

## **AVAG TERMS AND CONDITIONS OF SALE 14 JULY 2020**

General Terms and Conditions of Sale issued by the association of the Dutch greenhouse construction and technology industry, referred to as AVAG Greenhouse Technology, filed at the Registry of the The Hague District Court on 14 July 2020. Issued by AVAG Greenhouse Technology. © AVAG

Article 1	General provisions
Article 2	Offers from and agreements with Contractor
Article 3	Provisions relating to building contracts
Article 4	Prices
Article 5	Delivery
Article 6	Retention of title
Article 7	Risk
Article 8	Assembly
Article 9	Payments
Article 10	Delivery, completion and complaints
Article 11	Additional and less work
Article 12	Liability
Article 13	Warranty
Article 14	Force majeure
Article 15	Costs
Article 16	Cancellation
Article 17	Applicable law and disputes
Article 18	Translations

### **Article 1 General provisions**

1.1 Unless otherwise agreed in writing, these terms and conditions apply to all offers and agreements between the AVAG member (hereinafter referred to as 'the Contractor'), as the party of the first part, and any third party (hereinafter referred to as 'the Principal') as the party of the second part, relating to the delivery of goods and/or the performance of services (including contracts for professional services and contracts for works). These terms and conditions also form part of any subsequent agreements between the Principal and the Contractor after they have become part of any agreement between the Principal and the Contractor, even if, upon the conclusion of those subsequent agreements, no reference is made to the applicability of these terms and conditions, unless the parties have expressly agreed otherwise in writing.

1.2 Provisions departing from these terms and conditions apply only if agreed upon in a written contract, signed by representatives of the parties duly authorised to do so according to the Commercial Register. If, in addition to the applicability of these terms and conditions, the applicability of the Uniform Administrative Conditions [*Uniforme Administratieve Voorwaarden*] (UAC) has been agreed upon, then, in the event of any conflict between the various conditions, the AVAG Terms and Conditions of Sale prevail.

### **Article 2 Offers from and agreements with the Contractor**

2.1 Every offer, including those contained in brochures and price lists issued by the Contractor, is without obligation and becomes binding on the Contractor only when the agreement/order has been confirmed in writing by a representative of the Contractor duly authorised to do so according to the Commercial Register.

2.2 Illustrations, drawings, weights, dimensions and colours forming part of an offer made by the Contractor are not binding on the Contractor, unless their accuracy has been warranted by the Contractor in writing.

2.3 To the extent these are available, every offer is based on the drawings and data provided by the Principal.

2.4 The prices stated in an offer only relate to those activities and/or deliveries that are explicitly defined in the offer.

2.5 Until the Contractor has performed an agreement orally concluded or has confirmed this agreement in writing, the Contractor has the right to terminate oral agreements extrajudicially without giving any reasons if any information obtained by the Contractor does not show adequate creditworthiness of the Principal. The Contractor is at all times entitled to request the Principal to provide sufficient security and the Contractor is also entitled to suspend the performance of the agreement until this request has been met.

2.6 If a contract is made subject to finance and/or permits to be obtained and the relevant funds and/or permits cannot reasonably be obtained within a period to be determined by the Contractor, the Contractor is entitled to compensation for loss of profit if it becomes clear that the Contractor has awarded the contract or a substantial portion thereof to a third party within 18 months after the period fixed for obtaining the funds. This loss of profit is deemed to be at least 10% of the contract value of the agreement that was made subject to finance and/or permits, without prejudice to the Contractor's right to claim compensation for its actual loss of profit.

2.7 The Principal is also bound by a contract if the contract is awarded to the Contractor by an auxiliary person engaged by the Principal, such as a consultancy firm or an architect.

2.8 All periods stated in an offer or agreement are target dates unless otherwise agreed in writing.

2.9 All industrial and other intellectual property rights with regard to documents made available by the Contractor to the Principal (including but not limited to designs, explanatory notes, technical descriptions, static calculations and construction drawings) and models remain the property of the Contractor. These documents may not be made available by the Principal to third parties for inspection without the Contractor's prior written permission.

2.10 Unless otherwise agreed in writing, the Contractor continues to be the owner of all industrial and other intellectual property rights created by the Contractor in the course of the performance of the agreement concluded with the Principal. Following delivery by the Contractor, the Principal will only acquire the non-exclusive right to use the documents and models produced by the Contractor in connection with the performance of this Agreement in the course of its regular business operations.

