

GENERAL CONDITIONS FOR HIRING PERSONNEL

Laid down by decree of the State Secretary for Defence
dated 3 august 1999 no. M99004041

SHORT TERM:

AVIP 1999

General Conditions for Hiring Personnel (AVIP), applicable in cases in which the contractor, pursuant to a commission contract, performs services for or places personnel at the disposal of the State of the Netherlands, represented by the Minister of Defence, acting as the principal.

Article 1. APPLICABLE PROVISIONS

- 1.1. Dutch law is the applicable law.
- 1.2. The statutory provisions apply unless the AVIP deviate therefrom.
- 1.3. The AVIP shall apply in full except as otherwise agreed in writing.
- 1.4. The application of any general conditions used by the contractor is expressly rejected.

Article 2. TENDERS

- 2.1. In case of a call for tenders, any contractor wishing to send in a tender must enclose his tender form in the envelope which the principal has sent to him for this purpose and deliver it or cause it to be delivered at the address printed on this envelope no later than the closing date of the tender and without cost to the principal. Contractors may use other envelopes, provided that the envelope furnished to them is attached thereto.
- 2.2. The principal shall not open the envelopes containing the tender forms until after the closing date of the tender.
- 2.3. Tender forms which have not been delivered to the principal by the closing date of the tender at the latest are invalid, unless the principal decides otherwise on the ground of special circumstances.

Article 3. OFFERS

The contractor's offer shall state a fixed price in accordance with ARTICLE 22 - THE PRICE, unless the principal's invitation to Tender expressly requested quotation of a fixed price per hour, or a price subject to price adjustment in accordance with ARTICLE 23 - PRICE ADJUSTMENTS.

Article 4. VALIDITY OF OFFERS AND CONCLUSION OF THE CONTRACT

- 4.1. Offers from contractors shall be irrevocable for a period of thirty days after reaching the principal, unless the invitation to Tender stipulates a different term of validity. In the event of a call for tenders the period shall commence on the closing date of the tender.
- 4.2. The conclusion of the contract shall be effected through the principal accepting a written offer from the contractor by means of a written order. If, however, the order is dispatched after the expiry of the period referred to in paragraph 1 or if the order deviates from the offer on points of more than minor significance, then a contract shall be effected in accordance with the order unless the order is rejected by the contractor within fourteen days, of the date thereof.
- 4.3. If the contractor has not submitted an offer or if he has made an offer verbally, a contract shall come into being through the contractor accepting, in writing, a written order from the principal within fourteen days of the date of the order.
- 4.4. Modifications of the contract shall be valid only if made in writing.

Article 5. CONTRACTOR'S ACQUAINTANCE WITH THE CONTENT OF THE CONTRACT

The contractor has sufficiently informed himself with the objectives of the principal pertaining to the contract and the relevant organisation of the principal.

To this end, the principal has supplied the contractor with sufficient and correct information and shall - on the written request of the contractor - provide further information to the contractor as far as this information is available to the principal.

Article 6. ASSIGNMENT OF CONTRACTOR'S OBLIGATIONS OR LEGAL RELATIONSHIP

The contractor's obligations under the contract or his legal relationship with the principal may be assigned to a third party only with the prior written consent of the principal. Such consent may be subject to conditions.

Article 7. PERFORMANCE OF SERVICES BY THIRD PARTIES

- 7.1. The contractor may subcontract the execution of work to third parties only with the principal's prior written consent.
- 7.2. The principal's consent to subcontract the execution of work to third parties shall not affect the contractor's full responsibility for the performance of the contract.
- 7.3. The consent referred to in paragraphs 1 and 2 may be subject to conditions. To the extent that such conditions concern third parties, the contractor shall stipulate the same conditions vis-à-vis such third parties on behalf of the principal.

Article 8. PERSONNEL AND PERFORMANCE

- 8.1. Unless agreed otherwise, the contractor shall place personnel at the principal's disposal at his written request for a period to be agreed in mutual consultation.
- 8.2. Unless further requirements have been made, the personnel must at least be capable of performing the contract, and fit within the team to which they are assigned.
- 8.3. In the event that the principal has entered into the contract regarding its performance by a specific person, the contractor shall ensure that the contract shall be performed by that person.
- 8.4. The contractor shall not replace personnel, unless there are compelling reasons for doing so. This is subject to the prior written consent of the principal.
- 8.5. The principal shall employ personnel having been placed at his disposal outside the Netherlands only after having notified the contractor to this effect.
- 8.6. If, in the judgment of the principal, the proper performance of the contract requires that personnel be replaced, the contractor shall see to this at the request of the principal. The previous paragraphs of this article shall apply mutatis mutandis.

