GENERAL SUBCONTRACTING TERMS AND CONDITIONS

1. DEFINITIONS

As used in these general subcontracting terms and conditions (the "*General Subcontracting Terms and Conditions*"), the following capitalised terms will have the meaning set out below:

- Contractor: the contractor named as such in the particular conditions;
- Employer: the employer of the Contractor, named as such in the particular conditions;
- Main Construction Contract: the contract between the Contractor and the Employer (including all accompanying Appendices and all applicable regulations and standards). In order to avoid any misunderstanding, it is emphasised that such a contract, if the Mission is subject to public procurement regulations, may also consist of specifications or and/or tender guidelines;
- Mission: the mission assigned to the Contractor by the Employer in the Main Construction Contract;
- Subcontractor: the subcontractor of the Contractor, named as such in the particular conditions;
- Subcontract Works: the part of the Mission, as described in the particular conditions, that the Contractor subcontracts to the Subcontractor;
- Subcontract: the contract between the Contractor and the Subcontractor (including but not limited to the particular conditions and these General Subcontracting Terms and Conditions) relating to the execution of the Subcontract Works by the Subcontractor.

2. REALISATION OF THE SUBCONTRACT – ENTRY INTO FORCE

The Subcontract is realised and enters into force, subject to the condition precedent of the entry into force of the Main Construction Contract, on the first of the following dates:

(i) the date of the signature by the Subcontractor of the particular conditions signed by the Contractor;
(ii) the date of the commencement of the execution of the Subcontract Works by the Subcontractor, following the receipt by the Subcontractor of the particular conditions signed by the Contractor;
(iii) 15 calendar days after the Subcontractor receives the particular conditions signed by the Contractor (unless the Subcontractor issued prior explicit notice in writing that it does not accept the Subcontract).

3. INTERPRETATION

(a) The documents forming part of the Subcontract should be read in conjunction with each other and are to be taken as mutually explanatory of one another.
(b) In the event of contradictions between the provisions of the particular conditions and these General Subcontracting Terms and Conditions, the provisions of the particular conditions will take precedence. In the event of other contradictions in or between two or more documents forming part of the Subcontract, if and in to the extent the relevant interpretation rules in the Main Construction Contract do not provide a solution in that regard, these will be given an interpretation, in accordance with the principles of reasonableness and fairness, that best realises the objectives of the requirements concerned.
(c) In no case shall the general (invoicing or administrative) conditions of the Subcontractor (both the existing and any future conditions) apply to the Subcontract Works (even if these provide that only the general (invoicing or administrative) conditions of the Subcontractor shall apply). The Subcontractor consequently explicitly and irrevocably waives its own (existing and future) general (invoicing and administrative) conditions.
(d) The Subcontractor must ensure at all times that all tasks and performance in relation to the Subcontract Works are realised and, if necessary, supplemented in such a way that no gaps occur (at either the technical or the organisational level).

4. SCOPE OF THE SUBCONTRACT WORKS

(a) The execution of the Subcontract Works covers all performance necessary to execute the Subcontract Works in a timely manner, correctly and in accordance with the provisions of the Subcontract, the applicable regulations (as amended from time to time) and good practice, even if such performance is not explicitly provided for or described in the Subcontract.
(b) The Subcontractor:
  (i) explicitly declares and acknowledges that it has had sufficient time and opportunity in advance of the signature of the Subcontract and the execution of the Subcontract Works to study the Subcontract Works and the Subcontract fully and closely and that it has therefore concluded the Subcontract with perfect knowledge of what this entails;
  (ii) as a result of its close study of the Subcontract Works and the Subcontract, regards itself as perfectly able to execute the Subcontract Works in a timely manner, correctly, in accordance with the provisions of the Subcontract and to the satisfaction of the Contractor. The Subcontractor consequently acknowledges that it cannot make any claim to any surcharge and/or extension of time on the grounds of any (alleged) lack of clarity, inconsistencies, omissions or gaps in the Subcontract;
  (iii) confirms that it is fully aware of the scope and degree of difficulty of the Subcontract Works and is familiar with the modalities of this Subcontract and the specific (environmental) conditions at the building site. By commencing the works, the Subcontractor accepts the (properties of the) building site (including any existing works or works executed by other subcontractors, on which the Subcontractor must perform further work) in its/their current condition.
(c) All costs that (1) the Subcontractor must incur in connection with the realisation of the Subcontract Works or (2) must undergo as a result of the realisation of the Subcontract Works are borne by the Subcontractor unless and to the extent explicitly provided otherwise in the Subcontract.

5. BACK-TO-BACK PRINCIPLE – TRANSPARENCY RULE

5.1. General

(a) The Subcontractor guarantees the Contractor on a back-to-back basis that it will comply with and perform all obligations and will accept the risks and liabilities of the Contractor in relation to the Subcontract Works pursuant to the Main Construction Contract, in such a manner that the Contractor can in no case find itself 'between the hammer and anvil' in that regard. The Subcontractor explicitly declares and acknowledges (1) that it has taken account of the relevant provisions of the Main Construction Contract thoroughly for that purpose and, where appropriate, of the regulations applicable to the Main Construction Contract and (2) that it consents to the provisions thereof, as well as to their transparent passing-on in the Subcontract. This applies in particular (but no exclusively) if the Mission concerns a public procurement and is subject to specific (public procurement) regulations (including but not limited to the General Contracting Conditions (in Dutch: 'Algemene Aannemingsvoorwaarden' ('AAV')/'Algemene Uitvoeringsvoorwaarden' ('AUR') – in French: 'Cahier Général des Charges (C.G.Ch.)/Règles Générales d'Exécution' ('RGE')). In order to avoid any misunderstanding, it is emphasised that the aforementioned back-to-back principle is in no sense limited to the technical regulations of the Main Construction Contract in relation to the Subcontract Works, but also covers the administrative and other provisions of (or applying to) the Main Construction Contract.
(b) The Subcontractor explicitly declares and acknowledges that its compliance with the back-to-back principles described in this Article 5 is an essential condition for the Contractor to conclude the Subcontract with the Subcontractor, in the absence of which the Contractor would not have concluded this subcontract.

5.2. Realisation - Application

(a) In the realisation of the Subcontract Works, the Subcontractor is required at all times to meet its obligations in such a way that the Contractor is able to meet its corresponding obligations to the Employer in a timely manner, correctly and in full. The Subcontractor shall therefore be relieved of its obligations in relation to the Subcontract Works or shall be deemed to have met these obligations only to the extent and at the time that the same applies for the Contractor in its legal relationship with the Employer. The Subcontractor guarantees the performance of its tasks and obligations in relation to the Subcontract Works in accordance with the provisions of the Main Construction Contract.

(b) The Subcontractor cannot invoke *force majeure*, unforeseen circumstances, change of circumstances, disruption of the contractual balance ("*hardship*") or other (or broader) defences or rights against the Contractor:
   (i) unless if, to the extent and at the time when the Contractor can invoke these defences or rights in relation to the Employer on the grounds of the provisions of the Main Construction Contract (including any regulations applying to the Main Construction Contract); and
   (ii) on condition that such defences or rights are not explicitly excluded in the Subcontract.

   The Contractor must in any case only:
   (i) reimburse the Subcontractor for additional work, unforeseen circumstances, force majeure, change of circumstances, disruption of the contractual balance ("*hardship*") or similar situations, and/or
   (ii) grant an extension of the agreed time for completion,

   if, to the extent and as soon as the Contractor has received a corresponding reimbursement and/or has been granted a corresponding extension of time from the Employer. In no case can the Contractor be held responsible for the failure of negotiations with the Employer or for a rejection from the Employer in connection with claims or rights that the Subcontractor wishes to invoke against the Main contractor.

(c) If the Subcontractor, pursuant to the Subcontract, is entitled an extension of time and/or payment of compensation for damage or a surcharge by the Contractor (without this being attributable to default on the part of the Contractor), the scale of this can in no case exceed the (corresponding) extension of the time/the (corresponding) amount that the Contractor will receive from the Employer, and such an extension of time/amount will be due only as soon as the Contractor has received the corresponding extension of time/reimbursement from the Employer.

(d) If the Contractor, in accordance with the provisions of the Main Construction Contract (or any regulations applying to the Main Construction Contract), must comply with specific terms in relation to the execution of the Subcontract Works, the Subcontractor is required to maintain shorter terms towards the Contractor (for the execution of the corresponding obligations), in such a way that the Contractor still has enough time to be able to comply with its obligations to the Employer in a timely manner.
   This applies in particular, but not exclusively with regard to the mandatory (due) time limits provided for in the Main Construction Contract (or in the regulations applying to the Main Construction Contract) for reporting of circumstances disruptive to the building site or other (unforeseen or unforeseeable) circumstances which may give entitlement to a surcharge and/or extension of time. Furthermore, the Subcontractor is required in that regard to provide the Contractor with all necessary and useful information and documents and if applicable, all information and documents required pursuant to the Main Construction Contract (in the form required in the Main Construction Contract, where applicable).

(e) All declarations and acknlowlegdments (directly or indirectly) relating to the Subcontract Works wich the Contractor expresses in the Main Contract in favour of the Employer, are deemed to have been made and confirmed (in exactly the same way) by the Subcontractor to the Contractor.

(f) The Subcontractor must bear (a.o.) the following costs in full:
   (i) any reductions due to a lower value in relation to the Subcontract Works, imposed by the Employer on the Contractor;
   (ii) any penalties, fines or fixed compensation for damage relating to the Subcontract Works, imposed on the Contractor by the Employer;
   (iii) any additional expenditure of the technical control bureau or other third parties charged by the Employer to the Contractor, in accordance with the provisions of the Main Construction Contract, as a result of any action or omission of the Subcontractor;
   (iv) financial charges and additional costs for the Contractor due to delays in attaining any of the milestones or binding intermediate deadlines and/or in the granting of the provisional or final acceptance by the Employer, which are attributable to any default on the part of the Subcontractor;
   (v) any additional costs for the execution of the Subcontract Works in compliance with the provisions of the Main Construction Contract.

