16 section 8.

- 9-6 If the Employer does not give notification as referred to in section 5, the Contractor may set a term within which the Employer may still do so. If the Employer still fails to give notification, the Employer is entitled to terminate the Contract by registered letter and with due regard to the following, unless:
- (a) the Contractor is responsible for the fact that the permit and/or licence, exemption, order or permission has not been obtained or has not been obtained in due time; or
 - (b) obtaining the permit, and/or licence, exemption, order or permission (in due time) is not deemed essential for the realisation of the Works and/or the Long-Term Maintenance; or
 - (c) objections lodged against obtaining the permit and/or licence, exemption, order or permission can easily be overcome.
- 9-7 Cancellation of the Contract by the Employer under section 5 subsection b and termination of the Contract by the Contractor under section 6 shall entitle the Contractor to compensation, to be calculated in accordance with the provisions of clause 16 section 10 subsection a and subsection c. The provisions of sections 5 and 6 as well as this section do not prejudice the provisions of section 4 with regard to the Contractor's entitlement to damages.
- 9-8 The provisions of sections 4 up to and including 7 do not prejudice the Employer's statutory right to institute legal action with due observance of the relevant statutory provisions if a permit and/or licence, exemption, order or permission as referred to in section 1 has not been obtained or has not been obtained in due time owing to a failure on the part of the Contractor. In that event, the Employer shall be entitled to terminate the Contract by registered letter, unless a situation as referred to in section 6 subsection b or subsection c occurs. If the Contractor's failure as referred to above entitles the Employer to damages, the amount of damages shall total no more than 5% of the price laid down in the Agreement, exclusive of VAT.
- 9-9 If a permit and/or licence, exemption, order or permission as referred to in section 1 was obtained in due time but subsequently nullified, withdrawn, suspended or made subject to more severe conditions, the provisions of sections 3 up to and including 8 shall apply accordingly.

**Clause 10 Permits and/or licences, exemptions, orders and permissions:
obligations of the Contractor**

- 10-1 The Contractor shall make every effort in order to obtain with all due despatch and with due observance of the moment stated in the Agreement, the permits and/or licences, exemptions, orders and permissions that are not mentioned in the annex referred to in clause 9 section 1, in so far as these are necessary for the Works as planned, for the use of the Works and for the realisation of the Long-Term Maintenance. In so far as it lies within his powers, the Employer shall provide the Contractor with all necessary co-operation in order to obtain such permits and/or licences, exemptions, orders or permissions.
- 10-2 The Contractor shall obtain in due time the permits and/or licences, exemptions, orders and permissions, as he may need or desire and are not part of those referred to in section 1 and are not mentioned in the annex referred to in clause 9 section 1.
- 10-3 In order to determine which permits and/or licences, exemptions, orders and permissions are necessary for the use of the Works, the requirements referred to in clause 4 section 3 shall be indicative.
- 10-4 If the permits and/or licences, exemptions, orders and permissions as referred to in section 1 have not been obtained at the time stated in the Agreement and if this is due to:
- (a) Design Work failing to meet the relevant technical and environmental government regulations relevant for the Works, provided that the Contractor is responsible for such failure; or
 - (b) insufficient effort on the part of the Contractor to obtain the permits and/or licences as referred to in section 1;
- this shall be deemed a failure of the Contractor to fulfil his obligations under section 1 and the Employer shall have the statutory right to institute legal action with due observance of the relevant statutory provisions, subject to the provisions of section 5.
- 10-5 In the event of a failure on the part of the Contractor as referred to in the previous section, the Employer shall be entitled to terminate the Contract by registered letter, unless a situation as referred to in section 7 subsection b or subsection c occurs. If the Contractor's failure entitles the Employer to damages, the amount of damages shall total no more than 5% of the price laid down in the Agreement, exclusive of VAT.
- 10-6 If the permits and/or licences, exemptions, orders and permissions as referred to in section 1 have not been obtained at the time stated in the Agreement, the Employer may notify the Contractor in writing within a reasonable period of time that he:

- (a) orders a Variation in the Contract subject to the provisions of clause 14; or
 - (b) cancels the Contract in accordance with the provisions of clause 16 section 8.
- 10-7 If the Employer does not give notification within a reasonable period of time as referred to in section 6, the Contractor may set a term within which the Employer may still do so. If the Employer still fails to give notification, the Contractor shall be entitled to terminate the Contract by registered letter, unless:
- (a) the Contractor is responsible for the fact that the permit and/or licence, exemption, order or permission has not been obtained or has not been obtained in due time; or
 - (b) obtaining the permit, and/or licence, exemption, order or permission (in due time) is not deemed essential for the realisation of the Works and/or the Long-Term Maintenance; or
 - (c) objections lodged against obtaining the permit and/or licence, exemption, order or permission can easily be overcome.
- 10-8 Cancellation of the Contract by the Employer under section 6 subsection b and termination of the Contract by the Contractor under section 7 shall entitle the Contractor to compensation, to be calculated in accordance with the provisions of clause 16 section 10 subsection a and subsection c. The provisions of this section do not prejudice the fact that if a permit and/or licence, exemption, order or permission has not been obtained or has not been obtained in due time owing to a failure on the part of the Employer that entitles the Contractor to damages, the amount thereof must be calculated in accordance with the provisions of clause 16 section 10 subsection b and subsection c.
- 10-9 If a permit and/or licence, exemption, order or permission as referred to in section 1 was obtained in due time but subsequently nullified, withdrawn, suspended or made subject to more severe conditions, the provisions of sections 4 to 8 apply accordingly.

Clause 11 Statutory regulations and government orders

- 11-1 The Contractor shall be considered to be cognisant of all statutory regulations and government orders relating to Work, in so far as these are in force on the day upon which he submitted his Tender. The consequences attached to compliance with the said regulations and orders shall be for the Contractor's account.
- 11-2 The consequences of compliance with any regulations of a special nature shall be for the Contractor's account, unless it must reasonably be assumed that he was not required to have knowledge of such regulations. Only in the latter case

shall the Contractor be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

- 11-3 The consequences of compliance with statutory regulations and government orders that come into force after the day upon which the Contractor has offered his Tender, shall be for the Employer's account, unless it must be reasonably assumed that the Contractor could have foreseen those consequences on that day. Only if and in so far as the Contractor could not have foreseen the said consequences on that day shall he be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a. The provisions of this section shall also apply to judgements of any court of law and to arbitration awards pronounced after the day referred to in this section. However, if the Agreement includes provisions for settlement of changes in wages salaries and social security charges or of prices, rent and carriage costs, the consequences thereof shall only be for the Employer's account if and in so far as they arise from such provisions.
- 11-4 The Contractor shall indemnify and save the Employer harmless against any action, claim or demand by third parties for compensation for any damage and for payment of penalties relating to the Contractor's failure to observe statutory regulations and government orders, in so far as the Contractor is under an obligation to observe such statutory regulations and government orders pursuant to this clause.

Clause 12 Health and safety

- 12-1 The Contractor shall be responsible for order, health and safety at all places where Work is carried out by or on his behalf, particularly on the land referred to in clause 3 section 1 subsection b and the site referred to in clause 17. The Contractor's responsibility shall include the health and safety of all representatives, employees and subcontractors appointed or called in for the purpose of the Contract, the health and safety of third parties, as well as the safety of all goods used by the Contractor for the purpose of the Contract.
- 12-2 When the Contract is signed, the Contractor must have a safety system that is applicable to the Work. The safety system must operate in such a manner that the Work can be carried out in a safe and controlled manner. The safety system shall be set down in a safety manual.
- 12-3 In so far as this is stated in the acknowledgement plan, the Contractor shall submit a health and safety plan (H&S plan), any H&S subplans, as well as a H&S file to the Employer for Acknowledgement. The provisions of clause 23 shall apply.

- 12-4 No later than the time at which Acknowledgement thereof shall take place, the Employer shall have the authority to state in the H&S plan or the H&S subplans (where relevant), the times at which the Contractor shall submit an updated version of the H&S plan or the H&S subplans for Acknowledgement. The provisions of clause 23 shall apply.
- 12-5 If, pursuant to section 3, the Contractor submits the H&S plan, the H&S subplans and the H&S file to the Employer for Acknowledgement, he shall also submit, if required to do so, all relevant Documents referred to in the H&S plan, the H&S subplans and the H&S file, in so far as submission is necessary to enable the Employer to determine whether the H&S plan, the H&S subplans and the H&S file can be acknowledged.

CHAPTER 6 SOIL AND SITE

Clause 13 Soil and site

- 13-1 The Contractor shall be responsible for gearing Work to the soil conditions. If the manner in which Work has been geared to the soil conditions causes delay in the execution of the Contract, damage to or defects in the Works or damage to other goods of the Employer or third parties, the Contractor shall be liable for such delay, damage or defects, subject to the provision of section 2.
- 13-2 The Contractor shall cease to be liable pursuant to section 1, if he proves that he has taken all precautions that may be expected of a prudent Contractor in order to prevent delay, damage or defects, given the nature and the contents of the Contract, the nature of the Works, the nature of the Long-Term Maintenance and any other circumstances of the case.
- 13-3 If damage to the Works is caused by the manner in which Work has been geared to the soil conditions, this shall be deemed to be an extraordinary circumstance as referred to in clause 41 section 4, provided that the Contractor has furnished the evidence referred to in section 2.
- 13-4 The Contractor shall not be liable for pollution on, in or under the land or water referred to in clause 3 section 1 subsection b discovered during the execution of Work. The Employer may order the Contractor, either in the Employer's Requirements or by means of a Variation pursuant to clause 14 section 1, to remove the pollution discovered.
- 13-5 Irrespective of whether parties have agreed that the Contractor shall remove the pollution discovered, the Contractor shall be entitled to cost compensation and/or extension of time in accordance with the provision of clause 44 section 1

subsection a, if Work is delayed due to the discovery of pollution, subject to the provision of section 6.

- 13-6 The Contractor's right referred to in section 5 will lapse if he knew or should have known about the presence of the pollution referred to in section 4 before or at the time of formation of the Contract.
- 13-7 The Contractor shall be required to report to the Employer without delay the discovery of any objects found on, in or under the land or water referred to in clause 3 section 1 subsection b during Construction and Maintenance Work and which may be of material, historical or scientific interest. Where possible, such objects must be handed over to the Employer. In that case, the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

CHAPTER 7

VARIATIONS, SUSPENSION, DISSOLUTION, TERMINATION

Clause 14 Variations ordered by the Employer

- 14-1 The Employer is entitled to order, only in writing, the Contractor to observe the following Variations:
 - (a) variations of requirements stated in the Employer's Requirements;
 - (b) variations in the annexes to the Employer's Requirements;
 - (c) variations in the Agreement;
 - (d) variations of choices made by the Contractor when carrying out Work in so far as the Contractor in doing so was free to interpret the requirements stated in the Employer's Requirements;
 - (e) variations in acknowledged Documents;
 - (f) variations of acknowledged representatives or subcontractors;
 - (g) variations of acknowledged Work; and
 - (h) variations of acknowledged results of Work.
- 14-2 A Variation, as referred to in section 1, of an acknowledged subcontractor to another specifically named subcontractor shall be deemed to be equal to the nomination of that other subcontractor pursuant to clause 6 section 3. In that case, clause 6 section 3 to 7 shall apply accordingly.
- 14-3 Any change of Documents, Work or results of Work that has become necessary as a result of a circumstance for which the Employer is responsible by law, the Contract or opinions prevailing in society, shall be deemed to be a Variation ordered by the Employer as referred to in section 1.

- 14-4 The Contractor shall carry out an investigation and inform the Employer of the extent to which a Variation ordered by the Employer pursuant to section 1 implies a deviation of requirements, choices, Documents, representatives, subcontractors, Work and results of Work, as referred to in that section. This duty shall not affect the Contractor's duty to warn pursuant to clause 4 section 7 subsection h.
- 14-5 With due observance of the provisions of clause 45, the Contractor shall carry out any Variation ordered, unless this is contrary to the contents of this clause or clause 45.
- 14-6 The Contractor shall not be under an obligation to carry out a Variation ordered by the Employer if:
- (a) the Variation is not ordered in writing; or
 - (b) carrying out the Variation results in an unacceptable disruption of Work, according to good faith; or
 - (c) carrying out the Variation results in the Contractor being forced to carry out Work beyond his technical know-how and/or capacity; or
 - (d) carrying out the Variation is unacceptable to the Contractor, according to good faith, given the mutual interests of the parties.
- 14-7 After the Employer has ordered a Variation, the Contractor shall notify the Employer in writing and with all due despatch whether or not he intends to carry out the Variation. If the Contractor fails to send the notification with all due despatch, the Employer shall set a time limit within which the Contractor may still do so. If the Contractor still fails to send the notification, the Contractor shall carry out the Variation, subject to the provisions of section 16.
- 14-8 If the Contractor refuses to carry out the Variation ordered, he shall state the reasons therefor in the notification as referred to in section 7, referring to one or more of the grounds mentioned in section 6.
- 14-9 If the Employer is of the opinion that the Contractor wrongly refuses to carry out the Variation, he shall notify the Contractor accordingly in writing with all due despatch after receipt of the notification as referred to in section 7. In that case, the parties shall consult without delay in order to overcome the deadlock. During the consultation, the parties shall make an inventory of the financial consequences as well as of the consequences for the programme if the Variation were to be carried out.
- 14-10 If the Employer fails to send the notification with all due despatch as referred to in section 9, the Contractor shall set a time limit within which the Employer may still do so. If the Employer still fails to send the notification, the Contractor shall not be under an obligation to carry out the Variation ordered.

