

VGBOUW MODEL COMBINATION AGREEMENT

*with General Terms and Conditions and Tender
Agreement 1996
forming part thereof*

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Preface

The introduction of the new Civil Code in 1992 as well as the amended policy of the authorities with regard to competition was reason for the Company Lawyers Contact Group of VGBouw to actualize the familiar NIVAG Standard Contract of Cooperation. This revision offered at the same time the opportunity to carry through a number of amendments and to add a number of new provisions to the model. The revision has been carried out under the aegis of the Company Lawyers Contact Group by a working party, members of which were:

- | | | |
|---|-----------------------------|---------------------------------|
| - | mr. A. Henderson | TBI Bouwgroep B.V. |
| - | mr. ing. J.J. van de Vijver | VGBouw |
| - | mr. F.D. Wijma | (formerly) Hillen & Roosen B.V. |

Also outside the sphere of VGBouw frequent deliberations have taken place about the contemplated amendments. We thank in particular the Ministry of Economic Affairs, department marketing effects, for their advice with regard to the legal aspects of competition as well as mr.

H. Wammes, senior lecturer of the Nijmegen Catholic University and P. Klemann and P.A. van Onzenoort of the office De Brauw Blackstone Westbroek in Rotterdam for their advice on the subjects of property law and company law.

At its meeting of 15th February 1996 the Company Lawyers Contact Group of VGBouw established the new text. With the merger in 1990 of NIVAG and Progresbouw, the legal predecessors of VGBouw, the name NIVAG disappeared, so that the necessity arose to change the old name. The chosen name is: "VGBouw Model Combination Agreement with General Terms and Conditions and Tender Agreement forming part thereof".

The Company Lawyers Contact Group has very consciously maintained the formula of the NIVAG Standard Contract. It appears in practice that this formula meets most the wishes of the building companies.

The explanation to this Model Agreement shall consider the principal amendments with regard to the NIVAG Standard Contract of Cooperation.

Zoetermeer, March 1996.

Introduction for users

In a cooperation with building companies two phases can be differentiated: the joint tender in order to obtain an order and the joint execution of the order which has been obtained. For that reason it was decided to divide VGBouw Model Combination Agreement 1996 into:

- a form to be completed and signed by parties, in which form the necessary provisions are included, referred to as the “Tender Agreement”;
- and a form to be completed and signed by parties, in which form the necessary provisions are included, referred to as the “Combination Agreement”.

The VGBouw Combination Conditions 1996 form part of the Tender Agreement as well as of the Combination Agreement.

The fact that the old NIVAG Standard Contract of Cooperation has been widely used during many years means that the model met with wishes in practice. The composers of the revised publication hope that the new model, too, will be applied to the same extent. However, it will remain up to parties to judge whether deviating or additional rules will be necessary in their specific case.

For the sake of good order we note that it will in the end be up to the competent court to decide to what extent a combination contract, which has been effected by making use of this model, meets the laws and rules in force with regard to competition (on publication of this Model Agreement: Besluit mededingsregelingen aanbestedingen [Contract Competition Rules Decree]).

VGBouw TENDER AGREEMENT

(delete space left blank)

The Undersigned,

1.

established at:

represented by:

2.

established at:

represented by:

3.

established at:

represented by:

4.

established at:

represented by:

whereas:

a. the tender is open for the execution of

.....

hereinafter to be referred to as “the work”, which shall be executed on instructions from:

.....

b. parties contemplate to tender jointly for the work and, if the work is awarded to parties, to execute the work for joint account.

Article 1

Parties will jointly draw up an estimate of the work in order to reach a common tender price. The activities required for that purpose will be divided by mutual agreement.

Article 2

1. Should parties not reach agreement on a common tender price, the amount accepted by the majority shall be deemed to be common tender price. In the absence of a majority, the amount which is at the top of the poll shall be considered as common tender price. No common tender price shall be effected in the event of an equality of votes.
2. This Agreement ends with regard to each party who is not prepared to accept the tender price described in the first paragraph. Should a party with regard to whom this Agreement ends make use of his right to tender for the work at his own discretion or in any other way become a party to the execution of the work that party shall owe a compensation to the remaining parties for the data given by those parties for the benefit of the tender for the work and the other activities they have carried out to that purpose, whereby the first mentioned party may be judged to have benefited, which compensation will be fixed at an amount of percent* of the common tender price. This compensation shall be in reasonable proportion to the extent in which the party with regard to whom this Agreement ends shall have benefited. The provisions of article 5 of this Agreement are applicable mutatis mutandis to this compensation.
3. In all cases in which no common tender price is realized, this Agreement shall cease to have effect and parties shall be free to tender for the work at their own discretion.
4. Each party shall be free to withdraw as long as no common tender price has been fixed. The provision set out in the second paragraph shall apply to the party who makes use of this right, unless the remaining parties effect no common tender price either.

Article 3

1. Where a common tender price is realized in the manner described in article 2, parties shall jointly tender for the work.
2. As representative of parties to this Agreement shall be designated :
.....
.....
3. In the event that the work is awarded to parties, they undertake to execute the work for joint account. To that effect parties conclude at the same time of the signing of this Agreement a combination agreement under the suspensive condition of award of the work to parties
4. Should not all parties participate in the joint tender, the remaining parties may by mutual agreement introduce amendments to the Combination Agreement which they think necessary with due observance of the provision made in article 28 paragraph 3 of the VGBouw Combination Conditions 1996.

*Fill in percentage

Article 4

1. With regard to the realization of the common tender price each of the parties shall bear its own cost.
2. Contrary to the provision set out in paragraph 1, the following costs shall be borne by parties pro rata to the share described in the Combination Agreement of each of the parties in the Combination:

-
-
-
-

Article 5

1. Each party who acts contrary to an obligation being in force by virtue of this Agreement, shall forfeit in favour of the other parties an immediately payable fine amounting to three (3) per cent of the common tender price of the work providing that this fine shall be calculated on a part of the common tender price, should that party only be engaged in a part of the work.
2. Each of the other parties shall be entitled to collect the full amount of the fine. To that effect each of the parties shall in so far as necessary give an irrevocable power of attorney to each of the other parties. By payment of the fine to one of the other parties, the party obligated to pay the fine shall be discharged vis-à-vis all other parties.
3. Each of the other parties shall be entitled to the amount of the fine pro rata to its share in the Combination. Should a party not wish to receive its share that share shall be spent for a generally useful or charitable purpose designated by the board of Vereniging Grootbedrijf Bouwnijverheid or its successor in title.
4. The provisions set out in paragraphs 1, 2 and 3 shall not affect the right to claim full damages, should there be grounds to do so.