(g) The Contractor shall pass on to the Subcontractor all data, documents, information, instructions, guidelines, questions and any other information that it receives from the Employer and that is relevant for the execution of the Subcontract Works. Where applicable, the Subcontractor is obliged to comply with this in due time.
   At all times, the Subcontractor (whether or not at the Contractor's simple request) must provide the Contractor with all useful or necessary information and documents relating to the Subcontract Works that could be of service to the Contractor for the exercise of its rights pursuant to the Main Construction Contract as soon as possible, taking account of the terms provided for in the Main Construction Contract where applicable.

6. Performance guarantee(s)

(a) As surety for its compliance with its obligations pursuant to the Subcontract, the Subcontractor must (arrange to) issue a performance guarantee to the Contractor for a sum equal to 10% of the subcontract sum, within 10 calendar days of the realisation of the Subcontract. The aforementioned performance guarantee must take the form of an unconditional, abstract bank guarantee payable at first request, which is not limited in time (or open to cancellation in any way), provided by a recognised, reputable and solvent financial institution or surety fund, (substantially) in accordance with the model included in appendix A.

(b) The performance guarantee shall be released as follows:
   (i) after the provisional acceptance of the Subcontract Works (but no sooner than after the approval by the Employer and the Contractor of the as-built file relating to the Subcontract Works and any other delivery documents required): release of half of the initial amount of the performance guarantee. The released amount will however be reduced with, on the one hand, the amounts already claimed under the performance guarantee (if any) and, on the other hand,,the cost of rectification of any outstanding punch list items as reasonably estimated by the Contractor;
   (ii) after the final acceptance of the Subcontract Works: release of the balance outstanding at that time (where applicable, minus the cost of rectification of any outstanding snag list items as reasonably estimated by the Contractor).

(c) If explicitly provided in the particular conditions, the Subcontractor must – at the latest within 10 calendar days of the realisation of the Subcontract – also as surety for its compliance with its obligations under the Subcontract, provide a parent company guarantee (in Dutch: "*bogstelling*"/in French: "*cautionnement*") , issued by the parent company of the Subcontractor (or any other company accepted by the Contractor), in accordance with the model included in the attachments to the particular conditions.

(d) If and for as long as the performance guarantee is not issued (in a timely manner) in accordance with Article 6(a), the Contractor is entitled, without prior notice of default, to withhold amounts on the invoices of the Subcontractor as surety, at its own discretion:
   (i) amounting to 10% of the invoice amount on each occasion; or,
   (ii) amounting to the full amount of the invoice (or partial, if the total amount of 10% of the subcontract price would otherwise be exceeded), until a total amount of 10% of the subcontract price has been reached

   The release of the amounts withheld in this way will take place in accordance with Article 6(b).

7. TIME FOR COMPLETION, PLANNING AND COORDINATION

7.1. Organisation and coordination of the work

(a) Taking account of the provisions of the Subcontract and without prejudice to Article 7.1(b), the Subcontractor is responsible for the planning, organisation and coordination of the Subcontract Works.

(b) In the realisation of the Subcontract Works, the Subcontractor must at all times follow the instructions of the Contractor relating to the organisation and coordination of the Mission, without being entitled to claim any additional costs or extension of time (unless this Subcontract provides for this).

7.2. Planning

(a) The Subcontractor is required to perform the Subcontract Works in accordance with the planning attached to the Subcontract.
In order to avoid any misunderstanding, it is clarified that, unless explicitly stated otherwise in the particular conditiions, and except for any milestones dates and the planned end date(s), any concrete dates and execution *periods* stated in the planning attached to the Subcontract are always guiding and only the *times* for completion (with regard to the different phases of the Subcontract Works) that can be deduced from that planning are binding. If the works cannot commence on any fixed dates shown in the planning (for reasons not attributable to the Subcontractor), the Subcontractor therefore cannot derive any rights from this (unless and to the extent that this Subcontract explicitly makes provision for this), but the Subcontractor remains required to strictly respect the *times* for completion shown in the planning from the date on which the works can be commenced.
In order to avoid any misunderstanding, it is clarified that the following terms used above are defined as follows:
(i) the term 'execution *period*' refers to the exact period between two fixed dates or dates to be fixed (e.g. from 1 January to 31 March); and
(ii) the term '*time* for completion' refers to the envisaged duration of certain work and is separate from the period within which the work must be performed (e.g. 3 months).

(b) In consultation with the Contractor, the Subcontractor must develop the part of the overall planning for the Mission relating to the Subcontract Works into a detailed execution planning for the Subcontract Works. Where applicable, this detailed execution planning must be passed on to the Contractor in a timely manner, so that the Contractor can include this in its overall execution planning and submit this to the Employer in good time.

(c) The detailed execution planning of the Subcontractor must at least:
(i) provide a clear picture of the planning and phasing of the works to be performed in each period of the time for completion and at each location of the building site, explicitly stating matters including, but not limited to any critical tasks, any interference with other lots, the number of personnel to be deployed at any time, etc.;
(ii) be consistent with the overall planning for the Mission, as well as with any milestones and binding intermediate deadlines included in this;
(iii) take account of the periods of time required for the issuance of the necessary licences, authorisations and permits, as well as the periods of time necessary for the approval of documents by the Contractor and/or the Employer;
(iv) take account of the periods of time necessary for the required inspections, trials or testing of the products, materials and processes that are used by the Subcontractor in the execution of the Subcontract Works;
(v) be drawn up in a manner that enables any obstruction for the Employer, the Contractor and other subcontractors involved in the Mission and for the vicinity of the building site as a result of the execution of the Subcontract Works to be avoided as far as possible.

(d) The Subcontractor must update its detailed execution planning at least once a month, and must always do so:
(i) in response to any variations in the overall planning for the Mission; and
(ii) if required pursuant to the provisions of the Main Construction Contract or for other reasons.
Without the explicit consent of the Contractor, adjustments of the detailed execution planning of the Subcontractor can in no case lead to a change in the planned end date(s) and/or any milestone dates or other binding intermediate deadlines.

7.3. Time for completion

(a) The Subcontractor is required to perform and finish the Subcontract Works within the time for completion (and, where applicable, the binding intermediate deadlines) provided for in the planning attached to the Subcontract. The Subcontractor explicitly declares and acknowledges that compliance with the aforementioned time(s) for completion by the Subcontractor is an essential condition for the Contractor of the Subcontract, in the absence of which the Contractor would not have concluded this subcontract.

(b) Unless if and to the extent that such an overrun is the direct consequence of proven default on the part of the Contractor (and unless higher amounts are provided for elsewhere in the Subcontract), the Contractor:
(i) is entitled in the event of an overrun of the planned end date, by law and without prior notice of default, to payment of liquidated damages for delay by the Subcontractor of €5,000 plus a sum of 0.1% of the subcontracting price (with a minimum of €250) per commenced calendar day of delay (limited to a total of 10% of the subcontracting price or, if the subcontracting price amounts to less than €50,000, to €7,500);
(ii) is entitled in the event of an overrun of a milestone or binding intermediate deadline, by law and without prior notice of default, to payment of liquidated damages for delay by the Subcontractor of €3,000 plus a sum of 0.05% of the subcontracting price (with a minimum of €100) per commenced calendar day of delay per exceeded milestone date or binding intermediate deadline (limited to a total of 10% of the subcontracting price or, if the subcontracting price amounts to less than €50,000, to €5,000);
The liquidated damages for delay referred to hereabove:
(i) may, where applicable, be applied cumulatively and, at the Contractor's discretion, may (1) by law, be deducted from amounts payable to the Subcontractor or (2) be claimed under the performance guarantee;
(ii) do no prejudice the right of the Contractor to prove higher damage and ask for corresponding indemnity (and, thus, do not prejudice in any way the right of the Contractor to full payment of the proven damage suffered by the Contractor as a result of the delay in the performance of the Subcontract Works, provided that such damage exceeds the amount of the liquidated damages for delay);
(iii) where applicable, apply in addition to any penalties and/or compensation for damage which the Contractor owes the Employer as a result of the aforementioned overrun, which have to be borne by the Subcontractor pursuant to Article 5.2(f)(ii).

(c) If a delay in relation to the planning and/or the binding intermediate deadlines for which it provides is established at any time during the performance of the works, the Subcontractor must immediately, at its own risk and expense, and in agreement with the Contractor:
(i) prepare a realistic catch-up planning (from which no variations to the planned end date(s) and/or any milestone dates or other binding intermediate deadlines can be deduced in any way) and submit this to the Contractor for information; and
(ii) take all appropriate measures (including but not limited to e.g. the deployment of extra resources and/or personnel, extending the daily working hours and/or continuing the work at weekends and during (construction or collective) days of leave) in order to make up for this delay and avoid any further delays. Without prejudice to Article 10(k), the Subcontractor is solely responsible to take all necessary administrative and practical measures in this regard in a timely manner and to acquire all required licences and permits in that respect.

(d) If at any time the Subcontractor seems to be unable to complete the works in qualitative terms in accordance with the milestones, binding intermediate deadlines and/or the planned end date provided for in the planning, the Contractor has the right (at its own discretion), without prejudice to Article 7.3(c), to:

(i) deploy (one or more other subcontractors with) the necessary equipment and skilled personnel to complete the works as soon as possible, in accordance with the wishes of the Employer, at the risk and expense of the Subcontractor; and/or
(ii) to provisionally withhold potential penalties or compensation for delays which the Employer could impose on the Contractor as a result of the delays caused by the Subcontractor (regardless of whether the Employer has actually already done so or has threatened to do so) from amounts owed to the Subcontractor, or to claim such amounts under the performance guarantee.

(e) The Subcontractor explicitly declares and acknowledges that any extension or shift in the contractually agreed time for completion that (1) is not attributable to the Subcontractor and (2) is not the direct result of proven default on the part of the Contractor, does not, as such, entitle the Subcontractor to payment of any surcharge or compensation (for damage) by the Contractor. After all, as an experienced and professional subcontractor, the Subcontractor is aware that such extensions or shifts in the contractual time for completion, for example as a result of unforeseen circumstances or delays incurred by other actors involved in the execution of the Mission, are inherent to the execution of every construction project. The Subcontractor explicitly declares and acknowledges that it has taken this adequately into account in the subcontracting price and in its execution planning. Only if and to the extent that any extension or shift in the contractually provided time for completion which is not attributable to the Subcontractor unmistakeably and substantially exceeds the limits to what could reasonably be expected of a professional and experienced subcontractor (taking account of the scale and complexity of the Mission, as well as the many different actors involved in the execution of the Mission) can the Subcontractor possibly claim a surcharge and/or extension of time on those grounds, in compliance with the provisions of the Subcontract.

