



General Conditions drawn up in consultation with the Consumers' Association

Consultative Framework of the Social and Economic Council's Self-Regulation Coordination Group

# GENERAL CONSUMER CONDITIONS FOR VHG TRADE ASSOCIATION MEMBERS OPERATING IN THE LANDSCAPING SECTOR



These General Conditions of the VHG Trade Association have been drawn up in consultation with the Consumers' Association within the framework of the Social and Economic Council's Self-Regulation Coordination Group and take effect on 1 January 2019.

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### ARTICLE 1 - DEFINITIONS

In these General Consumer Conditions, the terms below are defined as follows:

<b>Entrepreneur:</b>	Any natural person or legal entity acting within the course of their commercial, business, trade or professional activity, whether or not also through another person acting on their behalf or for their account, who is a member of the VHG Trade Association, and who offers and performs the work listed below.
<b>Work:</b>	Preparing and performing work for or in connection with laying out and/or maintaining gardens and suchlike, both indoors and outdoors. Supplying living or dead materials needed for this work. Giving advice, drawing up plans and/or budgets for performing this work.
<b>Living materials:</b>	Products and items that need care and maintenance to stay alive, grow and/or develop; Sand, soil, topsoil and compost;
<b>Dead materials:</b>	All other products and materials that fall within the entrepreneur's area of expertise.
<b>Consumer:</b>	Any natural person acting for purposes outside their business or professional activity who enters into an agreement with the entrepreneur.

### ARTICLE 2 - APPLICABILITY

These conditions apply to every offer that the entrepreneur makes and to all agreements concluded between the entrepreneur and the consumer.

### ARTICLE 3 - THE OFFER

- Before an offer is made (by means of a proposal), the entrepreneur has a duty to become acquainted with all relevant information related to performing the work and the consumer has a duty to provide this information. The entrepreneur must also inform the consumer in advance of the costs associated with the offer and the design costs.
- The entrepreneur submits the offer preferably in writing or electronically.
- The entrepreneur dates the offer. Unless the offer specifies otherwise, it is irrevocable for 30 days after the date of the offer.
- The offer contains a complete and accurate description of the goods to be supplied and/or work to be performed, based on the information provided by the consumer to the entrepreneur as referred to in the first paragraph. This description must be sufficiently detailed to allow the consumer to properly assess the offer.
- The offer states when the entrepreneur starts the work and indicates the delivery date as accurately as possible.
- The offer provides insight into the price of the materials and the pricing method that the entrepreneur applies for the work to be performed: contract price or cost-plus pricing.
  - Under the contract price method, the parties agree a fixed amount for which the entrepreneur performs the work, including VAT.
  - Under the cost-plus pricing method, the entrepreneur accurately specifies the pricing factors (such as the hourly rate and unit prices of the required materials), including VAT. At the consumer's request, the entrepreneur can indicate the expected costs of performing the work by stating a guide price. The hourly rate is defined as the fee for one person performing the work for one hour, including VAT. The entrepreneur charges the consumer the total number of hours worked for the consumer, including commuting time.
- The offer specifies the payment method and payment conditions.
- The offer is accompanied – in writing or electronically – by a copy of these General Conditions.
- Unless expressly agreed otherwise, the entrepreneur retains the intellectual property rights to all provided designs, illustrations, drawings, sketches and so on. The consumer must return these items immediately on the entrepreneur's request, without prejudice to the entrepreneur's other statutory measures to safeguard their rights.
- The consumer is prohibited from in any way reproducing, publishing, exploiting or displaying any of the entrepreneur's materials subject to intellectual property rights without the entrepreneur's consent. If the contract to perform the work is not given to the entrepreneur, the consumer must return the offer, complete with designs, illustrations and drawings, to the entrepreneur within 14 days of the date of the decision or of the expiry of the offer. The consumer may not implement or have a third party implement the design concerned without the copyright holder's express written consent.
- If agreed in writing or electronically, the consumer must reimburse the entrepreneur for the previously announced preparation, design and/or drawing costs if the consumer had invited the entrepreneur to do drawing work, but ultimately does not give the entrepreneur a contract to perform work and/or supply goods.
- The entrepreneur must ensure that the information provided to the consumer under this article meets the statutory requirements, including, but not limited to, the statutory requirements in Section 6:230l of the Dutch Civil Code.

