

GENERAL TERMS AND CONDITIONS

for the member companies of the Vereniging van Scherm- en Reinigingsbedrijven ('VSR' - Association for Screen and Cleaning Companies), filed with the Chamber of Commerce Haaglanden in The Hague on 18 August 2009



I. GENERAL

Clause 1 – Applicability of the General Terms and Conditions

- 1.1. These General Terms and Conditions (hereinafter to be referred to as: 'the(se) Terms and Conditions') are applicable to all quotes and deliveries by/from members affiliated with VSR (hereinafter to be referred to as: 'Contractor') to third parties (hereinafter to be referred to as: 'Client'), as well as all agreements entered into between them.
- 1.2. After they have become part of any agreement between parties, the Terms and Conditions will also be part of subsequent agreements entered into with Client, even if the applicability of the Terms and Conditions was not referred to in the formation of those agreements subsequently entered into.
- 1.3. Deviations from the Terms and Conditions are only applicable to the extent that these were explicitly agreed in writing by parties. The deviations are only applicable for the quote or the agreement for which they were drawn up.
- 1.4. Full or partial invalidity of any stipulation of the Terms and Conditions does not affect the validity of the other stipulations of the Terms and Conditions.

Clause 2 – Quotes and Formation of Agreements

- 2.1. Each quote from Contractor is without engagement, unless explicitly stipulated in writing that the quote is irrevocable, and expires ipso jure, unless explicitly stipulated otherwise in writing, after expiry of 14 calendar days to be calculated from the date of the quote. With due observance of the stipulations in clause 2.2, Contractor's quotes can only be accepted in writing.
- 2.2. Agreements between parties are only formed after formation of the agreement has been confirmed in writing to Client on behalf of Contractor by persons authorised to do so or because Contractor has executed the agreement without reservation in a manner apparent for Client.
- 2.3. Amendments or additions to an agreement already formed are only binding if they have been agreed in writing and signed by both parties.
- 2.4. Contractor is entitled to subcontract its obligations towards Client in full or in part.

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Clause 3 – Prices

- 3.1. All prices stated by Contractor in its quotes are not binding, unless explicitly stated in writing otherwise.
- 3.2. All prices exclude value added tax, other government levies, as well as any costs to be incurred within the scope of the agreement, including dispatch and administration costs, unless explicitly agreed in writing otherwise.
- 3.3. Changes in cost price factors including, but explicitly not limited to, labour costs, cost prices for raw materials or materials, premiums/contributions, freight charges, exchange rate fluctuations and/or taxes, relating to the agreed performance and occurring after entering into an agreement, authorize Contractor to pass these on to Client. However, such with the proviso that if this leads to an increase of the initially agreed fixed or average transfer price of more than 15% (excluding VAT), Client shall be entitled to terminate the agreement extrajudicially, without this resulting in obligations to nullify.
- 3.4. The number of hours stated in the quote or agreement by Contractor are indicative and not binding, unless explicitly stipulated or agreed otherwise.
- 3.5. The prices are based on normal working hours and length of the working week. Upon transgression of the normal working hours on working days, in the event of work on Saturdays and Sundays and bank holidays, all this upon Client's request, Contractor will charge a 20% additional fee on the agreed prices.
- 3.6. In the absence of an agreed fixed price, the price for the assignment executed will be established after completion according to the volume of work performed and materials delivered or used, based on the rates agreed between parties prior to commencement of the work, or in the absence of such establishment, based on the rates valid locally at the time of completion of the work.

Clause 4 – Force Majeure

- 4.1. Parties are not held to fulfil any obligation they have towards each other, if they are impeded from doing so as a result of a cause for which they are not accountable by law, by legal act or according to generally accepted standards, including: work strike and/or interruption of work (both organised and unorganised), government measures that obstruct the production as well as suppliers' shortcomings (either attributable or not) as a result of which Contractor cannot fulfil its obligations towards Client in full or in part.
- 4.2. For the period the force majeure lasts, parties can suspend the obligations from the agreement. If this period lasts longer than 6 months, both parties shall be entitled to end the agreement in full or in part by cancellation or termination, without a case for compensation obligation or reversal existing.
- 4.3. Contractor shall be entitled to claim payment for what was already fulfilled in the performance of the particular agreement, before the circumstance causing force majeure occurred.

