

# General Terms and Conditions Governing Contracting Agreements for Consumers 2023 (AVA Consumenten 2023)

Adopted by the Governing Board of Koninklijke Bouwend Nederland on 7 December 2022.



At your request, the contractor has issued a quotation. This quotation describes the work that you want the contractor to perform and the price that must be paid for it. The contractor has declared these general terms and conditions applicable in his quotation. The contractor has provided these terms and conditions to you with the quotation, or has indicated in the quotation where you can consult and download these terms and conditions on his website. You must read these terms and conditions carefully before accepting the quotation. If you agree to the quotation, you also agree to the following 17 articles:

## Article 1 - The quotation for the work (*the work*)

1. The quotation can be made in writing or digitally.
2. The quotation is valid for 30 days from the date stated on the quotation.
3. You do not pay anything for the quotation, unless you have agreed this with the contractor in advance.
4. The contractor has described the work to be performed in the quotation. In the quotation, the contractor has indicated which documents are part of his quotation and what agreements he wants to make with you about, for example, the start date and construction time.
5. The quotation states the price to be paid for the work. This:
  - a) may have been determined in advance, or
  - b) may be calculated on a cost-plus basis. In that case, you pay the costs to be incurred by the contractor, plus surcharges, all as indicated in the quotation.
6. In the quotation, the contractor indicates at what time he will charge you the price or part thereof.
7. Whether or not you accept the quotation, the contractor is and shall always remain the owner of all information, whether on paper or digital, created by him or by someone else on his behalf. This concerns, for example, drawings, calculations, a technical description or a budget. You may not pass this information on to other persons or organisations or do anything with it yourself without written permission from the contractor.

## Article 2 - The contract and these terms and conditions

1. The quotation can be accepted in writing or digitally.
2. If you accept the quotation in time, you and the contractor are bound by a contract. You are then both bound by the quotation and further agreements made.
3. If you commission the work together with one or more persons, each person is (jointly and severally) liable towards the contractor for all the work.

## Article 3 - What can the contractor expect from you?

1. If this is necessary for the contractor to be able to carry out the work, you must ensure that final permission is obtained in time from the government (such as the permit to carry out the work) or other parties (such as neighbours, to be permitted to use of their plot). If the use of a quality assurance agent is required, it is your responsibility to arrange one.
2. You must also ensure that the contractor can use the building site, building or home where the work is being carried out in time.
3. If a connection for electricity, gas or water is required to carry out the work, you must provide this. The costs of these connections and the costs of consumption are for your account, unless you have agreed otherwise with the contractor.
4. Before the work has been completed (see Article 9), you may not carry out work yourself on the building site, in the building or in the home. You may do so if you have permission from the contractor.

## Article 4 - What can you expect from the contractor?

1. The contractor shall have a duty to carry out the work properly and thoroughly in accordance with the contract.
2. The contractor adheres to the rules set by the government that are important for the performance of the work and that apply on the day of the submission of the quotation.
3. The contractor shall hand over the work to you no later than on the handover date or within the agreed construction time. In some situations, the contractor is entitled to an extension of the construction time (see, for example, Articles 5-2, 6-3 and 10-4).

4. If the contractor notices that the information or instructions provided by you are incorrect, he shall clearly point this out to you in writing or digitally. This also applies if you give the contractor materials you want to be used in the work, but which turn out to be unsuitable, or if there is something wrong with the ground on which the work is made. The contractor must then discuss with you how to proceed.
5. If you pay a price for the work that is calculated on a cost-plus basis, the contractor shall regularly provide you with an overview of the number of hours spent, the material processed and the equipment used. If you do not agree with the overview, you must inform the contractor of your objections in writing or digitally within one week of receipt.

## Article 5 - Inflationary circumstances

1. Inflationary circumstances may arise or come to light after the conclusion of the contract. If these circumstances cannot be attributed to the contractor and he did not have to take into account the possibility that those circumstances would occur when determining the price, the contractor may charge you for the extra costs pursuant to Section 7:753 of the Dutch Civil Code.
2. The contractor shall inform you as soon as possible of these additional costs and of the consequences for performance and construction time. You and the contractor shall discuss this and record agreements in writing or digitally. You can choose to simplify the work or not to have parts of it performed. That may lead to less work.