### ARTICLE 4 - THE AGREEMENT

- The agreement is formed by the consumer's acceptance of the offer. This acceptance should preferably be in writing. If an order is placed electronically, the entrepreneur immediately sends an electronic confirmation to the consumer.
- After any changes to the offer, the entrepreneur will promptly submit a new offer.
- The offer is deemed to have been accepted unaltered if and at the time the consumer consents to it or clearly allows the work to start.

- Obvious errors or mistakes in prospectuses, brochures and/or publications, illustrations, drawings, offers, order confirmations and stated details do not bind the entrepreneur.
- The entrepreneur must enquire about the presence of cabling and pipes before starting any excavation work. The consumer must provide the entrepreneur with all known information in this regard.
- Except as provided for by law, the entrepreneur is not liable for damage to cabling, pipes or other underground works and structures that are hidden from view, or for the possible consequences of that damage.

### ARTICLE 5 - TERM AND TERMINATION OF THE AGREEMENT

- A fixed-term agreement between the entrepreneur and consumer cannot last for longer than one year. The consumer may not terminate this agreement early unless continuing the agreement under the given circumstances would be unacceptable according to the standards of reasonableness and fairness. If an agreement is tacitly extended and therefore lasts for longer than one year in total, the consumer may terminate the agreement, after it has lasted one year with due observance of a one-month notice period. The consumer may always terminate an agreement whose term is longer than one year or an agreement entered into for an indefinite period, after the first year with due observance of a one-month notice period, unless reasonableness and fairness preclude termination before the end of the agreed period.
- Unless expressly agreed otherwise in writing, maintenance agreements are entered into for an indefinite period. The consumer may give notice of termination of the agreement – preferably in writing – after the first year has passed with due observance of a minimum one-month notice period, after which the entrepreneur will confirm the notice of termination in writing.
- The entrepreneur may give notice of termination of the agreement based on the statutory provisions governing the agreement for services in Section 7:400 *et seq.* of the Dutch Civil Code, including Sections 7:402, paragraph 2 and 7:408, paragraph 2 of the Dutch Civil Code.

### ARTICLE 6 - THE PRICE AND PRICE CHANGES

- All amounts and prices mentioned in offers and agreements include VAT. The entrepreneur may pass on interim price changes arising from legislation to the consumer. The entrepreneur may pass on any other increase in cost determinants that have arisen after the agreement was concluded, but before delivery, to the consumer. If the entrepreneur does this within three months of concluding the agreement, the consumer may terminate the agreement. The entrepreneur may suspend the performance, or further performance, of the agreement until the consumer notifies the entrepreneur whether they accept the price increase. Termination of the agreement in this way does not entitle either party to compensation. Completed work must be paid at the originally agreed price.
- 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.
- Without prejudice to the obligation to pay the principal sum, contract variations must be recorded beforehand in writing or electronically. The entrepreneur performs this work only after the consumer agrees to it.
- If the consumer requires additions or changes to the agreed work, the entrepreneur can demand an increase in the price only if they have informed the consumer in due time of the need for a resultant price increase, unless the consumer should have understood that need themselves.

### ARTICLE 7 - DELIVERY

Delivery of accepted work means the actual delivery to the consumer. The work has been delivered when the entrepreneur, after performing the work, has informed the consumer in writing that the work has been fully completed. The work has also been delivered if the consumer 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 8 - CONFORMITY

