

# Supplemental terms and conditions

## Governing Works (AVW-12-01)



### 1 Designs, drawings and models

- 1.1 Designs, drawings, models, specifications, instructions, inspection regulations and other regulations, etc. (to be referred to below as the 'Documentation') that Eneco provides to the Contractor in connection with the performance of the Agreement form part of the Agreement and the Contractor will review them to ensure that they are complete and correct within a term of 14 days after the Agreement is concluded.
- 1.2 The Contractor will notify Eneco in writing within three working days after the term stipulated in subsection 1 of any missing information or errors in the Documentation and will propose improvements or modifications. After Eneco has given approval such improvements or modifications will form part of the Agreement.
- 1.3 In the event that the Contractor has not notified Eneco in writing within the term stipulated in subsection 2 of any missing information or errors in the Documentation, the Contractor will be deemed to have accepted the Documentation (or in any event the other content of the Documentation) and it will not be able to invoke that or any other missing information or errors in the Documentation at a later date.
- 1.4 Any of Eneco's intellectual property rights in respect of the Documentation are and will at all times remain the property of Eneco and may not be duplicated or made available to third parties or otherwise used than exclusively in the context of the performance of the Agreement. Documentation that Eneco makes available or documentation that is purchased or created by the Contractor for Eneco's account will remain or will become the property of Eneco.

### 2 Prices

- 2.1 Unless the parties have explicitly agreed otherwise in writing, the prices indicated in the Agreement are fixed, exclusive of VAT and comprise all the work to be performed and costs to be incurred by the Contractor and any subcontractors in the context of the Agreement, such as costs of raw materials, materials, objects, systems, parts, etc. (to be referred to below as the 'Building Materials', equipment, any duties and taxes to be levied by the government, etc.

### 3 Representation

- 3.1 Eneco is entitled to designate one or more persons to act as the management (to be referred to below as the 'Management') in connection with the performance of the Work.
- 3.2 If and as long as Eneco does not exercise its right referred to in subsection 1, references in these Terms and Conditions to the 'Management' should be read as 'Eneco'.
- 3.3 The Management is in charge with supervising the performance of the Work and the Management represents Eneco in respect of all matters related to the Work, except insofar as Eneco informs the Contractor otherwise in writing and in the cases in which Eneco is referred to in these Terms and Conditions.
- 3.4 The Management is authorised to determine that work that it designates may not be performed other than in the presence of the Management or persons whom it designates.
- 3.5 The Contractor is entitled to designate one or more persons, by means of an authorisation that has been approved by the Management, to represent it with respect to matters related to the Work. The Contractor will immediately provide Eneco with a certified copy of the authorisation.

### 4 Performance of the Work

- 4.1 Eneco will ensure that the Contractor has at its disposal in a timely manner:
  - a) the building, site or water in which or on which the Work must be performed;
  - b) the drawings and other information to be provided by Eneco; and
  - c) connection points for electric machines, lighting, gas, air and water.
- 4.2 Except in the case of a situation involving force majeure, Eneco will ensure that work to be performed and/or goods to be supplied by it or third parties that do not form part of the Contractor's Work are performed and/or supplied in such a way and in such a timely manner that the performance of the Work will not be delayed.
- 4.3 The Contractor is obliged to ensure that the Work is prepared and performed in accordance with the applicable standards of workmanship and expertise, the provisions stipulated in the Agreement and the related regulations and documents, as well as the directions and instructions from Eneco.
- 4.4 Unless the parties agree otherwise the Contractor must ensure at its own risk and expense that the permits, exemptions, approvals, decrees, etc. required for the Work are obtained.
- 4.5 The Work and the performance of the Work are at the Contractor's risk and expense as from the commencement date or as from an earlier date if the Contractor begins the Work earlier with Eneco's consent until the date on which the Work is deemed to have been completed in accordance with the provisions stipulated in Article 6. The Work and the performance of the Work are also taken to include the preparation, the supply of Building Materials, the performance of auxiliary works and the fitness for purpose and capacity of tools and equipment.
- 4.6 The Contractor is responsible and liable for compliance with the laws and regulations that apply in respect of the performance of the Work, insofar as they have entered into effect on the date on which the Agreement is concluded or it must be assumed that on the date on which the Agreement is concluded the Contractor reasonably should have foreseen that such laws and regulations would enter into effect.
- 4.7 The Contractor is obliged to inform Eneco of any errors or missing information in orders and instructions that are given by it or on its behalf and of any defects in Building Materials and auxiliary materials that Eneco makes available, insofar as the Contractor is aware or reasonably should be aware of them.
- 4.8 Without prior written permission from Eneco, the Contractor is not entitled to have all or any part of the Work performed by third parties. In the event that all or any part of the Work is performed by third parties after Eneco has granted permission, the Contractor will continue to be liable towards Eneco for the performance of that Work and the Contractor guarantees Eneco that those third parties will comply with the conditions and provisions stipulated in the Agreement and these Terms and Conditions as though they were parties to them.
- 4.9 The Contractor is obliged to notify Eneco immediately of any accidents that take place during the performance of the Work and to provide Eneco with any and all information that it requests in that context.

