



General terms and conditions for foundation works EFFC 2021

Clause 1. PELSC

1.1 By declaring these general terms and conditions applicable, the Principles of European Law on Service Contracts (PELSC) also apply, whereby the contracted party shall be deemed to be the constructor in accordance with and in the meaning of art. 2:101 PELSC and the work contracted by the contractor as the construction / structure in accordance with and in the meaning of art. 2:101 and 2:102 PELSC.

1.2 In the event of a conflict between these general terms and conditions and the PELSC, these general terms and conditions prevail.

Clause 2. Formation and content of the agreement

2.1 The agreement is formed by the acceptance of the offer of the contractor or by a written agreement. If the exactness of a written confirmation of a verbal assignment has not been disputed in writing within eight working days after receipt by the client, the parties are bound to it.

~~2.2 Unless otherwise agreed, the drawings, technical specifications and conditions of the principal of the client do not apply;~~

~~2.23 All work not specifically referred to in the agreement, does not form part of the agreement. The agreement covers the work specified in this agreement only.~~

2.34 Unless otherwise agreed, the following activities and costs are in any event for the account of the client; - value added tax (VAT) or similar national tax.

- ~~Provision of a properly designed, built and maintained working platform for the safe operation of piling rigs and equipment;~~
- taking all necessary traffic control measures, obtaining any permits and payment of sufferance rights on encroachments in, on or above public land;
- insurance premiums;
- connection costs, disconnection costs and usage costs of gas, water and electricity;
- inspection of building material, equipment and tools at the request of the client (the costs of these inspections are for the account of the client);
- carrying out soil-related surveys including, but not limited to, geotechnical surveys and environmental surveys;
- making calculations and drawings;
- (height) measurements, measuring work as well as the monitoring and maintenance of such during execution;
- required excavation, demolition, cutting, shoring and repair work to constructions;
- welding and burning work;
- levelling of pile heads, walls, barriers and massifs with soil improvement;

Met opmerkingen [CJ1]: Why do we specify that they do not apply? Should we say which drawings etc do apply to be clearer?

Met opmerkingen [GU2R1]: generally speaking, i agree. Client or principal drawings will depend on who is doing the engineering/design of the foundations.

Met opmerkingen [CJ3]: Should this be: The agreement covers the work specified in this agreement only.

Met opmerkingen [GU4R3]: Ok. the principle is the same but we can reverse the sentence and make reference to the scope of work.

- carrying out all soil and drainage works and the installation of auxiliary structures required for the stabilisation of other construction and the surrounding area;
- the removal of all obstacles in, on and above the ground which could impede the execution of the work or cause damage;
- ~~making the proper choices in the design phase in accordance with the occupational hygiene strategy when determining the foundation engineering option~~ the design of the works under this contract unless the design is part of the scope of works under the contract;
- the arrangements made or measures taken to prevent noise nuisance, nuisance or damage to the environment, adjacent premises, installations, information carriers, cables, ducts and road surfaces;
- client fees;
- pile-driving supervision, calendaring, test-loading, taking acoustic measurements and making/testing drilling cores;
- fencing and surveillance of the building site;
- providing (waste) containers and the landfill costs;
- a Permit to Dig or similar authorisation on a daily basis or as otherwise agreed marking the exact location of remaining overhead or underground of all live or disused pipes, cables or the like to prevent the entry of concrete, grout, slurry or drilling fluids during construction.
- making available site huts for breaks and sanitation in accordance with working conditions legislation
 - drawing up quality, safety and inspection plans.
- control or diversion of footpaths, road, rail or water borne traffic, including all necessary arrangements and payment of charges in connection with any road closures, lane rental and/or suspension of parking bays, rail possessions and the like.
- provision of site security to safeguard plant, equipment, materials and the contractor works.
- provision of internet access (Wifi) and designated areas for mobile phones. - manned wheel-cleaning facilities and/or road-cleaning, as necessary.

Met opmerkingen [CJ5]: Should we remove this and simply state that they are responsible for the geotechnical engineering option chosen? Or does this have a specific implication?

Met opmerkingen [GU6R5]: we can simply say that the client is responsible for the design of the works under this contract.

