

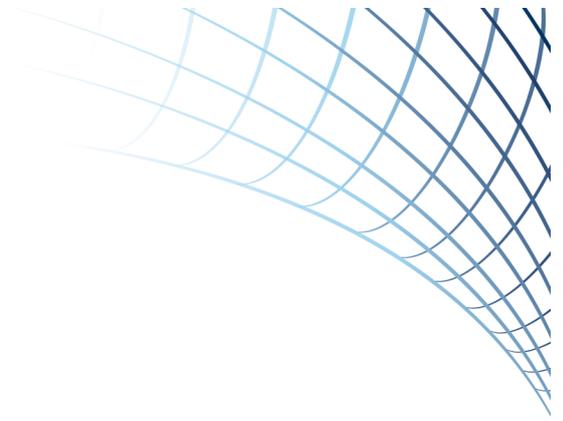


# REGULATIONS

## GOVERNING RELATIONS BETWEEN CLIENTS AND CONSULTING ENGINEERS

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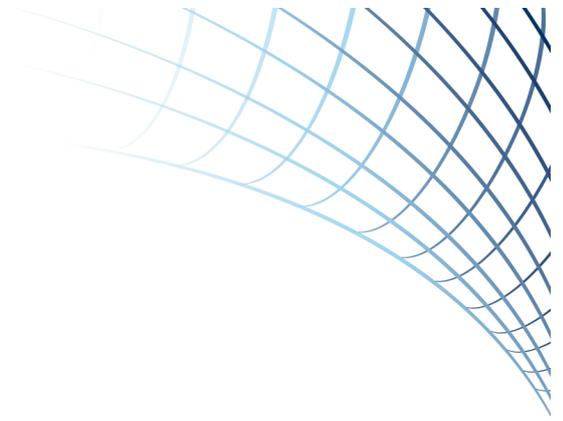
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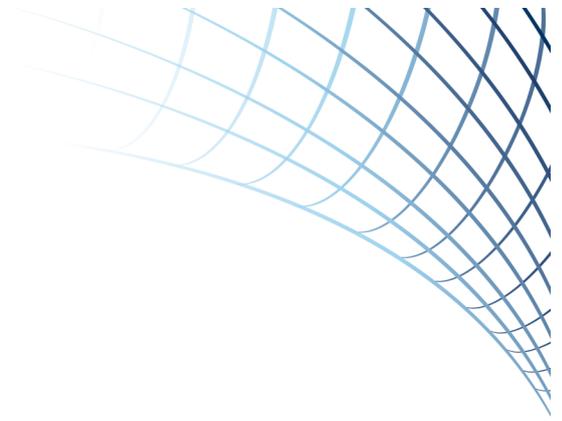
## **REGULATIONS**

### **GOVERNING RELATIONS BETWEEN CLIENTS AND CONSULTING ENGINEERS**

RVOI 1987  
Revised impression 1993

These regulations describe the legal relationship that arises where a client commissions consulting engineers to carry out work, as meant in these regulations, where and insofar as it has been agreed to apply said regulations.

Revised impression deposited at the Clerk's Office of the District Court at the Hague, 29 November 1993.



# Introduction

## General Comments

The Society of Civil Engineers produced its first booklet, setting forth the regulations governing relations between clients and consulting engineers in 1891. Since then, there have been seven revised editions. This last revision dates from 1971. The Royal Institution of Engineers [hereinafter The Institution] has given various committees the job of revising this edition as each regulation must be based on current conditions, case law and today's insights.

It is clear that since 1971:

- the number of specialist disciplines has increased;
- specialization within specialist disciplines has changed;
- that work in addition to commissions for complete buildings is now also concerned with design details and the separate phases of the design;
- studies are increasingly being commissioned;
- the level of remuneration has to be related a changing market situation;
- an adjustment in respect of liability is also desirable.

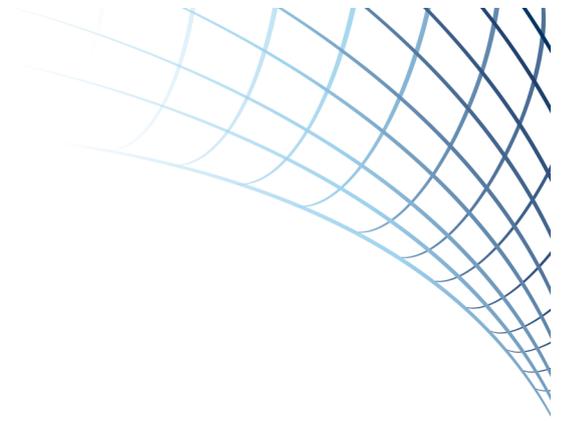
In view of this accumulation of issues, the Institution decided to subject the regulations to a thorough review.

A guideline in appointing committees was to maintain the balance between contributions from the side of the client and the consulting engineers. Considerable support was received from The Professional Association of Dutch Engineers [ONRI] in drafting chapters 1, 2 and 3. The Professional Association also took care of appendices A to F of the 1987 regulations.

When the draft of the conditions and the appendices were presented, the Institution turned to the Ministry of Housing, Planning and the Environment as the coordinating Ministry for Construction with a request to examine the draft so that it could serve as a valid basis for government contracts. A commission with representatives of the Ministry of Housing, Planning and the Environment including the State Buildings Service, and representatives of the Ministries of Transport and Waterways and Defence chaired by H.O. Thunnissen, (Chairman of the Appeal Board for the Business Community) examined and amended the draft, together with a delegation from the Institution which included representatives of the Professional Association and also the Association of Dutch Project Development Companies.

This interdepartmental committee judged that the "Detailed regulations governing relations between clients and consulting engineers on government contracts and on work receiving government subsidies" drawn up by the Board of the principal office of the Royal Institution of Engineers on the 30.03.1987, amended on the 16.11.1971 and approved by the Ministry of Housing and Planning on the 04.01.1972 under no. 16.6507 could no longer remain in force when the 1987 Regulations came into effect.

The committee noted that, in view of its contribution to the 1987 Regulations and of the likelihood of their general application and further because of the latitude that these regulations left for the amendment and establishment of tariffs by commission, there was no need to draw up new Detailed regulations for government contracts or for work benefiting from State subsidies. In mid 1987, the committee presented the final proposal to the Board of the Institution. The Board thanked Mr. T. Tjebbes who had chaired the committee responsible for the revision of the Regulations on behalf of the Institution and all other committees, including the Professional Association for their contribution. The Institution's Board approved the Regulations in its meeting of 24 June 1987 and deposited the 1987 Regulations with the Clerk of the District court in The Hague on 31 August, 1987.



## Most important changes

The 1987 Regulations which are presented here have been changed considerably in both form and content when compared with the 1966 regulations (revised in 1971).

The manner of remuneration has been dealt with extensively in these regulations.

A description of the various phases of the design through to the completion of a building was to be found in chapter 3.

The definition of consultancy activities for each specialism and phase of activity have been an extensive topic of research. These studies were carried out by a number of the Professional Association's committees, grounded in the specialist disciplines. This resulted in checklists which were included appendices A - F. Examples of methods of remuneration were developed in the appendices A - F. These appendices have been collected in a separate booklet. Appendix I includes the regulations governing the committee on disputes. This regulation was changed in December 1986 as a result of the new arbitration act becoming law. In addition to changes in respect of the obligations of parties, a great deal of attention has been paid to the professional liability of the consulting engineer. The maintenance of the principal of an agreement to make the best effort has meant that on the one hand an increase in liability has in fact taken place. On the other hand, the restraining powers of the Arbitration Tribunal and the resources of the parties are set forth in the regulations within the terms of the New Civil Code. In addition to copyright, issues relating to patent law have been included in Article 17.

The Executive Board of the Institution is of the opinion that the 1987 Regulations are adapted to the current contracting practice and is confident that clients will make use of it in a straightforward manner in their contract specifications.

## Introduction to the second impression

As a consequence of the first impression having run out of print, the publication of a second impression has provided the opportunity to correct a number of printing errors in the first impression. The text has also been changed slightly in two places to increase its clarity and intelligibility.

The most important addition relates to appendix B.2.3.

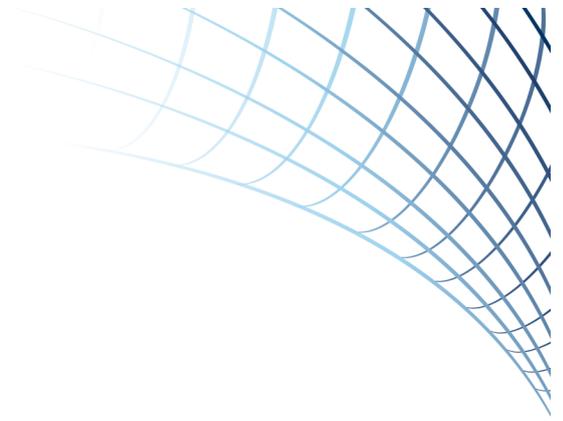
After the 1987 Regulations had been printed in their first impression in July 1988, the Minister of Housing, Planning and the Environment asked a committee to review the "Regulations for relations between the client and consultant with reference to structures and foundations in housing construction [RAW 1952] subsidized by the government".

These new provisions are included in the Regulations as appendix B.2.3.

Appendix B.2.3. was drawn up by the Executive Board of the Royal Institution of Engineers on 26 April 1989 and deposited with the clerk of the District Court at The Hague on 1 June 1989. In mid-1989 the provisions were published in a separate booklet. On the appearance of the second impression, this appendix was integrated into the already existing A-F appendices.

The introduction to this appendix, with reference to the composition of the committee, can be found on page 12 of the A-F appendices.

April 1990



## Introduction to the 1993 revised impression

The revision of the Regulations was made necessary by the amendments to the Civil Code. At the same time, a number of points were introduced into the text to make it clearer. A number of details were also introduced which relate to developments in the world of consultancy. The specialisms of geodesics and project management have now also been included in the Regulations. The subject of working conditions has also been referred to in various places.