- 14-11 If the Contractor decides to carry out the Variation as a result of the consultation as referred to in section 9, the provisions of section 16 shall apply.
- 14-12 If the Employer decides to withdraw the Variation ordered, either as a result of the notification of the Contractor as referred to in section 7, or as a result of the consultation as referred to in section 9, the Contractor shall not be under an obligation to carry out the Variation ordered.
- 14-13 If the Employer decides to persist in the Variation ordered as a result of the consultation mentioned in section 9, and if the Contractor persists in his refusal to carry out that Variation, the parties shall bring the dispute before the Dispute Adjudication Board, provided that they created the authority to do so in the Agreement, in order to have this Board determine whether the Contractor rightly refuses to carry out the Variation ordered.
- 14-14 If the Dispute Adjudication Board is of the opinion that the Contractor wrongly refuses to carry out the Variation ordered, he shall carry out that Variation subject to the provisions of section 16.
- 14-15 If the Dispute Adjudication Board is of the opinion that the Contractor cannot reasonably be expected to comply with the Variation ordered, in view of one or more of the grounds referred to in section 6, the Contractor shall not be under an obligation to carry out the Variation.
- 14-16 If, pursuant to section 7 or section 11, the Contractor notifies that he will carry out the Variation ordered or if he is compelled to carry out such Variation in view of the provisions of section 7 or section 14, the parties shall follow the procedure referred to in clause 45 before the Contractor proceeds to carry out the Variation. If the parties are not able to agree in that procedure on how the financial consequences and the consequences for the programme, inherent in the Variation, are to be divided among them, the Contractor shall not be under an obligation to carry out the Variation.
- 14-17 If the procedure stated in this clause is delayed due to:
- (a) failure on the part of the Employer as referred to in section 10; or
 - (b) the consultation as referred to in section 9, provided that the Employer has withdrawn the Variation following the consultation pursuant to section 12; or
 - (c) calling in the Dispute Adjudication Board, provided that the Board's opinion shall be as described in section 15;
- the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

Clause 15 Variations initiated by the Contractor

- 15-1 Provided that Work, the Works and the Long-Term Maintenance are in accordance with the provisions of the Contract, the Contractor shall be entitled to carry out:
- (a) variations of choices made by the Contractor when carrying out Work, in so far as the Contractor was free to interpret the requirements stated in the Employer's Requirements;
 - (b) variations of Documents;
 - (c) variations of representatives or subcontractors;
 - (d) variations of Work; and
 - (e) variations of the results of Work.

These Variations shall only be allowed, if such choices, Documents, representatives, subcontractors, Work and results of Work have not yet been tested or acknowledged by the Employer in the event that such test or Acknowledgement is stated in the Design Work test plan, the Construction Work inspection plan, the Maintenance Work inspection plan or the acknowledgement plan, or in so far as the Employer has not yet been informed otherwise.

- 15-2 If the Employer has already tested the choices, Documents, representatives, subcontractors, Work and results of Work as referred to in section 1, pursuant to the Design Work test plan, the Construction Work inspection plan or the Maintenance Work inspection plan, or if he has been informed otherwise, the Contractor shall only be entitled to carry out such Variations in so far as he has submitted such Variations for testing to the Employer with due observance of the provisions of clause 20 and clause 21 and that Work, the Works and the Long-Term Maintenance shall be in accordance with the provisions of the Contract.
- 15-3 With due observance of the acknowledgement procedure stated in clause 23, the Contractor shall submit for Acknowledgement any proposal that is intended as a Variation of:
- (a) requirements stated in the Agreement; or
 - (b) representatives; or
 - (c) choices, Documents, representatives, subcontractors, Work and results of Work referred to in section 1 that have already been acknowledged by the Employer on the basis of the acknowledgement plan. The Employer may refuse to accept this proposal if, as a result of the proposed Variation, the Works and/or the Long-Term Maintenance do not comply with the provisions of the Contract.
- 15-4 The Employer shall take into consideration the Variations submitted for Acknowledgement by the Contractor as referred to in section 3 subsection a, but shall be entitled to refuse acknowledgement, without giving the reasons.

Clause 16 Suspension, dissolution and termination

- 16-1 The Employer shall have the right to suspend Work.
- 16-2 During the suspension the Contractor shall:
- (a) take appropriate measures in consultation with the Employer to prevent and limit any damage to the Works;
 - (b) refrain from doing anything which might result in damage to the Works or which might impede the subsequent resumption of the Works or the Long-Term Maintenance.
- 16-3 If the Contractor has to make provisions as a result of the suspension, he shall be entitled to cost compensation and/or extension of time in accordance with the provision of clause 44 section 1 subsection a.
- 16-4 If the suspension continues for more than one month, the Contractor may demand payment for the Work already carried out, in so far as payment has not already taken place pursuant to the payment schedule.
- 16-5 If the suspension of all Work continues for more than six months, the Contractor shall have the right to dissolve the Contract.
- 16-6 The provisions of sections 3 to 5 shall not apply, if the suspension is due to breach of Contract for which the Contractor is responsible.
- 16-7 If the execution of all Construction Work has been delayed for an uninterrupted period of more than two months by reason of circumstances which are for the Employer's account, the Contractor shall have the right to dissolve the Contract.
- 16-8 The Employer shall have the right to terminate the Contract at all times.
- 16-9 If any of the cases referred to in sections 5, 7 and 8 occur during the realisation of the Works, the Employer shall take over the Works without delay following dissolution or termination. The Contractor shall be required to fulfil his obligations under section 2 until the Works have been taken over.
- 16-10 In the cases referred to in sections 5, 7 and 8 the Contractor shall only be entitled to:
- (a) payment of the price stated in the Agreement, exclusive of VAT, calculated on the basis of the status of Work carried out at the time of dissolution or termination;
 - (b) payment of 5% of the outstanding part of the price stated in the Agreement, exclusive of VAT, which would have been due by the Employer in the event of the execution of all Work;

- (c) payment of all cost made and yet to be made, arising from obligations the Contractor had already entered into at the time of cancellation or termination for the purpose of the performance of the Contract.

CHAPTER 8 SITE, ADVERTISING

Clause 17 Site

- 17-1 The Contractor may use the land or water surfaces designated in the Employer's Requirements as the site free of any charge as long as this may be necessary for the execution of Work. The cost of use of any other land or water shall be borne by the Contractor.
- 17-2 After consultation with the Contractor, the Employer shall indicate which parts of the site may be used for storage and for the placing of sheds, cabins and other items that the Contractor intends to use for the execution of the Contract.
- 17-3 If the Contract is intended exclusively for the realisation of the Works, the site shall, as far as possible, be returned to its original state after use and no later than on the actual date of completion and acceptance.
- 17-4 If the Contract involves the realisation of the Long-Term Maintenance, the site shall, as far as possible, be returned to its original state with all due despatch after the execution of Maintenance Work.

Clause 18 Advertising

- 18-1 The Employer shall be entitled, in consultation with the Contractor, to place advertisements or other notices on hoarding and fences enclosing the Works or the site, as well as elsewhere on the site or on the Works.
- 18-2 The Contractor shall also be permitted to use part of the above locations as well as Documents to advertise his name and business and to have advertised the names and businesses of his subcontractors. If and in so far as this is stated in the acknowledgement plan, the location, design and size of any such signs shall be subject to the acknowledgement procedure of clause 23.

CHAPTER 9

QUALITY ASSURANCE

Clause 19 Quality control and quality plan

- 19-1 Subject to all other provisions of the Contract, the Contractor shall be responsible for both the quality control of all Work and the quality of the results of Work and of Documents.
- 19-2 If and in so far as this is stated in the acknowledgement plan, the Contractor shall submit a quality plan as well as any quality subplans to the Employer for Acknowledgement. The provisions of clause 23 shall apply.
- 19-3 On demand, the Contractor shall hand over to the Employer all relevant Documents referred to in the quality plan and in any quality subplans.

Clause 20 Testing Design Work

- 20-1 The Employer shall have the authority to test whether:
- (a) qualifications of employees and subcontractors called in by the Contractor for the purpose of Design Work; and
 - (b) Design Documents resulting from Design Work;
- are in accordance with the requirements of the Contract. This testing shall take place on the basis of the Design Work test plan. The Employer shall have the authority to test the qualifications of employees and subcontractors and Design Documents, referred to in this clause, only in so far as this is expressly provided for in the test plan, subject to the provision of section 2.
- 20-2 The Employer shall have the authority to test whether the quality assurance of Design Work is in accordance with the quality plan (if there is one in place) and any quality subplans and all other requirements to be met by such quality assurance given the nature and content of the Contract.
- 20-3 The Employer shall interfere with Work as little as possible when using his authority to test pursuant to this clause.
- 20-4 The Employer shall be under no obligation whatsoever to use his authority to test pursuant to this clause. It shall be at the Employer's discretion to decide whether and how he uses such authority in the course of Design Work. Nevertheless the Employer shall inform the Contractor in writing in due time if he actually discovers a failure by the Contractor.

Clause 21 Testing Construction Work and Maintenance Work

- 21-1 The Contractor shall submit a Construction Work inspection plan and a Maintenance Work inspection plan to the Employer for Acknowledgement, if and in so far as this is stated in the acknowledgement plan. The provisions of clause 23 apply.
- 21-2 Using the results of inspections, provided for by the inspection plans referred to in section 1 and to be carried out by the Contractor, the Contractor shall demonstrate that Construction and Maintenance Work and the results thereof meet the requirements arising from the Contract.
- 21-3 Following the execution of a inspection provided for in an inspection plan, the Contractor shall inform the Employer in writing of the results thereof with all due despatch, unless the parties after consultation have agreed upon a certain period of time. In doing so, the Contractor shall:
- (a) state which part of the Construction or Maintenance Work has been inspected, referring to the relevant inspection plan;
 - (b) name the person who performed the inspection;
 - (c) state the date and the time of the inspection; and
 - (d) state whether the result of the inspection satisfies the requirements set for the Construction or Maintenance Work pursuant to the Contract.
- 21-4 The Employer shall be authorised to state, no later than when an inspection plan is acknowledged, the hold and witness points in that inspection plan. In that case, the Employer shall state for each individual hold point:
- (a) the objectivised criteria that the results of the relevant inspections provided for in the inspection plan must satisfy in order to qualify for Acknowledgement; and
 - (b) the period of time within which the Employer must inform the Contractor both verbally and in writing whether the results may be deemed accepted.
- 21-5 The Contractor shall inform the Employer in advance of the time at which a stop point or witness point is achieved, unless the parties after consultation have agreed upon a certain period of time.
- 21-6 Upon achieving a hold point, the Contractor shall submit for Acknowledgement to the Employer:
- (a) the Construction or Maintenance Work referred to in the inspection plan and/or the results of that Work for which the Employer has stated a hold point; and
 - (b) the results of the inspection of such Work provided for in the inspection plan, in accordance with the provisions of section 3.

The provisions of clause 23 sections 4 to 15 shall apply accordingly, on the understanding that all instances of 'acknowledgement plan' should be read as 'Construction Work inspection plan' or 'Maintenance Work inspection plan'.

- 21-7 Upon achieving a witness point, the Contractor shall keep available for testing by the Employer:
- (a) the Construction or Maintenance Work referred to in the inspection plan and/or the results of that Work for which the Employer has stated a hold point; and
 - (b) the results of the inspections of such Work provided for in the inspection plan, in accordance with the provisions of section 3.
- The Contractor is entitled to continue the Construction or Maintenance Work if, upon achieving a witness point, the Employer does not test the Work, the results of the Work and the results of the inspections of the Work, as provided for in the inspection plan, that the Contractor has kept available.
- 21-8 The Employer shall have the authority to test whether the quality assurance of Construction and Maintenance Work is in accordance with any quality system of the Contractor, the quality plan (if there is one in place), any quality subplan, the inspection plans and all other requirements to be met by such quality assurance given the nature and content of the Contract.
- 21-9 The Employer shall interfere with Work as little as possible when using his authority to test pursuant to this clause.
- 21-10 The Employer shall be under no obligation whatsoever to use his authority to test pursuant to this clause. It shall be at the Employer's discretion to decide whether and how he uses such authority in the course of Construction and Maintenance Work. Nevertheless the Employer shall inform the Contractor in writing in due time if he actually discovers a failure by the Contractor.

