

# General Business-to-Business Conditions for VHG Trade Association Members

## Article 1 – Definitions

In these general conditions, the terms below are defined as follows:

- a. contractor:* The contractor, as a natural person or legal entity, who is a member of the VHG Trade Association and offers and performs the following work.
- b. work* within the meaning of these conditions
1. preparing and performing horticultural, land development and related work for laying out and/or maintaining site facilities, areas with plants and shrubs, gardens and other green spaces, both indoors and outdoors.  
These general conditions also govern all work performed in conjunction with the above work.
  2. supplying materials in connection with the work mentioned here under point 1.
  3. giving advice, drawing up plans and/or budgets for this work and performing it.
- c. materials:*
- living materials: goods that need care and maintenance to stay alive, grow and/or develop;
  - dead materials: all other materials, including products that fall under the scope of the contract and/or that are within the contractor's area of expertise.
- d. client:* Any legal entity or natural person acting in the course of their profession or running a business, not being a consumer, who instructs a contractor to perform the work and/or supply the materials as described under b and/or c of this article.
- e. consumer:* A natural person not acting in the course of a profession or running a business.
- f. contract price:* The total amount determined in advance between the client and the contractor for performing the agreed work and/or supplying the agreed materials.
- g. work on a cost-plus basis:* All work between the client and the contractor, agreed under b, for which the price is determined according to the time worked and the materials processed, based on a previously agreed hourly rate and price for the materials.
- h. hourly wage:* The remuneration for one person to perform work for one hour. The hourly wage is based on the pay regulations legally applicable to the contractor when the work is performed, plus mark-up percentages for social security charges, operating expenses and contractor's remuneration. The client is charged the total number of hours worked for them under the agreed contract, including commuting time.

## Article 2 – Applicability and publication

1. These conditions apply to all calls for tenders, all agreements for performing work, purchase and sale agreements, and all other agreements between the contractor and the client.
2. The contractor expressly rejects the applicability of any conditions used by the client.

## Article 3 – The offer/proposal

1. Before submitting an offer, the contractor becomes acquainted with all relevant information relating to performing the work. The client must give the contractor the opportunity to gather this information and provide the contractor of their own accord with all information relevant to properly performing the contract. The contractor draws up the offer based on the information known to them and provided by the client. If this information proves to be incomplete or incorrect, the consequences will be at the client's expense and risk.
2. The contractor submits a written offer. Written also includes electronically (by e-mail).
3. The offer is dated. Unless the offer specifies otherwise, it is irrevocable for 30 days after the date of the offer.
4. The offer includes an unambiguous description of all work to be performed, including pricing based on the information provided by the client to the contractor. As far as possible, the offer also includes the work drawings and calculations, the period of validity, and the contractor's point of contact.
5. Unless expressly agreed otherwise, the contractor retains all intellectual property rights to all provided designs, illustrations, drawings and sketches. The copyright to these items therefore vests in the contractor. The client must return the designs, illustrations, drawings and sketches immediately on the contractor's request, without prejudice to the contractor's other statutory measures to safeguard these rights.
6. The client is prohibited from reproducing, publishing, exploiting, using or exhibiting the contractor's material subject to intellectual property rights, including copyright, in any way without the contractor's consent. If the contract to perform the work is not given to the contractor, the client must return the offer complete with designs, illustrations and drawings to the contractor within 14 days of the date of the decision, unless another arrangement has been made. The client may not implement or have third parties implement the design without the contractor's/copyright holder's express written consent.
7. Unless agreed otherwise in writing, the client must reimburse the contractor for the preparation, design and drawing costs if the contractor was invited to do drawing work but was not given the contract to perform work and/or supply goods.
8. The offer states when the work will start to be performed and indicates when it will be delivered.

9. The offer provides insight into the price of the materials and the pricing method applied to the work to be performed: contract price or cost-plus pricing. Under the contract price method, the parties agree a fixed amount at which the work will be performed. Under the cost-plus pricing method, the contractor accurately specifies the pricing factors such as the hourly rate of the workers, machines and unit prices of the required materials.
10. Contract variations are recorded in writing and mutually agreed as much as possible.
11. The offer states the payment terms and payment arrangement. All amounts and prices mentioned in offers or agreements exclude VAT.