Article 6

The VGBouw Combination Conditions 1996 shall apply to this Agreement in so far as there is no deviation from these conditions in the supplement on pages 9 and 10, which forms part of this Agreement.

Article 7

This Agreement may be referred to as the VGBouw Tender Agreement.

Thus infold, 19.....

at:

Party 1:

Signature:

Party 2:

Signature:

Party 3:

Signature:

Party 4:

Signature:

Party 1:.....

Party 2:.....

Party 3:.....

Party 4:.....

VGBouw Combination Agreement 1996

(Delete space left blank)

The Undersigned:

1.
established at:
represented by:
2.
established at:
represented by:
3.
established at:
represented by:
4.
established at:
represented by:

whereas:

- a. order has been given to parties by
.....
for the execution of by
.....

hereinafter to be referred to as “the work”;

- b. parties wish to carry out the work for joint account under a common name;

declare that they enter to that effect into a general partnership, hereinafter to be referred to as “the Combination”, with due observance of the following conditions.

The references in this Agreement concern the provisions of the VGBouw Combination Conditions 1996.

§1 (article 2, paragraph 1)

The Combination shall execute the work under the name:

.....

§2 (article 2, paragraph 2)

The address and domicile of the Combination shall be deemed to be:

.....

§3 (article 5, paragraph 2)

The following persons are appointed to the Board for the first time:

1. by:..... as a
member: as a deputy
member:
2. by:..... as a
member: as a deputy
member:
3. by:..... as a
member: as a deputy
member:
4. by:..... as a
member: as a deputy
member:

§4 (article 6, paragraph 4)

Resolutions shall be passed in the following proportion of votes:

| Party | has |
|--------|---------------|
| 1..... | vote(s) |
| 2..... | vote(s) |
| 3..... | vote(s) |
| 4..... | vote(s) |

§5 (article 6, paragraph 6a)

Unanimity of votes shall be required for entry into agreements by the Combination with the party commissioning the work or with third parties, in so far the Combination's interest of the obligations arising therefrom exceed the value or an amount of NLG

§6 (article 6, paragraph 6b)

Unanimity of votes shall be required for entry into agreements of the Combination with one of the parties, if it concerns a matter the interest or value of which exceeds an amount of NLG

§7 (article 7, paragraph 1)

With the daily management of the work as a project manager shall be charged:

.....

§8 (article 8)

Parties shall participate in the Combination in the following manner:

| Party | has |
|--------|---------|
| 1..... | % |
| 2..... | % |
| 3..... | % |
| 4..... | % |

§9 (article 10, paragraph 1)

The provisions applicable pursuant to this Agreement concerning the contribution of the use of equipment shall only apply to equipment with a purchase value exceeding an amount of NLG , unless the Board sets a different limit.

§10 (article 10, paragraph 2b)

For the cost of insurance of equipment, the use of which is contributed, parties shall receive :

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

..... % of the VGBouw standard of value for.

§11 (article 14, paragraph 4)

Costs and charges of seconded personnel are paid according to function in the following percentages of the gross monthly income:

| function | percentage |
|----------|------------|
| 1..... | % |
| 2..... | % |
| 3..... | % |
| 4..... | % |
| 5..... | % |
| 6..... | % |
| 7..... | % |
| 8..... | % |
| 9..... | % |
| 10..... | % |

§12 (article 16, paragraph 1)

For funds loaned by parties to the Combination an interest will be paid of %, per year.

§13 (article 18, paragraph 1)

Compensation of the general expenses of parties will amount to %

§14 (article 18, paragraph 2)

With regard to the contribution of goodwill, knowledge, work or diligence, an extra compensation will be paid for:

.....

§15 (article 24, paragraph 2)

Parties will share in the result of the Combination:

a.* pro rata to each party's share in the Combination

b.*

§16

This Agreement shall come into effect under the suspensive condition that the order for the execution of the work is given to the Combination.

§17

The VGBouw Combination Conditions 1996 shall apply to this Agreement in so far as there is no deviation from these conditions in the supplement on pages 17 and 18, which form part of this Agreement.

**) delete which is not applicable; complete b if a is deleted.*

§18

This Agreement may be referred to as the VGBouw Combination Agreement.

Thus infold, 19.....

at:

Party 1:

Signature:

Party 2:

Signature:

Party 3:

Signature:

Party 4:

Signature:

Party 1:.....

Party 2:.....

Party 3:.....

Party 4:.....

GENERAL TERMS AND CONDITIONS

**of the Vereniging Grootbedrijf Bouwnijverheid for the combined execution of works
(VGBouw Combination Conditions 1996)**

Article 1

DEFINITIONS

Unless otherwise stated, the following terms shall have the following meaning:

1. Tender Agreement: the agreement by which parties undertake to tender jointly for the work.
2. Combination Agreement: the agreement by which parties undertake to jointly execute the work.
3. Combination: the general partnership in which parties execute the work for joint account and under a common name.
4. work: the work described in the Tender Agreement and/or the Combination Agreement.
5. Board: the Board of Management of the Combination.

Article 2

NAME; DOMICILE

1. Should the work be awarded to parties, they shall have it executed by the Combination under a name to be mentioned in the Combination Agreement.
2. With regard to the tender for the work parties shall elect domicile at the office of the party who by virtue of the Tender Agreement is acting as authorized representative of the other parties and with regard to the execution of the work at the address mentioned in the Combination Agreement.

Article 3

COMING INTO EFFECT AND END OF THE AGREEMENTS

1. The Tender Agreement shall come into effect with the signing of that Agreement and shall end as soon as the tender procedure has ended or so much earlier pursuant to the provision set out in article 2, paragraph 3 of the Tender Agreement, any and all with maintenance of obligations which according to their nature shall be deemed to continue in existence after the termination.
2. The Combination Agreement shall be signed at the same time as the Tender Agreement, but shall not come into effect until such time that the work is awarded to parties. The Combination shall be deemed to be concluded as from that date.

3. The Combination Agreement shall end after the mutually agreed final settlement, unless and in so far as the work, rights or obligations continue to exist vis-à-vis the party commissioning or third parties, in which case the Combination Agreement shall end if and as soon as those rights or obligations have been fulfilled.

