

## CONDITIONS OF SALE OF AVAG

### GENERAL CONDITIONS OF SALE OF AVAG – PLATFORM for SUPPLIERS TO HORTICULTURE UNDER GLASS

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#### Article 1 General Provisions

1.1 Unless agreed otherwise in writing these conditions apply to all offers and agreements between the AVAG member (hereinafter: “Contractor”) on the one side and third parties (hereinafter: “Principal”) on the other side relating to the delivery of moveable property and/or the providing of services (including: orders and contracting for work). Once forming an integral whole with any agreement between Principal and Contractor these conditions will also form an integral whole with agreements concluded subsequently between Principal and said Contractor, even if at realization of such subsequently concluded agreements no reference is made to the applicability of these conditions, such unless parties have explicitly agreed otherwise in writing.

1.2 Provisions departing from these conditions apply only if agreed in writing and signed by parties’ representatives duly listed in the Trade Register. If, in addition to the applicability of these conditions also the applicability of the *Uniforme Administratieve Voorwaarden* (Uniform Administrative Provisions for the Execution of Works) (UAV) has been agreed, then, in the event of conflict between the various conditions, the AVAG conditions of sale will prevail.

#### Article 2 Offers from and Agreements with Contractor

2.1 Every offer, including those incorporated in brochures and price lists published by Contractor, shall be without obligation and will be binding on Contractor only at the moment that the agreement/order has been confirmed in writing by a representative of Contractor duly listed in the Trade Register.



- 2.2 Illustrations, drawings, weights, dimensions and colours forming part of an offer of Contractor are not binding upon him, unless their accuracy has been warranted by Contractor in writing.
- 2.3 Every offer, in so far as in place, is based on the drawings and data provided by Principal.
- 2.4 The prices stated in an offer relate only to those activities and/or deliveries explicitly defined in the offer.
- 2.5 Verbal agreements bind Contractor only at the moment of their written confirmation by a representative duly listed in the Trade Register, but only on the contingent condition that the information to be gained by Contractor evidences adequate credit rating. Contractor is nevertheless entitled to request Principal to put up adequate security and Contractor is also entitled to suspend the performance of the agreement until this request has been satisfied.
- 2.6 If an order is made subject to obtaining financings and/or permits, and these financings and/or permits could not reasonably be obtained within a period to be stipulated by Contractor, then Contractor is entitled to compensation of loss of profits if within 18 months after the period stipulated for obtaining the financing Principal awards the order or a substantial portion thereof to a third party. Such loss of profits is deemed to be at least 10% of the contract value of the agreement stipulating this subject clause, without prejudice to the right of Contractor to claim the loss of profits actually incurred.
- 2.7 Principal is equally bound to an order when the order was awarded to Contractor by an auxiliary person engaged by Principal, such as a consultancy firm or an architect.
- 2.8 All periods stated in an offer or agreement concern target dates, unless agreed otherwise in writing.
- 2.9 All intellectual and industrial property rights relating to documents made available by Contractor to Principal (such as, but not limited to: designs, explanatory notes, technical descriptions, static calculations, construction drawings and models) remain the property of Contractor. These documents will not be made available by Principal to third parties without Contractor's prior written permission.
- 2.10 Unless agreed otherwise in writing, Contractor remains the party entitled to all intellectual and industrial property rights created on the part of Contractor in the course of the performance of the agreement concluded with Principal. Following delivery made by Contractor, Principal acquires merely the non-exclusive right to use the documents and models, as produced by Contractor in connection with the performance of this agreement, in the course of his regular business operations.



### Article 3. Provisions relating to Building Contracts

3.1 If a building contract is concluded on the contingent or resolutive condition that the requisite financing and/or the requisite permits can be obtained then, if Principal provides proof of his inability to obtain the requisite financing and/or permits within 18 months upon realization of the agreement, parties will make every reasonable effort to perform the agreement adapted to the available financing and/or adapted to the restrictions of the permit to be granted.

3.2 The agreement contains provisions regarding:

1. the object to be built;
2. the building site;
3. the place and the method of delivery of the building materials;
4. on whose account and for whose risk the transport takes place;
5. the period when building will take place;
6. the contract price, exclusive of VAT, and the method of payment.

