



**GENERAL CONDITIONS APPLICABLE TO THE ACTIVITIES OF VINÇOTTE NV WITH TECHNICAL INSPECTIONS CONDUCTED IN THE CONTEXT OF THE TEN-YEAR'S LIABILITY INSURANCE OF ARCHITECTS AND CONTRACTORS AND THE INSURANCES RESULTING FROM THIS.**

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**a. Definitions**

**Article 1**

For these general conditions the following definitions apply:

- 1.1 Signatory  
The natural or artificial person who signs the agreement for the technical inspection.
- 1.2 Technical inspector  
VINÇOTTE NV.
- 1.3 Building owner  
The natural or artificial building owner for whose account the work is carried out, and who is to take possession of the building work after its completion.
- 1.4 The insured  
The persons indicated in the agreement for technical inspection who participate in the planning and construction of the building work, with the exception of the building owner, unless otherwise stipulated.
- 1.5 The insurer  
The insurance company or the group of insurance companies who are indicated in the agreement for technical inspection, and who will insure the building work.
- 1.6 Inspected building work  
Unless otherwise stipulated, the part of the building work consisting of the enclosed structural work (structures, façades, roofs) that is described in the agreement for technical inspection, and that is subjected to a technical inspection by VINÇOTTE NV.

**Article 2**

In these general conditions the nature of the assignment is described that VINÇOTTE NV must complete when the company acts as the technical inspector within the framework of the ten-year liability of architects and contractors and the insurance resulting from this. The general conditions also establish the execution modalities of the assignment, as well as the obligations of the parties.

**Article 3**

In the event of a difference between the agreement for technical inspection and these general conditions, the clauses of the agreement for technical inspection prevail.

**b. Assignment and activities of VINÇOTTE NV**

**Article 4**

The technical inspections conducted by VINÇOTTE NV have the objective of reducing the dangers of damage that can lead to ten-year liability as a result of the construction of engineering structures, buildings and industrial constructions that were the subject of the inspection.



## Article 5

The assignment of VINÇOTTE NV exclusively concerns the stability and the durability of the construction work. Subject to variances mentioned in the agreement for technical inspection, the inspection is limited to the civil engineering part of the engineering structures or to the enclosed structural work of the buildings.

In the event of the inspection of industrial constructions, the assignment of VINÇOTTE NV is limited to the actual immovable part of the buildings as present on the plans. Not included in this inspection assignment is the inspection of technical installations, even if these are immovable due to being built -in, particular to the intended industrial activity, and the inspection of the suitability of the buildings for the industrial activity. Should the assignment exceed these bounds, it only extends to the supplementary points that are explicitly mentioned in the agreement for technical inspection.

Subject to variances mentioned in the agreement for technical inspection, the assignment of VINÇOTTE NV ends with the provisional delivery of the work. After the completion of provisional delivery, a final report will be written in the language of the agreement for technical inspection, and VINÇOTTE NV will ensure the retention of the same and of the dossier for a period of ten years following definite delivery.

## c. Exclusions

### Article 6

The assignment of technical inspector that is incompatible with the assignment of designer or advising engineer obviously entails VINÇOTTE NV not participating in the assignments for the architect, engineer or contractor: VINÇOTTE NV will give attention to the detailed technical arguments and ultimately give or not give its approval to the solutions put forward, within the context of article 13 hereunder.

### Article 7

The assignment of VINÇOTTE NV does not impose the obligation to permanently have a presence on the construction site and cannot be compared to the assignment of a site supervisor or coordinator. The inspections are performed randomly and VINÇOTTE NV determines the frequency of its inspection visits on the basis of the progression of the activities.

### Article 8

The assignment of VINÇOTTE NV does not include the conduction of the soil tests, neither on the site nor in a laboratory.

### Article 9

The assignment of VINÇOTTE NV does not cover the activities concerning the positioning or the levelling of the work or parts thereof, nor detrimental effects to the neighbourhood or the environment that could be associated with the construction.