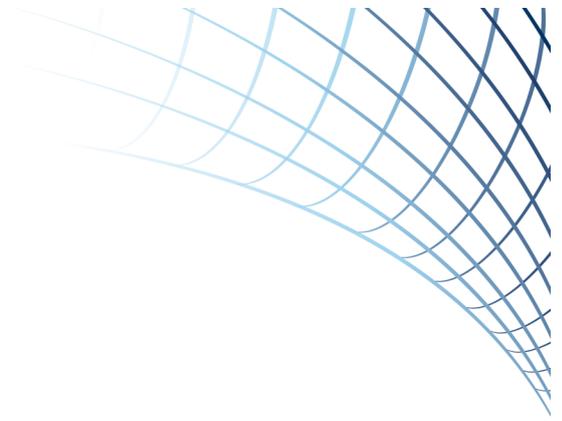
In drawing up the text of Chapter I (art. 1 through 18), the assistance of Mr R.S. Meijer of the law firm of Buruma Maris Scheer Van Solkema was called upon. We are extremely grateful to him for both his effort and valuable advice. The draft produced by this cooperation has been discussed with a committee of the Professional Association [ONRI]. Further the draft was discussed in an interdepartmental work group, in which the Ministries of Housing Planning and the Environment, Transport and Waterways, Defence and Economic Affairs, the State Building service and the Association of Dutch Municipalities were represented. This working group, together with the Institution, tested the draft, where necessary amended it and then approved it. These discussions were under the expert chairmanship of Mr H.O.Thunnissen.

In the appendices to the 1987 Regulations (1993 revised impression) the following additions have been made:

- Appendix B now refers to the calculation of remuneration pursuant to article 21,
- Appendix E gives further details of the calculation of remuneration pursuant to articles 19 and 21,
- Appendix G, dealing with the discipline of Geodesics, is new.
- Appendix H, dealing with the discipline of Project Management, is new.

The Regulations for the Arbitration Board, included in the booklet with general terms and conditions, have been amended in respect of some parts.

November 1993.



# Content

## Introduction Page

General comments  
Most important changes  
Introduction to the second impression  
Introduction to the revised 1993 impression

## CHAPTER 1

### General provisions

Article 1	Interpretation of terms
Article 2	Governing law, headings
Article 3	Content of a commission
Article 4	Drawing up and amending a commission
Article 5	The consultancy's obligations in general
Article 6	The client's obligations in general
Article 7	The role of the consultancy as an authorized representative
Article 8	Cooperation with third parties
Article 9	Types of commission
Article 10	Consultancy fees, payment
Article 11	Interim cancellation of the commission by the client
Article 12	Interim termination of the commission by the consultancy
Article 13	Dissolution as a result of bankruptcy and suspension of payments
Article 14	Decease or dissolution
Article 15	The consequences of halting the commission
Article 16	Consultancy's liability
Article 17	Ownership and use of documents - Copyrights, Patents
Article 18	Disputes

## CHAPTER II

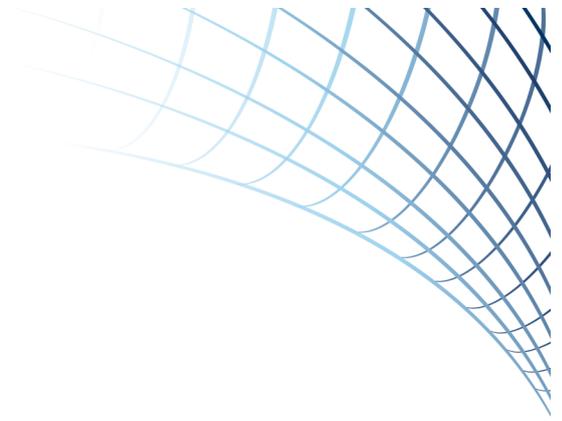
### Consultancy fees

Article 19	Remuneration for work on the basis of time spent
Article 20	Remuneration for work on the basis of a percentage of the construction costs of the object, increased by a fee based on time for activities further specified in the appendices.
Article 21	Remuneration on the basis of a percentage of the total construction cost to be established for the whole object or for each part of the object or a fixed sum.
Article 22	Expenses incurred for the commission
Article 23	Costs of supervision made for the object

## CHAPTER III

### Description of the consultancy's activities

Article 24	General
Article 25	Activities that do not or do not directly have as their objective the development of an object
Article 26	Activities which do have the construction of an object as their objective
Appendix 1	Regulations for the Arbitration Board
Appendices	A,B,C,D,E,F,G, and H in a separate booklet.



# Chapter 1

## GENERAL PROVISIONS

### Article 1 Interpretation of terms

The terms in these Regulations shall be interpreted as follows:

#### Client

- a. a natural person, or
- b. a legal entity, or
- c. a number of persons acting jointly whether possessing legal personality or not, who instruct the consultancy to carry out activities.

#### Consultancy

- a. a natural person, or
- b. a legal entity, or
- c. a number of persons operating jointly, whether possessing legal personality or not, who act as consulting engineers.

#### Consumer:

A client, a natural person, who does not operate as a professional or businessman in these regulations.

#### Commission

The agreement in which the consultancy undertakes to carry out the activities commissioned by the client - pursuant to the provisions of these regulations.

RVOI-1987: these regulations (revised impression 1993).

#### Project

The design to which the consultancy's commission relates

#### Object

A project to be built, installed or supplied.

#### Work

The object or part of an object completed by third parties.

Total construction cost: the construction cost, purchase cost or start-up cost for the object of the commission, exclusive of VAT.

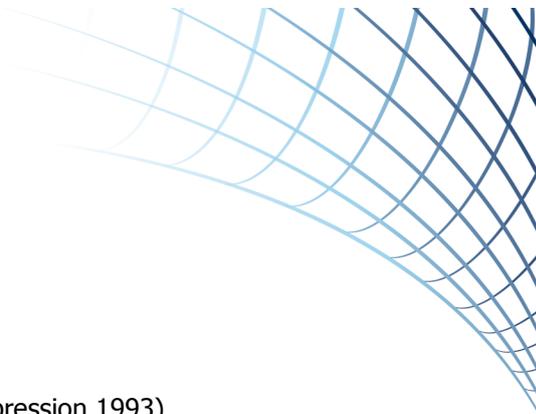
### Article 2 Governing law, headings

1. The commission is governed by Dutch law, notwithstanding the place where the work is actually carried out
2. The headings for the articles in these regulations are not a part of the regulations.

### Article 3 The content of the commission

The commission comprises everything that has been agreed between the client and the consultancy and records the project, as well as the nature and scope of the activities with which the consultancy has been charged.

In the commission, unless otherwise agreed by the parties, the following shall be indicated:



- that the commission is subject to the 1987 Regulations (revised impression 1993)
- any choice, made by parties in respect of the chapters I (articles 9 and 10), II and III of the 1987 Regulations (revised impression 1993)
- the manner of remuneration and arrangements for payment
- the period of time within which the work must be carried out
- the manner in which the consultancy shall notify the client that he regards the activities, ensuing from the commission, as completed
- the coordination within and the liability of the consultancy, where this relates to separate (legal) entities who jointly accept the commission.

Where the commission relates to an object as yet to be completed, the following information shall also be given:

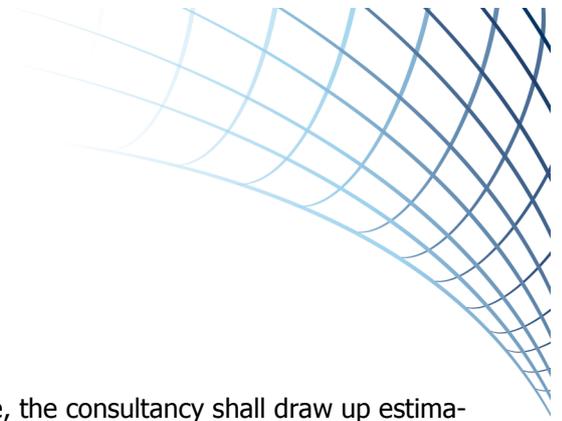
- the nature and the scope of the object
- the total budget for the object, unless the client does not wish to provide this information.

#### Article 4 Drawing up and amending the commission

1. The commission shall come into effect, where the consultancy confirms the agreement in writing or a written offer for it from the consultancy is accepted in writing by the client or where what is agreed is confirmed in writing in some other manner by the parties.
2. Amendment to the commission, including an extension or reduction in activities that have already been commissioned, can be effected as soon as the consultancy has confirmed the amendment in writing.
3. The provisions of paragraphs 1 and 2 do not affect the capacity of parties to give evidence of the existence of the commission and/or the amendments introduced via other channels.
4. The consultancy is required to provide the client with a copy of the 1987 Regulations (revised impression 1993) to allow the commission to come into effect, except in such cases where the consultancy had provided the client with a copy of the 1987 Regulations (revised impression 1993) for earlier commissions.

#### Article 5 The consultancy's obligations in general

1. The consultancy shall carry out the commission properly and with due care and attention, it shall protect the interests of the client to the best of its ability and perform all services with the greatest degree of skill and knowledge. The consultancy shall avoid anything that might infringe the independence of the advice provided. The consultancy shall in carrying out a commission not derive any benefit from it on the basis of findings of its own which are not known to the client.
2. The consultancy shall keep the client informed of the ongoing status of the commission, which shall include the financial aspects of the project and, when asked, provide all information required.
3. The commission must be carried out within the period of time indicated pursuant to article 3, subject to circumstances which cannot reasonably be ascribed to the consultancy. Unless expressly agreed otherwise by the parties, this shall not be a "deadline", the exceeding of which requires a written statement of default. The liability of the consultancy for exceeding the prescribed period is regulated pursuant to article 16.
4. Where in the commission a fixed maximum sum has been agreed for the completion of the object, the design and/or specifications must be carried out so that the object can be completed for the maximum sum that was fixed in the determining of the content of the commission or as most recently adjusted. The consultancy shall draw up estimates and budgets for the client for this purpose. Where this sum is exceeded, the consultancy is obliged to carry out its plan without charging extra consultancy fees so that the total cost, purchase price or start up cost specified do not exceed this amount. Where however the amount is exceeded as a result of circumstances that cannot reasonably be ascribed to the consultancy, the costs of consultancy will be charged separately, pursuant to the criteria specified in article 10 paragraph 2 under a, paragraph 3 under a, paragraph 4 under a and paragraph 8.