## Article 6 - Work excess and shortfalls

1. You can ask the contractor to make additions or changes to the work. That may lead to work excess and shortfalls.
2. If you have less work performed by the contractor, you shall be refunded the amount included in the price, plus the surcharges the contractor has calculated on this.
3. If you ask the contractor for additions or changes to the work, the contractor shall indicate in good time what consequences this shall have for the price of the work and the construction time. The desired additions or changes shall only be implemented if you agree with the contractor about the consequences.
4. The contractor shall charge an advance of up to 25% of the agreed price for more work. The contractor shall charge the remainder once he has carried out the additional work.
5. Provisional items may be included in the price of the work. With a provisional item, you reserve an amount for a part of the work, for which you want to make a choice at a later date. A provisional item can also be included if it is not clear what the realisation of a part of the work ultimately entails and costs.
6. When settling the provisional item, the actual costs incurred shall be deducted from the amount of the provisional item. If there is still an amount left after settlement of the provisional item, you shall receive this back. If the provisional item is exceeded, you must pay an additional amount.
7. If the total amount of less work is higher than the total amount of more work, the contractor is entitled to compensation of 10% on the difference of these amounts. The settlement of provisional items is not included in this.

## Article 7 - Payment

1. The contract regulates at what times the contractor sends you an invoice. If the contract stipulates that the contractor sends you an invoice upon handover, he may send it to you 14 days before the planned handover.
2. If you have received an invoice from the contractor, you must pay it within 14 days of the date of that invoice.
3. Upon handover of the work (see Article 9), all invoices sent by the contractor must be paid, provided the contractor has sent these invoices in good time before handover.
4. If the contractor has not yet charged you for all amounts due upon handover, he shall send you a final statement within a reasonable period of time.

## Article 8 - Security

1. If you have a house or apartment built by the contractor, you may deposit an amount of up to 5% of the price of the work (see Articles 1-5) into a third-party account of a notary upon handover (the bond). In that case, you must inform the contractor before handover of the amount you shall transfer to the notary. You must also ensure that the notary informs the contractor of the amount he has received before handover.
2. The bond amount serves as security for the fulfilment by the contractor of remedying any defects in the home or apartment that you have discovered upon handover or in a period of three months thereafter.
3. In the second month after handover, the contractor must inform you in writing or digitally that you can hold the bond with the civil-law notary for more than three months after handover. He must send the notary a copy of this notice.
4. If you want to keep the bond longer, you must let the notary know before the end of the three-month period. You should also communicate why and up to what amount you wish to maintain the bond. That amount must be approximately equal to the costs of remedying the (remaining) defects.
5. The notary pays the contractor the bond amount if you fail to ask him to retain the bond (it time).
6. In any case, the notary pays an amount from the bond to the contractor:
  - a. if you indicate that this may be paid to the contractor;
  - b. if based on a judgment of a regular court or an arbitration tribunal it has been decided that this must be paid to the contractor; or
  - c. if the contractor provides you with another security equal to the bond, for example, a bank guarantee.
7. If at the end of the three months after handover, you unlawfully hold an (excessive) bond amount, you must pay the contractor the statutory interest applicable at that time. Defects that you discover three months after handover are no reason to retain a bond amount.
8. The costs charged by the notary for keeping an amount in bond are for your account. If the notary pays you interest on the bond amount, you may keep it.
9. You can also agree with the contractor that you shall not deposit any amount with a notary, but that the contractor shall instead provide equivalent security. In such a situation, you are not entitled to deposit the 5% referred to in Article 8-1 with a notary. If the contractor gives you such security, Articles 8-2 to 8-7 apply. However, this does not concern paying out or retaining the bond, but whether or not to release all or part of the amount of the security.

## Article 9 - Handover of the work

1. If according to the contractor, the work is ready for handover, he shall invite you to inspect the work together. You can be assisted by another person.
2. Defects found during the inspection of the work are listed on a list (the handover report). This list is drawn up by the contractor. If you and the contractor cannot agree on a particular finding during the inspection, this can be stated on the handover report.
3. The work is handed over when the work is ready for handover according to the contractor and you accept the work.
4. Minor defects, which do not prevent normal use of the work, are no reason to refuse handover. A defect shall be remedied by the contractor within a reasonable period of time.
5. It is also possible that the contractor indicates the work is ready for handover and you do not inspect the work together. In that case, you can let the contractor know within 8 days of receiving the contractor's notification that the work is completed whether and, if so, what defects you have discovered in the work. If you do not respond within the 8-day period, you accept the work as-is. The work is then handed over.
6. If you believe the work cannot be put into use, you must inform the contractor in writing or digitally why this cannot be done. You also indicate which defects you have discovered.
7. If you start using the work or the space in which the work has been performed, you accept the work and it has been handed over.