3.3 When the agreement is in force, departures will be permitted if they are considered reasonably necessary, useful or advisable by Contractor and in so far as they do not fundamentally affect the functionality of the object to be realized.

3.4 Principal undertakes to ensure that the work can be performed at the agreed times. He also undertakes to ensure that the materials supplied by Contractor can be stored such that and in places where the materials cannot reasonably be damaged or stolen..

3.5 Principal is liable for the structures and methods prescribed by him, including any influence exerted by the composition of the soil, as well as for any instructions given by or on behalf of him and for auxiliary equipment and building materials made available.

3.6 Unless agreed otherwise in writing, only materials of normal trade quality are used. All materials or remaining supplies left over from building are the property of the contractor and may be removed by him from the site, unless the contractor used third parties' materials.

### Article 4 Prices

Agreed prices are based on the price basis at the time the agreement is concluded and apply "ex works", excluding VAT, costs of transport and delivery, packaging, insurance, duties and taxes, unless stated otherwise. Contractor is entitled to change or adjust prices without prior notification after expiry of a period of 14 days upon reaching the agreement, should cost price-determining factors change or be changed. Contractor will give detailed notification to Principal of this price increase as soon as possible. The payment of any price increase on the basis of this Article will take place in accordance with the provisions of Article 9 of these conditions.

Should the aforementioned price increase amount to a total of more than 20% of the agreed price excluding VAT, Principal will be entitled to cancel the agreement (prematurely), provided he notifies Contractor of such in writing immediately after learning of the increase. Principal is not entitled to compensation in the event of cancellation.



## Article 5 Delivery

5.1 Agreed delivery times are counted from the day Contractor confirms the agreement in writing, but not before the Contractor has received the information, documents and items required for the implementation of the order from the Principal and has been able to examine them.

5.2 Delivery period / completion date is established subject to the foreseeable circumstances prevailing at the moment of the realization of the agreement remaining unchanged during the performance of the work and the requisite materials of third parties being delivered on time to Contractor.

5.3 Delay due to changed circumstances and/or late delivery of materials by third parties results in an extension of the delivery period equal to the period of the delay.

5.4 Contractor is obliged to observe the delivery period as closely as possible but, unless a strict deadline has been agreed and without prejudice to art. 12, is not liable for the consequences of exceeding it. Exceeding the delivery period does not give Principal the right to demand compensation or a penalty of whatever kind, to refuse the goods and/or the object or to cancel the agreement wholly or partially. After expiry of the delivery period, Principal does, however, have the right to demand in writing that Contractor deliver within 30 working days. If this period is exceeded, Principal has the right to declare the agreement cancelled. If the period is extended on the basis of one of the provisions of these conditions, the delivery time is considered to have lapsed only after expiry of the extended delivery time.

5.5 Should Principal owe any payment to Contractor then Contractor has the right to suspend delivery. In as far as a delivery period has been agreed it shall start when payment is received.

5.6 If the agreement is a sale and delivery agreement and if part of the order is ready, Contractor is free to choose to deliver this part or to wait until the entire order is ready. Should no express agreement have been reached that the delivery will be made from stock then Contractor has the right to deliver from the stock of third parties.

5.7 Unless agreed otherwise, delivery is “ex works”.

5.8 Without prejudice to the provisions of Article 14 concerning force majeure, it is stipulated that in the event of a building contract the delivery period is extended by the same number of working days as days on which the fitting/building teams of the contractor have not been able to fit/work as a result of inclement weather conditions (such as rain, hail, hurricane, frost, snow, ice, mist or storm) or an unworkable soil quality at the building site in the period between the commencement of the agreement and the delivery date, leading to disruption of the contractor's building schedule.