Article 4

GENERAL OBLIGATIONS

1. Parties reciprocally undertake with regard to the award and the execution of the work to contribute all necessary goodwill, knowledge, work and diligence. The consent of all parties shall be required for further contribution.
2. Parties shall at the implementation of the Tender Agreement and the Combination Agreement observe reasonableness and fairness, always keep each other informed of matters which concern or may concern the Combination and generally do everything that corresponds with the proper implementation of the Tender Agreement or the Combination Agreement and omit what conflicts with same.
3. Parties shall jointly tender for activities which do not form part of the work, but according to common opinion are considered as a part of the project in which the work has been included, with due observance of the terms and provisions of the Tender Agreement, provided that the tender of these activities has been announced at the same time as that of the work.
4. Where tenders are invited for the execution of activities which do not form part of the work but will have an effect on the progress and undisturbed execution of the work, parties shall make reasonable efforts to tender jointly for these activities with due observance of the terms and provisions of the Tender Agreement.
5. Where a party contributes knowhow the other parties shall not, in so far as its use is not already permitted to them for other reasons, without explicit consent of the contributing party make use or allow to make use of said knowhow other than for the execution of the work.
6. Each of the parties guarantees that legal entities or enterprises in which they may be deemed to exercise final control will refrain from any actions which could constitute a violation of obligations pursuant to the Tender Agreement or the Combination Agreement, should they have been carried out by the party concerned. Where appropriate the party concerned shall be liable vis-à-vis the other parties for the ensuing loss.

Article 5

MANAGEMENT

1. The management of the Combination shall rest with the Board, to which each party shall appoint a member and a deputy member. Each party may at any time replace or remove from office a member or a deputy member appointed by that party.

2. The first appointment of members and deputy members will be included in the Combination Agreement.
3. In the event of absence of or prevention to act by a member of the Board he will be replaced by his deputy member. Should the deputy member also be unable to be present, the party concerned may be represented on the Board by another person in whom in that case the powers of a member of the Board shall vest provided that said representative holds a written power of attorney.
4. The Board shall represent the Combination. Where required for the execution of the work, the Board may assign the power of representation to the project manager of the work.
5. The Board may delegate powers to one or more of its members.
6. Should the Board comprise of more than two members the members of the Board shall elect a chairman from among its members.

Article 6

MEETINGS AND DECISION PROCESS

1. The Board shall meet whenever it passes a resolution to that effect, or at the request of one of the members.
2. Notice of a meeting shall be given by or on behalf of the chairman, or in the event of his refusal or absence, or if no chairman has been appointed, by the party who is first to take action with due observance of a period of at least 48 hours. Should notice not be given in the prescribed manner, valid resolution may nevertheless be passed if all parties are represented at the meeting.
3. The Board shall designate a person, who shall be charged with drawing up the minutes of its meetings. The minutes shall be sent to the members of the Board as soon as possible. If within 14 days of sending the minutes no objections have been raised, the minutes shall be deemed to have been approved. The period referred to in this paragraph shall be suspended during the shut-down of the company as a result of summer holidays and during other work stoppages applicable to the work for a period exceeding three days.
4. The Combination Agreement shall provide how many votes each member of the Board may be cast. In the absence of such a provision each member shall be deemed to be able to cast one vote.
5. Resolutions shall be passed by absolute majority of the votes of all members of the Board. In the event of an equality of votes the proposal shall be deemed to have been rejected.
6. The following resolutions require unanimity of votes:
 - a. the conclusion of agreements by the Combination with the party commissioning the work or with third parties, in so far as the Combination's interest or the obligations arising from the same exceed an amount or value to be stipulated in the Combination Agreement;
 - b. the conclusion of further agreement(s) with one of the parties, should the interest or value exceed the amount to be stipulated in the Combination Agreement in so far as it does not relate to the application of articles 9 up to and including 14;

- c. delegation of powers of the Board;
 - d. the appointment of a chairman of the Board;
 - e. to conduct on behalf of the Combination mediation procedures or legal actions, including an arbitration procedure, the request of binding third-party ruling or the conclusion of a procedural agreement [vaststellingsovereenkomst], provided that each member of the Board is empowered in emergencies to demand a provisionally enforceable relief in interim injunction proceedings, to request leave to attach before judgment or to defend an action that has been brought against the Combination;
 - f. the contracting of loans;
 - g. resolutions as referred to in article 10, paragraph 10.
7. Should a party be of the opinion that its interests or those of the Combination are unreasonably impaired by any resolution of the Board, the implementation of the resolution shall, if the party concerned has immediately requested revision in writing, be suspended. In that case the decision concerning the matter to which the contested resolution was related shall, as laid down in article 32, paragraph 2, be referred to arbitrators whose award with force of a binding third-party ruling shall replace the resolution. The suspension of the implementation of the contested resolution shall cease to have effect, unless the party who requested revision of the resolution has submitted the matter to which the resolution was related as emergency dispute in the manner described in article 32, paragraph 2, by the fifth working day after the day on which the resolution was passed. Should none of the parties make use of its rights described in this paragraph, the resolution of the Board shall be final.
8. Resolutions of the Board also contain a designation of the person who will be charged with the execution of the resolution.

Article 7

DAILY MANAGEMENT

- 1. A person to be mentioned in the Combination Agreement will be charged with the daily management of the execution of the work and shall act as project manager of the work. The project manager shall act on the instructions of the Board.
- 2. Unless the Board decides otherwise, the project manager shall be charged with maintaining contacts with the party commissioning and with the construction management.
- 3. The project manager shall ensure that at least once every four weeks or as often as the Board requests written reports are submitted concerning the course of developments of the work.

Article 8

PARTICIPATION

Parties shall participate in the Combination in a manner to be provided in the Combination Agreement. They shall be entitled in the same proportion to the capital of the Combination.

Article 9

EQUIPMENT; PERSONNEL; FUNDS

The Board shall decide on the contribution of the use of equipment, the secondment of personnel and the lending of funds to the Combination, each and all with due observance of each party's share in the Combination and shall furthermore decide on the purchase or rent of equipment from third parties by and at the expense of the Combination as well as the employment of personnel by the month.