5. In all cases other than those specified in paragraph 4 of this article, the consultancy shall draw up estimates and budgets related to the total building cost, purchase sum or start up costs to the best of its ability, where this is included in the commission, but it shall not be liable where it transpires that the commission cannot be completed for the estimated or budgeted cost.
6. In order to fulfil its obligation to provide information the consultancy shall inform the client on time about the financial consequences and risks relating to the making of other or further requirements, delaying or changing decisions and the arise of circumstances, to which no attention was paid when the agreement was entered into.
7. The consultancy shall provide the client with an estimate of the consultancy costs when the commission is drawn up. The consultancy shall indicate at the time, when changes in the commission are agreed, whether and to what extent this will have effect on the specified estimate. As soon as it becomes clear that the latest estimate is inadequate, the consultancy shall inform the client of this fact in writing.
8. Pursuant to article 16 paragraph 6, the consultancy shall draw attention of the client during the drawing up of the commission which relates to the construction of an object, to the CAR [Construction All Risks] insurance or comparable insurance that, in view of the nature and the scope of the object may be deemed to be customary insurance.

#### **Article 6 The client's obligations in general**

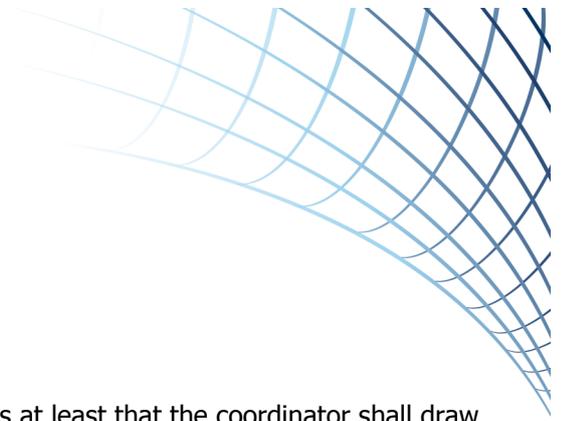
1. The client shall provide the consultancy with the information, data and decisions necessary to complete the commission on time.
2. The client shall make the payments due to the consultancy at the latest on the dates indicated in the arrangements for payment or the dates mentioned in the accounts sent by the consultancy.
3. Where the commission relates to the completion of an object, the client shall provide the consultancy with the program of requirements for this object.
4. Where the client comprises separate persons who act jointly in commissioning the work, each of these shall be severally liable. Persons in this case shall also include legal entities.

#### **Article 7 The role of the consultancy as an authorized representative**

1. The consultancy shall only act as authorized representative of the client where and insofar as the client has indicated in writing that this should be so. The absence of a written power of attorney cannot be held against the consultancy, where and insofar as the consultancy shall give evidence that the client otherwise expressly gave permission, or that his role as an authorized representative ensued from given circumstances or the nature of the commission.
2. The client may not, where and insofar as the consultancy has been appointed as an authorized representative, supervise orders and give instructions to third parties who are carrying out work on the object, or are providing deliveries related to the object or supervise the work without the knowledge of the consultancy.
3. Where and insofar as the consultancy acts in conflict with the provisions of paragraph 1, disadvantages that ensue therefrom shall be for his account and risk, except insofar as the client has authorized this procedure or this behaviour is a consequence of a necessary arrangement that had to be made without delay, for which the client could not be consulted, and also except insofar as the implementation of the unauthorized order shall lead to an enrichment of the client, the costs of which procedure, also taking its usefulness into account in view of the facts and the relevant circumstances, may not be for the account of the consultancy on the grounds of fairness.

#### **Article 8 Cooperation with third parties**

1. Where the commission involves the consultancy working with other consultancies brought in by the client for its completion, such as architects or other experts, the client shall determine, after consulting all those involved, who is to be responsible for coordination of the work and shall specify each party's role.



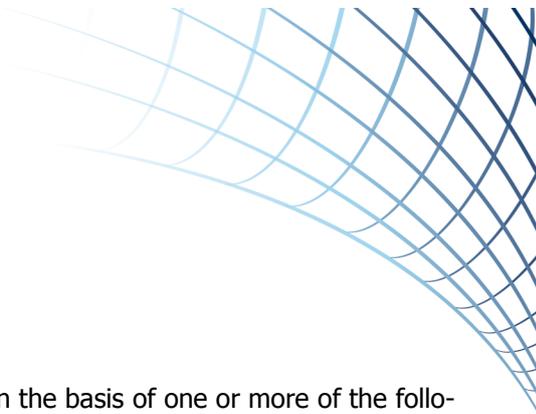
2. The leadership and coordination referred to in paragraph 1 requires at least that the coordinator shall draw up a timetable for the implementation of the commission meant in paragraph 1 on time in consultation with the client and the other contractors and that he - in the case of exceeding the time limit or other circumstances that could lead to delay or damage - immediately consults with them and provides them with a written report thereof.
3. Where the consultancy receives a commission which for its completion requires work in one specialist discipline or another, the consultancy may bring in other specialists about whom the client shall be informed beforehand. Where costs ensue for the client as a result of bringing in these other specialists, prior consent must be obtained from the client. The provisions of article 7 paragraph 3 apply in such cases.

### Article 9 Types of commission

1. The activities of the consultancy fall in the domain of technology and the related special disciplines in respect of organizational, environmental technology, legal and economic aspects, as well as activities that relate to working conditions.
2. In general commissions may, also based on the remuneration, be divided into the following principal groups:
  - A. Activities which are not or not directly related to the construction of an object, such as:
    - theoretical studies
    - experimental research
    - feasibility studies
    - preliminary research for an object
    - drawing up a program of requirements relating to an object
    - soil mechanics and hydrological issues
    - estimating costs
    - coordination of the activities of architects, consultancies, contractors and suppliers
    - evaluation, damage-assessments and activities in purchase or compulsory purchase
    - inspections and advice relating for example to the function, energy use and maintenance
    - technical assistance in acquiring patents
    - statements by experts in court cases.
  - B. Activities that are related to the completion of an object. In general, the object will belong to one or more of the following categories:
    - construction and hydraulic construction (appendix A)
    - structures (appendix B)
    - equipment installations (appendix C)
    - environmental technology (appendix D)
    - acoustics and the physics of buildings (appendix E)
    - naval architecture (appendix F)
    - geodesics (appendix G).
  - C. Activities related to geodesics (Appendix G)
  - D. Activities related to project management (appendix H and article 26 paragraph 3).

### Article 10 Consultancy fees, payment

1. Consultancy fees comprise:
  - A. remuneration for the activities of the consultancy
  - B. expenses incurred
  - C. supervision costs incurred in respect of the object.



2. The remuneration specified in paragraph 1 under a is determined on the basis of one or more of the following criteria:
  - A. on the basis of the amount of time spent on the commission, as described in article 19
  - B. on the basis of a percentage of the total construction cost, increased by a fee on the basis of time for activities specified in detail, all as specified in article 20 paragraphs 1 and 2
  - C. on the basis of a percentage of the total or part of the construction cost as specified in article 21.
  - D. on the basis of a sum to be set for the total or for each part of the work, as specified in article 21.
  - E. on the basis of any other adequate criterion.
3. The expenses specified in paragraph 1 under b., as specified in article 22, may be charged using one or more of the following criteria:
  - A. on the basis of expenses actually incurred
  - B. on the basis of a percentage of the construction cost
  - C. on the basis of a sum to be determined
  - D. on the basis of any other adequate criterion.
4. The costs of supervision specified in paragraph 1 under c, as specified in article 23, may be charged using one of the following criteria:
  - A. on the basis of the expenses actually incurred, as specified in article 19
  - B. on the basis of a percentage of the building cost
  - C. on the basis of a sum to be determined
  - D. on the basis of any other adequate criterion.
5. Combination of the percentages specified in paragraphs 2c, 3b and in some cases 4b into one percentage may take place in the agreement. Combination of the fixed amounts specified in paragraphs 2d, 3c and in some cases 4c may also be made in the agreement.
6. In drawing up the commission, an agreement will be made on the criteria upon which the costs of consultancy shall be calculated. Where not expressly otherwise agreed, remuneration shall be pursuant to paragraph 2 under a, expenses incurred shall be charged pursuant to paragraph 3 under a, and the fees for supervision shall be charged pursuant to paragraph 4 under a.
7. Where a commission relates to various objects or specialist disciplines, the remuneration for each of these objects or disciplines shall be charged separately, pursuant to these regulations, unless otherwise agreed beforehand.
8. Where the client in the case of a commission pursuant to article 9 para 2 under 2, following approval of the preliminary design, introduces changes into the requirements that he has made for the object, the activities made necessary as a result shall be charged on the basis of the time spent and the expenses incurred separately, unless expressly agreed otherwise.
9. The expenses of the consultancy are based on the activities that ensue from the commission and/or the completion of the various phases of the commission.
10. The amount to be charged by the consultancy pursuant to the commission shall be increased by the VAT owing.
11. The commission agreement shall state whether and how changes in rates and indexing is to be applied to consultancy costs.
12. The client shall, insofar as not otherwise agreed, pay the amount owing at the latest within 30 calendar days after submission of the relevant accounts.
13. Where the client disputes the accuracy of a part of the account, he is nonetheless required to pay the amount not in dispute. Where and insofar as the amount in dispute remains unpaid, the original due date shall remain in force.
14. Where the client does not make the payments owing on the agreement on time and the delay is not a consequence of circumstances, for which the consultancy is responsible, the consultancy shall have a right to payment of interest at the rate legally applying commencing on the day on which the payment fell due.
15. Where after the elapse of a period of four weeks since the day upon which the payment became due, it still has not been made, the percentage referred to in paragraph 14 shall be increased by 3 after the elapse of that deadline, on condition that the client is informed in writing of this by the consultancy. Setting aside article 6: 119, para 2 of the Civil Code, the interest claim of the consultancy itself shall in no case bear interest.