Clause 22 Acknowledgement procedure - Starting points

- 22-1 Pursuant to the provisions of clause 23, the Contractor shall submit to the Employer for Acknowledgement:
- (a) Documents;
 - (b) subcontractors he intends to appoint or to call in for the purpose of Work;
 - (c) Work;
 - (d) results of Work;
- if and in so far as this is stated in the acknowledgement plan; and
- (e) Variations initiated by the Contractor as referred to in clause 15 section 3.
- 22-2 If and in so far as the acknowledgement plan states that the Contractor shall submit for Acknowledgement the Documents, subcontractors, Work and results

of Work referred to in section 1 subsection a to subsection d, the Employer shall inform the Contractor in writing within the time limit stated in the acknowledgement plan whether the said Documents, subcontractors, Work or results of Work have been acknowledged. If the Contractor submits a Variation for Acknowledgement pursuant to clause 15 section 3, the Employer shall inform the Contractor with all due despatch after receipt whether the Variation has been acknowledged.

- 22-3 Subject to the provisions of section 2 and the provisions of clause 23 and clause 28, it shall be at the Employer's discretion to decide whether he acknowledges the Documents, subcontractors, Work and results of Work referred to in section 1 or the Variations referred to in clause 15 section 3. In addition, it is up to him to determine whether and how he will exercise his testing authority prior to an Acknowledgement. Nevertheless the Employer shall inform the Contractor in writing in due time if he actually discovers a failure of the Contractor.

Clause 23 Acknowledgement procedure - Procedure

- 23-1 The acknowledgement procedure described in this clause shall apply to the Acknowledgement of the Documents, subcontractors, Work and results of Work stated in the acknowledgement plan, as well to the Acknowledgement of Variations initiated by the Contractor referred to in clause 15 section 3.
- 23-2 An Acknowledgement request of the Contractor shall meet the following requirements:
- (a) it is submitted in writing and the acknowledgement plan shall state the number of copies to be submitted;
 - (b) it is submitted before or at the time stated in the acknowledgement plan; and
 - (c) it is accompanied by all relevant data, which must be stated as much as possible in the acknowledgement plan.
- If the Contractor submits a Variation as referred to in clause 15 section 3 for Acknowledgement, he shall do this stating the reasons.
- 23-3 The parties shall always check without delay that an Acknowledgement request has been received by the Employer in accordance with the requirements listed in section 2.
- 23-4 The Employer is entitled to request the Contractor in writing to provide information in addition to the data referred to in section 2 subsection c, in so far as this may be necessary to assess properly whether the Acknowledgement request should be granted. The Contractor will respond to such a request as soon as possible.

- 23-5 The Employer shall notify the Contractor within the period stated in the acknowledgement plan or, in the event of a Variation as referred to in clause 15 section 3, with all due despatch, unconditionally and in writing whether the Acknowledgement request has been granted.
- 23-6 If the Employer fails to send the notification stated in section 5 with all due despatch without making prior use of the procedure stated in section 7, the Contractor shall set a further period in writing within which the Employer may still do so. In doing so, the Contractor shall refer the Employer to the procedure stated in section 7. If the Employer fails to send the notification within the aforementioned further period, the Acknowledgement request shall be deemed granted from the time stated in the acknowledgement plan or, in the event of a Variation referred to in clause 15 section 3, from the day on which the Acknowledgement request is submitted.
- 23-7 If the period stated in the acknowledgement plan proves to be insufficient or, in the event of a Variation referred to in clause 15 section 3, the Employer is unable to determine with all due despatch whether the Acknowledgement request can be granted, he shall notify the Contractor in writing and without delay within which period he plans to do so, stating the reasons.
- 23-8 If the Employer decides to reject the Acknowledgement request, the notification referred to in section 5 shall be accompanied by a written explanation, specifying which of the objectivised criteria stated in the acknowledgement plan have not been satisfied, unless the rejection of Acknowledgement request pertains to a Variation proposed by the Contractor as referred to in clause 15 section 3 subsection a.
- 23-9 The Contractor is not allowed to engage subcontractors who have not yet been acknowledged for Work. Nor is he allowed to perform Construction Work that is based on Documents, Work or results of Work that have not yet been acknowledged. The Contractor is not allowed to carry out Variations as referred to in clause 15 section 3 subsection a that have not yet been acknowledged by the Employer.
- 23-10 Barring cases in which the rejection of Acknowledgement concerns a Variation as referred to in clause 15 section 3 and subject to the provisions of section 11, the Contractor shall eliminate, without delay and at his own expense, the reasons underlying the rejection of Acknowledgement. Subsequently, he shall submit with all due despatch a new Acknowledgement request, in accordance with the procedure stated in section 1, section 2 subsection a, section 2 subsection c, sections 3 and 4, section 6, and sections 8 to 16. The Employer shall notify the Contractor with all due despatch, in writing and unconditionally whether the new request has been granted. If the Employer is unable to

determine with all due despatch whether the request should be granted, the provisions of section 7 shall apply.

- 23-11 If the Contractor is of the opinion that the Employer could not reasonably reject the Acknowledgement, he shall inform the Employer thereof in writing immediately after receipt of the pertinent notification, stating the reasons. The parties shall then consult with each other without delay to break out the deadlock. If this consultation should prompt the Employer to withdraw the rejection of Acknowledgement, the Acknowledgement request shall be granted as from the day of withdrawal.
- 23-12 If the consultation referred to in section 11 should prompt the Employer to maintain the rejection of Acknowledgement, each of the parties shall be authorised to bring the rejection before the Dispute Adjudication Board, provided that the parties have stipulated this authority in the Agreement so as to allow an assessment as to whether that resolution could reasonably be adopted. The parties shall not be allowed to call upon the Dispute Adjudication Board, if the rejection of Acknowledgement pertains to a Variation as referred to in clause 15 section 3.
- 23-13 If the Dispute Adjudication Board is of the opinion that the Employer could not reasonably reject the Acknowledgement, the Acknowledgement request shall be deemed to have been granted as from the day on which such opinion is notified to the parties.
- 23-14 If the Dispute Adjudication Board is of the opinion that the Employer could reasonably decide to reject the Acknowledgement, the provisions of section 10 shall apply.
- 23-15 If, considering the provisions of section 12, neither of the parties decide to bring the rejection of Acknowledgement before the Dispute Adjudication Board, the provisions of section 10 shall apply.
- 23-16 If the procedure stated in this clause procedure is delayed as a result of:
- (a) the failures of the Employer as referred to in section 6; or
 - (b) the notification by the Employer as referred to in section 7; or
 - (c) the consultation as referred to in section 11, provided that the Employer has withdrawn the rejection of Acknowledgement following this consultation; or
 - (d) the involvement of the Dispute Adjudication Board, provided that the Board decides as referred to in section 13;
- the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

CHAPTER 10

COMPLETION AND ACCEPTANCE AND DEFECTS LIABILITY PERIOD

Clause 24 Inspection, completion and acceptance of the Works

- 24-1 As soon as the Contractor considers the Works to be ready for acceptance, he shall send a written request therefor to the Employer.
- 24-2 If the Employer wishes to exercise his authority to inspect the Works, the inspection shall be carried out with all due despatch and as a rule within 10 days of the day of despatch of the request referred to in section 1. In that case, the Contractor will be notified in writing of the day and time of the inspection with all due despatch, but at least 3 days in advance. The Employer may require the Contractor or his representative to be present at the inspection.
- 24-3 If the Employer has not notified the Contractor as referred to in section 2 within 7 days of the day of despatch of the request referred to in section 1, he shall be deemed to have waived his authority to inspect the Works.
- 24-4 The Employer shall notify the Contractor in writing within 14 days of the day of despatch of the request referred to in section 1 whether or not the Works have been accepted. If not, the Employer shall specify the defects constituting the grounds for rejection of the Works. If the number, nature and extent of the defects are such that such a specification cannot reasonably be required of the Employer, he shall just provide a brief overview of the defects. If the Works are accepted, the day of despatch of the request referred to in section 1 shall be regarded as the actual date of completion and acceptance.
- 24-5 If the Contractor has not received any of the written notifications referred to in section 4 within 15 days of the day of despatch of the request referred to in section 1, he may re-request the Employer by registered letter to accept the Works. Such a request shall not re-authorise the Employer to inspect the Works as referred to in section 2.
- 24-6 If the Employer has not notified the Contractor in writing within 7 days of the day of despatch of the letter referred to in section 5 whether or not the Works have been accepted, the Works shall be deemed to have been accepted. In that case, the day of despatch of the request referred to in section 1 shall be regarded as the actual date of completion and acceptance.
- 24-7 Minor defects that may properly be corrected before a next term of payment shall not constitute grounds for rejection of the Works, provided that they do not prevent the Works from being put into use. The Contractor is under an obligation to correct the defects referred to in this section as soon as possible.

- 24-8 If a separate period is stipulated in the Agreement within which a part of the Works must be ready for acceptance, that part shall be regarded as separate Works for the purposes of this section as well as of clause 4 sections 1, 25 to 28 and 36, and clause 41.
- 24-9 If the Contractor has not submitted a request for acceptance of the Works as referred to in section 1 but the Employer nevertheless wishes to accept the Works, acceptance may occur at the Employer's request. To this end, the Employer notifies the Contractor in writing that the Works are deemed acceptable. The day of despatch of this notification will then be regarded as the actual day of completion and acceptance.

Clause 25 Re-inspection and acceptance upon rejection of the Works

- 25-1 If, pursuant to clause 24 section 4 or section 6, the Employer has given notice that he rejects the Works, the Contractor shall repair any defects causing the rejection without delay.
- 25-2 Following repair of the defects referred to in section 1, the Contractor shall request acceptance of the Works in writing. The provisions of clause 24 shall apply accordingly.

Clause 26 Use prior to completion and acceptance of the Works by the Employer

Prior to completion of the Works, the Employer can put the Works or part of it into use, provided that this does not jeopardise the progress of the Works. The Employer will not put the Works into use until he has notified the Contractor in writing and the (part of the) Works to be put into use has been inspected. In the event of use prior to completion and acceptance of (a part of) the Works, the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a. Any damage to the Works resulting from the Works being put into use will not be borne by the Contractor. The putting into use and inspection referred to in this clause shall not mean that the (specific part of the) Works have been accepted by the Employer.

Clause 27 Defects liability period

- 27-1 The provisions of sections 2 to 8 shall apply, unless the Agreement stipulates that the Contractor will realise the Long-Term Maintenance.

- 27-2 If the Employer's Requirements prescribe a defects liability period, this period shall commence at once after the actual date of completion and acceptance.
- 27-3 The Contractor is under an obligation to correct any defects occurring in the defects liability period, with the exception of defects for which the Employer is responsible or liable under the Contract.
- 27-4 The correction referred to in section 3 shall be made at the expense of the Contractor within a reasonable period to be set by the Employer.
- 27-5 Any damage to the Works occurring in the defects liability period shall be borne by the Employer, with the exception of damage resulting from inadequate Work performed by the Contractor, in which case the provision of section 4 shall apply accordingly.
- 27-6 If, upon request, the Contractor undertakes to correct or repair any defects or damage to the Works for which he is not liable, the parties shall follow the procedure stated in clause 45.
- 27-7 The Contractor shall send the Employer a written request for acceptance of the Works at least 20 days before the end of the defects liability period.
- 27-8 The Employer is authorised to re-inspect the Works within 10 days of receipt of the request referred to in section 7 to ascertain whether the Contractor has met his obligations. The provisions of clause 24 shall apply accordingly.

Clause 28 Defects liability after the actual date of completion and acceptance

- 28-1 After the actual date of completion and acceptance, the Contractor shall no longer be liable for defects in (any part of) the Works, unless:
- (a) he is to blame for those defects or is liable for those defects pursuant to law, contract or opinions prevailing in society;
- and furthermore:
- (b) the Employer failed to discover those defects prior to the completion and acceptance;
- and furthermore
- (c) the Employer should not reasonably have had to detect those defects at the time of the actual date of completion and acceptance.
- 28-2 The action due to a defect for which the Contractor is liable pursuant to section 1 shall be inadmissible if it is filed after the expiry of:
- (a) five years after the day referred to in section 1; or

- (b) ten years after the day referred to in section 1, if the Works is about to collapse in whole or in part or becomes or is about to become unfit for the purpose for which it is intended according to the Contract and this can only be remedied or prevented by making extraordinary and very expensive provisions.

