

Belderbos Landscapes

TERMS AND CONDITIONS

The following terms and conditions shall apply to and are incorporated into every estimate provided by Belderbos Landscapes, and shall apply unless expressly modified or excluded in writing and signed by the Contractor and the Client.

1. SCOPE OF THE WORK

- 1.1 These Conditions shall be deemed to be incorporated into any contract between the Client and the Contractor and shall take precedence over any other terms and conditions (unless identified and agreed in writing by the Client/Contractor, and any deletion, substitution or amendment to the Conditions shall not take place unless agreed in writing by the Contractor/Client).
- 1.2 If there is any inconsistency between the specification and the drawings, the specification shall prevail.
- 1.3 The Contractor shall carry out and complete the landscape works described in the Contract Document in a good and workmanlike manner. Should any inconsistencies be found between the contract documents, these are to be highlighted and a revised price agreed prior to commencement of works.
- 1.4 The Client shall obtain all permissions, give all notices and pay all fees required under any Act of Parliament or any regulation or bylaw of any local authority or statutory undertaker having any jurisdiction with regard to the Works and the Client shall indemnify the Contractor against any claim, proceedings, loss or expense resulting from the Client's breach of the Clause in whole or in part. Client must produce copies of all relevant approvals. If not produced, work should not commence.

2. CONTRACT SUM

- 2.1 The Contractor shall provide an estimate in writing specifying the Works to be carried out and a breakdown of the cost of the Works (the Estimate).
- 2.2 The estimate shall remain open for acceptance for 30 days (or such other period as may be agreed in writing) from the date of estimate. If the Estimate is not accepted in writing within this period, the Estimate will lapse and be deemed to have been withdrawn.
- 2.3 If the Client accepts the Estimate in writing within the period stipulated in clause 2.2 the price contained in the Estimate shall become the Contract sum except as expressly provided in these Conditions. A binding contract will come into existence when the Client accepts the Estimate in writing.
- 2.4 The Client may issue to the Contractor reasonable instructions to vary and modify the quality and quantity of the Works. All instructions given by the Client must be given in writing. The Contractor is not under an obligation to carry out a verbal instruction until it is confirmed in writing, except in the case of an instruction being issued by the Client in an emergency e.g health and safety matters. All instructions issued in an emergency shall be confirmed in writing within 3 days and the Contractor shall be entitled to be paid for work properly carried out in accordance with that instruction.
- 2.5 If the Variation will alter the cost of carrying out the Works, The Contractor will provide a written Estimate and cost breakdown for the cost of carrying out the Variation and the effect it will have on the completion date. The Client and the Contractor will agree an adjustment to the Contract sum. If after the Client receives the Estimate and wishes to proceed, the Client shall confirm his instruction to proceed in writing, accepting the new Estimate and the extended completion date.
- 2.6 Where any additional or substituted work is of a similar nature to the Works, such works should be valued to the cost breakdown set out in the Estimate. Otherwise such work shall be valued at fair rates and prices agreed prior to execution and any additional payment due to the Contractor or any extension to the Completion date shall be added to the Contract sum and Completion Date respectively.

3. PAYMENT

- 3.1 The Contractor shall be entitled to receive interim payments at the intervals stated in the Estimate. If no payment interval is agreed the first interim payment shall be due within 14 days of the first agreed valuation date. Thereafter payment shall become due 14 days after receipt by the Client of the contractors monthly applications. Each interim payment shall become due on the following dates: as per specification
- 3.2 Where monthly payment periods apply the first interim payment shall not become due until 28 days after work has commenced on Site, thereafter payment shall become due 28 days after receipt by the Client of the Contractors Application.

- 3.3 Fortnightly or weekly payment periods shall apply as above 3.2, but after 14 days or 7 days respectively.
- 3.4 Without prejudice to the Contractors other rights and remedies, if the Client shall fail to pay as provided in the above clauses, the Contractor shall be entitled to suspend Works 7 days after giving notice to that effect to the Client.
- 3.5 The Client shall pay to the Contractor any Value Added Tax properly chargeable on the supply to the Client of any goods and services under these Conditions. The Client may at any time request appropriate evidence of the Contractors current VAT registration status. Should the Contractor fail to provide evidence then the Client may withhold amounts attributable to VAT on any outstanding payment.

4. COMMENCEMENTS, COMPLETION, DELAY AND DISRUPTION

- 4.1 The Client shall give to the Contractor full possession of the Site together with proper and adequate access to allow the Contractor to carry out and complete the Works and the Contractor shall commence the Works on Site on a date to be agreed by the Client and the Contractor 'the commencement date', but must not be later than 30 days from the date of the estimate, unless otherwise agreed in writing.
- 4.2 The Contractor shall take possession of the Site and commence the Works on the commencement date and shall proceed with due diligence and complete the Works by the Completion Date.
- 4.3 If it becomes reasonably apparent to the Contractor that the progress of the Works is being delayed and/or the Works will not be completed by the Completion Date, the Contractor shall within 7 days of any event or occurrence giving rise to such delay notify the Client in writing of the cause and duration of such delay. The Completion Date will be extended by a fair and reasonable amount of time if the Contractor:
 - a) has to spend extra time completing the Works because of Variations made to the work details as contained in the Contract documents.
 - b) the Works are delayed by any act or omission of the Client.
 - c) cannot finish the Works on time for reasons beyond his control such as excessively adverse weather conditions, and/or variable Site conditions and/or any delay caused by the Client and/or late delivery of supplies to site.
- 4.4 The Contractor shall be entitled to claim any reasonable additional costs incurred as a result of the Completion date being extended due to any events that may occur in clause 4.3 and such additional costs shall be added to the Contract Sum.
- 4.5 Notwithstanding clause 4.2 and 4.3, the Contractor hereby excludes liability to the Client for any loss, cost or damage of whatsoever kind to the fullest extent permissible by law arising out of or as a consequence of its failure to perform or complete the Works by reason of matters beyond the Contractors control and which it could not have reasonably been foreseen at the date of the Estimate.