### Article 10

The inspection of the hydraulic dimensioning of the sewage system and the associated constructions (such as, e.g. water purification stations, basins, overflows, etc.) are not covered by the assignment of VINÇOTTE NV.

### Article 11

The assignment of VINÇOTTE NV does not entail the inspection of moving, dynamic or mechanical parts of the construction.

## d. Obligations of the parties

### Article 12

The Signatory binds himself to the following :

- a) That in the agreements concluded between the building owner on the one hand and the architect and the advising engineer (or engineering office) and the contractor on the other hand, the obligation is mentioned to in all respects facilitate the assignment of VINÇOTTE NV (the signatory will ensure the coordination between the various parties involved).
  - b) To present to VINÇOTTE NV the specifications, the descriptive budgets, the calculation papers and all construction plans for investigation without costs for VINÇOTTE NV, or to ensure that this takes place. Documents and any changes that may be made must be presented to VINÇOTTE NV before the execution of the work to which they relate, taking account of the period required for their investigation.
- NB : - The calculation papers presented to VINÇOTTE NV will be drawn up in accordance with the methods corresponding with the theories occurring in the programme of university education; they



must be well-prepared and detailed, and mention the original reference of the formulas and coefficients used. If new calculations are brought forward, the engineers must name applicable examples as well as their theoretical and scientific references. Unless agreed to the contrary, the studies of reinforced concrete, prestressed concrete and metal trusses must be in conformity with the technical conditions of the Belgisch Instituut voor Normalisatie (Belgian Standardization Institute).  
- The drawings that must be presented to VINÇOTTE NV must namely concern the formwork, reinforcement, beams and rafters, and the place of the joints and the construction joints. They must be calculated on a suitable scale.

- c) To provide VINÇOTTE NV, at the latter's request, with all supplementary information and explanations that VINÇOTTE NV may deem necessary for the good progression of its assignment, or to ensure that this takes place.
- d) To provide VINÇOTTE NV with all useful explanations with regard to the nature, the make, the origin and the specifications of the material used in the construction, or to ensure that this is provided.
- e) To grant access to the construction sites or the factories for representatives of VINÇOTTE NV, and in general provide these representatives with all facilities during their inspection and sampling activities.
- f) To send to VINÇOTTE NV as soon as possible a copy of the insurance contract, in which VINÇOTTE NV is indicated as the technical inspector.
- g) To provide VINÇOTTE NV with the site description for the constructions, subject to argument, in sufficient copies. VINÇOTTE NV will send them to the insurer.
- h) To inform VINÇOTTE NV in good time of the commencement of the activities, the delivery dates, and all circumstances that can justify its intervention.
- i) To provide VINÇOTTE NV with all documents that make possible the determining of the final sum, excluding VAT, for contracting costs for the inspected construction work.

### Article 13

With respect to the insurer VINÇOTTE NV binds itself to :

- a) Immediately inform the insured of faults or shortcomings established by VINÇOTTE NV that are of a nature that could endanger the stability or the durability of the inspected construction work, or increase the risks described with the signing of the insurance contract.
- b) Immediately inform the insurer :
  - of the refusal of the insured to at the latter's expense remedy any situations indicated in point a) above ;
  - of any suspension of the inspection of all or a part of the activities ;
  - of any situation increasing risks.
- c) Answer any request for technical information from the insurer.
- d) Inform the insurer of the delivery date.
- e) Draw up the official report that mentions the delivery date as well as the remarks concerning the ten-year's liability, and to forward this to the insurer.
- f) Inform the insurer of the final sum, excluding VAT, unless otherwise stipulated, for the contracted works for the inspected construction work.

## e. Fees – payments – invoices

### Article 14

The fees for VINÇOTTE NV are established on the basis of a flat rate or of a fixed and definite rate expressed in % (percent) of the total value of the inspected work, including the fees of the architects and the engineers. The value is established at the time of the delivery of the work.