2.11 With the granting of the contract, the Principal agrees to provide the Contractor with the data generated with the goods and/or services supplied that can contribute to the optimisation of the goods or services supplied by the Contractor.

2.12 With the granting of the contract, the Principal also agrees that the Contractor may enrich this data with other data to improve its products and services.

### **Article 3. Provisions with regard to building contracts**

3.1 Where a building contract is concluded under the suspensive or resolutive condition that the necessary funds and/or the necessary permits can be obtained and if the Principal provides proof of its inability to obtain the necessary funds and/or permits within 18 months of the date on which the agreement is concluded, the parties will make every reasonable effort to perform the contract, adjusted to the available funds and/or adjusted to the limitations of the permit to be granted.

3.2 The agreement contains provisions concerning:

1. the structure or structures to be built;
2. the construction site;
3. the location and method of delivery of the construction materials;
4. at whose expense and risk the transport takes place;
5. the period when building takes place;
6. the contract price excluding VAT and the method of payment.

3.3 In the performance of the agreement, deviations the Contractor reasonably considers necessary, useful or desirable are permitted insofar as they do not fundamentally affect the functionality of the structure(s) to be built.

3.4 The Principal undertakes to ensure that the work can be carried out at the agreed times. The Principal further undertakes to ensure that the materials supplied by the Contractor can be stored in such a way and in such places that those materials cannot reasonably be damaged or stolen.

3.5 The Principal warrants that the structures and working methods prescribed by it are sound, including the effects of soil conditions, and also warrants that the instructions and the tools and building materials given by or behalf of the Principal are sound.

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

### **Article 4 Prices**

4.1 All prices are based on the price level at the time the agreement is concluded and apply 'ex works', excluding VAT, costs of transport and delivery, packaging, insurance, taxes and other levies, unless agreed otherwise in writing. The Contractor is entitled to change or adjust prices without prior notice after the expiry of a period of 14 days after the conclusion of the agreement, should cost-determining factors change or be changed. The Contractor will notify the Principal of this price increase, including a specification thereof, as soon as possible. Payments of any additional work under this article are made in accordance with the provisions of Article 9 of these terms and

conditions. If the aforementioned price increase totals more than 20% of the agreed price excluding VAT, the Principal is entitled to terminate the agreement (prematurely) by giving notice of termination, provided that it notifies the Contractor thereof in writing immediately after becoming aware of it. In the event of such termination, the Principal is not entitled to any compensation.

4.2 Unless the parties have expressly agreed otherwise in writing, the agreed prices do not include the following: costs of earthwork, piling, cutting, breaking, foundation work, masonry, carpentry, plastering, painting, wallpapering, repairs or other construction work, the costs of connecting gas, water, electricity or other structural facilities and the costs of disposing of materials, building materials, waste and the like, as well as travel and accommodation costs.

#### **Article 5 Delivery**

5.1 Delivery periods agreed in writing are counted from the date on which the Contractor has confirmed the agreement in writing, but not before the Contractor has received from the Principal the data, documents and items required to perform the contract and has been able to examine them.

5.2 The delivery period/completion date is subject to the foreseeable circumstances prevailing at the time of the conclusion of the agreement remaining unchanged during the performance of the work and the requisite materials from third parties being delivered to the Contractor in a timely fashion.

5.3 Delays due to changed circumstances and/or late delivery of materials by third parties mean that the delivery times will be extended by the period of the delay.

5.4 The Contractor is obliged to observe the delivery period as closely as possible, but, unless it has been agreed in writing that a delivery period is strict and cannot be extended and without prejudice to the provisions of Article 12, is not liable for the consequences of any failure to meet the delivery deadline. If the delivery deadline is exceeded, this does not entitle the Principal to claim damages or penalties of any kind, to refuse to deliver the goods and/or the object, or to cancel the agreement in whole or in part. After the expiry of the delivery period, the Principal does have the right, however, to send a demand letter to the Contractor demanding that it should effect delivery within 30 business days. If this period is exceeded, the Principal has the right to cancel the agreement. In the event of any extension of the period under any of the provisions of these conditions, the delivery period is deemed to have expired after the expiry of the extended delivery period.

5.5 If the Principal owes the Contractor any payment, the Contractor is at all times entitled to suspend the performance of the agreement. To the extent that any delivery period has been agreed, it commences after the receipt of payment.

5.6 In the case of a purchase agreement, the Contractor may, if a part of the order is finished, decide at its own discretion to deliver this part or to wait until the entire order is finished. If it has not been expressly agreed that delivery will be made from stock, the Contractor has the right to effect delivery from the stock of third parties.

