

General Business-to-business terms and conditions for the members of the Sector Association VHG**Article 1 – definitions**

In these general terms and conditions the following terms have the following meaning:

a. contractor

The contractor, natural person or legal entity, who is a member of the Sector Association VHG and who offers and executes the following work.

b. work within the meaning of these terms and conditions

1. the preparation and execution of horticultural, land and water management and related work for the landscaping and/or maintenance of grounds and green areas, gardens and other green areas, inside as well as outside. All work executed related to the aforesaid work is also governed by the present general terms and conditions.

2. the delivery of materials related to the work referred to here under point 1.

3. providing advice, drawing up plans and budgets for the work and the execution thereof.

c. materials:

- living materials: goods that require care and maintenance to stay alive, to grow and/or to reach development.
- non-living materials: all other materials, including products that fall within the assignment/the subject area of the contractor.

d. client:

Every legal entity or natural person who acts in the exercise of his/her profession or business, not being a consumer, who provides an assignment to a contractor for the execution of work and/or the delivery of materials, as described under b and/or under c of this article.

e. consumer:

A natural person who does not act in the exercise of a profession or business.

f. contract price:

The total amount that has been established in advance between the client and the contractor for the execution of the agreed work and/or materials to be delivered.

g. work on a cost-plus basis:

All work agreed between the client and the contractor as referred to under b, whereby the price is determined in accordance with the worked hours and the processed materials, on the basis of hourly pay and price for the materials agreed upon in advance.

h. hourly pay:

The payment for the execution of work during one hour by one person. The hourly pay is based on the pay regulations applicable by law at the time of the work to the contractor, plus the mark-up percentages for social security costs, operating expenses and contractor remuneration. The total number of hours during which work has been executed for the client in the context of the agreed assignment will be charged to the client, including the time for travel to and from work.

Article 2 - applicability and notification

1. These terms and conditions apply to all invitations to tender, all agreements for the execution of work, purchase and sales agreements, as well as all other agreements between the contractor and the client.

2. The contractor expressly rejects the applicability of any terms and conditions applied by the client.

Article 3 - the offer/the tender

1. The contractor will enquire after all relevant information related to the execution of the work prior to issuing an offer. The client is obliged to provide the contractor with the opportunity to gather this information and to provide the contractor on his/her initiative with all relevant information for the correct execution of the assignment. The contractor will draw up the offer on the basis of the information known to the contractor and provided by the client. If this information might appear to be incomplete or incorrect the consequences thereof will be at the client's expense and risk.

2. The contractor will issue the offer in writing. In writing also includes in an electronic manner (by email).

3. The offer will be provided with a date and will be irrevocable from 30 days after the date of the offer, unless this appears to be otherwise from the offer.

4. The offer will contain an unambiguous work description of all the work to be executed including price-setting on the basis of the information provided by the client to the contractor. The offer will further contain insofar possible, the (work) drawings and calculations as well as the validity period thereof and the contractor's contact person.

5. The contractor retains all intellectual property rights to all designs, images, drawings and sketches provided, unless expressly agreed otherwise. In this manner the copyright thereto is vested in the contractor. The designs, images, drawings and sketches must be promptly returned upon first request from the contractor, without prejudice to all other legal measures available to the contractor for safeguarding these rights.

6. The client is prohibited, without permission from the contractor, from in any manner whatsoever reproducing, publishing, operating, using or displaying the contractor's materials, in which intellectual property rights including copyright is vested. If the assignment for the execution of the work is not granted to the contractor, the offer, together with the designs, images and drawings, will be returned to the contractor within 14 days after the decision, unless other arrangements are made concerning this. The client is expressly not permitted to personally execute the design, or to have third parties execute the design, without express permission in writing from the contractor/copyright owner.

7. Unless agreed otherwise in writing, the client will pay the contractor for the preparation, design and drawing costs in the event that the contractor was invited to do the drawing work but no assignment for the execution of the work and/or delivery of goods was granted to the contractor.

8. The offer will state when the (execution of the) work will be commenced and an indication will be issued of the time when the work will be completed.

9. The offer will provide insight into the price of the materials and the pricing method that is applied for the work to be executed: contract price or work on a cost-plus basis. In the event of a contract price, parties will agree to a fixed amount for which the work will be executed. In the event of work on a cost-plus basis the contractor will make a precise statement of the price indicators such as the hourly rate for the people, machines and unit prices of the required materials.

10. Contract variations will be recorded and mutually signed for approval insofar as possible.

11. The offer will set out the payment terms and the payment arrangement. All amounts and prices referred to in offers and agreements are excluding VAT.

Article 4 - the agreement

1. The agreement for contracting work, for the execution of work on a cost-plus basis and/or for purchase or sale, as well as an addendum thereto and/or amendment thereof, will come into effect by means of acceptance of the offer by the client. This acceptance will take place in writing and with due regard to the provisions of article 4 subclauses 2 and 4.

