



General Terms and Conditions for Consumers of the VHG professional organization



These General terms and conditions of the VHG professional organisation have been drafted in consultation with the Dutch consumer organisation 'Consumentenbond' within the framework of the self-regulation coordination group 'Zelfreguleringsoverleg' of the Social and Economic Council of the Netherlands (SER) and are effective from 1 January 2016.

Content

ARTICLE 1 - DEFINITIONS

The following definitions apply to these General Terms and Conditions for consumers:

Contractor: each natural or legal person, acting in his entrepreneurial, company's or professional capacity, or any other person acting on his behalf and who is a member of the professional organisation VHG and offers and performs the following work.

Work: the preparation and performance of activities for, or in connection with, the construction and/or maintenance of gardens and such, both indoor and outdoor; The supply of the necessary living or dead materials for this work; Rendering advice, making plans and or budgets for these activities.

Materials:

Living materials: Products and articles that need care and maintenance in order to take root, grow and or come to full development; Sand, soil, garden mould and compost;

Dead materials: All other products and materials used for the profession of the contractor.

Consumer: Each natural person not acting in the exercise of his company or profession and concluding a contract with the contractor.

ARTICLE 2 - APPLICABILITY

These terms and conditions apply to any offer from the contractor and to any contract concluded by the contractor and the consumer.

ARTICLE 3 - THE OFFER

- Before an offer ('offerte') is made, the contractor will have to be informed about everything relevant to the performance of the work and the consumer is obliged to provide the contractor with this information. The contractor will also inform the consumer beforehand of the costs for the offer and the design.
- The contractor will preferably present the offer in writing and/or electronically.
- The contractor will date the offer. The offer is irrevocable in the 30 days following this date, unless otherwise specified in the offer.
- The offer contains a complete and accurate description of the goods that are to be supplied and the work that needs to be performed, based on the information from the consumer to the contractor as stated in the first paragraph of this article. This description needs to be sufficiently detailed in order for the consumer to assess the offer.
- The offer specifies when the contractor is to commence the work, and indicates a more or less specific delivery date.
- The offer gives insight in the price of the goods and the method of pricing used by the contractor for the work: a contract sum or a Time and Material (T&M) contract.
 - For a contract sum both parties agree on a set price for which the contractor will perform the work, including VAT.
 - For a Time and Material contract, the contractor will precisely indicate the price factors, including VAT (such as hourly rates and unit prices of the materials needed). At request of the consumer, the contractor may indicate the expected costs for the work, by stating a recommended price.
The hourly rate is the remuneration for performing the work for one hour by one person, including VAT. The contractor will charge the consumer the total number of hours that the contractor has worked for the consumer, including the commuting time to and from the work.
- The offer will state the method of payment and the terms of payment.
- The offer will be sent – in writing and/or electronically – accompanied by a copy of these General Terms and Conditions.
- Unless otherwise agreed, the contractor reserves the intellectual property rights of all designs, pictures, plans and drawings/sketches. The consumer is obliged to return these without hesitation when requested to do so by the contractor, without prejudice to other legal measures available to him to guarantee his rights.
- The consumer may not copy, publish, exploit or exhibit the intellectual property of the contractor without the contractor's permission. If the assignment for performing the work is not issued to the contractor, the consumer is obliged to return the offer to the contractor, including the designs, pictures and plans, within 14 days after the decision or the expiry of the offer. The consumer may not carry out the design himself or have a third party carry it out for him without the express written consent of the copyright holder.
- If agreed in writing and/or electronically, the consumer will pay the contractor the previously offered price for preparatory, design and/or drawing work when the consumer had invited the contractor to do this work but in the end did not instruct him to perform the work and/or supply the goods.
- The contractor will make sure that the information supply on the basis of this article to the consumer fulfils the legal requirements including, but not limited to, the legal requirements referred to in Article 6:230I of the Dutch Civil Code.

ARTICLE 4 - THE AGREEMENT

- The agreement is concluded when the consumer accepts the offer. This acceptance is preferably carried out in writing. In case of electronic acceptance of the order, the contractor will send the consumer a confirmation as soon as possible.
- Following changes in the offer, the contractor will submit a new offer in the short term.
- The acceptance of the offer is deemed unchanged if and at the moment the consumer agrees or explicitly allows the performance of the work to start.
- Obvious mistakes or errors in prospectuses, folders and/or other releases, pictures, drawings, offers, order confirmations and specified data are not binding on the contractor.
- The contractor is obliged to check for the presence of cables and underground wiring before the start of excavation works. The consumer is obliged to provide the contractor with all the information known to him in this respect.
- Save as otherwise provided by law, the contractor is neither liable for damage to cables, pipes or any other underground works and constructions, nor for any consequences resulting from this damage.