5. MAINTENANCE AFTER COMPLETION

- 5.1 Following completion of the Works, the Client shall be responsible for the proper maintenance of the site, unless otherwise determined by the Contractor/Client.

6. DETERMINATION

- 6.1 Without prejudice to its other rights and remedies, the Contractor may by written notice to the Client within 7 days determine its employment under the Contract by reason of any one of more of the following:
 - a) Failure by the Client to observe the provisions of Clause 3 hereof and/or
 - b) The Client becoming insolvent or committing any act of bankruptcy or, being a company, making an arrangement with its creditors, or (other than for the purposes of amalgamation or reconstruction), the commencing of winding up proceeding or the appointment of a receiver and/or the BALI contractor shall become a preferred creditor.
 - c) Failure by the Client to give access to the site under Clause 4.1 and/or
 - d) Breach of the Client's warranty under Clause 7.1 and/or
 - e) Suspension of the Works, in whole or in part, for a period of 5 days, whether or not consecutive, due to any act, omission or default of the Client or anyone for whom the Client is responsible. Provided that the Contractor shall have stated the default alleged in a written notice and the Client shall have failed to rectify the default within 7 days of the date of such notice and provided further that the notice of determination shall not be given unreasonably or vexatiously.
- 6.2 The Contractor will be entitled to be paid by the Client for work properly carried out and/ or materials supplied and materials ordered up to the date of determination of the Contractors employment under these Conditions.

7. THE SITE

- 7.1 The Client warrants that the site is free of springs, flooding, rock, tree stumps not specified to be removed, mine workings, covered wells or other cavities, running sand, service pipes and cables, sewage or land drains, foundations and sub-structures of former buildings or other hazards or obstructions which

are not reasonably apparent by visual inspection of the surface of the site or which have not been made known in writing by the Client to the Contractor prior to the date of the Estimate.

- 7.2 Without prejudice to his other rights and remedies, if the Client is in breach of the warranty under Clause 7.1, the Contractor may proceed with the Works provided the Contractor has provided an Estimate for the work which has been accepted by the Client in writing in accordance with Clause 2.2 and 2.3 and shall be entitled to reasonable payment for any additional works or materials caused by the breach of warranty. Such amount shall be added to the Contract Sum.

8. MATERIALS

- 8.1 Where any materials have been incorporated into the Works or the Site, the property in such materials and goods shall pass to the Client immediately upon their incorporation notwithstanding that the value of such materials and goods may not have been included in any interim payment or final payment or any payment received by the Contractor in respect thereof.
- 8.2 Unfixed materials and goods delivered, placed on or adjacent to the Site and intended for use in connection with the Works shall remain the property of the Contractor until the value of such materials and goods have been included in any interim or final payment and the amount has been discharged whereupon such materials and goods shall become the property of the Client.
- 8.3 The Client and the Contractor may agree payment for off site materials and goods in which case such materials and goods shall become the property of the Client upon payment and shall be so identified.
- 8.4 All plants, trees and turf supplied shall be true in name and healthy when planted. The Contractor shall not be responsible for any loss howsoever arising after planting unless the loss suffered is a direct consequence of the Contractor's failure to perform or to complete the Works as provided. Replacement of any plants found to be defective during the first growing season after planting shall be at the absolute discretion of the Contractor. Replacement will only be considered if the Client has maintained the plants properly, and the Client shall have advised the Contractor in writing as soon as the loss or damage became apparent and the Contractor has had the opportunity to inspect the affected plants or areas.
- 8.5 The grass seed supplied shall have been tested and shall conform to current EC Regulations. The Client acknowledges that a sward cannot be made in one season and several seasons and careful cultivation, weeding and feeding are essential and that no land is free from weeds and that accumulated weed growth and dormant weed seed cannot be eradicated in a limited number of cultivations. When agreeing to cultivate land, the Contractor shall have no liability for subsequent weed growth.

9. DISPUTES

- 9.1 In the event of any dispute or difference arising out or in connection with this contract, the BALI Complaints procedure will be the initial path undertaken (details available on BALI Website www.bali.org.uk or BALI HQ on 0870 770 4971). The Client and the Contractor shall have the right to have the dispute or difference referred to such person or persons as the parties may agree to appoint. In event that the parties fail to agree upon an independent Adjudicator within 14 days after either party has given to the other written notice to concur in the appointment of an Independent Adjudicator, the Complaints Committee of the British Association of Landscape Industries shall, upon request from either party, offer an Adjudicator. The Adjudicator shall act as expert and shall not be bound to follow the principles of law but may decide the matter submitted to him according to what he considers fair and reasonable in all the circumstances. The costs of the proceedings shall be borne by both parties or as otherwise agreed with the Adjudicator. Should the complaint lead to Court action, the Adjudication Process will become null and void and Court proceedings will take precedence.
- 9.2 The provisions of Clause 9.1 shall survive the termination of the Contract and shall not affect the parties rights under the Arbitration Acts 1950-1979.

10. THE PROPER LAW OF THE CONTRACT

- 10.1 *This contract shall be governed by and shall be construed in accordance with English/Welsh Law.

These Standard Terms & Conditions have been produced for the use of BALI Members when agreeing contracts for private garden works.

Any Member who wishes to use these terms should have them checked by their own solicitor before use, as BALI cannot be held responsible for any errors or omissions. The regulations will only apply to cases where the Client is a consumer.

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