## Article 6 Reservation of Title

- 6.1 Contractor remains the owner of all goods delivered to Principal until the purchase price for all these goods has been paid in full.
- 6.2 Provided title has not been transferred to Principal, he may not sell the goods or grant a third party any right to them, subject to the other provisions of this Article.
- 6.3 Principal is obliged to store the goods delivered under reservation of title with the necessary care and as the recognisable property of Contractor.
- 6.4 Principal is obliged to insure the goods for the duration of the reservation of title against damage caused by fire, explosion and water, as well as against theft, and to present the policies for this insurance to Contractor for inspection at the first request. All claims by Principal against the insurers of the goods on the basis of the aforementioned insurance will be pledged to Contractor by the Principal as soon as the former so requests, in the manner indicated in Article 3:239 of the Dutch Civil Code, towards additional security of the claims of the Contractor against Principal.
- 6.5 In case Principal fails to fulfil his payment obligations to Contractor or in case Contractor has good reason to fear such failure, Contractor is entitled to take back any goods delivered under reservation of title.
- 6.6 After taking back the goods, Principal will be credited for their market value, up to a maximum of the original purchase price, less costs incurred by Contractor in taking back the goods.
- 6.7 Principal is permitted to sell to third parties and to transfer the goods delivered under reservation of title in the course of his regular business operations. In the event of sale on credit, Principal is obliged to require a reservation of title from his customers in the manner of the provisions of this Article.
- 6.8 Principal undertakes not to assign or pledge to third parties claims which he obtains against his customers without the prior written consent of Contractor. Principal further undertakes to pledge the aforementioned claims to Contractor as soon as the latter expresses such a desire, in the manner indicated in Article 3:239 of the Dutch Civil Code, towards additional security of his claims against Principal on whatever basis.

## Article 7 Risk

- 7.1 Upon arrival of goods/materials delivered/supplied by or on behalf of Contractor at their destination, Principal is to ascertain the condition in which the goods are found. Should subsequently damage prove to have been caused to the goods and/or materials, he is to take all measures to obtain compensation from third parties, in so far these third parties can be held liable by Principal for such damage events.
- 7.2 In the event of a purchase contract, the risk of goods deliverable by Contractor is for Principal from the moment that the goods are presented “ex works” for transportation. If Contractor has concluded for the benefit of Principal a transporting



contract relating to the goods deliverable by Contractor then he will be deemed to have done so in the capacity of carrier in the meaning of article 8:60 BW. If Contractor has performed his own transportation then the risk of the goods deliverable by Contractor is for Principal from the moment that delivery of the goods is made to him.

7.3 In case of a building contract, the materials are for the risk of Principal as soon as these have been delivered to the designated unloading point on or near the land to be developed.

7.4 Principal is liable for all damage caused to the materials after delivery of these materials (such as damage, theft or misappropriation). Principal is to take out adequate insurance against the aforementioned risk.

7.5 During building/assembly, the risk for that which has been built/assembled rests with Principal. Principal will take out the required insurance for that which has been built/assembled as soon as the building/assembly commences, unless otherwise agreed in writing, and will, at Contractor's first request, make the policy terms available for inspection.

#### Article 8 Assembly

8.1 All fittings and/or provisions required for erection of the items to be assembled and/or the correct operation and/or reliability of the items in their assembled state are for the account and risk of Principal and are outside the responsibility of Contractor, unless the implementation of the said fittings and/or provisions is performed by or on behalf of Contractor in accordance with information provided and/or drawings produced by or on behalf of Contractor.

8.2 Apart from the latter exception, Principal is fully responsible vis-à-vis Contractor for the correct and timely implementation and/or reliability of the aforementioned fittings and/or provisions.

8.3 Principal ensures, for his own account and risk, that:

1. the employees of Contractor can commence activities as soon as they arrive at their destination and, furthermore, are at all times afforded the opportunity to perform their work;
2. access routes to the assembly site are suitable for transport;
3. the designated site is suitable for storage and assembly;
4. the necessary lockable storage places for materials, tools and other items are available;
5. the necessary supplies and equipment, gas, water and electricity are available in the correct place on time and free of charge;
6. all the necessary safety and other precautionary measures have been taken and are maintained.

8.4 If time is lost as a result of delay because of non-compliance with one or more of the conditions imposed by this Article, a reasonable extension of the delivery period shall be permitted, bearing in mind all circumstances.



## Article 9 Payments

9.1 Unless otherwise agreed in writing and without prejudice to the provisions of sub-clause 6, all payments are to be made within thirty days of the invoice date without any set-off, at the offices Contractor or into a bank account to be indicated by the latter.

9.2 Complaints regarding deliveries made give Principal neither the right to suspend his payment obligations nor to effect set-off.