Article 9. DEMANDS TO BE IMPOSED ON SERVICES

Insofar as the performance of the personnel made available by the contractor has not been specified, this shall in any case meet the reasonable expectations to which the principal is entitled, be of good quality and satisfy the customary standards of craftsmanship as a minimum requirement.

Article 10. WORKING CONDITIONS

- 10.1. The contractor shall ensure that the personnel provided by the contractor are familiar with the principal's regulations in respect of working conditions.
- 10.2. The contractor is responsible for his personnel observing the current regulations in respect of working conditions.
- 10.3. The contractor is obliged to inform the principal of any circumstance in violation of the current regulations in respect of working conditions.
- 10.4. The contractor shall indemnify the principal against any damage resulting from the contractor or his personnel failing to observe the current principal's regulations in respect of working conditions or the failure to report any violations thereof in due time.

Article 11. MATERIALS AND TOOLS/PROVISION OF GOODS BY THE PRINCIPAL

- 11.1. If clothing, materials or tools are required in connection with the execution of the services, the principal shall take care of this, unless otherwise agreed.
- 11.2. If it has been agreed that the contractor shall take care of the goods referred to in paragraph 11.1, the principal is authorised to inspect and test those goods. Such an inspection or test, or their omission, does not affect the responsibility of the contractor pertaining to the execution of the services or the compliance with statutory provisions.
- 11.3. If the principal provides the personnel of the contractor with any goods, the contractor undertakes that these goods be used and maintained in accordance with the instructions.
- 11.4. If any goods are placed at the disposal of the contractor by the principal, they shall be at the risk of the contractor from that moment onwards until such time as they have been

returned to the agreed place. The contractor is liable for reliable and efficient storage and safekeeping of these goods.

11.5. The contractor is entitled to store his materials and tools on the principal's premises subject to the principal's judgment as to whether this is required. The risk for the goods stored by the contractor on the principal's premises shall remain at the contractor, and he indemnifies the principal against all claims with respect to these goods.

Article 12. ORDER AND SECURITY

12.1. The contract and the performance of the contract come under the General Security Requirements relating to Defence Orders (ABDO).

12.2. The contractor shall ensure that his personnel observe the directives and instructions pertaining to order and security issued by or on behalf of the principal.

12.3. In the framework of the performance of the contract the principal is entitled to deny personnel employed by the contractor access to the principal's premises, if cooperation with an inspection of the nature of the goods they carry with them is being refused. Such a denial of access does not affect contractor's responsibility for the performance of the contract.

12.4. The contractor shall ensure that on each day that services are being executed on the principal's premises his personnel checks in and out with the authorised official.

12.5. The contractor shall ensure that his presence on the principal's premises and that of the personnel employed by him do not interfere with the principal's operational management, unless agreed otherwise.

Article 13. PLANNING OF WORK AND REPORTING

13.1. If the principal so requires, the contractor, before commencing work, shall submit a written planning pertaining to the execution of the services, based on the current working hours of the principal.

13.2. The plan is valid only after it has been approved by or on behalf of the principal. The approval of the plan does not affect the responsibility of the contractor for the performance of the contract.

13.3. The contractor and the principal shall consult with each other on the work progress as often as either party desires. At the request of the principal, the contractor shall provide the principal with a written report on the progress of work.

Article 14. WORKING HOURS

14.1. The working days and working hours are identical to the working days and working hours which are customary with the principal at the work location in question (for Defence personnel with a comparable task). If the principal so requires, the personnel of the contractor shall use a time card, badge or another registration system.

14.2. Overtime applies when work is done outside working days and working hours as referred to in paragraph 14.1. Work conducted immediately following the working hours defined in paragraph 14.1, which does not exceed thirty minutes, is not regarded as overtime. Personnel shall only work overtime if it has been explicitly agreed upon.

