

Landscape Construction For Hard & Soft Landscaping

Standard Terms and Conditions of Contract

for Business to Consumer Contracts: Boningale Garden Creations
(A trading division of Boningale Ltd)

1.0 DEFINITIONS

- 1.1** "Client" means the individual or organisation who buys or agrees to buy goods or services from the Contractor and who will be responsible for all payments to the Contractor unless otherwise notified in writing prior to commencement.
- 1.2** "Contractor" means Boningale Garden Creations Holyhead Road, Albrighton. WV7 3AT
- 1.3** "Contract" means the contract between the Contractor and the Client for the purchase of goods and services incorporating these Terms and Conditions.
- 1.4** "Goods" means the articles that the Client agrees to buy from the Contractor.
- 1.5** "Services" means the provision of landscaping services by the Contractor.
- 1.6** "Terms and Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Contractor.

2.0 CONDITIONS

- 2.1** Nothing in these Terms and Conditions shall affect the Clients statutory rights as a consumer.
- 2.2** Any variation to these Terms and Conditions, including any special terms and conditions shall be agreed by negotiation between the Contractor and Client and confirmed in writing.
- 2.3** Any errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other documentation or information used by the Contractor can be corrected in consultation with the client provided that the correction does not materially affect the contract.

3.0 PRICE AND PAYMENT

- 3.1** The Client agrees to pay the Contractor the contract sum together with any VAT properly chargeable upon the contract sum.
- 3.2** Payment of the total price of the Contract less any deposit paid shall be made to the Contractor after completion of the Contract. The Client shall not be entitled by reason of any alleged minor defect to withhold more than a proportionate amount of the Contract sum.
- 3.3** The Client will pay the Contractor interest of the rate of 1% per month interest on all outstanding sums from the due date until payment. The Contractor reserves the right to withdraw from the site if any contract payment schedule is not adhered to.
- 3.4** For contracts with a value in excess of £5000.00 excluding VAT, progress payments will be negotiated between the Client and Contractor prior to acceptance of the contract.
- 3.5** For contracts under £5000.00 a deposit is not required but payment in full will be required on satisfactory completion of the contract.
- 3.6** Prices in the quotation will remain fixed for 90 days. Acceptance before that date will ensure no increase in the cost of works specified in the quotation. If the cost to the Contractor of carrying out the Contract is subsequently increased by reason of increases in the cost of materials, labour and any other factor outside the control of the Contractor, then the Contractor shall notify the Client before undertaking any work to which the increase will apply and the Client may require the Contractor to discontinue the work and shall pay the Contractor only for the work carried out.
- 3.7** The cost of additional goods or services ordered by the Contractor on behalf of the Client will be agreed in writing and subject to the payment conditions detailed above. Any additional work requested which is not specified in writing within this Contract will only be carried out if a new Contract is entered into with the Contractor.
- 3.8** Title and ownership of materials and equipment will not pass to the Client until payment has been received in full. Legal proceedings may be taken to recover materials and equipment unpaid for.
- 3.9** The Client can cancel the Contract with reasonable notice and in negotiation with the Contractor. If the Client cancels the Contract they agree to pay any losses and costs the Contractor suffers because of the cancellation. The Contractor can cancel the Contract with reasonable notice and in negotiation with the Client. If the Contractor cancels the Contract he must pay the Client any losses or costs suffered because of the cancellation.

4.0 GENERAL CONDITIONS

The Contractor

- 4.1 The Contractor agrees to use materials that are suitable for the intended purpose. All materials remain the property of the Contractor until the Contract is completed. If for any reason beyond the Contractor's reasonable control the Contractor is unable to supply a particular item, the Contractor will notify the Client. With the agreement of the Client the Contractor will replace it with an item of superior standard and value.
- 4.2 All materials surplus to the contract will remain the property of the Contractor and will be removed upon completion of the contract.
- 4.3 The Contractor will be responsible for the safe storage and positioning of equipment and materials on the site at all times.
- 4.4 The Contractor will carry out work in accordance with Health and Safety regulations and will take all reasonable steps to minimise environmental disturbance, nuisance and pollution.
- 4.5 The Contractor will carry out and complete the works detailed in the contract in a good, timely and workman like manner.
- 4.6 The Contractor will not accept responsibility for damage to the Client's premises arising from third parties employed directly by the Client. The Client will be liable for any damages to works and or delay caused by third parties employed directly by the Client.
- 4.7 The Contractor will carry out a site risk assessment and will ensure all health and safety regulations are met. The Contractor will make arrangements for staff welfare facilities unless otherwise agreed with the client.