Clause 3 Risk regulation, offers

3.1 The prices referred to in the offer are based on the taxes, levies, wages, social insurance costs, material and raw material prices and other costs in force on the day of the offer. If, after the date of the offer, one or more of these cost categories undergo or have undergone a change, the contractor is entitled to change the agreed price as a result.

3.2 If the contractor has stated unit prices, these prices only apply insofar as the work is completed unchanged and the activities can be carried out unchanged. If the manner of execution changes, the unit prices will be reconsidered.

Clause 4. Obligations of the client

4.1 The client shall adequately inform the contractor of the specification elements, pile plans and other documents and knowledge the client possesses which are relevant for the execution of the work, whether or not originating from the principal. If said documents are fully or partially part of the agreement, in case of any conflict between these general terms and conditions and said documents, these general terms and conditions prevail. The client guarantees the accuracy and completeness of the information it has provided.

4.2 The client ensures that the contractor has timely access to geotechnical and hydrological information, information on soil contamination, old building materials emerging from the work and the building material made available by the client, information on the structural condition of adjacent premises as well as changes of work and/or site circumstances which the client was, or should have been aware of, in advance,

Met opmerkingen [CJ7]: Is this clause in conflict with the one above that says that the drawings etc do not apply?

Met opmerkingen [GU8R7]: it is similar but it refers to different information / documents. we could merge the clauses in one that covers all.

the above information being relevant to or affecting the price of the work. The client guarantees the accuracy and completeness of the information it has provided.

- 4.3 The client guarantees the orders and directions which the principal gives directly to the contractor.
- 4.4 If construction meetings are held between the principal and the client without the contractor being present, the client must inform the contractor regarding the issues discussed in the meeting insofar as they relate to the work assigned to the contractor. In that event, the client shall provide the contractor with a copy of the relevant passages from the construction meeting minutes.
- 4.5 The client ensures that the contractor has the approvals and permits required for the work in good time before the commencement of the activities. The client makes the required payments of levies and fees which may be due for the use of the site or for the execution of the foundation work.
- 4.6 The client makes health and safety facilities available in order to meet the applicable legislation and regulations.
- 4.7 The client shall take all the required provisions to prevent nuisance to the surrounding area, damage to adjacent premises and the environment.
- 4.8 The client is responsible for the order of the activities to be carried out prescribed by or on behalf of the client, prescribed pile systems or sheet piling profiles and foundation engineering, including the influence on such which may be exerted by the soil condition or due to hydrological causes, the condition and the location of cables, ducts and constructions or obstacles in the subsoil, omitted or incorrectly provided information which the client was obliged to provide pursuant to the agreement as well as the orders and directions given by or on its behalf.
- 4.9 The client guarantees the complete suitability of the building material it has prescribed and for building material which must be purchased from a supplier it has nominated, unless the contractor had the freedom of choice in relation to this building material.

Clause 5. Working Platform and area

- 5.1 The client is responsible for the proper practicability and access of the building site, or in the event of water works, for the navigability to and from the working area, for the transport of equipment, materials and personnel. The costs of any required facilities to make the site reachable and suitable for execution of the activities by the contractor are for the account of the client.
- 5.2 Design, installation, maintenance, regular inspection, repair and subsequent removal and exclusive use of free draining Working Platform, safe for pedestrian access and in accordance with the requirements of the attached Guidance, Regular Inspection Log and Working Platform Certificate. A signed copy of which must be provided to the contractor prior to the contractor's commencement. The design(s) shall include for all piling rigs, ancillary plant and equipment and wheeled transport including articulated and ready mixed concrete lorries and the checking of any retained structures which support the Working Platform. Where it is not possible for the contractor to have exclusive use of the Working Platform, the contractor's agreement to any other activities to be carried out concurrently must be obtained before they are commenced.
- 5.3 The client is responsible for the removal, in advance, of obstacles located above ground on the surface area which negatively affect the work of the contractor or the quality of the work or may cause damage to such.