8. PERFORMANCE DOCUMENTS

(a) The Subcontractor, at its own risk and expense and under its own responsibility, guarantees the timely preparation, submission for approval, variations and adjustments to all detail and performance drawings and schedules, studies, calculations, tests, investigations, attestations, certificates, administrative and other documents that are useful or necessary for the timely execution of the Subcontract Works. Such performance documents must always be prepared and submitted by the Subcontractor in a coordinated manner (and not, therefore, in a fragmented manner), with the Subcontractor being required to take account of the overall picture of its Subcontract Works at all times.

(b) The Subcontractor may commence the works only if it possesses the approved performance documents for the relevant part of the works, as approved by the Contractor and, if applicable, by the Employer.

(c) For that purpose, the Subcontractor must submit the performance documents to the Contractor at appropriate times (in accordance with the planning and the progress of the works) and in all cases within the terms provided for this in the Main Construction Contract and/or the particular conditions or, in the absence of this, at the latest within 15 (fifteen) calendar days of a request for these by the Contractor.

9. BUILDING AND OTHER MATERIALS

(a) In the performance of the Subcontract Works, the Subcontractor is required to use solely and exclusively high quality, sustainable and functionally sound building and other materials that have the technical quality and properties that make them fit for this purpose and that are consistent with the Subcontract.

(b) The Subcontractor must inspect all building and other materials closely for any defects or shortcomings, including in relation to the requirements provided for this in Article 9(a), before processing these materials.

(c) Any acceptance or inspection of building and other materials by (or on behalf of) the Contractor or the Employer does not relieve the Subcontractor in any way of its liability for the materials that it uses.

(d) The Subcontractor is liable to the Contractor for all (visible and hidden defects and shortcomings in the) materials used by the Subcontractor in the execution of the Subcontract Works (regardless of whether the Subcontractor detected or could have detected those defects and shortcomings).

(e) The ownership rights to all building and other materials and other parts intended for use and consumption in the execution of the Subcontract Works transfer to the Employer in the manner and at the time provided for in the Main Construction Contract.

10. ORGANISATION OF THE BUILDING SITE AND THE WORKS

(a) *Diligent Subcontractor* – the Subcontractor must always comply with all obligations arising for it from the Subcontract in good faith, as a subcontractor acting with normal care, in accordance with good practice. The Subcontractor must always perform and organise the Subcontract Works in all respects in such a way that this causes as little obstruction as possible for the road network, local residents and the environment.

(b) *Inspections* – the Contractor may (arrange to) inspect the Subcontractor's compliance with its obligations pursuant to the Subcontract at any time, with or without prior notification, at the building site, in the Subcontractor's workplaces or at any other location that the Subcontractor uses in relation to the performance of the Subcontract Works. The Subcontractor shall accommodate the manner in which this supervision by the Contractor (or by third parties appointed for that purpose by the Contractor) is organised in practice and shall bear any costs of the Subcontractor for this supervision.

(c) *Building site meetings* – the Subcontractor undertakes to attend all meetings relating to the Subcontract Works to which it is invited by the Contractor or to provide for its representation at such meetings by a properly authorised person who is empowered to commit the Subcontractor. Reports on building site meetings sent to the Subcontractor may be invoked against the Subcontractor and are deemed to have been accepted by the Subcontractor if it has not formulated any comments on these:
(i) within 5 calendar days of their receipt; or
(ii) where applicable, within the term provided for in the Main Construction Contract, if this is less than 5 calendar days.

(d) *Advice and information obligation* – As a specialised professional, the Subcontractor is required to inform and advise the Contractor with regard to the works to be performed. In particular, but not exclusively, the Subcontractor is required to notify the Contractor without delay, in writing, of:
(i) provisions of the Subcontract and guidelines or comments of the Employer or its architecture/engineering bureau that are abnormal or inconsistent with customary current construction technology and the rules applying to the Subcontract, which the Subcontractor, on the basis of its professional skill and experience, could reasonably have been expected to have noticed;
(ii) all incidents and circumstances that arise or threaten to arise and that could delay, obstruct, hamper or otherwise adversely affect compliance with the obligations of the Subcontractor pursuant to this Subcontract.

The Subcontractor is liable towards the Contractor for any consequences of not or late reporting of the aforementioned abnormalities, inconsistencies, facts or incidents to the Contractor. Any circumstances disruptive to the building site, on the basis of which the Subcontractor believes it has a claim against the Contractor for any surcharge or extension of time (without prejudice to any shorter reporting terms applying pursuant to the Main Construction Contract) must be reported to the Contractor in writing (stating the concrete consequences of these circumstances for prices and timing, as well as all other relevant consequences for progress at the site) at the latest within 10 calendar days of the date on which those circumstances arose or on which the Subcontractor could reasonably be expected to have been aware of them (regardless of whether the Contractor was already aware of those circumstances), on pain of lapsing.

(e) *Registration ("Erkenning"/ "Agréation")* – At all times during the performance of the Subcontract Works, the Subcontractor (and any

subcontractors, for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*")) must be in possession of any registration ("*Erkenning*"/"*Agréation*") required for this purpose pursuant to the provision of the Main Construction Contract and/or the applicable regulations. The Subcontractor must submit the proof of this to the Contractor within 5 calendar days of its receipt of the particular conditions.

(f) *Permits and administrative authorisations* – With the exception of permits which the Contractor or the Employer guarantees in accordance with the particular conditions or the Main Construction Contract, the Subcontractor is required to acquire in good time, and if necessary, to keep all administrative permits, authorisations, attestations, licences or any other similar documents that are necessary or useful for the performance of the Subcontract Works, and to issue the statutory notices and submissions accurately and in a timely manner. Unless provided otherwise in the Main Construction Contract, the Subcontractor guarantees compliance with and respect for any special permit conditions at its own risk and expense (regarding all relevant permits).

(g) *Order at the building site* – During the performance of the Subcontract Works, the Subcontractor guarantees order at the building site in relation to the performance of those Subcontrat Works at all times. The Subcontractor shall regularly clear and remove demolition materials, rubble and wastes from the building site and shall always do so in response to an explicit request to that effect from the Contractor (in the absence of which the Contractor (in justified circumstances even without prior notice of default to the Subcontractor), is entitled to perform/have the relevant works performed at the Subcontractor's risk and expense).

(h) *Transport and stockage* – transportation from and to the building site and transportation at the building site takes place at the risk and expense of the Subcontractor. Stocking of the materials and equipment of the Subcontractor shall take place at the location(s) on the building site made available for that purpose by the Contractor, in accordance with the instructions and guidelines of the Contractor. The Contractor is not responsible for guarding or protecting the materials or equipment from the Subcontractor.

(i) *Safety, building site rules and QSHE Charter* – The Subcontractor is required to:
   (i) perform the Subcontract Works safely at all times, in such a way that no risk exists for the health and safety of all persons present at or in the vicinity of the building site (with or without entitlement to be there);
   (ii) strictly comply with and respect the generally applicable safety principles and, if applicable, the specific building site rules applying at the building site, at all times;
   (iii) to accommodate the measures of the Contractor and, where applicable, the instructions of the safety coordinator, to ensure safety at the building site. More in general, the Subcontractor must make every effort to help to realise the objectives of safety coordination (as described in the regulations) and to enable the safety coordinator to fulfil his mission fully and adequately.

   Without prejudice to the foregoing, the Subcontractor must at all times comply with and respect the Charter for Quality, Safety, Health and Environment for Subcontractors (QSHE Charter) included in appendix B.

(j) *Measurement, tolerances and scheduling* – The Subcontractor itself holds sole responsibility for and takes and/or verifies all measurements at the location. The Subcontractor measures and checks all quantities and is fully aware of the existing condition of the building site and/or the existing building. Any variations in the tolerances shown in the mission documents are borne by the Subcontractor. The Subcontractor itself verifies before the start of each part of the work that it is in possession of the correct execution schedules with the latest index for the relevant part of the works.

(k) *Construction industry rest days* – No work may be performed on the construction industry rest days determined by the Joint Committee for the Construction Industry (in Dutch: "*Paritair Comité voor het Bouwbedrijf*"/in French: "*Commission Paritaire de la Construction*") without the explicit prior written consent of the Contractor. The Subcontractor explicitly declares and acknowledges that it has taken this adequately into account in its planning and it can in no case claim any surcharge or extension of time on those grounds.

11. Personnel

(a) The personnel and representatives deployed and hired by the Subcontractor and any of its subcontractors (for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*")) must be of a sufficient number and must have, each in their field, the required skills to ensure the regular and timely progress of the works and the good execution of the Subcontract Works.

(b) The Subcontractor or its subcontractors, as the case may be (regardless of their rank in the chain of subcontractors) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), must immediately replace all employees and/or other representatives (including the project manager) that the Contractor (optionally on the instructions of the Employer) designates as persons to which it objects in the interests of good cooperation between the parties or the good performance or the Subcontract Works, due to their methods, any lack of skill or bad will, violation of the building site rules or regulations or their commonly occurring errors or generally known default.

(c) All personnel and representatives deployed by the Subcontractor (and its subcontractors (irrespective of their rank in the subcontracting chain, if any) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*")) on the construction site (irrespective of their nationality, status and the joint committee under which they fall) must have attended (and, if necessary, periodically follow) the compulsory (basic) safety training courses, as referred to in and in accordance with the terms of the applicable regulations and collective labour agreements (including, for example, the Royal Decree on Temporary and Mobile Construction Sites and the Collective Labour Agreement of 12 May 2022 of the Joint Committee for the Construction Industry). Whenever the Contractor so requests, the Subcontractor must provide evidence thereof with regard to the personnel and representatives deployed on the construction site. Personnel and representatives of the Subcontractor who do not comply with this or in respect of whom the Subcontractor is unable to produce the requested proof upon first request, shall - at the request of the Contractor - be removed from the construction site with immediate effect.