## Article 4 – The agreement

1. The contractor agreement, the agreement to perform work on a cost-plus basis and/or for buying or selling, as well as additions and/or amendments to it, is formed by the client's acceptance of the offer. This acceptance is in writing and subject to the provisions of Article 4, paragraphs 2 and 4.
2. Unless stipulated otherwise in the offer, written acceptance occurs when the client signs the offer for approval and then hands it over or returns it to the contractor within 30 days of the offer date.
3. After any changes to the offer, a new offer is submitted. Paragraphs 2 and 3 then apply again.
4. The offer is deemed to have been accepted unaltered if and at the time the client consents to it or clearly authorises or allows the contractor to start the work.
5. The contractor is in no way bound by what is stated in prospectuses, brochures and/or publications, illustrations and drawings. Unless the contractor confirms the information contained in these items, they are not bound by it.
6. Before starting any excavation work, the contractor must be aware of the presence of cabling, pipes and any other objects.

## Article 5 – Price changes

Interim price changes arising from legislation and/or a collective labour agreement will be passed on to the client.

## Article 6 – Amendments to the agreement

1. Amendments to the agreement, including stipulations varying from these general conditions, must be agreed and recorded in writing. This does not apply to the price changes mentioned in Article 5.
2. Amendments to the agreement are regarded as contract extras if they result in a higher price and contract reductions if they result in a lower price.
3. Without prejudice to the obligation to pay the principal sum, offers for contract variations must be submitted in writing as much as possible.

## Article 7 – Supplies

1. Except when supplies form part of and are therefore already included in an agreed contract price, all supplies by the contractor will be charged to the client, without prejudice to payment owed for transport, processing and/or applying materials.
2. The contractor warrants the authenticity of the living materials they have supplied, in accordance with the description in the offer and the agreement. The contractor must monitor the high-grade composition of the materials to be delivered as carefully as possible, all with due observance of the applicable statutory provisions and in line with the designated use or intended purpose known to the contractor.  
If all or part of the agreement concerns the supply of materials, these provisions apply to the client on delivery: If the materials are damaged, the client must note this on the receipt and file a written complaint with the contractor within two working days of delivery, failing which the client is deemed to have accepted the goods as such. If there is no opportunity to inspect the delivered goods on delivery, the client must also note this on the receipt.
3. The contractor warrants regrowth during the next growing season of living materials they supply and process, provided they have been entrusted with the care of those materials, unless there are exceptional weather and/or site conditions or other forms of force majeure. In these cases, the contractor will reimburse the loss of the relevant living materials up to 10% of their value. The loss rate is determined by the total price of the relevant product(s) supplied in this regard.
4. If the contractor believes that work cannot be performed, or cannot be performed on time, because of weather and/or temporary site conditions, they may suspend the work until these circumstances end without this entitling the client to compensation for damage. The contractor may also further postpone planting if they believe this is necessary for the rooting or regrowth of the supplied material.
5. The contractor is not liable for the consequences of materials supplied or prescribed by the client, or a working method prescribed by the client, if the materials or working method concerned prove to be incorrect and the contractor did not know or could not have known this, or if the contractor warned the client without this resulting in a change to the contract.

## Article 8 – Delivery

Delivery of accepted work means the actual delivery to the client. The work is deemed delivered in its entirety once the contractor has notified the client in writing that the work has been fully completed. The work is also deemed delivered if the client puts the work into use, or does so again, on the understanding that by putting part of the work into use, that part is deemed to have been delivered.

## Article 9 – Transport risks

Unless agreed otherwise in writing, all goods are transported at the contractor's risk.

## Article 10 – Payment/late payment

1. Unless the parties agree otherwise in writing, the client must pay invoices within 30 days of the invoice date in the manner specified in the agreement. Compensation or setoff is expressly excluded.
2. If payment by instalments has been agreed, the client must pay in accordance with the instalments and the percentages recorded in the agreement.
3. The client is in default as soon as the agreed payment term has expired. This default is also not cured if the client receives a final payment reminder from the contractor after the expiry of that period and is given the opportunity to pay within seven days of receipt of this reminder.
4. The client owes the contractor interest on the payment, or part of the payment, that has not been made on time, from the expiry of the payment term until the day of payment in full. This interest equals the statutory interest rate. The client is also liable for all extrajudicial collection costs, including the costs incurred in drawing up and sending demands, conducting settlement negotiations and other acts in preparation for possible legal proceedings, and court costs. The extrajudicial collection costs are calculated based on the applicable statutory regime.
5. Employees of the contractor, who do not have express authority for that purpose, cannot be paid in discharge of obligations.
6. If payment is late, the contractor may suspend performing the agreement until payment has been made.

