



General terms and  
conditions

GENERAL TERMS AND CONDITIONS FOR THE UNDERTAKING OF ACTIVITIES AND DELIVERIES OF THE ASSOCIATION OF TECHNICAL SOIL SURVEYORS  
(Dutch acronym for: ALV-VOTB-2009)

As filed at the Chamber of Commerce for Central Netherlands in Utrecht, dossier number 40476246 Version 11 January 2010

**Clause 1**

**Application**

- 1.1 These terms and conditions ALV-VOTB-2009, are applicable to all offers, assignments and agreements and the consequential implementation of activities and delivery of services, goods, measuring and survey results and recommendations made by the Contractor, which excludes the Client's general terms and conditions, unless otherwise agreed to in writing.
- 1.2 Insofar as the Contractor's activities also include the providing of recommendations, the carrying out of studies, the carrying out of laboratory research and calculations, the conducting of the management and the secondment of employees, then the Legal relationship between the Client - architect, engineer and consultant and The New Regulation 2005, which is abbreviated as 'DNR 2005', is applicable to that portion of the activities as is relevant at the time that the assignment is granted, on the understanding that in cases of conflict, the stipulations of these general terms and conditions will prevail.
- 1.3 The DNR 2005 mentioned above has been filed at the registry of the Courts of Law in Amsterdam, registration number 139/2004 and are available for inspection at the Contractor's offices and can also be downloaded free of charge from [www.NLingenieurs.nl](http://www.NLingenieurs.nl). Upon request the Contractor will submit a copy thereof to the Client.
- 1.4 The coming about of an agreement means that these general terms and conditions are accepted by the Client.
- 1.5 Should the agreement be concluded by a third party on behalf of the Client, then such third party guarantees that the Client has accepted these conditions, in default of which the third party is bound to these conditions as if he were the Client himself.
- 1.6 The Client with whom these general terms and conditions have been agreed, agrees with the applicability of these conditions to agreements that he will conclude later with the Contractor.

**Clause 2**

**Agreement**

- 2.1 Offers from the Contractor are valid for 3 months.
- 2.2 The Client can grant an assignment by e-mail, fax, telephone or post. The order is a binding offer by the Client to conclude an agreement. The offer will be considered effectuated when it has reached the Contractor.
- 2.3 An agreement is concluded when the Contractor has confirmed an assignment in writing, or when the quotation from the Contractor is accepted by the Client in writing.
- 2.4 Offers are without obligation and the Contractor can therefore, after the acceptance by the Client, still retract same in writing.
- 2.5 A retraction shall be submitted by the Contractor within 5 working days after receipt of the acceptance.
- 2.6 If the offer has been made via an intermediary (representative), then the stipulations in the preceding paragraphs of this clause apply accordingly.
- 2.7 As long as full payment due to the Contractor has not yet taken place pursuant to the agreement, ownership of the items delivered to the Client remain the Contractor's property, and the information contained therein may not be used by the Client in any manner whatsoever or be made available to third parties. Until such time as the ownership of the previously meant items has been transferred to the Client, the Client is obliged to hand same to the Contractor immediately upon request, notwithstanding any other rights that the Contractor may have towards the Client and/or third parties meant in clause 1 paragraph 5.

**Clause 3**

**Description of the activities and services**

- 3.1 The contents of the agreement is determined by the activities and services specified in the offer or the confirmation of the agreement.
- 3.2 All work-related performances to be carried out by the Contractor which are not described in accordance with clause 3 paragraph 1, will be regarded as additional works and will be brought into account separately.

**Clause 4**

**Nondisclosure**

- 4.1 Information of an assignment will not be passed on to third parties by the Contractor without permission from the Client, unless the Contractor is legally obliged to do so.
- 4.2 In deviation to that which is determined in clause 4.1, after one year from the date of completion of certain reports, survey data and measuring data, the Contractor is entitled to add same to a database and in relation to the business operations to make same available in any manner deemed advisable by the Contractor or to make same available to third parties.
- 4.3 For copyrights, proprietary rights and patents, unless otherwise agreed to in writing between the Contractor and the Client, the stipulations of the DNR 2005 applicable at the time that the agreement is concluded will apply, taking clause 2 paragraph 6 into consideration and unimpeded by that which is determined in clause 4 paragraph 2 of these general conditions.
- 4.4 All the data related to the knowledge or skills supplied by the Contractor's staff to this assignment recorded in written, digital or material form, are the property of the Contractor. They may not be used by the Client or made available to third parties without our written consent.

