

Nummers 15/2017

BONAIRE INTERNATIONAL AIRPORT N.V. GENERAL TERMS AND CONDITIONS FOR CONTRACTS

ARTICLE 1 DEFINITIONS

The following terms are written with initial capitals in these general terms and conditions and are defined as follows:

- a. BIA: Bonaire International Airport N.V., user of these General Terms and Conditions;
- b. Contract: the written agreement between BIA and the Contractor to which the Terms and Conditions are declared to apply.
- c. Contractor: the counterparty of BIA;
- d. Party/Parties: BIA, the Contractor or both, depending on the context;
- e. Terms and Conditions: these general terms and conditions, which apply to and form an integral part of the Contract.

ARTICLE 2 SCOPE OF APPLICATION

- 1. The Terms and Conditions, together with the relevant Contract issued by BIA, are applicable to all offers, tenders, quotations, any Contract between BIA and the Contractor and to any other transaction or relationship between BIA and the Contractor, to which BIA has stated that these conditions are applicable, in so far as the Parties have not made any specific written agreements to the contrary. When the Contractor accepts BIA's offer, either by acknowledgement or any other way of acceptance, a binding contract shall be formed. Such Contract is limited to the Terms and Conditions as specified on the face and reverse of this document, the relevant Contract and any attachments. BIA does not agree to any proposed amendment, alteration, or addition by the Contractor. Amendments or additions to the Contract or derogations from the Terms and Conditions (or parts of them) are binding only in writing signed by BIA.
- 2. BIA is not bound by and hereby expressly rejects the Contractor's general terms and conditions and any additional or different terms or provisions that may appear on any proposal, quotation, price list, acknowledgment, invoice, packing slip or the like used by the Contractor. The Course of performance, course of dealing, and usage of trade shall not be applied to modify the Terms and Conditions.
- 3. All costs incurred by the Contractor in preparing and submitting any acceptance of BIA's offer shall be for the account of the Contractor.
- 4. Unless expressly differently agreed upon in writing, the Terms and Conditions are applicable for any subcontract between Contractor and third parties to which BIA directly or indirectly is a party.

Op heden
8-11-2017
.....
ter Griffie van het Gerecht
in Eerste Aanleg BES,
Zittingsplaats Bonaire
ingediend. De griffier.
WJZ

Plaza Medardo S.V. Thielman #1, Kralendijk, Bonaire, Caribisch Nederland Telefoon (599)717-5600 / Telefax: (599)717-5607
Website: www.bonaireinternationalairport.com

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ARTICLE 3 REPRESENTATION

BIA is solely bound to any Contract and/or transaction if the Contract and/or the transaction has been performed by any of those who are authorized to do so on behalf of BIA as evidenced by an entry in the Trade Register of the Chamber of Commerce and Industry Bonaire.

ARTICLE 4 OFFERS, QUOTATIONS AND TENDERS

1. All offers, quotations and tenders from BIA are free of obligation and can be revoked by BIA, even after acceptance of the offer, quotations or tender by the Contractor. Revocation by BIA after acceptance by the Contractor must be done as soon as possible, unless stated otherwise in writing.
2. If the acceptance deviates from the offer given (secondary items included), BIA shall not be bound by it. The agreement shall in such event not be concluded in accordance with the deviation, unless BIA indicates otherwise in writing.
3. Offers, quotations and tenders are not automatically applicable to future orders.

ARTICLE 5 PRICES, TARIFFS AND FEES

1. All prices, tariffs and fees mentioned in an offer, quotation or tender apply to those particular offers, quotations or tenders. BIA shall be allowed among others, to charge on price increases if changes in price have occurred between the moment the offer, quotation or tender was made and the moment of execution of the Contract.
2. The prices, tariffs and fees mentioned by BIA are expressed in American dollars. The prices given by BIA shall be exclusive of the costs of transport, taxes, import duties, other levies, insurance, packaging costs, license fees, disposal costs, any assembly or installation costs, and any other expenses to be possibly made within the scope of the Contract, including administration costs, unless stated otherwise in writing.
3. If BIA and the Contractor have agreed upon an administered price, BIA shall nevertheless be entitled to increase said price, if the increase of the price is less than 10%.

ARTICLE 6 PAYMENT

1. All payments will be done through bank payments or by cash, unless agreed otherwise in writing.
2. Unless otherwise explicitly agreed in writing, payment must be made within 15 days from the date of invoice. If payment of an invoice is overdue, BIA will charge interest at a rate of 12% per annum or, at its discretion, statutory interest and if necessary extrajudicial collection costs at a rate of 15%. The Contractor shall be deemed to be in default, without any further notification being required.
3. BIA charges administrative and office expenses at a rate of 5%.
4. Any and all payment will first be set off against the collection costs, then against the indebted interest and last against the (oldest) invoice sum.



