



Qirion



General Sale,  
Installation and  
Delivery Conditions

QIRION B.V. DUIVEN

# Table of contents

Article 1.	General conditions	3
Article 2.	Offer	3
Article 3.	Formation of the agreement condition	3
Article 4.	Performance of the agreement	3
Article 5.	Activities not provided for in the agreement	4
Article 7.	Insurance of the client	4
Article 8.	Circumstances likely to increase costs	5
Article 9.	Force majeure	5
Article 10.	Completion	5
Article 11.	Dissolution	5
Article 12.	Payment	6
Article 13.	Taking over personnel and seconded employees is prohibited	6
Article 14.	Default by the client	6
Article 15.	Retention of title	6
Article 16.	Warranty	7
Article 17.	Liability of Qirion	7
Article 18.	Final provision	7
Article 19.	Scope and definitions	8
Article 20.	Performance of the Activities	8

# A. General conditions

## Article 1. General conditions

### Applicability

These General Conditions apply to all offers drawn up by Qirion and any agreements entered into between Qirion and the client. They are also applicable to all obligations arising from any agreements entered into between the parties at a later stage. Applicability of any general conditions invoked by the client is explicitly rejected.

### Definition

In these General Conditions the term 'Work' means: the total agreed activities (incl. any design) and/or deliveries.

## Article 2. Offer

- 2.1 The offer is without any obligation; it specifies the manner of payment and gives insight into the price and the pricing method: a fixed price contract (fixed contract price) or a cost-plus contract.
- 2.2 The documents forming part of the offer (such as drawings, technical descriptions etc.) are as accurate as possible but are not binding and remain the (intellectual) property of Qirion. Without Qirion's consent it is not allowed to use, copy or provide them to third parties or disclose them in any other way.
- 2.3 If the client does not accept the offer, he will be immediately obliged to return to Qirion all the details meant in this Article.
- 2.4 Qirion is entitled to charge the costs associated with the offer provided Qirion pointed out these costs in writing to the client in advance.

## Article 3. Formation of the agreement condition

- 3.1 If Qirion's offer is accepted, the agreement will only be formed at the moment Qirion confirms the acceptance within a reasonable period.
- 3.2 Qirion cannot be held to commence the performance of the Work until after all the information required to this end has come into its possession and Qirion has received the agreed payment or instalment.

## Article 4. Performance of the agreement

### Obligations of Qirion

- 4.1 Qirion is obliged to cover its liability risk by insurance in accordance with the current practice in the sector. To this end Qirion has taken out a company liability insurance ('AVB Policy'), where a series of associated events are considered as one (1) single event.
- 4.2 At the client's request Qirion will submit the documents evidencing that it has taken out this insurance.
- 4.3 Qirion will observe the regulations declared applicable to it in connection with the performance of the Work. Any financial consequences of amendments to the regulations between the date of the offer and the completion of the Work will be settled as contract variations.
- 4.4 In the cases eligible to this end Qirion will instruct and inform the client or the persons appointed by the client with regard to putting the completed Work into operation and maintaining it in operation. The extent, date of commencement and duration of the obligations referred to will be reasonably determined by Qirion.

### Obligations of the client

- 4.5 The client is obliged to Qirion to enable the performance of the Work within Qirion's normal working hours and under conditions that comply with the legal safety requirements and other government regulations.
- 4.6 The client must ensure that Qirion can have at its disposal within due time the approvals required for the Work (such as licenses and exemptions) and the details to be provided by her for the Work.
- 4.7 The client must provide within due time the connections for the power required for the Work and for its testing. The costs of the energy required are at the expense of the client.
- 4.8 The client is responsible for applying for the connection of the systems to the grid of the respective network operator or to the various public transmission grids. The connection costs are at the expense of the client. Qirion will give directions in its field to this end.

