

General Terms and Conditions of Naktuinbouw for the provision of services and the execution of contracts

*adopted by Board resolution No. 2013.03, dated 12 July 2013,
and filed with the Chamber of Commerce in The Hague under No. 41150707.*

General

Article 1.

1. These General Terms and Conditions of the 'Stichting Nederlandse Algemene Tuinbouw' (Netherlands' Inspection Service for Horticulture), hereinafter referred to as 'Naktuinbouw', shall apply to all offers/quotations, order confirmations, contracts to provide services or carry out projects that are undertaken or carried out by Naktuinbouw, or to which Naktuinbouw is a party.
2. Stipulations other than those contained herein shall only apply in the event that the parties have agreed their acceptance in writing, and shall only apply for the contract concerned. In all other respects, the provisions in these General Terms and Conditions shall remain in effect.
3. The General Terms and Conditions of the client shall only be given effect if and insofar as they are not inconsistent with the General Terms and Conditions contained herein. In the event of doubt as to whether any such inconsistency exists, Naktuinbouw's Terms and Conditions shall prevail.
4. A contract, to which these General Terms and Conditions apply, does not come into existence until the moment that Naktuinbouw has confirmed in writing its acceptance of the offer or the instructions received from the client. The parties may also provide proof of the existence of a contract by other means.
5. Once a client has entered into a contract with Naktuinbouw to which these General Terms and Conditions apply, the client is deemed to have tacitly agreed to the applicability of these terms and conditions to a subsequent offer made/ quotation provided by Naktuinbouw or a subsequent contract entered into or instructions given to Naktuinbouw, unless Naktuinbouw expressly deviates from the provisions in these General Terms and Conditions.
6. The 'client' in these General Terms and Conditions is understood to be any person or legal entity who/that issues Naktuinbouw with instructions to provide services at their expense. 'Instructions' are understood to be services provided, and work, projects or other activities carried out, on instructions received from the client in return for payment of an (hourly) charge or other remuneration.

Liability

Article 2.

1. Naktuinbouw shall carry out all instructions to the best of its knowledge and ability. Naktuinbouw shall never be liable for indirect expenses or indirect damages. Naktuinbouw's responsibility for all direct costs and direct damages that are in any way related to the contract or caused by an error or failure on the part of Naktuinbouw, shall at all times be limited to the net amount of the invoice or expense claim related to the contract.
2. Nor is Naktuinbouw liable for damages that are the result of shortcomings on the part of third parties that have been brought in by Naktuinbouw. Any possible liability shall always be limited to the net amount of the invoice or expense claim in respect of the clients assignment.
3. Not only Naktuinbouw, but all persons engaged by Naktuinbouw in carrying out any instructions from the client, shall be able to rely on these General Terms and Conditions.
4. All assignments, including supplementary and follow-up instructions, shall only be accepted and carried out by or on behalf of Naktuinbouw. Naktuinbouw is entitled to have the assignments carried out, either in part or as a whole, by third parties.

5. Naktuinbouw shall not be liable to the client for the loss or damage to information, documentation and/or materials. The client is at all times required to keep a sample of the material to be examined or a copy of the details provided, so that Naktuinbouw shall have available a fresh sample or a copy, if for any reason whatsoever the material and/or the details have perished, are lost, or are no longer usable.
6. The stipulations in these terms and conditions have also been prepared for the benefit of the administrators of Naktuinbouw and for the all persons who work or have worked at Naktuinbouw.
7. The client indemnifies Naktuinbouw against all claims by third parties, including the associated costs for legal advice, which are in any way connected with the assignment or arise from the work carried out for the client, with the exception of intentional acts or gross negligence on the part of Naktuinbouw.
8. The client indemnifies Naktuinbouw against all claims by third parties in respect of infringements of intellectual property rights held by these third parties in connection with the goods/information provided by the client.
9. The client shall, in a timely manner, provide Naktuinbouw with all information and details, and shall to the best of its knowledge and ability cooperate, so that Naktuinbouw will be able to carry out and complete the assignment in a satisfactory manner. In the event that the information/goods needed for the assignment have not been provided to Naktuinbouw in a timely manner, Naktuinbouw shall have the right to suspend performance of the assignment and/or to charge the client at the usual rates for the additional costs resulting from the delay.
10. In the event that the client has set aside the delivery of certain materials and/or the completion of certain parts of the work for itself, the client shall be liable for any failure to deliver these materials in a timely manner or for any failure to carry out the work in a proper manner.
11. In the event that the client consists of more than one person or legal entity, each of the persons or legal entities involved shall be jointly and severally liable for compliance with the obligations arising from the contract.
12. Naktuinbouw shall not be liable for any damages whatsoever, because Naktuinbouw relied on inaccurate and/or incomplete information provided by the client, unless the accuracy or incompleteness should have been apparent to Naktuinbouw.
13. In the event that it is agreed that the assignment is to be carried out in phases, Naktuinbouw shall be able to put on hold completion of the components belonging to the next phase, until the client has provided its written approval of the results of the preceding phase.
14. In the event that the start or the progress of the work is delayed by factors for which the client is responsible, the resulting damages and costs for Naktuinbouw are required to be reimbursed by the client.