5. BIA has the right to offset invoice amounts owed against amounts that the Contractor owes BIA.
6. The Contractor is responsible for paying any applicable tax to the appropriate (tax) authorities.

ARTICLE 7 DELIVERY

1. If BIA has given a term of delivery, it shall only be indicative. A given term of delivery shall therefore never constitute a term to be observed on penalty of forfeiture of rights. If an indicative term is exceeded, the Contractor must give BIA notice of default in writing and BIA shall do its best to give an estimated delivery term, which shall again be indicative.
2. BIA shall be entitled to partial deliveries, unless such is deviated from in writing in the Contract or if the partial delivery does not represent an independent value. BIA shall be entitled to invoice the partial deliveries separately.
3. The Contractor shall be held to accept the delivery, the moment that BIA delivers it to the Contractor or has it delivered, or the moment at which the delivery is put at the Contractor's disposal.

ARTICLE 8 CONFIDENTIALITY

1. The Contractor will not divulge in any way any information that comes to its knowledge in performing the Contract and which it knows or may reasonably be assumed to know is confidential, except in so far as it is compelled to divulge such information under a statutory regulation or court ruling. All such information shall be used by the Contractor only for the purposes of the Contract. The Contractor shall protect BIA's information using not less than the same degree of care with which it treats its own confidential information, but at all times shall use at least reasonable care. All such information shall remain the property of BIA and the Contractor shall, upon BIA's demand, promptly return to BIA all such information and shall not retain any copy thereof.
2. The Contractor will impose the same duty of confidentiality on its Staff and guarantees that they will fulfill it.
3. The Contractor must hand over to BIA, within 14 days after the termination of the Contract, all information (i.e. written documents, computer files, etc.) which the Contractor has in its possession for the purpose of performing the Contract.
4. If the Contractor breaches its duty of confidentiality, BIA may impose a penalty, as laid down in the Contract. Payment of a penalty that is payable immediately does not discharge the Contractor from its liability for indemnifying any loss caused by the breach.
5. The existence and the content of the Contract shall be treated as confidential by the Contractor. The Contractor will not issue press releases or make other public statements about the Contract except with the prior consent of BIA.

ARTICLE 9 PERSONAL DATA

1. In so far as the Contractor processes personal data on behalf of BIA for the performance of the Contract, the Contractor will be regarded as a processor within the meaning of the Personal Data Protection Act BES ("PDPA") and the Contract as a contract within the meaning of the section 14, subsection 2 of the PDPA. The Contractor may not at any time use the personal data provided to it, or have them used, in whole or in part, in any way other than for the performance of the Contract, except where statutory obligations provide otherwise.
2. In the case referred to in article 9.1, the Contractor will take appropriate technical and organizational security measures to protect the personal data from loss or any form of unlawful processing. Such measures will guarantee, with due regard for the state of the technology and the cost of its implementation, an appropriate level of security given the risks arising from the processing and the nature of the data to be protected. The measures will be designed in part to prevent unnecessary collection and further processing of personal data. The Contractor will lay the measures down in writing.
3. The Contractor will process personal data, as defined in Article 1 the PDPA, in a proper and careful manner and in accordance with the applicable legislation and any code of conduct applied by BIA.
4. The Contractor will cooperate in full with BIA to ensure that data subjects within the meaning of Article 1 (f) of the PDPA:
 - (i) have access to their personal data,
 - (ii) can have personal data removed or corrected, and/or
 - (iii) can see that personal data have been removed or corrected if they were incorrect, or, if BIA disagrees with a data subject, to record that the data subject considers their personal data to be incorrect.
5. To the extent that the Contractor allows a (sub)contractor to process the Personal Data, the Contractor shall ensure that it binds such (sub)contractor to obligations which provide a similar level of protection as referred to in this article.
6. The Contractor shall, upon the termination of the Contract, securely erase or destroy all records or documents containing the Personal Data. The Contractor accepts and confirms that it is solely liable for any unauthorized or illegal processing or loss of the Personal Data, if the Contractor fails to erase or destroy the Personal Data upon termination of the Contract.
7. The Contractor shall indemnify and hold harmless BIA, their officers, agents and personnel from any damages, fines, losses and claims arising out of a breach of this article.

ARTICLE 10 CHANGE OF OWNERSHIP

1. In the case The Contractor is a corporation, the Contractor notifies BIA immediately in writing of any (possible) change in the ownership of the shares of the Contractor or of any transfer or release of control of the shares of the Contractor or of any possible or effective reconstruction or amalgamation of the Contractor.
2. The Contractor notifies BIA immediately in writing of any change of the Contractor's principles, partners, directors or constitution.