**Clause 5**

**Force majeure / interruptions**

- 5.1 In case of force majeure, the implementation of the agreement will be suspended for such length of time as the cause of the force majeure makes it impossible for the Contractor to implement same, without the Client or third parties being entitled to compensation.
- 5.2 In case of continuous force majeure, the Contractor has the right, without judiciary intervention, to terminate the agreement entirely or in part and the Client is bound to pay, in a reasonable relationship to the price for the entire delivery or assignment, for that portion of the agreement that has been carried out in the meanwhile, including the expenses incurred.
- 5.3 Force majeure, though not exclusively, is understood to be:
  - a. warfare, riots, floods or disasters, or extreme weather conditions;
  - b. obstructive measures taken by national and foreign public authorities, fire, sabotage, general strikes, transportation congestions, shortcomings by third parties in relation to – matters pertaining to the assignment granted by the Client to the Contractor – the purchase and/or contract agreements concluded by the Contractor with these third parties, which in all reasonableness cannot be considered to be for the Contractor's risk;
  - c. such changes in the circumstances that (further) compliance of the Contractor's obligation would be so inconvenient for the Contractor that same can reasonably not be expected from the Contractor;
  - d. the endangerment of the safety of the Contractor's employees, by whatever circumstances either.
- 5.4 Force majeure will further be understood to be defects in the equipment used by the Contractor in the implementation of the granted assignment despite the reasonably suitable measures taken by the Contractor to prevent such defects.
- 5.5 Additional work and delays due to interruptions through no fault of the Contractor, which include the renewed setting out of lost pickets, the placing of observation wells and / or the renewed collection of data, will be settled at the applicable rates.
- 5.6 If the work is carried out on a time basis then the Client bears the risk of time off due to unworkable weather.

**Clause 6**

**Transportation**

- 6.1 Supply and removal of survey equipment and measuring apparatus will be settled in accordance with that determined in the Contractor's quotation or job confirmation, on condition that the survey points are accessible with the generally used equipment.
- 6.2 If the reachability, accessibility and passability of the survey site is not possible for the generally used equipment and special measures have to be taken, then all expenses in that respect, so too for the waiting times, are for the account of the Client.

**Clause 7**

**Permits and the providing of details**

- 7.1 The Client guarantees the Contractor the timely obtaining and maintaining of all the permits, including those from the public authorities, which are required for the carrying out of activities and for the implementation in a normal manner, as well as permission for the use of access roads to the site.
- 7.2 The Client must provide the Contractor beforehand with qualitatively satisfactory drawings and other data with regard to the activities mentioned in the agreement.
- 7.3 All the consequences - penalties, damages and suchlike - as a result of or emanating from the (non-timeous presence)absence of the permits and data mentioned in clause 7 paragraphs 1 and 2, are for the account of the Client; this particularly applies to the costs of possible waiting times and extra transports.
- 7.4 On the basis of legislation pertaining to the Information of Subterranean Networks Act (Dutch acronym WION: *wet informatie ondergrondse netten*), the Client acting as the subterranean cable & piping contractor, will provide the data relevant to the presence and the proper positioning of cables and piping and subterranean infrastructure, at least 2 working days prior to the commencement of the implementation of the activities.
- 7.5 All the consequences caused by the non-functioning of the equipment made available by the Client or the incorrect implementation of (preparatory) activities by the Client, which includes, though not exclusively, the providing of proper and comprehensive details of the relevant assignment, are for the account of the Client.
- 7.6 For activities to or on the public roads system, tramlines and railway lines and in general the activities on property owned by or belonging to the government, the preceding paragraphs of this clause apply without prejudice.

**Clause 8**

**Obstacles**

- 8.1 If, during the implementation of the activities, obstacles appear to be found above, on or in the soil (even at greater depths) or unforeseen circumstances come about such as stones, strata, wood, cables, piping, pressurized water, soil gases and suchlike, the Contractor has the right to leave the survey point and to implement the activities anew in close proximity. The costs and possible consequential damages associated with this will be for the account of the Client.
- 8.2 If, during the execution of the borings or cone penetration tests, a danger of damage or loss of measuring devices comes about before the agreed depth is reached, the survey will be considered completed and settled at the agreed rates.
- 8.3 If obstacles or unforeseen circumstances cause consequential damage to or loss of the Contractor's equipment or apparatus or that which belongs to a third party engaged by the Contractor, then the Client is bound to compensate the Contractor for such damages or loss.
- 8.4 If the Client wants the activities to be continued, despite the obstacles or unforeseen circumstances, then all the costs, such as the removal of obstacles, waiting times and suchlike, will be for the account of the Client, as well as possible damages to and loss of apparatus and equipment.
- 8.5 Damages to cables, piping, plastic foil and paving is entirely for the account of the Client, unless the presence of such matters locally at the survey point has clearly been made known to the Contractor beforehand.