### 5 Performance period

- 5.1 The Contractor must perform the Work in such a way that it is certain that the Work will be completed in accordance with the term stipulated in the Agreement.

- 5.2 Not later than the fifteenth working day after the Agreement is concluded, the Contractor will draw up a general time schedule (to be referred to below as the 'Time Schedule') that clearly indicates in what manner, in what order, with what materials and with what auxiliary materials the Contractor intends to perform the Work and its parts in addition to how much time it considers necessary for each part. The Time Schedule must be in compliance with the requirements that are stipulated in the Agreement in respect of the performance of the Work.
- 5.3 Eneco must approve the Time Schedule and after it has been approved it will form part of the Agreement. Approval of the Time Schedule will not affect the Contractor's liability for the correctness of the Time Schedule and its being able to be complied with.
- 5.4 The Contractor must report to Eneco in writing regularly and in a timely manner regarding the progress of the Work and whether the terms and milestones indicated in the Time Schedule will be met.
- 5.5 The term within which the Work must be completed is expressed in the Agreement:
  - a) either as a number of working days;
  - b) or as a number of calendar days, calendar weeks or calendar months;
  - c) or by naming a specific date.Workable days will be deemed to be unworkable in the event that as a result of circumstances that are outside the Contractor's control the largest part of the workers or machines cannot work during a term of at least five hours.
- 5.6 Eneco may extend the term within which the Work must be completed.
- 5.7 Eneco is entitled to suspend the performance of the Work in whole or in part. Any additional costs or damage related to the suspension are or will be at the Contractor's expense, unless the suspension is the result of circumstances that must be deemed to be within Eneco's control.

### 6 Inspection, completion and maintenance

- 6.1 Not later than 14 days before the date on which the Contractor is of the opinion that the Work will be completed, the Contractor must invite Eneco in writing, stating the date on which it is of the opinion that the Work will be completed, to come and inspect the Work. The inspection will be intended to determine whether the Contractor has complied with its obligations pursuant to the Agreement and will be conducted by Eneco in the presence of the Contractor not later than eight days after the date stated in the invitation.
- 6.2 Within eight days after the Work has been inspected Eneco will notify the Contractor in writing whether or not the Work has been approved. In the event that Eneco refuses to approve the Work, that notification will also indicate the defects that prevent approval. The Contractor will be obliged to remedy such defects as quickly as possible at its own risk and expense.
- 6.3 Minor defects that Eneco indicates in the notification referred to in subsection 2, which do not prevent approval, will be remedied by the Contractor prior to the date on which the next payment instalment is due.
- 6.4 The provisions stipulated in subsections 1 to 3 apply mutatis mutandis with respect to a re-inspection after approval has been withheld.
- 6.5 The Work will be deemed to have been completed on the date on which the Contractor receives written notification from Eneco in accordance with subsection 3 that the Work has been approved.
- 6.6 A maintenance term of 90 days applies as from the date following the date on which the Work is completed, unless the Agreement stipulates a longer term.
- 6.7 The Contractor will be obliged to remedy defects that become apparent during the maintenance term as quickly as possible and for its own risk and account.