- 5.4 The client ensures that there is sufficient space around the location of the activities by the contractor and its equipment, including sufficient space for the protection of adjacent works and the property of third parties. If necessary, a minimum required clearance is agreed.
- 5.5 The client is responsible for providing adequate parking facilities for the contractor, its subcontractor and employees, free of charge for the contractor.
- 5.6 The client is responsible for the construction and maintenance of suitable access routes from the public road to the building site and the storage area.
- 5.7 The client is responsible for adequate overall lighting and direct lighting of the building site to enable safe working conditions and safe entry and exit, and to facilitate the execution of the work of the contractor.
- 5.8 The client is responsible for the supply of sufficient electricity and water at the work and at the site where the activities are carried out.
- 5.9 The client is responsible for the control or rerouting of any road, train or shipping traffic and for placing, maintaining and removing all necessary traffic signs and for other traffic control measures.
- 5.10 The client is responsible for site huts for breaks and sanitation (also) on behalf of the contractor in accordance with the Working Conditions Act.
- 5.11 The client must make appropriate and efficient rescue equipment permanently available and maintain this equipment, including lifeboats and navigators where required.
- 5.12 The contractor is entitled to fence off its work by means of fencing. Where the work is fenced off, only the contractor is authorised to have access.
- 5.13 The contractor is entitled to reimbursement of costs and/or a term extension if the execution of the work by the contractor is delayed or the contractor suffers loss in any other way because the client fails to comply with its obligations pursuant to this clause, unless the costs and/or delay are due to a circumstance which can be attributed to the contractor.
- 5.14 Protection of the works where taken over by other trades or contractors or where the contractor has left site, whichever occurs first. Backfilling of an empty bore/panel excavation with a suitable material which will not obstruct or be deleterious to the works but which will ensure the stability of the contractor works and will maintain compliance with items 5.1, 5.2 and 5.4.

Clause 6. Soil

- 6.1 The client is responsible before the commencement of the project by the contractor for the advance removal of underground obstacles that may negatively affect or damage the work of the contractor or the quality of the work. The client is responsible for the removal of obstacles (whether or not created by people) - including archaeological objects - that are discovered during the execution of the work.
- 6.2 The client is responsible for an adequate facility for the removal of, the packaging of, or the protection against poisonous or harmful materials found in the soil. If during the execution of the work, the contractor has to take safety measures in connection with the discovery of items or substances, the obligations or costs arising as a result are reimbursed to the contractor as additional work.

6.3 The client is responsible for clear and substantive setting out, marking or exposing on site the exact location of existing underground and overhead works and services and providing a drawing on which their positions in line and level are accurately plotted relative to the contractor's works. Adequate protection, diversion or removal of such works or services in order to prevent damage from the contractor's operations. The location and plugging off of all disused pipes or ducts in order to prevent the entry of concrete, grout or drilling fluids during construction.

6.4 The client is responsible during the project for the prior removal of overhead, surface or underground obstructions which may affect or impede the contractor's operations or quality of the works and backfilling of excavations and voids with a suitable material which will not obstruct or be deleterious to the works but will ensure the stability of the contractor's plant. Also removal of unexpected man made obstructions, including archaeological items and reimbursement of additional costs, including delays, to the contractor works.

6.5 The contractor is entitled to reimbursement of costs and/or a term extension if the execution of the work by the contractor is delayed or the contractor suffers loss in any other way because the client fails to comply with its obligations pursuant to this clause, unless the costs and/or delay are due to a circumstance which can be attributed to the contractor.

Clause 7. Commencement of the work; duration of the execution

7.1 The client shall prepare a realistic schedule in consultation with the contractor.

7.2 The client must, in consultation with the contractor, make the construction site available on the first day of the agreed week. It is determined in consultation between the parties on which day in the agreed week the work commences.

7.3 If it is not possible for the contractor to commence its work in the agreed week, the client shall notify the contractor as soon as possible, but at the latest two weeks before commencement, or so many days as agreed by the parties, before the agreed commencement date.

7.4 If the work cannot commence in the agreed week due to the actions of the client, a new commencement week must be agreed with the contractor which fits in with the schedule of the contractor.

7.5 If the commencement or progress of the work assigned to the contractor is delayed by force majeure, by circumstances attributable to the client or by an amendment in the agreement or the conditions of the execution, the loss arising from this for the contractor shall be compensated by the client.