- The entrepreneur warrants the quality and authenticity of variety of the living materials they have supplied, in accordance with the description in the offer. The entrepreneur ensures as carefully as possible that the composition of the sand, soil, topsoil, compost, foundation and/or paving material supplied is of the highest quality. This all applies with due observance of the relevant statutory provisions and in accordance with the intended use.
- The entrepreneur 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 circumstances beyond the entrepreneur's control, including, but not limited to, force majeure. The circumstances mentioned in the previous sentence include exceptional weather and/or site conditions.
- If exceptional weather, site conditions or force majeure occur, the entrepreneur will reimburse the loss of living materials up to 10% of the price of those living materials and up to 10% of the planting costs of the relevant living materials supplied.
- The entrepreneur is not responsible for defects that have arisen after delivery of the goods because of incompetent use or carelessness by the consumer, including lack of sufficient maintenance, or that result from changes that the consumer or third parties have made to the supplied goods. The entrepreneur is also not responsible for any damage resulting from these defects.

### ARTICLE 9 - SUSPENSION

- If force majeure occurs, the entrepreneur's delivery and other obligations may be suspended. If the period during which the entrepreneur cannot fulfil their obligations because of force majeure lasts longer than 90 days, the consumer may terminate the agreement, without being liable to pay compensation. If the entrepreneur has already partially fulfilled their obligations or could only partially fulfil their obligations at the start of the force majeure, they may invoice the consumer separately for what has already been delivered. In that case, the consumer must pay this invoice as if it related to a separate agreement. If a force majeure situation (non-attributable breach) occurs at the entrepreneur or the consumer and continues for longer than 90 days, the entrepreneur may terminate the agreement, insofar as performance after that period cannot reasonably be required of them.

- Force majeure at the consumer does not include the circumstance in which the entrepreneur cannot perform the work under the agreement because preparatory or other work at the consumer has not been completed or has not been completed on time.
- If the entrepreneur believes that work cannot be performed on time because of weather or temporary site conditions, they may suspend the work for as long as these circumstances continue without this entitling the consumer to compensation for damage. The entrepreneur may also further postpone planting after these circumstances have ended if they believe this is necessary for the rooting or regrowth of living material.
- If the agreed work cannot be performed or can only be partly performed because of temporary force majeure at the entrepreneur for up to 90 days, the entrepreneur will immediately contact the consumer to make replacement arrangements for performance.

#### ARTICLE 10 - ENVIRONMENTAL ASPECTS WHILE PERFORMING WORK

- The entrepreneur ensures the environmentally sound disposal of waste and/or residual materials released while performing their work. The resultant costs are included in the offer and payable by the consumer. The entrepreneur may charge the consumer for unforeseen environmental aspects that arise after the offer has been submitted as contract extras under Article 6, paragraphs 2 and 3.
- The entrepreneur 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.
- 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*).
- By signing these general conditions, the consumer agrees with the contractor's application of the general residual flows as responsible use, and that the contractor does not dispose of the residual flows as waste. The entrepreneur is responsible for any additional costs for the responsible use. Under Article 10, paragraph 1, the consumer bears only the costs for the responsible disposal of waste and/or residual materials.

#### ARTICLE 11 - ARRANGEMENTS MADE BY PERSONNEL

The entrepreneur is not bound by arrangements or agreements made with employees who are not authorised to represent the entrepreneur, unless the entrepreneur has confirmed these arrangements or agreements in writing or electronically. If the consumer pays in cash, the entrepreneur always provides a receipt.

#### ARTICLE 12 - PAYMENT

- Insofar as work is not part of and therefore already included in an agreed contract price, all work performed by the entrepreneur will be charged to the consumer, subject to the provisions of Article 6, paragraphs 2 and 3 of these general conditions and without prejudice to payment owed for transport, processing and/or applying materials.
- Unless agreed otherwise in writing, payment is made in euros.
- Unless agreed otherwise, the consumer must pay the invoice within 30 days of receipt.
- If payment by instalments has been agreed, the consumer must pay in accordance with the instalments and the percentages recorded in the agreement.
- Payment must be made in the manner specified in the offer. The entrepreneur's employees may not receive payments unless they have been expressly authorised to do so in writing.
- The entrepreneur may require the consumer to pay up to 50% of the price in advance for purchases.