**Clause 9**

**Health, Safety, Environment (HSE)**

- 9.1 The Client already informs the Contractor in the quotation request stage about all the potential HSE risks present and possibly present which includes, though not exclusively, the possible contaminations in the substrate and necessary safety precautions related thereto, which are relevant for the Contractor's activities.
- 9.2 When the Contractor carries out the work on location then the Client must guarantee a safe working environment at all times and must ensure that prior to the commencement of the activities, the Contractor's employees are informed and instructed about all required safety precautions in accordance with the applicable laws and regulations.
- 9.3 For activities which are not directed towards the determining of possible contaminating substances, the Contractor maintains the right to leave the site when possible hazardous contamination is observed or there is a reasonable suspicion of its presence. All the expenses incurred until then as well as those for the possible cleaning of the materials, apparatus and equipment used by the Contractor must be reimbursed by the Client. Further damages as a result of those contaminations are likewise for the account and risk of the Client.

**Clause 10**

**Contractor's Personnel**

- 10.1 The Contractor himself determines which personnel will be deployed, both in respect of their skills as well as the number of people, unless it is agreed to otherwise for the assignment.
- 10.2 For activities at the Client's location and therefore under the Client's responsibility (secondment), during the period of work which is calculated from the time that the activities commence on location, the Client is permitted to replace personnel if it appears that such personnel do not possess the skills as described in the assignment. The non-compliance with the required skills does not dismiss the parties from their obligations as stipulated in the assignment. The Contractor is permitted to justifiably replace personnel, which will occur in consultation with the Client.
- 10.3 In deviation to that which is stipulated in 12.6 of the DNR 2005, in the case of a secondment, for the duration of the agreement as well as for the duration of 1 year after expiration of the agreement, the Client is not entitled, whether directly or indirectly, for himself or for others, to employ any employee involved in the Contractor's agreement or to allow work to be carried out for him subject specifically to written permission from the Contractor.
- 10.4 Contravention of the preceding paragraph by the Client means a forfeit of an immediately due penalty of twice the annual salary of the relevant employee, notwithstanding the Contractor's right to claim full indemnity.

**Clause 11**

**Delivery date**

- 11.1 The delivery periods provided for by the Contractor in the offer do not purport to be strict deadlines, unless otherwise agreed to. In cases of non-timely delivery the Contractor will be given notice of default in writing.

**Clause 12**

**Data**

- 12.1 Data will be reported by the Contractor in triplicate in writing, unless otherwise agreed to.
- 12.2 The costs for:

- a. digital reports,
  - b. extra reports,
  - c. storage of data and samples, including packaging required for this,
  - d. submission of data and samples,
- are for the account of the Client.
- 12.3 The submissions are made at the Client's risk.
- 12.4 Unless otherwise agreed to, the Contractor is not bound to store the data and/or samples after the Contractor has reported the data to the Client.

#### Clause 13

##### Interpretations and use of the survey results and reports

- 13.1 Should there be a difference of opinion in connection with the results of the agreement, then the Contractor is bound to conduct a survey at the expense of the party which is ruled against.
- 13.2 The Contractor does not guarantee the accuracy of conclusions and/or interpretations other than those reported by the Contractor, which the Client and/or third parties associate with the survey results and reports delivered by Contractor.
- 13.3 Where digital information relevant to the survey results and reports deviate from the Contractor's hardcopy, the data on the hardcopy will prevail.
- 13.4 Survey results and reports, particularly those relevant to the ancillary works, such as the levelling data, for example, may only be used by the Client in view of the objective for which it was composed according to the agreement.

