

## **GENERAL CONDITIONS OF SALE APPLICABLE TO THE SERVICES OF VINÇOTTE NV/SA IN TECHNICAL INSPECTIONS CARRIED OUT WITHIN THE FRAMEWORK OF THE TEN-YEAR LIABILITY OF ARCHITECTS AND CONTRACTORS AND THE INSURANCES ARISING THEREFROM**

### **Article 1. Definitions**

For the purposes of these general terms and conditions of sale, the following definitions shall apply:

**1.1** Client: the party who signs the technical inspection contract with Vinçotte NV/ SA.

**1.2** Technical Inspector: Vinçotte NV/ SA, with registered office at 1800 Vilvoorde, Jan Olieslagerslaan 35 and registered in the Crossroads Bank for Enterprises under number 0462.513.222.

**1.3** Building Owner: the natural or legal person on whose behalf the services are performed and who takes possession of the structure after its completion.

**1.4** Insured Persons: the persons designated in the technical inspection contract who participate in the design and erection of the structure, excluding the building owner, unless otherwise stipulated.

**1.5** Insurer: the insurance company or group of insurance companies that will insure the structure.

**1.6** Controlled Works: the works described in the technical inspection contract.

**1.7** Contract: the negotiated offer of Vinçotte NV/ SA accepted by the contracting party or a specific negotiated agreement relating to technical inspection services.

**1.8** GTC: underlying general terms and conditions of sale with effect from subsequent amendments.

**1.9** Auxiliary: any natural person or legal entity entrusted by Vinçotte NV/ SA with the full or partial performance of a contractual obligation entered into by Vinçotte NV/ SA, and this throughout the entire contractual chain, such as subcontractors, mandataries, employees, directors, etc.

### **Article 2. Scope of application**

**2.1** These GTC define the rights and obligations related to the mission to be performed by the Technical Inspector when acting as Technical Inspector within the framework of the ten-year liability of architects, contractors and the insurances arising therefrom.

**2.2** In case of contradiction between the Contract and these GTC, the clauses of the Contract shall prevail.

**2.3** The application of general or specific terms and conditions of the Client is expressly rejected by the Technical Inspector, unless otherwise agreed beforehand in writing. If the Technical Inspector would expressly accept any (purchase) conditions of the Client, these GTC supplement the (purchase) conditions of the Client or the specific agreement, even if they would expressly state that the GTC would not apply. Under no circumstances does an acceptance of a purchase order from the Client imply an acceptance of any terms and conditions of the Client.

**2.4** Should any (part of a) provision of the GTC be void or unenforceable, this shall not affect the validity and enforceability of the other provisions of the GTC. In such case, the parties shall negotiate to replace such void or unenforceable provision with a valid and enforceable provision that is as close as possible to the purpose and intent of the original provision.

**2.5.** Any provision of the GTC which by its nature is intended to survive termination of the Contract shall survive termination of the Contract, including, inter alia, the confidentiality, non-solicitation and intellectual property rights provisions. The termination of the Contract will not affect the rights of any party acquired prior to such termination or annulment.

### **Article 3. Execution of the Contract**

**3.1** Unless expressly agreed otherwise in writing, all obligations of the Technical Inspector shall be obligations of means and the services shall be performed in accordance with the rules of the art.

**3.2** If the Client provides documents, data, drawings and the like to the Technical Inspector, the Technical Inspector may assume their accuracy and the Technical Inspector will base his services on them.

### **Article 4. Scope of technical control**

**4.1** The services of the Technical Inspector shall relate exclusively to the stability and durability of the structures. Unless otherwise stated in the Contract, the inspection is limited to what is stated below. The assignment of technical inspection is limited to the civil engineering part of the structures or to the closed shell of the buildings.

In case of technical inspection of (industrial) constructions, the services of the Technical Inspector are limited to the actual immovable part of the buildings as foreseen on the plans. However, do not belong to these services: the control of the technical installations (for example, pipes), even if they are immovable by incorporation, specific to the intended industrial activity. If the services exceed these limits, it extends only to the supplementary items expressly mentioned in the Contract.

**4.2** Unless otherwise stated in the Contract, the Technical Inspector's services end upon the provisional acceptance of the works. After the provisional acceptance, the Technical Inspector will prepare a final report in the language of the Contract. The Technical Inspector will keep its final report and file for the ten years following the provisional acceptance.