5.7 Unless agreed otherwise, delivery will be made 'ex works'.

5.8 Without prejudice to the force majeure provisions of Article 14, it is stipulated that in the event of a building contract, the delivery deadline will be extended by such number of workable days as equals the number of days that the fitting/building teams of the Contractor were unable to work as a result of unfavourable weather conditions (such as rain, hail, whirlwind, frost, snow, freezing rain, mist or storm) or any unworkable soil conditions on the building site in the period between entering into the contract and the delivery date and the Contractor's construction schedule was disrupted as a result thereof.

#### **Article 6 Retention of title**

6.1 The Contractor retains title to all goods delivered to the Principal until all debts owed by the Principal to the Contractor have been settled.

6.2 As long as title to the goods has not passed to the Principal, the Principal may not pledge the goods or grant a third party any right thereto, subject to the other provisions of this article.

6.3 The Principal shall separate and store the goods delivered under retention of title with the necessary care and as the recognisable property of the Contractor.

6.4 The Principal shall insure the goods for the duration of the retention of title against fire, explosion and water damage as well as theft and to make the relevant insurance policies available for inspection by the Contractor on demand. At the Contractor's request, the Principal shall pledge to the Contractor all claims of the Principal against the insurers of the goods under the aforementioned insurance policies in the manner set out in Section 3:239 of the Dutch Civil Code, as additional security for the payment of the debts owed by the Principal to the Contractor.

6.5 If the Principal fails to meet its obligations towards the Contractor or if the Contractor has good reason to fear that the Principal will fail to meet those obligations, the Contractor is entitled to repossess the goods delivered subject to retention of title.

6.6 After the goods have been repossessed, the Principal will be credited for their market value, up to a maximum of the original purchase price, less costs incurred by the Contractor as a result of repossessing the goods.

6.7 The Principal is permitted to sell and transfer the goods delivered subject to retention of title to third parties in the course of its regular business operations. In the event of sale on credit, the Principal is obliged to stipulate a retention of title clause from its customers on the basis of the provisions of this article.

6.8 If any goods have not been collected after the expiry of the applicable delivery period, they will remain at the Contractor's disposal and will be stored at the expense and risk of the Principal by or on behalf of the Contractor, without prejudice to the Contractor's right to invoke Section 6:90 of the Dutch Civil Code.

6.9 The Contractor undertakes not to assign or pledge to third parties claims that it obtains against its customers without the Contractor's prior written consent. The Principal further undertakes to pledge the aforementioned claims to the Contractor, as soon as the Contractor expresses the wish to do so, in the manner indicated in Section 3:239 of the Dutch Civil Code, as additional security for payment of its claims on any account whatsoever against the Principal.

#### **Article 7 Risk**

7.1 Upon arrival of goods and/or materials delivered by or on behalf of the Contractor at the destination, the Principal must check the condition of the goods. If it then turns out that damage has been caused to the goods and/or materials, it must take all measures to receive compensation from third parties insofar as the Principal can hold these third parties liable for this.

7.2 In the case of a purchase agreement, the risk of goods to be delivered by the Contractor lies with the Principal from the time that the goods are offered for transport 'ex works'. If the Contractor has concluded a transport agreement for the Principal with regard to the goods to be delivered by the Contractor, it will be deemed to have done so in the capacity of forwarding agent as referred to in Section 8:60 of the Dutch Civil Code. If the Contractor has carried out the transport itself, the risk of the goods to be delivered by the Contractor lies with the Principal from the time at which the goods have been delivered to it.

7.3 In the case of a building contract, the materials will be at the risk of the Principal as soon as they have been delivered at the designated unloading point on or near the land to be built upon.

7.4 The Principal is liable for all damage caused to the materials after they have been delivered (such as damage, theft or embezzlement). The Principal must take out adequate insurance against the aforementioned risk.

7.5 During the building/assembly, the risk for what has been built or assembled lies with the Principal. The Principal shall take out the required insurance for the purposes of what has been built or assembled immediately at the start of the building/assembly, unless otherwise agreed in writing and will, at the Contractor's first request, allow inspection of the policy conditions.

#### **Article 8 Assembly**

8.1 All fittings and/or provisions necessary for the erection of the items to be assembled and/or the correct operation and/or reliability of the items in their assembled state are at the expense and risk of the Principal and fall outside the responsibility of the Contractor except if the implementation of the said fittings and/or provisions is carried out by or on behalf of the Contractor according to data and/or drawings provided by or on behalf of the Contractor.

