

General business-to-business terms and conditions for VHG members, the Dutch professional organization for horticulturalists



Article 1 – Definitions

The following definitions apply to these general terms and conditions:

- a. Contractor* The contractor, natural person or legal person, member of VHG, providing and carrying out the following works.
- b. Works* Within the meaning of these terms and conditions:
1. the preparation and performance of horticultural, agricultural engineering and other construction and/or maintenance works for parks, gardens and other green spaces, both indoors and outdoors. All works, carried out for the aforementioned activities, are also governed by these general terms and conditions;
 2. the supply of materials for the works mentioned under 1; and
 3. advising, making plans and budgeting for the work and performance of the work.
- c. materials*
- Living materials: goods that need maintenance and care in order to stay alive, to grow and/or to come to full development.
 - Dead materials: all other materials, including products used for the assignment and/or within the field of expertise of the contractor.
- d. client:* Each legal entity or natural person, acting in the course of his profession or company, not being a consumer, assigning to the contractor to carry out the works and/or the supply of the material, as specified under b and c of this article.
- e. consumer:* A natural person not acting in the course of his profession or company.
- f. contract sum:* The total sum that has been predefined by the client and contractor to carry out the work and/or to supply the materials.
- g. T&M work:* All Time and Material contract work between the client and contractor, as referred to under b., where the price is set according to the time spent on the work, actual cost of the labour and the actual cost of the materials, based on a predefined hourly wage and price for the materials.
- h. hourly wage:* The compensation for one person for work performed in one hour. An hourly wage is based on wages agreements, increased by additional social security contributions, operating expenses and contractor's fee applicable at the time of the work. The client is charged the total number of hours that the contractor has worked for the assignment, including commuting time.

Article 2 – Applicability and notice

1. These terms and conditions apply to all tenders, all agreements for carrying out the work, all purchase and sale agreements, as well as all other agreements made between the contractor and the client.
2. The contractor explicitly denies any applicability of conditions used by the client.

Article 3 – Offer

1. Before submitting an offer, the contractor will inform himself of all information relevant to the work. The client is obliged to let the contractor collect this information and hand over all relevant information of his own accord. Based on the information known to him and received from the client, the contractor will formulate a tender. Should this information prove incomplete or incorrect, any consequences resulting from this will be at the expense and risk of the client.
2. The contractor will submit the offer in writing, which may include by electronic means (by email).
3. The offer will be dated and irrevocable for 30 days following this date, unless stated otherwise in the tender.
4. The offer contains a clear description of the work to be performed, including pricing based on the information given to the contractor by the client. The tender also contains plans or drawings (of the work) and calculations to the extent possible, as well as the validity period and the contractor's contact point.
5. The contractor reserves all intellectual property rights for all designs, pictures, plans and sketches. These are all copyrighted works owned by the contractor. The designs, pictures, plans and sketches must be returned without delay to the contractor upon request, without prejudice to any other legal measures open to the contractor to secure these rights.
6. The client may not copy, publish, commercially exploit, use or exhibit materials that are the intellectual property of the contractor or that are copyright protected, without the contractor's prior consent. If the contractor does not get the assignment for the offer, the offer, including the designs, pictures and plans, will have to be returned to the contractor within 14 days of the date of this decision, unless other arrangements have been made in this respect. The client is not allowed to carry out the design himself or have it carried out by third parties without the express and prior consent in writing of the contractor/copyright holder.
7. Unless otherwise agreed in writing, the client will reimburse the preparatory, design and drawing costs to the contractor in case the contractor actually was invited to draw up the design but had not been assigned to carry out the work and/or to supply materials.
8. The offer mentions the starting date of the work as well as provides an indication of when the work will have been completed.
9. The offer will indicate the price of the materials and the pricing method for the work: a contract sum or a Time and Material contract. A contract sum is where both parties agree on a set price for which the work is done. In case of a time and material contract, the contractor will give an accurate indication of the costs, such as the hourly wages, the use of machines and the unit prices of the materials needed.
10. To the extent possible, contract variations will be recorded in advance and mutually agreed upon.
11. The offer will state the payment terms or the payment schedule. All amounts and prices mentioned in the quotation or agreement are exclusive of VAT.