### **Article 5. Reports**

**5.1** With respect to the site inspections, the Technical Inspector shall prepare reports reflecting the determinations regarding the Controlled Works and any observations at a specified time.

**5.2** The reports of the Technical Inspector regarding the verification of documents shall refer to the documents submitted by the Client or his appointees to the Technical Inspector for inspection up to that time.

### **Article 6. Limits of the mission of technical control**

**6.1** The mission of Technical Inspector, which is incompatible with the assignment of designer, means that the Technical Inspector does not participate in the assignments of the architect, engineer, engineering firm or contractor.

**6.2** The Technical Inspector reviews the elaborated technical implementation documents and finally, within the framework of article 8 below, gives his comments, if any, on the technical proposals submitted to him for review.

**6.3** The assignment of the Technical Inspector does not involve a permanent presence on the construction site and cannot be compared to the work of a site manager or supervisor.

**6.4** The inspections shall be executed randomly. The Technical Inspector shall determine the frequency of his inspection visits based on the progress of the work.

**6.5** The Technical Inspector's assignment does not include the performance of soil mechanical tests, either in situ or in a laboratory.

**6.6** The mission of the Technical Inspector does not extend to the operations related to the implantation or leveling of the works or parts thereof, nor to the disadvantages or nuisances that may be associated with the construction for the neighborhood or the environment.

**6.7** The verification of the hydraulic dimensioning of sewerage networks and associated structures (e.g., wastewater treatment plants, landfill basins, overflows, etc...) are not part of the mission of the Technical Inspector.

**6.8** The Technical Inspector's mission does not include the inspection of the moving, dynamic or mechanical portions of the structure.

#### **Article 7. Obligations of the Client**

**7.1** Within the framework of the Contract, the Client undertakes the following obligations :

**(a)** stating in the agreements concluded between the Building Owner on the one hand and the architect and the engineering firm and the contractor on the other hand the obligation that the assignment of the Technical Inspector should be facilitated in all respects;

**(b)** ensure coordination between the various intervening parties;

**(c)** submit - or have submitted by the party in question - for inspection to the Technical Inspector the specifications, calculation notes, all construction plans and technical proposals, at no cost to the Technical Inspector. Those documents and any subsequent amendments must be submitted to the Technical Inspector before the execution of the Controlled Works to which they relate, taking into account the deadlines necessary for their verification.

**(d)** granting access to the construction sites or factories to the delegates of the Technical Inspector and generally allowing them all facilities in the inspections they carry out;

**(e)** timely notify the Technical Inspector in writing of the commencement of work, completion dates and any circumstances that may warrant his intervention;

**(f)** if documents and information are exchanged, made available or submitted for review between all parties involved via an electronic platform, make the content of all such documents and information as well as the associated communications between all parties involved available to the Technical Inspector in a structured readable format at all times.

**7.2** The Client shall provide the following information to the Technical Inspector, or have the relevant party provide it:

**(a)** at the request of the Technical Inspector, any additional information and justifications deemed necessary for the proper conduct of the services;

**(b)** any useful justification regarding the nature, make, source and specification of materials used in the construction;

**(c)** contradictory site descriptions for the structures in a sufficient number of copies, after which the Technical Inspector will provide them to the Insurer;

**(d)** all documents that allow the determination of the final amount, excluding VAT, of the construction contracts related to the Controlled Works;

**7.3** The Client undertakes to prepare or have prepared the calculation notes submitted to the Technical Inspector in accordance with the applicable standards and generally recognized guidelines. They must be clear and detailed and indicate the original references of the formulas used and coefficients adopted. If new calculation methods are proposed, engineers should cite not only their theoretical and scientific references, but also the applicable examples. Reinforced concrete, prestressed concrete and steel structure studies must conform to applicable standards.

**7.4** The plans (to be) submitted to the Technical Inspector shall include formwork, reinforcements, implantation of any movement joints and pouring seams. They should be drawn to an appropriate scale.