#### Clause 14

##### Liability and indemnification

- 14.1 Insofar as is applicable to the Contractor's activities the DNR 2005 as mentioned above in clause 1.2, the liability pertaining to the law of obligations is regulated by the relevant stipulations in the DNR 2005 referred to, on the understanding in cases of conflict that the stipulations of these general terms and conditions ALV-VOTB-2009 will prevail.
- 14.2 For the rest, the Contractor only accepts liability pertaining to the law of obligations for the damages suffered by the Client if and insofar as these are covered by our liability insurance and up to the sum paid out by such insurance.
- 14.3 If the damages are not covered by insurance, or the insurance company does not pay out, then our liability, in deviation to the DNR 2005, is limited to a maximum of 100% of the invoice amount for our services and/or delivery excluding VAT up to a maximum of €50,000.00 and to a maximum of 50% of the invoice amount in excess of €50,000.00. If the work is carried out on a settlement of time basis e.g. for a secondment, this liability is limited to a maximum of €5,000.00.
- 14.4 In deviation to the preceding paragraphs of this clause the Contractor does not accept liability in the following cases:
- a. For damages which, according to general practice in this line of business, must be covered by a CAR (Construction All Risks) insurance policy to be taken out by the Client or the building contractor.
  - b. For the accuracy and/or completeness of information supplied by the Client or requested from third parties by the Contractor.
  - c. For activities carried out by personnel who are not employed by the Contractor, who are deployed for the implementation of the work on the Client's instruction.
  - d. For deviations in the survey data on digital information carriers supplied by the Contractor.
  - e. For damages as a result of materials and equipment left behind in the soil in the implementation of the assignment by the Contractor.
  - f. For damages caused, as a result of obstacles encountered, as meant in clause 8 of these terms and conditions, due to the failure and/or dysfunctioning of material and equipment used in the implementation of the assignment by the Contractor.
  - g. For damages to cables, piping, plastic foil, paving and similar facilities when the Client has remained in default of properly supplying the Contractor with the relevant data at least 2 working days prior to the commencement of the activities for the implementation of the assignment in conformity with the stipulations in clause 7.
  - h. For damages as a result of hazardous environmental contaminations released during the implementation of an assignment – other than in the determining of purported environmentally hazardous contaminations.
  - i. For damages caused by the outflows of liquid or gaseous substances from the soil, as a result of the implementation of the assignment.
  - j. For damages as a result of exceeding the delivery periods.
  - k. For damages as a result of reaching the survey points, which includes, though not exclusively, rutting.
  - l. For the accuracy of reported conclusions and/or interpretations other than those reported by the Contractor, which the Client or third parties associate with the survey results and reports delivered by the Contractor.
- 14.5 In cases of force majeure, as meant in clause 5, the Contractor does not accept liability pertaining to the law of obligations.
- 14.6 The Contractor is neither liable for indirect damages, which is understood to include consequential loss, loss of profits, missed savings/benefits and damages due to interruptions of operations.
- 14.7 Every liability of the Contractor expires after five years, calculated from the date of the final invoice of the agreement.
- 14.8 The limitations and/or exclusions included in this clause do not apply if the damages are as a consequence of an intentional act or gross negligence by the Contractor or his supervisory subordinates.
- 14.9 The Client is obliged to indemnify the Contractor and the Contractor's deployed employees concerning matters for the implementation of the assignment for claims pertaining to the law of obligations from third parties concerning matters for the implementation of the assignment, insofar as these claims are not covered by the insurance as meant in the first paragraph of this clause and/or the acceptance of liability as meant in the second paragraph of this clause.

#### Clause 15

##### Payment

- 15.1 Unless otherwise agreed to, after the contract has been granted, 25% of the total invoice amount will be charged by the Contractor on commencement of the assignment.
- 15.2 Unless emphatically otherwise agreed to, the invoices from the Contractor must be paid within 30 days after the invoice date.
- 15.3 On exceeding this term of payment the Client is in default and – without an order or notice of default being necessary – the Client must remunerate the Contractor at an interest rate of 1% per month or part thereof from the day of late payment to the day of payment.
- 15.4 Those who grant the Contractor an assignment, are jointly and severally liable towards the Contractor for all obligations emanating from the assignment, so too if the assignment has been granted on behalf of third parties.
- 15.5 All the costs, being both the legal as well as the out-of-court costs – the latter of which is fixed at a minimum of €100.00 or 10% of the total amount due plus interest – which relate to the collecting and recovery of unpaid or late payment dues, are for the account of the Client.

- 15.6 In the case of cancellation of the agreement the Client must indemnify the Contractor with 10% plus the VAT of the amount due to be charged by the Contractor as a result of the assignment, notwithstanding the Contractor's rights to further indemnification if a reason exists thereto.
- 15.7 In the event that the Client terminates the agreement early, the Client is obliged to reimburse the activities and expenses incurred by the Contractor, notwithstanding his obligation to pay the indemnification of 10% and the rights to further indemnification as mentioned in clause 15 paragraph 5.
- 15.8 Negligence in the payment gives the Contractor the right, after a proper letter of demand, to cancel current agreements or if required to suspend same until payment has taken place, notwithstanding the Contractor's right to compensation for damages if there are grounds for this.
- 15.9 The Contractor is always entitled to request an interim guarantee for the payments to be carried out by the Client. If the Client remains in default to provide such guarantee within the period set, then the Contractor has the right without notice of default to terminate the agreement for the non-implemented portion without lawful intervention – notwithstanding the Contractor's rights to payment of the implemented portion and to compensation – or to suspend the further implementation of existing agreements until payment has taken place and to demand payment in advance for the further implementation.

