

Definitions and uses

- 1.1. These terms and conditions apply to all offers and to all agreements made or concluded by the user of these general terms and conditions, hereinafter referred to as the contractor, with third parties, hereinafter referred to as the client.
- 1.2. Deviation from these general terms and conditions is only possible by agreement concluded in writing. These deviations have no binding effect on other agreements with the client.
- 1.3. The client with whom a contract has been concluded under these terms and conditions agrees to the applicability of these terms and conditions to subsequent agreements between the client and the user.
- 1.4. The terms and conditions are referred to as the Cumela terms and conditions.

Offer and agreement

- 2.1. All quotes are a non-binding offer.
- 2.2. Unless expressly stipulated otherwise, the contractor is entitled to charge the client all reasonable costs it has had to incur in order to be able to submit its quote if it is not given an assignment.
- 2.3. Agreements may only be entered into on behalf of the contractor by persons authorised to do so. Agreements with contractor's employees working on performing the work are not binding on the contractor. At the client's first request, the contractor will indicate who within the contractor's business is authorised to enter into agreements.
- 2.4. The contractor will assume that the information provided by the client is accurate and will base its offer on this. Any loss resulting from the inaccuracy or incompleteness of this information will be borne by the client.

Industrial, intellectual property and data rights

- 3.1. All specifications or descriptions, budgets, plans, drawings or other documents provided by the contractor shall remain the property of the contractor and shall be returned at the contractor's first request. Its copyright as well as all other intellectual or industrial property rights shall also apply in full.
- 3.2. The contractor is free to collect data during the performance of its work insofar as this data collection is not unlawful. This collected data is the property of the contractor unless agreed otherwise.

Prices

- 4.1. All prices specified by the contractor or agreed between the contractor and the client are exclusive of turnover tax, insurance, import duties, levies, duties and other taxes unless explicitly stated otherwise.
- 4.2. If the normal working hours are exceeded on working days, in the event of work on Saturdays and on Sundays and public holidays, all at the client's request, the contractor will charge a surcharge on the agreed prices which is proportionate to the additional costs resulting from it.
- 4.3. In the absence of a fixed price already agreed, the price for the assignment performed will be calculated on the basis of the scope of the work performed and materials supplied or consumed as determined after completion, based on the rates agreed by the parties before the start of the work, or in the absence of such a calculation, based on the rates applicable locally at the time of delivery of the work.
- 4.4. If there are multiple clients, they are all jointly and severally liable for fulfilling the contractual obligations.
- 4.5. The provisions of the previous paragraph will also apply mutatis mutandis to a partially completed assignment.
- 4.6. The contractor is entitled to charge the client initial costs.
- 4.7. The contractor is entitled to demand a surety from the client for the fulfilment of its payment obligations before the agreement is executed.
- 4.8. The contractor will be entitled to pass on to the client the price increase of factors that determine the cost, including in any case - but not limited to - the cost of raw materials and fuels, materials, manufacture, transport, currency exchange rates, disposal and processing rates and the like, at the contractor's discretion, which arose after the agreement was concluded but before delivery/completion. If the contractor does this within 3 months of the agreement being concluded, the client will be entitled to dissolve the agreement, which right it must exercise within 8 days of the notification of the price increase. Dissolution of the agreement in this manner does not entitle either party to compensation.

Execution

- 5.1. The contractor will perform the assignment in the manner and over a period within the timescale agreed which it considers suitable for that purpose, taking into account the client's interests and, as far as possible, the client's wishes in this regard. The contractor will inform the client of the time when the assignment will be performed in good time.
- 5.2. The contractor is entitled to an extension of the timescale within which the work will be completed if the contractor cannot be expected to deliver the work within the agreed period due to force majeure or circumstances attributable to the client, or due to changes in the agreement or the terms of execution.
- 5.3. If the timescale within which the work is to be delivered is exceeded, the contractor will not be liable to the client for any compensation, unless the parties have agreed otherwise in a written agreement.
- 5.4. If the start or progress of the work is delayed by factors for which the client is responsible, the client must compensate the contractor for any resultant loss and costs.
- 5.5. If the contractor and the client disagree on the question of whether weather and/or working conditions, including circumstances relating to the use of fertilisers or the application of crop protection products, may have a negative impact on the work, the contractor is entitled not to perform the work without any obligation to pay compensation as a result. Should the contractor nonetheless perform the work at the client's express request, the client will bear the risk for the performance of the work and the client will never be entitled to any compensation if the work should have a negative outcome.
- 5.6. The place of delivery will be the location determined by the client, which is accessible via a paved road. The goods will be at the client's risk from the time of delivery. Deviation from this is only possible by written agreement.