#### **Article 8. Obligations of the Technical Inspector**

Towards the Insurer, the Technical Inspector undertakes the following obligations :

**(a)** notify the Insured Persons as soon as possible of any defects or deficiencies identified that are of such a nature that they may jeopardize the stability or durability of the Controlled Works or aggravate the risks described when the insurance contract was signed;

**(b)** immediately notify the Insurer of (i) the Insured Person's refusal to remedy at their expense any condition indicated in (a) above, (ii) any suspension of control of all or any portion of the Controlled Works, and (iii) any condition that aggravates the risks;

**(c)** respond to any request for technical information on the part of the Insurer;

**(d)** notify the Insurer of the completion date;

**(e)** prepare the final report indicating the completion date as well as the comments regarding the 10-year liability and transmit it to the Insurer;

**(f)** communicate the final amount, excluding VAT, of the construction contracts relating to the Controlled Works, subject to counterclaims.

#### **Article 9. Fees, payment and billing modalities.**

**9.1** The fees of the Technical Inspector shall be fixed in lump sum or based on a fixed and final rate expressed in % (percent) of the total value of the Controlled Works including the fees of the architects and engineers. Such value shall be determined at the time of delivery of the Controlled Works. If provisional acceptance is planned, the calculation of fees will be made at the time of provisional acceptance.

**9.2** The amount of the fees does not include Belgian and foreign taxes and duties.

**9.3** Performance will be invoiced monthly according to the progress of the Controlled Works. Unless otherwise agreed in writing, invoices are payable by bank transfer or online payment.

**9.4** Unless otherwise agreed in the Contract, payment shall be made in Euros without compensation within 15 days of the invoice date. Any protest of an invoice for any reason must be notified in writing to the Technical Inspector within 15 days of receipt of the invoice. Any protest does not suspend the Client's payment obligation.

**9.5** In the event of full or partial non-payment of an invoice on the due date, the Client shall by operation of law and without prior notice of default, owe interest on arrears at the

rate of 1% per month, for each month already started, and a fixed compensation amounting to 15% of the unpaid invoice amount with a minimum of 50€, unless otherwise stipulated by law, without prejudice to the right of the Technical Inspector to claim a higher compensation provided that proof of higher damage actually suffered is provided. In case of non-payment on the due date, the Technical Inspector is also entitled to immediately and without notice suspend its performance until full payment of all outstanding invoices. Set-off by the Client is expressly excluded.

**9.6** In the absence of timely payment on any invoice, all other outstanding claims against the Client shall become immediately due and payable.

**9.7** Payments made by the Client shall be applied firstly to all costs and interest due and secondly to the principal amounts of the longest outstanding payable invoices.

**9.8** The Client is not entitled to suspend any payment obligation to the Technical Inspector without prior notice of default.

#### **Article 10. Additional services and fees**

**10.1** The fees of the Technical Inspector do not include the costs incurred to perform certain services agreed together with the Client, such as (i) the performance of tests provided for in the specifications applicable to the company, (ii) the approval of non-traditional materials and techniques, (iii) the shipment to laboratories of material samples, (iv) tests using strain gauges, (v) radiographic, electromagnetic, ultrasonic and gamma-graphic examinations, and (vi) the performance of tests or measurements deemed necessary to evaluate deviations of the work from the specifications.

**10.2** If the Technical Inspector is required to provide more services than stipulated in the Contract due to reasons beyond his control (such as, for example, a delay of the construction works not caused by the Technical Inspector), the Technical Inspector will notify the Client. The additional fees will be determined in common agreement with the Client.

#### **Article 11. Place of performance**

In determining the fees of the Technical Inspector, it is assumed that all the services are performed in Belgium or in the Grand Duchy of Luxembourg. In case of control of construction elements manufactured in factories or workshops located outside the Belgian or Luxembourg territory, the additional fees caused by longer travel times and greater travel costs will be invoiced separately according to the rates in force at the time of the execution of the assignment.

#### **Article 12. Modification of the original design or implementation**

A significant modification of the original design or its mode of execution that requires a new intervention of the Technical Inspector shall entail the possibility for the latter to claim by right an indemnity to compensate for the supplementary costs incurred. The amount of said compensation will be calculated on the basis of half of the rate stipulated in article 9 and this on the value of the Controlled Works being modified.

#### **Article 13. Definitive termination**

**13.1** In the event of definitive termination of the Technical Inspector's assignment before the completion of the works for a reason not attributable to the Technical Inspector, a fee will be due calculated on the basis of the rate stipulated in

article 9, applied to the entirety of the already Controlled Works.