#### ARTICLE 13 - LATE PAYMENT

- The consumer is in default from the expiry of the payment date. After the payment date expires, the entrepreneur sends the consumer a payment reminder, free of charge, setting a new payment period for the consumer of at least 14 days after receipt of the reminder. The payment reminder also sets out the consequences of late payment.
- If the consumer still has not paid after the expiry of the payment reminder, the entrepreneur may charge interest from the expiry of the first payment date. This interest is equal to the statutory interest rate.
- If payment is late, the entrepreneur may suspend performance of the agreement for an indefinite period.
- All costs arising from non-payment or late payment that may be recovered from the consumer under the applicable legislation are payable by the consumer.

#### ARTICLE 14 - RETENTION AND TRANSFER OF TITLE

- Insofar as delivered goods have not become the property of the consumer under statutory rules on the acquisition of ownership, they remain the property of the entrepreneur as long as the consumer has not paid for them or has not paid for them in full.
- Insofar as the entrepreneur's retention of title to the supplied goods is extinguished through accession or specification, the consumer provides the entrepreneur with a non-possessory (undisclosed) pledge on the goods subject to accession or specification. This pledge serves as security for all that the consumer owes and will owe to the entrepreneur for whatever reason. If the goods supplied form an inseparable part of a property subject to registration, a mortgage right may be established. The consumer must provide all cooperation needed to establish or have the mortgage right established immediately on the entrepreneur's request.

#### ARTICLE 15 - PERFORMANCE OF WORK AND CONTRACT TERMINATION

- If the entrepreneur dies or the entrepreneur's business is liquidated or dissolved before the work is completed, the entrepreneur's legal successors by universal or singular title do not have to complete the work, even if the business is continued in any way. In that case, the consumer 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 entrepreneur's death or the liquidation or dissolution of the entrepreneur's business, as calculated under these general conditions.
- The entrepreneur may suspend performing the agreement for an indefinite period if the consumer is declared bankrupt, if the statutory debt restructuring scheme is declared applicable to the consumer, or if the consumer has petitioned for a moratorium on the payment of debts.

#### ARTICLE 16 - LIABILITY

- The entrepreneur is liable for damage caused to buildings, fixtures and equipment, persons, or property of persons while the agreement is being performed that is due to an attributable failure by the entrepreneur, their employees or any subcontractors.
- Within reasonable limits, the consumer must take all measures that can or could have prevented or limited the damage.
- Subject to the provisions of this article, the entrepreneur is liable for damage caused by or while performing the agreement. Damage is compensated up to €1,000,000 per event, notwithstanding statutory liability. If the consumer wishes to agree higher maximum liability, they must announce this before entering into the agreement. This liability cannot exceed €2,500,000 per event. For this purpose, the entrepreneur will take out additional business liability or professional indemnity insurance for the stated amount.
- The consumer indemnifies the entrepreneur against third-party claims if the entrepreneur causes damage because the consumer or third parties designated by the consumer have provided insufficient or incomplete information, which could have prevented or limited the damage had the entrepreneur been aware of it.
- The entrepreneur is not liable if the damage is due to an intentional, negligent or culpable act, or injudicious or improper use, by or on behalf of the consumer.
- The consumer is liable towards the entrepreneur for damage caused by a failure attributable to the consumer.
- The entrepreneur is not liable for damage resulting from the subsidence of ground/soil or topsoil if this subsidence is not related to applying, tilling or processing the ground, soil or topsoil.
- The entrepreneur is not liable for any form of damage that results from putting part of the work or the entire work into use before delivery.

#### ARTICLE 17 - COMPLAINTS

- The consumer must submit a complaint about a defective product and/or service, described as completely and clearly as possible, to the entrepreneur within due time after they have discovered or reasonably ought to have discovered the defect. For products, submitting a complaint within two months is always within due time. When products are delivered, the entrepreneur and consumer must inspect them as soon as possible after delivery, if possible, and note any visible defects on the receipt. This does not affect the consumer's rights under the first sentence of this paragraph.
- The entrepreneur responds substantively to the complaint within two weeks. If a substantive response is not yet possible, the entrepreneur lets the consumer know within two weeks, stating a period within which the consumer can expect a substantive response. The entrepreneur may have an independent third party investigate the complaint within four weeks of its submission. The consumer must cooperate in that case.
- Complaints regarding the performance of the work or the delivery of the goods do not release the consumer from observing the normal care that may be expected of them after completion of the work or delivery of materials.
- If the complaint cannot be resolved by agreement, a dispute arises that is subject to dispute resolution.

