

GENERAL CONDITIONS OF MEMBERS OF THE ASSOCIATION OF HORTICULTURAL SUPPLIERS (VERENIGING VAN TUINBOUWTOELEVERINGSBEDRIJVEN) IN THE NETHERLANDS

lodged on 23 May 2016 with the Chamber of Commerce under Chamber of Commerce number 40398573.

Article 1 Definitions

The following definitions apply in these general conditions:

- 'Supplier': the member of the Association of Horticultural Suppliers in the Netherlands which sells or supplies, acts as a service provider or effects material work subject to the present sector conditions.
- 'Delivery': the effective placing of the items to be supplied at the disposal of the buyer or client.
- 'In writing': shall also mean by fax or by e-mail. 'Organic material': a product consisting in whole or in part of organic materials and/or that contains organisms and/or is related to organic material with regard to its properties. This includes but is not limited to potting soil, substrates, seeds, germs, micro-organisms, saprophytic organisms, culture media, harvested products and the like.
- 'Pesticides': plant protection product or biocide as defined in the Plant Protection Products and Biocides Act (Wet gewasbeschermingsmiddelen en biociden).

Article 2 Applicability of the present conditions

The present conditions apply to all legal relationships where the Supplier acts as a seller, supplier of items, service provider or contractor. The applicability of general conditions used by the seller or client is expressly excluded unless these have been expressly accepted by the Supplier in writing.

Article 3 Quotes and conclusion of an agreement

1. All of the Supplier's quotes are without obligation unless expressly stated otherwise; they are valid for 30 days unless expressly stated otherwise.
2. An agreement is concluded between the Supplier and the buyer or client as soon as the Supplier has accepted the buyer's or client's order, or as soon as its implementation has started.
3. In principle, offers and commitments made by intermediaries, representatives, agents or employees engaged by the Supplier are not binding to the Supplier unless these have been confirmed in writing by a competent official or authorised representative.

Article 4 Delivery

1. Unless agreed otherwise, delivery shall take place on a Delivered at Place basis and the Supplier shall determine the manner in which transport takes place.
2. If the buyer collects the purchased items from the Supplier, delivery shall take place on an Ex-Works basis and the risk shall transfer to the buyer as soon as the items have left the Supplier's warehouse.
3. If one of the 'Incoterms' has been agreed as a delivery condition, the Incoterms valid at the time the agreement is concluded shall apply.
4. The buyer shall be obliged to accept the items the moment these are delivered to him. If the buyer refuses acceptance or fails to provide information or instructions necessary for delivery, the items

shall be stored at the buyer's risk. In that case, the buyer shall be liable for the payment of all additional costs, including in any event storage costs and transport costs.

Article 5 Delivery time

An agreed delivery time shall not be a strict deadline unless agreed otherwise. In the event of late delivery, the buyer shall therefore give the Supplier written notice of default.

Article 6 Part deliveries

The Supplier shall be permitted to deliver sold items in consignments. This shall not apply if a partial delivery has no independent value. If the items are delivered in consignments, the Supplier shall be entitled to invoice each consignment separately.

Article 7 Technical requirements, etc.

The items to be supplied by the Supplier shall satisfy the technical requirements or standards set by Dutch laws or provisions and/or European regulations. Other technical requirements set by the buyer for the items to be supplied and which differ from the aforementioned requirements and rules should be stated expressly by the buyer when the purchase agreement is concluded.

Article 8 Samples, models and examples

Any model, sample, example or other information shown or provided by the Supplier shall be assumed to have been shown or provided solely by way of an indication: the characteristics of the items to be supplied may differ from the sample, model or example unless it was expressly stated that such items would be supplied in accordance with the sample, model or example shown or provided.

