

AVAF 2016 ENSURES CONTRACTUAL BALANCE BETWEEN FOUNDATION CONTRACTORS AND THEIR CLIENTS

The NVAF contractual relationships working group has updated the general terms and conditions of the NVAF in close cooperation with **Mr. Lennart Alberts** of BVD Lawyers. The old conditions dated from 2009.

"There were three reasons that underpinned the update", says Lennart Alberts: "The developments and changes both in the execution of the work and in the law. Also, in 2012 and 2013 the Dutch Journal of Building Regulations published discussions surrounding the general conditions of 2009. The arrival of UAV 2012 was also a reason for scrutinizing the existing conditions."

Adequate protection

"The foundation sector consists of professional and specialist contractors. That character justifies the possession of specific general terms and conditions that are tailored to that sector. The 2016 AVAF offers the user a degree of protection that ensures contractual balance between the foundation and the client. The particular nature of foundation works reveals a need for the use of specific general terms and conditions. The 2016 AVAF also acts as a signal and highlights the rights and obligations that are of particular importance for the foundation sector", says Alberts. The new 2016 AVAF is therefore primarily for specialist foundation contractors.

Part of the whole

Alberts: "The law shows where the problem lies in the use of back-to-back clauses. Piling operations form only a small part of the total realization of a project, which means that the main question is: "What should the subcontractor keep in mind and which activities is he responsible for and what is the extent of his liability? The new general terms and conditions also serve as a signal, whereby an attempt has been made to strictly delineate the obligations of the foundation contractor. Emphasis has also been placed on the obligation of the client to the foundation contractor. For example, the client must provide adequate information on the work, as well as information on soil conditions at the construction site. The position of the foundation contractor is also typified from an insurance standpoint, as he is dependent on the client who takes out the CAR insurance. The foundation contractor should ensure that a proper insurance policy has been taken out and that it offers sufficient cover.

The role of the contractor

Lennart Alberts: "All these cases show that the role of the foundation contractor is significantly different than that of the normal construction expert or installation contractor. The

foundation contractor is specifically engaged to complete foundation work and is usually first on the construction site. The heavy piling machinery that he uses makes specific demands on the installation and accessibility of the construction site. These circumstances should be taken into account in the form of agreements on the commencement, execution and delivery of the work by the foundation contractor. Another important facet is the soil, because whatever is contained in the soil is invisible and to a certain degree unpredictable. That calls for the formation of specific agreements around responsibilities and the potential consequences that foundation works have on soil condition".

Risks

The work of foundation contractors carries significant risks. Sheet piling can for no apparent reason break out of interlocks, pile foundations can wash loose and vibration damage can occur to underground cables and pipes. This calls for a clear definition of mutual responsibilities. However, a significant grey area will always exist even in the event of clear delineation. For this reason, the AVAF 2016 limits the liability for uninsured damage to 10% of the contract price.

Each project is different

Lennart Alberts: "When drawing up the AVAF 2016 we took into account the sector-specific characteristics of the foundation contractor. As part of that I would like to make it absolutely clear: don't go to sleep at the wheel as a foundation company. Although the AVAF 2016 forms a safety net, for each project individuals should still be asking themselves the question: "What is required of me, what am I offering, which obligations do I intend and not intend to take on board. Basically, alertness is still required!"