   In the event of any failure by the Subcontractor, its subcontractors or, as the case may be, the subcontractors thereof (irrespective of their rank, in case of a chain of subcontractors) to comply with their obligations in this regard, the Subcontractor shall compensate and indemnify the Contractor for all possible adverse consequences that the Contractor suffers and/or might suffer as a result. Where applicable, the Contractor may by law, at its own discretion, deduct such damage or loss from amounts owed to the Subcontractor or claim them under the performance guarantee.

(d) When carrying out works at the construction site, at least one of the personnel and/or representatives deployed by the Subcontractor, present at the construction site, must have a command of Dutch, French or English, without prejudice to Article 23 (g) and without prejudice to the requirements (if applicable) laid down in the particular conditions regarding the operational language.

(e) The parties expressly declare and acknowledge that the Contractor - without in any way affecting the (employer's) authority exercised by the Subcontractor over the employees, representatives or agents used by the Subcontractor for the performance of the Subcontract Works - can and may (directly) give the following instructions to the Subcontractor's employees, representatives and agents:
   (i) instructions relating to health and safety at the construction site;
   (ii) instructions relating to the execution of the Subcontract.

   The following instructions shall be considered "instructions relating to the execution of the Subcontract" within the meaning of the previous paragraph:
   (i) instructions relating to the proper use of machinery, equipment, materials and documents;
   (ii) instructions relating to the proper execution of the specifications, detailed plans or provisions of the Main Constrution Contract, more specifically: the performance requirements, construction plans and performance requirements;

(iii) instructions relating to the order of succession of tasks and orders;
(iv) instructions relating to the timing of performance of tasks and assignments;
(v) instructions and comments in case of improper execution of tasks and assignments, with the exception of the imposition of disciplinary sanctions;
(vi) instructions and comments on on-site waste management.

The Subcontractor shall appoint a contact person (an employee or representative of the Subcontractor) who will act as the central spokesperson of the Subcontractor in this regard. Instructions to be given by the Subcontractor will, as far as possible, be given through this central spokesperson. However, this does not preclude the Contractor from giving instructions directly to the Subcontractor's employees, proxies or agents, if necessary and within the limits indicated above.

12. SUBCONTRACTING

(a) Without the explicit prior written consent of the Contractor (and, where applicable, of the Employer):
(i) the Subcontractor, and
(ii) other direct or indirect subcontractors of the Subcontractor (regardless of their rank in the chain);
are not permitted to call on subcontractors for the performance of (the whole or part of) the Subcontract Works.

(b) Without prejudice to Article 12(a), subcontractors (regardless of their rank in any chain of subcontractors, including, therefore, the Subcontractor) may only be deployed for the performance of the (whole or part of the) Subcontract Works if:
(i) they each offer sufficient assurances for good performance of the works entrusted to them and comply with the statutory requirements for the performance of the works for which they are deployed;
(ii) to the extent required pursuant to the Main Construction Contract (or if applicable, pursuant to the regulations applying to this):
- they (provide proof that they) hold the recognition or at least comply with the statutory provisions regulating the recognition of contractors for works in relation to the part of the Subcontract Works that they will perform;
- they (provide proof that they) are not subject to one of the grounds for exclusion shown in Articles 67, 68 or 69 of the Act of 17 June 2016 on public procurement (neither the mandatory or optional grounds for exclusion nor the grounds for exclusion relating to tax and social security contribution arrears) or if a ground for exclusion nevertheless applies, becomes applicable or threatens to become applicable, they immediately notify the Contractor of this and submit a file to it in a timely manner, in which, depending on the case, they (1) take corrective measures and/or (2) prove that they have regularised the relevant tax and social security contribution arrears, in the manner and at the time prescribed by the applicable regulations and acceptable for the Contractor;
- In relation to the part of the Subcontract Works that they will perform, they comply with any minimum requirements set out in the Main Construction Contract with regard to technical and professional skills;
- they do not, in turn, subcontract the whole of the works assigned to them to (an) other subcontractor(s) or only retain the coordination of the works to be performed for themselves.

(iii) they take account of any restrictions applying with regard to the chain of subcontractors and/or with regard to the scope of of works that may (or may not) be subcontracted in compliance with the provisions of the Main Construction Contract and/or the regulations to which this is subject.

For the sake of good order and to avoid any misunderstanding, it is emphasised that the above requirements also apply in relation to the Subcontractor itself.

The Subcontractor must notify the Contractor of any variations in or to the aforementioned situations during the execution of the Subcontract Works (in relation to all subcontractors, regardless of their rank in the chain and, therefore, including the Subcontractor itself) in writing without delay, after which the Subcontractor must (arrange to) take or undergo appropriate measures to correct this, where applicable as prescribed by the Main Construction Contract or the regulations applying to it (without being able to claim any compensation for damage or extension of time from the Contractor on those grounds).

Before concluding a contract with a subcontractor, the Subcontractor must ensure that the subcontractor concerned complies with the requirements of this Article 12(b).

(c) At least the following data of all subcontractors (regardless of their rank in the case of a chain of subcontractors) that are involved in the execution of the Subcontract Works must be notified to the Contractor no less than 3 weeks prior to the commencement of the works relating to the Subcontract Works by the subcontractors concerned: the surname, first name and principal place of residence or the company name and principal place of business, the business number and the registration number at the Belgian National Social Security Office, statutory representatives (at least the manager(s) or executives) and other contact details.

The Subcontractor must notify the Contractor of any variations in the aforementioned data during the execution of the Subcontract Works (in relation to all subcontractors, regardless of their rank in the chain) in writing without delay.

(d) The appointment of any subcontractors and any consent of the Contractor for this do not relieve the Subcontractor in any way of its liability towards the Contractor for the correct execution of the Subcontract Works. The Contractor is not associated with these subcontractors by any contractual ties whatsoever.

(e) The Subcontractor must immediately (arrange to) remove from the building site all subcontractors (regardless of their rank in the chain of subcontractors) which the Contractor (if applicable at the request of the Employer) states:
(i) do not comply with the applicable regulations or the requirements of this Article 12 (any longer); or
(ii) represent a threat to the correct and/or timely performance of the works,
and where applicable, must provide for their replacement by another subcontractor, in compliance with the provisions of this Article 12 (without being able to claim any compensation for damage or extension of time from the Contractor on those grounds).

(f) Each time at the simple request of the Contractor (as requested by the Employer or otherwise), the Subcontractor must immediately, and in any event within 3 calendar days of such a request (or, where applicable, within the shorter terms applying for this pursuant to the Main Construction Contract):
(i) provide evidence of compliance with the subcontracting obligations described in this Article 12 and elsewhere in the Subcontract or the Main Construction Contract;
(ii) answer all questions in that regard; and
(iii) transfer the necessary supporting documents in connection with the subcontractors involved in the execution of the Subcontract Works (regardless of their rank in the chain of subcontractors).

(g) The Subcontractor is required to include the necessary clauses in its contracts with any subcontractors that enable the imposition of the subcontracting obligations of this Article 12 on any further subcontractors in the chain.

(h) Without prejudice to Article 12(e), in the event of any violation of the modalities of this Article 12 by the Subcontractor, its subcontractors or where applicable, their subcontractors (regardless of their rank in the chain of subcontractors), the Subcontractor shall indemnify and hold harmless the Contractor against and from any and all adverse consequences (including but not limited to any penalties imposed by the Employer) that the Main contractor suffers or (could suffer) as a result of this. Where applicable, the Contractor may by law, at its own discretion, deduct such

damage or loss from amounts owed to the Subcontractor or claim them under the performance guarantee.

13. SOCIAL SECURITY AND TAX OBLIGATIONS

13.1. General

(a) The Subcontractor undertakes to always comply promptly, correctly and in full with its social security, tax and labour law obligations and must ensure that its subcontractors and, where applicable, their subcontractors (regardless of their rank, in the event of a chain of subcontractors) comply strictly with the applicable regulations (and in particular, but not exclusively, with the applicable regulations concerning taxes, wages, social security and general working conditions).

(b) In the event of any default by the Subcontractor, its subcontractors or where applicable, their subcontractors (regardless of their rank, in the event of a chain of subcontractors) on their social security, tax and labour law obligations or obligations concerning attendance registration, the Subcontractor shall indemnify and hold harmless the Contractor against and from the fiscal and social security penalties, administrative penalties or increases and any other damage or loss that the Contractor could suffer as a result of these. Where applicable, the Contractor may by law, at its own discretion, deduct such damage or loss from amounts owed to the Subcontractor or claim them under the performance guarantee.

13.2. Remuneration of personnel

(a) In particular, the Subcontractor shall ensure compliance with its obligation to pay its personnel wages to which they are entitled in a timely manner. It shall also provide for compliance with that obligation by its subcontractors and third parties that it deploys.

(b) The Subcontractor declares that the Contractor has notified it of the coordinates of the website of the Belgian Federal Public Service Employment, Labour and Social Dialogue, which includes information concerning the wages payable (www.minimumlonen.be).

(c) The Contractor may, by law, at its own discretion, deduct any amounts payable directly to personnel of subcontractors who are/were deployed in the execution of the Subcontract Works (regardless of their rank in the chain of subcontractors) by the Contractor pursuant to the regulations, from the amounts payable to the Subcontractor or may claim these amounts under the performance guarantee.

13.3. (No) social security and tax arrears

(a) The Subcontractor, its subcontractors and where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), explicitly declare and acknowledge that at the time of the signature of the Subcontract (or the signature of further subcontracting agreements), the publicly accessible databank of the National Social Security Office (RSZ) and the tax authority contains no notice of any deduction obligation for social security and/or tax arrears of the subcontractor. The Subcontractor shall provide incontrovertible proof of this at the latest on the signature of the Subcontract (or on the signature of further subcontracts).
The Subcontractor must notify the Contractor by registered mail of every change in the foregoing that occurs during the execution of the Subcontract, within three calendar days.