Article 4 – Agreement

1. The agreement for the contract work, for the sale and/or purchase as well as for a Time and Material contract will be concluded at the time the client accepts the offer, which will be in writing and taking into account the provisions of Articles 4(2) and (4).
2. By accepting the offer in writing and submitting or returning it to the contractor no later than 30 days of the date of the offer, the client accepts the offer, unless otherwise indicated in the offer.
3. If a change is made in the offer, a new offer will be made. In that case, paragraphs 2 and 3 will apply once again.
4. The offer is considered to have been accepted if and when the client clearly consents to or permits the start of the work by the contractor.
5. The contractor is in no way bound to that which is mentioned in prospectuses, folders and/or other publications, designs and drawings. The data mentioned therein do not bind the contractor, unless he specifies so in writing.
6. Before any digging is started, the contractor is informed about the location of cables, pipes or any other underground ducts.

Article 5 – Price changes

New pricing due to changes in the law or collective labour agreement while the work is being carried out will be charged to the client.

Article 6 – Changes in the agreement

1. Changes in the agreement, including aberrations of these general terms and conditions, are agreed upon and recorded in writing. This does not apply to the price changes referred to in Article 5.
2. Changes in the agreement will be considered as additional work if they result in a higher price or as cost savings if they reduce the amount of work.
3. Additional or less work (contract variations) will be specified in the offer as much as possible without prejudice to the obligation to pay the principal sum.

Article 7 – Supplies

1. All supplies delivered by the contractor will be charged to the client, without prejudice to the payable sum for transportation, processing and/or installation, except when these are part of the agreed contract sum and so are included in the price.
2. The contractor will vouch for the authenticity of the living materials supplied, in accordance with the description in the offer and the agreement. To the extent possible, the contractor will carefully monitor the quality and composition of the materials to be supplied, taking into account the relevant legal provisions in this respect and keeping in mind the objective or function of the materials, insofar as known to the contractor.
If the agreement is partly or solely about the supply of materials the client needs to indicate so on his receipt and will have to formally complain in writing within two working days after the supply with the contractor; if the client fails to do so he is considered to accept the materials as such. If there is no means to inspect the supplied goods upon delivery the client needs to state so on the receipt.
3. The contractor can guarantee the growing of the living materials supplied and planted by him until the following growing season but only if the care is in his hands and unless there are exceptional weather or terrain conditions or other forces majeure. In the latter case the cost of these materials, with a maximum of 10%, will be reimbursed by the contractor. The height of this amount of the reimbursement will be determined by the total price for the relevant products.
4. If, according to the contractor, the work cannot be carried out in time due to the condition of the weather or the terrain, he has the right to cancel the work temporarily without having to pay compensation to the client, until the circumstances as referred to above have ended. The contractor has the right to further postpone the planting if he considers this necessary for the catching on (rooting) or regrowth of the materials.
5. The contractor is not liable for materials that are delivered or prescribed by or methods that are prescribed by the client or any consequences resulting from this, if these methods or materials turn out to be improper and the contractor wasn't aware of this or when the contractor had warned the client without this resulting in a change of the assignment.

Article 8 – Completion

Completion of the contracted work means the actual delivery to the client. The work is considered completed if the contractor has confirmed this in writing to the client. The work is also considered completed if the client uses or reuses the work, on the understanding that by using part of the work that part will be considered as completed.

Article 9 – Risks of transportation

Unless otherwise specified in writing beforehand, the risks of transportation of all materials are for the contractor.

Article 10 – Payment /untimely payment

1. Invoices need to be paid by the client within 30 days of the invoice date and in the manner stated in the contract, unless parties have agreed in a different way in writing beforehand. Compensation and setting off of debts are explicitly excluded.
2. If a payment in instalments has been agreed, the client will have to pay according to the instalments and percentages set out in the agreement.