9.3 Should payments not have been made at the agreed times, Principal will owe compensation for loss of interest, without prejudice to his payment obligation, in any event for the unpaid amount from the due date, amounting to 2% above the promissory discount rate plus any additional tariffs, with a minimum rate of interest based on 12% per year, calculated over the total amount of invoices as yet unpaid, which compensation will be payable without notice of default, without prejudice to the rights granted to Contractor to lodge other claims under the Law or pursuant to these General Conditions.

9.4 Settlement of the price increase as referred to in Article 4 of these conditions, payment or set-off, as appropriate, of additional or less work takes place in accordance with this Article.

9.5 Should a delivery, building and/or assembly, at the request of Principal, vary from the original order with the consent of Contractor, the variation will be charged to Principal in accordance with the price applicable at the time of the delivery, construction and/or assembly.

9.6 Unless the parties have agreed otherwise in writing, the contract price for a building contract relating to the construction of premises shall be invoiced at the following times:

- 15% upon commencement of the foundations;
- 20% upon delivery of the steel structure;
- 20% upon halfway completion of the steel structure;
- 20% upon delivery of the glass;
- 15% upon halfway completion of the installation of the glazing;
- 5% upon completion of glazing and commencement of assembling the mechanism;
- 3% upon first inspection;
- 2% upon second inspection.

Unless the parties have agreed otherwise in writing, if a building contract has been concluded relating to installations, invoicing shall take place at the following times:

- 35% once the materials or a substantial proportion thereof have been supplied;
- 35% when assembly or installation is commenced;
- 20% upon completion of assembly but before commissioning;
- 5% upon first inspection or, if the work is commissioned earlier, upon commissioning;



- 5% upon second inspection or, if the work is commissioned earlier, upon commissioning.

Payment of these invoices is to take place within 8 days of the invoice date.

#### Article 10 Delivery (Completion) and Complaints

10.1 All claims against Contractor based on incomplete or incorrect delivery lapse in case no complaint in this respect is submitted in writing within seven days of receipt of the goods by Contractor.

10.2 In departure from the provisions of sub-clause 1, claims based on externally visible faults lapse if Principal did not register the alleged fault on the waybill or proof of receipt immediately upon receipt of the goods.

10.3 With respect to the dimensions and weights and/or quality and reliability of all materials, Contractor is always permitted the usual variations as are customary among the manufacturers charged with the manufacture of these materials.

10.4 In the case of a building contract, visitation will take place within fourteen days of completion of the work, i.e. an inspection of the work performed. Principal is to cooperate promptly in the inspection.

10.5 Completion is deemed to have taken place if the installation or the work is installed fully complete and ready for operation and after testing at the time of inspection has revealed that the installation or the work meets the requirements under the agreement and that the system or work meets with the approval of Principal at the time of inspection and testing.

10.6 During inspection, at the request Principal a list can be drawn up of any defects. Defects not preventing normal functioning of the deliverable will not be a reason for the withholding of approval by Principal.

10.7 Contractor is obliged to repair these defects as quickly as possible once Principal has requested this in writing from Contractor. Principal is obliged to give the Contractor the opportunity to do this.

10.8 In addition, at the time of inspection, a final list of additional and less work will be drawn up.

10.9 In the event that Principal during inspection finds defects in the work, not being the defects referred to in sub-clause 6, second sentence, Principal is obliged to notify these in writing to Contractor within five days of the inspection. If he fails to do so, the installation or work is considered to have been approved.

10.10 Contractor must be given the opportunity to repair the defects observed within a reasonable period to be mutually established. After repair of the defects found by Principal, a new inspection takes place.





10.11 Upon second inspection, defects other than those which were found at the first inspection will not be a reason for renewed withholding of approval.

10.12 The work is deemed to have been completed immediately after the second inspection by Contractor and approval of this inspection by Principal and/or immediately after commissioning by Principal.

#### Article 11 Additional and Less Work

11.1 If, after entering into the agreement, in consultation with Principal the surface area of the premises to be built proves larger or smaller than originally stipulated or installation or assembly of the deliverable proves larger or smaller in scope then Contractor is entitled to charge Principal the actual price variation incurred as a result, or to deduct from the amount payable the actual costs consequently saved, so that Contractor is not obliged to increase or decrease the original purchase price/contract price by an amount which is proportionate to the enlargement or reduction of the original object.