ARTICLE 11 COMPLAINTS

Possible visible shortcomings in performance or for faulty performance must be communicated in writing to BIA within seven (7) days following the performance. Non-visible shortcomings must be reported within three weeks following their detection, but not later than 12 months following the performance. If the Contractor does not file a complaint in time, the Contractor loses all its right regarding the particular matter.

ARTICLE 12 LIABILITY

1. If one of the Parties fails to discharge its obligations under the Contract, the other Party may give notice of default. The defaulting Party is deemed to be immediately in default, if it is clear that there is no prospect whatsoever of it discharging the obligations in question within the stipulated time limit for reasons other than force majeure. The notice of default will be given in writing, and the defaulting Party will be given a reasonable period of time in which to discharge its obligations. This is a strict deadline. The defaulting Party is in default if it fails to discharge its obligations by the deadline set.
2. The notice of default referred to in the preceding paragraph is not required if a time limit included in the Contract has been extended prior to its expiry. If the defaulting Party fails to discharge its obligations as described in the preceding paragraph by the end of the extended time limit, the defaulting Party is held to be immediately in default as from that date.
3. If BIA imputably fails to discharge its obligations, BIA is liable to the Contractor for any loss incurred by the Contractor, on the understanding that the liability is limited to an amount of USD 10.000 (ten thousand United States Dollars).
4. The Contractor is liable for all obligations in respect of the Contractor's staff, including those arising under tax and social insurance law. The Contractor indemnifies BIA against any liability in this connection. The Contractor is also liable for all damage caused, by their auxiliary personnel, by its passengers, by its clients and/or by other third parties the Contractor is involved with.
5. If the Contractor makes use of property belonging to BIA, the Contractor is liable for any damage caused to such property and if damage of whatever nature is caused to the Contractor and/or third parties as a result of the Contractor using BIA's property, the Contractor will be wholly liable for this damage.
6. BIA shall never be liable for indirect damages, which include (among other things) financial loss due to direct damages and pure financial loss, company damages, loss of profits, missed savings, damages due to business interruption, damages due to the electronic payments or damages due to third party claims towards the Contractor.
7. BIA shall never be liable for the disruption or malfunction of the supply of water, electricity, telephone, internet, cable or any other service provided for by a third party.
8. The limitations of liability contained in the present terms and conditions shall not apply if the damage is due to intentional act or omission or gross negligence on the part of user or his subordinates.



ARTICLE 13 SAFEGUARDING

1. The Contractor warrants that it has obtained all necessary consents and permits and that the Contractor complies with all other obligations (legal or otherwise), which are necessary to enter into the Contract. The Contractor hereby holds BIA harmless for all claims from third parties related to the Contractor, that directly or indirectly arise from the Contractor's default.
2. The Contractor shall safeguard BIA against claims filed by third parties in connection with the rights and obligations under the Contract.
3. The Contractor and the Contractor's Staff, its passengers, its clients, its guests or any other third party the Contractor is involved with, are at all-time obliged to obey the Safety and Airport Security regulations (the "**Regulation**") which apply for the hangars/sheds, premises, platforms, run- and taxiways and parking lots of BIA. The Contractor is liable for all damage caused which derive from a violation of the Regulation. The Contractor indemnifies BIA against any liability in this connection.
4. BIA shall not be obliged to provide security in relation to sureties for payment of freight, duties, levies, taxes and/or any other costs. All the consequences of non-compliance or failure to comply with a aforementioned security shall be borne by the Contractor. If BIA has provided the security, the Contractor shall reimburse BIA for the costs, unless agreed otherwise in writing. The Contractor indemnifies BIA against any liability in this connection.

ARTICLE 14 FORCE MAJEURE

1. Performance of the obligations of the Parties shall be suspended in the event of force majeure that is of such a nature as to prevent or delay the performance of contractual obligations of either Party. In the event of a force majeure, Parties will immediately notify each other in writing after the circumstances bringing about force majeure have occurred, stating the cause of the force majeure.
2. Force majeure means any event that is beyond the control of the Party invoking it and against which it could not reasonably protect itself. The term 'force majeure' is in any event understood not to include (but not exclusively): staff shortages, strikes, staff illness, shortages of raw materials, transport problems, breach of obligations by suppliers, failures in the production process and liquidity or solvency problems, failures on the part of third parties engaged by a Party, not officially declared epidemic or pandemic, the inability of a Party to secure the necessary legal or administrative permits or authorizations.