Confidentiality

Article 3.

1. Both parties undertake to refrain from disclosing all confidential information they have received in the context of this contract either from each other or from alternative sources. Information is deemed to be confidential when this is stated by one party or when it is self-evident from the nature of the information.
2. If, pursuant to a regulatory provision or a court order, Naktuinbouw is required to disclose confidential information to third parties specified by law or by a competent court, and the client cannot claim a legal right or rely on a decision by the court for refusing to provide the information, Naktuinbouw shall not be liable for the payment of damages or compensation, and the client shall not be entitled to cancel the contract on the grounds of any damages that may arise as a result of such disclosure.

Return of goods and/or documents

Article 4.

1. After notice of termination of the relationship/contract between Naktuinbouw and the client, all documents provided to Naktuinbouw by the client may be picked up from Naktuinbouw by the client or, at the expense and risk of the client, may be sent to them by mail.

2. In the event that the client has not picked up or requested the return by mail up this documentation within six months of the date of the aforementioned notice, Naktuinbouw shall have the right to destroy the documentation.
3. In principle, plant matter or other materials provided to Naktuinbouw for examination, are not returned after the end of the examination or the assignment, but are destroyed instead, unless the client when entering into the contract for the assignment or prior to the examination has specified that the plant matter and/or materials are to be returned after completion of the examination or termination of the assignment.
4. In the event that the client does not meet its obligations under the relevant contract for an assignment, Naktuinbouw shall be authorised to defer the return of the materials/documentation provided by the client (right of retention) until the client has paid all charges due in respect of all assignments/contracts.

Tests, evaluations and plantings

Article 5.

1. Naktuinbouw shall, within the context of the requests for testing/assessment of materials, determine the time and the manner in which the test(s)/assessment(s) will be carried out. Agreed implementation data or delivery details shall never be regarded as absolute, unless this has been expressly agreed to by the parties. In the event that a piece of data or an agreed deadline is exceeded, Naktuinbouw shall be entitled to a reasonable period of grace in which to achieve compliance.
2. A summary of the result(s) of testing and assessment work that Naktuinbouw has provided in the context of the tests/assessments referred to in the previous paragraph, shall only apply to the sample(s) examined and therefore not to the batch material involved, unless Naktuinbouw indicates otherwise.
3. The client fully indemnifies Naktuinbouw against all claims by holders of intellectual property rights (including but not limited to patents and plant breeder's rights), holders of licences and third parties, including claims for the payment of damages for activities related to the testing/assessment of samples carried out or to be carried out by Naktuinbouw on instruction and for the benefit of the client, in the broadest sense of the word.
4. In the case of possible contamination with a quarantined organism, and upon request from authorised officers of the Dutch Food and Consumer Safety Authority (NVWA), Naktuinbouw has an obligation under the Plant Diseases Act to provide all information they reasonably require in the performance of their duties.
5. Pathogens that have been isolated from plant, seed or other materials to be examined by Naktuinbouw itself, shall become the property of Naktuinbouw for internal use or applications of public interest.
6. Details, including DNA profiles, obtained through methods of analysis, including molecular marker analysis of plant material, seed, micro-organisms or other materials to be examined, will be stored by Naktuinbouw, in a database. Naktuinbouw shall be able to use these profiles for applications of public interest.
7. Notwithstanding the stipulations contained in these General Terms and Conditions, Naktuinbouw reserves the rights and powers to which Naktuinbouw is entitled under intellectual property law. Naktuinbouw reserves the right to use the increased knowledge gained through the provision of services or by carrying out assignments for other purposes, insofar as it does not involve passing on confidential information to third parties in the process. Any variations from this provision shall be included in the contract.

Training Courses

Article 6.

1. Notwithstanding the provisions of Article 1, Paragraph 4, registration for a Naktuinbouw training course or workshop shall be with the use of a registration form. This registration form can be found on the Naktuinbouw website and can either be completed and lodged on-line, or be can be filled in and returned by mail. Registrations are not binding for Naktuinbouw until Naktuinbouw has confirmed these registrations by e-mail.
2. For 'in-house' training courses or workshops, the client will receive a quotation in duplicate from Naktuinbouw. A confirmation will be prepared as soon as Naktuinbouw receives back a signed copy of the quotation. The contract is not binding for Naktuinbouw until Naktuinbouw has confirmed the contract by e-mail.