2. Acceptance in writing will take place due to the fact that the client signs the offer for approval and thereupon hands or sends this back to the contractor, no later than 30 days after the date of the offer, unless stated otherwise in writing in the offer.

3. Following alterations of the offer, a new offer will be issued. Subclauses 2 and 3 will apply once again in that case.

4. The offer will be deemed to have been accepted in an unaltered manner, if and at the time when the client agrees thereto, or as the case may be clearly permits or allows the contractor to commence the execution of the work.

5. The contractor will not be bound in any manner whatsoever to that which is set out in prospectuses, leaflets and/or publications, images and drawings. The data stated therein will not bind the contractor unless the contractor confirms this in writing.

6. The presence of cabling, pipelines and any other matters must be known to the contractor prior to the commencement of any digging work.

Article 5 - Price changes

Interim price changes ensuing from the law and the Collective Labour Agreement will be charged on to the client.

Article 6 - Amendments of the agreement

1. Amendments of the agreement, including derogations from these general terms and conditions, will be agreed and recorded in writing. This does not apply to the price changes as referred to in article 5.

2. If a higher price would result therefrom, all amendments of the agreement will be considered to be contract extras and insofar as a lower price would result therefrom as contract reductions.

3. Contract variations (extras and reductions) will be offered in writing insofar as possible, without prejudice to the obligation of payment of the principal sum.

Article 7 - Deliveries

1. All deliveries from the contractor will be charged, notwithstanding the payment owed for transport, processing and/or affixing, except in the event that these form part of the agreed contract price and are therefore included in the price.

2. The contractor guarantees the genuineness of the living materials delivered by the contractor, in accordance with the description in the offer and the agreement. The contractor will as carefully as possible supervise the qualitative proper composition of the materials to be delivered, all this with due regard to the statutory provisions set out for this, and attuned to the designated use or the intended purpose use that is apparent to the contractor.

In the event that this concerns wholly or in part the delivery of materials, the following will apply to the delivery to the client:

In the event of damage of materials the client must note this in the delivery receipt and furthermore must submit a complaint in writing to the contractor within two working days after delivery, in the absence of which the client will be deemed to have accepted the goods as they are. If there is no opportunity at the delivery for inspection of the delivered goods the client must also note this in the delivery receipt.

3. The contractor guarantees the regrowth of the living material delivered by the contractor during the next growing season, provided that the care is assigned to the contractor, unless there are exceptional weather and/or ground conditions, other than (any form of) force majeure. In the latter events the loss will be compensated by the contractor to a maximum of 10% of the value of the goods concerned. The level of the amount of the loss percentage will be determined by the amount of the total price of the delivered product(s) that are relevant in this context.

4. If, in the opinion of the contractor, the execution of the work cannot take place (in a timely manner) resulting from weather and/or temporary ground conditions, the contractor will have the right - without this giving the client any right to compensation of damage - to suspend the work until the conditions as referred to above have ended. The contractor has the right thereby to postpone the planting if, in the opinion of the contractor, this is necessary in the context of the success or regrowth of the delivered materials.

5. The contractor will not be liable for (the consequences of) the materials delivered or prescribed by the client personally, or as the case may be a working method prescribed by the client, if these materials or working method appear to be incorrect and the contractor did not know this or could not know this, or as the case may be the contractor has warned the client regarding this without this warning resulting in any change of the assignment.

Article 8 - Completion

Completion of the contract work is taken to mean the actual delivery to the client.

The work will be regarded as entirely completed when the contractor has informed the client in writing that the work is entirely completed.

The work will be further regarded as completed when the client takes the work (once again) into use, always provided that due to the taking into use of a part of the work, that part will be regarded as completed.

Article 9 - Transport risks

All goods will be transported at the contractor's risk, unless agreed otherwise in writing.

Article 10 - Payment/late payment

1. The invoice date must be paid by the client within 30 days after the invoice date and in the manner as stated in the agreement, unless parties have agreed otherwise in writing. Compensation or set-off is expressly excluded.

2. If payment in instalments has been agreed the client must make the payments in accordance with the instalments and the percentages, as recorded in the agreement.

3. The client will be in default from the time when the agreed payment term has expired. This default will not be terminated in the event that the client receives a final payment reminder from the contractor after the expiry of this term and the client is provided on the basis thereof with the opportunity to still make the payment within 7 days after receipt of this reminder.

4. The client will owe interest to the contractor over (the part of the) payment that is not made in a timely manner, from the expiry of the payment term until the day of payment in full. This interest will be equal to the statutory commercial interest. In addition the client will be liable for all extrajudicial (collection) costs, including the costs incurred for the drawing up and sending of demand letters, the conducting of settlement negotiations and other acts for the preparation of potential court proceedings as well as judicial costs. The extrajudicial collection costs will be calculated on the basis of the applicable legal regime.