If a provisional delivery is planned, the calculation of the fees will be made at the time of the provisional delivery.

### Article 15

Belgian and foreign taxes and levies are not included in the sum of the fees.

### Article 16

Our activities will be invoiced monthly in accordance with the progression of the inspection activities.

Our invoices are payable net cash at the registered office of VINÇOTTE NV.

The signatory may not raise any motive whatsoever to refuse or delay payment of our invoices, in particular late submission of invoices, revision of rates or prices, or disputes relating to any matter whatsoever.

Only the signatory is bound to pay the invoices of VINÇOTTE NV. The latter will therefore in no way be obliged to claim payment for his activities from third parties.

In the event of payment being overdue VINÇOTTE NV reserves the right to :

- a) Send a reminder by registered mail to the signatory.
- b) Subsequently suspend its activities with a lack of payment within eight workdays of the sending of the registered mail, and only continue them after receipt of payment.

In the event of failure to pay all or part of any invoice the following shall apply ipso jure and without formal notice being required to this effect :

- a) The payment of all invoices, even those not yet due.



- b) A surcharge of 15 % of the amount outstanding, subject to a minimum of 25 EUR, shall be payable as a contractual indemnity to defray the costs of recovery.
- c) Interest on the amounts unpaid by the signatory that is equal to the legal interest rate calculated on a daily basis from their date of maturity.

Negligence in payment is understood as the refusal of the building owner to pay an invoice in accordance with the clauses of the contract, and of which the payment is not disputable.

In the event of any change in the situation of the signatory, such as the sale or assignment of all or part of the signatory's business, death, legal incompetence, delays in or suspension of payments, liquidation of assets, a settlement imposed by court order, temporary suspension of legal proceedings, composition, bankruptcy or any similar proceedings, winding up or change of legal form of the business, even after the partial performance of contracts or orders, the same stipulations shall apply as for non-payment of invoices.

## f. Supplementary activities and costs

### Article 17

The fees of VINÇOTTE NV do not include costs incurred by the latter for carrying out certain activities that are agreed in consultation with the signatory, such as :

- a) The delivery and the handling of the loads and the materials for the conducting of direct load tests.
- b) The conducting of tests provided for in the specifications applicable to the company.
- c) The approval of non-traditional materials and techniques.
- d) The sending of material samples to the laboratories.
- e) Tests using strain gauges.
- f) Radiographic, electromagnetic, ultrasonic and gamma investigations.
- g) The execution of tests or measurements that are deemed necessary to evaluate abnormalities of the work with respect to the specifications

### Article 18

With the determining of the fees of VINÇOTTE NV it is assumed that all VINÇOTTE NV's activities take place in Belgium or the Grand Duchy of Luxembourg. In the event of the inspection of construction elements manufactured in factories or workplaces outside the territory of Belgium or Luxembourg, the supplementary costs caused by longer travelling times and higher travelling expenses will be invoiced separately according to the rates applicable at the time of the execution of the assignment.

### Article 19 - Changing of the original design

A significant change to the original design or the manner of its execution that requires a new intervention by VINÇOTTE NV entitles the latter to ipso jure claim compensation for supplementary costs incurred. The sum of this compensation will be calculated on the basis of half of the rate determined in article 14, and this on the value of the work that is changed.

### Article 20 - Definite termination

In the event of the definite termination of the assignment of VINÇOTTE NV before the delivery of the work for a reason not attributable to VINÇOTTE NV, VINÇOTTE NV will become due a sum calculated on the basis of the rate determined in article 14, applied to all the works already inspected. VINÇOTTE NV will also ipso jure by way of compensation be entitled to claim a sum calculated according to the following formula :

$$(MT - MF) \times 0,5 \times \%$$

whereby	MT	=	total value of the work, estimated on the day of the termination
	MF	=	value of the work already completed on the day of the termination
	%	=	rate determined in accordance with article 14

## g. Suspension and termination of the assignment of VINÇOTTE NV

### Article 21

Each error or technical defect established by VINÇOTTE NV in the design and with the execution of the construction work must be made known to the insured. It is up to the latter to then immediately respond in remedying the defects or errors referred to.