- The client is in default from the moment the agreed time of the instalment has passed. This default is also not cured when, after the instalment period has lapsed, the client receives a final payment reminder from the contractor in which the client is given the opportunity to pay within 7 days of receipt of this reminder.
- The client owes the contractor interest on the part of the payment that was received too late, from the date of the default until the day that the payment has been made in full. This interest is equal to statutory commercial interest. In addition, the client is liable for all extrajudicial costs and collections, including those for drafting and sending reminders, reaching settlement negotiations or preparing any court action, which includes legal costs. The extrajudicial collection costs are calculated on the basis of the 'Voorwerk II' report plus € 25 in registration fees.
- The client is not at liberty to make payments to unauthorised personnel of the contractor.
- In the case of untimely payment the contractor has the right to suspend the performance of the agreement until the payment has been made.

Article 11- Agreements made by employees

- Agreements entered into with personnel who are not authorised to act on behalf of the contractor do not bind the contractor, unless they have been confirmed in writing.
- Unauthorised personnel are considered to be employees who do not have a power of attorney, as is for instance apparent from the commercial register.

Article 12 – Environmental aspects when performing work

- The contractor will make sure to remove any waste material and/or residue of the work in an environmentally sound way.
- The costs for waste and/or residue removal will be charged to the client.

Article 13 – Retention of title

- All delivered materials insofar as they are not permanently fixed will remain the property of the contractor, as long as these are not paid for or only paid for in part.
- Insofar as the retention of title of the contractor on the supplied goods is extinguished through specification ('zaakvorming') or otherwise, the contractor reserves the right of non-possessory pledge on a property, until security has been provided of all that the client is or will be due. Upon the contractor's first request, the client is to cooperate in establishing a non-possessory pledge on this property.

Article 14 – Maintenance

- Agreements to carry out maintenance are entered into for an indefinite period of time, unless expressly agreed otherwise in writing.
- Both parties may terminate this agreement by sending a registered letter to the other party, taking into account a notice period of three months before the end of the current contract period.

Article 15 – Force majeure

- If the agreed work cannot be carried out temporarily or only partly due to force majeure for a maximum period of 90 days, the contractor will immediately contact the client to arrange alternative work.
- In case the contractor is not able to perform the work in accordance with the agreement because the client has failed to carry out preparatory and/or other activities or failed to do so in time, the contractor will contact the client to consult on alternative work. This circumstance will constitute a breach on the part of the client and does not affect the contractor's rights under Dutch law, the contract or these general terms and conditions.
- In case of force majeure, the obligation to supply and other obligations of the contractor will be suspended. If the contractor cannot meet his obligations due to force majeure for longer than 90 days, both parties may terminate the contract without any need for compensation.
- If, at the start of the period of force majeure, the contractor has already fulfilled or was only able to fulfil part of his obligation, he has to right to send a separate invoice for work performed or materials delivered. In that case the client is obliged to pay the invoice as if it were a separate contract.

Article 16 – Performance of the work and end of contract

- If the contractor dies before the work is completed, his successors under universal acquisition are not obliged to perform or complete the work but the contract will be terminated. In this case the client will pay the contract sum minus a reasonable amount for the incomplete parts of the work or, with a Time and Material contract, the amount due until the time of death of the contractor in accordance with the current conditions.
- If the client has applied for bankruptcy or a suspension of payments, is placed under guardianship, if any property of the client is attached, if the client dies, or if the company of the client is liquidated or dissolved or a statutory debt restructuring arrangement has been ordered, the contractor can immediately claim any due and payable amount.
- The contractor has the right to suspend the performance of the agreement for an indeterminate time if the client has been declared bankrupt, if a debt restructuring arrangement applies or if the client has applied for a suspension of payments. In all these cases the contractor has to right to terminate the agreement, without prejudice to the contractor's right to claim compensation.