7.6 The client shall compensate the contractor for the business interruption costs, trading loss and consequential loss suffered by the contractor as a result of the client, or a third party, failing to carry out the work and/or deliveries properly, in full and on time, or other circumstances which are for the account of the client.

7.7 Force majeure includes: any independent cause beyond the will and/or control of the contractor which is not at its risk and as a result of which the contractor is prevented from complying with its obligations. Force majeure includes in any event: abnormally high or low water levels, floating ice, unworkable weather, industrial action, riot, wilful damage and delay in the work and deliveries to be carried out by the client and/or third parties, outside the responsibility of the contractor.

7.8 If due to changed circumstances, force majeure, a public health emergency or suspension of the work the contractor is impeded in the performance, or full performance, of the agreement, it is entitled to amend the

Met opmerkingen [CJ9]: Do we need to introduce a pandemic or public health emergency clause to make it explicit that these

Met opmerkingen [GU10R9]: yes we can add them among the events

performance of the agreement. The contractor shall then take the justified interests of the client into account.

7.9 An amended performance as a result of circumstances referred to in clause 7.8 shall be settled as contract variations.

Clause 8. Insurance

8.1 The client insures the work from the start of the work up to and including the end of the maintenance term, if agreed, or at any rate up to and including the delivery, by means of a CAR insurance, against all material damage, loss or destruction, due to whatever cause, ~~replacing Article 951 and insofar as necessary Article 932 Book 7 of the Dutch Civil Code~~, for such an amount that the costs of clearing up, repair or replacement of all that is damaged or lost can be paid. This CAR insurance must be primary, meaning that it prevails over other insurances.

Met opmerkingen [CJ11]: Are these too country specific? Do we need to spell out CAR insurance, or is it well enough understood?

Met opmerkingen [GU12R11]: To be deleted reference to Dutch. civil code

8.2 The CAR policy shall state that in any case of damage, the pay-out of the insurance money shall be made to the party who owns the goods. Deductions relating to excess can never be more than 1% of the contract sum per event for the contractor. The client shall not offset any claims against the contract price of the contractor.

8.3 The insurance covers in any event:

- the loss which arises as a result of the loss and/or material damage of (part of) the work, as well as all accompanying work, additional work, changes, all materials and building materials, structures and parts destined for the work, and in addition all temporary and/or auxiliary works, auxiliary materials and other objects to be used for the benefit of the work.
- liability for loss which is the result of, or relates to, the execution of the work on the building site and/or its direct environment, including damage caused by work equipment subject to the ~~Motor~~ liability insurance.
- material damage to and/or loss of property of the principal, caused by the work;

Met opmerkingen [CJ13]: I'm unfamiliar with this – is this the machinery manufacturer's warranty or something else. Is this saying that the CAR insurance is to cover everything, even though some elements should be covered by other forms of insurance?

8.4 The client shall ensure that the CAR insurance does not include in an in-the-ground-formed-piles and/or ~~sheet piling clause or any clause that excludes the works covered by this contract~~.

Met opmerkingen [GU14R13]: not sure if some events can be of interest of both insurances. i am not an expert on that.

8.5 The client shall stipulate that in the policy all the parties involved in the work and their employees shall be considered to be third parties towards each other.

Met opmerkingen [CJ15]: Do we need to add "excluding these works from the insurance coverage"

8.6 Without prejudice to the responsibility of the client to comply with the obligations of this clause, the client is obliged to submit the policy, the general policy conditions and the clauses before the commencement of the work. At the request of the contractor, the client is also obliged to demonstrate that there is actual cover.

Met opmerkingen [GU16R15]: yes. we need to clarify that those are exclusions we do not want applied.

8.7 Without prejudice to the provisions in clause 8.1, the client, in whatever capacity, and/or its employees shall never be deemed to be co-insured under the insurance policies of the contractor.

8.8 The client indemnifies the contractor against claims for compensation for which the CAR insurance does not entitle to an insurance benefit as a result of the failures by the client in the obligations on the basis of this clause.