**13.2** In addition, the Technical Inspector shall be entitled by operation of law to claim by way of indemnification a sum calculated according to the formula :

$(MT - MF) \times 0.5 \times \%$

in which

- MT = total value of Controlled Works, estimated at the date of severance
- MF = value of Controlled Works already completed at date of disconnection
- % = rate determined in accordance with Article 9

#### **Article 14. Suspension and termination of the services**

**14.1** Any mistake or technical error detected by the Technical Inspector in the design and execution of construction works must be brought to the attention of all parties involved in the construction work. It is up to them to react immediately and rectify as soon as possible the errors or mistakes pointed out. If the appropriate measures are not taken in due time, the Technical Inspector reserves the right to suspend all or part of his assignment, depending on the seriousness of the consequences that could result from this negligence. This suspension will be communicated to the Client by registered letter.

**14.2** All works performed during a period of suspension of the Technical Inspector's assignment regardless of whether it is the suspension provided for in article 9.5 or that provided for in article 14.1 of these GTC, and all parts of the construction work that may be affected by it, shall be deemed by operation of law to have been the subject of reservation on the part of the Technical Inspector and may therefore be excluded from the benefit of coverage by the Insurer if it so decides.

**14.3** If the non-payment (article 9.5) or the failure to remedy errors or faults (article 14.1) persists for one month from the date of notification by registered letter provided for in those articles, the Technical Inspector has the right to definitively terminate his assignment. The Technical Inspector must notify the Client of his decision by registered letter.

**14.4** In case of interruption of the Technical Inspector's assignments due to any of the above reasons, the Client waives any claim for compensation as a result.

**14.5** During the period of suspension, the Technical Inspector shall be entitled as compensation to the total amount of the services that the Technical Inspector should normally have performed. From the definitive cessation, the Technical Inspector shall be entitled to the compensation provided for in article 13.2.

**14.6** The decision taken by the Technical Inspector to suspend or stop his services must be notified to the Insurer within 15 days of its effective date.

#### **Article 15. Duration and termination of the Contract**

**15.1** The Contract is entered into for the term specified therein.

**15.2** In the event that, despite a written notice of default observing a period of at least 15 working days, any contractual obligation is not (properly) fulfilled or not fulfilled on time, as well as in the event of bankruptcy, suspension of payment, liquidation or if they are placed under administration, receivership or receivership, or in the event of non-compliance with relevant standards and generally accepted execution guidelines, that contracting party shall

be deemed to be in default by operation of law. The other party shall in such case have the right, without any notice of default and without judicial intervention, to suspend the performance of the Contract with immediate effect or to invoke the full or partial dissolution of the Contract, at the option of the other party, without any compensation being due, but with the right to claim compensation for all costs and damages incurred. All claims of the Technical Inspector against the Client shall then become immediately due and payable. The right to termination shall not apply if the failure does not justify termination.

**15.3** If, at any time, the Technical Inspector has doubts about the creditworthiness or solvency of the Client, the Technical Inspector expressly reserves the right to request a prior payment or (other) security for performances yet to be performed, even if the performances have already been delivered in whole or in part. If the Client refuses to comply with the request of the Technical Inspector, the Technical Inspector reserves the right to terminate the Contract immediately and without judicial intervention and without any compensation.

#### **Article 16. Force Majeure**

**16.1** Force majeure means: circumstances that prevent the performance of the Contract and that cannot be attributed to the parties, regardless of whether those circumstances could be foreseen at the time of the conclusion of the Contract. During force majeure the obligations of the parties shall be suspended.

**16.2** The circumstances referred to in article 16.1 shall include, inter alia, war conditions, fire and other destruction, operational disturbances, strikes, government measures, pandemic, ICT-disruption or attack and unforeseeable delays at third parties on which the parties depend for the performance of the Contract.

**16.3** If the period, in which due to force majeure fulfillment of the obligations is not possible, lasts longer than one month, both parties are entitled to invoke the dissolution of the Contract without any obligation to pay damages in that case.

**16.4** If at the commencement of the force majeure the Technical Inspector has already partially fulfilled his obligations or can only partially fulfill his obligations, he is entitled to separately invoice the part already performed or executable part and the Client is obliged to pay this invoice as if it were a separate order. However, this does not apply if the part already performed or executable part has no independent value.

#### **Article 17. Liability**

**17.1** The parties to the Contract undertake to properly perform their obligations as stipulated in the Contract and the GTC applicable to each particular assignment.

**17.2** Except as otherwise provided in the Contract, the services of the Technical Inspector are limited to the assignment as well as to the inspections described in articles 4, 5 and 6 of the GTC.