- 28-3 The total damage to be compensated by the Contractor pursuant to the first section shall be limited to 10% of the price stated in the Agreement in so far as that price is related to the realisation of the Works by means of Design and Construction Work. If the amount thus calculated is less than EUR 1,500,000, the amount of damages due to the Employer shall total no more than EUR 1,500,000.
- 28-4 If the Employer's Requirements prescribe a defects liability period, the day following the expiry of that period shall replace the day referred to in section 1.

CHAPTER 11

LONG-TERM MAINTENANCE

Clause 29 Long-term Maintenance

- 29-1 The provisions of this chapter shall apply in so far as the Agreement stipulates that the Contractor will realise Long-term Maintenance. In that event, all other provisions included in the Contract with regard to the Long-term Maintenance, the Maintenance Work, the Maintenance Documents, the Long-term Maintenance Period and the Maintenance Work inspection plan shall apply.
- 29-2 The Contractor is under an obligation, subject to the other provisions of the Contract, to realise the Long-Term Maintenance in such a manner that the Works meet the requirements under the Contract during the Long-Term Maintenance Period. If the Works fail to meet these requirements during the Long-Term Maintenance Period, the Contractor will correct that failure without delay at his own expense and risk, unless that failure is not attributable to him. If, upon request, the Contractor undertakes to correct a failure that is not attributable to him, the parties shall follow the procedure stated in clause 45.
- 29-3 If and in so far as he may be held liable pursuant to the provisions of clause 28 sections 1, 2 and 3, the Contractor shall correct any defect in the Works appearing during the Long-Term Maintenance without delay at his own expense and risk. If, upon request, the Contractor undertakes to correct a failure that is not attributable to him, the parties shall follow the procedure stated in clause 45.

- 29-4 If the condition of the Works referred to in the second sentence of section 2 is the result of damage to the Works occurring during the Long-Term Maintenance Period, the provisions of clause 41 shall apply.

Clause 30 Acceptance of the completed Long-Term Maintenance

- 30-1 The Contractor shall send the Employer a written request for acceptance of the completed Long-Term Maintenance at least 20 days before the end of the Long-Term Maintenance Period.
- 30-2 The Employer is authorised to inspect the completed Long-Term Maintenance within 10 days of receipt of the request referred to in section 1 to ascertain whether the Contractor has met his obligations with regard to the realisation of the Long-Term Maintenance. If the Employer wishes to exercise his authority to inspect, the inspection shall be carried out with all due despatch and as a rule within 10 days of the day of the despatch of the request referred to in section 1. In that case, the Contractor will be notified in writing of the day and time of the inspection with all due despatch, but at least 3 days in advance. The Employer may require the Contractor or his representative to be present at the inspection.
- 30-3 If the Employer has not notified the Contractor as referred to in section 2 within 7 days of the day of despatch of the request referred to in section 1, he shall be deemed to have waived his authority to inspect the completed Long-Term Maintenance.
- 30-4 The Employer shall notify the Contractor in writing within 14 days of the day of despatch of the request referred to in section 1 whether or not the completed Long-Term Maintenance has been accepted. If not, the Employer shall specify the defects constituting the grounds for rejection. If the number, nature and extent of the defects are such that such a specification cannot reasonably be required of the Employer, he shall just provide a brief overview of the defects. If the completed Long-Term Maintenance is accepted, the acceptance shall be deemed to have taken place on the final day of the Long-Term Maintenance period.
- 30-5 If the Contractor has not received any of the written notifications referred to in section 4 within 15 days of the day of despatch of the request referred to in section 1, he may re-request the Employer by registered letter to accept the completed Long-Term Maintenance. Such a request shall not re-authorise the Employer to inspect the completed Long-Term Maintenance as referred to in section 2.
- 30-6 If the Employer has not notified the Contractor in writing within 7 days of the day of despatch of the letter referred to in section 5 whether or not the completed

Long-Term Maintenance has been accepted, the Long-Term Maintenance shall be deemed to have been accepted on the final day of the Long-Term Maintenance period.

- 30-7 Minor failures that are attributable to the Contractor and that may properly be corrected before a next term of payment shall not constitute grounds for rejection of acceptance. The Contractor is under an obligation to correct the failure referred to in this section as soon as possible.
- 30-8 If the Contractor has not submitted a request for acceptance of the completed Long-Term Maintenance as referred to in section 1 but the Employer nevertheless wishes to accept it, he may notify the Contractor in writing that he considers the completed Long-Term Maintenance accepted. In that event, the acceptance shall be deemed to have taken place on the final day of the Long-Term Maintenance period.

Clause 31 Re-inspection and acceptance after rejection of the completed Long-Term Maintenance

- 31-1 If the Employer has notified the Contractor pursuant to clause 30 section 4 or section 6 that he rejects the completed Long-Term Maintenance, the Contractor shall correct the failures constituting the grounds for the rejection without delay.
- 31-2 Following the correction referred to in section 1, the Contractor shall request the Employer in writing to accept the completed Long-Term Maintenance. In that case, the provisions of clause 30 shall apply accordingly.

Clause 32 Liability for failures in the completed Long-Term Maintenance after the expiry of the Long-Term Maintenance Period

- 32-1 After the expiry of the Long-Term Maintenance Period, the Contractor shall no longer be liable for failures in the Long-Term Maintenance, unless:
- (a) he is to blame for those failures or is liable for those failures pursuant to law, contract or opinions prevailing in society;
and furthermore
 - (b) the Employer did not discover those failures during the Long-Term Maintenance Period;
and furthermore
 - (c) the Employer should not reasonably have had to detect those failures at the time of acceptance of the completed Long-Term Maintenance.

- 32-2 The action due to a failure for which the Contractor is liable pursuant to section 1 shall be inadmissible if it is filed after the expiry of one year after the Long-Term Maintenance Period.

CHAPTER 12

PAYMENT, PROVISIONAL SUMS, TURNOVER TAX, PENALTY CLAUSE, BONUS, PLEDGE OR ASSIGNMENT

Clause 33 Payment

- 33-1 Payment of the price stated in the Agreement shall be effected according to the payment schedule drawn up by the Contractor.
- 33-2 If and in so far as this is stated in the acknowledgement plan, the Contractor shall submit a payment schedule based upon the programme to the Employer for Acknowledgement. The provisions of clause 23 shall apply.
- 33-3 If the Contractor is of the opinion that he is entitled to payment of an amount stated in the payment schedule, he shall request the Employer to issue a performance statement¹⁾, including a reference to the payment schedule.
- ¹⁾ A model performance statement has been included with these UAV-GC 2005 as appendix A.
- 33-4 If the Employer is of the opinion that the Contractor is entitled to the issue of the performance statement, the statement shall be issued with all due despatch following receipt of the request referred to in section 3.
- 33-5 If the Employer is of the opinion that the Contractor is not entitled to the issue of the performance statement, he shall notify the Contractor thereof in writing, stating the reasons, with all due despatch following receipt of the request referred to in section 3.
- 33-6 The Contractor shall send the invoices with the related performance statement as referred to in section 4 to the address stated in the Agreement. The invoices shall state the details stipulated in the Agreement. The Employer may refuse to handle invoices that do not meet these requirements and return them to the Contractor.
- 33-7 Payment of invoices that meet the requirements referred to in section 6 shall be effected within 4 weeks of receipt thereof at the address referred to in section 6.

- 33-8 The issue of a performance statement as well as the payment of invoices shall under no circumstances lead to Acknowledgement of Documents, Work, results of Work, the Works or the completed Long-Term Maintenance.
- 33-9 If one of the events as referred to in clause 43 sections 2, 3, 4 or 5 occurs and the Employer completes or has a third party complete the Works and/or the Long-Term Maintenance at the Contractor's expense, the Employer shall be entitled to pay the subcontractors, at the Contractor's expense, directly a reasonable fee for Work for which they have not yet received payment from the Contractor. The Employer shall not do so until he has heard the Contractor or his legal representative or successor regarding the matter.

Clause 34 Provisional sums

- 34-1 Provisional sums are the amounts referred to in the Agreement that are included in the price stated in the Agreement and that are intended for the performance of Work that was insufficiently specified on the day of the Contract and still need to be specified by the Employer. The Agreement shall specify the item to which each provisional sum pertains.
- 34-2 If the sum total of the expenditures debited against a provisional sum exceeds the amount of that provisional sum, the difference shall be compensated.
- 34-3 The expenditures debited against provisional sums shall be calculated on the basis of the net prices charged to the Contractor or the net costs incurred by him, increased by a payment of:
- (a) 10% in so far as these prices or costs relate to deliveries made by the Contractor;
 - (b) 10% in so far as these prices or costs relate to work performed by the Contractor; or
 - (c) 5% in so far as these prices or costs merely relate to payments to third parties;
- exclusive of turnover tax.
- 34-4 Work, for which provisional sums have been included, shall be performed by the Contractor on further instruction of the Employer. Prior to debiting an expenditure against a provisional sum, the Employer may require the Contractor to submit evidence.
- 34-5 If the Employer has instructed the execution of Work for which provisional sums have been budgeted, the Contractor may request the Employer to issue a performance statement with regard to that Work upon completion. The provisions of clause 33 shall apply.

Clause 35 Turnover tax

- 35-1 The turnover tax due in respect of the Works and the Long-Term Maintenance shall not be included in the charges and prices agreed or to be agreed between the Employer and the Contractor. However, the amount of the turnover tax shall be stated separately in the Contractor's quotations.
- 35-2 The Employer shall pay the Contractor the turnover tax due in respect of the Works and the Long-Term Maintenance.
- 35-3 The Contractor shall receive no payment of turnover tax due in respect of the Works and the Long-Term Maintenance if and in so far as such tax is levied from the Employer.
- 35-4 The amount to which the Contractor is entitled under the Contract shall be calculated on the basis of charges and prices that do not include turnover tax; the turnover tax to be paid to the Contractor by the Employer shall be calculated separately.
- 35-5 Turnover tax shall be paid to the Contractor at the same time as the other amounts to be paid to him.

Clause 36 Penalty clause and bonus

- 36-1 Subject to the provisions of section 3, the Employer may impose a penalty on the Contractor if the latter fails to meet the milestone date stated in the programme in an annex to the Employer's Requirements or the date of completion and acceptance stated in the Agreement, unless this failure is not attributable to the Contractor.
- 36-2 For the purpose of this clause, the date of completion and acceptance stated in the Agreement shall be regarded as a milestone date specified in the programme in an annex to the Employer's Requirements.
- 36-3 The amount of the penalties that may be imposed is specified for each milestone date stated in the Agreement. If the Agreement does not stipulate a penalty for a certain milestone date, the Contractor shall not owe a penalty if he fails to meet that date.
- 36-4 No penalty shall be imposed for a failure to meet a milestone date, if and in so far as this failure is the result of a failure to meet a previous milestone date for which a penalty was imposed, provided that the aforementioned dates are interrelated.

- 36-5 Penalties shall be forfeited by the mere lapsing of the milestone date, without notice of default being required.
- 36-6 Penalties and any other amounts that the Contractor owes pursuant to the Contract shall be withheld in the next term of payment and, if necessary, the next terms of payment or recovered from the Contractor in another manner.
- 36-7 The Employer may award a bonus for each day by which the actual date of completion and acceptance precedes the date of completion and acceptance stated in the Agreement. The amount of the bonus shall be stated in the Agreement. If the Agreement does not specify an amount of the bonus, the Employer shall not have to award a bonus in the event that the actual date of completion and acceptance precedes the date of completion and acceptance stated in the Agreement.

Clause 37 Pledge or charge or assignment

The Contractor may pledge or charge or assign the whole or any part of the rights to the balance referred to in clause 3 section 9.

CHAPTER 13 SECURITY, INSURANCE

Clause 38 Security

- 38-1 The Contractor is obliged to provide security for the fulfilment of his obligations regarding the realisation of the Works and for the fulfilment of his obligations regarding the realisation of the Long-Term Maintenance. The security must be provided in the form of a bank guarantee¹⁾. The value of the security shall be stated in the Agreement. The bank guarantee shall be governed by Netherlands law.

¹⁾ A model security document has been included with these UAV-GC 2005 as Appendix B.

- 38-2 If the Employer plans to invoke the security, he shall notify the Contractor by registered letter. The Employer shall be entitled to invoke the security, unless the Court of Arbitration for the Building Industry or the Dispute Adjudication Board rules otherwise in a dispute to be filed by the Contractor within 14 days of despatch of the notification referred to in this section.

