

## **General Terms and Conditions Van der Valk Horti Systems B.V.**

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### **Article 1: Applicability**

- 1.1 These general terms and conditions shall apply to all offers and quotations made by and agreements entered into by Van der Valk Horti Systems B.V. (hereafter to be referred to as: "Contractor") and agreements that may result therefrom, in which the Contractor commits itself to deliver products to the Client, all this insofar as the Contractor is the provider or supplier.
- 1.2 The applicability of the Client's general terms and conditions or any other general terms and conditions is expressly rejected.
- 1.3 Departures from these general terms and conditions shall only be valid if expressly agreed to in writing by the Contractor.
- 1.4 In the event of any conflicts between the substance of the agreement concluded between the Client and The Contractor on the one hand and these general terms and conditions on the other, the provisions set out in the agreement have precedence.
- 1.5 Insofar as these general terms and conditions are also drawn up in a language other than Dutch, the Dutch text shall always prevail in the event of any conflict.

### **Article 2: Offers and the conclusion of an agreement**

- 2.1 All offers are without any obligations, also if they contain an acceptance period.
- 2.2 If the Client supplies the Contractor with data, drawings and the like, the Contractor may rely on their accuracy and completeness and the Contractor shall base its offer on that information. In the event of any changes to the provided data, drawings and the like, the Client is obliged to inform the Contractor in a timely manner.
- 2.3 The prices stated in the offer are based on 'free carrier', Monster, the Netherlands (FCA, Incoterms 2010). The prices are excluding turnover tax and packaging.
- 2.4 An agreement shall come into effect once the Contractor has confirmed the order in writing. In the event that the Contractor has not confirmed the agreement in writing, the mere commencement of execution or delivery forms sufficient evidence of the existence of consent and consequently the agreement.
- 2.5 Any offer or promise made by a representative of the Contractor shall only become binding when it is confirmed in writing by the Contractor.

- 2.6 If the Client does not accept the Contractor's offer, the Contractor is entitled to charge the Client all costs that it has incurred in making its offer.

### **Article 3: Prices**

- 3.1 Unless otherwise agreed in writing, prices shall be stated in Euro, excluding VAT and based on 'free carrier', Monster, the Netherlands (FCA, Incoterms 2010).
- 3.2 The Contractor is entitled to pass on to the Client any increase in cost-determining factors that occurred after concluding the agreement.
- 3.3 The Client is obliged to pay the price increase as referred to in paragraph 2 of this article at the Contractor's discretion at one of the following moments:
- a. when the price increase occurs;
  - b. at the same time as paying the principal sum;
  - c. at the time of the next agreed term of payment.
- 3.3 In the event that the Client delivers goods and the Contractor is prepared to use those goods, the Contractor may charge up to 20% of the market price of the goods provided.

### **Article 4: Intellectual property rights**

- 4.1 Unless expressly agreed otherwise in writing, the Contractor retains all intellectual property rights on all offers made by the Contractor and designs, illustrations, pictures, drawings, (test)models, software and the like that were provided.
- 4.2 The rights referred to in article 4.1 remain the Contractor's property, irrespective of whether the Client was charged for creating these. This data may not be copied, used or showed to third parties without express prior written consent from the Contractor. The Client owes the Contractor an immediately due and payable penalty of €25,000 per violation of this provision. This penalty may be demanded in addition to any compensation damages awarded by law.
- 4.3 The Client must return the data that was provided to him as referred to in paragraph 1 of this article on first demand within a term set by the Contractor. When violating this provision, the Client owes the Contractor an immediately due and payable penalty of €1,000 per day. This penalty may be demanded in addition to any compensation awarded by law.
- 4.4 The Contractor reserves all of its intellectual property rights in connection with the products it delivers. The Client shall not be permitted to partially or completely modify any product

delivered, or to affix any other trademark to it, to use the relevant mark in any other way, or to register it in his own name.