11.2 All changes to the work, whether these result from special instructions by Principal or from a consultancy agency recruited by Principal and/or from a person duly authorised by Principal and/or from government-prescribed changes to the work or whether these proved necessary to prevent unforeseen difficulties or solve subsequent problems such as reinforcement or strengthening of the foundations of the premises, are to be considered additional work if this results in increased costs and less work within the context of this Article, in so far as reduced costs are incurred.

#### Article 12 Liability

12.1 If Contractor has failed imputably in the compliance with any of its obligations, or has committed a wrongful act towards Principal then, subject to its obligations under article 13 (Guarantee), Contractor is liable towards Principal for damage incurred by the latter in this context only if Principal furnishes proof that this damage is attributable to malicious intent or gross culpability of Contractor or of the latter's supervising employees.

12.2 If liability on the part of Contractor under article 12, sub-clause 1, must be presumed then Contractor's liability is limited to the amount of the purchase/contract price or, as the case may be, the invoice amount relating to the services provided, with the exclusion of Contractor's liability for indirect damage such as but explicitly not limited to: loss of profits and loss of sales.

12.3 Furthermore, Contractor is never liable for damage resulting from the quality of materials used or incorporated by Principal or from making use of the materials and equipment provided by Principal to Contractor.

12.4 Notwithstanding the above, Contractor's total liability will in any event never exceed the amount of € 1,000,000 (in writing: one million euro) per damage event, whereby a sequence of related events shall be one event.



12.5 Principal holds harmless Contractor and the (auxiliary) persons engaged by the latter in the performance of his obligations against all claims of third parties on account of damage incurred by such third parties ensuing from or associated with the performance by Contractor of the agreement, the use by Principal of goods delivered by Contractor, works realized and services provided, unless a situation involves malicious intent or gross culpability on the part of Contractor and/or the (auxiliary) persons engaged by the latter in the performance of the agreement.

## Article 13 Guarantee

### Delivering Goods

13.1 Subject to the restrictions below, Contractor vouches for the reliability of goods delivered by him.

13.2 Unless agreed otherwise in writing, the greenhouses are delivered by Contractor under a two-year guarantee period counting from the date of commissioning or completion whichever comes first, whereby the other deliverables by Contractor come under a one-year guarantee period counting from the date that Principal accepts the goods and/or installations delivered by Contractor for delivery or commissioning if this occurs sooner. If a delivered good fails to satisfy the agreement, Principal is entitled to have the good repaired or replaced or Contractor is entitled to withdraw the delivered good under the obligation of (proportionate) refunding of the price paid by Principal without being obligated to replace, such at Contractor's discretion. In case of glazing breakage, the above applies with the understanding that, in so far as such breakage occurs inside the guarantee period, repair occurs inside the granted guarantee period only after Principal has shown that the glazing breakage is the consequence of a design error on the part of Contractor or of any other failure attributable to Contractor under these conditions.

### Providing Services

13.3 In the event services are provided, Principal will perform the order as per generally accepted industrial standards.

13.4 Contractor guarantees maintenance performed by him as per the provisions in the preceding sub-clause for a three-month period counting from the date that the equipment or installation on which maintenance was done by Contractor is again available for use by Principal.

13.5 Principal informs Contractor in writing of any improper maintenance. The scope of the guarantee granted in preceding sub-clause includes the proper performance of maintenance initially performed improperly or, such at Contractor's discretion, dissolution in whole or in part, without judicial intervention, of the agreement concluded with Principal in so far as said agreement is binding in terms of intended maintenance in combination with proportionate crediting.

13.6 The guarantee defined in preceding sub-clauses is not valid if the delivered good's non-functioning or non-compliance with its specifications is the result of inexpert handling such as e.g., but not limited to: negligence, abuse, improper or non implementation of service instructions, or for off-specs that reasonably are technically unavoidable, imply a quality improvement or do not significantly constrain the



functionality of the good given the purpose for which Principal uses the good in his normal business operations.

13.7 Guarantee granted by Contractor on materials and/or goods procured by Contractor from third parties does not exceed the guarantee granted to Contractor by the relevant supplier or producer.

13.8 Complaints regarding non-externally visible faults are to be lodged as quickly as possible in writing, but no later than ten days from observation of the faults; if this period is exceeded all claims against Contractor regarding these faults lapse.