### 7 Personnel and working conditions

- 7.1 During the term of a framework agreement or other agreement the Contractor must ensure that personnel are available who have the correct knowledge and expertise, who have been given the applicable instructions and who are in possession of valid diplomas, including B-VCA (safety, health and the environment)/VOL-VCA (safety for operational supervisors).
- 7.2 The Contractor is in possession of a valid VCA diploma and warrants that it will retain that diploma during the term of a framework agreement or other agreement. The scope of the diploma demonstrably covers the work that falls within the scope of the framework agreement or other agreement. If the Contractor acts as the main contractor it must be certified in accordance with VCA\*\* or VCA-P (petrochemical).
- 7.3 Before the work commences and – in the event that the framework agreement or other agreement has a term that exceeds one year – each year the Contractor will provide Eneco with an overview of the safety performance that at least includes: the accident frequency, the severity rate and the most recent defects that have been discovered in external safety audits, together with an analysis of trends and a comparison with prior years.
- 7.4 The Contractor must ensure that the personnel who are deployed are familiar with its own safety regulations and Eneco's safety regulations. In the event that work is performed at third parties' locations the rules that apply there will be explained.
- 7.5 Building Materials and equipment must be approved in accordance with the statutory requirements. Eneco reserves the right to monitor compliance with inspections and certification of materials and may act in the event that defects are discovered.
- 7.6 The Contractor is responsible for the safety of its personnel and the personnel of third parties whom it engages with and will take the necessary measures in that respect. The Contractor is permitted to outsource the work pursuant to the framework agreement or other agreement once, in which context all the requirements stipulated in this Article (7) must be met. Any deviations must be discussed in advance with Client and if necessary will be submitted to Eneco's HSE Department for approval.
- 7.7 The Contractor must ensure that it is in compliance with the requirements with respect to the health and safety coordination, as laid down in Articles 2.29 to 2.33 of the Dutch Working Conditions Decree (Arbeidsomstandighedenbesluit).
- 7.8 Upon request the Contractor will provide Eneco with the Safety, Health and Environment documentation that has been drawn up specifically for the work, such as the health and safety plan and hazard identification and risk assessment. Eneco reserves the right not to allow the work to commence until all the documentation requested has been received and assessed. Any costs as a result of documentation that is provided late or incomplete information will be paid by the Contractor.
- 7.9 The Contractor will ensure that its personnel are provided with approved and appropriate personal safety equipment, such as protective dust, welding and safety goggles, safety harnesses, safety shoes, safety helmets, safety vests,

- hearing protection, etc.
- 7.10 The Contractor must always notify Eneco immediately and in any event on the same day of any accidents, incidents (such as environmental incidents) and dangerous circumstances that relate to the work that is being performed for Eneco, the foregoing in accordance with Eneco's guidelines.
- 7.11 The Contractor must in any event report to Eneco in writing on a monthly basis with respect to the number of workplace inspections held, accidents, incidents and dangerous situations and the actions and points for improvement that ensue from them, in addition to the number of hours worked on Eneco's instructions.
- 7.12 Eneco reserves the right to conduct a further investigation into the causes of an accident, incidents reported and/or dangerous situations. The Contractor must always fully disclose the state of affairs and must fully cooperate with the investigation, even if the persons involved are the Contractor's employees.
- 7.13 In the event that an unsafe situation or working method is discovered that was caused by the Contractor, Eneco will be entitled to obligate the Contractor to immediately make changes. In the event of such an unsafe situation Eneco will be authorised to immediately have the performance of the work cease, without being obliged to compensate any costs and/or damage.
- 7.14 The Contractor will notify to Eneco in writing of the personal details and terms and conditions of employment in the context of the personnel who are engaged in connection with the Work. The Contractor's personnel are obliged to carry an identity card provided by the Contractor and to show it at Eneco's request. In the event that foreign personnel are deployed, the Contractor will be responsible for compliance with the statutory requirements with respect to matters such as payment of taxes, work permits, etc. A copy of the relevant documents must be provided to Eneco. In the event that foreign personnel do not speak the working language sufficiently, the Contractor must ensure that the information that is relevant for them is provided to them in a language they can understand.
- 7.15 If it is requested to do so the Contractor will use an hourly timesheet for each employee or other monitoring instrument to be chosen by Eneco and make it available to Eneco in order to determine the number of hours worked by the personnel referred to in the preceding subsection. That is separate from the monthly obligation stipulated in subsection 11.
- 7.16 The working hours in the context of the personnel engaged for the work will be the same as the working hours of Eneco's personnel, unless the parties have agreed otherwise in writing.