Force majeure

- 6.1. The contractor is entitled to suspend the performance of its obligations for the duration of a force majeure situation.
- 6.2. Force majeure is understood to include a circumstance that was not reasonably to be expected at the time when the agreement was concluded and which is beyond the contractor's control. This includes: government measures, exceptional weather conditions, strikes, transport disruption, illness, civil commotion and/or war, and an attributable failure in performance and/or force majeure on the part of those persons on whom the contractor depends for the manufacture and/or delivery of products.
- 6.3. Force majeure can never be a ground for paying compensation to the client.

Changes to the work and circumstances

- 7.1. Changes to the work will always result in additional or reduced work if:
 - a. there is a change to the design or specifications;
 - b. the information provided by the client does not correspond to reality;
 - c. there is a deviation from estimated quantities by more than 10%;
 - d. normal working hours are exceeded by more than 10%.
 - e. there is a deviation from the chargeable quantities. In the event of deviations of more than 10%, the client and the contractor will agree on an altered unit price.
- 7.2. Additional work is calculated on the basis of the value of the price-determining factors applicable at the time when the additional work is performed. Reduced work will be offset on the basis of the value of the price-determining factors that applied at the time the agreement was concluded.
- 7.3. If during the execution there are unforeseen circumstances that have not been notified in writing by the client and were not visible to the contractor without investigation at the time of surveying the work on site, such as the presence below ground level of rocks or other objects, foundation residues or swampy areas or other types of soil than visible on the surface, the contractor shall be entitled to adjust the price in connection with the additional costs arising from these unforeseen circumstances. If the client does not agree to this, the contractor will be entitled to terminate the agreement with immediate effect by registered letter. In that case, the client is not entitled to claim any compensation, but the contractor is entitled to settle the matter pursuant to Civil Code Section 7:764 paragraph 2.
- 7.4. If the balance of the reduced work exceeds that of the additional work, the contractor may charge the client 10% of the difference in the balances in the final settlement. This provision does not apply to reduced work resulting from a request from the contractor.

Client's obligations

- 8.1. The client shall ensure that the contractor has timely access to the information and approvals required to prepare the work, such as permits, exemptions and rulings, unless the parties have agreed otherwise in writing.
- 8.2. The client is obliged to conduct an investigation into and inform the contractor in writing of all circumstances, including the location and presence of obstacles, cables, pipes and other impediments and risks present, such as - but not limited to - the condition of the soil and (ground)water level, risks to third parties (e.g. in spraying work), protected indigenous plants and species present, plot restrictions (e.g. water extraction area) and contamination of the soil by building materials and objects occurring in the work.
- 8.3. The client must conduct itself in accordance with the Wet Informatie-uitwisseling boven- en ondergrondse Netten (Information Exchange (Aboveground and Underground Grids) Act - WI-BON) and the associated and most up-to-date CROW directive relating to careful soil disturbance.
- 8.4. Unless agreed otherwise in writing, the client will ensure that all connections to public utilities and any other pipes and/or cables and/or other obstacles and/or other obstacles that are in use through, over or beneath the site are disconnected/sealed and make the required certificates for this available.
- 8.5. The client undertakes to provide insight at the contractor's request into the environmental hygienic condition of the soil to be worked, to issue a design phase health & safety plan and/or perform or commission an asbestos survey by an asbestos survey firm recognised and certified for this purpose (SC 540) and/or a building materials survey.
- 8.6. The client is obliged to remove all impediments, and to inform the contractor of all circumstances that result or may result in the contractor being unable to perform the assignment within the period of execution referred to in article 5.1 as soon and as fully as possible, and without damage.
- 8.7. The client shall ensure that the site where the agreement is executed is easily accessible in the contractor's opinion.
- 8.8. The client is responsible for ensuring that the public road is cleaned and kept clean before, during and after works in which the public road is used for the work.
- 8.9. If materials supplied by the client are found to be contaminated in any way, as a result of which the contractor must incur additional costs, the costs will be borne by the client.
- 8.10. Items supplied by the client or to be disposed of on the instructions of the client will remain the property of the client and therefore at the expense and risk of the client.
- 8.11. Unless agreed otherwise, the client will be responsible for any removal of items produced during the execution of the agreement such as soil and waste.
- 8.12. The client is responsible for providing information about the (environmental) quality of the soils to be excavated or worked by the contractor, or for the material to be transported by the contractor.
- 8.13. Unless agreed otherwise in writing, the costs of sampling and analyses of items to be excavated, transported, worked or disposed of will be borne by the client.
- 8.14. If the contractor makes an employee available to the client, the client will provide all information relevant to the proper performance of the assignment, including an accurate description of the work, the required and desired qualifications, the working hours, workplace, working conditions and the planned term of the assignment.
- 8.15. With regard to the employee as referred to in 8.14, the client will carry out management and supervision in the same careful manner as is required for its own employees.
- 8.16. The client is not permitted to make the employee available to a third party to perform work under the management and supervision of this third party or a third party to be designated by the latter without the contractor's prior written consent.
- 8.17. If the client has not or cannot comply with its obligations under this article, it must inform the contractor of this in writing immediately, but no later than five working days prior to the start of the agreement.