16. 16Extrajudicial costs, made in connection of late payments of an account are for the account of the client.

### Article 11 Interim cancellation of the commission by the client

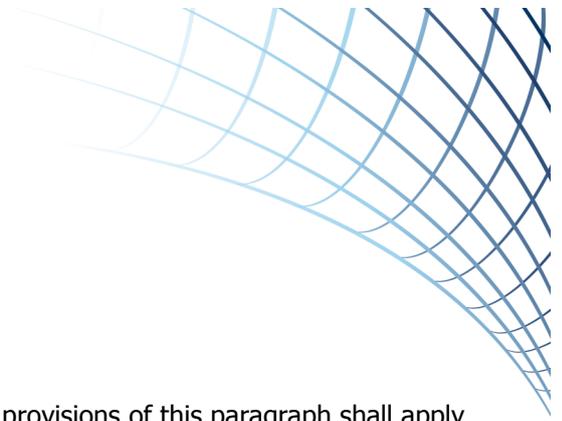
1. The client may make an interim cancellation of the commission. In such case the client shall also fully respect the copyright of the consultancy, pursuant to the provisions of article 17.
2. In the case of cancellation of the commission as meant in paragraph 1, the client shall be required to re-compensate the consultancy for:
  - fees for work carried out thus far
  - expenses incurred
  - costs made for supervision
  - costs ensuing from any agreements with third parties reasonably already entered into by the consultancy for the completion of the commission.
3. Furthermore the client, unless he is a consumer, shall pay 10% of the remaining part of the fee and the costs of supervision which he would have owed on completion of the commission by the consultancy. Nevertheless, where the principle of fairness so demands, the consultancy may require compensation for the true damages suffered as a result of the interim cancellation, or require from the client a limitation of the actual damage, where this damage is more than 150% or less than 50% of the agreed 10% mentioned above. The obligations in this third paragraph do not apply where the commission was cancelled early on grounds of dissolution, annulment or reasons of overriding importance to be ascribed to the consultancy.

### Article 12 Interim termination of the commission by the consultancy

1. The consultancy can in the case of force majeure and in the case of breach by the client dissolve the agreement. Further, the consultancy can cancel the agreement in the interim for reasons of overriding importance. The client shall in such case fully respect the copyright of the consultancy pursuant to the provisions of article 17.
2. The consultancy is nonetheless required to limit the damage to the client as a consequence of the cancellation where and insofar as this, in the given circumstances, can be reasonably expected from him, with due observance among other things of the recovery of the costs incurred and the grounds for the remuneration.
3. The client is required to compensate the consultancy for:
  - remuneration in respect of the work already carried out
  - the expenses incurred
  - costs incurred for supervision
  - costs ensuing from any agreements with third parties reasonably already entered into by the consultancy for the completion of the commission.
4. Where the work commissioned is terminated because of breach by the client for reasons of overriding importance to him, the consultancy also has the right to recover damages suffered from the client, or - at the consultancy's choice - to require compensation pursuant to the criteria of article 11 paragraph 3.

### Article 13 Dissolution on the grounds of bankruptcy and suspension of payments

1. Where the client has been declared bankrupt, the consultancy is authorized to require the receiver to state whether he is prepared to continue the agreement with the provision of a security to assure its correct fulfillment.
2. Where the receiver is not able within a reasonable period to state that he is prepared to continue the agreement, the receiver may for his part no longer require that the agreement be upheld.



In the case of grant of a suspension of payments to the client, the provisions of this paragraph shall apply equally, with the understanding that "receiver" is taken to be "the client and the administrator".

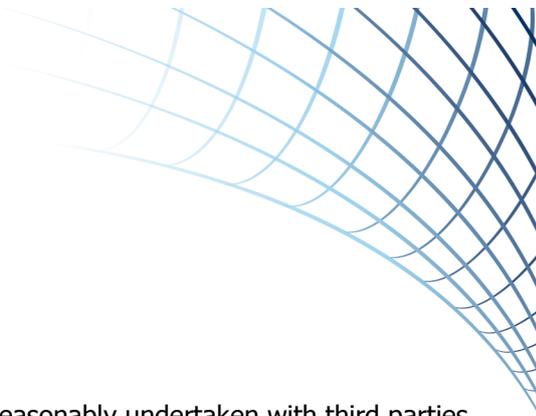
3. Where the consultancy dissolves the agreement because of the bankruptcy or suspension of payments of the client, the provisions of article 12 shall apply.
4. Where the consultancy is declared bankrupt, the client is authorized to require the receiver to state within a reasonable period of time whether he is prepared to continue the agreement with security to assure its correct fulfillment.
5. Where the receiver is not able to state within a reasonable period of time that he is able to continue the agreement, the receiver may for his part no longer require the agreement be met.
6. Where there has been a grant of suspension of payments to the consultancy, provisions of this paragraph are equally applicable with the understanding that "consultancy and administrator" be read instead of "receiver".
7. Where the client dissolves the agreement because of bankruptcy or suspension of payments on the part of the consultancy, the provisions of article 11 shall apply.

#### Article 14 Decease or dissolution

1. The commission granted to the consultancy does not expire on the decease of the client, unless otherwise expressly agreed, in which case the agreement shall expire upon the date on which the consultancy has taken cognizance of the decease.
2. Where the client is a legal entity or a partnership [two types of partnerships are recognized in Dutch law VOF & Maatschap], the decision to dissolve and also the loss of the legal entity will mean that the commission will be seen as having ended at the moment upon which the consultancy is notified of the occurrence of one of these events. In such case, the provisions of article 11 shall apply.
3. Where the commission has been granted with a view to a particular natural person acting as consultant and this person has in fact been charged with the implementation, his mental or physical infirmity, whether long term or not, shall allow the consultancy to claim force majeure. In such case, just as in the case of the decease of the consultant, each party - on the understanding that there is reasonable consultation - has the right to cancel the agreement, where and insofar as that party can derive reasonable interest from cancellation taking into account the nature and current status of the commission and with due attention to the continued existence of the consultancy in these circumstances. In the case of termination on these grounds the provisions of article 11 or article 12 shall apply respectively.
4. Where the consultancy is a legal person, or a cooperative association of persons, which may or not have legal personality, on a decision to dissolve such entity, each party - after reasonable consultation - has the right to cancel the agreement, where and insofar as that party can derive a reasonable interest from cancelling, taking into account the nature and current status of the commission and with due attention to the continued existence of the consultancy in these circumstances. In the case of termination on these grounds the provisions of article 11 or article 12 shall apply respectively.

#### Article 15 Consequences of halting the commission

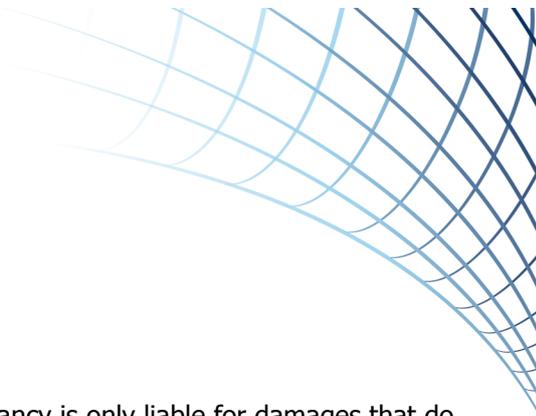
1. The client may require the consultancy to halt its activities. The client is required to notify the consultancy of this in writing.
2. Where work on the commission is halted, the client is required to compensate the consultancy for:
  - fees for the work done to date
  - expenses incurred
  - costs of supervision



- any costs already incurred by the consultancy in obligations reasonably undertaken with third parties for the completion of the commission. Further, the consultancy is authorized to claim compensation for damages, suffered as a result of this cessation of work, from the client - on condition he is not a consumer - subject to a requirement on the consultancy to restrict the damage as far as possible.
- 3. If the commission is continued at a later date, the additional activities that ensue for the consultancy from restarting activities, shall be paid for by the client on the basis of time spent, expenses incurred and the costs of supervision. The client and the consultancy shall enter into consultations to determine whether the provisions governing the commission have to be adjusted to meet the new situation.
- 4. Where the cessation of work lasts for longer than two years, the parties are required to enter into consultation with one another with a view to terminating the commission pursuant to the provisions of article 11 or 12 respectively.