Article 9 Execution of the agreement

1. The Supplier shall exercise the care of a good contractor when executing the agreement.
2. If and insofar as the Supplier believes such is required to ensure the proper execution of the agreement, the Supplier shall be entitled to have certain activities specified by it carried out by persons to be designated by it, including third parties.
3. The client shall ensure that the Supplier is provided in good time with all information indicated by the Supplier as being necessary or all information which the client can reasonably be expected to understand is necessary for the execution of the agreement. If the Supplier is not provided with the information required for the execution of the agreement in good time, the Supplier shall be entitled to suspend the execution of the agreement and/or to charge the client the costs arising from the delay in accordance with the rates agreed with the client or, if none has been agreed, in accordance with the usual rates.
4. The execution of the agreement shall take place on working days and within normal working hours under normal working conditions. If the agreement has to be performed outside normal working hours and under different working conditions as a result of the client's actions, the client shall be bound to pay the resultant additional costs.
5. The Supplier shall not be liable for damages of any nature whatsoever that have been caused because the Supplier relied on incorrect and/or incomplete information provided by the client unless it was aware or should have been aware that the information was incorrect or incomplete.
6. If it has been agreed that the agreement will be executed in phases, the Supplier may suspend the execution of those

parts belonging to a subsequent phase until the client has approved the results of the preceding phase in writing.

Article 10 Contract term; execution term

An agreed deadline for execution shall not be a strict deadline unless agreed otherwise. The Supplier shall not be in default until it has been given written notice of default after the expiry of the aforesaid deadline and it has been given a reasonable period for compliance which has expired unused.

Article 11 Changes in the items to be supplied

The Supplier shall be entitled to supply items which differ from that which was agreed if the changes in the items to be supplied, the packaging or accompanying documentation were required in order to comply with applicable statutory provisions or if the changes in the item are minor changes constituting an improvement.

Article 12 Amendment of the agreement

1. If it becomes apparent during the execution of the agreement that its proper execution requires a modification or supplement to the activities to be performed, the parties shall amend the agreement accordingly in good time and in joint consultation.
2. If the parties agree that the agreement should be amended or supplemented, the time for completing its execution may be affected. The Supplier shall notify the client of this as soon as possible.
3. Should any such amendment or supplement have financial or quality-related consequences, the Supplier shall notify the client of this in advance. Where a fixed fee has been agreed, the Supplier shall indicate the extent to which amending or supplementing the agreement will result in that fee being exceeded.

Article 13 Confidentiality

Both parties shall have a duty to maintain secrecy regarding all confidential information which they have obtained from each other or another source by virtue of their agreement. Information shall be deemed confidential if the other party has identified it as such or the type of information indicates its confidential nature.

Article 14 Intellectual property

1. Without prejudice to the provisions of Article 13 (Confidentiality) of the present conditions, the Supplier shall reserve the rights and powers due to it under the Copyright Act (Auteurswet).
2. All documents supplied by the Supplier, such as reports, recommendations, drafts, sketches, drawings, software, data carriers, etc. are intended to be used only by the client for the purposes of the agreement and may not be reproduced, published or disclosed to third parties without the prior consent of the Supplier.
3. The Supplier also reserves the right to use the knowledge acquired through the performance of activities for purposes other than the execution of the agreement unless such will result in confidential information being disclosed to third parties.

Article 15 Cancellation in the case of an engagement agreement

1. Both parties may cancel the agreement in writing or in the same manner as the manner in which the agreement was concluded for serious reasons as referred to in Book 7, Section 408(2) of the Dutch Civil Code (BW).

2. In the event of early termination for serious reasons, the client shall be liable to pay a proportion of the remuneration determined reasonably in accordance with the provisions of Book 7, Section 411 of the Dutch Civil Code.

Article 16 Termination of the agreement

The buyer's or client's claims shall be payable on demand in instances in which:

- circumstances coming to the attention of the Supplier after the conclusion of the agreement give it cause to fear that the buyer or client will not meet its obligations;
- the Supplier has asked the buyer or client to provide surety for the fulfilment of obligations and that surety has either not been provided within the period set or is insufficient.

In such cases, the Supplier shall be entitled to suspend the further execution of the agreement, or to terminate the agreement, all the foregoing being without prejudice to the right to claim compensation.

The Supplier shall be entitled to dissolve the agreement if circumstances arise in relation to people and/or material which the Supplier makes use of or usually makes use of when executing the agreement, and which are of such a nature that execution of the agreement becomes impossible or problematic and/or disproportionately expensive to a degree that fulfilment of the obligation under the terms of the agreement can no longer reasonably be required.

