

<p>1. DEFINITIONS</p> <p>1.1 In these conditions the following words shall have the following meanings:- “The Client” means the person firm or company with whom any contract to provides services and goods is made by the company. “The Company” means Westwood Landscape Limited. “The Company’s premises” means 18-19 Marconi Road, Burgh Road Ind Estate, Carlisle, CA2 7NA. “The service” means the services and articles described in the order details between the Company and the Buyer for the sale or supply of goods by the Company (including any instalment) together with any packaging. “The order details” means those set out on the Company’s order confirmation or accepted tender. “Writing” includes email, facsimile transmission and/or other comparable means of communication.</p> <p>2. GENERAL</p> <p>2.1 These conditions shall be deemed to be incorporated into every contract entered into by the Company to provide services and goods and shall notwithstanding and statement to the contrary contained in any of the client communications prevail over any conflicting or inconsistent terms and conditions contained in any order, fax, email, letter, or form of contract sent by the client to the Company or any other communication between the Client and the Company whatsoever and whatever their respective dates unless or to the extent that any variation of these conditions shall be expressly agreed in writing and signed by one of the Company’s directors.</p> <p>2.2 No order placed with the Company shall be binding until confirmed by the Company by the issue of Order Details.</p> <p>2.3 All dealings between the Company and the Client are confidential. The Client may not disclose information concerning contracts with the Company (unless required by law) to any third party without the consent of the Company.</p> <p>2.4 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise the same prior to the Company’s acceptance of the Client’s order by the issue of acknowledgement of order.</p> <p>2.5 All designs and sketches are submitted by the Company in total confidence and (unless otherwise agreed in writing by the Company) such designs and sketches and the copyright and other intellectual property rights (if any) in them remains the property of the Company with no right to reproduce or copy in any way passing to the Client.</p> <p>3. PRICES</p> <p>3.1 Subject to the following provisions of this condition the price for the goods shall be as stated in the Order Details.</p> <p>3.2 Unless stated to the contrary in the Order Details and subject to the provisions of clause 3.3. The Company’s prices are quoted.</p> <p>3.3 Except as otherwise expressly stated in the Order Details:- 3.3.1 all prices are stated exclusive of VAT; 3.3.2 The Client shall pay forthwith against the invoice the Company’s reasonable charges for any special service arrangements made at the Client’s request.</p> <p>4. DELIVERY</p> <p>4.1 Any delivery dates specified in the Order Details are given in good faith but unless expressly stated to be guaranteed are given for guidance only and time shall not be of the essence of any contract. The Company’s only obligation shall be to deliver within a reasonable time taking into account the time the Company received all necessary information and the weather and ground conditions.</p> <p>4.2 No stipulation as to time or period of delivery shall be of the essence of any contract between the Company and the Client.</p> <p>4.3 The Company shall not under any circumstances be liable to compensate the Client for any indirect or consequential loss whatsoever (including but not limited to loss of profit or liability to third parties) arising by reason of the Company’s failure to deliver the Services and Goods after or within the time or period stipulated by the Client or that notified by the Company to the Client or within a reasonable time and whether or not such failure results from the Company’s negligence.</p> <p>4.4 Where the Services and Goods are to be delivered in phases, each phase shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any claim by the Client in respect of any one or more instalment shall not entitle the Client to treat the contract as a whole as repudiated.</p> <p>4.5 If the Company fails to deliver the Services and Goods for any reason other than any cause beyond the Company’s reasonable control or the Client’s fault and the Company is accordingly liable to the Client, the Company’s liability shall be limited to the excess to the cost of the Client of similar Services and Goods to replace those not delivered over the agreed price of the Services and Goods.</p> <p>4.6 If the Client fails to take delivery of the Services and Goods or fails to give the Company adequate access and suitable site conditions at the time stated for delivery (otherwise than by reason of any cause beyond the Client’s reasonable control or by reason of the Company’s fault) then, without prejudice to any other right or remedy available to the Company, the Company may: 4.6.1 store the Goods until actual delivery and charge the Client for reasonable costs (including insurance) of storage; or 4.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the price under the contract or charge the Client for any shortfall below the price under the contract and for any wastage due to the delay.