Clause 5 – Guarantee

- 5.1. With due observance of the stipulations elsewhere in the Terms and Conditions, Contractor will warrant:

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- upon delivery of goods/items pursuant to a purchase agreement: that these have the properties in accordance with their specifications for a period of 6 months from delivery of the good/item to Client;
 - upon the performance of services pursuant to a contract of services: that due care and diligence was observed by the Contractor in the fulfilment;
 - in the completion of work pursuant to an agreement for contracting work: that the realised work does not show defects for a period of 6 weeks from completion that do not detract from the functionality of the work in such a way that the work is, in reasonableness, no longer to be considered suitable for the objective it was made known for to Contractor upon formation of the agreement, such with the exception of chalk work, concerning which no guarantees are given with regard to wear resistance.
- 5.2. In the case of mixed agreements, the guarantees stated in clause 5.1 must be applied to the corresponding component thereof.
- 5.3. If Client rightfully invokes any guarantee stipulation from clause 5.1, Contractor will, at its discretion and without prejudice to the other stipulations in this Clause, either replace the defective performance, or correct it, with the original guarantee period then only being extended by the period during which Client did not have the faulty good or defective work at its disposal due to the repair or replacement.
- 5.4. The aforementioned guarantee obligation will lapse if:
- a. change(s) or repair(s) to the delivery were made/carried out by third parties without prior written permission from Contractor;
 - b. the delivery was used for a different purpose than its apparent purpose;
 - c. the delivery was treated, used or maintained in an improper manner (in Contractor's reasonable opinion);
 - d. Client does not observe any obligation towards Contractor;
 - e. Client is to blame otherwise for defects to the delivery.
- 5.5. Any costs for disassembly, dispatch and transport are to be paid by Client and are at Client's risk.
- 5.6. Guarantee for goods purchased elsewhere by Contractor will only be issued if and to the extent that the particular manufacturer/supplier issues a guarantee and within the scope thereof.
- 5.7. The fact that Client claims on the guarantee does not entitle Client to suspension of any obligation towards Contractor.

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Clause 6 – Complaints

- 6.1. Complaints about visible defects must be lodged in writing and as soon as possible, but at the latest within 5 working days from delivery of the good/item, the completion of the assignment or the hand-over of the work, stating accurately the nature and foundation for the complaint(s). Other defects must be reported in writing as soon as possible but at least within 5 working days from them being discovered or from the point that they should have been reasonably discovered.
- 6.2. Complaints about invoices must also be submitted in writing within 5 working days from dispatch date of the invoice. After expiry of this period the content of the invoices will count as exclusive evidence concerning (value and correct fulfilment of) the goods, performance and the work delivered thereunder, unless proven otherwise.
- 6.3. After expiry of the aforementioned term Client will be considered to have approved Contractor's performance. If this is the case, complaints will no longer be accepted by Contractor.
- 6.4. Returns of supplied goods/items can only take place after prior written approval by Contractor. Contractor can attach terms to this.

Clause 7 – Liability

- 7.1. The Contractor's liability towards Client is, with the exception of the stipulations in the following subclauses, limited to Contractor meeting the guarantee obligations as described in Clause 5.
- 7.2. The Contractor's liability for unlawful acts committed by Contractor is excluded in so far as these are the consequence of deliberate intent or conscious recklessness on the part of the Contractor's subordinates in management positions. Also excluded is the liability of Contractor for indirect and consequential damage suffered by Client as a result of a shortcoming in the observance of Contractor's obligations under any agreement attributable to Contractor, such as, but emphatically not limited to: lost profits, lost sales, immaterial damage, missed opportunities and tarnishing of a good reputation, unless this damage is the result of deliberate intent or conscious recklessness by the Contractor
- 7.3. The Contractor's liability for direct damage suffered by Client that is a consequence of or connected with an attributable shortcoming on the behalf of Contractor in the fulfilment of its obligations towards Client under an agreement entered into with Client, is limited to those cases in which the Client can demonstrate that the damage is a direct consequence of the attributable shortcoming and is furthermore for each occurrence or series of related occurrences with a common cause limited to a value agreed between parties (excluding VAT) of the commitment(s) in the observance of which Contractor has thus attributably failed, with a maximum of € 25,000 unless a further limitation arises from one of the following subclauses.
- 7.4. Each claim towards Contractor based on an agreement entered into with Contractor will lapse through the mere expiry of a year. The expiry period begins the day after the Client is both aware of the damage and with liable party.