Article 10

COMPENSATIONS FOR THE USE OF CONTRIBUTED EQUIPMENT

1. Equipment shall mean equipment with a purchase value exceeding the amount to be included in the Combination Agreement.
2. Parties shall receive a basic compensation per week for the equipment, the use of which they contribute, which shall be calculated as laid down in the indexed costs standards for contractors equipment as laid down in the volume "Cost Standards for Contractors Equipment" (publication VGBouw), as they read at the time of the realization of the Combination Agreement, hereinafter to be referred to as "VGBouw Standards", as follows:
 - a. for depreciation, interest, maintenance and repair costs: the VGBouw Standards;
 - b. for insurance against damage to the equipment:
the percentage mentioned in the Combination Agreement.In order to calculate a part of a week the week shall be set at five days; a part of a day shall be calculated as a whole day.
3. The Board shall determine the basic compensation for equipment which does not appear in the VGBouw Standards by analogy with the standards for comparable equipment which does appear in the VGBouw Standards.
4. The basic compensation shall be due from the time of departure from the loading point in the Netherlands up to the time of return to the unloading point in the Netherlands, but not exceeding one week after the use of the equipment has been terminated by the Combination, each and all with due observance of the following provisions:
 - a. for the time of delivery and transport in the Netherlands, only the compensation for depreciation and interest shall be due of the basic compensation, which furthermore shall be halved should the delivery or transport take place to or from another work;
 - b. for the time during which the equipment is not used at the work, of the basic compensation only the compensation for depreciation and interest and the compensation for insurance shall be due, unless otherwise provided in (c) and (d) here under;

- c. for the time in which equipment cannot be used as a result of frost, snow and/or floating ice, through industrial action of a general nature, because of public holidays, unscheduled work days being in force or the company's summer holidays shut-down, only compensation for insurance shall be due;
 - d. if equipment cannot be used through a defect of that equipment, or owing to industrial action of exclusively personnel in the employment of the party who has contributed the use of that equipment, not one component of the basic compensation shall be due.
5. Overtime does not allow for additional payment of basic compensation, unless other than on occasion work is carried out in a system which deviates from the system of one shift per week of at topmost 50 hours in which case the Board can make alternative arrangements.
6. In addition to the basic compensation the following costs and expenses shall be borne by the Combination:
 - a. the cost of operation and the normal use of lubricants and fuel;
 - b. the cost of delivery and transport within the Netherlands, including the cost of transport insurance, to and from the wharf of the party who contributes the use of the equipment. If delivery or transport takes place to or from another work of said party, half of those costs shall be compensated;
 - c. the cost of unloading, assembly and installation following delivery and the cost for disassembly and loading preceding transport;
 - d. the cost of any necessary extension or alteration in connection with the requirements of the work and the cost of removing the extension or alteration again following the use.
7. No compensation shall be due for the loading costs before delivery, the unloading costs following the transport and any normal assembly and disassembly costs at the place where the party who contributes the use of the equipment transports the same to or from.
8. Equipment, the use of which has been contributed, shall be in good repair and shall be maintained in that state by the contributor.
9. Where the use of ageing equipment has been contributed, the productive capacity of which is disproportionately low in comparison to the capacity of modern equipment, the Board may, at the proposal of the project manager, fix a lower basic compensation for that equipment.
10. The Board acting unanimously has the power in special cases to deviate from the provisions in this article.

Article 11

TESTING OF EQUIPMENT

1. The project manager shall evaluate the usefulness, the suitability and the state of good repair of equipment, the use of which is contributed, on arrival at the work as well as during the use at the work.
2. Should the project manager reject equipment, it shall be replaced by the party who has

contributed the use. Should the rejection take place on arrival at the work, the party concerned shall not receive any compensation, whilst at the same time it shall pay the Combination's costs and loss, if any, arising from the rejection.

3. Should the rejection be the result of undiscovered defects from an earlier test, the party concerned shall receive no compensation other than the basic compensation for the period in which the equipment has been in use at the work.
4. Parties shall have the right to have the equipment tested by the project manager before it is supplied to the work. Should the equipment be rejected, the costs of testing shall be for the account of the party concerned, while that party also has to pay the Combination any loss which the Combination might sustain on that account.
5. Should a party not agree with a decision by the project manager, as referred to in this article, the dispute will be submitted to the Board for decision.
6. The project manager can let himself be assisted with the testing of equipment by the technical service of one of the other parties.
7. Each party shall be liable for loss as a result of defects on equipment which has been contributed by that party, in so far as it concerns defects which could not reasonably have been distinguished during the testing.

Article 12

WITHDRAWAL PROHIBITION

Equipment, the use of which has been contributed, may not be withdrawn from the work without the Board's consent.

Article 13

PURCHASED EQUIPMENT.

Equipment which has been purchased at the expense of the Combination but, in the opinion of the Board, is no longer necessary for the execution of the work will be sold to the party who has made a bid that is higher than the bid made by the other parties and at least as high as the highest bid by third parties provided that should it concern the equipment the Combination has purchased from one of the parties, that party has the right to repurchase the equipment for an amount corresponding with ninety (90) per cent of the highest bid, or if that is lower, with ninety (90) per cent of the purchase price paid by the Combination.

Article 14

PERSONNEL

1. Personnel seconded by a party to the Combination, shall remain in the employment of that party. Payment of salaries and additional remunerations to monthly paid personnel shall be made by the party seconding and that of other personnel by the Combination.

2. The income of the seconded monthly paid personnel shall be specified in advance to the Combination, submitting a certificate by a chartered accountant concerning the income in the year preceding the year in which secondment took place.
3. On the basis of the data referred to in paragraph 2, the Board shall fix a gross monthly income of the personnel concerned which qualifies for compensation.
4. Parties who second monthly paid personnel shall receive as compensation an amount equal to the gross monthly income referred to in paragraph 3 and in connection with other costs and charges for that personnel falling to the account of those parties in their capacity as employer, an amount a percentage of the gross monthly income to be stipulated in the Combination Agreement.
5. The compensations referred to in the preceding paragraph shall not be due if and in so far as a seconded staff member is prevented from working for more than three working days at one time because of illness or other causes concerning him personally.
6. Where the salary administration of any party is organized for payment of salaries per four week period, a “month” shall for the application of the preceding paragraphs be understood to be a period of four weeks.
7. Personnel seconded to the Combination may not be withdrawn from the work without the Board’s consent.
8. The project manager shall assess the efficiency and suitability of seconded personnel and may, at his discretion, require removal or replacement of staff members. If a party does not agree with a decision of the project manager, the dispute will be submitted to the Board for decision.
9. The Combination can itself employ personnel for the execution of the work. The Combination shall pay wages, salaries and additional compensations to that personnel.
10. Parties reciprocally undertake not to employ staff members who have been seconded to the Combination by one of the other parties or who, before they entered into the employment of the Combination, were employed by one of the other parties within one year of the secondment or the end of the employment with the Combination.
11. Parties reciprocally undertake not to employ staff members who are in the employment of the Combination during the duration of the work other than with consent of the Board.