ARTICLE 5 - DURATION AND END OF THE AGREEMENT

- An agreement entered into by the contractor and consumer for a specified period has a maximum duration of one year. The consumer cannot terminate this agreement early, unless continuation of this agreement under the circumstances would be unacceptable according to criteria of reasonableness and fairness. In the case of a tacit extension of the agreement of more than one year, the consumer can terminate the agreement after this first year at any time, with due observance of a one-month notice period, unless the principles of reasonableness and fairness dictate against such cancellation before the end of the agreed period.
- Maintenance agreements are entered into for an indefinite period of time, unless expressly agreed otherwise in writing. The consumer can terminate the agreement after the first year – preferably in writing – with due observance of a one-month notice period after which the contractor will confirm the termination in writing.
- Under the provisions of Articles 7:400 et seq. relating to the contract of services, including Articles 7:402(2) and 7:408(2) of the Dutch Civil Code, the contractor can terminate the agreement.

ARTICLE 6 - PRICING AND PRICE CHANGES

- All amounts and prices stated in offers and agreements are inclusive of VAT. The contractor may charge interim price changes arising from the law to the consumer. The contractor may charge other increases in price of cost price determining factors arising after the conclusion of the agreement but before the completion to the consumer. If the contractor changes the prices within 3 months after entering into the agreement, the consumer has the right to terminate the agreement. The contractor may suspend the (further) performance of the agreement until such time as the consumer informs the contractor that he accepts the price increase. Termination of the agreement in this manner does not entitle any party to a right to compensation. Work that has already been performed will be charged at the original agreed price.
- Changes in the agreement will be considered as additional work if they result in an increased price or as cost savings if they reduce the amount of work.
- Additional or less work (contract variations) will need to be recorded in writing or electronically as much as possible without prejudice to the obligation to pay the principal sum. The contractor will perform this work only if the consumer has agreed to it.
- In case of additions or changes in the agreed work desired by the consumer, the contractor can only claim an increase in the price if he has informed the consumer in time of the need of the increase, unless the consumer should have understood this need himself.

ARTICLE 7 - COMPLETION

The completion of the contract work is the actual delivery to the consumer. The work is considered delivered when the contractor, following the completion of the work, has informed the consumer in writing that all of the work is completed. The work is also considered delivered if client uses the work, on the understanding that by using part of the work that part is seen as completed.

ARTICLE 8 - CONFORMITY

- The contractor guarantees the quality and authenticity of the living materials he supplies, in accordance with the description on the offer. The contractor will see to the quality of the sand, earth, gardening mould, compost, foundation and/or surfacing material as much as possible, with due observance of statutory provisions set for this and for its intended use.
- The contractor guarantees the regrowth of the living materials supplied and processed by him in the next growing season provided he has been asked to provide this service and unless there are circumstances the contractor cannot be held accountable for, including but not limited to force majeure. The circumstance referred to in the previous sentence include exceptional weather or terrain conditions.
- In case of exceptional weather and/or terrain conditions or force majeure, the contractor will compensate the failure of the living materials up to a maximum of 10% of the price for these living materials, as well as a maximum of 10% of the planting costs of the supplied relevant living material.
- The contractor is not liable for defects arising after the supply of goods due to unprofessional use or lack of care by the consumer, including insufficient maintenance or defects that result from changes that the consumer or third parties made to the supplied goods. The contractor is also not liable for any damage resulting from these defects.

ARTICLE 9 - POSTPONEMENT

- In case of force majeure, the obligation to supply and other obligations of the contractor will be suspended. If this period, in which the contractor cannot meet his obligations due to force majeure, is longer than 90 days, the consumer can terminate the agreement 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 may invoice the consumer for what he has already supplied. The client is then obliged to pay the invoice as if it were a separate contract. In case of force majeure (a non-attributable failure) emerging from his side or from the consumer and lasting longer than 90 days, the contractor may terminate the contract, insofar as compliance cannot in all reasonableness be demanded from him after that period.

- Force majeure with the consumer does not include the circumstances that the contractor cannot perform the work according to the agreement because other and/or preparatory activities have not been or not in time been carried out on the side of the consumer.
- If the contractor is of the opinion that the work cannot be performed in time due to weather or terrain conditions, he may postpone the work for as long as these circumstances continue, without entitling the consumer to any right to compensation. In this respect, the contractor has the right to further postpone the planting until the circumstances, as mentioned before, have ended, if he thinks this is necessary for the living material to strike root or regrow.
- If the agreed work, due to force majeure, cannot be performed temporarily or only partly for a maximum period of 90 days, the contractor will immediately contact the consumer to arrange alternative work.

