



THIS AGREEMENT IS MADE ON THE \_\_\_\_\_

BETWEEN

"The Supplier" *Claybank Landscapes & Arbcare, 13 New Road, Studley, B80 7ND*

AND

"The Client" \_\_\_\_\_

IT IS HEREBY AGREED AS FOLLOWS

### ***1. Interpretation***

***1.1.*** Except where the context requires otherwise, words importing the masculine shall include the feminine; words importing the singular shall include the plural; words importing natural personage shall be equally applicable to corporate personage and vice versa.

***1.2.*** References to any statutory provision, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.

### ***2. Relationship Between the Parties***

***2.1.*** The Client engages the Supplier to provide the services specified in these terms and conditions and attached schedules.

***2.2.*** No term of this agreement or course of dealings between the parties shall operate to make the Supplier an employee or agent of the Client.

***2.3.*** Neither party shall assign or transfer any of their rights, liabilities or obligations arising under this agreement without the prior written consent of the other party.

### ***3. The Quotation***

***3.1.*** The Supplier shall provide to the Client a proposal for the services to be provided ("the Quotation") which shall set out: a) The services which the Supplier will undertake for the Client. b) The date or time period within which the service will be performed. c) The costs which the Client shall be charged for the performance of the services including: i. Any fees which the Supplier shall charge. ii. Any disbursements or expenses which the Supplier will require the Client to meet (including but not limited to the costs of materials). iii. Any VAT or tax element which will be payable by the Client.

***3.2.*** The Quotation shall be attached to these terms and conditions as a schedule and where a contract is entered into between the Supplier and the Client, the Client will be deemed to have accepted the content of the Quotation in full.

### ***4. The Services and the Time and Manner of their Delivery***

***4.1.*** The Supplier will provide such services to the Client as are set out in the Quotation.

***4.2.*** The services will be provided to the Client within the timeframe specified in the Quotation.

**4.3.** Time frames and dates of delivery are provided for guidance only and the Supplier makes no guarantee that the services will be performed within the specified period. For the purposes of this agreement, time shall not be of the essence and the Supplier shall not be liable for any loss or damage suffered by the Client as a result of the delivery of services being delayed or postponed for any reason.

**4.4.** Any drawings, descriptions, plans, catalogues, promotional materials or concept designs are for the purposes of illustration only, and except where specified otherwise they are approximations and are not intended to be a full and exact representation of the services.

## **5. Payments**

**5.1.** The contract price is set out in the Quotation, which includes details of the charges which the Supplier will make for labour, materials and parts as well as any taxes or additional costs or expenses or disbursements which the Supplier may charge to the Client.

**5.2.** The intervals at which the Supplier may invoice the Client in respect of the whole or an installment of the contract price are set out in the Quotation.

**5.3.** Notwithstanding 5.1 and 5.2 above, the Supplier may vary the contract price from the amount set out in the Quotation where he has provided services which are different or in addition to those set out in the Quotation either at the specific request of the Client or because he has been required to complete additional work which was not anticipated at the time the Quotation was made, or because of market fluctuations in the price of materials.

**5.4.** The Client agrees: a) Not to withhold any sums due to the Supplier. b) To settle all invoices raised by the Supplier within 7 days. c) To pay to the Supplier interest at a rate of 2.0 percentage points per annum above the Bank of England base rate on any payments which are not settled in accordance with section 5.3(b). d) To pay to the Supplier such costs and expenses as he may incur in recovering payment from the Client where the Client fails to make payment in accordance with these terms and conditions.

## **6. Cancellation**

In accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 the Client may cancel this contract within 14 calendar days of signing this agreement (or within whatever extended period the Supplier may specify in the Quotation) and shall be entitled to a full refund of any monies paid to the Supplier, less an amount representing any reasonable administration costs which the Supplier has incurred. Any cancellation outside this period will not entitle the Client to a refund of any monies paid.

## **7. Client's Obligations**

**7.1.** The Client shall be responsible for the correctness of all measurements for products or materials which he gives to the Supplier. Where these measurements are not correct and accordingly materials or products which are ordered or provided by the Supplier are the wrong size, the Client shall bear the expense of rectifying this.

**7.2.** The Client shall cooperate with the Supplier as may be necessary to facilitate this agreement, including but not limited to: a) Permitting the Supplier access to the property or location in which the services are to be supplied ("the Site") and assuring that such access is appropriate and adequate. b) Where the Site is indoors, ensuring that there is adequate ventilation. c) Providing for the Supplier such facilities as may be necessary in order to allow him to complete the services. d) Following the Supplier's reasonable instructions relating to safety and the state of work which has recently been completed by the Supplier or is in the process of being completed or to the state of the Site in general, including directions and restrictions on appropriate usage, care and maintenance.

**7.3.** Where the Supplier stores or keeps any materials or equipment on Site, the Client shall be responsible for the security and safety of such and shall account to the Supplier for any loss or damage.

**7.4.** The Client shall be responsible for any permissions, licences or consents which are necessary in order for the services to be provided. The Client warrants that he has applied for and obtained all such necessary permissions, licence or consents prior to contracting the Supplier.

**7.5.** The Client shall be responsible for identifying the location of any underground pipes or services and advising the Supplier of this. Where the information provided is incorrect, the Supplier shall not be responsible for any damage which results to underground pipes or services and the Client shall bear the cost of rectifying this.

**7.6.** Once the services have been completed, the Client shall be responsible for the care, wellbeing and maintenance of any plants which are introduced to the Site by the Supplier.

## **8. Suppliers Obligations**

**8.1.** The Supplier shall perform all duties, services and obligations under this contract with reasonable care and skill and to a reasonable standard. He shall comply with all relevant codes of practice and statutory or regulatory requirements.