8. After handover, the work is at your expense and risk. From that moment on you must ensure the work is sufficiently insured.

#### **Article 10 - Construction time and the consequences of it being exceeded**

1. You can agree with the contractor that the work must be handed over on a certain date or within a certain number of working days.
2. Official holidays set by the government and days on which the contractor's business is closed to all employees are not working days.
3. If due to weather conditions, the contractor has not been able to work for 5 or more hours with the majority of the contractor's or subcontractors' personnel present, that day is also not considered a working day. If only 2 to 5 hours can be worked on a working day due to weather conditions, this is considered half a working day.
4. The construction time may be exceeded. If the contractor is not responsible for the delay, he is entitled to an extension of the construction time. In that case, you cannot expect the contractor to hand over the work within the agreed construction time.
5. If the contractor hands over the work late (taking into account a right to an extension of construction time), the contractor shall pay you a predetermined compensation of EUR 50.00 for each working day handover is delayed. You may deduct this compensation from the contractor's unpaid invoices. The compensation is no more than 10% of the price of the work.
6. If work is delayed due to events for which you are responsible, the contractor may incur damages and costs. You must compensate the contractor for this damage and these costs. The contractor will discuss this with you.

#### **Article 11 - What if you fail to fulfil your obligations?**

1. If you have not paid an invoice within 14 days, you must pay the statutory interest to the contractor on the amount of the invoice. If you then let another 14 days pass without paying, the interest rate shall be increased by 2 from the 15th day.
2. If you do not pay an invoice, the contractor may send you a reminder and request compensation for extrajudicial collection costs.
3. If you do not pay invoices in time, or if the contractor has doubts as to whether you shall pay invoices that have been sent or shall be sent, he may ask you to provide security.
4. If you fail to comply with agreements with the contractor, the contractor may temporarily suspend the work or permanently terminate the contract. In both cases, the contractor must let you know in advance that he shall do this and give you the opportunity to still comply with the agreements within a reasonable time. If you end up in a debt assistance programme with the municipality or in a statutory debt restructuring programme for natural persons (WSPN), this is not necessary and the contractor may immediately temporarily suspend the work or terminate the contract permanently.
5. In the event of a temporary suspension of work or permanent termination of the contract, the contractor is entitled to compensation for damage, costs and interest.

#### **Article 12 - What if the contractor fails to fulfil his obligations?**

1. If the contractor does not comply with agreements made about the start of the work, you must ask the contractor in writing or digitally to still start within a period of fourteen days. You should also do this if you feel the contractor is not carrying out the work with the necessary diligence.
2. You may have the work performed by another contractor if the following conditions are met:
  - a. you have informed the contractor in writing or digitally that he must still start within a reasonable time or must perform the work expeditiously and that, if he does not do so, you shall instruct another contractor to perform the work; and
  - b. the contractor who has allowed a reasonable time to pass without starting or expeditiously performing the work;
3. In that case, the contractor is obliged to compensate your damage and additional costs. You must limit that damage and additional costs as much as possible.

#### **Article 13 - The (partial) postponement of payment of invoices**

1. If the contractor does not perform the work or parts thereof as agreed, you may (partially) postpone

- payment of one or more invoices. The amount you withhold must be in reasonable proportion to the shortcoming. You must inform the contractor in writing or digitally why you are delaying payment.
2. If you withhold an excess amount, you must pay interest on that part of the amount (see Article 11-1).

#### **Article 14 - Temporary suspension of work or permanent termination of the contract**

1. You may inform the contractor at any time in writing or digitally that he must temporarily suspend the work.
2. The contractor may therefore have to take measures to prevent damage. You must pay the associated costs to the contractor. This also applies to damage suffered by the contractor and the extra costs he incurs because he has to temporarily suspend his work.
3. Damage to the work may occur after temporarily suspending the work. You are responsible for this damage.
4. If the work has been temporarily suspended by you for more than 14 days, the contractor may request compensation from you for all work carried out up to that point that he has not previously charged. The same applies to unused materials that have been delivered to you or have been delivered to the contractor and paid for by him.
5. If the work has been temporarily suspended by you for more than one month, the contractor may permanently terminate the contract.
6. You may permanently terminate the contract at any time. You do not have to give a reason for this, but you must inform the contractor in writing or digitally that you are permanently terminating the contract.
7. Upon permanent termination of the contract, the contractor shall draw up a settlement in accordance with Section 7:764 of the Dutch Civil Code. You must pay the amount of the settlement immediately. If you fail to do so, you must pay interest on the unpaid part (see Article 11-1).