## Article 11 – Arrangements made by personnel

1. The contractor is not bound by arrangements or agreements made with employees who are not authorised to act unless the contractor has confirmed these arrangements or agreements in writing.
2. In this context, all employees without power of attorney, as evidenced by the Trade Register or otherwise, are always regarded as employees without authority to act.

## Article 12 – Environmental aspects while performing work

1. The contractor must ensure the environmentally sound disposal of waste and/or residual materials released while performing their work.
2. The resultant costs are payable by the client.
3. The contractor wants to contribute towards a transition to a circular economy. The contractor does this, for example, by intentionally creating a high-grade clean wood chip product from green residual streams such as green waste, pruned cuttings, grass clippings and so on released during management and maintenance activities such as pruning and felling, rather than disposing of these residual streams as waste. The uses of this product will include generating sustainable energy in a biomass plant and recycling for soil improvement, raising or covering.
4. The contractor warrants that the reuse of the product is guaranteed and responsible and that the product is of adequate quality. The contractor also warrants compliance with relevant laws and regulations such as the EU Waste Framework Directive, the National Waste Management Plan (LAP 3) and the Environmental Management Act (*Wet milieubeheer*).
5. By signing these general conditions, the client agrees with the contractor's application of the green residual flows as responsible use, and that the contractor does not dispose of the residual flows as waste. The contractor is responsible for any additional costs for the responsible use. Under Article 10, paragraph 1, the client bears only the costs for the responsible disposal of waste and/or residual materials.

## Article 13 – Retention of title

1. Insofar as not attached to the land or permanently affixed, all supplied goods remain the property of the contractor until they have been paid for in full.
2. Insofar as the contractor's retention of title to the supplied goods is extinguished through specification or otherwise, the contractor reserves a right of non-possessory pledge on an item as security for all that the client owes and will owe to the contractor for whatever reason. The client must cooperate immediately on the contractor's request to establish a non-possessory pledge on this item.

## Article 14 – Maintenance

1. Agreements to perform maintenance are entered into for an indefinite period, unless expressly agreed otherwise in writing.
2. Either party may give notice of termination of this agreement before the end of the current contract period only by means of a registered letter addressed to the other party and with due observance of a three-month notice period.

## Article 15 – Force majeure

1. If the agreed work cannot be performed or can only be partly performed because of temporary force majeure for up to 90 days, the contractor will immediately contact the client to make replacement arrangements for performance.
2. If the contractor is unable to perform the work under the agreement because preparatory and/or other work at the client has not been completed or has not been completed on time, the contractor will contact the client to consult about replacement arrangements for performance. This circumstance constitutes a failure by the client and does not affect the contractor exercising their rights under the law, the agreement and these general conditions.
3. If force majeure occurs, the contractor's delivery and other obligations may be suspended. If the period during which the contractor cannot fulfil their obligations because of force majeure lasts longer than 90 days, either party may terminate the agreement, without being liable to pay compensation.
4. If the contractor has already partially fulfilled their obligations or could only partially fulfil their obligations at the start of the force majeure, they may invoice the client separately for the work they have already performed or what has already been delivered. In that case, the client must pay this invoice as if it related to a separate agreement.

## Article 16 – Performance of work and contract termination

1. If the contractor dies before the work is completed, their legal successors by universal title do not have to complete the work, but the contract ends. In that case, the client must pay the legal successors the contract price less a reasonable amount for the uncompleted part of the work or, if the work was performed on a cost-plus pricing basis, the amount owed up to the contractor's death under these general conditions.
2. The contractor's full claim for payment is always immediately payable if the client is declared bankrupt, petitions for a moratorium on the payment of debts, is placed under guardianship, if any of the client's property is attached, if the client dies, if the client's business is liquidated or dissolved, or if the statutory debt rescheduling scheme is declared applicable.
3. The contractor may suspend performing the agreement for an indefinite period if the client is declared bankrupt, if the statutory debt restructuring scheme is declared applicable to the client, or if the client has petitioned for a moratorium on the payment of debts. In these cases, the contractor may also terminate the agreement, without prejudice to their right to claim compensation.