ARTICLE 10 - ENVIRONMENTAL ASPECTS WHEN PERFORMING THE WORK

The contractor will make sure to remove waste matter and/or residue of the work in an environmentally responsible way. The cost for environmentally friendly waste and/or residue removal will be charged to the consumer. The contractor may charge the consumer for extra work in respect of environmental aspects if these arise after the offer has been made, in accordance with articles 6 (2) and (3).

ARTICLE 11 - AGREEMENTS BY EMPLOYEES

Arrangements or agreements with employees not authorized by the contractor are not binding on the latter, unless he has confirmed so in writing or electronically. In case of cash payments by the consumer, the contractor will hand out a receipt.

ARTICLE 12 - PAYMENT

- All work performed by the contractor will be charged to the consumer – insofar that these are not part of an agreed contract sum and are thus part of the price – with observance of the content of articles 6 (2) and (3) of these General Terms and Conditions and without prejudice to the amount due for transportation, processing and/or installation.
- Unless agreed otherwise and in writing, payment is in Euros.
- The consumer must pay the invoice within 30 days following the receipt of the invoice, unless otherwise agreed.
- If a payment term has been agreed, the consumer must pay according to the payment terms and the percentages stated in the agreement.
- The payment must take place in the manner stated in the offer. Employees of the contractor are not authorised to receive payments, unless specifically authorised in writing to do so.
- In case of purchase, the contractor may oblige the consumer to a prepayment with a maximum of 50 per cent of the price.

ARTICLE 13 - UNTIMELY PAYMENT

- The consumer is in default from the moment the payment date has expired. After the expiry of the date of payment, the contractor will send the consumer a payment reminder free of charge, in which he gives the consumer the opportunity to pay within 14 days upon receipt of the reminder. The payment reminder also states the consequences of untimely payment.
- If the consumer has failed to pay after the payment reminder, the contractor may charge interest from the expiry of the first payment date. This interest is equal to statutory commercial interest.
- If the payment was received too late, the contractor may suspend performance of the agreement for an indefinite period of time.
- All costs resulting from non-payment or untimely payment and that can be recovered from the consumer under current legislation, will be charged to the consumer.

ARTICLE 14 - RETENTION OF TITLE AND PROPERTY TRANSFER

- All goods supplied insofar as they are not the property or become the property of the consumer based on statutory regulations on acquisition of ownership will remain the property of the contractor, as long as the consumer has failed to pay all or part of these.
- Insofar as the contractor's retention of title of the supplied goods ceases to exist because of accession or specification, the consumer will establish a non-possessory (undisclosed) pledge on the goods that become a constituent element or the specified goods to the contractor. This pledge will serve as collateral of all that the consumer, in any capacity, owes and will owe to the contractor. If the supplied good is an inseparable part of a register-bound property, a right of mortgage can be established. On the contractor's request, the consumer is to cooperate fully in establishing a mortgage.

ARTICLE 15 - PERFORMANCE OF THE WORK AND END OF CONTRACT

- In the event that the contractor dies, or has applied for liquidation or a dissolution of the company, before the work is completed, his successors under universal or particular title are not obliged to complete the work, even if the company is continued in any form. In that case the consumer must pay the legal successors the contract sum minus a reasonable amount for the non-finished part of the work or, with a Time and Material contract, until the time of death of the contractor or with the liquidation or dissolution of the contractor's company, according to these General Terms and Conditions.
- The contractor may postpone the performance of the agreement for an indefinite period of time if the consumer has been declared bankrupt, is placed under guardianship or if the consumer has submitted an application for a suspension of payment.

ARTICLE 16 - LIABILITY

- The contractor is liable for damages inflicted during the performance of the agreement to the building and inventory, persons or properties and which may be due to imputable failure by the contractor, his personnel or possible subcontractors.
- The consumer has the obligation, within reasonable boundaries, to take any measure that could prevent or limit the damage.
- With due observance of the provisions in this article, the contractor is liable for damage resulting from or caused during the performance of the agreement. The damage is compensated for with a maximum of €1,000,000 for each event, without prejudice to statutory liability. If the consumer wishes to agree to a higher maximum liability sum, the consumer needs to notify this prior to the conclusion of the agreement. This maximum may not exceed € 2,500,000 for each event. The contractor will then have to enter into an additional liability insurance arrangement for companies or professionals for this sum.
- The consumer indemnifies the contractor for liability from third parties against the contractor if the contractor inflicts damage because the consumer or third parties appointed by the consumer have provided insufficient or incomplete information that, if it had been known to the contractor, could have led to the prevention or limitation of the damage.
- The contractor is not liable for damage caused by intentional or gross negligence and/or imputable action or incompetent or improper use of or on behalf of the consumer.
- The consumer is liable for damage caused to the contractor by an imputable failure on the part of the consumer.