#### **Article 5: Advice, designs and materials**

- 5.1 Data that the Contractor has provided with the offer, the agreement or separate from it, in the form of advice, assembly and/or operating instructions, manuals, drawings or shipment documentation, has an informative character and does not form part of the agreement between the Client and the Contractor, unless this has been expressly agreed to in writing.
- 5.2 The Client is responsible for all drawings, calculations and designs that have been made by or on behalf of the Client, for the functionality of all materials prescribed by or on behalf of the Client, for all technical information and all other relevant information delivered by or on behalf of the Client. When executing the agreement, the Contractor may assume these to be correct and complete.
- 5.3 The Client indemnifies the Contractor against any claims from third parties with regard to the use of advice, drawings, calculations, designs, material, samples, models, technical information and all other information that was provided by or on behalf of the Client.
- 5.4 At all times, the Client is responsible for a final check of all material specifications provided by or on behalf of the Contractor.
- 5.5 At the Client's own expense, the Client may examine (or arrange for the examination of) the materials that the Contractor intends to use before they are processed. All expenses incurred by the Contractor as a result of this are at the Client's expense.

#### **Article 6: Delivery**

- 6.1 The delivery time stated by the Contractor shall under no circumstances be deemed to constitute a fatal date. The Contractor shall not be in default in respect of such delivery time until the Client notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which the Contractor has the opportunity to effect delivery, and the Contractor still fails to do so.
- 6.2 When determining delivery times, the Contractor assumes that the order can be carried out under the circumstances as they are known to the Contractor at that moment.
- 6.3 The delivery period only commences when the agreement concerned has been entered into in accordance with the provisions of article 2, the parties have reached an agreement regarding all business and technical details, all necessary data, definitive and approved drawings and the like are in the Contractor's possession, the agreed (instalment) payment

or advance payment has been received and the necessary conditions for executing the order have been met.

- 6.4 a. In the event of circumstances that differ from those that were known to the Contractor when it set the delivery period, the Contractor is entitled to extend the delivery period by such period as it needs to execute the order under such circumstances. If the activities cannot be incorporated into the Contractor's schedule, they shall be carried out as soon as the Contractor's schedule permits.
- b. In the event of any additional work, the delivery period shall be extended by such period as is needed to deliver (or have delivered by a third party) the material and the parts that are needed for the additional work and for carrying out the additional work. If the additional work cannot be incorporated into the Contractor's schedule, it shall be carried out as soon as the Contractor's schedule permits.
- c. In the event that the Contractor's obligations are suspended, the delivery period shall be extended by the duration of the period in which the obligations are suspended.
- 6.5 In the event that the delivery period is exceeded, the Client is not entitled to suspend or terminate the agreement, and the Client is not entitled to any compensation.
- 6.6 The Client is obliged to pay all costs incurred by the Contractor as a result of a delay affecting the delivery period and/or execution period as referred to in paragraph 4 of this article.
- 6.7 The Contractor retains the right to deliver in parts. Every partial delivery shall be considered a separate agreement. The Contractor is entitled to demand payment for every partial delivery before proceeding with further delivery.
- 6.8 If the Client fails to comply with its payment obligation or fails to comply in a timely manner, this results in the Contractor's delivery obligation being suspended.

#### **Article 7: Transfer of risk**

- 7.1 Unless otherwise agreed in writing, the delivery shall be made 'free carrier', Monster, Netherlands (FCA, Incoterms 2010). The risk attached to the item is transferred at the moment the Contractor makes it available to the Client.
- 7.2 Irrespective the provisions of paragraph 1 of this article, the Client and the Contractor may agree that the Contractor looks after the transportation. In that case, the risk of storage, loading, transportation and unloading shall be borne by the Client. The Client may insure itself against these risks.

- 7.3 In the event of a purchase in which an item is exchanged and the Client retains the item to be exchanged pending the delivery of the new item, the risk attached to the item to be exchanged remains with the Client until it has placed this item in the Contractor's possession. If the Client cannot deliver the item to be exchanged in the condition that it was in when the agreement was concluded, the Contractor may dissolve the agreement.