Article 15. INTELLECTUAL PROPERTY RIGHTS

15.1. All intellectual property rights, which can or will be exercised with regard to the results of the work, rest with the principal. These rights are herewith transferred by the contractor to the principal, which transfer of rights shall be accepted upon these rights arising now for then by the principal. Insofar as a further deed of transfer is required for the transfer of these rights, the contractor shall cooperate on first demand by the principal with the transfer of such rights, without being entitled to setting any further conditions. Any possible costs related to establishing certain intellectual property rights (for instance a patent) are borne by the principal. The principal is irrevocably authorised by the contractor to enter the transfer of these intellectual property rights in the relevant registers.

15.2. In the event of any disputes arising between the parties with respect to the intellectual property rights, they shall be deemed to rest with the principal, unless the contrary is proven by the contractor.

15.3. The contractor undertakes not to make the work results available to third parties in any form whatsoever, nor to divulge any information to third parties, unless the principal has given written permission to do so. The principal is entitled to attach conditions to granting said permission.

15.4. The contractor indemnifies the principal from claims by third parties pertaining to (possible) infringement of intellectual property rights of these third parties in connection with the services to be provided by the contractor. The contractor gives an undertaking that he will take all measures at his own expense which may help to avoid a standstill in the principal's activities and to limit the extra expense to be incurred and/or the damage to be suffered by the principal

Article 16. EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND PERSONNEL

16.1. The contractor shall ensure that, on first demand by the principal, the personnel involved in performance of the contract can submit a document signed by the contractor as proof of their being employed by the contractor.

16.2. If the contractor intends to call in personnel not employed by him in the framework of the performance of the contract, he shall inform the principal of this. The principal is entitled to refuse these personnel. If the principal does not object, the contractor shall ensure that the personnel concerned are in possession of a signed document showing by whom they are employed as such.

16.3. The contractor indemnifies the principal against claims from the personnel made available by the contractor in respect of the inception of an employment relation with the principal.

Article 17. LICENCES

17.1. If the contractor is under a public-law obligation to be in possession of a licence pertaining to the performance of the contract, he is obliged to inform the principal to this effect and to submit a copy of the licence to the principal prior to performing the contract. The contractor undertakes to do everything that is necessary to ensure that he retains the licence. The contractor is obliged to inform the principal of any changes in connection with this licence. He shall notify the principal of any actions that may result in acting in contravention of the said public-law obligation.

17.2. If the personnel who are employed in the framework of the performance of the contract are under an obligation to be in possession of a licence pursuant to a public-law regulation, the contractor is obliged to inform the principal to this effect and to submit a copy of the licence to the principal prior to the performance of the contract. The contractor undertakes that everything is done to ensure that the licence is retained. The contractor shall not make available personnel who are not (any longer) in possession of a licence. He shall notify the principal of any actions that may result in acting in contravention of the said public-law regulation.

17.3. If the principal, pursuant to a public-law regulation, is regarded as co-employer in connection with the execution of the services, or is assigned a responsibility as principal, this is without prejudice to the obligations of the contractor to observe this regulation. The contractor shall indemnify the principal against any claims in this matter.

Article 18. OBLIGATIONS PURSUANT TO ANTI-MISUSE LEGISLATION

18.1. The principal is authorised to demand statement and inspection of the payment record of the contractor and the third parties engaged by the contractor vis-à-vis the tax authorities and the social security agency ("uitvoeringsinstelling").

18.2. The contractor shall, on first demand, allow full inspection of the accounts which he, under public-law regulation, is obliged to keep in connection with the performance of the contract.

18.3. The contractor indemnifies the principal against claims by the tax authorities or social security agencies that may arise in connection with the performance of the contract.

Article 19. INJUNCTION ON RECRUITMENT OF PERSONNEL

19.1 During the performance of the contract, the contractor shall refrain from activities relating to recruitment of personnel of the principal for its own or other organisations, as well as from all other activities aimed at recruitment, and undertakes that all contractor's personnel employed at the principal refrains from such activities as well.

19.2 Non-compliance with paragraph 19.1 may result, in annulment of the contract in whole or in part in accordance with the stipulations of article 29 - ANNULMENT paragraph 1.

Article 20. NON-IMPATABLE FAILURES (FORCE MAJEURE)

To the extent that a failure to perform an obligation cannot be imputed to the contractor, he shall not be in default, nor be liable in damages, nor owe any penalty, provided that he has

given the principal written notice of the failure and the reason therefore without delay and in any case within the period agreed for compliance with the obligation.