## Article 16 The liability of the consultancy

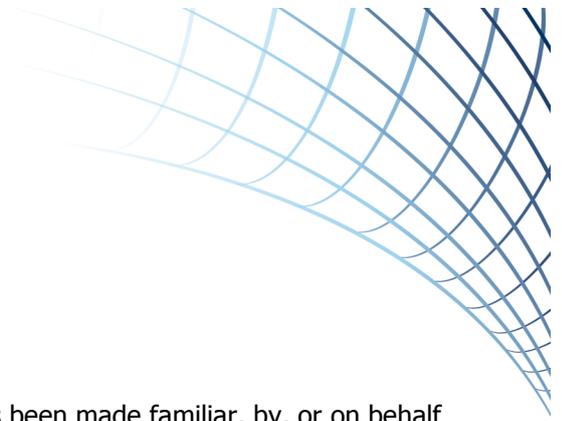
1. The consultancy may only be considered in breach where defects arise in implementation of the commission of a sort, which would and should have been avoided by a consultancy operating properly and with due care and attention and normal expertise, after the breach has been confirmed in writing by the client in order to allow the consequences of the defects to be remedied within a reasonable period of time.
2. The consultancy is only liable to pay compensation for damages for:
  - A. the costs of altering the design, the study or the report
  - B. the costs of remedying defaults and the damage directly caused by such defaults. These shall in no case include costs that would have been included in the total building cost, purchase price or the start up costs of the building, if the commission had been carried out properly from the beginning.
  - C. the costs in terms of labour and material claimed by third parties from the client, which are forfeit as a result of the defects of the consultancy, subject to the condition that this labour and material could have been usefully employed elsewhere or in another way during the period of delay. The consultancy shall only be liable for compensation for damages, other than those specified under a, b or c, where and insofar as the defect is the result of gross negligence on the part of the consultancy.
3. The total damages to be paid on the basis of the provisions of paragraphs 1 and 2 under b and c by the consultancy is limited to the amount that the client would owe the consultancy for the complete fulfillment of the relevant commission, notwithstanding its nature and scope, pursuant to article 10, up to a maximum of NLG 1,500.000. For commissions, which may be regarded as falling under the specialisms of architecture and hydraulic engineering, structures and technical installations, as specified in article 9 paragraph 2 under 2, in derogation from the provisions in the previous sub-paragraph of this paragraph, the consultancy is required, in the case of a commission which has gone through all of its phases from preliminary-research/preliminary design through to the completion of the object and on the basis of which the client owes the consultancy less than NLG 150,000, the client is required to pay for the damage caused up to an amount of NLG 150,000 in full.
4. Where the client is a consumer, the provisions in paragraphs 2 and 3 shall apply, unless these restrictions may be regarded as unreasonably onerous.
5. Where the award of the damages specified in the previous paragraphs in the given circumstances including the particular technical aspects, the relative scope of the commission within the project as a whole, the nature and the gravity of the defect and the capacity of the parties, would lead to obviously unacceptable consequences for the consultancy, the arbitration tribunal may, as specified in article 18, reduce the damages. Where an award of the damages as specified in the previous paragraphs leads in a particular case to obviously unacceptable consequences for the client, the arbitration tribunal can set a higher sum for damages within the legal limits, on condition that the defects of the consultancy can be attributed to its own intent or gross negligence and the client may not claim these damages elsewhere.



6. Unless otherwise expressly specified in the commission, the consultancy is only liable for damages that do not fall under the customary CAR-insurance [Construction All Risks] or comparable insurance for commissions that relate to the construction of an object, all with due observance of paragraph 1 and subject to the consultancy meeting its obligations, as specified in article 5 paragraph 8.
7. Where no commission is granted to the consultancy for (a) particular phase(s) in the construction of the object - specified in article 26 paragraph 1 under 2 and following - the consultancy is not liable for errors or defects in the data which are supplied by, or on behalf, of the client, and even less for errors or defects that arise in processing, supplementing or changing the data, provided by the consultancy, by, or on behalf, of the client.
8. The client's entitlement to make claims for the defects of the consultancy elapses, where said client does not make a reasoned objection in writing within due time after he has discovered the defect or could have been expected to discover it. The entitlement specified elapses in any event, where this protest has not been made in the manner prescribed above, within five years, to be counted from the termination of the commission, or, where the commission relates to the construction of an object, from the completion of the object. All claims in the matter elapse, where no legal claim has been registered at the latest within two years after this objection.
9. Subject to the provisions of the previous paragraphs, the consultancy is only liable to the client for offending against legal regulations, infringement of rights or legally protected interests of third parties, where these rules, rights or interests are generally known to consultancies operating in the relevant specialism, or when the client has expressly indicated the existence of such regulations or rights. In that case paragraphs 3 and 4 of this article shall apply. Where the consultancy itself is accused of the violation or infringement, as specified here, by third parties, the client is correspondingly required to indemnify and compensate the consultancy.

## Article 17 Ownership and use of documents Copyright - Patents

1. Documents given to the client by the consultancy become the property of the client and may be used by him, however subject to the condition that the client has met his financial obligations to the consultancy.
2. The client is not permitted to copy and carry out the construction of an object, carried out in terms of the design, the drawing and other work of the consultancy - whether this includes an extension or not - either in whole or in part, without the express permission of the consultancy; the consultancy is authorized to attach conditions to its consent, including the payment of a fee to the consultancy.
3. The copyright in respect of the documents provided, specified in paragraph 1, and in respect of the design, the drawing and works specified in paragraph 2, remains with the consultancy.
4. Subject otherwise to the consultancy's copyright specified in paragraph 3 of this article, the client has the right to complete the building, described in the commission, using the design, the drawings and other work provided by the consultancy, without the intervention and approval of the consultancy where:
  - A. the commission has been terminated for breach on the part of the consultancy, or on the grounds specified in article 14 paragraphs 3 and 4, or
  - B. the consultancy terminates the commission on grounds other than those of breach by the client, or one of the reasons of overriding importance given by the client, or
  - C. the consultancy terminates the commission on the grounds of breach by the client, after the object on the basis of the design, drawing and other work by the consultancy was transferred for the completion to the contractor, on condition that the client shall have paid a mutually determined sum of compensation for copyrights to the consultancy.
5. The consultancy is, within the meaning of the Single Benelux Act on Drawings and Models, the designer of the drawings and models, which it has made in the context of the commission. The consultancy has the exclusive right to deposit these drawings and models with the Bureau specified in the Act. The provisions in respect of copyright in paragraph 4 shall apply as far as possible to the rights to be derived from such a deposit.



6. Data and documents given to the consultancy, or with which it has been made familiar, by, or on behalf of, the client may not be communicated to third parties, subject to the express consent of the client. The results of calculations, research, tests and inspections entirely paid for by the client deriving from third parties shall also be regarded as such data and documents. This obligation does not apply to data and documents that are generally familiar or accessible to the public, or have become known without the consultancy being responsible for this.
7. The consultancy shall not pass any specific project-related data and documents to third parties without the express consent of the client.
8. The client shall not prevent the consultancy providing its knowledge to third parties, unless this knowledge comprises the commercial secrets of the client or is part of an invention, in respect for which a patent has been applied for, with due observance of the provisions of paragraph 9.
9.
  - A. The consultancy undertakes to bring inventions, suitable in its view for the grant of patents, which have arisen as part of and as a result of work on the commission, immediately to the attention of the client.
  - B. Where an invention has arisen by exchange of knowledge between the client and the consultancy, the client has the right to make an application for a patent in his own name and for his own account. The client shall inform the consultancy of his decision forthwith. The consultancy undertakes, where requested, to provide assistance in dealing with the application. The activities ensuing for the consultancy from this activity shall be paid for on the basis of time spent.
  - C. Where the client receives a patent as specified in this paragraph, he shall provide the consultancy in principle with a non-transferrable licence for the invention at no charge. For actual use of the licence the consultancy shall seek the consent of the client, this consent shall only be refused where the client is able to show that this conflicts with his business interests.
  - D. When the client makes no use of the right specified in paragraph 9 b, or where an invention of this type has come into being as a result of an exchange of knowledge between the client and the consultancy, the consultancy has the right to make an application for a patent in its own name and for its own account, all with due observance of the provisions of paragraph 6 of this article. The consultancy shall notify the client of its decision forthwith.
  - E. Where the consultancy is granted a patent, as meant in this paragraph, it shall in principle grant the client a non-transferable licence to use this invention in the client's current business at no charge.

## Article 18 Disputes

1. Solutions to differences of opinion between the client and the consultancy shall, as far as possible, be sought out of court. Where a difference of opinion is not able to be solved out of court, a dispute shall be considered to exist.
2. All disputes, including those which are only regarded as such by one of the parties, which arise between the client and the consultancy in connection with the commission, or any agreement which ensues from it, shall, to the exclusion of the judge in ordinary and at the highest level exclusively be judged by arbitration in accordance with the Regulations of the Arbitration Board established by the Executive Board of the Royal Institution of Engineers, these regulations shall have been deposited with the clerk of the District Court at The Hague on the day upon which the dispute came into effect.
3. An arbitration tribunal in accordance with the regulation mentioned in paragraph 2 of this article shall judge as just men observing principles of fairness.
4. Where this article refers to the client or consultancy this shall include the assignees of the client or the consultancy.



## Chapter 2

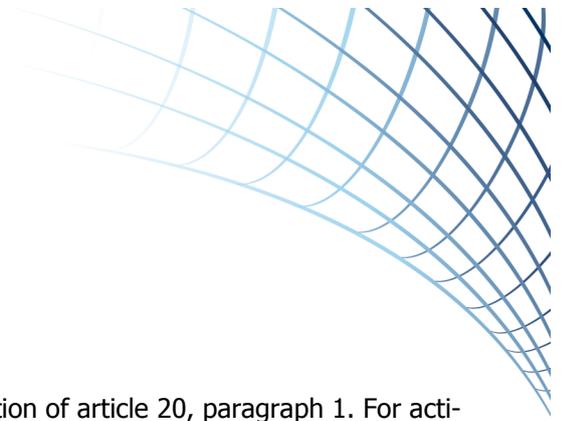
# CONSULTANCY FEES

### Article 19 Remuneration for work on the basis of time spent (article 10 paragraph 2 under a)

1. Remuneration is calculated by multiplying the amount of time spent on the work by a rate per time unit.
2. Time expended is understood as the total number of hours that are directly spent on carrying out the work and the travelling time necessary to carry out the work.
3. The rates per time unit, in terms of person, job or group, are as far as possible determined or described in the commissioning letter. In all other cases they will be calculated as noted in the appendices to Chapter III.
4. Where the commission entails carrying out activities abroad; remuneration for this will be determined separately beforehand with the client.

### Article 20 Remuneration for work on the basis of a percentage of the total construction cost of the object, increased by a fee based on time for the activities further specified in the appendices (article 10 paragraph 2 under b).