(b) If the Contractor becomes aware of social security and/or tax arrears of the Subcontractor, its subcontractor(s) or their subcontractor(s) (regardless of their rank) and does not opt for early termination of the Subcontract in accordance with Article 22.3, the Contractor may deduct the amounts determined in accordance with Article 30*bis* of the Act of 27 June 1969 and Article 403 of the Belgian Income Tax Code 1992 from all amounts payable to the Subcontractor, and may also deduct the amounts of the subcontractor's social security contribution and/or tax arrears for which the Contractor can be held jointly and severally liable in the application of the aforementioned Articles 30*bis* of the Act of 27 June 1969 and 403 of the Belgian Income Tax Code 1992.
In the event of social security and/or tax arrears of the Subcontractor's subcontractor(s) or their subcontractor(s) (regardless of their rank), the Subcontractor must deduct from every payment to that/those subcontracter(s) the amounts recorded in accordance with Article 30*bis* of the Act of 27 June 1969 and Article 403 of the Belgian Income Tax Code 1992 and the Subcontractor must also deduct the amounts of the subcontractor's social security contributions and/or tax arrears for which the Contractor can be held jointly and severally liable in the application of the aforementioned Articles 30*bis* of the Act of 27 June 1969 and 403 of the Belgian Income Tax Code 1992.
The Subcontractor shall then provide the Contractor with proof that it has been relieved of all subsidiary liability for any social security and/or tax arrears in relation to the subcontractor(s) of the Subcontractor or of their subcontractor(s) (regardless of their rank).

13.4. Deployment of illegally staying non-European nationals in the EU

(a) In no case may the Subcontractor deploy illegally staying third-country nationals, within the meaning of the Act of 11 February 2013, in relation to the establishment of sanctions and measures for employers of illegally staying third-country nationals and in signing the Subcontract, the Subcontractor formally undertakes to comply with this prohibition.

(b) The Subcontractor shall impose the same prohibition on its own subcontractors and shall ensure that they impose the same prohibition on their subcontractor(s) (regardless of their rank).

13.5. Specific provisions for foreign (sub)contractors

(a) The Subcontractor, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), which are registered in other countries and perform temporary work in Belgium, declare that they are aware of all their obligations pursuant to regulations for the performance of work in Belgium.

(b) The Subcontractor, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), which are registered in other countries and perform temporary work in Belgium, therefore undertake to comply with the obligations including (but nog excluded to) the following:
   (i) the submission of a declaration for the International Information System for Migration Research by the Social Administration (LIMOSA) (see www.limosa.be) for itself and for all its employees and temporary staff, and the possession of the LIMOSA-1 receipts for itself and for all employees and temporary staff deployed in Belgium, and the ability to present these proofs;
   (ii) the possession of the secondment forms (A1) supplied by the competent social security institution in the country of origin for itself and for all employees and temporary staff deployed in Belgium;
   (iii) compliance with all formalities for the residence documents for itself and for all employees and temporary staff deployed in Belgium;
   (iv) the application of the working conditions for the employees which are required as minimum regulatory provisions. These provisions relate e.g. to the minimum wage applicable in the Belgian construction sector, the working hours, the annual holiday entitlement, the use of temporary employees, the provision of staff and the health and safety of the employees at work.

(c) The Subcontractor, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*") which are registered in other countries and perform temporary work in Belgium, undertake to provide the Contractor with the following details regarding themselves and all employees and temporary employees that they may deploy at the building site before commencing the works:
   (i) copy of identity card or passport and where applicable, copy of legally valid residence permit;
   (ii) copy of A1-secondment form;
   (iii) copy of L1-Limosa form.
   Persons who do not possess the above documents may be denied access to the building site. If the validity of the aforementioned documents is due to expire during the execution of the Subcontract works, the Subcontractor its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*") must submit the necessary

replacement documents to the Contractor in a timely manner, on its own initiative.
They also undertake to send the Contractor a list by e-mail, stating the surnames and first names of the persons present at the building site on each day at which they are present at the building site, before entering the building site.

13.6. (Electronic) attendance registration ('Check in at work')

(a) If (electronic) attendance registration is required pursuant to the applicable regulations, the Subcontractor and its subcontractors and, if applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), must correctly register their attendance at the building site electronically, in compliance with the applicable modalities, before the start of the works and must submit the proof of this to the Contractor.
(b) Unless provided otherwise in the particular conditions, the Subcontractor, its subcontractor(s) and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "sterkmaking"/in French: "se porter fort") are required to perform and manage the (electronic) attendance registration via the ZEN application of Conneqtr (Zen Conneqtr Mobile) and this in accordance with the user manual included in Appendix D.
(c) If, where applicable, the Contractor provides a(n other) registration system, the Subcontractor, its subcontractors and, where applicable, their subcontractor(s) (regardless of their rank) for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*"), are required to use this system, at their own expense.

14. Acceptance

(a) In principle (i.e. provided that the Subcontract Works are effectively ready for delivery), the provisional and final acceptance of the Subcontract Works by the Contractor takes place back-to-back with the provisional and final acceptance by the Employer under the Main Construction Contract: the Subcontract Works are therefore provisionally or finally accepted (at the earliest) if and to the extent that the corresponding works have been provisionally or finally accepted by the Employer.
The Subcontractor explicitly acknowledges and accepts that:
  (i) the Contractor can in no case be forced to grant the provisional or final acceptance of the Subcontract Works if and as long a the Employer has not granted provisional or final acceptance of the corresponding works;
  (ii) the provisional or final acceptance of the Mission by the Employer does not automatically imply the provisional or final acceptance of the Subcontract Works. Regardless of whether the Employer has granted the provisional/final acceptance, the Contractor cannot be required to grant the provisional/final acceptance of the Subcontract Works if, in the view of the Contractor, the Subcontract Works are not in a condition for delivery at that time.
(b) With regard to the provisional acceptance of the Subcontract Works, the Subcontractor must:
  (i) participate in the (informal) tour(s) and mutual inspection of the works, as provided for in the Main Construction Contract, at the simple request of the Contractor to that effect;
  (ii) clean the works it has performed and make it ready for delivery, in the absence of which the Contractor, after notice of default to the Subcontractor in that regard has remained without any useful result within 5 calendar days of its dispatch, is entitled to perform/have the relevant works performed at the Subcontractor's risk and expense.
(c) Without prejudice to the Contractor's own right to formulate comments or indicate snags/punch list items, all comments formulated or snags/punch list items indicated by the Employer in relation to the Subcontract Works as part of the provisional or final acceptance of the Mission, automatically apply in the relation with the Subcontractor. Such comments or snags/punch list items are regarded by law as part of the comments of the Contractor to the Subcontractor.
(d) Unless this applies as tacit acceptance of the corresponding works by the Employer in respect of the Contractor, neither (full or partial) taking possession of the Subcontract Works by the Contractor or the Employer, nor the (full or partial) commissioning of the works, nor the absence of complaints in that regard during a particular period, nor full payment for the works can be invoked as actions equivalent to tacit acceptance of the Subcontract Works by the Contractor.

15. Warranty period and obligations

(a) Unless a different warranty period is set in the Main Construction Contract, the warranty period commences on the date of the provisional acceptance and ends on the date of the final acceptance. With the exception of specific parts of the works for which a longer warranty period is explicitly fixed elsewhere in the Subcontract or the Main Construction Contract, the warranty period shall be at least one calendar year (it being understood that for items repaired or replaced during the warranty period, a new warranty period of the same duration – starting on the date of repair or replacement of the relevant item – shall apply).
(b) Unless different warranty obligations apply pursuant to the Main Construction Contract, during the warranty period the Subcontractor is required, at its own risk and expense:
  (i) to remedy or repair all defects and shortcomings relating to the Subcontract Works concerning which a comment is formulated in the certificate of the provisional acceptance, within the repair period set for this in the certificate of provisional acceptance, and in any event within 3 calendar months of the date of the provisional acceptance;
  (ii) to remedy or repair all defects and/or shortcomings that become visible after the date of the provisional acceptance or were already visible on the date of the provisional acceptance, but deteriorated thereafter (unless and to the extent that the Subcontractor shows that (the deterioration of) such defects and/or shortcomings are the result of (1) normal wear and tear or (2) any other cause that is not attributable to the Subcontractor). Such defects and/or shortcomings must be remedied or repaired by the Subcontractor immediately and in any event within 30 calendar days of their notification.
(c) The Subcontractor must in any event indemnify and hold harmless the Contractor against and from all damage and other adverse (cost) consequences of, and (third party) claims in relation to such defects and/or shortcomings that come to light after the provisional acceptance.

16. Price and Payment

16.1. General

Unless explicitly provided otherwise in the particular conditions:
  (i) payment of the subcontracting price to the Subcontractor takes place in function of the progress of the works, on the basis of monthly progress reports;
  (ii) all amounts in the Subcontract are shown in euros, are fixed and cannot be revised;
  (iii) all amounts in the Subcontract are shown exclusive of VAT;
  (iv) the prices mentioned in the Subcontract always cover all necessary actions, performance, costs and expenditure on an all-inclusive basis, with no exceptions, for the realisation of the corresponding works (including, but not limited to (1) studies and preparation of performance documents (2) loading, (internal and external, horizontal and vertical) transportation and unloading, (3) assembly and installation, (4) (maintenance of) all necessary tools and equipment, (5) site hut and workplace lighting, (6) clean-up and disposal, and (7) project and site management), unless specific prices are explicitly provided for elsewhere in the Subcontract for such actions and performance. In no case,

other than for exceptions provided for in the Subcontract, may the Subcontractor claim any additional payment or reimbursement for the realisation of the relevant works;

(v) items from the bill of quantities marked as 'FQ' (fixed quantities) are settled on the basis of the fixed quantities shown in the measurement statement (regardless of the actual quantities); variations to fixed quantities are possible only in the event of a variation in the Subcontract Works. The Subcontractor explicitly declares and acknowledges that it has closely reviewed and assessed the fixed quantities shown in the bill of quantities prior to the realisation of the Subcontract;

(vi) items in the bill of quantities marked as 'EQ' (estimated quantities) are settled on the basis of the actual quantities performed (and where applicable, accepted by the Employer), as shown by a mutual measurement of the works or a joint agreement on the calculated quantities based on the execution documents. In no case do any differences between the estimated quantities and the actual quantities performed entitle the Subcontractor to payment of a surcharge or adjustment of the applicable unit prices (unless and in as far as provision is made for such a right in the Main Construction Contract). Responsibility for the organisation, at the appropriate times, of the mutual measurement of the 'EA' items performed by the Subcontractor is held solely by the Subcontractor.