Completion of the work

- 9.1. The work will be considered completed if:
 - a. the client has approved the work;
 - b. the work has been put into use by the client. If the client puts part of the work into use, that part will be considered completed.
 - c. the contractor has informed the client in writing that the work has been completed and the client has not notified the client in writing within 14 days of the notification whether or not the work has been approved;
 - d. the client fails to approve the work on the basis of minor defects or missing parts that can be repaired or delivered within 30 days and that do not prevent the work from being put into use.
- 9.2. If the client does not approve the work, it is obliged to inform the contractor of this in writing, stating reasons.
- 9.3. If the client does not approve the work, it will give the contractor the opportunity to complete the work again. It must thereby grant the contractor a reasonable period of time. The provisions of this article will again apply to this.

Separate equipment rental

- 10.1. The contractor, being the lessor, undertakes to make the agreed rented item available in good condition for the agreed rental period, as the client, being the lessee, is obliged to accept the equipment with due observance of the agreed term and any agreed notice period.
- 10.2. When taking possession of the rented item, the client must carefully examine the rented item for soundness, intactness and completeness. If the client thereby discovers defects or shortcomings, it must immediately notify the contractor in writing.
- 10.3. The client is obliged to use the rented item solely within the context for which the rented item is suitable by its nature and only for the purpose for which it is rented.
- 10.4. The client shall use the rented item with due observance of the instructions given to it by the contractor by means of instruction manuals and similar or otherwise. The client declares that it has sufficient experience and expertise with regard to the rented item.
- 10.5. The client shall continuously monitor the proper working of the rented item and, insofar as not agreed otherwise, it shall perform the necessary daily maintenance in good time in order to maintain its proper working, all in accordance with the manufacturer's specifications.
- 10.6. The costs of maintenance and repair, all insofar as these are the result of normal wear and tear in the context of proper use in accordance with the designated use, will be borne by the contractor.
- 10.7. The client will take all reasonable measures to prevent damage, loss and/or theft of the rented item.
- 10.8. The client is liable for all damage, by any name and howsoever caused to or occurring on the rented item during the rental period. After discovery of a defect, shortcoming or damage on the rented item, the client will not continue to use it until after consulting the contractor. If the client fails to consult the contractor (in good time), any damage resulting from continued use will be or remain at the client's expense.
- 10.9. The client is liable for all damage, by any name and howsoever caused by the rented item or arising on visible and non-visible movable or immovable goods/property of third parties (e.g. underground cables and pipes).
- 10.10. The client is liable for all damage caused to or by the rented item during transportation, including interim transportation, performed by or on the instructions of the client, regardless of how and by whom this is caused.
- 10.11. The client must take all customary measures to prevent theft of the rented item. In the event of theft/loss of the rented item, the client must report this to the contractor immediately after discovery and report the theft to the police. The client is liable for theft and misappropriation of the rented item.
- 10.12. If the contractor or its authorised representative records the type and number of rental hours worked on job sheets, they shall be prepared on a weekly basis and signed as approved by both parties. If the client or its authorised representative does not avail itself of the opportunity offered to sign, the client will be deemed to agree to the contents of the job sheets.
- 10.13. The client is prohibited from making the rented item available to third parties in rental, sub-rental, use or otherwise without the contractor's prior written consent.
- 10.14. If the client fails to return the leased item no later than on the day on which the agreed rental period ends, the client will be liable to the contractor for damages that are at least equal to the agreed rental payment. Each part of a day is thereby considered a full day. Without prejudice to the above, the contractor reserves the right to recover additional damages from the client. The client will not be entitled to a refund of any rental payment if the rented item is returned earlier than the day on which the rental period ends.
- 10.15. Unless otherwise agreed, the rental prices will be exclusive of fuel costs and delivery and removal costs.
- 10.16. If the client insures the work equipment that it uses, the liability insurance for the rented equipment must also insure the contractor in its capacity as principal/keeper of the work equipment. The client grants the contractor express and irrevocable permission to derive rights from that insurance. If this paragraph is not complied with or the client fails to comply with another obligation in this article and the contractor is held liable for any damages by a third party, the client is obliged to fully indemnify the contractor and compensate the contractor for all that the contractor must pay to this third party.
- 10.17. For any event relating to the rented item for which the contractor's insurance is invoked, the client will pay the contractor's full excess and all resultant damages.