#### **Article 8: Force Majeure**

- 8.1 The Contractor is entitled to suspend the fulfilment of its obligations if it is temporarily prevented from fulfilling its contractual obligations towards the Client due to force majeure.
- 8.2 Force majeure includes (but is not limited to) the circumstance that suppliers, the Contractor's subcontractors or transportation companies engaged by the Contractor, do not or not in a timely fashion comply with their obligations, weather conditions, earthquakes, fire, theft or loss of tools, the destruction of material to be processed, roadblocks, strikes or work stoppages and import and trade restrictions.
- 8.3 The Contractor is no longer authorised to suspend fulfilment if the temporary inability to fulfilment has lasted longer than six months. On expiry of this term, the Client and the Contractor can terminate the agreement with immediate effect, but only as regards the part of the obligations that has not yet been fulfilled.
- 8.4 In the event of force majeure in which fulfilment is or becomes permanently impossible, both parties are entitled to terminate the agreement with immediate effect as regards the part of the obligations that has not yet been fulfilled.
- 8.5 In the event that the Contractor has already fulfilled a part of the order, the Client shall proceed to pay the purchase price for all delivered products.
- 8.6 The parties are not entitled to any compensation of damage suffered or yet to be suffered as a result of the suspension or termination for the purpose of this article.

#### **Article 9: Liability**

- 9.1 In the event of an attributable shortcoming, the Contractor is obliged to still meet its contractual obligations after a written notice of default from the Client.
- 9.2 The Contractor's obligation to pay compensation, irrespective of the legal grounds, is limited to the damage for which the Contractor is insured pursuant to an insurance policy taken out by it or on its behalf, but shall never be higher than the amount paid out by the insurance in the case concerned.

- 9.3 If, for any reason whatsoever, the Contractor cannot invoke the limitation of paragraph 2 of this article, the obligation to pay compensation shall be limited to the amount that was charged by the Contractor for the order in question (excluding VAT). If the order consists of parts or partial deliveries, the obligation to pay compensation is limited to the amount that was charged by the Contractor for that part or that partial delivery concerned (excluding VAT).
- 9.4 The following does not qualify for compensation:
- a. consequential loss. Consequential loss is understood to mean, among other things, loss from standstills, production losses, loss of profit, transportation costs and travel and accommodation expenses. The Client may take out an insurance against such losses if so desired;
  - b. supervision damages. Supervision damages are understood to include damages caused during or as a result of the performance of the work, to objects on which work is being carried out or to objects situated in the vicinity of the work site. The Client should take out insurance to cover such damages, if such is deemed desirable;
  - c. damages caused by intent or wilful recklessness on the part of helpers or non-management employees of the Contractor; and
  - d. damages caused by incompetent use of the manuals that were delivered by the Contractor and incompetent installation by the Client (or a third party) of the material that the Contractor delivered.
- 9.5 The Contractor is not liable for damages resulting from improper processing to materials provided by or on behalf of the Client, such as canvasses. Upon the Client's request, the Contractor shall carry out the process anew, using new material provided by the Client and at the Client's expense.
- 9.6 The Client indemnifies the Contractor against all claims from third parties on account of product liability stemming from defects in products provided by the Client to third parties that consisted of or included products and/or materials provided by the Contractor. The Client is obliged to compensate all damage that the Contractor has suffered in this respect including the (full) costs of defence.
- 9.7 The Client bears the full risk and is fully liable for any damage caused in connection to loss, theft, burning of or damage to items that belong to the Client and for products and/or materials of third parties that are needed for the agreement with the Contractor, such as

canvasses, materials intended for the work or material used during the work, which are located at the Contractor's terrain.

- 9.8 The Client is obliged to adequately insure itself against the risks referred to in paragraph 7 of this article. In addition, the Client must take out insurance for the material to be used, which the Client, being the legal owner, has made available to the Contractor. On first demand, the Client must send the Contractor a copy of the insurance policy or policies concerned and a proof of payment of the premium. In the event of any damage, the Client is obliged to report this immediately to its insurer for further handling and processing.
- 9.9 If the Client does not fulfil its obligations as described in the previous paragraphs of this article and this leads to a delay in the execution of the activities, the activities shall be carried out as soon as the Client remedies this breach and the Contractor's schedule permits this. The Client is liable for all damage resulting from the delay incurred by the Contractor.

#### **Article 10: Warranty and other claims**

- 10.1 The Contractor warrants that the products are free from any defects in workmanship for the following periods following delivery by the Contractor:

##### **Screens:**

- Steel wire, steel wire rope and polyester threads: the supplier's warranty applies
- Wear parts: 5 years
- Motors and other drive components: the supplier's warranty applies
- Other components: 10 years

##### **Ventilation mechanisms:**

- Wear parts: 5 years
- Motors and other drive components: the supplier's warranty applies
- Other components: 10 years

- 10.2 In the event that the performance was not executed properly, the Contractor shall decide whether to still properly execute it or credit the Client a proportionate part of the invoice amount. If the Contractor decides to still properly execute the performance, it shall determine the manner and time of execution. If the agreed performance consisted (entirely or partially) of processing material delivered by the Client or by third parties for the order

with the Client, the Client must provide (or arrange a third party to provide) new material at its own risk and expense.