- 38-3 The security provided for the fulfilment of the obligations regarding the realisation of the Works shall remain valid until the actual date of completion and acceptance, on the understanding that, in the event of minor defects as referred to in clause 24 section 7, the security shall remain valid until the Contractor has corrected the defects. If clause 27 applies and the Employer's Requirements prescribe a defects liability period, the security shall remain valid until it has been ascertained in accordance with clause 27 section 7 that the Contractor has met his obligations.
- 38-4 Following the actual date of completion and acceptance or, if the Employer's Requirements prescribe a defects liability period, after the expiry of that defects liability period, the Contractor shall be entitled to provide substitute security to an amount as shall be reasonably required to correct the defects that are for his account. The Employer shall be required to return the original security after he has agreed to and received the substitute security.
- 38-5 The security provided for the fulfilment of the obligations regarding the realisation of the Long-Term Maintenance shall remain valid until the end of the Long-Term Maintenance Period, on the understanding that, in the event of minor failures as referred to in clause 30 section 7, the security shall remain valid until the Contractor has corrected these failures. After the expiry of the Long-Term Maintenance Period, the Contractor shall be entitled to provide substitute security to an amount as shall be reasonably required to correct the failures that are for his account. The Employer shall be required to return the original security after he has agreed to and received the substitute security.
- 38-6 The Employer shall not be entitled to require the Contractor to provide security for the fulfilment of his obligations if it has been agreed that the price stated in the Agreement will be withheld in whole or in part. Such withholding shall also exist if a performance statement requested by the Contractor pursuant to clause 33 section 3 is not issued with all due despatch or if a payment to which the Contractor is entitled pursuant to a performance statement issued has not been effected after 14 days from the day by which the payment should have been made.
- 38-7 If the Employer does not pay or does not pay in time the amount to which the Contractor is entitled under the Contract or if the Contractor has reason to believe that the Employer will not pay him or not pay him in time the amount due, the Contractor shall be entitled to require the Employer to provide sufficient security. If the Employer fails to provide the security required, the Contractor shall be authorised to either suspend Work or to dissolve the Contract. With respect to the suspension or the dissolution, the provisions of clause 16 shall apply accordingly.

- 38-8 If the Contractor intends to invoke the security provided by the Employer, he shall notify the Employer by registered letter. The Contractor shall be entitled to invoke the security, unless the Court of Arbitration for the Building Industry or the Dispute Adjudication Board rules otherwise in a dispute to be filed by the Contractor within 14 days of despatch of the notification referred to in this section.

Clause 39 Insurance

- 39-1 Unless provided otherwise by the Employer's Requirements, the Contractor shall be required to take out insurance policies in which the Employer is included as co-insured, in so far as this is necessary and customary considering the nature and the extent of the Works and the Long-Term Maintenance. The existence and the contents of the aforementioned insurance policies shall be subject to the acknowledgement procedure of clause 23, if and in so far as that is stated in the acknowledgement plan.
- 39-2 If the Employer has taken or will take out insurance policies in connection with the Works and/or the Long-Term Maintenance, the conditions of such insurance policies shall be appended to the Employer's Requirements, and the Employer shall ensure that the Contractor receives written proof of the existence and contents of the aforementioned insurance policies as soon as possible.

CHAPTER 14 INTELLECTUAL PROPERTY RIGHTS

Clause 40 Intellectual property rights

- 40-1 The Contractor or his successor(s) has/have the exclusive right to publish, produce and reproduce his Design Documents with due observance of the provisions of the Copyright Act 1912 or the Uniform Benelux Act on Drawings and Designs.
- 40-2 The Design Documents issued by the Contractor to the Employer shall become the ownership of the Employer and may be used by him with due observance of the rights arising from intellectual property law, after the Employer has met his financial obligations to the Contractor.
- 40-3 The Employer shall not be permitted to repeatedly reproduce the Works as completed in accordance with the Design Documents – as part of an extension or otherwise – in whole or in part, without the express permission of the Contractor. The Contractor shall be authorised to set certain conditions for this permission, including the payment of a fee to the Contractor.

- 40-4 Without prejudice to the provisions of section 1, the Employer shall be entitled to complete the Works in accordance with the Design Documents, without the intervention and approval of the Contractor, if the Contract is dissolved due to an attributable failure of the Contractor in the fulfilment of the Contract. In that event, the Contractor shall not be liable for defects in the Works in so far as those defects can be ascribed to the completion of the Works by or on behalf of the Employer.
- 40-5 The Contractor shall be deemed the designer, as referred to in the Uniform Benelux Act on Drawings and Designs, of the drawings and designs that he has produced under the Contract. The Contractor shall have the exclusive right to file these drawings and designs with the Office referred to in that act. The provisions with regard to intellectual property rights shall apply accordingly as far as possible to the rights derived from such filing.
- 40-6 Information that one party places at the disposal of the other may not be divulged to third parties by the receiving party without the express permission of the other party. This obligation does not apply to information from the Employer the disclosure of which to employees and subcontractors of the Contractor is required for the execution of Work. Nor does the obligation apply to information that is common knowledge or publicly accessible or that becomes known through no fault of the receiving party.
- 40-7 The Contractor shall not divulge information about the Works and the Long-Term Maintenance to third parties without the express permission of the Employer.
- 40-8 The Employer shall not obstruct the Contractor in making his knowledge available to third parties, unless this knowledge consists of trade secrets of the Employer or forms part of a discovery, for which a patent application has been filed with due observance of the provisions of sections 9 to 13.
- 40-9 The Contractor is obligated to notify the Employer immediately of any inventions made during and through the fulfilment of the Contract that he considers to be patentable.
- 40-10 If a discovery as referred to in section 9 has arisen through the exchange of knowledge between the parties, the Employer shall be entitled to apply for a patent to that invention in his name and at his expense. The Employer shall notify the Contractor of his decision to do so without delay. If so requested, the Contractor is under an obligation to provide the Employer with assistance in filing the application. In that case, he shall be entitled to cost compensation and/or extension of time in accordance with the provision of clause 44 section 1 subsection a.

- 40-11 If the Employer obtains a patent as referred to in section 10, he shall grant the Contractor a – in principle – non-transferable licence to that invention. The Contractor shall request permission from the Employer if he wishes to apply the licence in actual practice which permission may only be withheld if the Employer can demonstrate a conflict of interests with his company
- 40-12 If the Employer does not exercise the right referred to in section 10, the Contractor shall be entitled to apply for a patent for that invention in his name and at his expense, all with due observance of the provisions of section 6. The Contractor shall notify the Employer of his decision to do so without delay.
- 40-13 If the Contractor obtains a patent as referred to in section 12, he shall grant the Employer a – in principle – non-transferable licence to use the discovery in his current business operations.
- 40-14 The Contractor shall be liable for any damage arising in connection with the fulfilment of the Contract as a result of an infringement of third-party intellectual property rights. The Contractor shall indemnify and save the Employer harmless against third-party claims for compensation of such damage.

CHAPTER 15

DAMAGE TO THE WORKS

Clause 41 Damage to the Works

- 41-1 The provisions of this clause shall apply if damage to the Works occurs before the actual date of completion and acceptance. If the Agreement stipulates that the Contractor will realise the Long-Term Maintenance, the provisions of this clause shall also apply if damage to the Works occurs during the Long-Term Maintenance Period.
- 41-2 Damage to the Works as referred to in this clause shall be understood to mean damage to the entire or partial result of Work of the Contractor.
- 41-3 The Contractor shall notify the Employer of damage to the Works without delay after he has or could have detected the damage.
- 41-4 Without prejudice to the liability of the parties under the Contract or the law, damage to the Works shall be borne by the Contractor, unless this damage is the result of extraordinary circumstances against the prejudicial consequences of which the Contractor should not have had to take appropriate measures, given the nature of the Works or Long-Term Maintenance, and it would be unreasonable to charge the damage to his account.

- 41-5 When damage to the Works has occurred, the Contractor is under an obligation to take appropriate measures to limit the damage without delay.
- 41-6 Damage to the Works resulting from non-fulfilment of the obligation referred to in section 3 or section 5, shall be borne by the Contractor.
- 41-7 The Contractor shall repair damage to the Works for which he is liable without delay, unless this may not be reasonably required of him. In that event, as well as if it may not reasonably be required of the Employer that he has the repair carried out by the Contractor, the Employer may alternatively claim damages from the Contractor.
- 41-8 If the Employer wishes that the Contractor repairs damage to the Works for which the latter is not liable, he must order a Variation as referred to in clause 14 section 1.

CHAPTER 16

DEFAULT, INCAPACITY OR DEATH OF ONE OF THE PARTIES

Clause 42 Default, incapacity or death of the Employer

- 42-1 If the Employer fails to issue a performance statement to the Contractor in due time or if any of the payments to be made under an issued performance statement are overdue and the delay is not caused by any circumstance that can be attributed to the Contractor, the latter shall be entitled to payment of interest at the statutory rate accruing from the day on which the performance statement should have been issued or payment should have been made at the latest. The Contractor's claim for interest shall never include compound interest.
- 42-2 If a performance statement requested by the Contractor pursuant to clause 33 section 3 is not issued with all due dispatch or if a payment to which the Contractor is entitled under an issued performance statement has not been made within 14 days of the due date, and if a subsequent written demand by the Contractor has not resulted in the issue of the performance statement or payment within 14 days either, the rate of interest referred to in section 1 shall be increased by 2 percent upon expiry of the said period of 14 days and, provided he has made an announcement to that effect in the demand, the Contractor shall have the right either to suspend Work until the Employer has issued the performance statement or paid the outstanding amount, or to dissolve the Contract. With respect to the suspension or dissolution, the provisions of clause 16 shall apply accordingly.

- 42-3 The provisions of section 2 regarding suspension and dissolution shall not apply if the Contractor's claim relates to a payment concerning which the Employer has filed proceedings in an dispute.
- 42-4 If the Employer is adjudicated bankrupt or is put into liquidation, the Contractor may summon the trustee/liquidator in writing to state within reasonable period whether he is prepared to have Work continued, providing such adequate security as the Contractor has demanded in the said summons. If the trustee/liquidator states that he is prepared to do so, he shall be required to provide the security demanded when making such a statement. If the trustee/liquidator is not prepared to have Work continued or if he is prepared to do so but fails to provide the security demanded, the Contractor shall be entitled to dissolve the Contract. With respect to the dissolution, the provisions of clause 16 shall apply accordingly.
- 42-5 If the Employer is placed under compulsory guardianship, the provisions of section 4 shall apply accordingly. If the Employer is granted a suspension of payments or confined to a psychiatric hospital on judicial authorisation, the provisions of section 4 shall apply accordingly, except that "the trustee/liquidator" shall read "the Employer and the trustee/administrator" or, as the case may be, "the provisional trustee/administrator or the special guardian".
- 42-6 In the event of the Employer's death, the Contract shall not be dissolved by reason of his death. In that case, the provisions of section 4 shall apply accordingly, except that "the trustee/liquidator" shall read "the Employer's heirs". If the Contractor so demands, the Employer's heirs shall be required to appoint one from their number or a third party to represent them in all respects.

Clause 43 Default, incapacity or death of the Contractor

- 43-1 If the Employer suspects that the Contractor is failing or will fail to perform any of his obligations, the latter shall be required to take such measures or allow such measures to be taken as will be necessary to ascertain whether or not this is the case. If this is not the case, the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.
- 43-2 If the Employer ascertains that the Contractor is failing or will fail to perform any of his obligations and the Employer gives notice of default, such notice shall be given in writing and shall allow the Contractor a reasonable amount of time within which his default may be remedied. In urgent cases, the Employer shall be entitled, even before the stated period of time has expired, to take such measures at the Contractor's expense as the Employer may deem appropriate for the benefit of the Works and/or the Long-Term Maintenance. If the Contractor

continues to default in the performance of his obligations the Employer shall be entitled to complete or have others complete the Works and/or the Long-Term Maintenance at the Contractor's expense, without prejudice to the Employer's right to damages.