Liability

- 11.1. Except in the case of intent or gross negligence, any liability on the part of the contractor on any grounds or with regard to any matter is limited to the amount paid out by the insurer under the contractor's liability insurance plus the amount of the excess that is not borne by the insurer under the policy (terms). The contractor will provide information about (the scope of) the liability insurance on request.
- 11.2. If the contractor has not taken out any liability insurance or the insurer does not provide cover for any reason, any liability shall be limited to the amount equal to the invoice amount (exclusive of VAT) that has become payable to the contractor pursuant to the agreement in respect of which the contractor has been held liable, up to a maximum of € 10,000, except and insofar as there is intent or gross negligence.
- 11.3. Intent or gross negligence within the meaning of these terms and conditions is understood to include intent or gross negligence on the part of the bodies of the contractor or persons charged with the management of its enterprise, including managerial subordinates.

Indemnification

- 12.1. The client indemnifies the contractor against all claims by third parties, including the reasonable costs of legal assistance, which are related to or arise from the work performed for the client, except in the event of intent or gross negligence on the part of the contractor and with due observance of the provisions of article 12.2.
- 12.2. The indemnification will only apply to the amount that is not paid out by the contractor's liability insurance for any reason whatsoever.

Complaints

- 13.1. Visible defects must be reported to the contractor in writing within 24 hours of actual delivery of the goods or completion of the work.
- 13.2. Other defects must be reported in writing within a reasonable time after they have been discovered or reasonably should have been discovered.
- 13.3. After the expiry of these periods, the right to invoke the defect lapses.
- 13.4. The submission of a complaint does not remove the payment obligation.
- 13.5. In performing the work the contractor is expressly permitted to deviate from a previous recommendation, provided plan or drawing, since this recommendation, provided plan or drawing is an execution plan that was drawn up before the work commences, and it may sometimes be useful to implement changes during the work.

- 13.6. The right to make a complaint will lapse one year after the end of the works or completion of the work.

Payment

- 14.1. The contractor is entitled to invoice periodically or after completion of the work. The contractor may require (partial) payment of the agreed price in advance. Unless another payment term has been indicated, payment must be made within 30 days of the invoice date into a bank account designated by the contractor, all without any right to discount, suspension or offsetting.
- 14.2. If the client fails to pay within the period specified in Article 14.1, it will be legally in default without any further notice of default being required. The contractor is entitled to payment of statutory commercial interest with effect from the date by which the payment should have been made.
- 14.3. The full claim for payment shall be immediately due and payable if:
 - a. a payment term has been exceeded;
 - b. the client has been declared bankrupt, applies for a suspension of payments, or has been admitted to a debt rescheduling arrangement;
 - c. attachment has been levied on the client's goods or debts;
 - d. the client (company) is dissolved;
 - e. the client (natural person) is placed under a trustee or dies.

Retention of title and right of retention

- 15.1. The contractor remains the owner of all items delivered or otherwise made available, as well as the works created with it, as well as the goods yet to be delivered until the following debts have been settled:
 - a. debts relating to the consideration for goods delivered or to be delivered by the contractor to the client pursuant to an agreement; or
 - b. work performed or to be performed for the benefit of the client pursuant to such an agreement, as well as
 - c. with regard to the claims due to failure in compliance with such agreements.
- 15.2. The client is obliged to refrain from any act that affects the aforementioned retention of title, such as the creation of a right of pledge, transfer to a third party, sale or installation.
- 15.3. The contractor has a right of retention in respect of goods offered to it for processing, repair or storage. If the contractor invokes this right, that right will not lapse as a result of the client providing surety.

Privacy

- 16.1. Insofar as personal data is provided to the client by the contractor in the context of the performance of the work, this data will be processed in a proper and careful manner and in accordance with the General Data Protection Regulation and the Uitvoeringswet Algemene verordening gegevensbescherming (General Data Protection Regulation Implementation Act).
- 16.2. Technical and organisational measures will be taken by the client to protect the personal data against loss or any other form of unlawful processing, taking account of the state of the art and the nature of the processing.

Legal forum

- 17.1. All agreements are governed by the laws of the Netherlands.
- 17.2. Disputes will be settled by the competent local court in the place where the contractor has its registered office. However, the contractor is permitted to apply to the court that has jurisdiction in the place where the client has its registered office.
- 17.3. The parties may agree on a different form of dispute resolution in writing, such as arbitration or mediation.