- 4.9 The client must ensure that activities (such as construction activities) and/or deliveries to be performed by third parties, which do not form part of Qirion's Work, are performed in such a way and so promptly that the performance of the Work is not delayed by them. If nevertheless any delay occurs as meant in this Article, the client must inform Qirion of this immediately.
- 4.10 If the commencement and progress of the Work is delayed by circumstances for which the client is responsible, the loss arising from this for Qirion must be compensated by the client.
- 4.11 The client is responsible for the timely presence of adequate and safe auxiliary equipment for horizontally and vertically moving heavy parts required for the Work and for the accessibility of the location where the Work is to be performed as well as for the suitability of the access roads to the location of the Work.
- 4.12 The client bears the risk for damage to and loss of materials, parts or equipment brought to the Work if and insofar as the client is responsible for their security.
- 4.13 The client bears the risk of damage caused by defects or unsuitability of items derived from her or which are prescribed or must be sourced from a prescribed supplier and for the non-delivery or late delivery of said items.
- 4.14 The client bears the risk for damage caused by faults or defects in the drawings, calculations, constructions, specifications and implementing rules provided by her.
- 4.15 The client bears the risk for:
- improper fulfilment of the agreement due to the auxiliary persons prescribed by her;
  - damage attributable to the wrongful acts of secondary contractors and their auxiliary persons;
  - the design derived from Qirion if and insofar as it has been approved by the client.
- 4.18 The client indemnifies Qirion against any claims by third parties with regard to losses which remain at the expense of the client under these Conditions, including the losses as a result of infringements of intellectual and industrial property rights.
- 4.19 The client allows Qirion to apply name indications and advertisements on the worksite or to the Work.

## Article 5. Activities not provided for in the agreement

- 5.1 The client is not entitled to allow auxiliary persons engaged by Qirion in the performance of the Work to carry out activities which are not associated with the Work.

## Article 6. Settlement of contract variations

- 6.1 Settlement of contract variations will take place:
- a. in the event of changes to the specifications (changes to the specifications, the Work or the implementation conditions of the Work);
  - b. in the event of deviations from the provisional amounts and offsettable and/or estimated quantities;
  - c. in the cases as provided for in these conditions. Each of the total amounts or the balance of the additional payments and deductions as a result of changes to the specifications shall not exceed 10% of the contract price.
- 6.2 Settlement of additional work will take place as a lump sum when the next instalment becomes due. If no payment by instalments has been agreed, then this will take place on completion.
- 6.3 Settlement of variations for less work also takes place upon the final settlement.
- 6.4 If the total of the variations for less work exceeds that of the additional work, Qirion will be entitled to an amount equal to [15]% of the difference between these total amounts.
- 6.5 The absence of written instructions for additional work does not affect Qirion's claims for its settlement.

## Article 7. Insurance of the client

- 7.1 The client is obliged to take out and maintain a usual CAR insurance or (an) equivalent usual insurance(s) in which Qirion (including the subcontractors and auxiliary personnel to be engaged by Qirion for the performance of the agreement) is included in the policy as a co-insured if the activities of Qirion serve to carry out the client's business operations, unless something else has been agreed in writing.
- 7.2 The client is obliged - upon the export of her products and installations, partly consisting of goods developed and/or supplied by Qirion, to the US and Canada or areas in which the

law of these countries is applicable - to notify Qirion within due time of her intention to export and to take out and maintain the usual liability insurances, partly for the benefit of all the parties involved in the development, manufacture or creation of these products and installations. The client will not cancel or change these insurances without the prior written consent of Qirion.

- 7.3 The client shall ensure that Qirion receives any written evidence of the existence and content of the insurances meant in paragraphs 1 and 2 as soon as possible.

### Article 8. Circumstances likely to increase costs

- 8.1 When circumstances likely to increase costs occur, Qirion must inform the client of this as soon as possible.
- 8.2 Circumstances likely to increase costs not attributable to Qirion will be settled as additional work.

### Article 9. Force majeure

- 9.1 In the event of force majeure Qirion will be entitled, without any judicial intervention being required, either to suspend the performance of the Work for no more than six (6) months or to terminate the Work in an incomplete condition, without being obliged to pay any compensation. All costs incurred by Qirion up to that stage will become immediately fully due and payable.
- 9.2 The term force majeure means circumstances Qirion reasonably did not have to take into account upon entering into the agreement and which it was not aware of either. This also includes suppliers of Qirion not fulfilling their obligations, transport problems, fire, strikes or work stoppages, loss of the parts to be processed, import or trading bans.

### Article 10. Completion

- 10.1 The agreed delivery period will be observed as much as possible but will never be considered as a deadline. Should this delivery period be exceeded, Qirion will enter into consultation with the client.