1. Remuneration
  - A. In addition to the remuneration described in this first paragraph a fee for particular activities on the basis of time as described in paragraph 2 of this article must be paid.
  - B. The commissioning letter should describe which parts of the construction should be included for remuneration in the total construction costs by specialism.
  - C. The percentage of the total construction cost is derived from tables that are based on consultancy and objects within the Netherlands. These tables are included for each specialism in the appendices to Chapter III of these regulations.
  - D. In the phases preceding the construction of the object the construction cost of the object is based on the budget or estimate for the object, exclusive of VAT, drawn up by the consultancy and approved by the client.
  - E. The total construction cost for the object is based on the total of the contractors fees per specialism/trade and additional work, exclusive of VAT, in the phases during and following the construction of the object.
  - F. The part of the remuneration which is billed per phase, is derived from the standards specified in the appendices to Chapter III. When a phase is completed, the remuneration for that phase is finally paid.
  - G. Changes in the object, which give rise to an increase or reduction of the consultancy activities lead to a calculation based on the method noted in the commissioning letter or to a contract entered into separately between the client and the consultancy.
  - H. Where the contract relates to changes in an existing object, the remuneration is increased to correspond with the increase in time spent by the consultancy in relation to the cost of the changes.
  - I. Where the object is built under state control, the activities in the tendering and the subsequent phases are calculated as work of a particular nature or importance. For remuneration, reference is made to the appendices to Chapter III.
  - J. Where the object is built by the client himself, then the remuneration is calculated on the basis of the budget as if the object had been put out to tender normally and increased to correspond with the additional involvement of the consultancy.
  - K. Where use is made of materials or parts which are provided by or on behalf of the client, or this use can be relied on, or old material or parts are used, the calculation of the fee involves increasing the construction cost by the value of the materials and parts which, in this connection, will be equated with the costs of corresponding new materials and parts in terms of the day's prices.
  - L. Where the activities are carried out by a construction team and the consultancy is charged with the leadership and coordination of the construction team, the remuneration of the consultancy will be increased in accordance with the additional time spent, all with due reference to article 5, paragraphs 6 and 7.



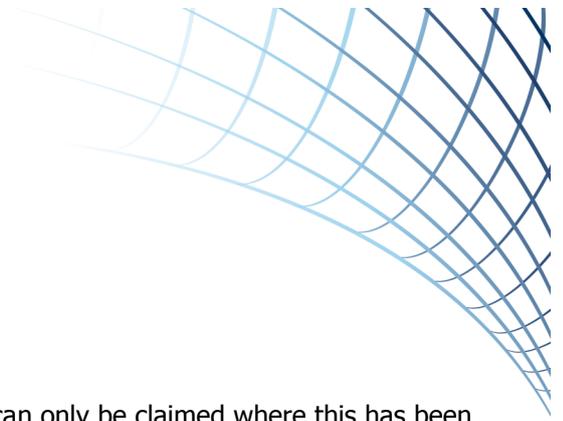
2. Fees for activities on the basis of time in addition to the remuneration of article 20, paragraph 1. For activities further specified in the appendices to Chapter III, a fee will be charged based on time spent pursuant to article 19, in addition to the remuneration mentioned in paragraph

### **Article 21 Remuneration on the basis of a percentage of the total construction cost to be established for the whole object or for each part of the object (article 10 paragraph 2 under c) or a fixed sum (article 10 paragraph 2 under d).**

1. In the commissioning letter the agreed percentage of the agreed amount shall be set forth. At the same time the commissioning letter shall describe the scope of the project, the activities of the consultancy, which description can be derived from the appendices to Chapter III, as also the time planning, where necessary sub-divided into phases.
2. The remuneration is based on activities to be carried out by the consultancy in the Netherlands.
3. Where, however, particular activities have to be carried out abroad, the fee for them is agreed separately with the client.
4. For remuneration on a percentage basis, the following applies for the total construction cost:
  - A. The commissioning letter shall describe which elements of the construction are to be included per specialism in the remuneration of the total construction cost.
  - B. In the phases prior to carrying out the construction the construction cost of the object will be based on the estimate or budget drawn up by the consultancy and approved by the client, exclusive of VAT.
  - C. In the phases during and following the construction of the object, the construction cost of the building will be based on the total of the contractor's fees per specialism and additional work, exclusive of VAT.
  - D. Where the construction is carried out by the client himself, the remuneration is calculated on the basis of the budget as if the object had been put out to tender normally and increased to correspond with the additional involvement of the consultancy.
  - E. Where use is made of materials or parts which are provided by or on behalf of the client, or this use can be relied on, or of old material or parts are used, the calculation of the fee involves increasing the construction cost by the value of the materials and parts which, in this connection, will be equated with the costs of corresponding new materials and parts in terms of the day's prices.
4. The commission should specify the installments for the payments that must be made by the client to the consultancy. Where this is not regulated, monthly payments will be made on the basis of the degree of progress in the work.
5. Changes in the object, which give rise to an increase or reduction of the activities of the consultancy, are a reason for adjustment using the procedure specified in the commissioning letter, or using a separate agreement made later between the client and the consultancy.

### **Article 22 Expenses incurred for the commission (article 10 paragraph 3)**

1. The following expenses can be claimed using one of the criteria, mentioned in article 10 paragraph 3.
  - A. Travel and hotel expenses made for the commission
  - B. Costs relating to inspecting materials, structures and installations, and the costs relating to other simple tests or analyses.
  - C. Costs of copying agreements, plans, drawings, calculations, reports, etc.
  - D. Costs of notification by advertisements, postage, telecommunications, registration, land registry office costs and other advances.
  - E. In measurements and tests, a fee for the use of instruments provided by the consultancy.
  - F. Costs of electronic calculation, drafting or measuring equipment, calculated using the rates based on the equipment time used, and the cost of the use of software. All these costs are charged on the basis of rates agreed beforehand with the client.



2. The costs of external experts and research by specialist institutes can only be claimed where this has been agreed beforehand with the client.
3. The consultancy undertakes to inform the client periodically of the level of expenditure for which the client is liable pursuant to this article.

#### **Article 23 Costs of supervision made for the object (article 10 paragraph 4)**

1. The consultancy is required to consult with the client on time before starting work on the object about the scope of the level of site supervision, whether daily or otherwise, during construction. The consultancy shall inform the client on a regular basis of the level of the costs related to this supervision.
2. The costs of site supervision are for the account of the client and can be claimed using one of the criteria specified in article 10 paragraph 4.



## Chapter 3

# DESCRIPTION OF THE ACTIVITIES OF THE CONSULTANCY

### Article 24 General

The activities of the consultancy fall into two categories, to wit:

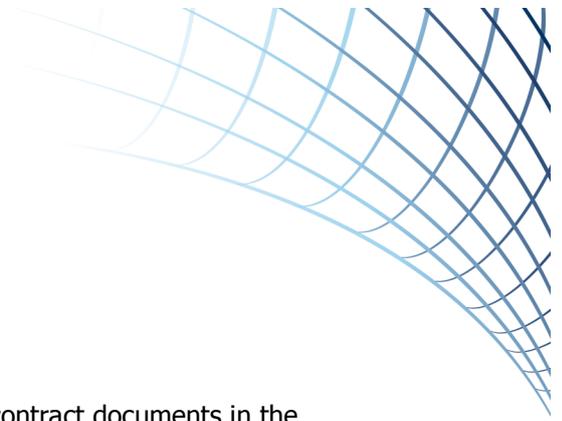
1. Activities that do not or do not directly have as their objective the construction of an object. These ensue from a commission as specified in article 9 paragraph 2 under 1.
2. Activities that do have as their objective the construction of an object. These ensue from a commission as specified in article 9 paragraph 2 under 2.

### Article 25 Activities that do not or do not directly have as their objective the construction of an object (article 9 paragraph 2 under 1).

1. The consultancy submits a proposal for the work to be carried out.
2. In consultation with the client, those activities belonging to the commission are set forth, as also the scope of the activities and the time period within which these activities must be carried out.
3. Where, during the completion of the commission, it appears that the scope of the activities agreed pursuant to paragraph 2 has to be extended, such extension requires the prior consent of the client.
4. Remuneration for the activities will be, unless otherwise agreed, on the basis of time spent (article 10 paragraph 2 under a). The costs incurred, unless otherwise agreed, shall be claimed by the consultancy pursuant to article 10 paragraph 3 under a.

### Article 26 Activities which do have the construction of an object as their objective (article 9 paragraph 2 under 2).

1. The sub-division of the activities into phases. The activities which relate to the construction of an object can be sub-divided into the following phases.
  - 1.1 Research  
This has as its objective reaching basic decisions for example in the areas of:
    - policy
    - feasibility
    - establishment
    - environmental impact
    - social acceptanceThe results are set forth in a report that can serve as the point of departure for the program of requirements to be drawn up by or on behalf of the client.
  - 1.2 Preliminary design  
In the preliminary design, design sketches, the schematic diagrams and global descriptions of the system are made, based on the program of requirements, in order to give the client an impression of the nature, scope, completion and running costs and completion time for the object.
  - 1.3 Final design  
The final design involves fixing the main dimensions and most important materials and equipment for the preliminary design approved by the client, using drawings, calculations and specifications, so that there is a clear picture of the nature, scope, completion and running costs, the completion time and the working conditions during the construction of the object.
  - 1.4 Plan  
The plan is drawn up on the basis of the final design approved by the client and forms the record in terms of the place, scope, materials and quality of the object to be completed. At the same time it comprises administrative conditions, the general technical provisions and provisions with respect to working conditions which have to be met during the construction.



The plan is used for those tendering bids and is one of the contract documents in the agreement with the contractor/supplier. The client receives the budget from the consultant on the basis of the plan.

1.5 Tendering for bids and awarding the contract

- A. Tendering invokes a call for bids held in consultation with the client in order to receive bids from tenderers for the work. On the basis of the bids tendered an opinion will be given to the client on the award of the contract so that it is possible to proceed to award the contract to the contractor/supplier.
- B. Where it suffices to ask for an offer or a bid from one contractor/supplier, this bid will be assessed by the consultancy on the basis of its budget and where necessary negotiations will be held.

1.6 Detailed planning

This includes a detailed working out of the plan, so that the object can be built on its basis.

1.7 Management

Management is, supervision on behalf of the client, to ensure that the object is constructed in terms of the requirements of the plan and pursuant to any further wishes by the client, in part on the basis of observations and reports for the staff carrying out the supervision.

1.8 Completion

Completion is everything that assists in ensuring that the contractor/supplier has met his obligations, ensuing from the contracting agreement for the work. Advice is then given about the final account on completion, and also on the transfer [of ownership] of the object or parts of it.