#### ARTICLE 18 - DISPUTE RESOLUTION

- Disputes between the consumer and entrepreneur about concluding or performing agreements for services and goods supplied or to be supplied by this entrepreneur can be brought by either the consumer or the entrepreneur before the *Geschillencommissie Groen* (Dutch disputes committee for the landscaping sector), Bordewijklaan 46, P.O. Box 90600, 2509 LP The Hague ([www.sgc.nl](http://www.sgc.nl)).
- The *Geschillencommissie* will deal with a dispute only if the consumer has first submitted their complaint to the entrepreneur.
- If the complaint is not resolved, the dispute must be submitted to the *Geschillencommissie*, in writing or in another form to be determined by the *Geschillencommissie*, within twelve months of the date on which the consumer submitted the complaint to the entrepreneur.
- If the consumer brings a dispute before the *Geschillencommissie*, the entrepreneur is bound by this choice. If the entrepreneur wishes to bring a dispute before the *Geschillencommissie*, they must ask the consumer to state within five weeks whether they agree. When doing so, the entrepreneur must state that they will consider themselves free to take the dispute to court after this period has expired.
- The *Geschillencommissie* gives its decision with due observance of the provisions of regulations that apply to it. The *Geschillencommissie*'s decisions under those regulations are given by means of a binding opinion. The regulations are sent on request. A fee is payable for handling a dispute.
- Only the court or the *Geschillencommissie* is competent to hear disputes.

#### ARTICLE 19 - PERFORMANCE BOND

- Stichting Garantiefonds Groen* (Dutch guarantee fund for the landscaping sector) guarantees that VHG Trade Association members will comply with the *Geschillencommissie*'s binding opinion, unless the VHG Trade Association member decides to submit the binding opinion to the court for review within two months after it has been sent. This guarantee revives if the binding opinion, after review by the court, has been upheld and the judgment evidencing this has become final and conclusive. *Stichting Garantiefonds Groen* pays up to €10,000.00 for each binding opinion to the consumer, on condition that the consumer, at the same time as their right to invoke the performance bond is recognised, assigns their claim under the binding opinion up to the amount paid to *Stichting Garantiefonds Groen*. For the excess amount, *Stichting Garantiefonds Groen* has a best-effort obligation to ensure that the VHG Trade Association member complies with the binding opinion. This best-effort obligation entails offering the consumer the opportunity to also assign their claim for the excess amount to *Stichting Garantiefonds Groen*, after which this organisation will request payment of that claim in court in the name and at the expense of *Stichting Garantiefonds Groen* in order to pay the consumer.
- Stichting Garantiefonds Groen* does not provide a performance bond if one of the following situations applies before the consumer has complied with the formal acceptance requirements for handling the complaint (payment of the complaint-filing fee, return of the completed and signed questionnaire and any deposit):
  - the member has been granted a moratorium on the payment of debts
  - the member has been declared bankrupt
  - the business activities have actually ceased. The decisive factor for this situation is the date on which the business cessation is recorded in the Trade Register or an earlier date that *Stichting Garantiefonds Groen* can convincingly demonstrate is when the business activities actually ceased.

#### ARTICLE 20 - VARYING STIPULATIONS

Individual stipulations varying from the agreement or from these general conditions must be recorded in writing or electronically between the entrepreneur and the consumer.

#### ARTICLE 21 - AMENDMENTS

The VHG Trade Association will amend these General Conditions only in consultation with the Consumers' Association.

#### ARTICLE 22 - 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.
- Article 18 of these General Conditions has been drawn up in consultation with *Stichting Garantiefonds Groen*.