ARTICLE 15 DISSOLUTION AND CANCELLATION

1. Without prejudice to the other provisions of the Contract, either Party may dissolve the Contract, in full or in part out of court by registered mail, if the other Party is in default or is permanently or temporarily unable to fulfill its obligations.

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2. Without prejudice to the other provisions of the Contract, BIA may dissolve the Contract, in full or in part out of court by registered mail, upon receipt of the information as specified in article 10.1 and 10.2.
3. If one of the Parties is unable to discharge its obligations under the Contract as a result of force majeure, the other Party is entitled to dissolve the Contract, subject to a reasonable period, in full or in part out of court by registered mail, without its action creating any entitlement to compensation, but no earlier than 15 days as from the date on which the circumstance that produced the force majeure arose.
4. BIA may dissolve the Contract forthwith out of court by registered mail, without being required to send any demand or notice of default, if the Contractor applies for or is granted a provisional or definitive suspension of payments, files for bankruptcy, is declared bankrupt, if its business is wound up, if it ceases trading, if a substantial proportion of its assets are seized, if it undergoes a merger or a division or is dissolved, or if it is deemed on any other grounds to be no longer capable of discharging its obligations under the Contract.
5. If the Contract is dissolved, the Contractor will repay any undue amounts already paid by the BIA, plus the statutory interest on those amounts from the date on which they were paid. If the Contract is partially dissolved, the Contractor only has to repay payments relating to the part of the contract that has been dissolved.
6. In addition, BIA may terminate the Contract at any time by giving notice of termination by registered mail. In such an event, the account between BIA and the Contractor will be settled on the basis of the services provided and costs reasonably incurred by the Contractor and of any commitments reasonably entered into for the future for the purposes of the present Contract. BIA is not obliged to compensate the Contractor in any way for the consequences of the termination of the Contract.
7. In the case the Contractor is not making or only partially making use of any service or facility BIA provides to the Contractor pursuant to the Contract, BIA is entitled to charge the full amount that Parties agreed upon, without prejudice to BIA's right to claim further indemnification.

ARTICLE 16 MISCELLANEOUS

1. The Contractor has taken out and will retain adequate and customary insurance cover in accordance with generally accepted standards in respect of the following risks:
 - a. professional liability, i.e. the risks arising from professional errors;
 - b. business liability, including liability for damage caused to persons or BIA's property;
 - c. loss of or damage to business property (including as a result of fire or theft), including items of property owned by BIA; and
 - d. any other liability as may be requested by BIAwith, unless otherwise agreed by BIA, a minimum limit of 1 million USD for claims of bodily injury, including death, and any other damages that may arise or acts or omissions of the Contractor under the Contract. Such insurance policies will be written with appropriately licensed and financially responsible insurers. The Contractor will not terminate either the insurance contracts or the terms applying to them without BIA's prior written consent. Nor will the Contractor change the insured sum to BIA's disadvantage without BIA's prior written consent. The insurance premiums

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owed by the Contractor are deemed to be included in the agreed prices and fees. Certificates of insurance evidencing the required coverage and limits and insurance policies shall be furnished to BIA upon BIA's request.

2. The rights and remedies reserved to BIA are cumulative and are in addition to any other or future rights and remedies available under the Contract, at law or in equity.
3. The Contractor shall not subcontract, transfer, pledge or assign any of its rights or obligations under the Contract, without the consent of BIA. BIA will not withhold its consent without good reason and BIA may attach conditions. Any pre-approved subcontracting, transfer, pledge or assignment shall not release the Contractor from their obligations under the Contract. The fact that BIA has given its consent does not affect the Contractor's own responsibility and liability for discharging the obligations imposed on it under the Contract, and for discharging the obligations imposed on it as an employer under tax and social insurance law.
4. If one or more provisions of the Terms and Conditions or the Contract are found to be invalid or are nullified by a court of law, the remaining provisions will retain their legal force. The Parties will consult on the former provisions in order to make an alternative arrangement. The alternative arrangement must not undermine the purpose and the purport of the Terms and Conditions or the Contract.
5. All terms and conditions of the Contract which are destined, whether express or implied, to survive the termination or the expiration of the Contract, including but not limited to liability, confidentiality, personal data and disputes and applicable law, shall survive.
6. The Contract and the Terms and Conditions shall be governed by and construed in accordance with the laws of Bonaire, St. Eustatius and Saba, and any disputes arising out of or in connection with the Contract and the Terms and Conditions shall be exclusively determined by the competent court on Bonaire.

Op heden, 08 NOV 2017
ter Griffie van het Gerecht
in Eerste Aanleg BES,
zittingsplaats Bonaire gedeponeerd.
De Griffier.



Handwritten signature/initials