- 43-3 If the Contractor is adjudicated bankrupt or is put into compulsory liquidation, the Employer may summon the trustee/liquidator in writing to state within a reasonable period whether he is prepared to continue Work, providing such adequate security as the Employer has demanded in the said summons. Pending the decision on continuation of Work and in urgent cases, the Employer shall be entitled to take such measures at the Contractor's expense as the Employer may deem appropriate for the benefit of the Works and/or the Long-Term Maintenance. If the trustee/liquidator states that he is prepared to continue Work, he shall be required to provide the security demanded when making such a statement. If the trustee/liquidator is not prepared to continue Work or, if he is prepared to do so but fails to provide the security demanded, the Employer shall be entitled to complete or have others complete the Works and/or the Long-Term Maintenance at the Contractor's expense, without prejudice to the Employer's right to damages.
- 43-4 If the Contractor is placed under compulsory guardianship, the provisions of section 3 shall apply accordingly. If the Contractor is granted a suspension of payments or confined to a psychiatric hospital on judicial authorisation, the provisions of section 3 shall apply accordingly, except that "the trustee/liquidator" shall read "the Contractor and the trustee/administrator" or, as the case may be, "the provisional trustee/administrator or the special guardian".
- 43-5 In the event of the Contractor's death the Contract shall not be dissolved by reason of his death. In that case, the provisions of section 3 shall apply accordingly, except that "the trustee/liquidator" shall read "the Contractor's heirs". If the Employer so demands, the Contractor's heirs shall be required to appoint one from their number or a third party to represent them for in all respects.
- 43-6 The Employer shall ensure that the Contractor's expenses arising from the enforcement of the provisions of this clause shall remain within reasonable limits.
- 43-7 If pursuant to the provisions of this clause the Employer takes measures for the benefit of the Works and/or the Long-Term Maintenance or employs others to complete the Works and/or the Long-Term Maintenance, the Employer is entitled to use or have others use all such items as are available to the Contractor.
- 43-8 The Employer shall be required to maintain or have others maintain the items as referred to in section 7 in a good state of repair and to make them available to the Contractor again with all due despatch as soon as they are no longer needed for the execution of Work. Any damage caused to the said items during use as

mentioned above shall be borne by the Employer, unless he proves that such damage is not attributable to any fault on his part or to any cause that is attributable to him pursuant to law or opinions prevailing in society.

CHAPTER 17

COST COMPENSATION, EXTENSION OF TIME, PROCEDURE FOR SETTLING CONSEQUENCES OF VARIATIONS BY THE EMPLOYER

Clause 44 Cost compensation and/or extension of time

- 44-1 Subject to the provisions of clause 45, the Contractor shall be entitled to cost compensation and/or extension of time only if:
- (a) these UAV-GC 2005 expressly provide for such cost compensation and/or extension and on condition that the costs and/or delay are caused by a circumstance that cannot be attributed to the Contractor; or
 - (b) the costs and/or delay are caused by a circumstance for which the Employer is responsible pursuant to the Contract against which the Contractor did not have to warn given his obligation referred to in clause 4 section 7; or
 - (c) an unforeseen circumstance arises the nature of which is such that, according to the standards of good faith, the Employer cannot expect the Contract to be maintained unaltered.
- 44-2 If the Contractor is of the opinion that he is entitled to cost compensation and/or extension of time, he shall notify the Employer thereof in writing with all due despatch, stating the reasons. Unless the provisions of section 3 apply, this notification shall be accompanied by the notification referred to in section 5.
- 44-3 If the Contractor is of the opinion that he is entitled to cost compensation and/or extension of time due to a circumstance referred to in section 1 subsection c, the Employer shall be entitled to limit or simplify Work of the Contractor with all due despatch after receipt of the notification referred to in section 2 by ordering a Variation as referred to in clause 14 section 1. In that event, the parties shall follow the procedure stated in clause 45.
- 44-4 If the Employer fails to exercise the authority referred to in section 3 with all due despatch, the provisions of section 5 shall apply. Such failure of the Employer shall in no way imply recognition of any claim of the Contractor for cost compensation or extension of time. Nor shall it deprive him of the opportunity to still exercise the authority referred to in section 3 at any time after the Contractor has given the notification referred to in section 5, subject to the provisions of section 10.

- 44-5 The Contractor shall notify the Employer in writing with all due despatch, stating the reasons, to what extent he believes to be entitled to cost compensation and/or extension of time. This notification shall also state all direct and indirect costs, as well as a reasonable surcharge for general expenses, profit and risk. In addition, he shall specify the programme stated in an annex to the Employer's Requirements, the agreed milestone dates and the date of completion and acceptance stated in the Agreement.
- 44-6 The Employer shall notify the Contractor in writing with all due despatch after receipt of the notification referred to in section 5 whether he recognises the Contractor's claim for cost compensation and/or extension of time.
- 44-7 The Employer shall be entitled to request the Contractor in writing with all due despatch after receipt of the notification referred to in section 5 to hold consultations about the latter's claim for cost compensation and/or extension of time. The Contractor shall grant this request within the bounds of good faith. If the parties fail to reach an agreement even after such consultations, the Contractor's claim for cost compensation and/or extension of time shall be considered to have not been recognised by the Employer.
- 44-8 If the Employer has not made a request as referred to in section 7 and fails to give the notification with all due despatch as referred to in section 6, the Contractor shall grant the Employer a further period within which the latter can do so. If, within this further term, the Employer still fails to give such a notification or make a request as referred to in section 7, the Contractor's claim for cost compensation and/or extension of time shall be deemed to have been recognised by the Employer from the moment the further term lapses.
- 44-9 After the Employer has notified the Contractor, whether or not after the consultations referred to in section 7, that he recognises his claim for cost compensation and/or extension of time, the parties shall be deemed to have agreed as from the moment of recognition that:
- (a) the Employer shall pay the Contractor the costs referred to in the notification pursuant to section 5 of this clause, possibly adjusted by the parties during consultations referred to in section 7; and
 - (b) the programme stated in an annex to the Employer's Requirements, the agreed milestone dates and the date of completion and acceptance stated in the Agreement have been adjusted in accordance with the content of the notification pursuant to section 5 of this clause, possibly adjusted by the parties during the consultations referred to in section 7.
- 44-10 If the Contractor's claim for cost compensation and/or extension of time is not recognised by the Employer, whether or not after the consultations referred to in section 7, the Employer shall notify the Contractor in writing, stating the reasons. As from that moment, the Employer shall no longer be authorised to exercise his

authority as referred to in section 3. The provision of the previous sentence shall also apply from the moment at which the Contractor's claim is deemed not to have been recognised by the Employer.

Clause 45 Procedure for settling consequences of Variations ordered by the Employer

- 45-1 If the Contractor states that he will carry out a Variation ordered by the Employer or if he is under an obligation to do so given the provisions of clause 14 section 7 or section 14, the parties shall follow the procedure stated in this clause.
- 45-2 Once he notifies the Employer that he will carry out the Variation or once he is under an obligation to do so given the provisions of clause 14 section 7 or section 14, the Contractor shall send the Employer a written quotation with all due despatch, stating:
- (a) the balance, comprising all direct and indirect costs, as well as a reasonable surcharge for general expenses, profit and risk, related to the execution of the Variation, less the amount by which the price stated in the Agreement can be reduced as a result of the execution of the Variation; and
 - (b) the adjustment of the programme stated in the annex to the Employer's Requirements, the agreed milestone dates and the date of completion and acceptance stated in the Agreement, based on a calculation of the time needed for the execution of the Variation; and
 - (c) the adjustment of the payment schedule.
- 45-3 The Contractor shall be entitled to a reasonable compensation of the costs associated with the quotation referred to in section 2, regardless of the question of whether the parties will agree on that quotation.
- 45-4 Following receipt of the quotation referred to in section 2, the Employer shall notify the Contractor in writing with all due despatch whether he accepts the quotation.
- 45-5 Following receipt of the quotation referred to in section 2, the Employer may invite the Contractor in writing to consultations about the quotation submitted. The Contractor shall be under an obligation to accept this invitation within the bounds of good faith.
- 45-6 If the Employer fails to give the notification referred to in section 4 with all due despatch without prior use of the procedure stated in section 7, the Contractor shall set a further term within which the Employer can still do so, referring the latter to the procedure stated in section 7. If the Employer still fails to give the notification referred to, the quotation shall be deemed to have been accepted by

the Employer from the moment the further time lapses. In that event, the provisions of section 8 shall apply.

- 45-7 If the Employer is not able to decide with all due despatch whether he wishes to accept the quotation, he shall notify the Contractor in writing and without delay within which term he will reach that decision, stating the reasons.
- 45-8 If the Employer decides to accept the quotation, possibly after the consultations as referred to in section 5, he shall notify the Contractor in writing. As from that moment, the parties shall be deemed to have agreed that:
- (a) the price stated in the Agreement has been, respectively, increased or decreased with the balance stated in the quotation made pursuant to section 2, possibly adapted by the parties during the consultations referred to in section 5;
 - (b) the programme stated in the annex to the Employer's Requirements, the agreed milestone dates and the date of completion and acceptance stated in the Agreement have been adjusted in accordance with the content of the quotation, possibly adapted by the parties during the consultations referred to in section 5; and
 - (c) the payment schedule has been adapted in accordance with the content of that quotation, possibly adapted by the parties during the consultations referred to in section 5.
- 45-9 If the Employer decides to reject the quotation, possibly after the consultations as referred to in section 5, he shall have the notification referred to in section 4 accompanied by a written motivation. In that event, he shall be authorised to submit the quotation and any other further agreements made during the consultations as referred to in section 5 to the Dispute Adjudication Board, provided that the parties have stipulated such authority in the Agreement, in order to have this Board determine whether the quotation qualifies as reasonable.
- 45-10 If the Dispute Adjudication Board is of the opinion that the quotation of the Contractor, possibly supplemented with the further agreements made by the parties during consultations as referred to in section 5, qualifies as reasonable, it shall be up to the Employer to decide whether he still accepts the quotation. If the Employer decides to reject the quotation, the provisions of clause 14 section 16, second sentence, shall apply. If the Employer decides to accept the quotation, the provisions of section 8 shall apply.
- 45-11 If the Dispute Adjudication Board is of the opinion that the quotation of the Contractor, possibly supplemented with the further agreements made by the parties during the consultations as referred to in section 5, does not qualify as reasonable, the Contractor must submit a new quotation with due despatch. If the Employer so wishes, he may request the Dispute Adjudication Board to

determine that the Contractor must carry out the Variation pending the submission of a new priced offer. If the Dispute Adjudication Board grants the request, the Contractor shall be obligated to carry out the Variation ordered and the provisions of section 8 shall not apply.

45-12 If, given the provisions of section 9, the Employer decides not to submit the quotation to the Dispute Adjudication Board, the provisions of clause 14 section 16, second sentence, shall apply.

45-13 If the procedure stated in this clause is delayed as a consequence of:

- (a) the failures of the Employer as referred to in section 6; or
- (b) the notification by the Employer as referred to in section 7; or
- (c) the Employer's calling upon the Dispute Adjudication Board, provided that the Board rules as referred to in section 10;

the Contractor shall be entitled to cost compensation and/or extension of time, in accordance with the provision of clause 44 section 1 subsection a.

CHAPTER 18

RECORDING THE CONDITION; SETTLEMENT OF DISPUTES

Clause 46 Recording the condition

46-1 If, during the progress of the Works or the Long-Term Maintenance Period, one of the parties wishes to record the condition of any part of the Works or the Long-Term Maintenance at some particular time, or any other fact or series of facts concerning Work, that party may issue a written order requiring a joint assessment of the condition or a joint verification of such a fact or series of facts to be carried out and recorded in a report to be signed by both parties.

46-2 Should the Employer or the Contractor fail to comply with the demand referred to in section 1, the other party may instruct others to record the condition as mentioned above in a report in accordance with the Regulations of the Court of Arbitration for the Building Industry, entirely without prejudice to the other party's right to carry out the required assessment and verification itself in the presence of witnesses and to record the same in a report to be signed by the party and any witnesses. The decision as to the probative value of the report shall lie with the said Court of Arbitration, subject to the provisions of clause 47 section 5.

46-3 The report as referred to in sections 1 and 2 shall be drawn up in duplicate, the Employer and the Contractor will each receive a copy.

Clause 47 Settlement of disputes

- 47-1 With respect to the settlement of disputes as referred to in this clause, the parties expressly waive their right to seek the intervention of the common courts of law.
- 47-2 Subject to the provision of section 5, any disputes whatsoever – including any disagreement that only one party considers to be a dispute – which may arise between the parties in connection with or as a result of the Contract or any subsequent arising out of the Contract, shall be settled by arbitration in accordance with the rules defined in the Regulations of the Court of Arbitration for the Building Industry, as these read three months before the day on which the Contract was concluded.
- 47-3 If, after the Employer has given the Contractor written notice of his definitive decision in respect of the final account, the Contractor wishes to submit a dispute concerning the final account to the Court of Arbitration referred to in section 2, he should do so within six months. After the expiry of this term, which begins as soon as the Employer has reminded the Contractor thereof by registered letter, the Contractor's action shall be inadmissible in so far as his claim is for more or other relief than that stated in the final account. This condition expires when the claim arises from any event, which occurred after the expiry of the six-month term.
- 47-4 If an arbitration award by the Court of Arbitration referred to in section 2 is declared null and void, in whole or in part, by a final and binding judgement of a court of law, either party shall have the right to re-submit the dispute in question to arbitration in accordance with this clause, if and in so far as the dispute has remained unresolved as a result of such a judgement. The action shall not be admissible, however, if it is brought before the Court of Arbitration referred to in section 2 later than three months after the judgement of the court of law has become final and binding. Any person who, as arbitrator or secretary, took part or assisted in the nullified award shall not be permitted to take part or assist in the new arbitration on the dispute.
- 47-5 If the parties have stipulated in the Agreement that they shall bring the disputes referred to section 2 before the Dispute Adjudication Board, those disputes, contrary to section 2, shall be settled by the Dispute Adjudication Board in accordance with the dispute rules stated in an annex to the Employer's Requirements.