- 10.3 Parts or materials that are repaired or replaced by the Contractor, must be sent by the Client to the Contractor delivery duty paid, Monster, Nederland (DDP, Incoterms 2010). All transportation or shipment costs, disassembly and assembly costs, and travel and accommodation expenses will be at the Client's expense.
- 10.4 The Client must in all cases offer the Contractor the opportunity to remedy any shortcomings or to carry out the process anew.
- 10.5 The Client is only entitled to invoke the warranty once it has fulfilled all its obligations towards the Contractor.
- 10.6 a. No warranty is given if the defects result from:
- the fact that the Client provided the Contractor with incorrect information, including but not limited to information with regard to weather conditions, stability of the basis, external influences and the like;
  - incorrectly, not fully, not skilfully and/or unprofessionally following the instructions in the operating and assembly instructions, and, where applicable, not following the Contractor's advice as regards attaching the system to the basis or the construction;
  - unusual chemical effects on the material, including but not limited to herbicides, fertilisers, detergents and the like;
  - the use of damaged or defective components in the final construction;
  - normal wear and tear;
  - incorrect use;
  - lack of sound maintenance; and
  - installation, assembly, adjustments or repairs carried out by the Client or third parties.
- b. No warranty is given on objects supplied that were not in a new condition at the time of delivery, or on objects for which its use was prescribed by the Client and/or that were made available by or on behalf of the Client;
- c. No warranty is given on the inspection and/or repair of objects owned by the Client.
- d. No warranty is given on parts for which a manufacturer's warranty has been provided.
- 10.7 The provisions of paragraphs 2 to 6 of this article shall apply mutatis mutandis in the event of any claims from the Client pursuant to a breach of contract, non-conformity or any other basis.



10.8 The Client cannot transfer any rights under this article.

### **Article 11: Complaints**

11.1 The Client can no longer invoke a shortcoming in the performance if it has not submitted a complaint in writing within fourteen days of the date on which the shortcoming was discovered, or on which the Client could reasonably be expected to have discovered it.

11.2 At the risk of forfeiting all rights, the Client must have submitted complaints about the invoice amount within the payment term and in writing to the Contractor. If the payment term is longer than thirty days, the Client must have submitted a complaint in writing at the latest within thirty days of the invoice date.

### **Article 12: Uncollected goods**

12.1 Upon expiry of the delivery period, the Client is obliged to take delivery of the good or goods subject to the agreement and at the agreed location.

12.2 The Client must lend all cooperation that can be reasonably expected from it to enable the Contractor to make the delivery.

12.3 Uncollected goods are stored at the Client's risk and expense (including handling and insurance costs).

12.4 When violating the provisions in paragraphs 1 and/or 2 of this article, the Client shall owe the Contractor a penalty of €250 per day with a maximum of €25,000. This penalty may be claimed in addition to damages pursuant to the law.

12.5 The Contractor is at all times entitled to rely on article 6:90 of the Civil Code.

### **Article 13: Payment**

13.1 The Contractor shall at all times be entitled to demand full or partial payment in advance. As regards all other sales, payment must be made by the Client within 30 days of the invoice date concerned, unless otherwise agreed in writing.

13.2 Without prejudice to the specified payment conditions, the Client is obliged, at the Contractor's first demand, to provide security for payment, to the Contractor's satisfaction upon or after entering into the agreement and before its execution. Failure on the Client's part to provide such security for payment within the period specified will immediately constitute default. In that case, the Contractor is entitled to suspend or terminate the agreement and to recover any damage suffered from the Client.

