

# **Miller's Garden Services**

## **Standard Terms and Conditions of Contract For Maintenance Services**

### **1.0 DEFINITIONS**

- 1.1** "Client" means the individual or organisation who buys or agrees to buy Goods or Services from the Contractor.
- 1.2** "Contractor" means the person or company detailed in the Quotation.
- 1.3** "Contract" means the contract between the Contractor and the Client for the purchase of Goods and Services comprising the Quotation and 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 landscape maintenance services by the Contractor.
- 1.6** "Site" means the site where the Services will be performed.
- 1.6** "Terms and Conditions" means the terms and conditions set out herein.
- 1.7** "Quotation" means the Contractor's written quotation for the Contract work to which these Terms and Conditions apply.

### **2.0 CONDITIONS**

- 2.1** Where this Contract is entered into by a consumer, nothing in these Terms and Conditions shall affect the Client's statutory rights as a consumer.
- 2.2** No variation to this Contract shall be binding on the parties unless made in writing and signed on behalf of both parties.

### **3.0 PRICE AND PAYMENT**

- 3.1** The Client agrees to pay the Contractor the Contract price together with any VAT properly chargeable upon the Contract price.
- 3.2** Unless otherwise stated in the Quotation/specification or otherwise agreed between the parties, the Contractor will invoice the Client for work completed on a monthly basis in arrears. Unless otherwise stated in the Quotation/estimate or otherwise agreed by the parties, payment shall be made on receipt of each invoice.
- 3.3** The Contractor reserves its right to charge interest at the rate of 12% per annum above the base rate of the Bank of England on all outstanding sums from the due date until payment. Where any payment is outstanding, without prejudice to such other rights and remedies as may be available, the Contractor shall not be obliged to provide any further Goods or Services whatsoever to the Client and shall be entitled to cancel the Contract with immediate effect.
- 3.4** Quotations/specifications shall be open for acceptance during the period set out in the Quotation. If after acceptance of the Quotation by the Client the cost to the Contractor of carrying out the Contract work is increased by reason of increases in the cost of materials, labour or any factor outside the control of the Contractor, the Contractor shall notify the Client of the price increase before undertaking any further work. If the Client does not accept the price increase, either party may terminate the Contract with immediate effect.

### **4.0 GENERAL CONDITIONS**

#### **The Contractor**

- 4.1** The Contractor will carry out and complete the work detailed in the Contract/Specification in a good and workmanlike manner.
- 4.2** The Contractor will carry out the work while soil and weather conditions are suitable for the relevant operations.
- 4.3** The Contractor will use only machinery and tools suitable for the Site conditions and the work to be carried out.
- 4.4** Unless otherwise agreed, all Goods will be delivered to the Site.

#### **The Client**

- 4.5** The Client shall notify the Contractor of any known hazards or obstructions on the Site prior to submission of a Quotation. The Contractor will promptly notify the Client of the discovery of any obstructions or hazards during the course of the work and advise on the implications of the discovery of such obstructions or hazards, if any.

**4.6** The Client must provide electricity and water on the Site if required by the Contractor. The cost of providing electricity and water will be borne by the Client.

**4.7** The Client will allow the Contractor access to the Site within the agreed working hours and throughout the agreed time period.

**4.8** If the Client provides on Site storage they will ensure that the facility is safe and secure.

## **5.0 HEALTH AND SAFETY**

**5.1** The Contractor will take all reasonable steps to minimise environmental disturbance, nuisance and pollution. Noise may however be unavoidable due to the operation of machinery.

**5.2** The Contractor will carry out a Site risk assessment and will ensure that all applicable health and safety regulations are met. The Contractor will make arrangements for staff welfare facilities unless otherwise agreed with the Client.

## **6.0 CONSENTS**

**6.1** The Client is responsible for obtaining any necessary consents for the implementation of the work from the relevant authorities and for ensuring that the implementation of the work complies with all applicable laws.

## **7.0 DURATION OF WORK**

**7.1** The Contractor will provide the Client with an estimate/specification of the likely duration of the work. Any dates or time scales given are approximate only.

**7.2** Notwithstanding any other term of this Contract, the Contractor shall not be liable for any delay in delivery of the Goods or performance of the Services and time shall not be of the essence of this Contract.

## **8.0 PLANTING MATERIAL**

**8.1** The Client shall be responsible for the maintenance of all living material following completion of the work. **8.2** If specific plant material is unavailable the Contractor will provide a suitable alternative.

## **9.0 RUBBISH REMOVAL 9.1** As per specification

## **10.0 IRRIGATION**

**10.1** Unless otherwise specified in the Quotation or notified to the Client, the Contractor is not responsible for irrigation of planted material and lawns and does not accept liability for the loss of planted material due to lack of irrigation or adverse weather conditions.

## **11.0 COMPLAINTS**

### **11.1**

The Contractor will follow the complaints 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.

## **12.0 INTELLECTUAL PROPERTY**

**12.1** All original designs, drawings, specifications, photographs and any other written material produced by the Contractor during the performance of the Contract shall remain the property of the Contractor.

## **13.0 THIRD PARTIES**

**13.1** The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

#### **14.0 FORCE MAJEURE**

14.1 The Contractor shall not be liable for any delay or failure to perform any of its obligations under this Contract if the delay or failure results from events or circumstances beyond its reasonable control, including but not limited to acts of God, strikes, accidents, war, fire, breakdown of plant or machinery, shortage or unavailability of materials, adverse weather conditions or adverse or difficult Site conditions.

#### **15.0 CHANGES TO CONTRACT AND TERMS AND CONDITIONS**

15.1 The Contractor shall be entitled to amend and update these Terms and Conditions from time to time.

#### **16.0 GOVERNING LAW AND JURISDICTION**

16.1 This Contract is governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

#### **17.0 ACCEPTANCE**

17.1 Acceptance of a Quotation shall be deemed to be acceptance of these Terms and Conditions.

#### **18.0 TERMINATION**

##### **18.1 As described in the specification/quotation**

#### **19.0 LIABILITY**

19.1 Except in the case of death or personal injury caused by the Contractor's negligence, the entire liability of the

Contractor under or connection with this Contract shall not exceed the price paid by the Client to the Contractor under this Contract in the 12 month period preceding the claim.

19.2 Notwithstanding anything else contained in this Contract the Contractor shall not be liable to the Client for loss of profits or contracts or any indirect or consequential losses whether arising from negligence, breach of contract or otherwise.

#### **20.0 SEVERANCE**

20.1 If any provision of this Contract is declared by any judicial or other competent authority to be unenforceable, the remaining provisions of this Contract will remain in full force and effect.

#### **21.0 ENTIRE AGREEMENT**

21.1 This Contract constitutes the entire agreement between the parties and supersedes any and all prior agreements. In the event of a conflict between these Terms and Conditions and any Quotation, unless otherwise specified, the terms of the Quotation shall prevail.

#### **22.0 WAIVER**

22.1 No waiver shall be valid unless made in writing and signed on behalf of the Contractor.