**8.2.** Whilst the Supplier shall take all reasonable steps to work to the Client's specifications and to provide specific plants where these are requested, he may substitute a suitable alternative where the specific plant is not available, albeit that he will inform the Client before he does this.

**8.3.** The Supplier shall take all reasonable care with the Client's property, including taking reasonable steps to protect existing plants during the provision of the services; however, the Supplier shall not be liable for any damage which is caused.

**8.4.** The Supplier shall be responsible for managing and arranging the safe and lawful disposal of any waste materials which are generated or removed from the Client's property as a result of the provision of the services.

**8.5.** The Supplier shall at all times hold a valid employer and public liability insurance policy.

### ***9. Property Rights and Assumption of Risk***

**9.1.** Any property rights, title or ownership in any property or materials which are used by the Supplier in providing or delivering the service shall remain with the Supplier until the Client has made payment in full in accordance with these Terms and Conditions.

**9.2.** Risk in and responsibility for any products or materials which are used in the supply, performance or delivery of the services shall pass from the Supplier to the consumer a) Where the Supplier is responsible for delivering the products or materials to the Client, upon delivery; or b) Where the Supplier is not responsible for delivery, at the moment the products or materials leave the Supplier's premises.

### ***10. The Guarantee***

**10.1.** The Supplier provides to the Client, in addition to any statutory rights which the Client may have, a guarantee that the services provided under this contract shall be free from defective or flawed workmanship for a period of 5 years from the completion of the services, notwithstanding that this guarantee shall not apply to: a) Defects or flaws which are as a result of any misuse, failure or adequately and properly maintain, neglect or failure to follow instructions or recommendations on the part of the Client. b) Defects or flaws resulting from damage which is not due to defect in the workmanship or materials provided by the Supplier.

**10.2.** The Supplier shall, at his sole discretion, determine the manner in which he will satisfy this guarantee, whether by repairing re-performing or replacing the services or by refunding to the Client all or part of the monies which have been paid.

**10.3.** Where the Client considers that the services are defective upon delivery or performance then he shall notify the Supplier of this within 2 days, failing which he shall not be entitled to claim the benefit of this guarantee.

**10.4.** This guarantee shall not become effective until the Client has paid the Supplier in full, failing which the Client shall not be entitled to claim the benefit of this guarantee.

### ***11. Termination***

**11.1.** This agreement shall continue until the services (or any mutually agreed addition, extension or variation thereof) have been provided, or until terminated in accordance with the below.

**11.2.** Without prejudice to the above, this agreement may be terminated immediately where any of the following circumstances arise: a) Either party commits a serious breach or persistent breaches of this agreement including but not limited to the non-performance, neglect or default of any of his duties as outlined herein (including a failure on the part of the Client to make payment within agreed timescales) and after notice of this breach has been given to the defaulting party it remains unremedied and unrectified days after such notice. b) Either party commits a breach of this agreement which cannot be remedied. c) Either party becomes insolvent or enters into a CVA or IVA or ceases to carry on the whole or substantially the whole of its business.

**11.3.** Upon termination of this agreement the Client shall pay to the Supplier such sums as may represent work done and expenses incurred up to and including the date of the termination.

**11.4.** Any right to terminate this agreement shall be without prejudice to any accrued rights or liabilities arising out of this agreement which are in existence at the date of termination.

### ***12. Disclaimers and Exclusions***

**12.1.** The Supplier shall not be responsible in any circumstances to the Client or any third party for any loss of profit or indirect or consequential economic damage or loss, howsoever caused, whether as a result of negligence, misrepresentation, breach of contract or otherwise.

**12.2.** Nothing in the foregoing shall be read as restricting or limiting in any way the Suppliers liability for death or personal injury.

### **13. Indemnity**

The Client shall indemnify the Supplier against any loss or damage which results from the Client's breach of this agreement or failure to abide by any of its terms.

### **14. Force Majeure**

Neither party shall be liable for any delay or failure in performing its obligations or duties under this agreement which results from circumstances outside his reasonable control including but not limited to acts of God, industrial action, war, fire, threat of terrorism, civil disturbance or rioting, government or regulatory action, breakdown in plant or machinery or shortage of raw materials or Supplier.

### **15. Warranty of Contractual Capacity**

Both parties and the signatories to this agreement warrant that they are authorised and permitted to enter into this agreement, and have obtained all necessary permissions and approvals.

### **16. Whole Agreement, Governing Law, Severability and Miscellaneous Provisions**

**16.1.** This document constitutes the entirety of the agreement between the parties. It supersedes any prior representations which may have been made, whether orally or in writing. Any modification to this agreement must be made in writing and signed by both parties.

**16.2.** This agreement shall be governed by the Law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.

**16.3.** All clauses, sub clauses and parts thereof shall be severable and shall be read and construed independently. Should any part of this agreement be found invalid this will not affect the validity or enforceability of any other provision or of this agreement as a whole.

**16.4.** All terms, conditions and covenants contained in this agreement shall bind the parties and their heirs, legal representatives, successors to title and permitted assignees.

**16.5.** Nothing in these terms and conditions shall incur any rights on a third party and no third party may enforce any provision of this contract under the Contracts (Rights of Third Parties) Act.

**16.6.** The failure by either party to enforce any provision of this agreement shall not be deemed a waiver or limitation of that party's right to subsequently compel and require strict compliance with every provision of this agreement.

IN WITNESS OF WHICH the parties have caused this agreement to be executed on the day and date first before mentioned.

**On behalf of the Supplier**

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)

**On behalf of the Client**

\_\_\_\_\_  
(Sign)

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Position)

\_\_\_\_\_  
(Date)