Clause 48 Applicable law

The Contract shall be governed by Netherlands law.

APPENDIX A - model performance statement

Name of Contractor:

Contract number:

Price exclusive of VAT: EUR¹

Number of instalments based on
the payment schedule forming
part of the Contract:

STATEMENT

Employer/his representative:

Name:

hereby declares that, under the Contract, the Contractor is entitled to payment of the

..... invoice instalment(s), amounting to (exclusive of turnover tax)

EUR.....²

(in words:)³

..... (town), (date)

..... (signature)

The Contractor must enclose the original of this signed performance statement with the (instalment) invoice to be sent to the Employer. The (instalment) invoice must state the serial number of the invoice instalment in addition to the details mandatory under the Contract.

¹ Amount in digits.

² Amount of the instalment in digits.

³ Amount of the instalment in words.

Appendix B - Model Security

Bank guarantee (specimen)

The undersigned, 1)
having its offices in, 2)
hereinafter referred to as the 'guarantor',
hereby stands, and waives all defence granted by law to guarantors,
as guarantor
to 3)
having its offices in, 4)
hereinafter referred to as the 'Employer',
to guarantee the proper fulfilment of
the obligations of 5)
having its offices in, 6)
hereinafter referred to as the 'Contractor',
ensuing from the Agreement no. 7)
concerning the following works tendered by the Employer and accepted by the Contractor
namely the

☐ * Work, 8)

to the amount of €, in words 9)

☐ * Long-Term Maintenance 10)

to the amount of €, in words 11)

* the parties are expected to tick one or both of the options to indicate their choice

On the grounds of this bank guarantee, the guarantor shall be bound at the first written request of the Employer informing him that the Contractor has defaulted in the proper fulfilment of his obligations as described in the aforementioned Agreement to pay the Employer an amount not exceeding the aforementioned sum, provided that the guarantor has received a copy of the registered letter sent by the Employer to the Contractor in which the Employer informs the Contractor of his intention to call in the bank guarantee and if at least 14 working days have elapsed since said letter was sent

and

if the Contractor, prior to expiry of the aforementioned period of 14 working days, gives no evidence, for example in the form of confirmation of receipt from the Court of Arbitration for the Building Industry, to the guarantor that he has requested an emergency procedure to be brought before the arbitration tribunal.

If the Contractor, prior to expiry of the aforementioned period, gives evidence to the guarantor that he has requested an emergency procedure to be brought before the arbitration tribunal referred to above, the employer shall only be entitled to call in the bank guarantee after the tribunal rules accordingly in the first instance.

In accordance with the provisions of clause 38 UAV-GC 2005, this security shall remain in effect until the Contractor has fulfilled all his obligations ensuing from the aforementioned Agreement.

If the Employer neglects to return to the Contractor documents that have been submitted to him with respect to this security, the Contractor shall be entitled to request the guarantor in writing to terminate this security.

The guarantor shall be entitled to terminate this security if the Contractor has sent a copy of this request by registered letter to the Employer and the latter does not inform him in writing within one month of the date of the registered letter that he is not in agreement.

Place12)

Date13)

Guarantor14)

Signature15)

- 1) Name of the guarantor.
- 2) Full address of the guarantor.
- 3) Name of the Employer.
- 4) Full address of the Employer.
- 5) Name of the Contractor.
- 6) Full address of the Contractor.
- 7) Number of the Agreement.
- 8) Brief description of the Works.
- 9) Value of the security (see article 17, option 1 Model Agreement).
- 10) Brief description of the Long-Term Maintenance
- 11) Value of the security (see article 17, option 2 Model Agreement).
- 12) Place where the guarantee is signed.
- 13) Date on which the guarantee is signed.
- 14) Name of the guarantor.
- 15) Signature of the guarantor.

GENERAL EXPLANATORY NOTES

1 Integrated contracts

Dutch employers who take the initiative to realise works in the Netherlands used to enter into separate contracts with design professionals and contractors. They nowadays increasingly make a balanced choice between that kind of contracting and the so called integrated contracts. Generally, standard conditions are declared applicable to those contracts. Using two separate contracts, the most commonly employed standard conditions for contracts with design professionals are the Standard Conditions 1997 Legal Relationship Client-Architect (SR 1997) and the Regulations governing the relationship between the client and the consulting engineers 2001 (RVOI 2001), or The New Regulations 2005 governing the legal relationship between employer/architect, engineer and advisor (DNR 2005). For contracts with contractors, Employers rely on the Uniform Administrative Conditions for the Execution of Works 1989 (UAV 1989).

More and more the mentioned considerations result in a decision to contract only one party for the design and the realisation of a work by means of an integrated contract. The other party then undertakes to produce both the design and the execution of the work. In certain cases, the contract also includes the performance of long-term maintenance of the completed work following its completion and acceptance. 'Design & build', 'Design & construct', 'Turnkey' and 'maintenance' are only some of the terms frequently employed in this context. They are, however, fairly loosely defined. The umbrella term 'integrated contracts' to cover all these contracts.

Standard forms such as the SR 1997, RVOI 2001, DNR 2005 and UAV 1989 have a long-standing tradition. They were developed by co-operative efforts of (organisations of) employers and contractors and are regarded by many as well-balanced standard conditions. The development of the Model Agreement with corresponding UAV-GC 2005 and the testing of the first version of those conditions during the test and implementation period (2000 – 2004) fit in with this tradition.

2 History of the Model Agreement with corresponding UAV-GC

The Information and Technology Centre for Transport and Infrastructure CROW undertook the development of the Model Agreement with corresponding Uniform Administrative Conditions for integrated contracts (UAV-GC) on the initiative of the market parties represented in this organisation. A study of the developments of contracts in Groundwork, Road and Hydraulic Engineering resulted in the RAW2000 Blueprint in late 1996, containing a view on various forms of co-operation. The subsequent feedback of the ideas to the various parties in the entire building industry (Groundwork, Road and Hydraulic Engineering and the Building Sector) revealed that they should be able to relate to the concepts of co-operation presented and that priority should be given to the development of a legal and administrative

framework for contracts relating to an integral design and construction responsibility.

In the period from early 1998 to early 2000, a working group instituted for the purpose developed the Model Agreement with corresponding UAV-GC. A phased approach made it possible to feed the underlying principles, potential solutions and draft texts back to the various organisations and stakeholders. The Ministry of Housing, Spatial Planning and the Environment (as co-ordinating building ministry) and the Ministry of Economic Affairs were notified of the result achieved and the completion process.

In June 2000, the UAV-GC 2000 were presented to representatives of the Federation of Dutch Contractors' Organisations and of the Ministry of Economic Affairs, and these conditions were thus released for a broad and building industry-wide application in connection with a test and implementation period, a period in which these conditions were available as a 'stable document' with which to determine the practical impact and gain user experience. Additional related developments could then be defined and initiated on the basis of this experience. The test and implementation period thus laid the basis for a building industry-wide acceptance. An UAVgc Sounding Board group¹ charged with supervision was instituted and its members included the authors, thus allowing direct feedback of the experience gained.

After about two years, a large portion of the projects to which the UAV-GC 2000 were declared applicable appeared to have been carried out to a limited degree only. An interim report presenting the experience gained in drawing up contracts and tendering procedures encouraged application on a larger scale. In the course of four years, information on around one hundred projects was

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Composition of UAVgc Sounding Board Group

Dr. J.M.J.F. Houben (chair)	Directorate-General for Public Works and Water Management
Mr. H.G. Avink-Wikkerink	Directorate-General for Public Works and Water Management, ECO
Mr. B. van den Berg	ProRail
Prof. Mr. M.A.M.C. van den Berg	Tilburg University
Mr. A.G. Blok	UNETO
ing. P.E.J. Boelhouwer	Vianed
Prof. Mr. M. Chao-Duvis	Instituut voor Bouwrecht (Institute for Construction Law)
Mr. R.C.J. Cremers	Stichting STABU (Foundation for Standard Building Specifications for Residential and Commercial Property)
Mr. R.H. Gribnau	Ministry of Defence
ing. F. Keldermans	Rotterdam Municipal Public Works Department
Mr. M.A.Th. de Koning-van Rutte	VIANED (United Dutch Infrastructure Contractors)
Ing. J.C. van Kuijen	Ministry of Housing, Spatial Planning and the Environment, Government Buildings Agency
Mr. J.C. Overbosch	DHV Consultancy and Engineering
J. van Oehler	Government Service for Land and Water Use, Ministry of Agriculture, Nature Management and Fisheries)
Ir. O. Sluizer	BNA (Royal Institute of Dutch Architects)
ing. J. van Vliet	Croon Infra
Mr. D.E. van Werven	BouwNed (association of construction and infrastructure companies)

In the period leading up to the final report, mr. H. de Koning (previously Vianed) and ing. R.M. Prins (Directorate-General for Public Works and Water Management, Limburg Department) had to end their participation in the Sounding Board Group and were replaced by Ms De Koning (Vianed) and Ms Avink (Directorate-General for Public Works and Water Management, ECO). Mr Houben took office as secretary for the Regieraad Bouw (Construction Policy Co-ordination Board) in the same period.

The Sounding Board Group is supervised by:

ing. T.G. van Reeuwijk (project manager)	CROW, UAVgc helpdesk
Ir. J.P. Eelants	CROW, UAVgc helpdesk
ing. W.A.I.E. Suy	CROW, UAVgc helpdesk
Ir. R.J. De Boer (reporting)	ZeeBoer
Prof. Mr. C.E.C. Jansen (legal assistance)	VU University Amsterdam

eventually analysed. Of course, reactions requesting substantive and editorial amendments to the administrative conditions were also received in the test and implementation period. A final report was drawn up and adopted on the basis of all this data.

The conclusion of this report is that the test and implementation period has proven that the UAV-GC 2000 can definitely be used in practice and that their contents require no drastic or essential changes. To convey this conclusion clearly, the changes that were deemed desirable were incorporated in a revised version, the UAV-GC 2005. This publication simultaneously marks the end of the test and implementation period.

3 Possible applications of Model Agreement with corresponding UAV-GC 2005

3.1 *Civil engineering and building works*

Although the development of the Model Agreement with corresponding UAV-GC 2000 was indeed initiated by the civil engineering sector, the authors have consistently attempted to formulate the provisions of the Model Agreement and the UAV-GC 2005 in sufficiently abstract terms to make them applicable in both sectors, civil engineering projects and building projects. The test and implementation period confirmed the wide applicability of this legal and administrative framework.

3.2 *Initiative, design, construction and long-term maintenance*

A characteristic of integrated contracts is that they combine several functions of the construction process. The functions of the construction process distinguished in the Model Agreement with corresponding UAV-GC 2005 are initiative, design, construction and long-term maintenance. As with most other construction contracts, the employer continues to play the role of initiator: he specifies his expectations in the employer's requirements. Under the Model Agreement with corresponding UAV-GC 2005, the contractor takes responsibility for the construction process functions design and construction: he carries out design and construction work on the basis of the employer's requirements. At the employer's discretion, the scope of the contractor's job responsibilities may be extended to include long-term maintenance of that work. This is not necessary, but the Model Agreement with corresponding UAV-GC 2005 provide this possibility. If the employer avails himself of this possibility, the long-term maintenance must be ordered simultaneously with the realisation of the work; that is, if the employer wishes to declare the Model Agreement with corresponding UAV-GC 2005 applicable to the integrated contract. The contractor will then commence performance of the long-term maintenance on the day of completion and acceptance of the work performed.

3.3 *Variable possibilities for active involvement of the employer*

There are as yet no conventions for the degree to which the employer, in the event of integrated contracts, actively influences the completion of the design and construction of the work as well as the long-term maintenance. Actual practice shows that this active influence may differ from project to project, which can be expressed using the image of a sliding scale (see image on the inside of the cover). On the one hand, there are employers who draw up detailed employer's requirements at the initial stage of the project, significantly restricting the freedom of choice of the contractor. Even during the realisation of the work, many of the employers reserve the right to intervene actively. On the other hand, there are employers who only draw up general employer's requirements, affording the contractor considerable freedom of choice with regard to the solution guidelines. They are often given this freedom in the realisation phase itself.