- 10.2 The Work is considered as completed:
- either when Qirion has given notice to the client that the Work has been completed, tested and ready for operation and the client has approved or accepted the Work;
  - or when no later than eight (8) days have expired after Qirion has stated in writing to the client that the Work has been completed, tested and ready for operation and the client has omitted to approve or accept the Work within that period;
  - or when the client puts the Work (prematurely) into operation on the understanding that by (prematurely) putting a part of the Work into operation that part will be considered as completed.
- 10.3 Minor defects that can be remedied within the warranty period and that do not affect the operation of the Work will not prevent completion.
- 10.4 The completion will release Qirion from all liability for defects the client should reasonably have discovered by that time.
- 10.5 As a result of the completion the risk of the Work will pass from Qirion to the client.

### Article 11. Dissolution

- 11.1 Notwithstanding any other rights Qirion might have, Qirion will be entitled, without any judicial intervention and notice of default being required, either to suspend the performance of the Work or to terminate the Work in an incomplete condition, if the client:
- a. applies for or has been granted a moratorium;
  - b. has been declared bankrupt or has filed for bankruptcy;
  - c. has failed in the performance of an obligation or it is foreseeable for Qirion that she will fail in this respect.
- Termination and suspension will take place by means of a written statement without Qirion being obliged to pay any compensation or to give any guarantee.
- 11.2 All claims Qirion might have or acquire on the client in these cases will become immediately due and fully payable.

## Article 12. Payment

### Security

12.1 After the agreement has been entered into Qirion will be entitled to demand sufficient security from the client if it has good reason to fear that the client will not fulfil her payment obligations. Article 11 applies accordingly if the client remains in default of providing the certainty demanded by Qirion.

### Risk Scheme

12.2 All prices are excluding VAT and are offsettable according to the Electrical and Mechanical Engineering Risk Scheme <sup>(1)</sup>. In that case Qirion will inform the client about the wage- material ratio applied in the offer.

### Payment

- 12.3 Payment by the client will take place in instalments in proportion to the progress (cost-plus contract) or the duration of the Work (fixed price contract), without any right to discount or setoff.
- 12.4 In connection with the cost-plus pricing method payment must take place each time no later than within thirty (30) days after the invoice has been sent. Payment in advance must be no later than within seven (7) days after the agreement has been entered into.
- 12.5 In connection with the fixed price contract pricing method payment must take place as follows:
- 20% upon awarding the contract;
  - 70% divided into no more than three (3) milestones as further described in the offer as meant in Article 2;
  - 10% on completion.
- 12.6 Payment for additional work will take place according to Article 12.3.

(1) Electrical and Mechanical Engineering Risk Scheme Settlement of wage costs changes:  $(L2-L1)/L1 \times 100\% = \dots\%$  L1: wage level on date of offer; L2: wage level on date of change.

Wage level: Collective Labour Agreement wages per hour according to the Statistics Netherlands Index including special remunerations, construction industry.

Settlement of prices of materials:  $(M2-M1)/M1 \times 100\% = \dots\%$

M1: price index figure on date of offer; M2: price index figure on date of change.

Price index figure: Index figures of Statistics Netherlands of manufacturer's prices for domestic sales.

## Article 13. Taking over personnel and seconded employees is prohibited

- 13.1 For the duration of the agreement and until one year after its termination the client will not be allowed to employ employees of Qirion involved in the performance of the agreement or to have them work for her otherwise.
- 13.2 In the event of secondment the client will not be allowed to employ these seconded employees for the duration of the secondment and until one (1) year immediately after the end of the secondment or to have them work for her otherwise.
- 13.3 In the event of any breach of the obligation referred to in paragraphs 1 and 2 the client will forfeit a penalty immediately due and payable which is not open to judicial mitigation amounting to three (3) gross annual salaries of the respective employee.

## Article 14. Default by the client

- 14.1 If payment has not taken place within due time, the client will be in default and Qirion will be entitled to suspend the Work and the warranty, notwithstanding any other rights Qirion might have.
- 14.2 After the client has defaulted Qirion will be entitled to collect the money owed to it without any further notice of default being required. All associated extrajudicial costs will be at the expense of the client unless Qirion opts to determine these costs at a fixed amount of [15]% of the outstanding amount.
- 14.3 Qirion can charge interest on the amount owed to it for the period that the client has been in default of payment. This interest is equal on an annual basis to the statutory interest (pursuant to Article 6:119a of the Dutch Civil Code).
- 14.4 A payment made by the client serves in the first place to reduce all costs and interest due and is then deducted from the invoices due and payable that have been outstanding the longest, even if the client states that the payment relates to subsequent invoices.