</p> <p>5. PAYMENT</p> <p>5.1 Subject only to an agreement in writing to the contrary between the Company and the Client the Company shall be entitled to invoice the Client for the price of the Services and Goods (or any instalment) on or at any time after delivery of the Services and Goods. Payment of the invoiced price shall be made within the period detailed on the invoice. All periods of credit shall nevertheless cease and the whole of the amounts invoiced and all other amounts due under any contract between the Company and the Client shall become immediately due and payable if any of the events mentioned in clause 7.4 arise.</p> <p>5.2 Time of payment shall be of the essence of every contract.</p> <p>5.3 The Company shall be entitled to charge interest at the rate of 2% (two per cent) over the base rate from time to time of Handelbanken on all overdue amounts until actual payment in full (irrespective of whether payment has been formally demanded or judgment entered).</p> <p>5.4 The Company reserves the right to invoice up front payment of any accepted quotation of any proportion The Company deems acceptable and demand payment before commencing works. This will be invoked at The Company’s discretion.</p> <p>6. RISK</p> <p>6.1 The risk in the Services and Goods shall pass to the Client:- 6.1.1 in the case of Goods to be delivered at the Company’s premises at the time the Company notifies the Client that the Goods are available for collection; 6.1.2 In the case of Goods to be delivered otherwise than at the Company’s premises at the time of delivery or if the Client wrongfully fails to take delivery of the Goods the time when the Company has tendered delivery of the Goods.</p> <p>7. RETENTION OF TITLE</p> <p>7.1 Subject to the power given to the Client by this condition, sole and absolute ownership of the Goods shall remain vested in the Company until all amounts relating to Goods supplied by the Company to the Client under this or any other contract have been paid in full and the Company retains the right of removal of the Goods until ownership passes under this condition.</p> <p>7.2 If the Goods (or any element thereof) are processes or mixed with or applied to any other goods then the resulting products (“the products”) shall be the property of the Company until the Client has complied with its obligations in clause 7.1 hereof subject to the proviso that if the value of the Products (as quantified by the price paid or payable by the Client therefore, or if not, the direct cost to the buyer of their manufacture) exceeds the invoice cost of the Goods then the Product shall (as between the Company and the Client) remain the property of the Client.</p> <p>7.2.1 Notwithstanding clauses 7.1 and 7.2 ownership in the Goods or the Products shall pass to the Client upon any bona fide sale at arms length by the Client to an unrelated third party without notice of the Company’s title but in any event the Client shall hold the proceeds of sale on trust for the Company to the extent that any sums are owing to the Company (whether or not yet due and payable) and shall place the proceeds of sale in a separate bank account and shall give the bank notice as to the Company’s rights therein.</p> <p>7.3 Until ownership in the Goods or the Products passes to the Client it shall hold them as Bailee in a fiduciary capacity to the Company, and:- 7.3.1 shall store the Goods or the Products in a manner which makes them readily identifiable as the Company’s; and 7.3.2 shall upon request, promptly inform the Company of the location of the Goods or the Products; 7.3.3 shall insure the Goods or the Products; and 7.3.4 Shall accept the Company’s right to dispose of the Goods or the Products.</p> <p>7.4 In the event of the Client defaulting in payment of any amount due for the Goods for 7 days (whether or not any agreed credit period has expired) or if the Client ceases or threatens to cease to carry on trading or passes or calls a meeting to pass a resolution for winding up or if a receiver is appointed of any of the Client’s assets or if winding up petition is presented, then the Client shall forthwith cease to use or otherwise dispose of the Goods not then used, disposed of or sold and shall upon demand forthwith deliver up to the Company and of the Company’s Goods in the Client’s possession or under its control.</p> <p>7.5 On making such a demand as in clause 7.4 the Company shall be entitled without incurring any liability to the Client to enter the Client’s premises or any other premises where the Company’s Goods or the Products are located to inspect the Client’s stocks and to remove and resell such of the Company’s Goods or the Products as are to be found there. The Client’s liability to the Company in respect of any goods so removed shall be limited to the amount of any costs or expenses incurred in such removal and re-sale.</p> <p>7.6 Nothing in this condition shall give the buyer the right to return the Goods without the Company’s consent.