

GENERAL TERMS AND CONDITIONS FiberCore Europe

Version dated April, 2017

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A. Provisions concerning the applicability of these general terms and conditions and the conclusion of an agreement

1 Applicability

- 1.1 These general terms and conditions are applicable to all quotes, offers, price statements and agreements covering the carry out of work, the creation of tangible work, and/or the delivery of products by InfraCore Holding B.V., FiberCore Europe B.V., InfraCore IP B.V., InfraCore Company B.V. and/or another party affiliated with the aforementioned companies (hereafter collectively and/or individually referred to as: "**FiberCore**"), and all resulting and/or related agreements between Client and FiberCore, or their respective legal successors.
- 1.2 The applicability of other, contrary general (purchasing) terms and conditions is expressly rejected by FiberCore.
- 1.3 In the event of conflict between the provisions of these general terms and conditions and the provisions of the agreement concluded between FiberCore and Client, the provisions of the agreement prevail.
- 1.4 Deviations from or changes to these general terms and conditions are only applicable insofar as these are agreed in writing.
- 1.5 These general terms and conditions are also stipulated for the benefit of the (legal) persons engaged by FiberCore for the fulfilment of the agreement, the directors and the shareholders of FiberCore, as well as for the directors and the (indirect) shareholders of the relevant shareholders and all those who, whether or not in an employment relationship, work for FiberCore.

2 Quotes and offers

- 2.1 All oral and/or written quotes, offers and price statements of FiberCore are revocable and expire after thirty (30) days; the amounts mentioned therein exclude VAT unless stated otherwise.
- 2.2 In the event no exact price is provided in the quote, offer and/or price statement, then FiberCore will work on a cost-plus basis. The Client must in that case pay the price that will be determined on the basis of post-calculation on the grounds of the usual rates and methods of FiberCore. When FiberCore has provided a target price, such target price entails nothing more than an indication without obligation. The target price can be exceeded or undershot without limitation.
- 2.3 The quote, offer or price statement contains an exhaustive statement and description of the work to be done by FiberCore for the Client.



2.4 Client shall only use the quote, offer or price statement issued by FiberCore and the knowledge and ideas of FiberCore contained therein for considering whether or not to enter into an agreement with FiberCore.

2.5 FiberCore has the right to modify all prices, rates and suchlike annually per 1 January.

3 Conclusion of the agreement

3.1 The agreement is entered into if a confirmation of the assignment is signed by the Client and such is received by FiberCore or if FiberCore actually executes such as is included in the quote/offer.

3.2 Changes, deviations and/or additions to the agreement are only binding after such is agreed between the parties in writing.

B. Provisions concerning assignments to carry out work

4 Assignment to carry out work

4.1 That provided in articles 4 and 5 of these general terms and conditions is applicable to all assignments to FiberCore to do work in the sense of article 7:400 paragraph 1 DCC, such as providing advisory or design services.

4.2 The assignment to carry out work to FiberCore concerns a best effort obligation (*inspanningsverbintenis*).

4.3 The execution of the contracts awarded is exclusively for the benefit of the Client. Third parties can derive no rights from it.

4.4 When engaging third parties that are not part of the FiberCore organization, FiberCore shall exercise the necessary care and shall consult as much as reasonably possible with the Client for the selection of these third parties.

5 Liability

5.1 All assignments referred to in article 4 shall be considered as exclusively granted to and accepted by FiberCore, even if it is expressly or silently the intention that the project is to be completed by a certain person. In derogation of articles 7:404, 7:407 paragraph 2 and 7:409 of the DCC, the directors of FiberCore, as well as those who work for or for the benefit of FiberCore, whether or not in an employment relationship, are not personally bound or liable, and the assignment is not ended by their death, even if the contract is awarded with that certain person in mind.

C. Provisions concerning contractor agreements

6 Contractor agreements

6.1 That provided in articles 6 through 9 is applicable to all assignments to FiberCore for the creation of tangible work in the sense of article 7:750 paragraph 1 DCC.

7 Contract variations

- 7.1 Settlement of contract variations (whether such consists of more or less work) takes place:
- a. in the event of changes to the agreement;
 - b. in the event of directions from or because of the government on the grounds of legal regulations or rulings, insofar as these were not foreseeable before or upon the conclusion of the agreement;
 - c. in the event of deviations from provisional sums;
 - d. in the event of deviations from offsetable quantities; or
 - e. in the events in which settlement of contract variations is prescribed in the agreement.