Article 15

PURCHASE AND SUBCONTRACTING

1. The Board shall determine the purchase and subcontracting procedures.
2. Equipment shall be purchased by the project manager with due observance of the powers granted to him, unless the Board decides otherwise.
3. Unless the Board decides otherwise, the project manager shall ask quotations without engagement for the parts of the work to be contracted to qualified subcontractors. The selection procedure of the subcontractors to be contracted shall at all times require the approval of the Board.

Article 16

FUNDS

1. Interest to be stipulated in the Combination Agreement shall be paid for funds which the parties have placed at the disposal of the Combination by way of loan.
2. Funds which parties have placed at the disposal of the Combination can be paid back by decision of the Board pro rata to the contribution of each party, in so far and so long as the liquidity position of the Combination so permits.

Article 17

BANK GUARANTEE

Where a bank guarantee has been given at the expense of the Combination to the party commissioning the work, parties undertake in so far as required to issue counter-guarantees pro rata to each party's share in the Combination.

Article 18

COMPENSATION OF COSTS

1. To compensate the general costs of parties, the parties shall, after receipt of every payment from the party commissioning, be paid an in the Combination Agreement laid down percentage of the amount received pro rata to each party's share in the Combination.
2. With regard to the contribution of goodwill, knowledge, work or diligence no settlement shall take place, unless and in so far as the Tender Agreement and/or the Combination Agreement stipulates otherwise, nor shall the costs attached to the membership of the Board be compensated. As such the members of the Board shall receive no remuneration.
3. Should the Board assign special activities such as carrying out calculation or drawing work or keeping the accounts of the Combination to one of the parties, the cost thereof shall be fixed by mutual agreement and be paid at the expense of the Combination.

Article 19

SETTLEMENTS

Unless in any instance a different arrangement is made by mutual agreement, the parties shall present their claims against the Combination every four weeks. Payment shall be made subject to the approval of the Board within four weeks of the date of presentation. In the event of overdue payment parties shall be paid the interest described in article 16, paragraph 1.

Article 20

FINANCIAL MANAGEMENT

The Board shall decide on the opening of one or more giro and/or bank accounts in the name of the Combination. The power to dispose of funds and accounts of the Combination shall be laid down by the Board.

Article 21

ACCOUNTING

1. The accounts shall be kept by the Combination, unless the Board decides otherwise. Should one of the parties be charged with keeping the accounts, it shall keep the accounts of the Combination separate from its own accounts.
2. The Board shall give directives for keeping the accounts.
3. The Board shall designate a person who shall be charged to submit a written report to the Board concerning the financial state of affairs. This shall be done in consultation with the project manager at least every four weeks and furthermore as often as the Board so requests.

Article 22

ANNUAL ACCOUNTS

1. The financial year of the Combination coincides with the calendar year.
2. Within three months after the end of any financial year the person responsible for the accounts of the Combination shall draw up simple annual accounts.
3. Each of the parties shall sign the annual accounts. In the event that the signature of one of the parties is missing the reasons shall be mentioned.
4. Each of the parties shall receive a copy of the annual accounts.

Article 23

INSPECTION

The Board shall designate an auditor in order to audit the accounts and report on the annual accounts. Each party shall have the right at all times to inspect at its own expense the books and records of the Combination or to have same inspected by an auditor.

Article 24

MUTUALLY AGREED FINAL SETTLEMENT; RESULT

1. Within three months after the final settlement of the work the mutually agreed final settlement shall be drawn up by the person charged with keeping the accounts of the Combination. In so far as necessary provisions shall be included in the mutually agreed final settlement in connection with latent obligations or risks.
2. Parties shall share in the result of the work in the manner mentioned in the Combination Agreement.
3. The Board may pay out interim advances on an expected positive balance of the mutually agreed final settlement, if the liquidity position of the Combination so permits. Should the development of the liquidity position so require, the Board may request repayment of these advances.
4. Where the Board does not arrange in due time for the drawing up of the mutually agreed final settlement, each of the parties shall be authorized to so do. Where appropriate the accounts of the Combination shall for that purpose be handed over to the party who so requests.
5. As soon as the mutually agreed final settlement has been drawn up, it shall be forwarded to each of the parties by registered post.
6. The mutually agreed final settlement shall be binding on all parties, unless at least one of the parties objects to the person who has drawn up the mutually agreed final settlement within two months of forwarding. Failing agreement, the final settlement shall be determined at the request of the party who is first to take action as laid down in article 32.

Article 25

LIQUIDATION

1. Subsequent to the mutually agreed final settlement the Combination shall be dissolved and the affairs of the Combination shall be liquidated, in so far as this should not yet have taken place for the benefit of the mutually agreed final settlement. The Board shall be charged with the liquidation of the affairs of the Combination.
2. By resolution of the Board one of the parties may also be charged with the liquidation. In that case the Board shall determine the powers of that party in its capacity as liquidator.
3. The liquidator shall from time to time inform the other parties of the progress of the liquidation. In so far as necessary the parties shall make a further settlement every three months with due observance of each party's share in the Combination.
4. All books and records concerning the Combination and/or the work shall be kept during a period of ten (10) years after the determination of the mutually agreed final settlement by the person whom the Board designates. This person shall preferably be a corporate body.

Article 26

INSURANCES

1. With regard to the work a Construction All Risks Insurance shall be taken out on customary terms, unless and in so far as it is taken out by and for the account of the party commissioning.
2. The amounts to be insured shall be fixed by the Board in accordance with the nature, scope and requirements of the work.
3. The insurances shall as much as possible be concluded as supplements to insurances which have been concluded by parties. For that purpose parties shall submit the policies in question to the Board. The Board may at the expense of the Combination determine a proportional contribution to the cost of the insurances of parties.