## Article 15. Retention of title

- 15.1 Qirion remains the owner of all items (such as materials and parts) for as long as the client has not fulfilled his payment obligations under this agreement including the amount that would become due from the client in connection with the failure to perform his obligations.

## Article 16. Warranty

- 16.1 Within the limits of the following conditions Qirion undertakes to remedy free of charge any defects which were already present at the time of completion but which only became apparent within six (6) months after the completion.
- 16.2 This obligation only covers defects which were reasonably not observable at the time of the completion and which become apparent under normal operating conditions and in connection with using the Work appropriately. It does not cover defects which are the result of insufficient maintenance by the client, changes applied without written consent from Qirion or repairs carried out by the client or normal wear and tear for which the client is liable according to Article 17.
- 16.3 In order to invoke the rights arising from Article 15, the client must:
- inform Qirion of the defects established in writing immediately;
  - make plausible to Qirion that the defects must be ascribed to the lesser quality or defective performance of the Work or - if and insofar as the design of the Work originated from Qirion - be the direct consequence of a blameworthy fault of Qirion, notwithstanding the provisions in Article 4;
  - render his full assistance to Qirion to enable the defects to be removed within a reasonable period.
- 16.4 The faulty parts replaced by Qirion pursuant to the warranty obligation become the property of Qirion.
- 16.5 If at Qirion's discretion the costs of repair are disproportionate to the client's interest in repair, the client will be entitled to compensation.

## Article 17. Liability of Qirion

### Before completion

- 17.1 Qirion will repair at its own expense any damage to the Work originating before completion of the Work unless it has not caused this damage or it is otherwise unreasonable that it should pay for this damage, notwithstanding the provisions in Article 4.
- 17.2 Qirion will be liable for the damage suffered by the client with regard to persons and items other than the Work insofar as this damage is caused by the performance of the Work and is the fault of Qirion or of the auxiliary persons it has engaged, if and insofar as this liability is covered by its insurance.
- 17.3 The two previous Articles will apply accordingly if Qirion carries out activities in order to fulfil its warranty obligation pursuant to Article 16.

### After completion

- 17.4 After completion Qirion will no longer be liable for any shortcomings in the Work other than fulfilment of the warranty obligation described in Article 16.
- 17.5 Qirion will only be liable for the loss suffered by the client as a result of the defects meant in Article 16, if and insofar as this liability is covered by its insurance.

### Extent of the compensation

- 17.6 If Qirion is obliged pursuant to this Article to compensate the loss suffered by the client, this compensation will not exceed the total amounts of the excess of its insurance and the amount paid under the insurance.
- 17.7 Qirion will never be liable for losses that the client would suffer other than those meant in the previous Articles.
- 17.8 The limitations included in the previous Articles are not applicable if the loss is the result of the intention or gross negligence of Qirion or its managing subordinates.
- 17.9 Any claim for compensation or repair of loss suffered before or after the completion will lapse if this claim has not been expressed at the latest on the day of the completion or on the day on which the warranty period ends.
- 17.10 The legal action against Qirion by the client for compensation or for repair under these conditions will become time-barred after one (1) year after the client has protested in this respect.

## Article 18. Final provision

- 18.1 The agreement and all agreements arising from it will exclusively be governed by Dutch law.
- 18.2 Any dispute between Qirion and the client will be settled with the exclusion of the ordinary court by the Dutch Arbitration Board for the Metal Industry and Trade.
- 18.3 Contrary to the foregoing Qirion will be entitled to have the dispute settled by the ordinary court; in the event that the district court has jurisdiction the dispute will be settled by the district court in the location or district in which Qirion is registered.
- 18.4 The applicability of the Vienna Convention 1980 (CISG) with regard to contracts for the international sale agreements regarding movables is excluded.

## B. Special conditions with regard to maintenance

Apart from these General Conditions the provisions in this 'Maintenance' chapter are applicable if it has been determined in an agreement that Qirion will carry out maintenance activities during the maintenance period.

### Article 19. Scope and definitions

- 19.1 Unless otherwise agreed the Maintenance Activities will only be carried out on installations fitted in the Netherlands.
- 19.2 The following words written with a capital letter in this chapter will have the meaning given to them below:
  - a. Maintenance Activities: all activities, including the delivery of goods, Qirion must carry out to ensure that the technical condition of the installation and the functions to be performed by the installation comply with the requirements arising from the agreement during the maintenance period.
  - b. Breakdown: a sudden unexpected interruption of the performances of the installation.