8 Delivery of a work

- 8.1 FiberCore will endeavor to consider the agreed term for execution as much as possible; however, this term will never apply as a fatal deadline (*fatale termijn*). In the event of exceeding or a threat of exceeding the term, FiberCore will consult with the Client.
- 8.2 The work will be considered as delivered if, in accordance with the following paragraphs of this article, it is or is considered to be approved by the Client.
- 8.3 At least one (1) week prior to the day on which the work in the opinion of FiberCore is completed, the Client will be invited to inspect the work. The Client will inspect the work in the presence of FiberCore, to ascertain whether the work is in conformity with the agreement.
- 8.4 Within eight (8) days after inspection, the Client must notify FiberCore in writing whether or not the work is approved, in the first case, stating any minor defects, and in the latter case stating the defects that form the reason for withholding approval.
- 8.5 Minor defects will never be a reason for withholding approval, as long as they do not stand in the way of putting the work into use.
- 8.6 If the Client does not make the notification in writing in accordance with article 8 paragraph 4 within eight (8) days after inspection, the work will be considered to be approved on the eighth (8th) day after inspection.
- 8.7 When the Client fails to inspect the work – despite the invitation of FiberCore to do so in accordance with article 8 paragraph 3 – FiberCore can invite the Client a second time by registered mail to inspect the work. If the Client again does not fulfil the request to inspect the work, then the work will be considered to be approved on the date of the first invitation to do an inspection. If the Client does fulfil the request, then the provisions of article 8 paragraph 3 through 8 paragraph 6 is applies.
- 8.8 The work will in any case be considered to be approved if the Client put it into use. The day the work or part thereof is put into use shall be considered as the day of approval of the work or the relevant part.

9 Defects

- 9.1 Client loses any claim related to a defect in the work if the Client does not notify FiberCore in writing of such defect within (14) days after the Client has discovered or reasonably should have discovered the defect. During the completion and delivery of the work, the Client is required to maintain close supervision and monitoring of the work so that defects can be discovered.
- 9.2 In any case, any legal claim due to a defect in the work expires by operation of law five (5) years after delivery.

D. Provisions concerning the sale and delivery of finished products

10 Agreement concerning the sale of a finished product

10.1 That provided in articles 10 through 14 is applicable to all agreements between FiberCore and the Client concerning the sale and delivery of movable items (ready product) in the sense of article 7:1 DCC.

11 Delivery of a product

11.1 The place and manner of delivery will be provided in the agreement. The moment the product is offered at the agreed place and time, qualifies as the moment the product is delivered even if the Client does not take delivery of the product. The delivery costs are payable by the Client.

11.2 FiberCore will endeavor (*inspannen*) to consider the agreed delivery time as much as possible; however, this term will never apply as a fatal deadline (*fatale termijn*). In the event of exceeding the delivery term, the parties will consult with each other.

11.3 The risk with regard to the product shall pass to the Client after delivery.

11.4 Without prejudice to that provided in the law, the ownership of the product shall not pass to the Client until FiberCore has received all payments due under the agreement.

11.5 During the time that FiberCore is still to be considered as the owner of the product, the Client is required to handle the delivered product carefully and not to pledge, process, transfer or dispose of the product other than is necessary in the context of normal business operations.

12 Complaints

12.1 The Client is required to notify FiberCore within twenty-four (24) hours after delivery of a product of those defects that are noted or that reasonably could have been noted by the Client upon delivery.

12.2 That provided in article 9 paragraph 1 is also applicable to the agreement for sale between FiberCore and Client.

E. Provisions which are applicable regardless of the nature of the agreement

13 Other provisions

13.1 That provided in articles 14 through 19 is applicable to all assignments to carry out work and/or contractor agreements, or to agreements for sale.

14 Payment

14.1 The Client must pay the invoice amount within fourteen (14) days after the invoice date, in euros, by means of deposit into the bank account designated by FiberCore and without any right to suspension, discount or setoff.

- 14.2 If Client has not paid within the previously mentioned deadline, then Client is in default by operation of law and shall also owe the statutory commercial interest (*wettelijke handelsrente*) over the outstanding amount, increased by two (2) percentage points, until the date of entire satisfaction, without prejudice to the other rights and claims of FiberCore on the grounds of this agreement and the law. If Client is in default, all claims of FiberCore with respect to work done and costs incurred become immediately payable.
- 14.3 Costs as a result of legal or extra-legal collection of the claim are payable by the Client. The extra-legal costs are at least fifteen percent (15%) of the claim amount with a minimum of € 1,500.00 (that is: fifteen hundred euros).