Article 27

LIABILITY; MUTUAL INDEMNITY

1. One or the other party runs the risk of damage or loss as a result of mistakes by persons used by the Combination in the execution of the work pro rata to the each party's share in the Combination.
2. Contrary to the provision set out in paragraph 1, the party who has failed in its obligations to such a serious extent that the other party/parties cannot reasonably be expected to take the consequences partly for their account, shall bear alone all consequential loss and where appropriate, keep the other parties indemnified on that account.
3. The provision set out in paragraph 2 shall not apply to damage which has been compensated by an insurer pursuant to a policy which excludes recourse against the negligent party. In the event of partial compensation the provision set out in paragraph 2 shall remain applicable with regard to the part of the damage which is not compensated.

Article 28

INTERMEDIATE DISSOLUTION

1. The Combination may only be dissolved intermediately with the consent of all parties.
2. Should, however, before the final completion of the work a party be declared insolvent, apply for a suspension of payments, offer a private arrangement to its creditors or be restricted in a different manner in its power to perform legal transactions, or should a party pass a resolution for dissolution and proceed to liquidation, or should equipment which has been placed by a party at the disposal of the Combination be attached so that withdrawal from the work impedes and this attachment has not been raised within two (2) weeks, the other party/parties may terminate the Combination Agreement with regard to the party whom it concerns with immediate effect by giving notice of termination. Each notice of termination shall be given by registered letter or by bailiff's writ.

3. In the cases referred to in paragraph 2 the remaining party/parties shall continue the Combination or the affairs of the Combination. In so far as necessary the remaining parties shall determine rules by unanimous vote with regard to matters which pursuant to the notice of termination require further regulation. Should no agreement to that effect be reached, the determination of further rules in the manner described in article 32, paragraph 2, shall be referred to arbitrators who will render award by way of binding third-party ruling.
4. In the cases described in paragraph 2 the remaining party/parties shall have the right to continue to use all equipment, the use of which has been contributed by the terminated party, at the agreed compensation until the completion of the work.
5. With regard to personnel seconded to the Combination by the terminated party, the obligation described in article 14, paragraph 10, shall cease to be effective, while the terminated party shall further be regarded to consent that this personnel is employed for the Combination either by the Combination or by one of the remaining parties.
6. In the event of termination of the Combination with regard to one of the parties, the common goods of the Combination shall be allocated to the remaining parties. For the purpose of the division these goods will be deemed to have been delivered in advance by entry into the Combination Agreement. In so far as any other actions might be required for the purpose of the division parties on both sides shall give each other an irrevocable power of attorney to that effect.
7. The settlement with the terminated party shall take place at the same time as the mutually agreed final settlement as referred to in article 24. The terminated party shall share in a positive balance pro rata to the time that it has participated in the Combination, while its share in a negative balance shall be determined as if it remained in the Combination until the final completion of the work.
8. Unless the Board decides otherwise, each payment to the terminated party shall be suspended until it has been established that no obligations are to be expected to the debit of the Combination other than those for which a provision has been included in the mutually agreed final settlement.

Article 29

DEFAULT

Each party which fails in the performance of one or more obligations under the Tender Agreement or the Combination Agreement, shall vis-à-vis the other parties be bound to compensate the ensuing loss, unless it concerns a failure which cannot be imputed to it, any and all without prejudice to the other rights to which the other parties are entitled in that respect by operation of the law, while in such instance the provisions set out in article 28 shall as much as possible be applicable mutatis mutandis.

Article 30

ASSIGNMENT; PLEDGE

With regard to the work to third parties it is prohibited to pledge or transfer claims without the Board's consent. Should consent be granted, it shall be in force on the condition that counterclaims which may arise after the pledge or transfer on the part of the Combination or one or more of the other parties may be settled with the pledged or transferred claims.

Article 31

APPLICABLE LAW

The Tender Agreement and the Combination Agreement shall be governed by the law of the Netherlands.

Article 32

DISPUTES

1. Unless otherwise provided in the Agreement, all disputes which might arise in connection with the Tender Agreement or the Combination Agreement or any further agreement shall be submitted for settlement to a mediation procedure in accordance with the Rules of the Stichting Nederlands Mediation Instituut (NMI) in Rotterdam, as read on the day on which the agreement to which the dispute relates, came into force.
2. Should the mediation be ended without a settlement agreement being reached, the dispute will be settled by arbitration in accordance with the Regulations of the Raad van Arbitrage voor de Bouwbedrijven (Court of Arbitration for the Building Industry) in the Netherlands, as read on the day on which the agreement to which the dispute relates came into force, providing that the tribunal of arbitration consists always of a lawyer as chairman and two members taken from the list of member contractors of the Court of Arbitration, while in those cases in which one arbitrator decides, one of the member contractors of the Court of Arbitration will be appointed.
3. Where it is expressly stipulated by parties in the Tender Agreement or the Combination Agreement, the disputes referred to in paragraph 1 shall immediately be settled by arbitration in accordance with the provision set out in paragraph 2.

Article 33

ENTRY INTO THE AGREEMENT

Parties may decide by unanimous vote to let third parties enter into the Tender Agreement or the Combination Agreement under simultaneous regulation of the consequences.

Article 34

These General Terms and Conditions may be referred to as the VGBouw Combination Conditions 1996.

EXPLANATION

Tender Agreement

In the NIVAG Standard Contract of Cooperation the preamble of the agreement included that parties sought the cooperation for reasons that the cooperation, having regard to the position, the equipment and the manpower of parties, would lead to technically and economically more justified results. This reasoning was based on the then existing competition act and rules; cooperation was only permitted if it would lead to technically and economically more justified results. With the Besluit mededingingsregelingen aanbestedingen (Tender Competition Regulation Decree) of 19th January 1994 that requirement ceased to be effective. Article 8 of said Decree now provides that a cooperation between building companies is permitted with regard to a tender made or announced, if there is a question of (1) a written agreement which regulates a joint presentation of a tender price and (2) each of the building companies concerned undertakes to substantially contribute to the execution of the order.

- Article 2

In the NIVAG Standard Contract of Cooperation a party to the Tender Agreement who wished to withdraw from a joint tender was without the consent of the remaining parties forbidden to tender independently for the work anyway or to become involved in any other manner in the execution of the work. The Besluit mededingingsregelingen aanbestedingen (Tender Competition Regulation Decree) objects to such a prohibition, because it inadmissibly restricts free competition. In order to prevent parties from participating in a Tender Agreement only for the purpose of obtaining information in order with that knowledge (head start) to tender for the work independently, a rule has been included in the new model which raises a certain barrier avoiding absolute prohibition. The party who no longer wishes to participate in the joint tender will in the new model have to pay a compensation to the remaining parties.