#### **Article 15 - What are you responsible for?**

1. You are responsible for ensuring the data and information you provide to the contractor is correct.
2. If the situation that the contractor actually encounters deviates from what he could expect and this results in additional costs, you must reimburse those additional costs and any damage to the contractor.
3. If you, or someone else on your behalf, prescribes constructions or a method of performance to the contractor, you are responsible for this. This also applies to orders and instructions given by or on behalf of you.
4. You can make certain items (such as materials) available to the contractor that you want to have installed in the work. If it turns out afterwards that these are not suitable or defective, you are responsible for this yourself. The same applies to the land on which you have the work performed.
5. You can instruct the contractor to engage a supplier or subcontractor of your choice. If that supplier or subcontractor does not fulfil his agreements on time, delivers incorrect or defective goods, or does not perform his work or does not perform it properly, the additional costs shall be for your account.
6. During the performance of the work, you can ask the contractor to allow other persons to perform work simultaneously with the contractor (Article 3-4). If these persons cause damage to the work, you are responsible for this yourself.
7. After the quotation date, the government may introduce new rules that increase the price of the work. If the contractor could not foresee these new rules on the quotation date, the extra costs shall be charged to you.
8. You may have to provide a file to the competent authority (usually the municipality) before you can start using the work. Unless agreed otherwise, you are responsible for creating, maintaining and timely delivery of the file with the correct content.

#### **Article 16 - What is the contractor responsible for?**

1. The contractor is responsible for the work from start to finish. The contractor is liable for damage to the work during this period, unless this is the result of circumstances for which you are responsible, or circumstances that are not for his account or risk.
2. After handover, the contractor is only liable for defects in the work for which you demonstrate that the contractor is liable.
3. The contractor is not liable for damage, discolouration or defects caused by wear and tear, (incorrect) use or insufficient maintenance.

4. Your right to bring a claim in connection with defects after handover in proceedings before the regular court or an arbitration tribunal expires 5 years after the handover date.
5. The term in paragraph 4 is 10 years in the event of a serious defect. This is the case if:
  - a. all or part of the work has collapsed or is in danger of collapsing, or has become unsuitable for the use you intend to make of the work under the contract, and
  - b. the defect can only be remedied by incurring very high costs.
6. As soon as you notice a defect, you must report this to the contractor as soon as possible.
7. You must give the contractor the opportunity to remedy the defect. He may do so in whatever way he thinks is right.
8. The costs of remedying a defect may not be in reasonable proportion to your interest in the remedy. In that case, the contractor does not have to remedy the defect, but he must pay you reasonable compensation.

#### **Article 17 - Disputes: who decides between the parties and which law applies?**

1. You and the contractor may have a difference of opinion about the performance of the work or the agreements made. This constitutes a dispute.
2. You have the right to have the regular court or the Arbitration Board for construction disputes decide on the matter.
3. The contractor may also have a dispute settled by the regular court. If the contractor wants the dispute to be decided by the Arbitration Board for construction disputes, he must ask you in writing or digitally whether you agree with this. The contractor must give you at least one month to do so. If you indicate this in time, the contractor must follow your choice. If you agree that the Arbitration Board for construction disputes shall decide the dispute, or if you do not respond within that month, the Arbitration Board for construction disputes may decide the dispute.
4. In connection with the choice you may make according to Article 17-3, an overview has been made of the most critical differences between a court case before the regular court and proceedings before the Arbitration Board for construction disputes. The contractor shall present this overview to you when he gives you the choice in accordance with Article 17-3.
5. Arbitration Board for construction disputes handles the dispute, it shall follow the rules of arbitration regulations. The dispute between you and the contractor shall be dealt with according to the arbitration rules in force three months before the date of the contract.
6. Dutch law applies to the contract and all further agreements made by the parties.