**17.3** Should the Technical Inspector be held liable, its liability shall be limited to twice the fees of the Contract (and in any case to a maximum of 1.25 million € for all direct damages). Above these amounts, the Client releases the Technical Inspector from any liability for damages caused by its bodies or its appointees. The Technical Inspector can only be held liable for direct damages. The Technical

Inspector cannot be held liable for indirect damage, such as commercial damage, loss of production, reputational damage and damage to third parties.

**17.4** The Client shall indemnify the Technical Inspector against third party claims in respect of damage arising in or as a direct result of the performance of the Contract.

**17.5** The limitations of liability set forth in this article shall not apply in cases of fraud, willful misconduct, bodily injury or in the event of specific legal provisions to the contrary.

**17.6** In addition, the liability of the Technical Inspector, should it be established, does not exclude the liability of the contractor, structural engineer, architect or any person who has acted as a professional. To what extent a liability of the Technical Inspector would be established, such liability shall in no way alter the contractual relationship binding the Building Owner and the Insurer.

**17.7** Any complaint against the Technical Inspector that does not fall within the scope of the 10-year insurance must be filed within the 12 months following the end of his intervention. Such submission must be made by registered letter at the latest one month after the discovery of the deficiency giving rise to the complaint. The aforementioned deadlines are due dates.

**17.8** This article must be understood within the framework of Book 6 NCC. The parties waive any extra-contractual liability claim by one towards the other party as well as towards the Auxiliaries for damages caused by the non-performance of any contractual obligation among the parties. The present article is without prejudice to legal provisions of public policy or mandatory law. The Auxiliaries, as third-party beneficiaries, may invoke the clauses of this article. The Client undertakes to impose the same waiver described in this article on his contracting party/parties ((end)client) and indemnifies the Technical Inspector and/or its Auxiliaries against any possible damage suffered by the Technical Inspector in the event of an extra-contractual claim by his contracting party/parties ((end)client) against the Technical Inspector and/or its Auxiliaries.

#### **Article 18. Intellectual property rights**

Notwithstanding any special written agreement to the contrary, all logos and intellectual property rights, both existing and those developed under the Contract, relating to the services provided by the Technical Inspector shall remain the property of the Technical Inspector or the existing rights holders and shall in no event be transferred to the Client, nor shall any reproduction right, right of use or license thereon be granted to the Client. However, the reports prepared by the Technical Inspector for the Client may be copied or scanned in their entirety and without modification for the purpose of storing them or transmitting the report to third parties.

#### **Article 19. Non-recruitment**

During the term of the Contract as well as for 1 year after its termination, the Client shall not in any way, except with the prior written consent of the Technical Inspector, employ or otherwise, directly or indirectly, cause an employee of the Technical Inspector to work or perform services for the Client. Any breach of this clause by the Client shall by operation of law give rise to the payment of damages to the Technical Inspector equal to once the gross annual salary of the employee dismissed or taken over.

## **Article 20. Confidentiality obligation**

**20.1** The Client and the Technical Inspector undertake to treat all information such as, inter alia, financial, operational and technical information obtained in relation to the Contract strictly confidential and not to disclose it to third parties, except (1) with the express permission of the other party; (2) if required for the defense of a party's interests in or out of court; (3) if required or allowed by legal or regulatory provisions; (4) at the request of any judicial or (supervisory) authority. In the latter 2 cases, the other party may be notified.

**20.2** Does not constitute a breach of article 20.1: at the request of an Auxiliary, transmission of the contractual clauses on means of defense in the event of a dispute relating to the performance of the contractual obligation in which that Auxiliary is directly involved.

## **Article 21. Protection of personal data**

The Technical Inspector processes the personal data of the Client and its appointees in accordance with Belgian and European legislation regarding the protection of personal data. The Technical Inspector's policy regarding the processing and protection of personal data is available at [www.vincotte.be](http://www.vincotte.be) -> privacy-policy.

## **Article 22. Applicable law and competent court**

**22.1** The Contract is governed by Belgian law to the exclusion of the provisions of international treaties including the Vienna Sales Convention, to the extent they do not contain mandatory law.

**22.2** All disputes relating to the validity, interpretation, performance or termination of the Contract shall be subject to the exclusive jurisdiction of the Dutch- or French-speaking Courts of Brussels (Belgium).

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