Furthermore in the present model the systems has been simplified to determine when a common tender price is realized and when not. With regard to the determination of the common tender price each of the parties shall be entitled to one vote. In the execution phase the number of votes is fixed according to the model of the Combination Agreement on the basis of the participation of parties in the Combination.

- Article 3

Where a common tender price is realized, parties tender jointly. In principle parties are free in addition to the joint tender to tender also independently for the work, unless the contractor objects. In the past this possibility was often excluded in the agreement. With reference to the above explanation to article 2 it is also here in force that such an exclusion is no longer permitted. Only when the work is commissioned to the joint parties, shall the Combination be realized. The Combination shall consequently not be realized if the work is awarded to one of the parties who also tendered independently. Contrary to the NIVAG Standard Contract of Cooperation the new model assumes that at the same time of the signing of the

Tender Agreement the Combination Agreement is also signed. The Combination Agreement is entered into under the suspensive condition of award of the work to parties. That means a single signature does not constitute the Combination Agreement to be in force. The Combination Agreement shall only come into force when the work is awarded to the joint parties.

- Article 4

The NIVAG Standard Contract of Cooperation still included a settlement provision with regard to the funds which could be divided among parties on the basis of the Uniform Prijsregelend Reglement (Uniform Price Controlling Regulations). By order of the European Commission of 16th February 1992 (later confirmed by the decision of the European Court of Justice in Luxembourg) the UPR was prohibited. For that reason the settlement provision has been deleted in the new model.

- Article 6

Contrary to the NIVAG Standard Contract of Cooperation the general provisions, “de VGBouw Combination Conditions 1996”, are directly applicable to the Tender Agreement.

Combination Agreement

The preamble specifically provides that the legal form under which parties enter into the cooperation is a ‘general partnership’. This was already the case under the regime of the NIVAG Standard Contract of Cooperation, but this was only expressed in the explanation. The composers of the present model have consciously chosen to specifically name the legal form under which the cooperation is to be concluded. As an aside it is noted that sometimes there will be reason for the cooperation to choose a different legal form, such as a private company with limited liability or a limited partnership. The present model may in that case not be used or only be used for a different purpose (for instance shareholders covenant).

- §5

Contrary to the NIVAG Standard Contract of Cooperation the new model provides that unanimity shall be required for entry by the Combination into agreements with the party commissioning or third parties, in so far as the interest of the obligations exceed the value or amount to be mentioned in the Combination Agreement. In the old model nothing was provided on this subject. This means that purchase of equipment also falls under this regulation.

- §6

The function name ‘chief supervisor’ in the text has been replaced by the currently more accepted function name ‘project manager’.

It has been decided to abandon the designation of an accountant in the Combination Agreement. The Board of Management of the Combination may itself decide how and by whom the accounts of the Combination shall be managed.

General Terms and Conditions

- Article 3, Coming into Effect and End of the Agreements

Contrary to the NIVAG Standard Contract of Cooperation the present model explicitly indicates when the Tender Agreement and the Combination Agreement come into effect and when these end. It is essential to note that the Combination Agreement will be entered into under the 'suspensive condition of award of the work to the Combination'. See in this connection also the comment in this explanation to article 3 of the 'Tender Agreement'.

- Article 4, General Obligations

This article compiles all those provisions which more generally standardize the relationship between parties.

A very important amendment compared to the NIVAG Standard Contract of Cooperation can be found in paragraphs 3 and 4 of article 4. In article 17 paragraph 5 of the NIVAG Standard Contract of Cooperation parties undertook to make no offers for works connected with the work without the explicit consent of the other parties. In the opinion of the Ministry of Economic Affairs that provision is contrary to the Besluit mededingingsregelingen aanbestedingen (Tender Competition Regulation Decree), because there is in fact a question of a prohibition of parties to freely tender for a work, as a results of which free competition is inadmissibly restricted. In the new model this provision has therefore not returned.

The Besluit mededingingsregelingen aanbestedingen (Tender Competition Regulation Decree), however, allows parties to enter into a combination for more than one work. Condition is that the other works have been announced at the same time as the tender for the work. There is not only a question of 'having been announced' if a tender advertisement has been published for these works, but also when in the contractor's policy making route the plans for those other works are sufficiently concrete, and the party commissioning has made known the intention to make the invitation for those other activities at a time further to be specified. The third paragraph of article 4 regards the foregoing situation. That means that parties shall be obligated to tender jointly for those other works in so far as the just mentioned condition has been complied with complemented by the condition that the other works according to common opinion form part of the project in which the work has been included.

Parties to the agreement have an interest in the progress and the execution of the work running undisturbed. Sometimes a situation arises that other activities are contracted out which actually jeopardize the undisturbed progress of the work being executed. The fourth paragraph of this article for this situation imposes on the parties the obligation to make a reasonable effort to tender also jointly for those activities. Should in spite of that effort no joint tender be realized, each party shall be free to tender independently for those other activities.

- Article 6. Meetings and Decision Process

Contrary to the NIVAG Standard Contract of Cooperation it is at present provided that even if a notice of meeting has not been given in the prescribed manner, the Board of Management may yet pass valid resolutions if all parties are represented at the meeting.

Contrary to the NIVAG Standard Contract of Cooperation in the event of equality of votes the proposal shall be deemed to have been rejected. In the present model the chairman of the Board of Management loses the power to cast a deciding vote in the event of equality of votes.

Contrary to the NIVAG Standard Contract of Cooperation the provision which grants the Board of Management the power to amend the Combination Agreement has been deleted. The composers of the new model are of the opinion that the parties to the agreement are entitled to that power.

Contrary to the NIVAG Standard Contract of Cooperation an entirely different regulation has been included for the situation which arises when the Board of Management passes a resolution which in the opinion of one or more parties unreasonably impairs the interests of those parties or of the Combination. Parties have in the present model the power to suspend the execution of the resolution in order to submit it to the judgment of arbitrators. Each claim for compensation of damage arisen by the execution of the resolution has been deleted in the present model.

- Article 8, Participation

At present it is explicitly included that parties are entitled to the assets of the Combination in the same proportion as the proportion in which parties participate in the Combination.

- Article 10, Compensation for the Use of Contributed Equipment

With the exception of a single editorial amendment the present article has not undergone any significant substantive amendments in comparison with the relevant article in the NIVAG Standard Contract of Cooperation. The composers have chosen to maintain the basic ideas of the old article, because the regulation laid down therein is still applied in practice. This has no effect on parties being able to prefer a different regulation. The tenth paragraph of this article offers a possibility to so do.