Article 17 Warranty

1. Many factors may have an impact on the items supplied and/or services performed, including the specific characteristics of a product containing organic material or pesticides, the holding and/or storage and/or application of the items supplied in accordance with the label requirements by the buyer or client, weather influences, external factors such as the presence of micro-organisms at the premises of the buyer or client. Since such factors are not within the control of the Supplier, the Supplier can provide only a limited guarantee with respect to the proper functioning of the goods supplied or the intended results of the services supplied.
2. The Supplier guarantees that the items it supplies are free of design, material and manufacturing defects for the period equivalent to the manufacturer's warranty or for a warranty period following the time of delivery agreed when the agreement was concluded.
3. Where the Supplier finds a complaint under the warranty to be valid, the Supplier shall be obliged, at its discretion, only to supply the missing part, to replace the item forming the subject of the complaint or to refund the buyer or client the purchase price of the items forming the subject of the complaint upon return of those items, at the expense of the buyer or client.
4. The Supplier shall be liable in accordance with the provisions of Article 25 (Liability) for damage arising as a result of a defect in the item supplied.
5. The warranty shall not cover damage caused by the buyer's or client's mishandling of an item under warranty. Mishandling shall be understood to mean, among other things:
 - incompetent use;
 - failure to follow the manufacturer's instructions; - failure to carry out maintenance or failure to carry out maintenance properly;
 - arranging for the installation, assembly, modification or repair to be carried out by the buyer or client or by third parties.

6. The warranty shall be void if the buyer or client adapts or transforms the item under warranty into a different product.
7. The buyer or client may not rely on the warranty if it has not met its obligations towards the Supplier.

Article 18 Reservation of title

1. The items supplied by the Supplier shall remain the property of the Supplier until the buyer has met all further obligations under all the purchase agreements entered into with the Supplier:
 - the consideration or considerations relating to the the item or items supplied or to be supplied;
 - the consideration or considerations relating to the services supplied to be supplied by the Supplier under the purchase agreement or purchase agreements;
 - claims, if any, for non-fulfilment of this agreement or agreements.
2. Unless the Supplier determines otherwise, the implications concerning property rights for an item intended for export shall be governed by the law of the country of destination of the item in question, provided the reservation of title does not become inoperative until the full price has been paid.
3. Items supplied by the Supplier which are covered by the reservation of title by virtue of paragraph 1 may be resold only in connection with normal business operations. The buyer shall not be entitled to pledge the items or attach any other right to them.
4. The Supplier states that he will retain the rights of lien with respect to items supplied which have become the property of the buyer through payment, as additional security for claims as referred to in Book 3, Section 237 of the Dutch Civil Code other than that which is mentioned in paragraph 1 of this article, which the Supplier may have against the buyer for whatever reason. The power included in this paragraph shall also apply to items supplied by the Supplier which the buyer has adapted or transformed, resulting in the Supplier losing its reservation of title.
5. If the buyer fails to perform its obligations or if there is good cause for concern that there will be such a failure, the Supplier shall be entitled to remove, or arrange the removal of, the items supplied in which the buyer or third parties holding the item for the buyer has retained title. The buyer shall be obliged to provide its full cooperation subject to a penalty of 10% of the amount it owes for each day of non-cooperation.
6. If third parties intend to establish or assert any right to the items supplied under reservation of title, the buyer shall be obliged to notify the Supplier as soon as can reasonably be expected.
7. The buyer shall undertake, should the Supplier so demand,
 - to insure and keep the items supplied under reservation of title insured against fire, explosion and water damage, as well as theft, and to make that insurance policy available for inspection;
 - to pledge all claims of the buyer on insurers relating to the items supplied under reservation of title to the Supplier in the manner prescribed in Book 3, Section 239 of the Dutch Civil Code;
 - to pledge the claims which the buyer obtains against its clients with the resale of items supplied by the Supplier under reservation of title in the manner prescribed in Book 3, Section 239 of the Dutch Civil Code;
 - to mark the items supplied under reservation of title as the property of the Supplier;
 - to cooperate in other ways with all reasonable measures which the Supplier plans to take to protect its property right in relation to the items and which do not unreasonably hamper the buyer in the ordinary course of its business.