8.2 In view of the latter exception, the Principal is fully responsible to the Contractor for the correct and timely implementation and/or reliability of the aforementioned fittings and/or provisions.

8.3 The Principal shall ensure, at its own expense and risk, that:-

1. the Contractor's employees, as soon as they have arrived at their destination, can commence their work and are furthermore given the opportunity to perform their work at all times;
2. the access roads to the relevant site are suitable for transport;
3. the designated construction site is suitable for storage and assembly;
4. the necessary lockable storage areas for materials, tools and other goods are present;
5. the necessary auxiliary and operating materials, gas, water and electricity are available in the correct place in a timely manner and free of charge;
6. all necessary safety and other precautions 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 paragraph 9.6, all payments must be made within thirty days of the invoice date without any setoff at the offices of the Contractor or into a bank account to be indicated by the Contractor.

9.2 Complaints about deliveries made will never entitle the Principal to the suspension of its payment obligations, nor to set-off.

9.3 If payments have not been made at the agreed times, the Principal, without prejudice to its payment obligation, will in any case owe compensation for loss of interest for the unpaid amount as from the due date, amounting to 2% above the promissory discount rate plus any surcharge rates with a minimum interest rate based on 12% per year, calculated on the total amount of the invoices not yet paid, which compensation will be owed without notice of default being required, and without prejudice to the rights to institute other claims under the law or pursuant to these terms and conditions.

9.4 Settlement of the price increase as referred to in Article 4 of these terms and conditions or payment or settlement of additional or less work takes place in accordance with this article.

9.5 If any delivery, construction and/or assembly at the request of Principal varies from the original order and/or contract with the approval of the Contractor the deviation will be charged to the Principal in accordance with the price applicable at the time of delivery, construction and/or assembly.

9.6 Unless the parties have agreed otherwise in writing, in the case of a building contract relating to the construction of a building, the contract price will 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 glazing;
- 5% upon completion of glazing and upon the start of assembling the mechanism;
- 3% upon first inspection; and
- 2% on second inspection.

Unless the parties have agreed otherwise in writing, in the case of a building contract relating to installations, invoices will be made on the following dates:

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

Payment of invoices must be made within 8 days of the invoice date.

### **Article 10 Delivery, completion and complaints**

10.1 All claims against the Contractor based on incomplete or incorrect delivery will lapse if a complaint in this respect has not been received by the Contractor in writing within seven days of receipt of the goods.

10.2 Without prejudice to the provisions of paragraph 1, claims based on externally visible defects will also lapse if the Principal does not, immediately upon receipt of the goods, has the alleged defect noted on the consignment note or delivery receipt.

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

10.4 In the case of a building contract, the inspection, i.e. an inspection of the work carried out, will take place within 14 days after the work has been completed. The Principal must cooperate promptly with the inspection.

10.5 Delivery will be deemed to have taken place if the installation or the work is installed or carried out completely and is ready for operation and if, after a check at the time of inspection it has become clear that the installation or the work complies with the agreement and has been approved by the Principal at the time of inspection and testing.

10.6 During inspection, a list of any defects may be drawn up at the request of the Principal. Defects that do not prevent or substantially prevent impede the normal operation of the delivered goods are no reason for withholding approval by the Principal.

10.7 The Contractor is obliged to repair these defects as soon as possible after the Principal has requested the Contractor to do so in writing. The Principal is obliged to give the Contractor the opportunity to do so.

10.8 A final list of additional work and less work may also be drawn up upon inspection.

10.9 In the event that the Principal finds defects in the work upon inspection, not being the defects referred to in the second sentence of paragraph 10.6, the Principal is obliged to inform the Contractor in writing within five days after the inspection. If he fails to do so, the installation and/or the work is deemed to have been approved.

10.10 The Contractor must be given the opportunity to repair the defects discovered within a reasonable period to be determined by consultation. A new inspection will take place after the defects discovered by the Principal have been repaired.

10.11 In the event of reinspection, defects other than those found at the time of the first inspection will not constitute grounds for renewed withholding of approval.

10.12 The work will be deemed to have been completed immediately after the second inspection of the work by the Contractor and the Principal has approved the second inspection and/or the commissioning by the Principal.

#### **Article 11 Additional work and less work**

11.1 If, after entering into the agreement in consultation with the Principal, the surface area of the structure to be built becomes larger or smaller than originally determined, or the assembly or installation of the delivered property is larger or smaller in size, the Contractor will be entitled to charge the Principal the actual additional price resulting from this or to deduct the actual costs saved as a result from the amount owed, so that the Contractor will not be obliged to increase or reduce the original purchase price/contract price by an amount that is in proportion to the increase or reduction of the original structure.