Attention is drawn to the reference to the new publication of the volume “Cost Standards for Contractors Equipment” by VGBouw as well as to the obligation where the contributor has to keep the equipment contributed by him in good repair.

- Article 11, Testing of Equipment

Paragraph 7 of this article provides that parties are liable for loss as a result of hidden defects. Such a provision was not included in the NIVAG Standard Contract of Cooperation.

- Article 14, Personnel

With the exception of some editorial amendments also in this article virtually no substantive amendment has occurred in comparison with the corresponding article in the NIVAG Standard Contract of Cooperation.

The most important amendment concerns the reduction in duration of the parties' prohibition to employ staff members who were seconded to the Combination by other parties or prior to entering into the employment of the Combination had first been in the employment of one of the other parties. The duration of the prohibition has been reduced from two years to one year.

- Article 15, Purchase and Subcontracting

This is an entirely new article. The NIVAG Standard Contract of Cooperation only included a regulation for the purchase of equipment. The Board of Management shall determine the purchase and subcontracting procedures. In so far as the purchase of equipment or the interest of the subcontract exceeds a certain value, a unanimous decision of the Board of Management shall be required in accordance with the provision set out in article 6 paragraph 6a.

- Article 17, Bank Guarantees

No provision with regard to bank guarantees was included in the NIVAG Standard Contract of Cooperation.

- Article 18, Compensation of Costs

In this article the provisions which are connected with compensation of costs for services carried out by parties for the Combination have been compiled.

- Article 19, Settlements

Contrary to the NIVAG Standard Contract of Cooperation the interest the Combination owes to parties for overdue payment of claims submitted by parties equals the interest as determined in ' 12 of the Combination Agreement. The provision that the mutual obligations are settled in Dutch guilders and via Dutch accounts has been deleted.

- Article 21, Accounting

In the present model the main rule is that the Combination keeps the accounts, unless the Board of Management decides otherwise. No main rule was given in the NIVAG Standard Contract of Cooperation where the Board of Management always had to make a decision. The appointment of an accountant has also been abandoned in the Combination Agreement.

- Article 22, Annual Accounts

A regulation concerning the annual accounts has been added to the model.

- Article 24, Mutually Agreed Final Settlement; Result

Compared to the regulation in the NIVAG Standard Contract of Cooperation there is practically only a question of editorial amendments. New, however, is that the party who wants to draw up the final settlement (or cause it to be drawn up) in the event of negligence by the Board of Management may for that purpose claim the accounts of the Combination.

- Article 25, Liquidation

In this model a separate regulation has been made with regard to the liquidation of the Combination. Compared to the NIVAG Standard Contract of Cooperation it has been changed that the Board of Management may also charge one of the parties with the liquidation. Furthermore an obligation has been included for the person who has been charged with the liquidation to inform the other parties regularly of the progress of the liquidation. Finally, it has now been expressly included that all books and records relating to the Combination and/or the work must be kept for a period of ten years. The Board of Management shall designate a person/party for that purpose.

- Article 26, Insurances

At present it has been expressly included that with regard to the work a 'Construction All Risk' insurance has to be taken out. It is no longer imperatively prescribed that the subcontractor shall be coinsured. Finally, the Board of Management's obligation to pay a proportional contribution to the cost of insurances of parties, has been deleted and has been replaced by a power.

- Article 28, Intermediate Dissolution

This article regards the situation that a party is expelled from the Combination by notice of termination. The remaining parties shall continue the Combination, so that the dissolution shall only be valid vis-à-vis the terminated party. The resignation of a party has effects on the assets of the Combination. Object and purport of article 28, paragraph 48, is that the Combination shall not be impeded in its functioning, at least as little as possible, by the expelling of a party. In article 28, paragraph 4, a regulation is given for goods which have not become part of the assets of the Combination. In that instance it concerns goods, of which only the use has been contributed.

The remaining parties may continue to use these goods. In article 28, paragraph 5 a regulation is given with regard to the personnel of the terminated party.

Article 28, paragraph 6 relates to goods which have become part of the assets (the corporate community property) of the Combination. Parties agree that mutual goods shall be allocated from the start to the remaining parties. For the purpose of this regulation the divided goods must be delivered. In order not to be dependent on cooperation of the terminated party and/or its trustee, this delivery shall be made in anticipation. In so far a delivery in anticipation is not possible or has not been made, parties give each other reciprocally irrevocable power of attorney to carry out the necessary delivery transactions. However, the fact should be considered that the irrevocable power of attorney ends at the insolvency of the party who gave the power of attorney (the expelled party). In so far as the claims of the Combination on the party commissioning are concerned (this concerns a so-called claim in name) the delivery shall only be completed after notice to the party commissioning. This notice must have reached the party commissioning prior to the occurrence of the insolvency of the terminated party. Such ‘survivorship clause’ was not included in the NIVAG Standard Contract of Cooperation.

- Article 30, Assignment; Pledge

A regulation has been added for pledging of claims. Furthermore the provision that claims which have been assigned contrary to the prohibition cease to have effect, has not returned in the new model.

- Article 31, Applicable Law

The Tender Agreement and the Combination Agreement shall be governed by the law of the Netherlands. The obligatory choice of domicile of foreign parties in the Netherlands and the determination of the jurisdiction of the Dutch Court have been deleted.

- Article 32, Disputes

‘Mediation’ is a voluntary, in principle not binding, procedure for settling disputes. The procedure addresses the reaching of consensus between parties with the aid of an independent mediator. Mediation is characterized by the lack of a ‘decision imposed from above’ by an arbitrator or court of law. If the mediation effort succeeds, the result is laid down by parties in an agreement. Should one of the parties be dissatisfied at any time with the course of the mediation it can be ended without any objection. The dispute can then be submitted to arbitration.

The advantages of mediation (maintenance of relationship and voluntariness) caused the Company Lawyers Contact Group to include a mediation provision in this model. Should, however, parties wish to submit their disputes, if any, direct to the Court of Arbitration for the Building Industry in the Netherlands for settlement, parties shall have to include a specific clause to that effect in the Tender Agreement or the Combination Agreement.

VGBouw has exercised the utmost care in the composition of this Model Agreement. VGBouw can, however, not accept any liability should the application of this model ensue in loss.

This exclusion of liability is also applicable to the composers of this model.

Zoetermeer, 29th March 1996.

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