Article 19 Defects pertaining to items sold

1. The buyer shall inspect, or arrange the inspection of, the items purchased upon delivery - or as soon as possible thereafter. If the item purchased contains organic material, that inspection must take place no later than 24 hours after delivery. The buyer must verify whether the item supplied is in accordance with the agreement, namely:
 - whether the correct items have been supplied;
 - whether the items supplied are in accordance with the agreement in terms of quantity (for example, the number and amount);
 - whether the items supplied meet the agreed quality requirements or - if there is none - the requirements which may be set for ordinary use and/or commercial purposes;
2. Where visible defects or shortages are noted, the buyer shall report this to the Supplier within 14 days of delivery.
3. The buyer shall report invisible defects in writing to the Supplier within 14 days of their discovery, but not later than within the warranty period or, if there is no warranty period, within 14 days of delivery.
4. Unless the parties have agreed otherwise, a level of divergence of 10% in respect of the stated sizes, dimensions, weights, numbers, colours and other characteristics shall under no circumstances be deemed a breach on the part of the Supplier.
5. Even if the buyer submits a complaint in good time, its obligation to pay and accept the items to be supplied shall remain in place. Items may be returned to the Supplier only after prior written consent has been obtained.
6. Where, as a result of a complaint, claim or for some other reason the Supplier is obliged to engage an expert to examine the merits of the complaint, the buyer shall bear the costs of that examination if it transpires that the aforementioned complaint or claim is unfounded.

Article 20 Defects pertaining to service provision or contracting work

1. The client must submit complaints in writing to the Supplier about work carried out within 14 days of their discovery, but not later than within the warranty period or, if there is no warranty period, within 14 days of completion of the work.
2. Where a complaint is well-founded, the Supplier shall carry out the work as agreed, unless it has been established in the meantime that such will no longer be of any use to the client. The client must demonstrate that such is the case, giving reasons. Where it is no longer possible or worthwhile to continue to perform the agreed service, the Supplier shall be liable only within the limits of Article 25 (Liability).
3. Even in instances in which the client submits a complaint in good time, its obligation to pay shall remain in place.
4. If the Supplier is obliged to engage an expert to examine the merits of the complaint as a result of a complaint, claim or for some other reason, the client shall bear the costs of that examination if it transpires that the aforementioned complaint or claim is unfounded.

Article 21 Price increase

1. If the Supplier agrees to a specific price with the buyer, the Supplier shall nevertheless be entitled to increase the price; The Supplier may charge the price applicable at the time of delivery in accordance with its current price list. If the price increase exceeds 10%, the buyer shall have the right to dissolve the agreement.

Article 22 Fee

1. Paragraphs 2, 6 and 7 of this article shall apply to offers and agreements in which a fixed fee is offered or agreed. Paragraphs 3 to 7 of this article shall apply if no fixed fee has been agreed.
2. The parties may agree to a fixed fee when the agreement is concluded. The fixed fee is exclusive of VAT.
3. Where no fixed fee has been agreed, the fee shall be established on the basis of the hours actually spent. The fee shall be calculated in accordance with the Supplier's usual hourly rates, applicable to the period in which the work is carried out, unless a different hourly rate has been agreed.
4. Any cost estimates are exclusive of VAT.
5. The costs due for orders with a term exceeding one month shall be charged periodically.
6. The Supplier shall be entitled to pass on increases in costs regardless of whether a fixed fee has been agreed. Any such increase of the fee may be charged to the client only one month after the date on which the client was given written notification of the increase.
7. If the increase exceeds 10%, the client shall be entitled to cancel the agreement with immediate effect.

Article 23 Payment

1. Where no other payment term has been agreed, payment must be made within 30 days after the invoice date,
 - either by means of legal currency at the offices of the Supplier;
 - or by transferring the amount due to the account number in the Supplier's name stated on the invoice.

Where payment is made after the expiry of the agreed payment term or, if there is no such deadline, the buyer or client is in default 30 days after the invoice date; the buyer or client shall be liable to pay the statutory commercial interest on the amount due from the moment it is in default.
2. The Supplier may demand full or partial advance payment from the buyer or client.
3. In the event of liquidation, bankruptcy or suspension of payment of the buyer or client or where the debt management scheme is declared applicable to the buyer or client, the obligations of the buyer or client shall be due and payable immediately.
4. Payments made by the buyer or client shall always be used first to pay all interest and costs due and then for payment of the oldest outstanding invoices, even where the buyer or client has stated that the payment relates to a later invoice.
5. Payment must take place without a discount or settlement.
6. The buyer or seller must notify the Supplier of complaints relating to the an invoice within 14 days of the invoice date. Subject to proof to the contrary provided by the buyer or client, the Supplier's administration records shall constitute conclusive proof.