1.9 Period of maintenance/guarantee

Within the maintenance/guarantee period the consultancy will supervise the remedying of defects which have been established during completion and arose during the maintenance or guarantee period.

2. Description of advisory activities by phase and specialism. A detailed description of the activities which may be carried out by the consultancy in any of the phases specified in paragraph 1, is included in appendices A through G drawn up for each specialism. In this description, a survey of the systems of remuneration has been included which can apply to particular activities. The methods of calculation used for some remuneration systems is also included in appendices A through G.
3. Activities relating to project management. Responsibility for the integral planning, organization and management of a project, by the consultancy on behalf of the client as a complete commission. In a partial commission a part of the integral commission or a specific time, cost, quality or organizational aspect, as also activities in respect of working conditions is awarded. See further appendix H.

The first impression was drawn up by the Executive Board of the Royal Institution of Engineers on 24 June 1987 and deposited at the clerk's office of the District Court at The Hague on 31 August 1987.

- W.J. Wolff, President
- D. van Moorsel, secretary general.

The second impression was drawn up by the Executive Board of the Royal Institution of Engineers on 24 April 1990 and deposited at the clerk's office of the District Court at The Hague on 25 April 1990.

- J.M. Ossewaarde, President
- J.N.P. Haarsma, secretary general.

The 1987 Regulations (revised impression 1993) was drawn up by the Executive Board of the Royal Institution of Engineers on 23 November 1993 and deposited at the clerk's office at the District Court at The Hague on 29 November 1993.

- J.M.H. van Engelshoven, President
- J.N.P. Haarsma, secretary general.



## APPENDIX I REGULATIONS GOVERNING THE ARBITRATION BOARD

### Article 1

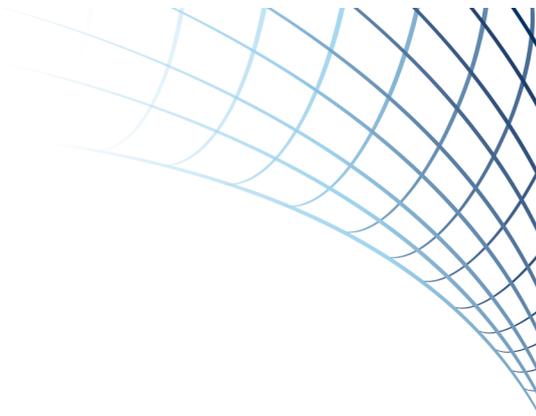
- 1.1 The Arbitration Board shall comprise a chairman and four members, who shall all be members of the Royal Institution of Engineers.
- 1.2 The chairman and the members shall be appointed by the Executive Board of the Royal Institution of Engineers.
- 1.3 The chairman and the members shall hold office for a period of three years; they shall retire following a timetable and can be immediately re-appointed for one more period.
- 1.4 The Board shall have its official office at the Royal Institution of Engineers.
- 1.5 The Institution provides the Board with a secretary, who is not a member of the Board.
- 1.6 A legal advisor, who is not a member of the Board, shall be added to it. He is appointed and discharged by the Executive Board of the Royal Institution of Engineers.
- 1.7 The legal advisor may act on behalf of the Board, or on behalf of the chairman of the Board, with the right of substitution - as long as an arbitration tribunal and a secretary have not been appointed for a particular dispute pursuant to article 7 of these regulations.

### Article 2

- 2.1 A dispute can be brought before the Board by submitting a statement of claim to the Board in sextuplicate.
- 2.2 The dispute shall be regarded as having been brought before the authorities on the day of the receipt of the statement of claim.
- 2.3 The statement of claim must comprise:
  - A. the name, forenames, domicile and street address (or the name, type of legal entity, place of establishment [town] and the street address) of the claimant;
  - B. the name, forenames, domicile and street address (or the name, type of legal entity, place of establishment [town] and the street address) of the opposing party;
  - C. a clear description of the commission, which has given rise to the dispute;
  - D. a clear description of the dispute and of the claim, and also the grounds on which the claim is made;
  - E. the grounds, on which the claimant judges that an arbitration tribunal, to be appointed pursuant to these regulations, is competent to take cognizance of the dispute.
- 2.4 Parties may appear before the arbitration tribunal in person or be represented by a lawyer or a representative with a special power of attorney in writing. The parties may be assisted in the action by persons of their own choice.

### Article 3

- 3.1 The Board sets the deadlines, by which the further statements must be submitted.
- 3.2 As soon as these deadlines have been set, the Board notifies the parties thereof.
- 3.3 It submits the notification specified in paragraph 2 to the defendant accompanied by a copy of the statement of claim and of the invitation to submit a statement of defence in sextuplicate to the Board within the period of time set for this by said Board.



## Article 4

- 4.1 The Board sets a guarantee payment that must be deposited by the party making the claim, in case of default, the proceedings shall be postponed until the day upon which payment has been received. The Board is authorized to require additional guarantee payments to be made at each stage of the proceedings where there are grounds therefor.
- 4.2 Where, after an arbitration tribunal and a secretary have been appointed for a dispute pursuant to article 7 of these regulations, the guarantee deposit appears to be insufficient, the secretary of the arbitration tribunal shall establish an increase, delaying the proceedings until the day of receipt of payment thereof.
- 4.3 Where following a second written warning by the Arbitration Tribunal, one party has not paid its guarantee deposit within a period of fourteen days, it shall be regarded as having withdrawn the claim.
- 4.4 Where the defending party has submitted a counter claim, the same provisions apply to any guarantee deposit to be paid by it.

## Article 5

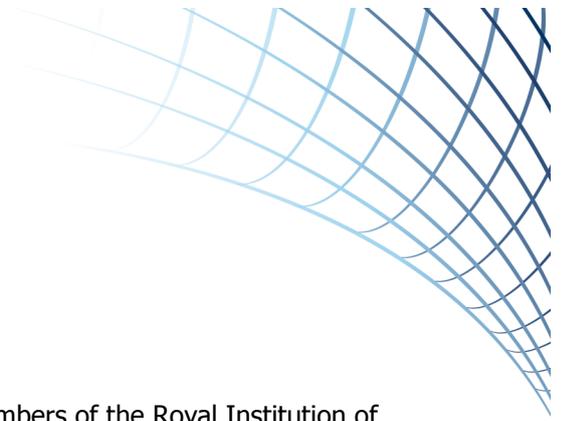
- 5.1 A party may withdraw its claim or counter claim as long as other party has not submitted a statement of defence, or in the case of summary proceedings as long as the oral proceedings have not taken place.
- 5.2 Thereafter a party may only withdraw its claim or counter claim with the permission of the other party.
- 5.3 The withdrawal shall be confirmed in writing to the parties by the Board.
- 5.4 In the case of withdrawal of the dispute the claimant shall meet the costs of the proceedings to the Board. The Board is authorized to determine that the costs shall be met from the guarantee deposit.
- 5.5 The costs of the case shall be, in any event, the fixed administrative costs of the Royal Institution of Engineers, the remuneration and advances of the members of the Tribunal and for any experts supplementing the Tribunal and other expenses incurred in connection with dealing with this dispute and costs ensuing from the activities of the legal advisor to the Board and the Secretary of the Tribunal.

## Article 6

- 6.1 Where the defence shall submit a statement of defence on time, a copy shall be sent by the Board to the opposing party.
- 6.2 In this the claimant is invited to submit a statement of response in sextuplicate within the period set by the Board pursuant to article 3, paragraph 1.
- 6.3 Where the claimant meets this requirement, this statement of response will be dealt with in the same way as the statement of claim and the defendant will be given the opportunity within the time set by the Board pursuant to article 3, paragraph 1, to submit a statement of reply in rejoinder in sextuplicate. This statement of reply in rejoinder shall be treated in the same way as has been determined for the statement of response mentioned above.
- 6.4 The Board can at the request of one of the parties, or of its own motivation extend one or more of the deadlines set by it, by notifying the parties thereof.

## Article 7

- 7.1 Within three months of the day upon which the last statement was submitted, or within three months of the day upon which the last deadline, set by the Board for the submission of a statement has elapsed, without the statement being submitted, a tribunal shall be appointed by the Board comprising one or three persons, chosen from among the members of the Royal Institution of Engineers. Where the tribunal comprises three members, the Board shall appoint a chairman. In taking this decision, the Board shall also appoint a lawyer as secretary for the case in question, who shall advise the tribunal.



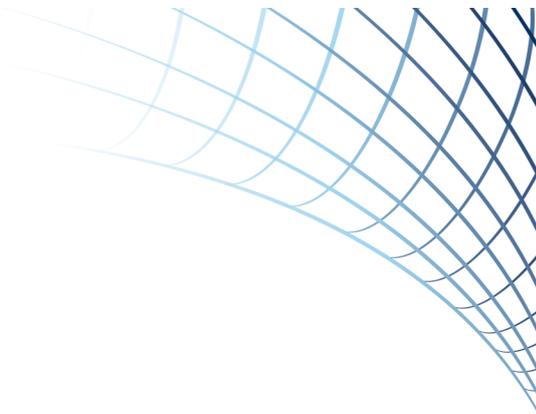
- 7.2 Where the Board regards it as necessary, persons that are not members of the Royal Institution of Engineers, may be appointed to the tribunal.
- 7.3 At the request of the tribunal and/or of one of the two the parties the Board may, where it regards it as necessary, add one or more experts to the tribunal in an advisory capacity.
- 7.4 Before appointing the arbitrator(s) and the secretary and any supplementary experts the Board shall hear the parties concerning the number and desired expertise of these arbitrator(s) and concerning the question of whether experts in an advisory capacity should be added. Parties will be given the opportunity to give their opinions within a period set by the Board.
- 7.5 The Board shall inform the parties as quickly as possible of the assignment and appointment of the tribunal, the secretary and any additional experts. Where experts are appointed to the tribunal following the appointment of the tribunal and the secretary, the secretary of the tribunal shall inform the parties thereof as soon as possible.
- 7.6 An arbitrator shall accept his appointment in writing.
- 7.7 An arbitrator who has accepted his appointment may at his own request be relieved of it, either with the approval of the parties, or of the Board, the parties having been heard.
- 7.8 An arbitrator who has accepted his appointment may, where he either in law or in fact is no longer able to carry out his duties, be relieved of his appointment by the Board at the request of one of the parties.
- 7.9 An arbitrator who is relieved of his appointment pursuant to paragraphs 7 or 8 of this article, or who deceases, will be replaced by the Board. In the case of this replacement the proceedings shall automatically be adjourned. After the adjournment the proceedings will be continued from the point where they left of.