#### Clause 16

##### Applicable law

- 16.1 Dutch law and these general terms and conditions are applicable to all agreements concluded by the Contractor, so too when the implementation of the activities take place outside the Netherlands.
- 16.2 That which is determined in clause 16 paragraph 1 is also applicable if the Client is established outside the Netherlands.

#### Clause 17

##### Disputes

- 17.1 Insofar as the DNR 2005 is applicable to the Contractor's activities, disputes will be treated in accordance with the procedure stipulated in the DNR 2005, as is relevant at the time that the assignment is granted.
- 17.2 For activities which do not fall under the DNR 2005, the Contractor and the Client, are authorized to subject all disputes and claims which have come about as a result of an agreement between the Contractor and the Client, or as a result of agreements emanating therefrom, to a judgement by a court of competent jurisdiction or to a judgement by an arbitration tribunal, in accordance with the statutes and regulations of the Arbitration Board for the Building Industry in the Netherlands, which arbitration tribunal will render a decision taking the statutes and regulations of such Arbitration Board into consideration.
- 17.3 If one of the parties has brought legal action before one of the institutions mentioned in clause 17 paragraph 2 the respondent party loses the right to opt for the other institution for the trial of the relevant dispute.

#### Additional stipulations regarding supervisory activities

##### 1. General

- 1.1 The supervisor made available by the Contractor acts on behalf of, under the responsibility of and on commission for the Client and his authorized representative.
- 1.2 The Client provides the supervisor with adequate instructions enabling him to carry out the assigned activities properly.
- 1.3 If it is evident in the report from the supervisor to the Client that during the activities there have been deviations from the instructions provided by the Client or from the applicable building regulations, the Client must take measures to alter these instructions or regulations or to bring about a concurrence in the activities to be carried out. If the client cannot or does not want to comply with that which is stated above then the Contractor is entitled to withdraw his supervisory personnel from the relevant project without the Client deriving entitlement to any damages. In that case the Contractor will notify the Client in writing that the activities have been terminated as well as the reasons that led to it, and thus maintains the right to charge the Client for the supervisory days not worked.
- 1.4 The Contractor is entitled to exchange supervisors during the activities on a project, unless otherwise agreed to, or unless the work is of such a short duration – less than a working week – that exchange will cause an inconvenience for the relevant work. The required time for the handing over of the duties is not for the account of the Client.

##### 2. Duration of the work; starting time

- 2.1. For activities which start later than finally agreed with the Client, or which are temporarily interrupted through no fault of the Contractor, the time not actually worked will be settled at the applicable rates, unless it is agreed to in advance that the abovementioned regulation is excluded. For work interruptions longer than 2 days, the first 2 days will be charged on at the applicable rates. For the following days a satisfactory solution for both parties will be sought in consultation with the Client. Work interruptions are understood to include cases of time lost through frost, impassable terrains, etc.
- 2.2. Additional work and activities that take longer through no fault of the Contractor will be settled at the applicable rates. To this end as much cooperation as possible will be given by the Contractor to keep the supervisory personnel engaged on the project.
- 2.3. The working hours of the supervisor will run simultaneously to the working hours maintained on the job. The Client hereby commits himself to inform the supervisor timeously about the working hours to be maintained and when and why possible temporary deviations may or must occur. Unless otherwise agreed to, the activities for which the supervision is required may not take place in the absence of the supervisor.
- 2.4. The settlement of the supervisory activities will take place on the basis of the applicable normal working hours (number of hours per working week) of the Contractor at the time that the activities commence. Overtime hours will be settled separately, based on the number of hours per working week.

##### 3. Facilities

- 3.1 Unless it has been agreed to beforehand that the following regulation is excluded, the Client must provide an accommodation – site office – on site for the carrying out of the necessary administration.
- 3.2 The Client must ensure that the following facilities are made available: a telephone connection, sanitary facilities and the supply of coffee and/or tea in the accommodation, unless otherwise agreed to.

##### 4. Reports

- 4.1 The supervisor is obliged to report all the relevant operation details to the Contractor and the Client. The reporting by the supervisor is made directly to the Client or to a person or institution appointed by the Client.
- 4.2 After consultation with and permission from the Client the supervisor can gain advice from the Contractor's consultancy departments regarding technical problems. The activities involved here are not included in the normal day rates of the supervisor and will therefore be settled on the basis of the relevant consultancy department rates applicable at that time.