5. No payment in discharge of an obligation can be made to persons who are employed by the contractor and who do not have an express power of attorney for this purpose.

6. In the event of late payment the contractor will have the right to suspend the performance of the agreement until payment is made at a later date.

Article 11 - Arrangements made by personnel

1. Arrangements or agreements with the contractor's employees who are not authorised to act will not bind the contractor, unless the contractor has confirmed this in writing.
2. Employees who are not authorised to act must be regarded in this context as all employees who do not have power of attorney, as is inter alia evident from the Commercial Register.

Article 12 - Environmental aspects during the execution of the work

1. The contractor will be responsible for ensuring sustainable and ecological removal of the waste and/or residual materials that are released during the execution of the contractor's work.
2. The costs ensuing from this will be at the client's expense.
3. The contractor wants to contribute to a transition to a circular economy. The contractor does this by consciously creating green residual streams such as green waste, prunings, clippings, etc. that are released during management and maintenance work such as pruning and logging work, using a product from (for example) high-quality clean wood chips and not disposing of these residual streams as waste. The product will be used for, for example, sustainable energy generation in a biomass plant, recycling as soil improvement, raising or covering.
4. The contractor guarantees that the reuse of the product is guaranteed, justified and that the product is sufficiently high-quality. The contractor also guarantees that relevant laws and regulations are complied with, such as the European Waste Framework Directive (Dutch: Europese Kaderrichtlijn afvalstoffen), the national waste management plan in The Netherlands (Dutch: Landelijk afvalbeheersplan LAP 3) and the Environmental Management Act in The Netherlands (Dutch: Wet Milieubeheer).
5. By signing these general terms and conditions, the client agrees with the application of the green residual flows by the contractor as responsible use, and that the contractor does not discard the residual flows as waste. Any additional costs for responsible use are at the expense of the entrepreneur. In accordance with Article 10, paragraph 1, the client only bears the costs for the responsible disposal of waste and / or residual materials.

Article 13 - Retention of title

1. All delivered goods, insofar as not attached to the land or permanently attached, remain the contractor's property for as long as these have not been paid for or not been paid for in full.
2. Insofar as the contractor's retention of title of the delivered goods has been lost due to specification or otherwise the contractor retains the right to a nonpossessory pledge on the goods, for provision of security of all that which the client owes or will owe to the contractor on whatsoever basis. The client must provide cooperation upon first request from the contractor to establish a nonpossessory pledge on these goods.

Article 14 - Maintenance work

1. Agreements for conducting maintenance will be entered into for an indefinite period, unless expressly agreed otherwise in writing.
2. Termination of this agreement can be done by both parties by registered letter addressed to the other party and with due regard to a notice of termination period of three months with effect from the end of the ongoing contract period.

Article 15 - Force majeure

1. If the agreed work cannot be executed, or can only be executed partially, temporarily for a period not exceeding 90 days, due to force majeure the contractor will immediately contact the client to make arrangements for replacement execution.
2. In the event that the contractor cannot execute the work in accordance with the agreement, because preparatory and/or other work has not been executed, or has not been executed in a timely manner by the client, the contractor will contact the client for consultation regarding replacement execution. This circumstance will provide a failure on the part of the client and will not affect the exercise by the contractor of the rights accruing to the contractor on the basis of the law, the agreement and these general terms and conditions.
3. In the event of force majeure the delivery and other obligations on the part of the contractor will be suspended. If the period, during which force majeure makes the fulfilment of the obligations by the contractor impossible, lasts longer than 90 days both parties will be entitled to terminate the agreement, without any obligation of compensation existing in that case.
4. If at the occurrence of the force majeure the contractor has already fulfilled the obligations partially, or could only fulfil the obligations partially, the contractor will be entitled to separately invoice for that which the contractor has already executed and/or delivered. In that event the client will be obliged to pay this invoice as if it concerned a separate contract.

Article 16 - Execution of the work and contract termination

1. In the event of the death of the contractor prior to the completion of the work the contractor's successors in title under universal title will not be obliged to execute or complete this work any further because the assignment will end then. In that event the client must pay the contract price to the contractor's successors in title, reduced by a reasonable amount for the part of the work that has not been completed, or as the case may be for work on a cost-plus basis the amount owed in that case at the time of the death of the contractor, calculated in accordance with the present terms and conditions.
2. The claim for payment of all that which is owed to the contractor will be in any event immediately due and payable if the client is declared insolvent, applies for moratorium, the placement under guardianship of the client is claimed, if any attachment is levied on the client's goods, and in the event of the death of the client, or as the case may be the liquidation or dissolution of the client's enterprise, or if the statutory debt management scheme is declared applicable.
3. The contractor has the right to suspend the performance of the agreement for an indefinite period in the event that the client is declared insolvent, the statutory debt management scheme is declared applicable, as well as in the event that the client has submitted an application for moratorium. In these events the contractor will also have the right to termination of the agreement, without prejudice to the contractor's right to claim compensation.