Article 21. PERFORMANCE

21.1. If the services to be performed do not conform to the contract, the principal shall be entitled to demand that the contractor perform the services in such a way that they do comply with the terms of the contract. The costs entailed thereby shall fall on the contractor.

21.2. If the contractor, after having been sent a written warning by the principal, fails to comply with a demand as referred to in paragraph 21.1 within a reasonable period to be granted therefore in the warning, the principal shall be authorised to have the services delivered by a third party without requiring prior leave from a court of justice therefore, and to recover the costs thereof from the contractor.

21.3. The preceding paragraphs are without prejudice to any other rights or claims which the principal can derive from any failure to perform.

Article 22. THE PRICE

The price is fixed unless expressly agreed otherwise. The agreed price shall comprise all costs entailed by the performance of the contract, the profit, duties and taxes with the exception of value added tax.

Article 23. PRICE ADJUSTMENTS

23.1. If it is expressly agreed that the price shall be adjusted in the event of changes in the price of foreign exchange rates, wage levels, social security charges or taxes, the following shall apply:

- a. the adjustment may not be officially prohibited;
- b. the adjustment method and the adjustment factors shall be stated in the contract;
- c. adjustment shall be made only if the price differences exceed the agreed limits;
- d. increases in the price of adjustment factors occurring after the expiry of the agreed performance period shall not result in adjustment of the price, unless the performance period is exceeded due to force majeure or due to the principal. Decreases in the price of adjustment factors occurring prior to performance shall always result in adjustment of the price;
- e. no adjustment of profit shall be made in respect of the differences resulting from the price adjustment.

Article 24. AUDIT

24.1. The principal shall be entitled to have all calculations and pricings in regard to this contract, as well as compliance with the administrative obligations as referred to in article 18, verified by the Ministry of Defence Audit Board (hereinafter referred to as "the Audit Board").

24.2. Moreover, in the event of a price adjustment, the principal shall be entitled to have the accuracy of the price adjustment verified by the Audit Board.

24.3. For the purpose of the audit or verification the contractor shall allow the Audit Board to inspect all books and documents and shall also furnish any and all further information which the Audit Board deems necessary. The contractor shall ensure that the information required by the Audit Board can be derived from the accounting records in a simple manner.

24.4. When carrying out its examination the Audit Board shall be authorised to call in the assistance of experts designated by the principal. The examination shall be confidential and shall extend no further than is necessary for the assessment of the price breakdown, the price conditions and the verification of the price adjustment.

24.5. The contractor shall ensure that to the best of his ability all information which he has presented or will still present to the Audit Board for assessment is current, complete and accurate on the date of its presentation to the Audit Board.

Article 25. PAYMENT OF CONTRACTOR

25.1. Without prejudice to paragraph 25.4 the principal shall pay the price, or an agreed part of the price, plus value added tax within thirty days after receipt of the invoice as specified in paragraph 25.2.

25.2. The invoices shall be dated and numbered and shall contain at the least the following information:

- a. name and address of the contractor;
- b. registration number in the trade register;
- c. date and number of the order;
- d. the performance statement, or, if applicable, a time registration form correctly filled in by the contractor and approved by the principal;
- e. the price to be paid;
- f. the number of hours worked by each of the employees and the applicable hourly rates;
- g. the amount due in value added tax;
- h. the VAT identification number of the contractor.

25.3. The principal shall in no case be bound to pay if he has not received the agreed number of copies of the invoice at the agreed address, or if the invoice does not state the information referred to in paragraphs 2 and 3 of this article, or if the invoice is not accompanied by such documents as are stipulated in the contract.

25.4. Payment shall be made in the currency in which the price is expressed.

25.5. In the event of an imputable failure of the principal to meet his liabilities, the principal shall be in default without notice of default being required and shall owe the legal interest on the arrears for the period during which the default continues.

25.6. If the goods referred to in paragraphs 3 and 4 of ARTICLE 11 - MATERIALS AND TOOLS/PROVISION OF GOODS BY THE PRINCIPAL - have not been returned without delay on completion of the work, or if they are returned with a defect, the principal is entitled to charge the replacement costs or the costs of repair without delay. For the purpose of doing this, the principal is entitled to deduct this sum from the total amount due.