## Article 8

- 8.1 Arbitration shall take place at The Hague.
- 8.2 The tribunal may conduct its business, take advice, and hear witnesses and experts in other places, which it deems suitable, either in the Netherlands or abroad.

## Article 9

- 9.1 Parties are given the opportunity to explain their viewpoints orally in one another's presence, at such time and place as shall be determined by the tribunal and be communicated by the secretary to the parties at least three weeks beforehand.
- 9.2 Where following these oral proceedings, an arbitrator has been replaced, the oral proceedings will have to take place again - unless the parties and the tribunal regard this as unnecessary.
- 9.3 In the oral proceedings meant in paragraph 1, the parties shall be given the opportunity to have their claims confirmed by witnesses, where they so wish, and/or explained by experts, on condition that the names and addresses of these witnesses and/or experts have been communicated to the tribunal and the opposing party at least one week beforehand.
- 9.4 The parties may be represented in the oral proceedings and/or supported by counsel. They have the right to ask questions through the chairman of the tribunal of the opposing party and the witnesses and experts brought by them.
- 9.5 The tribunal is however at all times authorized to require the personal appearance of parties, and parties must meet this requirement. The tribunal is further authorized to call upon the advice of experts and to do everything that it decides is required to reach a correct decision in the case. Any reports submitted by experts will be provided to the parties for their perusal. Parties may submit their views regarding the content of these reports by submitting a special statement in sextuplicate which will be treated by the secretary as with the final statement of reply.
- 9.6 The hearings of the tribunal are not open to the public.



## Article 10

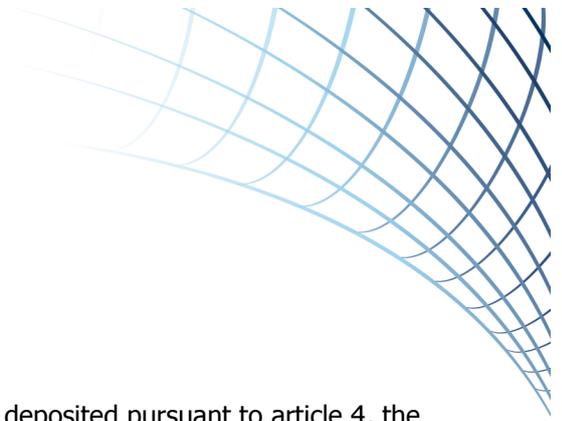
- 10.1 The original defending party is authorized on its side to commence counter claim proceedings.
- 10.2 Such claims must be initiated by a statement of defence, which will be subject to the above mentioned provisions relating to the exchange of further statements, on the understanding, that the defendant in counter claim shall also have the opportunity to make statement of reply in rejoinder in the counter claim.

## Article 11

- 11.1 Subject tot the provisions of titles 1 and 2 of book 4 of the Code of Legal Forms, the proceedings will be carried out in such manner as these regulations provide or in a manner determined by the parties by a further agreement. Insofar as the law, the regulations or the parties in the further agreement have not made provision therefor, the proceedings will be carried on in the manner determined by the tribunal. As long as no tribunal has been appointed for the dispute in question, the Arbitration Board shall have the authority of the tribunal as meant in the last sentence.
- 11.2 The tribunal shall make its decision as just men in terms of the principle of fairness.
- 11.3 The tribunal shall take decisions on a majority of votes, no mention shall be made of the feelings of the minority in the decision.
- 11.4 At the request of the complainant the Arbitration Board may dismiss the tribunal, having heard the opposing party and the tribunal, if said tribunal carries out its duties in unacceptably slow manner, despite repeated warnings with all circumstances having been taken into account. In such case the authority of the judge in ordinary is restored.
- 11.5 The decision of the tribunal shall, subject to the provisions of article 6, be given in the form of a tribunal judgment.
- 11.6 Where the parties have agreed to a written form of binding advice, the tribunal shall make its decision in the form of binding advice.
- 11.7 Each of the parties shall receive a copy of the decision, a third copy shall be deposited in the files of the Board of Arbitration, and a fourth copy shall be deposited with the appropriate clerk of the court, unless the decision is made in the form of binding advice.
- 11.8 The Royal Institution of Engineers draws up a report annually in which it gives a brief summary, without mentioning names, of the decisions taken. This annual report is available at a charge to cover the costs. The judgments made are also, without mentioning names, available for perusal at the office of the Royal Institution of Engineers at The Hague on conditions that will be further specified. The Royal Institution of Engineers may also publish the judgments made in a different form without the mention of names (either in shortened and/or summary form).

## Article 12

- 12.1 The decision of the tribunal shall also include a judgment regarding the fixing of the costs of the proceedings, as specified in article 5 paragraph 5, and also in respect of the assignment of the costs to the parties.
- 12.2 Where and insofar as this is claimed by the one party and where and insofar as the tribunal regards this as justified, the tribunal may award the one party costs for legal assistance and/or the costs of witnesses and their notification against the other party.
- 12.3 In the establishment of the amount of the costs of the proceedings, the tribunal is not bound to the amount of the guarantee deposit made as specified in article 4.
- 12.4 The tribunal is authorized to determine that the guarantee deposited shall cover the whole or part payment of the cost of the proceedings and thence to determine how the costs of the proceedings shall be assigned among the parties.



- 12.5 Where the costs of the proceedings are higher than the guarantee deposited pursuant to article 4, the secretary of the tribunal - pursuant to paragraphs two and/or four of article 4 - can require an additional deposit to cover the difference. The proceedings shall be adjourned where this additional deposit has not taken place. The tribunal is however authorized in such case - where it finds grounds therefor - nevertheless to make a judgment and to determine, that one or more of the parties shall meet the costs of the proceedings, which are not able to be met by the guarantee deposited to the tribunal. Where one or more of the parties remains in default for these last costs to be paid to the tribunal, despite being warned, the chairman of the tribunal in his capacity is authorized to claim the sum owed in law.

### Article 13

- 13.1 The chairman of the Board, or the person, who has been appointed by the Board as his representative or replacement, may grant leave to introduce summary proceedings in all cases, where - this exclusively at the judgment of the chairman of the Board or his representative or replacement - for the requirement of speed an immediate decision is either required or judged necessary.
- 13.2 This leave shall be asked on submission of the statement of claim, as specified in article 2.1 of these regulations. The decision on this request shall be communicated as quickly as possible to the applicant in writing. This decision does not have to be motivated.
- 13.3 Where the leave is refused, the proceedings shall be continued in the normal manner, where and as soon as the applicant indicates his wish so to do.
- 13.4 Where leave is granted, the chairman of the Board or his representative or replacement shall nominate a tribunal as quickly as possible and in any event within four weeks after the grant of this leave. The same decision will allow for the nomination of a secretary for the case in question.
- 13.5 The secretary shall call the parties together as quickly as possible for oral proceedings in the dispute by sending the defence a copy of the statement of claim.
- 13.6 The original defending party is in principle authorized on its side to introduce counter claim proceedings in the summary proceedings. The tribunal however shall decide from case to case, when and how this sort of counter claim may be submitted and the way in which the counter claim shall be dealt with.
- 13.7 The tribunal is at all times authorized to refer the dispute to ordinary proceedings, when it sees grounds for so doing.
- 13.8 The tribunal shall make decisions as rapidly as possible.
- 13.9 For the remaining articles 1.7, 2, 4, 5, 7.1, 7.3, 7.5, 8.9 (with exception of the deadlines mentioned in articles 9.1 and 9.3 and the last sentence of article 9.5), 11 and 12 are correspondingly applicable. Articles 3, 6, 7.4 and 10 are correspondingly not applicable.

### Article 14

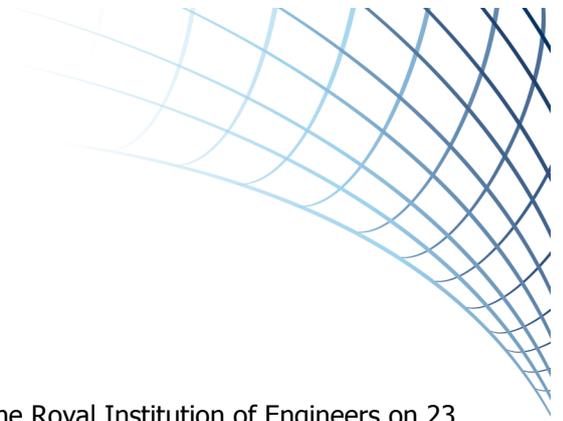
- 14.1 These regulations come into effect on the day upon which they are deposited at the clerk's office of the District Court at The Hague.

The first impression was drawn up by the Executive Board of the Royal Institution of Engineers on 24 June 1987 and deposited with the clerk of the District Court at The Hague on 31 August 1987.

- W.J. Wolff, President
- D. van Moorsel, Secretary General

The second impression was drawn up by the Executive Board of the Royal Institution of Engineers on 24 April 1990 and deposited with the clerk of the District Court at The Hague on 25 April 1990.

- J.M. Ossewaarde, President
- J.N.P. Haarsma



The revised impression was drawn up by the Executive Board of The Royal Institution of Engineers on 23 November 1993 and deposited with the clerk of the District Court at The Hague on 29 November 1993.

- J.M.H. van Engelshoven, President
- J.N.P. Haarsma, Secretary General

I, Stafford Wadsworth, residing at Bat 11 in Eijsden, sworn translator for the English language, hereby affirm that the above is an accurate translation of the Dutch text of 45 pages to which it is attached.