15 Intellectual property and know how

- 15.1 FiberCore reserves all rights with respect to rights of intellectual property and (secret) know how, that FiberCore uses or has used in the context of the execution of the agreement with the Client.
- 15.2 All rights of intellectual property and know how that become known to parties during the execution of the work, whether or not the work is done collectively, or that are created or acquired or could be, rest solely with FiberCore. Insofar as needed, the Client hereby transfers (in advance) to FiberCore all rights to intellectual property that are created during the collective execution of the work, which transfer FiberCore hereby accepts (in advance).
- 15.3 If the collective or non-collective execution of the work should lead to results that are suitable for an application for a patent, then FiberCore has the exclusive right to apply for a patent, in FiberCore's own name and at FiberCore's own expense. Client is required to render FiberCore all assistance for the submission of a patent application. During the execution of the work, parties will mutually inform each other should the suspect results to be patentable.
- 15.4 It is expressly forbidden for the Client, with or without the engagement of third parties, to duplicate, publish or exploit the rights and know how intended in this article 15 without prior written consent from FiberCore. None of the parties shall inform third parties about the content of assignments or agreements that are concluded between the parties. Parties ensure that third parties they engage, including employees, shall comply with the provisions of this article 15.
- 15.5 The Client is in any event not entitled to make use of reports, calculations, recommendations, designs and all other items protected by copyright that are prepared by FiberCore, until the entire compensation owed to FiberCore in that regard is paid. In the event of unauthorized use, the Client forfeits to FiberCore a penalty of € 10,000.00 (that is: ten thousand euros) for every day that the unauthorized use continues, without prejudice to the right of FiberCore for compensation for actual damages suffered and FiberCore's other rights pursuant to the agreement and the law.

16 Suspension, premature termination, termination

- 16.1 The Client is at all times entitled to entirely or partially terminate (*opzeggen*) the agreement. In the event that the Client terminates the agreement on the grounds of this paragraph, FiberCore has the right to payment of the complete price increased by the costs that FiberCore incurs as a result of the non-completion, reduced by the costs saved by FiberCore as a result of the premature termination and increased by an extra compensation of 10 percent (10%) of the complete price that is owed on the grounds of the agreement or would have been. The extra compensation just mentioned is not owed if the agreement is terminated due to compelling reasons (*zwaarwichtige redenen*) that are attributable to FiberCore.

- 16.2 FiberCore is authorized to dissolve (*ontbinden*) the agreement in the event of liquidation, (application for) suspension of payments, debt restructuring and/or bankruptcy of the Client or in the event of seizure of assets of the Client – if and insofar as the seizure is not lifted within three (3) months – or of any other circumstance due to which the Client no longer has full control over its assets. In such cases, the Client has no right to any payment and/or compensation. In the event that FiberCore dissolves the agreement on the grounds of this paragraph, FiberCore – without prejudice to its other rights and claims on the grounds of the law – has the right to payment of the complete price increased by the costs that FiberCore incurs as a result of the non-completion, reduced by the costs that FiberCore saves as a result of the premature termination.
- 16.3 During the time that the Client is in default with respect to its payment obligations or any other obligation under the agreement (including these general terms and conditions), FiberCore is entitled to suspend the performance of its obligations. The measurements that FiberCore must take as a result thereof as well as the damages that FiberCore may suffer as a result thereof will be compensated by the Client to FiberCore.

17 Liability

- 17.1 Except in case of FiberCore or its management directors' willful intent or gross negligence (*opzet of bewuste roekeloosheid van FiberCore of haar leidinggevende ondergeschikten*), FiberCore's total liability for breach of the agreement, unlawful act or other cause – including any possible guarantee or indemnity – shall be limited to compensation for direct damages and shall not exceed the amount that FiberCore receives from its insurer in this respect.
If, for whatever reason, the insurance does not provide payment, the total liability of FiberCore is limited to the amount that is paid by the Client under the relevant agreement, with a maximum of € 500,000.-.
- 17.2 FiberCore is never liable for indirect damages. Aforesaid indirect damages include (but is not limited to): consequential damages, loss of revenue, production loss, lost profits, missed savings and business interruption loss.
- 17.3 The Client indemnifies FiberCore and/or the persons engaged by FiberCore for the execution of the work against all claims of third parties due to product liability as a result of a defect in a product that is delivered by the Client to a third party and that (partly) consisted of products and/or materials delivered by FiberCore.
- 17.4 Any (guarantee) liability due to defects in that which is delivered shall cease to have effect if:
- other and/or stricter requirements are set for the work done than that which was known upon the conclusion of the agreement;
 - without prior written consent from FiberCore, repair or other work is done by third parties;
 - the provided materials and the work done are not used and/or maintained in the intended way; or
 - the Client has not fulfilled its obligations towards FiberCore.

18 Law and forum choice

- 18.1 All agreements between the Client and FiberCore shall be exclusively governed by and construed in accordance with the laws of the Netherlands. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 18.2 Any and all disputes will be exclusively submitted to the competent court of Rotterdam, location Rotterdam.