16.2. Submission of progress reports

(a) On the 25th day of each calendar month, the Subcontractor submits a detailed progress report (with the accompanying accounting documents) to the Contractor - with a duplicate by e-mail to progressreports@denys.com - containing:
   (i) the quantities and/or the permitted batches for fixed items processed during the relevant calendar month; and
   (ii) the combined (cumulative) quantities and/or batches realised since the start of the works.
   The quantities or batches charged by the Subcontractor in progress reports may in no case exceed those that the Contractor can claim from the Employer for the relevant works.
   Progress reports of the Subcontractor must be drawn up in the model provided by the Contractor for that purpose, if applicable, and must always be drawn up in line with the bill of quantities attached to the Subcontract.

(b) The Contractor checks submitted progress reports, makes variations and/or improvements to these if necessary and then, within 15 calendar days of the date of receipt of those progress reports (or if applicable, after the date on which those progress reports are deemed to have been received in accordance with Article 16.4(d)), sends a stamped and signed version of the progress report, as checked and, where appropriate, amended and/or improved, to the Subcontractor.

(c) The parties explicitly declare and acknowledge that stamping and signature of progress reports of the Subcontractor by the Contractor (as well as, if applicable, the absence of comment or improvements of the Contractor with regard to those progress reports):
   (i) in no case serves as approval or acceptance by the Contractor of the works, quantities, prices and/or materials shown in the relevant progress report;
   (ii) always takes place subject to the approval by and/or any comments of the Employer; and
   (iii) in no way prejudices the Subcontractor's liability for the proper execution of the Subcontract Works.
   Stamping and signature of the Subcontractor's progress reports by the Contractor takes place solely with regard to practical follow-up and invoicing of the Subcontractor's works, without the Subcontractor being able to derive any other rights in that regard. The correctness and of the quantities and amounts claimed by the Subcontractor and their consistency with the provisions of the Subcontract will be checked only after the provisional acceptance, on the basis of the inspection of the Subcontractor's final statement.

16.3. Invoicing and payment

(a) At the latest within 5 calendar days of receipt of the progress report stamped and signed by the Contractor, the Subcontractor draws up an invoice (or where applicable, a credit note) for the permitted amount and submits it to the Contractor, together with the stamped and signed progress report as an appendix.
   If the amount of the invoice (or where applicable, the credit note) differs from the amount shown in the stamped and signed progress report, that invoice (or where applicable, that credit note) is not payable and will be returned.

(b) Invoices submitted by the Subcontractor in a timely and regular manner will be paid by the Contractor via a deposit or transfer to the Subcontractor's bank account within 60 calendar days following the day after the day on which the Contractor received the underlying progress report from the Subcontractor (or is deemed to have received this, in accordance with Article 16.4(d)).
   If the Subcontractor exceeds the term of 5 calendar days for submission of its invoices, as set in Article 16.3(a), the payment term of the Contractor will be extended by law by the number of calendar days by which the aforementioned term of 5 calendar days for the submission of invoices by the Subcontractor was exceeded.

(c) Irregular invoices of the Subcontractor (including but not limited to invoices that do not comply with the applicable regulations or the provisions of the Subcontract) are deemed to have been contested by the Contractor (regardless of whether and, where applicable, the time at which the Contractor returned the relevant invoices to the Subcontractor). In no case and at no time can such invoices be deemed to have been tacitly accepted by the Contractor.

(d) If the payment term set for this in Article 16.3(b) is exceeded, the Subcontractor, after having issued written notice of default in that regard to the Contractor, is entitled to payment of interest on arrears. The interest on arrears is calculated in proportion to the number of calendar days between (1) the 10th working day following the receipt of the aforementioned notice of default of the Subcontractor and (2) the payment date, at the statutory rate of interest referred to in the Act of 5 May 1865 concerning interest-bearing loans.

(e) The foregoing notwithstanding, (and without prejudice to Article 2 above), the Contractor has the right to suspend any payment to the Subcontractor (without the Subcontractor being able to claim interest on arrears on those grounds or any other form of compensation (for damage)) until the Main contractor has received the particular conditions signed by the Subcontractor.

16.4. Other payment modalities

(a) Payment of one or more of the Subcontractor's invoices by the Contractor must always be regarded as a conditional payment that does not relieve the Subcontractor of its responsibility to properly execute the Subcontract Works, of which the consistency with the provisions of the Subcontract will not be checked until after the provisional acceptance, on the basis of the inspection of the Subcontractor's final statement.

(b) The Contractor is authorised to settle all that the Subcontractor owes to the Contractor (where applicable, in relation to other sites or pursuant to contracts other than the Subcontract) with any amounts that the Contractor owes to the Subcontractor.

(c) In the event of a dispute concerning an invoice or progress report of the Subcontractor, the Subcontractor in no case has the right to suspend or delay the execution of the Subcontract Works or to interrupt or halt these, partially or in full.

(d) Any progress reports of the Subcontractor that are sent to the Contractor before the 25th calendar day of the calendar month to which those progress reports relate, are deemed to have been sent to the Contractor only on the 25th calendar day of the relevant calendar month

(e) Any amounts for which the Subcontractor believes it has a claim against the Contractor in relation to the Subcontract Work must be notified to the Contractor by the Subcontractor in writing within 90 calendar days of the final date of the Subcontractor's work at the building site, on pain of lapsing (and without prejudice, where applicable to any shorter term set for this in the Main Construction Contract). Formulation of a general reservation relating to such amounts alone does not suffice for that purpose.

(f) By way of derogation from:

(i) article 1254 of the old Belgian Civil Code, the payments of the Contractor shall always first be applied to settle the capital and not, therefore, any interest due before settlement of the capital;
(ii) article 1154 of the old Belgian Civil Code, in no case may any interest payable by the Contractor be capitalised.

(g) For the sake of good order, the Subcontractor explicitly declares and acknowledges that payment of an invoice of the Subcontractor in no case serves as acceptance by the Contractor of any (general) (invoicing) terms and conditions shown on the front or back of the Subcontractor's invoice.

17. Direct claims

(a) The Subcontractor must always pay the invoices of any of its subcontractors correctly, promptly and in full. In the event of a direct claim of a subcontractor against the Contractor, the Subcontractor indemnifies the Main contractor in full for all consequences of this direct claim. Among other things, therefore, the Subcontractor must reimburse the Contractor for all legal costs, court fees and registration fees payable for any decision or judgement and shall *ipso facto* owe the Contractor a fixed charge of €2,500 (per direct claim instituted) to cover the Contractor's administrative costs. The Subcontractor irrevocably authorises the Contractor to directly deduct these costs, fees and charges, at the Contractor's discretion, from the payments owed to the Subcontractor or to claim these under the performance guarantee.
(b) If the Subcontractor is not involved in the direct claim by its own subcontractor, the Contractor will notify the Subcontractor of the direct claim within 10 calendar days. In every case, within 5 calendar days of receiving notice of the direct claim, the Subcontractor must explicitly notify the Contractor in writing of whether it objects to the payment of the subcontractor by the Contractor (if applicable, stating its reasons for such an objection). In the absence of any objection (or of a statement of the reasons for the objection) within this term, the Contractor has the right to make the payment to the subcontractor, up to the amount that the Contractor owes the Subcontractor at that time. Such payment to the subcontractor shall also serve as a release settlement in respect of the Subcontractor.
If the Subcontractor objects to the payment, it undertakes to voluntarily intervene in the proceedings if it is not a party to the direct claim.

18. Variations

18.1. Variations initiated by the Employer

(a) The Subcontractor is required to perform any additional or less work or other variations to the Subcontract Works that the Employer imposed on the Contractor and that the Contractor notifies to the Subcontractor on the basis of the back-to-back principle described in Article 5.
(b) The Subcontractor undertakes to refrain from executing any work or order commissioned directly by the Employer and/or its architecture/engineering bureau to the Subcontractor without the prior consent of the Contractor.
(c) In relation to variations to the Subcontract Works initiated by the Employer, the Subcontractor is only entitled to payment of a surcharge or an extension of the time for completion of the works, if and to the extent that the Contractor is granted these by the Employer pursuant to the provisions of the Main Construction Contract.
(d) To the extent relevant in relation to the Subcontract Works, the Subcontractor's attention is particularly (but not exclusively) drawn to the obligation in relation to the public procurement projects to implement variations imposed by the Employer, even if no agreement exists (yet) on the consequences of such variations on the price and timing.

18.2. Variations initiated by the Contractor

(a) The Contractor has the right at all times to change the Subcontract Works (at its own initiative).
(b) No variation initiated by the Contractor may take place without the prior explicit written consent of the Contractor (including but not limited to consent regarding the impact of the variation on the planning and the subcontracting price). In the absence of such written consent, the Subcontractor shall in no case be entitled to claim any surcharge or extension of time for such variation, which will than be deemed to incontrovertibly form part of the original Subcontract Works.

18.3. Price consequences of variations

Unless explicitly provided otherwise in the particular conditions (or, as the case may be, the Main Construction Contract):
(i) the price increases or reductions arising from variations to the Subcontract Works will be settled on the basis of the quantities and where applicable, the unit prices fixed in the Subcontract;
(ii) the 'open book' principle applies for variations to the Subcontract Works for which no unit prices are determined in the Subcontract, and the price for such variations will be transparently compiled and must be consistent with the usual and market standard unit prices or fixed prices for the relevant items. To that end, the Subcontractor shall provide the Contractor with all requested information and supporting documents and shall grant the Contractor access to its administrative documents and accounts;
(iii) the Subcontractor may only charge surcharge percentages for general expenses, profits, risks etc. if and to the extent that this is permitted, if applicable, by the Main Construction Contract. In no case may higher surcharge percentages be applied than those provided for, if applicable, in the Main Construction Contract.