Article 17 – Liability

- 1a. The contractor is liable for direct damage to buildings, inventory, persons or properties of persons inflicted during the performance of the agreement, which may be due to negligence, carelessness or incorrect actions by the contractor, his employees or any subcontractors. The contractor is not liable for indirect or consequential damages.
- 1b. The client has however the obligation to take any measure, within reasonable boundaries, that can or could prevent or limit the damage.
- The right for reimbursement of this damage will expire if the claim in this respect is not submitted in time, as indicated in these general terms and conditions.
- With regard to the damage stated in this article, the contractor is liable for the damage incurred as a result of or during the performance of the agreement with a maximum of €1,000,000 for each event, which will be paid by the insurer. If the client wishes to agree on a higher maximum liability sum, the client needs to inform the contractor of this wish prior to concluding the agreement, so the contractor can enter into a

higher liability insurance scheme for companies or professionals. The limitation of the liability does not apply in case of gross negligence or intent on the part of the contractor.

- The contractor's liability for defective materials is limited to the price agreed for the supply. The contractor's liability in respect of dead materials does not go beyond that which is allowed under the supplier's guarantee. If the contractor has informed the client of the identity of his supplier for the dead materials, he is obliged to first hold the supplier accountable for any compensation of the damage.
- The contractor cannot or can no longer be held responsible for the sand, earth, garden mould and compost if these have already been mixed with the soil of the client during or after the performance of the work.
- The client will indemnify the contractor from liability claims from third parties directed against the contractor if the contractor has caused damage because insufficient, unclear or incomplete information was provided by or on behalf of the client while this damage could have been prevented or limited if the contractor had received the proper information.
- The contractor is not liable if the damage is caused by willful misconduct, gross or culpable negligence or injudicious or improper use by or on behalf of the client.
- The contractor is not liable for damage resulting from subsidence of the soil, earth or garden mould if this subsidence cannot be connected with the processing of the s, earth, soil or garden mould.
- The contractor is not liable for any damage resulting from premature use of the work or parts thereof.
- The contractor is not liable for any form of damage resulting from the use of materials prescribed by the client or from carrying out a project of the client.

Article 18 – Complaints

- Only written complaints on visible flaws or defects regarding the performance of the work as well as the supply of materials that have been received within 14 days of the invoice date can be accepted. Other written complaints on the performance of the work as well as the supply of materials must have been received within 60 days of the completion of the work or the last day of the work or supply of materials, respectively.
- Filing a complaint does not suspend the client's obligation to pay.
- Complaints about the performance of the work or the supply of materials will be inadmissible if the client has not provided the normal care as could be expected of him after the completion or performance of the work and/or supply of materials.

Article 19 – Disputes

All disputes arising from offers and supplies as well as from agreements about the performance of the work or about the sale and/or purchase are subjected to the decision of the competent court in the district where the contractor has his/its official seat. Each party has the right to request a decision from the 'Raad van Arbitrage voor de Bouw' (Arbitration Board for the Construction Industry), if the dispute is wholly or partly of a technical nature. Disputes will only be heard by the Raad if no legal proceedings have yet been initiated with the District Court. If a dispute is first brought before the 'Raad', any subsequent proceedings brought before the court will be rejected. Disputes brought before the 'Raad' are subject to its Articles of Association. These can be requested from the 'Raad', Stationsplein 29/3 hoog, 3511 ED Utrecht (telephone number: (030) 234 32 22, telefax: (030) 230 01 25). By entering into an agreement under these General terms and conditions the parties consent to these. The ruling of any dispute is final and binding.

Article 20 – Final clause

These general terms and conditions have been adopted by the assembly of the 'Branchevereniging VHG' and deposited with the Chamber of Commerce in Utrecht, under number 40482980. These general terms and conditions come into effect on 1 January 2014.

note from the translator: This translation is provided for information purposes only. In the event of a difference of opinion or dispute, the Dutch version of this document is binding.