13.9 After repair or replacement within the context of this guarantee regulation the period of guarantee shall not be extended and the guarantee ends when the original period would have ended.

13.10 No guarantee is given with respect to faults which are entirely or partially due to any government regulation regarding the nature or quality of the materials used.

13.11 Should Principal perform or allow others to perform any repairs or alterations during the guarantee period without the prior consent of Contractor, or should Principal not fulfil his payment obligation then Contractor's guarantee obligation immediately lapses.

13.12 The goods covered by the aforementioned guarantee may be returned by Principal with the prior consent of Contractor only. Goods which are returned but not found to be faulty will be returned to Principal at the latter's expense, whereby the costs incurred by Contractor with respect to the investigations undertaken with reference to this complaint will also be payable by Principal.

13.13 Guarantee granted and responsibility borne by Contractor apply only to its own designs and Contractor is therefore never liable for defects to the premises built as per designs of Principal or third parties nor in case the Principal supplied information proves to have been not entirely accurate or incomplete.

13.14 In case finished products – goods procured by Contractor and delivered without value having been added – are sold, said goods are sold in as built state. Contractor accepts no guarantee and liability for these, unless explicitly agreed otherwise in writing.

#### Article. 14 Force Majeure

Without prejudice to further rights to which it is entitled, Contractor has the right to suspend implementation of the agreement or wholly or partially to cancel the agreement, such at Contractor's discretion, if he is prevented from implementing the agreement or from doing so on time due to force majeure, without Contractor being obliged to make any compensation or being otherwise obliged.



## Article 15 Costs

All costs, both judicial and extra-judicial, which have to be incurred by Contractor to compel Principal to comply with these conditions are for the account of Principal. The extra-judicial collecting charges also include all costs of summons and notification of default and dossier examination. The extra-judicial costs amount to at least 15% of the amount to be claimed in this respect by Contractor from Principal, at a minimum of € 300, which minimum percentage and amount are designed to encourage Principal to comply with his obligations under the agreement

## Article 16 Cancellation

16.1 Should Principal fail to fulfil any obligation vis-à-vis Contractor, fail to do so correctly or on time, arrange debt adjustment with his creditors, request suspension of payment or undergo a similar procedure, be declared bankrupt, shut or transfer his business or die or be placed under legal control or, if Principal is a company, should it be dissolved or seized under foreclosure, it will be considered lawfully in default and Contractor will have the right to suspend implementation of the agreement without notification of default and without legal intervention, as well as the right to wholly or partially cancel the agreement, such at Contractor's discretion, without Contractor being bound to make any compensation or guarantee, but without prejudice to further rights to which Contractor is entitled.

16.2 If Contractor suspends implementation of the agreement and completes the work subsequently then Principal is obliged to compensate Contractor for the damage the latter suffered.

16.3 When Contractor cancels the agreement, Principal or the latter's legal successor is obliged to pay the former the full purchase/contract price, after deducting the cost price of the materials not used and wages not paid out by Contractor as a result of the incomplete or non-implementation of the agreement, all in accordance with the calculation made by Contractor, which will be binding upon Principal subject to evidence to the contrary.

16.4 In the event that Contractor cancels the agreement should Principal, having placed an order with Contractor, have the work performed by another contractor or procure the goods from another Contractor, then the damages Contractor is entitled to in respect of this attributable breach on the part of Principal shall be fixed at 15% of the purchase/contract price, irrespective of the right to demand full compensation, should this prove higher.

16.5 All claims which Contractor has or acquires against Principal become immediately payable in the event of an attributable breach on the part of Principal.

## Article. 17 Applicable Law and Disputes

17.1 All disputes, including those considered such by only one of the parties, which arise with reference to the agreements which are reached with Contractor to which these conditions apply, or with reference to other agreements which are a consequence thereof, will be settled by the competent court of The Hague exclusively, unless



Contractor should approach another court or unless imperative law prescribes otherwise.

17.2 Taking these conditions into consideration, the agreements concluded with Contractor are subject to the laws of the Netherlands with the exception of the *Weens Koopverdrag* (CISG).

These conditions have been filed for Contractor with the Chamber of Commerce Haaglanden in 's-Gravenhage resulting in the cancellation of the conditions previously filed, except with respect to agreements of which said previously filed conditions already form a part and into which the present conditions cannot be incorporated.