Article 17 - Liability

- 1a. The contractor will be liable for the direct damage or loss caused during the performance of the agreement to buildings and fixtures and fittings, injury to persons, or property of persons, and that can be attributed to negligence, carelessness, or wrong acts on the part of the contractor, the contractor's personnel, or any of the contractor's subcontractors. The contractor will not be liable for indirect damage or consequential loss.
- 1b. The client has the obligation to take all measures within reasonable boundaries, which can (could have) prevented or limited the damage.
2. The right to compensation of damage will lapse if this has not been relied on in a timely manner as described in these general terms and conditions.
3. The contractor will be liable, with due regard to the provisions of this article, for damage caused by/during the performance of the agreement not exceeding the amount that the contractor's liability insurer pays to the contractor concerning this, which will be with a maximum of € 1,000,000 per incident. If the client wishes to agree to a higher maximum of liability, the client must make this known to the contractor prior to concluding the agreement, in

order for the contractor to be able in that case to take out additional liability insurance for companies or professions for this purpose. This limitation of liability will not apply in the event of intention or gross negligence on the part of the contractor.

4. Any liability on the part of the contractor for defects related to the delivered materials is limited to the price agreed for the delivery. With regard to delivery of non-living materials the liability on the part of the contractor will not exceed that which is possible on the basis of the supplier's guarantee provisions. If the contractor makes the identity of the contractor's supplier of non-living materials known to the client, the client will be obliged to address this supplier first in order to acquire compensation of damage.
5. It applies with regard to deliveries of sand, soil, topsoil and compost that the contractor cannot or can no longer be held liable if mixing thereof with the soils present at the client's location has occurred in the context of the usual raising or processing.
6. The client indemnifies the contractor against claims by third parties towards the contractor, if the contractor has caused damage due to the fact that insufficient, incorrect or incomplete information was provided by or on behalf of the client and that if this information had been known to the contractor this could have resulted in prevention or limitation of the damage.
7. The contractor will not be liable if the damage is attributable to intention, gross negligence, or otherwise serious culpable acts, or incompetent or improper use on the part of or on behalf of the client.
8. The contractor will not be liable for damage ensuing from sinking of the ground/soil or topsoil, if this sinking is not related at all to the affixing or processing of soil, ground or topsoil.
9. The contractor will not be liable for any form of damage ensuing from the early taking into use of a part of the work or the entire work.
10. The contractor will not be liable for any form of damage ensuing from the use of the materials prescribed by the client or the execution of a design originating from the client.

Article 18 - Complaints

1. The contractor will exclusively deal with complaints in writing regarding visible defects in the execution of the work as well as in the execution of the delivery of materials, if these complaints are received within 14 days after the invoice date. Other complaints in writing concerning the execution of the work or the delivery of materials must have been received no later than 60 days after the completion of the work, or the last day of the execution of the work or delivery of materials.
2. The payment obligation on the part of the client will not be suspended by means of submitting a complaint.
3. Complaints concerning the execution of the work or the delivery of the goods are inadmissible if the client has not observed the usual due care, which can be expected from the client after the end, or as the case may be the execution of the work and/or the delivery of materials.

Article 19 - Dispute settlement rules

All disputes ensuing from offers and deliveries as well as from agreements for the execution of work, or for purchase/sale are subjected to the decision of the court with competent jurisdiction in the district where the contractor is established. Each party has the right to submit the dispute to the Court of Arbitration for the Building Industry in the Netherlands instead of the Dutch court with competent jurisdiction, if the cause of the dispute is (partly) of a technical nature. Disputes are only admissible for the Court of Arbitration for the Building Industry in the Netherlands if proceedings have not already commenced before the court with competent jurisdiction. If a dispute is submitted first to the Court of Arbitration for the Building Industry in the Netherlands, the hearing and determining thereof by the court with competent jurisdiction will be deemed to be excluded. Disputes that are submitted to the Court of Arbitration for the Building Industry in the Netherlands will be governed by the Charter. These can be acquired upon request from the Court of Arbitration, Stationsplein 29/3 hoog, 3511 ED Utrecht (telephone (030) 234 32 22, fax (030) 230 01 25). By means of concluding an agreement, on the basis of these general terms and conditions, parties agree thereto. The decision on the basis of the dispute settlement rules will be final and binding.

Article 20 - Concluding provision

The general terms and conditions are recorded by the Members' council of the Sector Association VHG and filed with the Chamber of Commerce and Industry in Utrecht under number 40482980. These terms and conditions come into effect on the 19th of June 2019.