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- 7.5. All defence Contractor can derive from the agreement with Client to shield from its liability, can also be invoked by its personnel and third parties engaged by it for the performance of the agreement, towards the Client, as though the personnel and as though the aforementioned third party were party to the agreement themselves.
- 7.6. Liability limiting, excluding or determining terms which can be enforced by third parties against Contractor can also be enforced by Contractor against Client.

Clause 8 – Indemnification

Client indemnifies Contractor, its personnel and any third parties engaged by Contractor within the scope of the implementation of its obligations under the agreement against all claims from (other) third parties for reimbursements for any (perceived) damage suffered from the aforementioned third parties (including fines imposed by these third parties), caused by or otherwise connected with the performance delivered by the Contractor under the agreement except in the case of recklessness or deliberate act by the Contractor.

Clause 9 – Payment Terms

- 9.1. Unless expressly stipulated otherwise in writing, the payment for each invoiced amount must take place within 14 calendar days from invoice date and take place as stated on the invoice. The payment must take place in the agreed currency and without settlements, discounts and/or suspensions.
- 9.2. In the case of overdue payment of an invoice, Client will be in default, without notice of default, and all Client's payment obligations will be immediately payable, even to the extent that they ensue from previous invoices remaining unpaid. This is also the case if Client is declared bankrupt or applies for suspension of payments.
- 9.3. In the event of overdue payment of an invoice, Client will owe the statutory commercial interest rate (article 6:119a of the Civil Code), increased by 1 % of the invoice amount, from the due date of the invoice.
- 9.4. In addition, all judicial and extrajudicial costs incurred by Contractor in reasonableness (including, but not limited to: bailiff costs and the costs of legal assistance) that have been incurred within the scope of nonfulfillment by Client of its obligations are to be paid by Client, such with a minimum of 10% of the principal sum due (incl. VAT) or an amount of € 250, to the extent that this is higher, which minimum fee must be (partly) viewed as an incentive for Client to meet its obligations properly (penalty clause).
- 9.5. Payments made by Client are always first set off against all interest and costs due and secondly against the invoices that have been due the longest even if Client states, that the payment relates to a later invoice.
- 9.6. Irrespective of the foregoing, Contractor will always be entitled to demand cash payment or to demand satisfactory security from Client for timely payment, prior to commencement of fulfilment of the agreement, delivery or further execution of the work. The security is provided by providing an irrevocable bank guarantee from a Dutch reputable banking institution, or by furnishing other security to be considered equivalent in reasonableness.

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Clause 10 – Drawings, Models, Calculations and such like

- 10.1. If Contractor shows or issues a drawing, model, design, calculation or other details, this is only indicative. The goods/work to be delivered may deviate from the goods/work shown.
- 10.2. To the extent that intellectual and/or industrial property rights are applicable, they shall remain vested in Contractor.

Clause 11 – Suspension and Termination

- 11.1. Without prejudice to its statutory rights to dissolution of the agreement, Contractor is authorised, without judicial intervention and without Client having to be in default, to terminate the agreement entered into with Client in full or in part, or to suspend the fulfilment of the agreement, or to terminate it, whether or not with immediate effect, without being held to pay damages, if:
 - a. Client is declared bankrupt or this is applied for;
 - b. Client applies for (provisional) suspension of payment or enters the process of liquidation; and if
 - c. the Client's capital or part thereof is attached.
- 11.2. If the agreement ends in accordance with the stipulations in clause 11.1, the Contractor's claims on Client become immediately payable. If Contractor suspends the performance of its obligations towards Client, it retains its claims from law and the agreement.
- 11.3. Termination of the agreement does not lead to obligations to nullify.