19. Intellectual Property Rights - Confidentiality

(a) With regard to the Subcontract Works, the Subcontractor is required to grant the Contractor the necessary rights (free of charge) which the Contractor must hold in order to comply with its obligations in relation to intellectual property rights under the Main Construction Contract.
(b) The Subcontractor declares that it holds all rights, titles, licences and approvals necessary for the performance of its obligations in relation to the Subcontract Works and that in no case will any violation of the intellectual property rights of any third party take place.
(c) The Subcontractor undertakes to treat all information that it receives in relation to the Subcontract Works from the Contractor, the Employer or other actors involved in the Mission in strict confidence and without the approval of the Contractor, will in no way disclose this to third parties or apply it in any way other than for the performance of its obligations in relation to the Subcontract Works.
(d) Without prejudice to the other provisions of the Subcontract, the Subcontractor must at all times comply with and respect the Memorandum for Data Protection included in appendix C.

20. Liability

(a) The Subcontractor is liable for the proper performance of the Subcontract Works and is, vis-à-vis the Contractor, liable for all the subcontractors, service providers, suppliers and other third parties that it deploys in relation to the execution of the Subcontract Works. Any limitation of its liability by the Subcontractor will be deemed to be unwritten.
(b) Apart from any error or negligence on the part of the Subcontractor, the Subcontractor also bears the risk in relation to the Contractor of any damage to the works performed by the Subcontractor or one or more of its subcontractors, even if this damage was caused by third parties (including but not limited to e.g. other subcontractors of the Contractor) until the time of the provisional acceptance.
(c) Without prejudice to Article 9(e), the risk of damage, loss (e.g. as a result of theft) or any other incident relating to the materials, building materials and other parts intended for use and consumption by the Subcontractor in the execution of the Subcontract Works (regardless of whether they are located at the building site) is and will remain borne by the Subcontractor until the date of the provisional acceptance. With regard to these materials, building materials and other parts and with regard to the buildings in which the said substances are or have yet to be processed and/or incorporated, the Subcontractor is required to take all useful and/or necessary measures with a view to their protection, maintenance and integrity,

at its own risk and expense.

(d) The Subcontractor must indemnify and hold harmless the Contractor against and from any third party claims (including but not limited to the Employer) against the Contractor in relation to the execution of the Subcontract Works.

(e) If and to the extent that the Contractor is liable to the Employer for faultless neighbourhood nuisance (Article 544 of the old Belgian Civil Code/Articles 3.101 et seq. of the new Belgian Civil Code), the Subcontractor must also protect, indemnify and hold harmless the Contractor against and from claims by the Employer (or third parties) pursuant to Article 544 of the old Belgian Civil Code/Articles 3.101 et seq. of the new Belgian Civil Code.

(f) By derogation from Article 6.3 of the new Civil Code, the Parties agree to exclude the application of the legal provisions on extra-contractual liability in the event of a breach of contract by the Contractor (or, if applicable, its auxiliary persons). Thus, with regard to the subject matter of this Subcontract, the Contractor (or, if applicable, its auxiliary persons) shall be subject only to the legal provisions regarding contractual liability, even if the event giving rise to the damage would also constitute a tort. This clause expressly serves as a defense against possible extra-contractual liability claims by the Subcontractor (or, if applicable, its auxiliary persons). The Subcontractor expressly acknowledges that, as far as the Contractor's auxiliary persons are concerned, this clause applies as a clause in favour of a third party.

21. INSURANCES

(a) The Subcontractor must at all times ensure that it is properly and adequately insured in relation to the execution of the Subcontract Works.

(b) The Subcontractor must underwrite at least the following insurance policies with reputable and creditworthy insurance companies:
   (i) workmen compensation insurance;
   (ii) civil liability insurance (where applicable - i.e. if the Subcontractor guarantees this in accordance with Article 20(e), including cover for faultless hindrance of neighbours pursuant to Article 544 of the old Belgian Civil Code/Articles 3.101 et seq. of the new Belgian Civil Code), with a minimum insured sum of €1,000,000 per incident (bodily injury, material and immaterial damage combined);
   (iii) all other insurance policies specifically required by the Employer of the Contractor in relation to the Subcontract Works (unless otherwise provided in the particular conditions).

   The Subcontractor must submit an insurance certificate concerning the above insurance contracts to the Contractor prior to the commencement of the works, in the absence of which the Contractor is entitled to deduct 5% from all the Subcontractor's invoices.

(c) All insurance policies to be undertaken by the Subcontractor pursuant to this Article must:
   (i) contain a clause providing that a change to, suspension of or termination of the relevant insurance policy will only take effect one month after the Contractor has been notified of this in writing, by registered mail;
   (ii) provide for a waiver of recourse in favour of the Contractor, the Employer, the architect and any engineering consultants, as well as their employees and insurers.

(d) The insurance policies to be underwrited by the Subcontractor pursuant to this Subcontract in no way prejudice the responsibility of the Subcontractor or its obligations pursuant to the Subcontract. The Subcontractor guarantees and holds sole responsibility for any exemptions and overruns of the damage amounts covered by the insurance policies that it has undertaken on the basis of the Subcontract.

22. DEFAULT AND EARLY TERMINATION

22.1. General

The rights of the Contractor pursuant to this Article 21(d) apply without prejudice to the other rights of the Contractor on the basis of the Subcontract and/or the applicable law (in particular with regard to the Contractor's right to full compensation for proven damages suffered by the Contractor as a result of default on the part of the Subcontractor).

22.2. Default

(a) In the event of any default by the Subcontractor on its obligations pursuant to the Subcontract:
   (i) the Contractor may issue written notice of default to the Subcontractor in that regard, setting a reasonable term (to be fixed by the Contractor) where applicable, within which the Subcontractor must rectify the shortcoming; and/or
   (ii) the Contractor may (arrange to) mutually assess the status of the Subcontractor's works, after inviting the Subcontractor for that purpose in writing, at least 48 hours in advance.
   If the Subcontractor is absent despite the aforementioned invitation, the Contractor may provide for the status of the works to be assessed by a bailiff (or other independent party) at the Subcontractor's expense, in which case the assessment of that bailiff (or other party) can be invoked against the Subcontractor and will be deemed to have been mutually determined. However, if the status of the Subcontractor's work is sufficiently clear (e.g. on the basis of clear photographs with date markings or on the basis of an assessment of the Employer or its advisers), the Contractor is not required to deploy a bailiff (or other party) for that purpose, but as such, the assessments of the Contractor may be invoked against the Subcontractor.

(b) Without prejudice to Article 22.1 (and where applicable, over and above the corresponding penalties, fines and/or liquidated damages provided for in the Main Construction Contract), the Contractor is entitled to payment of compensation for damage by the Subcontractor, without prior notice of default, of:
   (i) €250 per calendar day of delay in the event of late submission of performance documents (including, but not limited to the technical file) to the Contractor;
   (ii) €250 per case per calendar day in the event that the Subcontractor exceeds the repair periods set in (or in accordance with) Article 15(b);
   (iii) €500 per case per calendar day in the event of default by the Subcontractor or its direct or indirect subcontractors (regardless of their rank in the chain) in relation to applicable general or specific safety principles that (could) give rise to unsafe situation or substantial damage;
   (iv) €1,000 per case in the event of any violation of Article 12 on the part of the Subcontractor or its direct or indirect subcontractors (regardless of their rank in the chain);
   (v) €1,000 per case in the event of any violation of Article 13 by the Subcontractor, its subcontractor(s) or the subcontractor(s) of its subcontractor(s) (regardless of their rank);
   (vi) €150 per case per calendar day, in the case of a violation of the applicable building site rules by the Subcontractor;
   (vii) €250 per case, in the event of the irregular absence of the Subcontractor from a site or project meeting;
   (viii) €350 per calendar day per case in the event of any other default on the part of the Subcontractor that is not rectified or corrected by the Subcontractors within the repair period set by the Contractor in accordance with Article 22.2(a).

(c) In such a case, the Contractor may at its own discretion:
   (i) settle the compensation for damage referred to in Article 22.2(b) with any amounts that the Contractor still owes the Subcontractors pursuant to the Subcontract; and/or
   (ii) claim this under the performance guarantee.

22.3. Early termination/replacement of the Subcontractor

(a) At its own discretion, the Contractor may unilaterally and extra-judicially (1) terminate the Subcontract with immediate effect or (2) appoint a replacement subcontractor for the continuation of the works, at the Subcontractor's risk and expense, if:

(i) the Subcontractor applies for bankruptcy or is declared bankrupt (or is unable to make payments or halts payments by other means);
(ii) the Subcontractor is dissolved or liquidated;
(iii) the Subcontractor (or one of its direct or indirect subcontractors) does not comply or no longer complies with any subcontracting requirements of the Main Construction Contract or provisions of the regulations applicable to it;
(iv) the certificate of recognition, where applicable, is not submitted in a timely manner or if the required recognition certificate (where applicable) is lost during the execution of the Subcontract Works;
(v) the Subcontractor halts the execution of (virtually) all work at the building site, unless this is provided for in a planning drawn up by the Subcontractor in advance and accepted by the Contractor;
(vi) the Subcontractor fails to comply with the safety regulations applying at the building site, as a result of which the safety of goods and/or persons is seriously jeopardised;
(vii) the Subcontractor is involved in any way in trading in prohibited goods or services or in fraud;
(viii) the planned end date or other binding (intermediate) deadline is exceeded by more than 15 calendar days (as well as if and in as far as it is established that the planned end date or another binding term will unavoidably be exceeded by more than 15 calendar days);
(ix) the Contractor is notified in writing by the social inspectorate of a serious breach by the Subcontractor, its subcontractor(s) or, if applicable, their subcontractor(s) of their obligation to pay their employees the wages to which they are entitled in a timely manner;
(x) the Contractor becomes aware that the Subcontractor, its subcontractor(s) or their subcontractor(s) (regardless of their rank) deploys illegally staying third-country nationals for the execution of the Subcontract Works;
(xi) the Subcontractor (or one of its subcontractors, regardless of their rank in the chain of subcontractors) fails to comply with its statutory obligations (in particular, but not exclusively with regard to its social security, tax and labour law obligations and its obligations regarding wages, attendance registration, recognition and deployment of illegal immigrants);
(xii) any other shortcoming on the part of the Subcontractor is not rectified within the term set for this by the Contractor in accordance with Article 22.2(a).