Article 24 Collection charges

1. If the buyer or client does not meet one of its obligations or does not meet it in time, in addition to the agree price and costs, all costs incurred to obtain an out-of-court settlement shall be borne by the buyer or client, including the costs of drawing up and sending dunning notices, making settlement proposals and obtaining information. Such costs shall be established to be 15% of the invoice amount, with a minimum of €250. Where the Supplier

can prove that it incurred higher costs, those costs shall also be eligible for reimbursement. Where the buyer or client is a consumer, the extra-judicial costs shall be calculated in accordance with the Extra-judicial Collection Costs (Fees) Decree graduated scale.

2. The buyer or client shall be liable to refund the Supplier the legal costs it incurs in all instances, except to the extent that the buyer or client can prove that such costs are unreasonably high.
This shall apply only where the Supplier and the buyer or client enter into legal proceedings with regard to an agreement to which the present general conditions apply and a court order enters into force where the buyer or client is found fully or largely at fault.

Article 25 Liability

1. The warranty as described in Article 17 (Warranty) of the present conditions shall apply to defects in items supplied.
2. Any liability of the Supplier other than that referred to in paragraph 1 shall be limited to the amount of the payment made by the insurer plus the amount of the Supplier's excess. If in any case the insurer does not make a payment or the loss is not covered by the insurance, the Supplier's liability shall be limited to the invoice amount of the supply or order concerned. If the damage does not exceed the Supplier's deductible, the latter shall compensate for the loss only if the insurer, based on the policy, would make payment or would have granted cover for the loss incurred if the amount of the claim would exceed the deductible.
3. The Supplier shall never be liable for indirect and/or consequential damage. This shall include, among other things, (growth) damage to plants, trading loss, business interruption loss and lost profit.
4. The client shall indemnify the Supplier and or the agents engaged by the Supplier for the execution of the agreement against all third-party claims resulting from a default or breach in or during the execution of the agreement and/or for losses arising from the provision or application of the results of the work carried out by the Supplier to third parties, all the foregoing being subject to the provisions of paragraph 5 and without prejudice to the provisions of paragraph 2.
5. The limitations of liability included in the present conditions shall not apply if the loss can be attributed to intent or wilful recklessness on the part of the Supplier or its management.
6. Any right of action for compensation pursuant to the Supplier's liability shall be prescribed by the passage of one year after the time of delivery of the item or completion of the order.

Article 26 Force majeure

1. Force majeure means circumstances which prevent fulfilment of the obligation and which are not attributable to the Supplier.
These shall include (if and in so far as such circumstances make fulfilment impossible or unreasonably complicated): strikes at companies other than those of the Supplier, wildcat strikes or political strikes at the Supplier's company; a general lack of raw materials and other items or services required for the effecting of the agreed performance; unforeseeable interruption affecting upstream suppliers or other third parties upon which the Supplier is dependent and general transport problems.
2. The Supplier shall also be entitled to invoke force majeure if the circumstances preventing fulfilment or further fulfilment occur after the Supplier should have met its obligation.
3. Supply and other obligations of the Supplier shall be suspended during force majeure. Should the period in which force majeure prevents the Supplier from fulfilling its obligations exceed one month, both parties shall be entitled

to dissolve the agreement without any obligation to pay compensation.

4. Should the Supplier already have met part of its obligations at the time of the commencement of force majeure, or be able to meet its obligations only partially, it shall be entitled to invoice the part already supplied or the deliverable part separately and the buyer or client shall be obliged to pay that invoice as though it were a separate contract. However, this shall not apply if the part already supplied or the deliverable part has no independent value.

Article 27 Dispute resolution

The competent Dutch court of the place of business or registered office of the Supplier shall have exclusive jurisdiction to hear all disputes arising between the Supplier and the buyer or client. However, the Supplier shall remain entitled to summon the buyer or client to appear before the competent court of the buyer's or client's place of business.

Article 28 Applicable law

Dutch law shall apply to every agreement between the Supplier and the buyer or client, with the exception of the Vienna Convention on the International Sale of Goods 1980 (CISG).

Article 29 Amendment of the conditions

The Supplier is entitled to amend the present conditions. Any such amendments shall enter into effect on the announced date of entry into force.

The Supplier shall send the amended conditions to the buyer or client in good time. Where no date of entry into force is communicated, amendments concerning the buyer or client shall enter into force as soon as it is notified of the amendment.