- 13.3 The Client's right to offset outstanding claims against the Contractor is excluded, unless the Contractor has been declared bankrupt.
- 13.4 Irrespective of whether the Contractor has fully executed the agreed performance, everything that is or shall be owed to it by the Client pursuant to the agreement is immediately due and payable if:
- a. a payment term has been exceeded;
  - b. the Client's bankruptcy or suspension of payment has been applied for;
  - c. the Client's assets or claims are seized;
  - d. the Client (company) is dissolved or wound up;
  - e. the Client (a natural person) requests to be admitted to statutory debt rescheduling, is placed under guardianship or has died.
- 13.5 If payment has not been made by the payment deadline specified, the Client shall be deemed to be in default without the need for any notice of default or judicial intervention and the Client is immediately liable to pay interest to the Contractor. This interest is payable at a rate of 12% per year, or at the statutory rate if that is higher. For the purposes of calculating the interest, partial months are counted as full months.
- 13.6 If payment has not been made by the payment deadline specified, the Client is immediately liable to pay the Contractor all extrajudicial costs, with a minimum of €75. These costs are calculated in accordance with the following table (principal sum incl. interest):
- on the first €3,000 - 15%
  - on the excess up to €6,000 - 10%
  - on the excess up to €15,000 - 8%
  - on the excess up to €60,000 - 5%
  - on the excess above €60,000 - 3%
- If the actual extrajudicial costs exceed those based on this formula, the Client is liable to pay the actual costs.
- 13.7 If judicial proceedings are decided in the Contractor's favour, all costs incurred by the Contractor in connection with those proceedings are for the Client's account.

#### **Article 14: Securities, retention of ownership and pledging**

- 14.1 Irrespective of the agreed payment conditions, the Client is obliged to provide sufficient security for payment, on the Contractor's first demand and to its satisfaction. If the Client does not comply with such demand within the term set for this, it shall immediately be in

default. In that case, the Contractor is entitled to dissolve the agreement and recover its damage from the Client.

- 14.2 The Contractor shall retain ownership of any goods delivered as long as the Client:
- a. fails or shall fail the fulfilment of its obligations under this or other agreements;
  - b. has not paid amounts owed that result from not fulfilling the aforementioned agreements, such as damage, penalty, interest and costs.
- 14.3 As long as the goods delivered are subject to retention of title, the Client may not encumber or alienate these other than in the ordinary course of its business.
- 14.4 Once the Contractor has invoked its retention of title, it may take back possession of the goods delivered. The Client shall lend its full cooperation to this end and provide the Contractor access to the location where these objects are located.
- 14.5 The Contractor has a right of pledge and a right of retention in respect of all goods that are or will be held by it and in respect of all claims it has or might acquire against the Client with regard to anyone seeking their surrender.
- 14.6 If the Client has fulfilled its obligations after the Contractor has delivered the goods to the Client in accordance with the agreement, the retention of title shall be revived with regard to such goods if the Client does not fulfil its obligations under an agreement subsequently concluded.
- 14.7 In the event that the Contractor cannot claim retention of title because the delivered objects have been extinguished by confusion, specification or accession, the Client is obliged to pledge the newly formed objects to the Contractor.

#### **Article 15: Suspension and termination**

- 15.1 In the event that the Client does not, or not in a timely manner, fulfil its obligations pursuant to an agreement it entered into, in the event that there are sound reasons for assuming this, or in the event that the Client submits a request for suspension of payments, bankruptcy or winds up its company, the Contractor is entitled to suspend or terminate the agreement concerned without further notice of default or judicial intervention, and shall not be obliged to pay any compensation.
- 15.2 Any claim from the Contractor with regard to a part of the agreement that has already been executed or has led to damage as a result of the suspension or termination, including loss of profit, is immediately due and payable.
- 15.3 If the Client wishes to terminate the agreement without the Contractor being in default and the Contractor agrees to this, the agreement shall be terminated by mutual consent. In that

case, the Contractor is entitled to compensation of all financial losses such as losses incurred, loss of profit and costs incurred.

**Article 16: Applicable law and competent court**

16.1 These general terms and conditions and any agreements entered into by the Contractor shall be solely governed by the laws of the Netherlands.

16.2 The Vienna Sales Convention (C.I.S.G.) does not apply, nor do any other international regulations of which exclusion is permitted.

16.3 Disputes will be heard exclusively by the Dutch civil court with jurisdiction over the Contractor's place of establishment, unless this violates mandatory law. The Contractor may deviate from this rule of jurisdiction and use the legal rules of jurisdiction.