The Client

- 4.8 The Client confirms that the site is free from known hazards or obstructions, which are not discoverable upon visual inspection of the surface of the site or made known in writing by the Client to the Contractor prior to submission of a quotation. The Contractor cannot be held responsible for any unforeseeable or unknown obstructions below ground and any reasonable additional costs incurred by the Contractor as a result of unforeseen or unknown hazards or obstructions will be agreed with the Client in advance. If the Client is aware of unseen obstructions they must notify the Contractor prior to acceptance of a quotation.
- 4.9 The Client confirms that the site is free from any known hazards which are not discoverable upon visual inspection of the surface of the site. Should the Client be aware of any such hazard then he shall notify the Contractor in writing at the earliest opportunity. If, following acceptance of the contract, the Contractor discovers any obstruction or hazard which was not reasonably foreseeable this will be deemed to be a factor outside the control of the Contractor and accordingly clauses 3.6 and 3.7 shall apply. Should the Client not agree to any reasonable variation to the Contract made necessary by an unforeseen obstruction or hazard in order to complete the contract and to satisfy Health and Safety requirements, then the Contractor will be entitled to discontinue the work with immediate effect and the Client will pay the Contractor only for work carried out.
- 4.10 The Client must provide reasonable access to mains electricity and water on the site. The cost of providing electricity and water will be borne by the Client.
- 4.11 The Client will allow the Contractor access to the site within the agreed working hours and throughout the stated time period.

5.0 CONSENTS

- 5.1 The Client is responsible for obtaining any necessary consent for the implementation of works as described in the Contract or specification of works from the local authorities and for ensuring that the implementation of works is in accordance with the provisions of any by-laws. Planning regulations shall not be the responsibility of the Contractor. The Client is also responsible for confirming ownership of land to be worked upon.

6.0 DELAYS

- 6.1 The Contractor will give the Client an estimate of the duration of the contract but shall not be liable for any delays for any reason whatever that are beyond the Contractor's reasonable control such as adverse weather or adverse or difficult site conditions not reasonably foreseen by the Contractor. In any such circumstances the Client and Contractor will negotiate an agreed extension of time.
- 6.2 If the Client wishes to delay the Contract they must notify the Contractor within seven days of the commencement of the contract.
- 6.3 If the Contractor does not start the Contract within 10 days of any date included in the estimate or quote then the Client may nominate a date on which they want the Contract to start.

7.0 PLANTING MATERIAL

- 7.1 The Contractor will ensure that all plant material and turf is fit for purpose and of the right quality. The Contractor will also make available care notes for the Client to assist with the maintenance of living material after the completion of the Contract. On completion of the Contract all responsibility for the ongoing

maintenance of all living material is transferred to the Client. The Contractor will not be liable for any damage or deterioration to the living material for example adverse weather conditions, unless arising from a breach of contract on the part of the Contractor, or failure to discharge his statutory obligations.

7.2 If plant material specified in the Contract is unavailable the Contractor will provide the Client with suitable alternatives. The Client has the choice whether to accept the alternative plant material.

8.0 COMPLAINTS

8.1 Any complaint that the Client has arising from the Contract works must be reported to the Contractor in writing within reasonable time of discovery of the problem. The Contractor will properly investigate any complaint received and if the Contractor's work is deemed to be faulty then the Contractor is liable to conduct extra work as deemed sufficient to remedy the fault at no charge to the Client.

8.2 The Contractor will follow the complaint procedure as set out by the Association of Professional Landscapers. A copy of this procedure can be obtained from The Association of Professional Landscapers, Horticulture House, 19 High Street, Theale, Reading, Berkshire RG7 5AH.

9.0 COPYRIGHT

9.1 All original designs, drawings, specifications, photographs and written material remain the property of the contractor. The Contractor reserves the right to use any such material for promotional purposes or for any other purpose, unless the Client has purchased the copyright.

10.0 THIRD PARTIES

10.1 No work by the Contractor is intended to confer a benefit on any third party for any purpose.

11.0 FORCE MAJEURE

11.1 The Contractor shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances out of reasonable control, including but not limited to acts of God, strikes, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of materials from a natural source of supply and the Contractor shall be entitled to a reasonable extension to its obligations.

12.0 CHANGES TO CONTRACT AND TERMS AND CONDITIONS

12.1 The Contract will only be varied with the Client's consent. The Client is entitled to cancel the Contract if the Contract is varied and the variations are not acceptable to the Client.

13.0 GOVERNING LAW AND JURISDICTION

13.1 This Contract is governed by the law of England where the Contract is located in England or Wales and by Scots law where the Contract is located in Scotland.

14.0 ACCEPTANCE

14.1 It is important that the Client reads and understands the Terms and Conditions that will apply to the Contract before signing.