## 8 Building Materials, tools and auxiliary equipment

- 8.1 The Building Materials and tools to be used by the Contractor to perform the Work must be approved by the Management before they are used to perform the Work.
- 8.2 In the event that the Management does not approve Building Materials or tools on the ground of the provisions stipulated in subsection 1, the Contractor will be obliged to immediately replace them at its own expense.
- 8.3 Except in the event of any retention of title by a party other than Eneco or the Contractor, Building Materials will become the property of Eneco as soon as they have been delivered at the Work and approved by the Management; however, the Contractor will bear the risk of loss and/or damage from that time until the date of completion. The old Building Materials that come from the Work will remain the property of Eneco.
- 8.4 Eneco is authorised to request that the ownership of the Building Materials be transferred at an earlier time, in which case the Contractor will mark the Building Materials as the recognisable property of Eneco and will indemnify Eneco against loss, damage and the exercise of rights by third parties.
- 8.5 In the event that while performing the Work the Contractor uses auxiliary equipment or facilities provided by Eneco, that use will be at the Contractor's risk. As soon as the Contractor has finished using such auxiliary equipment or facilities, but in any event on the date on which the Work is completed at the latest, the Contractor must return the auxiliary equipment or facilities to Eneco in the condition they were in when they were made available.

## 9 Final invoice and payment

- 9.1 Unless the parties have explicitly agreed otherwise in writing, payment of the amounts that Eneco owes pursuant to the Agreement will be made within 30 days after receipt of a properly itemised invoice. The Contractor's invoices must include substantive supporting documentation and must be in compliance with the requirements stipulated in the Dutch Turnover Tax Act (Wet Omzetbelasting).
- 9.2 In the event that the parties have agreed on payment in instalments, payment of an instalment will be made within 30 days after inspection and approval, within the meaning of Article 6, of the part of the Work in question that has been performed and an invoice has been received in respect of that instalment.
- 9.3 As quickly as possible, but in any event within 14 days after the maintenance term has elapsed or the date on which the Work is completed, the Contractor will send Eneco the final invoice for the Work. The final invoice must in any event indicate:
- the contract price;
  - an itemisation of any additional work and/or cancelled work;
  - a specification of the amounts that Eneco has already paid; and
  - an itemisation of any claims that the parties still have against each other on the ground of the Agreement.

## 10 Damage and insurance excess

- 10.1 The Contractor is obliged to notify Eneco immediately in the event that any damage occurs and to confirm that notification in writing within 48 hours.
- 10.2 The insurance excess, both in the case of any insurance taken out by the Contractor and in the case of any insurance taken out by Eneco itself, will be at the Contractor's expense in all cases, in addition to any and all damage and/or reimbursements that are not covered by the insurance.

## 11 Sequential liability

- 11.1 The Contractor must comply with all the obligations that ensue from the Dutch Wages and Salaries Tax and Social Security Contributions (Liability of Subcontractors) Act (Wet ketenaansprakelijkheid) and will compensate Eneco for and indemnify Eneco against any and all related claims.
- 11.2 In light of the provisions stipulated in subsection 1, the Contractor will take any and all measures to ensure that the wages and salaries tax and social security contributions due in connection with the Work are remitted to the authorised agencies.
- 11.3 Eneco or a third party that it designates for that purpose is entitled at all times to check whether the Contractor has complied with the obligations stipulated in subsection 1, and the Contractor will fully cooperate in that context.
- 11.4 In the event that a guarantee fund is maintained also for the benefit of the Contractor, the Contractor will provide all the necessary information as quickly as possible so that Eneco can register. The Contractor will not commence its work until after the declaration of indemnity has been received by the guarantee fund.
- 11.5 In the event that a guarantee fund is not used, the Contractor will make a (blocked) 'guarantee account' available and the Contractor will specify in the invoices the

- wage amount in accordance with Article 4 of the Dutch Social Security (Coordination) Act (Coördinatiewet Sociale Verzekering) in addition to the percentage agreed with Eneco that must be deposited in the guarantee account for wages and salaries tax and statutory payroll tax and social security contributions.
- 11.6 At Eneco's request the Contractor must include with the invoices a timesheet showing which persons were deployed for the Work on which days and for how many hours a day. The personal details must include the name, date of birth and social fund number. The Contractor must also declare that the persons named were employed by it during the Work.
- 11.7 Eneco is entitled at all times to deduct the wages and salaries tax and statutory payroll tax and social security contributions referred to in subsection 5 from the amounts due to the Contractor and to deposit them directly in the authorised agencies' account.
- 11.8 In the event that the regulations governing the transfer of VAT liability in accordance with the Turnover Tax Act apply, the invoice must specify that the liability for turnover tax (VAT) has been transferred and that no VAT has to be charged.