### Article 20. Performance of the Activities

- 20.1 Qirion will do its utmost within its capacity during the maintenance period to keep the chance of Breakdowns at an acceptable level by means of preventative Maintenance Activities and to remedy any Breakdowns, insofar as this has been agreed, by means of corrective Maintenance Activities.
- 20.2 Qirion is entitled to carry out remote Maintenance Activities by means of a connection with the installation formed via a telecommunication facility.
- 20.3 After the formation of the agreement but before the commencement of the Activities Qirion will formulate a work plan with an overview of the Maintenance Activities in a diagram with regard to the order and period (week, month, annual plan) in which they will be carried out.
- 20.4 The work plan is based on the client's description of the Breakdown performance of the installation, of all the tasks, implementation frequencies, materials, auxiliary means and any required skills, all this for the performance of the preventative Maintenance Activities and making the corrective Maintenance Activities controllable.
- 20.5 The work plan will become effective after approval by the client. If the work plan fits the description as referred to in paragraph 4 the client cannot withhold his approval of the work plan.
- 20.6 Qirion will adjust the work plan annually and on the basis of this she will make an estimate of all maintenance costs for the respective year. The work plan can only be adjusted in the meantime by means of a change pursuant to Article 6.
- 20.7 If this has been agreed, the work plan will include the date of commencement and completion of anticipated and intended instructions for carrying out preventative and/or corrective Maintenance Activities and/or other activities.

- 20.8 The instructions referred to in paragraph 7 will be given in writing by the client at least one (1) month in advance on the basis of the work plan. Instructions not included in the work plan will be given in writing at least two (2) months in advance. Prior to giving the instructions Qirion will have issued its price for this.
- 20.9 The client must give instructions for performing the corrective Maintenance Activities in writing in advance. If this is impossible due to circumstances, the instructions will be given afterwards on the basis of the actual costs incurred by Qirion.
- 20.10 After completion of the Maintenance Activities Qirion will ask the client to sign the instructions as completed. After these instructions have been signed the Maintenance Activities are considered to have been completed.
- 20.11 If it has been explicitly agreed, Qirion will ensure that one copy of the technical information will be present on the site or at the location where the Maintenance Activities are to be carried out, that these documents can be consulted at any reasonable moment and that the 'As Built' situation of the Maintenance Activities has been incorporated therein for a fee determined in the agreement.
- 20.12 If this is required for the performances, operational reliability and maintainability of the installation or it is prescribed in the rules referred to in Article 4 paragraph 3, Qirion will inform the client with regard to the measures to be taken. By means of a change pursuant to Article 6 the client can instruct Qirion separately to carry out the necessary construction change or other (project-based) activities.
- 20.13 Qirion shall inform the client in advance of the moment in time at which the Maintenance Activities will be carried out. If the Activities are not carried out at the agreed moment in time and this is not attributable to Qirion, it will be entitled to an extension of the period and/or cost compensation pursuant to Article 8.
- 20.14 If this has been explicitly agreed, Qirion will ensure that Breakdowns can be reported to a disclosed reporting centre 24 hours a day and seven days a week.
- 20.15 Notwithstanding the provisions in paragraph 9 after instructions from the client Qirion will do the utmost within its capacity to remedy urgent Breakdowns within 24 hours after being reported unless a different period has been agreed. The other Breakdowns will be remedied where possible during Qirion's normal working hours.
- 20.16 Qirion will carry out the Maintenance Activities during the maintenance period specified in the agreement, failing which a period of one (1) year applies.
- 20.17 The maintenance period will be tacitly extended each time by the original period unless one of the parties terminates the agreement in writing with due observance of a notice period of three (3) months before the end of the respective period.
- 20.18 The Maintenance Activities carried out by Qirion will be settled according to the rates, unit prices or as a fixed price specified in the agreement which will be annually index-linked according to the Electrical and Mechanical Engineering Risk Scheme unless otherwise agreed.
- 20.19 Payment of the fees takes place within two (2) weeks after the date of the respective invoice.
- 20.20 Cancellation of the agreement by the client requires a written notice. In the event of a notice of termination of the entire agreement the client must observe a notice period of at least six (6) months and with regard to a notice of termination of an instruction to carry out Maintenance Activities a notice period of at least one (1) month.