The authors of the Model Agreement with corresponding UAV-GC 2005 have opted to capture this varied practice in one overall standard form. The result is a contract that offers the employer the opportunity, through optional clauses to be selected on a project-by-project basis, to determine the extent of his active involvement in the realisation of the work and, if desired, specify the long-term maintenance. The authors have therefore expressly opted not to fix the extent of that influence at a certain stage. In this way, the Model Agreement with corresponding UAV-GC 2005 have been made suitable for a wide range of applications.

The above is best expressed in the provisions regulating the relationship between the employer's requirements of the employer, on the one hand, and the design work of the contractor, on the other. The employer has the opportunity to detail these employer's requirements to a greater or lesser degree and can choose from three variants. Firstly, the employer's requirements may consist of a conceptual design only. Secondly, the employer may draw up employer's requirements consisting of a conceptual design and a preliminary design. The last variant of the employer's requirements comprises a conceptual design, a preliminary design and a basic design. The scope of the design work of the contractor depends on the variant selected by the employer. In the first variant, this scope is the widest and includes producing the preliminary design, the basic design and the final design. In the second variant, the contractor creates the basic design and the final design, whereas in the last variant he is only responsible for producing the final design. Combinations of the above variants within one project are also possibilities (parts of the project specified at various levels).

A second example of the above concerns the regulation of public-law and private-law co-operation, such as permits and/or licences, orders and permissions. The Model Agreement with corresponding UAV-GC 2005 does not provide a fixed overview of the responsibilities of the employer and the contractor in this context. Instead, it provides for a flexible framework regulation, within which the employer may indicate for each project the extent to which he wishes to be involved in providing public-law and private-law co-

operation. The extent of this involved will depend in part on the variant of employer's requirements that the employer has selected.

Active intervention of the employer during the performance of the work or the long-term maintenance on the work of the contractor as such is not ruled out in the Model Agreement with corresponding UAV-GC 2005, but caution is recommended. In principle, the employer's requirements should be assumed to have set the boundaries within which the contractor should then be able to deliver his performance as independently as possible. Intervention in that process by the employer where this is not strictly necessary will disrupt the process and may even lead to a shift in responsibility from the contractor to the employer.

3.4 *Variable possibilities for passive involvement of the employer*

One of the features of the UAV 1989 is that these standard conditions enable the employer, often supported by a professional supervisor, to closely monitor the construction process by means of tests and inspections. This passive involvement of the employer, which may sometimes give rise to active intervention in the construction process, is in principle also found in integrated contracts, where actual practice once again shows a varied picture. The extent of passive involvement of the employer may differ from project to project, and may again be expressed through the image of a sliding scale. One employer stipulates far-reaching opportunities for testing design documents, goods and materials, construction processes and construction results of the contractor, whereas another may assume a much more distance position, confining himself to testing the quality audits conducted by the contractor.

The reporters attempted to capture this practice, too, in one overall standard form. Once again, it was decided to include optional clauses to ensure flexibility, and to leave it to the employer to lay down the extent of his passive involvement in the performance of the work and the long-term maintenance. Consequently, the extent of this involvement is once again not fixed at a certain point. This, too, has contributed to the Model Agreement with corresponding UAV-GC 2005 being suitable for a wide range of applications.

In concrete terms, this is expressed in the arrangement of the quality plan, the acknowledgement plan, the design work test plan, the construction work inspection plan, the maintenance work inspection plan and the health and safety plan. The employer may incorporate criteria in these plans by which he intends to test the contractor's performance. These plans also offer him the opportunity to vary the frequency of tests from project to project, which may even lead him to not subject certain performances of the contractor to any tests at all. A prerequisite for this, however, is that the nature and the extent of the passive involvement of the employer in the process is stated in advance, enabling the contractor to prepare himself.

3.5 *Contracting out involvement of the employer*

A characteristic feature of traditional contracts in the construction industry is the figure of the supervisor, who often plays an important part in the completion of the work, in the design phase as a party and in the construction phase as representative of the employer. The Model Agreement with corresponding UAV-GC 2005 does not expressly provide for this. After all, the basic principle is that the contractor performs the construction and the long-term maintenance independently within the boundaries set in the employer's requirements. As has become apparent from the above, this leaves the employer's ability to exert both active and passive influence on that performance intact. The Model Agreement with corresponding UAV-GC 2005 allows for the possibility that the employer calls in the assistance of one or more employees or subcontractors.

3.6 *Minor (simple) projects and major (complex) projects*

A quick perusal of the Model Agreement with corresponding UAV-GC 2005 may create the impression that its application requires such intensive supervision by the employer that it can only be used by professional employers in connection with large, complex projects. In this context, it should be noted that the extent of the procedural and regulatory burden on the employer depends greatly on his active and passive involvement in the realisation of the work and, as the case may be, long-term maintenance. As indicated above, the employer himself may determine the exact extent and nature of his involvement, allowing him to control the procedural and regulatory burden. This is precisely why the Model Agreement with corresponding UAV-GC 2005 are also suitable for minor and relatively simple projects, which is not to say that the employer is permitted to exert only a small amount of active and passive influence on the process in such projects.

4 **Relationship between the Model Agreement and the UAV-GC 2005**

Both the Model Agreement and the UAV-GC 2005 employ the term 'Contract'. This term denotes the entire legal relationship between the employer and the contractor. That legal relationship is given substance by various contract documents (for this, see article 3 section 1 Model Agreement). The Model Agreement and the UAV-GC 2005 are two important complementary contract documents in this respect.

The UAV-GC 2005 constitute the actual standard conditions, comparable to the UAV 1989. Within the legal relationship between the parties, the UAV-GC 2005 should be regarded as a static fact: in order to apply the UAV-GC 2005 to an actual project, they may be declared applicable regardless of the nature of the project. That is not the case with the text of the Model Agreement. This text is to be complemented by the parties themselves before the Model Agreement is signed, so that the legal relationship between the parties is based on a concrete, project-specific Model Agreement.

Some articles of the Model Agreement that expressly invite the parties to fill in the text of those articles afford the parties considerable freedom of choice. In other cases, the parties' freedom of choice is more limited, as the article presents a number of options from which they have to choose. The majority of articles of the Model Agreement provide for the situation in which the parties fail to fill in the text of an article or fail to tick an option in an optional clause.

Other articles of the Model Agreement remind the employer in a more indirect manner of the need to complement the arrangement of their mutual legal relationship, for example because these articles mention the fact that certain matters have to be regulated in the annexes to the employer's requirements on a project-by-project basis. These articles also indicate the minimum requirements that the contents of a certain annex have to meet.

The Model Agreement and the annexes jointly serve as a cushion for the UAV-GC 2005. The UAV-GC 2005 can, in principle, operate within the boundaries of every conceivable customised Model Agreement. Some articles of the Model Agreement refer to UAV-GC 2005 clauses relevant to the articles in question. It should be noted that, given the nature of the provisions of the Model Agreement and the connection of those provisions with the UAV-GC 2005, the Model Agreement, like the UAV-GC 2005, should in principle be regarded as a commonly accepted standard that should not be changed. Formally, however, variation cannot be ruled out and is made possible in part because the UAV-GC 2005 clauses do not refer to concrete articles in the Model Agreement. However, great caution is recommended when adding articles to or omitting articles from the Model Agreement. The provisions of the Model Agreement in themselves constitute a satisfactory framework for arranging the legal relationship between the parties on a project-by-project basis.

The fact that the legal relationship between the parties should be arranged for each project specifically requires the creation of tools and guidelines that can help the parties filling in the details of individual projects. Such tools and guidelines are provided for separately.

5 Remaining general remarks

5.1 *Sources of the Model Agreement with corresponding UAV-GC 2005*

From the start of the development of the Model Agreement with corresponding UAV-GC 2005, a distinction was made between issues typical of integrated contracts on the one hand and issues inherent in all construction contracts on the other. For the latter category, inspiration was drawn mainly from concrete provisions of the UAV 1989. This ensures that the contract is embedded in the existing tradition of Dutch construction contract law. In addition, the authors drew on provisions from the Dutch Civil Code and, to a lesser degree, provisions of The New Regulations 2005 governing the legal relationship between employer/architect, engineer and advisor (DNR 2005). The other typical issues were arranged primarily on the basis of the more abstract

principles underlying the previously mentioned standard conditions, as well as the ideas gleaned from studying comparable foreign standard conditions. A deliberate decision was made, however, not to adopt concrete provisions from foreign standard conditions, as they are often deeply anchored in the law of obligations of the country in question, which usually differs from Dutch law. In addition, use was made of the insights developed in the literature. A number of customised contracts developed by a number of professional (Dutch) employers for specific projects in recent years served as an additional source of inspiration. Also worth noting is the (inter)national expertise of the members of the UAVgc Sounding Board Group and that of their organisations.

5.2 *Terminology*

As the Model Agreement with corresponding UAV-GC 2005 is intended for integrated projects, it was necessary to formulate the provisions in somewhat more abstract terms, allowing the design, construction and long-term maintenance performances to be arranged by a smaller number of provisions. Accordingly, the terminology chosen tends to be more abstract. Part of that new terminology is also the result of the introduction of the quality assurance system.

The terminology used in the Model Agreement and the UAV-GC 2005 to refer to periods of time is derived from expressions used in the Dutch Civil Code that have been clarified in parliamentary history. For example, the term 'at once' means that the party addressed must respond immediately. The term 'without delay' offers the party concerned a little more latitude than the immediate response that is required of him when the term 'at once' is used. 'Without delay' speaks for itself. The requirement of acting 'without delay' is met if an act can be said to have been performed without postponement. There is room for taking into account the circumstances of the case in question. For example, a party that has a number of acts to perform will have acted without delay if it has dealt with them in the order in which the need to deal with them presented itself. The term 'with all due despatch' affords the party in question even more time, for example when there is a need for deliberation or some investigation. The terms 'with due despatch' or 'within a reasonable period' indicate that some examination or deliberation is permitted. Exactly how much time the party is afforded should be ascertained on the basis of the agreement or customs (the expertise and relationship between the parties).

5.3 *Scope of the Model Agreement with corresponding UAV-GC 2005; procedural rules*

The scope of the Model Agreement with corresponding UAV-GC 2005 may be considerable, but it is still markedly smaller than the scope of the traditional standard conditions combined that are declared applicable to individual design, construction and long-term maintenance contracts. A smaller administrative burden is just one of the advantages of combining the various functions of the construction process.

The wide scope of the UAV-GC 2005 is largely due to the comprehensive arrangement of a number of procedures in clauses 14, 23, 44 and 45. These procedures concern all situations in which either the parties have to reach an agreement on a certain issue during the performance of the work or the long-term maintenance, or the employer or the Contractor has to adopt a position with regard to a certain issue: the question of whether a variation ordered by the employer must be carried out by the contractor; the question of whether the contractor is entitled to cost compensation and/or extension of time in that event; the question of whether or not the employer should decide on acknowledgement of a performance of the contractor; the question of whether the employer should grant a request of the contractor for cost compensation and/or extension of time. Each party addressed may adopt different standpoints with regard to such concrete issues and each standpoint has consequences for the progress of the realisation of the project or the long-term maintenance. If not all possible standpoints are fully provided for, as tends to be the case in practice, there is the risk of a deadlock endangering the execution of the contract, which may worsen the relationship between the parties, with all the associated consequences. An arrangement that covers all open-end situations can prevent this risk. Such an arrangement needs to be comprehensive.

5.4 *Actual and legal integration*

In the Model Agreement with corresponding UAV-GC 2005, the actual integration of the functions of the design, construction and long-term maintenance has been translated into a legal integration. Any problems that might affect the execution of each individual function in a similar fashion are consistently provided for by one provision or a set of provisions. Where this proved unnecessary, the execution of functions is not legally separated. The prime example of this is the responsibility of the contractor for his design and construction work. This responsibility is not provided for in two separate provisions. Both types of work are closely interwoven and designed for the same purpose: the realisation of the work in accordance with the provisions of the contract. On the other hand, the responsibility for the design and construction work on the one hand and for the long-term maintenance work on the other is split. After all, the latter type of work serves another purpose than the design and construction work.

6 Explanatory comments

The provisions of the Model Agreement with corresponding UAV-GC 2005 have been provided with detailed explanatory comments into which experience gained with the test and implementation period was also incorporated. These provisions naturally take precedence over the explanatory comments. Those explanatory comments, including the present general explanatory notes, can only serve as a guideline when answering questions regarding the interpretation of the Model Agreement with corresponding UAV-GC 2005. The explanatory comments have the status of an additional source of information.