The contract - basis for qualified tree care

Any kind of agreement about tree-care between the owner of a tree and a tree-worker is always a contract. In this case the German law doesn’t have any special guidelines for the form or the content of the contract. That means that the contracting parties are free to agree on any terms. Of course they must not stipulate any immoral or unlawful agreements.

The contract is the basis for qualified tree care. Only the defined qualified work and qualified professionals with the necessary skills in the contract ensures the tree-owner that he will get the best possible treatment. Furthermore, the client receives the most value for his money.

For construction works for public sites there has been a kind of model contract for more than 80 years: the VOB (official contracting terms for the award of construction performance contracts). This has been developed with the goal to achieve a fair balance between the interests of the contracting parties. It includes guidelines for the allocation, the correct technical handling and organization of any kind of construction works. A tree is, technically speaking, a construction. This was decided more than 40 years ago by the German Supreme Court. Therefore tree-care works are construction works and the VOB can be applied to tree-care contracts.

A private customer / contractor can always use the VOB as a basis for a contract.

The German “official contracting terms for the award of construction performance contracts - VOB” offer requirements and also possibilities to enforce them.

It offers a lot of possibilities to legally fix qualified tree-care in a contract.

Already during the writing of the work description and the selection of the competing firms, legally unqualified firms can be excluded.

For example: The VOB defines that construction works are to be given to qualified, efficient and reliable companies, which offer adequate prices.
“Qualified” can be defined in the contract by stipulating the presence of certified tree-works, e.g. “European Tree workers” on the building sites. In this case that has to be documented.

“Efficiency” can be achieved by proof of the contracting company that it can supply the needed machinery and tools e.g. working platforms. Also references by former contractors which refer to comparable works can function as proof. “Reliability” can be proven by certifications that provide information by financial- and social authorities about the liquidity and tax-status of the contracting party.

By precisely describing the required works (e.g. pruning or cutting) the quality can be defined in the work description. The “additional technical contract terms for tree-care” play an important role. They can be agreed upon in the contract; that way the tree-worker has to apply these terms to his work. The so called ZTV (additional technical contract terms for tree-care) are professionally accepted in Germany.

During the construction the VOB-contract offers possibilities to enforce the correct methods and stop the incorrectly handled works.

The customer is able to mandate things that are necessary to enforce contractual works. The client has opportunities to stop incorrect tree-work during the implementation and acceptance of tree care work. The customer is entitled to demand an immediate change in the cutting-method if the tree-worker carries out wrong cuts. These mandates are to be given to the executing workers of the employed company. The customer has to be told who is responsible in the employed company. Every operating company has to name a responsible, qualified site supervisor.

The contractor has to heed the acknowledged technical rules and the legal and civil regulations. He has to employ the correct cutting-methods, heed bird protection regulations and communal regulations like noise protection at schools or cemeteries.
Subcontracting of parts of the original contract is only possible with acknowledgment of the customer. If an employed company is not able to carry-out necessary climbing because it doesn't have the appropriate tree-workers, it can not just subcontract another company.

If the customer sees that contracted dates cannot be met, he can revoke the contract and demand refund. He can also deny the final acceptance, withhold partial or complete payment and demand rectification of the works if he finds out that certain works have not been carried out after the end of the construction.

For example, if crown-securing measures are not mounted correctly, the payment will only take place after the corrections have taken place according to the contract during a defined period.

It can be assumed, that the contract law in other European countries offers similar opportunities as there is the EU - harmonization of contract law on public procurement. There are common rules, especially for contracting large commissions. Regional and local specifications like tree-protection acts or communal regulations on structural clearance have a great impact on tree-care works. Therefore there can be no general contract forms. These problems are taken into account by the VOB.

Unfortunately there are usually not enough experts on the sides of the customers that can distinguish between good and bad tree-care. These experts would need expert knowledge as well as the skill to define appropriate specifications, to supervise the construction site and the courage to deny the final acceptance. They would have to be able to arbitrate between local authorities, property companies or other owners and explain that generally the cheapest contractor usually causes the greatest longterm costs.