II. SALES

Clause 12 – Delivery

- 12.1. All deliveries are made ex works, unless agreed in writing otherwise. The transport is therefore for Client's account and risk.
- 12.2. Client is obliged to buy the goods purchased at the moment of delivery. If Client refuses the purchase or fails to provide information or instructions, necessary for the delivery, the goods will be stored for Client's account and risk, without prejudice to Contractor's right to claim fulfilment and/or full compensation and to terminate the agreement.
- 12.3. Client is obliged to inspect the delivery immediately for any faults or damage upon delivery, or to perform this inspection after notification from Contractor that the goods are at Client's disposal.
- 12.4. Any deficiency or damage to the delivery must be stated/instructed by Client to be stated on the delivery note, the invoice and/or the transport documents, in the absence whereof Client will be considered to have approved the delivery.

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Clause 13 – Partial Deliveries

- 13.1. Contractor reserves the right to supply the delivery in parts (partial deliveries) which can be invoiced separately. Client will then be obliged to pay in accordance with the stipulations in Clause 9 of the Terms and Conditions.

Clause 14 – Delivery Period

- 14.1. The delivery time is always given approximately and does not constitute a fatal term, unless explicitly stated in writing otherwise. In the event of overdue delivery Client must therefore always declare Contractor in default in writing first.
- 14.2. Contractor is in no way liable for exceeding the delivery time, due to whichever cause. Exceeding the delivery time does not oblige Contractor to any reimbursement and does not give Client the right to terminate the agreement or refuse purchase, or to invoke suspension of any obligation.

Clause 15 – Retention of Title

- 15.1. In the event of sale of goods/items by Contractor the risk, but not the property thereof is transferred to Client or to a third party to be designated. All goods/items delivered to Client remain Contractor's property until the moment of payment of all that Client owes Contractor for whatever reason, including interest and costs.
- 15.2. Client is not entitled to alienate the goods/items falling under the retention of title, unless alienation takes place within the scope of the normal course of business. Client is otherwise not authorised to pledge the goods/items or establish any other right on them.
- 15.3. Without prejudice to any further rights to which it is entitled, Contractor is irrevocably authorised by Client to take possession of the goods/items delivered by Contractor, if Client does not meet its obligations entered into or does not meet them in time towards Contractor without any notice of default or judicial intervention and, in order to do so, access the place where the goods are located.
- 15.4. If third parties should attach the goods/items delivered under retention of title or wish to establish rights on them or assert rights to them, Client will be obliged to inform Contractor of this as soon as can reasonably be expected.
- 15.5. Client undertakes to insure the goods/items delivered under retention of title and to keep them insured against fire, explosion and water damage as well as theft and to make the policy available for inspection upon first request.

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III. ASSIGNMENT AND CONTRACTING

Clause 16 – Execution by Third Parties

- 16.1. If within the scope of the fulfilment of the agreement of services or contracting of work by Contractor parts thereof are subcontracted to third parties on terms that are stricter than these Terms and Conditions, Contractor may invoke the same, stricter terms against the other party concerning the subcontracted part of the agreement.
- 16.2. If it has been agreed that the performance of the assignment or the work will take place in phases, Contractor shall be entitled to postpone the commencement of this work, belonging to a phase, until Client has informed Contractor in writing that it has approved the completion of the preceding phase.
- 16.3. Commencement time of the work and the completion time within which the assignment must be carried out are established approximately. The stated completion times are never to be considered as fatal terms, unless explicitly agreed in writing otherwise. In the event of overdue completion Contractor must therefore be given notice of default in writing.
- 16.4. The agreed completion term has been established based on the expectation that the circumstances under which completion will take place, will not change after acceptance of the assignment.
- 16.5. If such a change of circumstances, irrespective of the foreseeable nature thereof, takes place anyway, causing a delay in the execution of the assignment or the work, the agreed time of completion will be moved accordingly.