11.2 All changes to the work, whether by special instructions from the Principal or a consultancy engaged by the Principal and/or by a third party authorised by the Principal and/or changes to the work prescribed by the government, or facilities that prove necessary to prevent unforeseen difficulties or to solve problems that have arisen, such as the reinforcement or strengthening of the foundations of the buildings, should, if increased costs arise as a result, be considered additional work and, insofar as lower costs arise as a result thereof, less work within the meaning of this article.

#### **Article 12 Liability**

12.1 If the Contractor has failed to fulfil any of its contractual obligations towards the Principal or has committed an unlawful act towards the Principal, the Contractor's liability will be limited to the invoice amount in respect of the services or work performed or the goods delivered during the performance or delivery as a result of which the loss or damage occurred, subject to a maximum of €250,000, and on the understanding that the Contractor's liability for indirect loss (loss of profit, loss of turnover and missed opportunities) is excluded and, furthermore, on the understanding that the Contractor is never liable for loss or damage suffered by the Principal that is the result of insufficient quality of the materials and tools made available by the Principal to the Contractor.

12.2 The limitations referred to in Article 12.1 do not apply where the loss or damage referred to in that article is the result of wilful recklessness or intent on the part of the Contractor or its supervising subordinates.

12.3 The Principal agrees to indemnify the Contractor and (through a third-party clause) its employees and the auxiliary persons engaged by the Contractor in the performance of its obligations against all third-party claims arising from any loss or damage suffered by these third parties or relating to the performance by the Contractor of the agreement entered into with the Principal, the use by the Principal of the goods delivered by the Contractor, work carried out and/or services provided by the Contractor, unless the loss or damage that led to the claims in question was caused by the wilful recklessness or intent of the Contractor or its supervising subordinates.

#### **Article 13 Warranty**

##### **Delivery of goods**

13.1 Subject to the limitations set out below, the Contractor warrants the reliability of the goods delivered by it.

13.2 Unless otherwise agreed in writing, a warranty period of 18 months applies to the greenhouses supplied by the Contractor, counting from the date of first use, or the date of completion if this has taken place earlier, while for the other goods to be supplied by the Contractor a warranty period of one year applies, counting from the date on which the Principal has received the goods and/or installations supplied by the Contractor or, if this has taken place earlier, has taken them into use. If any delivered goods do not comply with the agreement, the Principal is entitled to the repair or replacement of the goods delivered or the Contractor is entitled to take back the goods delivered subject to the obligation to refund (on a pro rata basis) the price paid by the Principal without being obliged to replace it, at the Contractor's discretion. In the event of broken glass sheets, however, the above applies on the

understanding that, insofar as it occurs within the warranty period, repair under the warranty is not carried out until after the Principal has demonstrated that the broken glass was the result of a construction fault on the part of the Contractor or any other defect that has to be at the Contractor's expense.

#### **Provision of services**

13.3 If services are provided, the Contractor will carry out the contract in accordance with the generally accepted industrial standards.

13.4 The Contractor warrants the maintenance performed by it in accordance with the provisions of the preceding paragraph for a period of three months, counting from the date on which the equipment or installation on which maintenance has been performed by the Contractor is made available again to the Principal.

13.5 The Principal shall inform the Contractor in writing of any improper maintenance. The warranty provided in the preceding paragraph includes the correct performance of faulty maintenance or, at the discretion of the Contractor, the complete or partial cancellation, without judicial intervention, of the agreement concluded with the Principal, to the extent that it is required to perform the maintenance in question in combination with proportionate crediting.

13.6 The warranty defined in the preceding paragraphs does not apply if the non-conformity of the delivered goods with or their failure to function in accordance with their specifications is the result of injudicious handling, including but not limited to negligence, misuse, incorrect or non-executed maintenance instructions, or if it concerns deviations that cannot technically reasonably be avoided, imply a quality improvement or do not significantly limit the functionality of the goods given the purpose for which the uses them in the normal course of its business.

13.7 The Contractor will not provide greater warranty on materials and/or goods purchased from third parties by the Contractor than is granted to the Contractor by the supplier or manufacturer concerned.

13.8 Complaints with regard to non-externally visible defects must be made in writing as soon as possible but no later than 10 days after the defects have been discovered, in which case any claim against the Contractor with regard to those defects will lapse.