## Article 17 – Liability

- 1a. The contractor is liable for direct damage caused to buildings, fixtures and equipment, persons, or property of persons while the agreement is being performed that is due to the negligence, carelessness or incorrect acts of the contractor, their employees or any subcontractors. The contractor is not liable for indirect or consequential damage.
- 1b. Within reasonable limits, the client must also take all measures that can or could have prevented or limited the damage.
2. The right to compensation of damage lapses if it has not been invoked in due time, as described in these general conditions.
3. Subject to the provisions of this article, the contractor is liable for damage caused by/during performance of the agreement up to a maximum of the amount paid by the contractor's liability insurer in this regard, subject to a maximum of €1,000,000 per event. If the client wishes to agree a higher maximum liability, they must inform the contractor of this before entering into the agreement, so the contractor can take out additional business liability or professional indemnity insurance. The limitation of liability does not apply if the contractor is grossly negligent or acts intentionally.
4. Any liability of the contractor for defects relating to the supplied materials is limited to the agreed price for those materials. The contractor's liability for supplied dead materials does not extend beyond what is possible under the supplier's warranty provisions. If the contractor discloses the identity of their supplier of dead materials to the client, the client must approach the supplier first to obtain compensation for damage.
5. The contractor cannot be held liable, or can no longer be held liable, for supplied sand, soil, topsoil and compost, if mixing has occurred with soil present at the client as part of normal processing or reprocessing.
6. The client indemnifies the contractor against third-party claims if the contractor has caused damage because insufficient, inaccurate or incomplete information has been provided by or on behalf of the client, which could have prevented or limited the damage had the contractor been aware of it.
7. The contractor is not liable if the damage is due to an intentional, grossly negligent or otherwise serious culpable act, or injudicious or improper use, by or on behalf of the client.
8. The contractor is not liable for damage resulting from the subsidence of ground/soil or topsoil if this subsidence is not in any way related to applying, tilling or processing the ground, soil or topsoil.
9. The contractor is not liable for any form of damage that results from putting part of the work or the entire work into use early.
10. The contractor is not liable for any form of damage resulting from the use of materials prescribed by the client or from implementing a design originating from the client.

## Article 18 – Complaints

1. The contractor deals with complaints about visible defects in the performance of the work or supply of materials only if these are received in writing within 14 days of the invoice date. Other written complaints concerning the performance of the work or supply of materials must be received no later than 60 days after delivery of the work or the last day of performing work or supplying materials, respectively.
2. The client's obligation to pay is not suspended by filing a complaint.
3. Complaints regarding the performance of work or supply of goods are not admissible if the client failed to observe the normal care that may be expected of them after termination or completion of the work and/or supply of materials.

## Article 19 – Dispute resolution

All disputes arising from offers and supplies as well as from agreements for performing work or buying/selling are subject to the ruling of the competent court in the judicial district where the contractor is established. Either party may submit disputes to the *Raad van Arbitrage voor de Bouw* (Arbitration Board for the Building Industry) instead of the competent Dutch court if all or part of the cause of the dispute is of a technical nature. Disputes are admissible before the *Raad van Arbitrage voor de Bouw* only if proceedings have not already started before the competent court. If a dispute is first submitted to the *Raad van Arbitrage voor de Bouw*, a hearing by the competent court is deemed excluded.

Disputes submitted to the *Raad van Arbitrage voor de Bouw* are subject to its articles. These are available on request from the *Raad van Arbitrage voor de Bouw*, Stationsplein 29/3 hoog, 3511 ED Utrecht (telephone +31 (0)30 234 32 22, fax +31 (0)30 230 01 25). By entering into an agreement under these general conditions, the parties accept this procedure. The decision based on the dispute resolution procedure is final and binding.

## Article 20 – Final provision

These general conditions have been adopted by the Members' Council of the VHG Trade Association and filed with the Utrecht Chamber of Commerce under number 40482980.

These conditions take effect on 19 June 2019.