- The contractor is not liable for damage resulting from subsidence of the earth, soil or garden mould if this subsidence cannot be connected with the processing of this earth, soil or garden mould.
- The contractor is not liable for any damage resulting from the premature use of all or part of the work

ARTICLE 17 - COMPLAINTS

- The consumer is obliged to describe a complaint about a defect product and/or service as completely and clearly as possible, and file it with the contractor within a reasonable time after the consumer has or should have discovered the defect. For products, this reasonable time is two months. On delivery of the products, the contractor and the consumer will inspect the products as soon as possible following the delivery, if feasible, and note possible defects on the receipt, without prejudice to the consumer's rights under the first sentence of this paragraph
- The contractor will respond to the subject matter of this complaint within two weeks. If such a response is not possible, the contractor will inform the consumer so in two weeks and indicate a period in which the consumer can expect a substantive answer. The contractor has the right to have the complaint looked into by an independent third party within four weeks following the filing of the complaint. In that case the consumer will collaborate.
- Complaints on the performance of the work or the delivery of goods do not release the consumer of the normal duty of care expected of him after completion of the work or the delivery of goods.
- If the complaint cannot be settled by common accord, dispute resolution proceedings may be initiated.

ARTICLE 18 - DISPUTES

- Disputes arising between the consumer and the contractor about the conclusion or performance of agreements on services and goods to be delivered by the contractor can be filed with the 'Geschillencommissie Groen' (Dutch foundation for Consumer Complaints Board), Bordewijklaan 46, PO Box 90600, 2509 LP The Hague (www.sgc.nl) by both the consumer and the contractor.
- A dispute can only be filed with the Consumer Complaints Board if the consumer has filed his complaint with the contractor first.
- If this complaint does not lead to a resolution, the dispute will have to be filed in writing, or any other form determined by the Board, at least 12 months following the date on which the consumer filed his complaint with the contractor.
- If the consumer files a complaint with the Consumer Complaints Board he must ask the consumer to express within five weeks whether he agrees with this. The contractor also needs to announce whether he will consider himself free to bring the dispute before the court after the expiry of those five weeks.
- The Consumer Complaints Board will pronounce a decision taking into account the provisions of its applicable rules and regulations. The Board's decisions will be made in accordance with these rules and regulations by way of a binding opinion. Upon request, a copy of the rules and regulations will be sent. A fee is required for resolving a dispute through the Consumer Complaints Board.
- Only a court and the Consumer Complaints Board are authorised to settle disputes.

ARTICLE 19 - PERFORMANCE GUARANTEE

- 'Stichting Garantiefonds Groen' (Dutch guarantee fund for the horticulturalist sector) guarantees the compliance by members of the 'Branchevereniging VHG' with the binding opinions of the Consumer Complaints Board, unless the member of 'Branchevereniging VHG' decides to bring the binding opinion before the district court within two months after the opinion was received. This guarantee revives if the binding opinion after a judicial review is upheld and this judgment has become final and conclusive. The consumer will receive from the 'Stichting Garantiefonds Groen' a maximum of € 10,000 for each binding opinion, on condition that the consumer assigns his claim to the 'Stichting Garantiefonds Groen' together with the award of the performance guarantee. For anything above that maximum the 'Stichting Garantiefonds Groen' is under the obligation to ensure that the member of the 'Branchevereniging VHG' complies with the binding opinion. This obligation entails that the consumer is requested to also submit his claim for anything above the maximum amount to the 'Stichting Garantiefonds Groen' after which this organisation in its name and expense will bring legal proceedings to compensate the consumer.
- 'Stichting Garantiefonds Groen' will not provide a performance guarantee if, before the legal proceedings can be instituted the consumer has met the formal intake requirements (payment of the complaint-filing fee, receipt of the completed and signed questionnaire and any payment of deposit), one of the following situations occurs:
 - the member has been granted a moratorium of payment, or
 - the member has been declared bankrupt, or
 - the company operations have effectively been ended.

The effective ending of the business activities is the date on which the cessation of the company operation is registered with the Commercial Register or an earlier date, which the 'Stichting Garantiefonds Groen' can plausibly demonstrate that the company operations have effectively ended.

ARTICLE 20 - EXCEPTIONS

Individual exceptions of the agreement or of these General Terms and Conditions will have to be recorded in writing or electronically between the contractor and the consumer.

ARTICLE 21 - AMENDMENTS

The 'Branchevereniging VHG' will only amend these General Terms and Conditions after consultation with the 'Consumentenbond'.

ARTICLE 22 - FINAL CLAUSE

- These General Terms and Conditions have been adopted by the assembly of the 'Branchevereniging VHG' and are deposited with the Chamber of Commerce in Utrecht, under number 40482980.
- Article 18 of these General Terms and Conditions has been effected in consultation with 'Stichting Garantiefonds Groen'.

17 November 2015

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.