If suitable measures are not taken in this respect, VINÇOTTE NV reserves the right to partly or fully suspend its assignment depending on the seriousness of the consequences that could result from this negligence. This suspension must be made known to the signatory by registered mail.

### Article 22

All work carried out during a period of suspension of the assignment of VINÇOTTE NV, irrespective of whether this concerns a suspension provided for in article 16 or that provided for in article 21 of these general conditions, and all



parts of the construction work that could be influenced by this, are ipso jure considered having comprised the object of reservation on the part of VINÇOTTE NV, and can therefore be excluded from the benefits of cover by the insurer should the latter so decide.

If non-payment (article 16) or the failure to remedy mistakes or errors (article 21) continues for a period of one month after the date of notification by registered mail as provided for in these articles, VINÇOTTE NV becomes entitled to definitely terminate its assignment. VINÇOTTE NV must inform the signatory of this decision by means of a new registered letter.

In the event of the termination of the assignments of VINÇOTTE NV for one of the above reasons, the signatory waives any right to damage compensation as a result.

During the period of suspension, VINÇOTTE NV has right to compensation amounting to the total sum for the activities that would normally have taken place. From the definitive termination VINÇOTTE NV becomes entitled to the damage compensation provided for in article 20.

### **Article 23**

The decision taken by VINÇOTTE NV to suspend or terminate its assignment must be made known to the insurer within fifteen days after its effect.

## **h. Force majeure**

### **Article 24**

No party whatsoever will be considered as a party not complying with its obligations resulting from these general conditions and the agreement for technical inspection if compliance with its obligations is delayed, hindered or prevented by force majeure.

The following are considered as cases of force majeure :

- all causes beyond the control of the parties, that could not reasonably have been anticipated or guarded against.
- all legal provisions that make it impossible for one of the parties or comply with its obligations in good time.

The party claiming force majeure must inform the other party as soon as possible, and within five workdays at the latest by written notification. This notification must be accompanied by all useful and detailed information.

Cases of force majeure that are not notified within the above periods and in accordance with the conditions above will only come into effect ex nunc.

## **i. Liability**

### **Article 25**

The contracting parties bind themselves to ensure good compliance with their obligations as included in these general conditions and in the clauses of the agreement for technical inspection applicable to each specific assignment.

Unless explicitly stipulated in the agreement for technical inspection, the activities of VINÇOTTE NV are limited to the assignment as well as to the inspections and investigations described in articles 4 and 5 of these general conditions. In the event of VINÇOTTE NV being held liable, this liability will be limited to two times the fees of the contract for physical injury and material damage together. On top of this sum the signatory indemnifies VINÇOTTE NV against any liability for damage caused by its bodies or its appointed persons. VINÇOTTE NV cannot be held liable for indirect damage such as commercial damage, loss of production, ...

Furthermore, in accordance with article 6 of these general conditions, the liability of VINÇOTTE NV, should this be established, does not exclude the liability of the contractor, the constructor, the architect or any person having been involved with the project in a professional capacity. VINÇOTTE NV accordingly assumes a means obligation and no result obligation.

To whatever extent any liability may be established against VINÇOTTE NV, this liability in no way changes the contractual relationship binding the building owner and the insuring body.

Any complaint with regard to VINÇOTTE NV that does not fall under the ten-year insurance must be submitted within twelve months of the end of its activities.

This complaint submission must take place by registered mail at least one month after the discovery of the shortcoming that has given rise to the complaint.

The above periods are periods of expiry.

## **j. Disputes**

### **Article 26**

Any dispute concerning the agreement for technical inspection will be settled in accordance with Belgian law and exclusively by the law courts of Brussels or by the justice of the peace of the canton of the registered office of VINÇOTTE NV.