Article 26. TRANSFER OF VAT

If article 24b of the Value Added Tax Implementation Decree 1968 applies, the contractor shall refrain from charging VAT and state on the invoice that VAT has been transferred ("omzetbelasting verlegd"). In the event of any disputes arising between the principal and the contractor with respect to the application of this regulation, the competent tax inspector in this matter shall be asked for a decision. Pending this decision, matters shall proceed as if the said regulation were to apply. The principal is discharged from paying the said sums insofar as these sums are concerned.

Article 27. PENALTY CLAUSE

27.1. If the services laid down in the contract are not being performed or have not been performed at the agreed place within the agreed time, the contractor shall, without notice of warning or other prior notice, owe the principal a penalty that shall be immediately due and payable to the amount of 0.1% of the total price plus value added tax for each day that the failure continues up to a maximum of 10% of the agreed price.

27.2. The principal shall be entitled to payment of the penalty without prejudice to all his other rights or claims, including:

- a. his right to claim compliance with the obligation to perform the services that have been agreed in the contract;
- b. his right to claim damages to the extent that the damages exceed the amount of the penalty;
- c. the expenses incurred by the principal and/or his personnel in the event that the contractor fails to comply in part or in full with public-law regulations, the consequences of which can also be imputed to the principal and/or his personnel.

27.3. The penalty shall be set off against any amounts owed by the principal, regardless of whether the claim for payment thereof has passed to a third party.

Article 28. INSURANCE

28.1. If the contractor's business liability insurance does not cover or does not provide adequate cover for damage in connection with the performance of the contract, he shall mention this fact in his offer and at the request of the principal shall:

- a. increase the insured amount and/or extend the coverage of the business insurance; or
- b. conclude a separate insurance agreement for damage and loss.

28.2. The principal shall be entitled to inspect the business insurance policy of the contractor.

28.3. If a separate insurance agreement is concluded the policy shall be made out in the name of the principal and the contractor and shall be approved by both parties. The amount of indemnity payments shall be determined by the principal and the contractor in consultation with the insurers. The policy shall contain a provision stating that all indemnity payments under this insurance shall be made to the principal. A certified copy of the original policy document shall be sent to the principal.

28.4. The costs entailed by the provisions of paragraph 28.1 may be charged to the principal.

28.5. In the event of goods being damaged or lost, the contractor shall pass on the indemnity received under his business insurance to the principal without delay.

28.6. If the principal should decide to repair or replace damaged or lost goods, this shall be carried out by the principal or a repairer/supplier to be designated by the principal at the expense of the supplier. The indemnity payments made to the principal shall be balanced with the repair or replacement costs.

28.7. No profit mark-up shall be charged over the costs referred to in paragraph 28.4.

Article 29. ANNULMENT

29.1. Without prejudice to all other rights or claims the principal may annul the contract in whole or in part by notice in writing if:

- a. the contractor is in default in the fulfilment of any obligation under the contract;
- b. the contractor is temporarily or permanently unable to meet any liability that is due under the contract;
- c. the contractor is adjudicated bankrupt or granted a court-ordered suspension of payments to creditors, whether temporarily or otherwise;
- d. any benefit is or has been offered or provided by the contractor or any of his employees to any person forming part of an organ of the principal or to any of its employees or representatives.

29.2. If the contract is annulled pursuant to any provision of paragraph 29.1, the contractor shall refund any and all amounts already paid to him to the principal, augmented by the legal interest on such amounts from the day on which they were paid. If only part of the contract is annulled, the liability to repay shall exist only with respect to the amounts relating to the annulled part of the contract.

29.3. The principal may also suspend the performance of the contract in whole or in part or annul the contract in whole or in part in other situations than those provided for by law or in paragraph 29.1, provided that the principal in such a case compensates the contractor for the loss suffered by the latter as a result thereof.

Article 30. DISPUTES

30.1. All disputes in connection with the contract or related contracts shall be settled by the competent court of The Hague.

30.2. Paragraph 30.1. shall leave intact:

- a. the right of the principal to choose to have a dispute settled by the court having competent jurisdiction pursuant to the law;
- b. the right of the parties to conclude a submission agreement referring a dispute to arbitration.