13.9 After repair or replacement under this warranty scheme, the warranty period will not be extended and the warranty ends when the original period would have ended.

13.10 No warranty is given with regard to defects that are wholly or partly the result of any government regulation concerning the nature or quality of the materials used.

13.11 If, during the warranty period, the Principal carries out any repairs or changes without the Contractor's prior approval, or has them carried out by others, or fails to meet its payment obligation, the Contractor's warranty obligation will immediately lapse. In that case, the Contractor can therefore, inter alia, never be obliged to reimburse repair bills from third parties.

13.12 The goods for which the aforementioned warranty is invoked may be returned by the Principle only with the Contractor's prior approval. Goods that are returned but not found to be defective will be returned to the Principal at the Principal's expense, and the costs incurred by the Contractor in connection with the investigations initiated as a result of this complaint will also become payable.

13.13 The Contractor provides warranty and bears responsibility only for its own designs, so that the Contractor is never liable for defects in the buildings built according to designs by the Principal or third parties, nor if it should turn out that the information provided by the Principal has not been entirely correct or incomplete.

13.14 In the event of the sale of finished products – goods purchased by the Contractor and delivered without any processing – the goods will be sold in the condition in which they are. The Contractor does not accept any warranty or liability in this respect, unless expressly agreed otherwise in writing.

#### **Article 14 Force majeure**

Without prejudice to the other rights to which it is entitled, if it is prevented by force majeure from performing the agreement or from performing the agreement in a timely fashion, the Contractor is entitled to suspend the performance of the agreement or to cancel the agreement in whole or in part, at the discretion of the Contractor, without the Contractor being obliged to pay any compensation or otherwise.

#### **Article 15 Costs**

All costs, both judicial and extrajudicial, that have to be incurred by the Contractor in order to receive payment for any claim that the Contractor has on the Principal must be borne by the Principal. The extrajudicial collection costs include, inter alia, all costs of demand letters and notices of default and dossier examination. The extrajudicial costs amount to at least 15% of the amount to be claimed by the Contractor from the Principal in this respect, with a

minimum of € 300, which minimum percentage and amount are intended to encourage the Principal to fulfil its obligations under the agreement.

#### **Article 16 Cancellation**

16.1 If the Principal fails to fulfil any obligation towards the Contractor, fails to fulfil it properly or in good time, enters into a debt settlement with its creditors, applies for a moratorium or undergoes a similar procedure, is declared bankrupt, closes or transfers its business or dies or is placed under curatorship or, if it is a company, is dissolved, as well as if any post-judgment attachment of assets is levied on it, the Principal is deemed to be in default by operation of law and has the right, without notice of default or judicial intervention being required, to suspend the performance of the agreement or to cancel the agreement in whole or in part for breach or to have it terminated by notice, at the Contractor's discretion, without the Contractor being obliged to pay any compensation or provide any warranty, but without prejudice to the Contractor's further rights.

16.2 If the Contractor suspends the performance of the agreement and executes it at a later stage, the Principal will be obliged to compensate the Contractor for any damage or loss suffered.

16.3 If the Contractor cancels the agreement, the Principal or its legal successor is obliged to pay it the full purchase price / contract price less the cost price of the materials not used and wages not spent by the Contractor due to the non-performance or incomplete performance of the agreement, according to the Contractor's calculation, which will be binding on the Principal, subject to proof to the contrary.

16.4 If the Contractor cancels the agreement for breach, the following applies: if the Principal, after awarding a contract to the Contractor, has the work carried out by another contractor or purchases any goods from another seller, the compensation to which the Contractor is entitled in respect of this attributable failure in the performance committed by the Principal will be fixed at 15% of the purchase price / contract price, without prejudice to the Contractor's right to claim full compensation, if this is higher.

16.5 Any claim which the Contractor has or will have against the Principal will become immediately due and payable in the event of attributable failure on the part of the Principal.

#### **Article 17 Applicable law and disputes**

17.1 All disputes, including those regarded as such by only one of the parties, arising from the agreements concluded with the Contractor to which these terms and conditions apply, or from any other agreements resulting therefrom, are exclusively submitted to the competent court in The Hague, unless the Contractor prefers to submit a dispute to the court that has jurisdiction according to the law.

17.2 Dutch law governs the agreements concluded with the Contractor, with due observance of these terms and conditions, with the exception of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **Article 18 Translations**

In the event of any inconsistency between the Dutch version of these terms and conditions and any translated version thereof, the Dutch version prevails.