3. In the event of the cancellation of a registration for a training course or workshop, Naktuinbouw will charge the following: 5% of the cost of the training course/workshop, or 50% of the cost of the course in the event of a cancellation within the month prior to the registration deadline for the particular training course/workshop. After expiration of the deadline for registrations, the full cost of the training course is payable.
4. For 'in-house' training courses or workshops, the confirmation sent after receipt of the signed copy of the quotation shall be binding. In the event of cancellation, the full cost of the training course shall be payable.
5. In the case of insufficient registrations for a course or workshop, Naktuinbouw shall have the right to cancel a training course or workshop, and shall be entitled not to accept a registration. Should this occur, Naktuinbouw shall not be liable for the payment of any damages or costs.
6. In the event that a participant is unable to attend, he or she may allow someone else to attend in his or her stead. In such a case, Naktuinbouw will not charge any (additional) costs.
7. Naktuinbouw has the right to exclude from further attendance of a training course or workshop any participants who because of their conduct or in any other way hinder the normal progress of the training course or workshop. Exclusion will not affect the requirement to pay for the cost of the training course.
8. The copyright and/or other intellectual property rights in respect of the training materials produced by Naktuinbouw, or any other work resulting from or related to an assignment, training course or workshop, are vested in Naktuinbouw, unless the parties have expressly agreed otherwise in writing.
9. The client and the course participants are only permitted to use all of the training materials and/or any other work prepared by Naktuinbouw, for their own needs. Without prior and express written approval from Naktuinbouw, it is not permitted to:
 - a. reproduce and/or publish training materials or any other work, either as a whole or in part, by way of print, photocopy, microfilm, video disk, magnetic disk or tape, storage in an database reference system accessible by third parties, or in any other way whatsoever electronically, mechanically or [Translator's note: the end of this sentence appears to incomplete]
 - b. pass on, sell or in any other way make available training materials or any other work, as a whole or in part, to third parties.

Payment

Article 7.

1. Invoices and advances billed, must be paid at the offices of Naktuinbouw or by transfer to a bank or Giro account specified by Naktuinbouw, within 30 days of the date of invoice, without discount or off-set against other debt, even in the case of bankruptcy.
2. In the event that the client has not paid within the period referred to in Paragraph 1 or a period otherwise agreed, the client shall be ipso jure in default and Naktuinbouw shall have the right without further warning or notice of default, to charge the client interest at 1% per month (or part thereof) from the due date, up to the date of full settlement, without prejudice to any other rights to which Naktuinbouw may be entitled. In the event of a default, Naktuinbouw shall be entitled to terminate or suspend (further) progress of the assignment until the amount owing is paid in full, including interest and costs.
3. All costs incurred as a consequence of a legal or extra-legal collection procedure in respect of an amount payable by the client shall be paid by the client.
4. In the event that the collection process is handled by a third party, the extra-legal collection costs shall be fixed in advance at 15% of the invoiced amount, with a minimum of € 250.00 (excluding VAT).
5. The total amount that Naktuinbouw is owed by the client is payable on demand if and insofar as the client's payment is overdue and in default, also in the case of bankruptcy, WSNP [Debt Management (Natural Persons) Act], an application for a moratorium or suspension of payments, or a winding up of the company.
6. Each invoice from Naktuinbouw contains a brief description of the services provided or the work to be carried out. The Naktuinbouw accounting records shall serve as full proof that the amount charged is due and payable. Unless other-

wise agreed in writing, all invoices and advances billed will exclude sales tax.

Proviso

Article 8.

In the event that the client does not comply with the terms of the contract or the contract for the provision of services, or does not do so in a timely manner, Naktuinbouw shall be entitled suspend progress on the assignment or cancel the assignment, either as a whole or in part.

Applicable law and jurisdiction

Article 9.

1. All offers, order confirmations, assignments or other contracts or projects to which Naktuinbouw is a party or is otherwise involved, or the application and interpretation of these terms and conditions, shall be governed by the laws of the Netherlands.
2. Only the version of these General Terms and Conditions written in the Dutch language shall be legally valid. In the event that a translation varies from the original Dutch text, the Dutch text shall prevail.
3. All proceedings in respect of disputes arising from the contracts referred to in Paragraph 1 of this article must, in the first instance, be instituted before, and adjudicated by, the Courts in The Hague [in the Netherlands].