



HORTICOOP

General Terms and Conditions of Supply (HORTICOOP B.V.)

1. General terms and conditions

a. Subject to the provisions of Clauses (b) to (d) of this article these general terms and conditions shall apply to all agreements and offers – howsoever they may be called – entered into or presented by Horticoop B.V., hereinafter referred to as ‘Horticoop’. These terms and conditions may also be invoked by Horticoop’s employees and any other party that is engaged by Horticoop.

b. Specific agreements entered into by Horticoop and the relevant contracting party for the purposes of providing advice or selling and supplying potting soil shall be solely governed by the general terms and conditions of the Vereniging van Potgrondfabrikanten Nederland [Association of Dutch Potting Soil Producers], which were filed under number 25/2007 with the clerk of the District Court of The Hague on 11 April 2007, provided that no other terms and conditions of supply are declared to be applicable.

c. Specific agreements entered into by Horticoop and the relevant contracting party for the purposes of decontamination or spraying shall be solely governed by the Algemene Spuit Voorwaarden [General Terms and Conditions Governing Spraying] (ASV) of the Landbouwschap [Agricultural Board] of The Hague of 1 January 1978, provided that no other terms and conditions of supply are declared to be applicable.

d. Specific agreements entered into by Horticoop and the relevant contracting party in relation to the supply and installation of kitchens shall be solely governed by the general terms and conditions of kitchens and bathrooms division of Centrale Branchevereniging Wonen, which have been filed as Number 306/1995 with the District Court of Utrecht, the Netherlands.

e. Supplementary terms and conditions may be agreed to in respect of specific agreements entered into by Horticoop and the relevant contracting party with regard to the supply and installation of items as part of an engineering project.

2. Force majeure

In the event that Horticoop cannot comply with an agreement or do so properly or on time due to circumstances beyond its control, this shall be deemed to constitute force majeure on its part. In this case Horticoop shall not be liable for any loss which occurs due to its failure to comply with the relevant agreement or to do so properly or on time.

3. Supply

a. At such time as Horticoop actually effects the supply of goods, ownership thereof and any risks pertaining thereto shall pass to the contracting party subject to the provisions of Article 5(b). Insofar as supply does not involve installations or the like, the following shall apply:

- in the event that a contracting party objects to the manner in which Horticoop implements the relevant agreement, he shall be required to notify Horticoop of this in writing when the product concerned is supplied, immediately after the relevant service has been provided, or upon handover;

- in the event that any defect only becomes evident at a later stage, an objection must be communicated to Horticoop in writing within seven (7) days thereafter;

- in the event that any objection is not disclosed on time in writing, Horticoop shall be assumed to have effected proper performance.

b. Insofar as supply involves installations and the like, the following shall apply. Supply shall be deemed to have been effected in the event that what has been ordered has been installed in its entirety, is ready to be put into service, and a trial reveals that it satisfies the stipulated requirements or, where a trial is not conducted, what has been ordered is used. Such use shall at any rate be deemed to have occurred eight (8) days after what has been ordered has been installed in its entirety and is ready to be put into service. A contracting party shall indemnify Horticoop against any risk of loss occasioned by a storm, water, fire, theft and so forth as of the time when delivery is effected to a building site.

4. Warranty

a. Horticoop shall only have obligations pursuant to a warranty if one is explicitly agreed to when the relevant agreement is concluded and a clearly defined warranty term is decided on in this respect. Such warranty obligations shall entail the following:

- where the performance agreed on consists in contracting to perform work, throughout the term of the warranty Horticoop warrants that the structure supplied and the materials used are free of any defect. Should it appear that the structure supplied or the materials used are not free of any defect, Horticoop shall repair or replace same. Any parts which Horticoop is to repair or replace must be sent to it carriage paid. The contracting party shall be responsible for the disassembly and reassembly of such parts and any travel and accommodation costs incurred;

- where the performance agreed on consists in treating or repairing materials supplied by the contracting party, throughout the term of the warranty Horticoop warrants that the item supplied is free of any defect. Should it appear that supply has not occurred free of any defect, the item concerned must be returned to Horticoop carriage paid. Horticoop shall then elect to repair the item, replace it or provide credit for a proportionate part of the relevant invoice amount.

b. A warranty given by Horticoop’s supplier shall apply with regard to any part in respect of which Horticoop and the relevant contracting party have explicitly agreed to this in writing. In such a case this warranty shall apply instead of the aforementioned warranty obligations.

c. A contracting party may only invoke a warranty, after he complies with all of his obligations towards Horticoop.

d. No warranty shall be provided in respect of any defect which is due to normal wear or tear, improper use, maintenance work carried out incorrectly or not at all, or where the customer or some other party effects installation, assembly, alteration or repairs.

5. Payment

a. The relevant price must be paid to Horticoop by the due date stipulated on the relevant invoice without invoking any setoff.

b. In the event of late payment Horticoop shall retain ownership of the goods supplied. In this case Horticoop shall have the power to require the return of what has been supplied in that it is Horticoop’s property.

c. In the event that payment is not effected by the agreed due date, the relevant contracting party shall be deemed to be in default by operation of the law and without the need to give any further notice of default Horticoop shall be entitled to charge the legally stipulated interest plus 3%, subject to a minimum of 0.8% per month, as of the due date, as well as any extrajudicial costs incurred in relation to the collection of its claim, which latter costs shall be deemed to constitute 10% of the sum payable subject to a minimum of EUR 500.00.

d. Horticoop reserves the right to set off debts at any time.

6. Liability

a. Horticoop shall only be liable for any direct loss which a contracting party suffers and which is exclusively the direct result of a serious failure for which Horticoop is culpable. Under no circumstances shall Horticoop be liable for damage to crops (inhibition of growth or otherwise) or harm to business, which is deemed to include any loss of earnings and loss due to the disruption of business. Horticoop’s liability shall at all times be confined to the invoice value of the service or product which occasions such loss subject to a maximum of EUR 25.000.00 for each occurrence or series of occurrences with an identical cause.

b. Any legal claim for compensation pursuant to Horticoop’s liability in relation to defective goods supplied or services provided shall lapse one (1) year after the time of supply.

c. Subject to the foregoing Horticoop shall only be liable for loss suffered by a contracting party due to a wilful act or omission, or gross negligence on its part.

7. Terms and conditions of procurement

Horticoop shall not consent to all or part of any contracting party’s terms and conditions of procurement.

8. Dutch law and competent court of law

All agreements entered into with Horticoop shall be governed by and construed in accordance with the law of the Netherlands. Only a court of law within whose jurisdiction Horticoop’s head office is situated shall be competent to hear any dispute.

These terms and conditions have been lodged under Number 09117293 with the Chamber of Commerce in The Hague