Clause 17 – Scope of the Work

- 17.1. Client must ensure that all permits, exemptions and other decisions required for the execution of the assignment or the work have been obtained in time and with the correct contents, unless parties have agreed in writing otherwise.
- 17.2. If circumstances occur that are of such a nature that the risk of them occurring did not need to be taken into account in the formation of the agreement, and that cannot be ascribed to Contractor and raise the cost of the assignment or work, Contractor will be entitled to additional payment.
- 17.3. Contractor is entitled to change the agreed performance, if this is necessary in Contractor's opinion for the proper execution of the assignment or the work. If this change entails extra work, this is designated as a cost-increasing circumstance in the sense of art. 17.2.

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Clause 18 – Client's Obligations

- 18.1. Client is responsible for determining Client's objectives, needs and integration concerning the items/goods, services or work purchased from Contractor. Contractor is not obliged to perform research in this regard. Client will ensure that all information, of which Contractor states that it is necessary or of which Client should reasonably understand that this is necessary for the performance of the agreement, is provided to Contractor in time. If the information required for the fulfilment of the agreement was not provided to Contractor in time, Contractor shall be entitled to suspend the fulfilment thereof and/or charge Client for any extra costs resulting from the delay according to the usual rates.
- 18.2. Without prejudice to the stipulations in Clause 7 of the Terms and Conditions Contractor will not be liable for damage, of whichever nature, arisen due to Contractor proceeding from incorrect and/or incomplete information provided by Client, unless Client proves that this incorrectness or incompleteness was apparent for Contractor.
- 18.3. Client must ensure that the work area is easily accessible and passable, at all times, for Contractor's work material and employees and that work can be performed safely and otherwise in conformance with all relevant regulations by Contractor and third parties engaged by Contractor. Even if the assignment or work is performed outside office hours or Client's usual working hours, Client will ensure the presence of sufficient company first aid assistants as referred to in the Working Conditions Act. In the event that within the scope of the execution of the assignment or the work, fluids are used (such as, but not limited to: (window/glass) washing, cleaning pipes, etc.) Client will ensure the proper collection of waste water, turning off valves and circulation systems etc.
- 18.4. In the event of the use of chemical and/or hazardous substances (such as pesticides and glass cleaning detergents) in the execution of an assignment or work Client is obliged to provide Contractor beforehand in writing with all the information necessary to be able to execute the assignment or the work properly, including, but explicitly not limited to:
 - a. the correct position and size of the plot, on which the object to be treated is situated;
 - b. the limitations of the plot with the crops and/or objects/items thereon as well as the crops and/or objects/items present on adjacent plots;
 - c. the state of the plot (water catchment area, nature conservation area etcetera);
 - d. weeds, fungi, insects or other elements harmful for the particular good/item/crops, against which treatment is desired, or, that has to be treated against late fruit fall or otherwise;
 - e. circumstances that may be of influence on the treatment, such as soil type(s) of the plot involved, indication of variety, previous cropping, destination for the good/item/crops, previous treatments, fertilization and such like.

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Clause 19 – Completion of the Work

The work will be deemed to have been completed upon actual putting into operation by Client. Partial putting into operation by Client is permitted, provided this does not endanger the sufficient progress of the other work and provided any costs resulting from this for Contractor are paid to Contractor as extra work and provided Contractor has agreed to the accelerated putting into operation in writing. The components of the work taken into operation are considered to have been completed with the putting into operation. The work is considered to have been completed if Contractor informs Client of this upon completion of the work.

IV. FINAL STIPULATIONS

Clause 20 – Applicable Law and Disputes

- 20.1. Dutch law exclusively applies to all Contractor's quotes and agreements, with the exception of the Vienna Sales Convention 1980.
- 20.2. Any disputes, including those that are only considered as such by one party, resulting from or related to the agreement to which the Terms and Conditions are applicable or concerning the Terms and Conditions themselves and their interpretation or explanation, both of a factual and legal nature, shall be settled by the competent court in The Hague, unless Contractor prefers to submit the dispute to the competent court in Client's place of residence/establishment.

Clause 21 – Amendment to the Terms and Conditions by Contractor

Contractor is authorised to make changes to the Terms and Conditions. These amendments shall take effect at the announced commencement time of operation. Contractor will send Client the amended Terms and Conditions in time. If no time of operation commencement has been communicated to Client, amendments will take effect towards Client as soon as the amendment has been communicated.