Clause 9. Liability of the parties

- 9.1 If the contractor does not comply with its obligations and the client therefore declares the contractor to be in default, the notice of default shall be in writing and the client shall give the contractor a reasonable term to as yet comply with its obligations.
- 9.2 The contractor does not accept liability for:
- a. misplacement of piles and (sheet) piling, unless demonstrably caused by gross negligence and this has been notified by the client in writing on time;
 - b. damage caused to underground cables, pipes or ducts, culverts, sewers and such like, unless the client has sufficiently informed the contractor by means of drawings of their location and this location corresponds with the provided information;
 - c. loss as a result of errors in the design, unless the agreement expressly shows that the contractor is liable for the design of the complete works or for that part in which the error has occurred.
- 9.3 The obligation of the contractor to pay compensation, on whatever basis, is at all times limited to the amount of the contract price.
- 9.4 Without prejudice to the provisions in clause 9.3, the obligation of the contractor to pay compensation is limited to the amount to which it is entitled on the basis of the Construction All Risk (CAR) insurance, Motor liability insurance or public liability insurance taken out by or (partly) for the benefit of the contractor.
- 9.5 If, for whatever reason, the insurances as referred to in clause 9.4 in respect of loss for which the contractor is held liable, do not entitle to a benefit, the total liability of the contractor for losses, damages or costs of any kind shall be finally limited to 10% of the contract value or € 225,000.00 whichever is the lower and our total liability in respect of delay shall be limited to 5% of the contract value or € 25,000.00 whichever is the lower.
- 9.6 If the circumstances as referred to in clause 9.5 occur, the damage to the work, which at least includes the equipment, temporarily constructions, building materials, is deemed to come for the account of the client, unless the damage can be attributed to the contractor.
- 9.7 If the circumstances as referred to in clause 9.5 occur, the contractor does not accept liability for damage to the works of the client connected to the work or to other works and property of the client or third parties, unless the damage has been caused by the execution of the work and is due to an intentional act or gross negligence of the contractor, its personnel, its subcontractors or its suppliers.
- 9.8 The client indemnifies the contractor against all claims by third parties for loss for which the contractor pursuant to the agreement between the client and the contractor is not liable.

Clause 10. Delivery

- 10.1 The contractor shall notify the client if it considers the work to be ready. A submitted final instalment or a final invoice are considered to be a notice of completion for the work carried out.
- 10.2 Following the notice of completion, the client shall inspect the work and subsequently notify the contractor whether or not the work is approved, possibly stating the items on the delivery points still to be remedied.
- 10.3 The work is deemed delivered if it is approved by the client or if the client has failed to make known in writing that it disapproves the work within fourteen days after the day on which the work in accordance with the completion notice of the contractor was ready. The work is also deemed delivered if it is taken into use by the client, which also includes the carrying out of further works to the work by the client.

10.4 The day of delivery is the day on which the work was ready according to the contractor's completion notice, provided that the work can subsequently be deemed as delivered in accordance with clause 10.3.

Clause 11. Retention of title

11.1 As long as the client has not made full payment in respect of the agreement, the delivered materials remain for the account and at the risk of the client and, either processed or unprocessed, the property of the contractor.

11.2 This retention of title also covers the materials already paid for by the client if and, insofar other materials, also those later delivered, remain unpaid by the client.

Clause 12. Disputes

12.1 Unless otherwise stipulated by the parties in the agreement, all disputes - including those only considered to be such by one of the parties - as a result of the agreement or of agreements resulting from such between the client and the contractor are resolved by arbitration in accordance with an International Chamber of Commerce as applicable on the day of the contract award or contract confirmation.

12.2 Instead of relying on the dispute resolution as set out in clause 12.1, the contractor is entitled submit a dispute to the competent court in the district of the contractor.

12.3 If a clause in these conditions is declared void or unreasonably onerous, either wholly or in part, by any court or arbiter, ~~it is deemed to have been converted into a clause which, whilst maintaining the content and purport of such as far as possible, cannot be classified as such.~~ This will not affect the other clauses of the contract.

Met opmerkingen [CJ17]: I don't understand what this is saying. If a clause is ruled unreasonable by a court or arbiter – what happens next?

Met opmerkingen [GU18R17]: it is assumed that the judge or arbiter shall then apply a principle as the clause void is replaced by one compliant with the laws.
never had experience on this even if the clause is not unusual.
To make it more easy we can revise stating that in case a clause is declared void, this will not affect the rest of the contract.

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