(b) In all the cases referred to in Article 22.3(a), the Contractor is entitled to full compensation by the Subcontractor for the damage suffered by the Contractor (including but not limited to the Contractor's additional costs for appointing a replacement subcontractor to complete the Subcontract Works). In such a case, the Subcontractor has no rights whatsoever to compensation for damage from the Main contractor.

22.4. Termination of the Main Construction Contract

The Subcontract is terminated automatically if and when the Main Construction Contract is terminated (regardless of the reason for this). If the termination of the Main Construction Contract:
(i) is based on any default by the Subcontractor, the Contractor is entitled to payment of compensation for damage by the Subcontractor, in compliance with Article 22.3(b);
(ii) is not based on any default of the Subcontractor, the Subcontractor is entitled to payment of compensation for damage in compliance with Article 22.5, on the understanding that such compensation can in no case exceed the reimbursement (related to the part of the Mission concerning the Subcontract Works) to which the Contractor is entitled from the Employer (if any).

22.5. Termination for convenience

(a) The Contractor may unilaterally terminate the Subcontract at any time, at its own discretion and without stating its reasons, by means of written notification to the Subcontractor.
(b) By way of derogation from Article 1794 of the old Belgian Civil Code and without prejudice to Article 5.2(b), the Subcontractor is then entitled only to payment of a fixed sum by the Contractor for compensation of loss of profit, amounting to 2.5% of the cancelled part of the Subcontract Works, in addition to the payment of all useful and correctly realised works up to the date of the written notification and the other costs usefully incurred until that date, as demonstrated by the Subcontractor.

22.6. Consequences of early termination

(a) Regardless of the cause of the early termination of the Subcontract, the Contractor has the right to deploy all execution documents, schedules, supporting documents, calculations, drawings, notes and files drawn up by the Subcontractor for the execution of the Subcontract, for the completion of the Subcontract Works. To that end, at the Contractor's earliest request, the Subcontractor shall hand over to the Contractor either the original or a copy of the aforementioned execution documents, schedules, supporting documents, calculations, drawings, notes and files, regardless of whether all progress reports were already settled or not. Files will be transferred in a format that the Contractor can view and process, without passwords or other security.
(b) In the event of early termination of the Subcontract (regardless of the reason for this), the Subcontractor must leave the building site immediately and, at the discretion of the Contractor:
(i) remove all its remaining (and if applicable, already ordered) building materials and equipment from the building site or, upon simple request by the Contractor:
- make materials available to the Contractor free of charge for as long as necessary; and
- transfer the building materials to the Contractor;

with regard to further completion of the Subcontract Works by (or on the instructions of) the Contractor; and/or
(ii) transfer any subcontracting or supply contracts concluded by the Subcontractor in relation to the execution of the Subcontract Works to the Contractor. To that end, the Subcontractor must include all the necessary provisions to that effect in its subcontracts and supply contracts.

23. Communication and Publicity

(a) Unless explicitly agreed otherwise, the Subcontractor shall in no case contact the Employer or its architecture/engineering bureau(s) directly (in particular, but not exclusively, the Subcontractor shall refrain from transferring any price offer or technical proposal to the Employer or its advisers, at its own initiative or otherwise, without the explicit prior written consent of the Contractor). If the Subcontractor is contacted directly by the Employer or its architecture/engineering bureau(s), the Subcontractor shall refer the Employer (or its architecture/engineering bureau(s)) to the Contractor. Each time at the request of the Contractor to that effect, the Subcontractor must support the Contractor in (the coordination of all) contacts with the Employer (or its architecture/engineering bureau(s)) in relation to the Subcontract Works.
(b) All approvals and consent necessary from the Contractor on the basis of the Subcontract must always be obtained by the Subcontractor in advance, explicitly and in writing. The Subcontractor explicitly declares and acknowledges that any approvals and consent of the Contractor can in no case take place tacitly or implicitly.
(c) The Subcontractor shall refrain from burdening the Contractor with unnecessary correspondence and must always give priority to the realisation of the Subcontract Works. In no case shall the absence of a response from the Contractor to a letter from the Subcontractor on a matter on which the Contractor has already made its position known, be regarded as (implicit) consent of the Contractor to the content of that letter from the Subcontractor.
(d) Without the permission of the Contractor, the Subcontractor may not install publicity signs at the building site. Publicity signs of the Subcontractor installed without the permission of the Contractor or in contravention of its instructions in that regard may be immediately removed from the building site by (or on the instructions of) the Contractor without prior notice of default, at the Subcontractor's risk and expense.

(e) If this is provided for in the particular conditions or at the explicit request of the Contractor to that effect, the Subcontractor must make use of the electronic information sharing platform for the exchange of information concerning the Subcontract Works, as designated for that purpose by the Contractor (without being able to claim any additional costs or extension of time on those grounds). All documents sent to the Contractor electronically must be sent in a legible and processable format, with no password or other security.
(f) Without the prior, written and express consent of the Contractor, the Subcontractor and the personnel and respresentatives deployed and hired by the Subcontractor (for whom the Subcontractor vouches (in Dutch: "*sterkmaking*"/in French: "*se porter fort*") shall refrain from communicating about the performance of the Subcontract Works on social media (or on other, publicly accessible, fora).
(g) All communications relating to the execution of the Subcontract shall take place in the language of the language region in which the corporate seat of the Contractor is registered.

24. Applicable law and Competent Courts and tribunals

(a) The Subcontract is governed by Belgian law.
(b) Any dispute concerning the validity, interpretation, enforcement, performance or termination of the Subcontract shall be submitted to the exclusive jurisdiction of the judicial district of East Flanders, division Ghent.
(c) In the event that the Contractor becomes involved in legal proceedings in connection with the execution of the Subcontract Works, the Subcontractor is required, upon simple request of the Contractor, to voluntarily intervene in the proceedings for the indemnification of the Contractor, regardless of the court or tribunal or dispute settlement body before which these proceedings take place.

25. Final provisions

(a) *Variations* – No variation to the Subcontract is binding unless the parties agree on this and the variation is recorded in writing and is signed and dated by the parties.
(b) *Sufficiency of contract price – Disruption of the contractual balance* – The Subcontractor explicitly declares and acknowledges that all costs and risks that it has to bear pursuant to the provisions of the Subcontract, are fully and adequately included in the subcontract price (unless the Subcontract explicitly provides otherwise or such risks arose or were caused by the actions, error or negligence of the Contractor).
With regard to unforeseen circumstances that disrupt the contractual balance ("*hardship*"), the parties note that they enter (entered) into the Subcontract knowingly and willingly and that the mechanisms provided for in the Subcontract (already) adequately (intend to) cover any unforeseen circumstances that may arise, as well as the consequences thereof. Except if and to the extent that the Contractor, in accordance with the provisions of the Main Construction Cotract, could invoke this against the Employer (in which case this will be settled between the parties on the basis of the back-to-back principle), the parties expressly agree that article 5.74 of the (new) Belgian Civil Code does not apply to the Subcontract.
(c) *(Temporary) company forms without legal personality* – In order to avoid any misunderstanding, it is emphasised that if the Subcontractor takes on the form of a (temporary) company form without legal personality (unless explicitly provided otherwise in the particular conditions):
  (i) the partners in such a (temporary) company form without legal personality are jointly and severally liable towards the Contractor; and
  (ii) the term 'Subcontractor' in the Subcontract will refer both to the actual (temporary) company form without legal personality and to the individual partners of the (temporary) company form without legal personality.
(d) *Damage limitation obligation* – The Subcontractor undertakes to always take all reasonable damage limitation measures at its own expense if, pursuant to the provisions of the Subcontract, it is entitled to compensation for damage suffered from the Contractor.
(e) *Entire agreement* – The Subcontract contains all agreements between the parties regarding the subject of the Subcontract and replaces all previous agreements, correspondence and exchanges of information in that regard between the parties. Any comments or reservations of the Subcontractor concerning the provisions of the Subcontract will be regarded as unwritten unless such reservations or comments have been explicitly accepted by the Contractor.
The parties explicitly declare and acknowledge that:
  (i) the Subcontract is the result of fair negotiations in good faith between equal parties (whereby the Subcontractor acknowledges in particular having had the opportunity to negotiate these terms and conditions);
  (ii) they have been able to acquaint themselves entirely with the scope of this Subcontract and have entered into this Subcontract in full knowledge of the facts (informed consent); and
  (iii) all amounts and compensation for damage included in the Subcontract are consistent with the damage that the parties could reasonably foresee at the moment of entering into the Subcontract.
(f) *(No) waiver* – Under no circumstances may the Contractor, in the absence of an explicit written declaration of the Contractor to that effect, be deemed to have implicitly waived any provision of the Subcontract at any time. Any non-strict application by the Contractor of its rights pursuant to the Subcontract in a particular case (such as in the event of default on the part of the Subcontractor) can in no case be regarded as a waiver or revocation of those rights on the part of the Contractor in relation to future cases (e.g.: the fact that the Contractor would not have withheld a certain amount on a specific invoice of the Subcontractor pursuant to Aricle 6(c), does not prejudice the right of the Contractor to withhold such amounts on the following invoice(s) of the Subcontractor).
(g) *Legal proceedings* – Without prejudice to any shorter (reporting) terms applying on the basis of this Subcontract, every legal claim relating to the Subcontract Works by the Subcontractor must be filed with the competent court or tribunal in all cases, on pain of lapsing, within one year of:
  (i) the date of the granting of the provisional acceptance, regarding facts or circumstances that occurred prior to the provisional acceptance;
  (ii) the expiry of the warranty period, regarding facts and circumstances that arose during the warranty period.
(h) *Continuing obligations* – The end or termination of the Subcontract (regardless of the reason for this) is without prejudice to the Subcontractor's obligations that, by their nature, are intended to continue after the termination of the Subcontract.
(i) *Relative nullity* – In as far as possible, the parties waive their right to invoke the nullity or voidability of the Subcontract.
(j) *Divisibility and conversion* – If any provision of the Subcontract is invalid, unlawful or unenforceable, this does not affect the validity, lawfulness or enforceability of any other provision of the Subcontract or of the Subcontract as a whole. To the extent that any provision of the Subcontract is invalid, unlawful or unenforceable, the parties undertake to negotiate a clause in good faith that approximates the envisaged effect of the invalid, void or unenforceable provision as closely as possible.