</p>	<p>8. TERMINATION AND SUSPENSION</p> <p>8.1 Where the Company is unable to supply, deliver or provide the Goods by its normal route or means of delivery owing to any of the following:- 8.1.1 the Client’s failure to supply any necessary information; or 8.1.2 any other reason beyond the Company’s reasonable control including (without prejudice to the generality of the foregoing expression) shortages or unavailability from normal sources or routes of supply of raw materials, breakdown of plant, reduction or unavailability of power, strikes, lock-outs, act of Government, fire, flood, Queen’s enemies, explosion, lightning, aircraft, civil commotion, acts of water, malicious mischief or theft Then the Company shall have the right on giving written notice to the Client and without incurring any liability to him to suspend further performance of this contract for a period (not exceeding 3 months) equal to the continuance of any such impediment preventing the Company from performing its obligations.</p> <p>8.2 At the end of any period of suspension without performance of the contract under clause 8.1.1 the Company may terminate this contract by notice in writing to the Client or under clause 8.1.2 either party may terminate this contract by notice in writing to the other.</p> <p>8.3 In the event that: 8.3.1 the Client is in arrear in making any payment due to the Company under any contract; or 8.3.2 the Client’s stated credit limit with the Company has been reached; or 8.3.3 The Company believes on reasonable grounds that any payment (whether or not any agreed credit limit has expired) will not be met by the Client when due. Then the Company may suspend further work and/or deliveries under any contract with the Client and require immediate payment of all amounts due to the Company and further payment in advance before making any further deliveries under any contract (notwithstanding agreed credit terms). If any such payment or any part of it remains in arrear for 7 days after the Company has demanded it in writing then the Company shall have the further right to cancel that and/or any other contract without prejudice to any claim for damages it may have against the Client and without incurring any liability to the Client for failure to deliver.</p> <p>8.4 When a contract is terminated or suspended under this condition then: - 8.4.1 the Company shall be entitled to charge the Client with any interest, insurance, transport, storage or other costs and charges arising from any such termination or suspension; 8.4.2 the Client shall forthwith pay for and where appropriate take delivery of all goods appropriated by the Company to the contract up to the date of any such termination or suspension;</p> <p>8.5 Apart from the right conferred on the Client by clause 8.2 the Client shall have no right to suspend deliveries or otherwise to postpone performance of any contract by either party nor to terminate any contract for any reason other than the Company’s repudiation of it.</p> <p>9. INSPECTION AND CLAIMS</p> <p>9.1 The Client shall procure that a thorough inspection of the Goods is made immediately upon delivery and in any event before they are resold or otherwise dealt with by or on behalf of the Client.</p> <p>9.2 Claims in respect of defects or errors in quality or description or quantity reasonably discoverable on such an inspection shall be made within 14 days of delivery by fax or email backed up by hard copy written notice in the post and in the absence of such claim the Goods shall be deemed to have been delivered and accepted by the Client complete and satisfactorily.</p> <p>9.3 It is the Client’s entire responsibility to satisfy himself that the Goods and services are suitable for the purpose and/or conditions for which they are required subject to the provisions of clause 10.1 being applicable and met.</p> <p>9.4 Where a complaint or claim has been made in respect of Goods and services proved to be or alleged to be defective or below the required standard then the Company may suspend delivery of any Goods which may have the same or similar defect or alleged defect until the validity of such complaint/claim has been finally determined in such case any delivery date shall be postponed accordingly.</p> <p>10. WARRANTIES</p> <p>10.1 The Company warrants that except as otherwise herein specifically provided, the Goods will accord with the specification contained in the Order Details, will be of good quality and, where the Company has previously specifically so agreed in writing, will be reasonably fit for the purpose of which the Client has given appropriate written details prior to Order Details being issued. Except where the Client deals as a consumer this warranty is in substitution for all conditions and warranties (other than under section 12 of the Sale of Goods Act 1979), relating to the Goods and services whether express or implied by statute or custom of the trade or otherwise and whether as to quality, condition, performance, merchantability or fitness for any purpose or otherwise.</p> <p>11. LIABILITY</p> <p>11.1 Where the Goods and services are alleged to be defective or below the required standard the Client shall notify the Company pursuant to the provisions of clause 9 above and in any event as soon as practicable by email followed by hard copy written notice in the post and where possible shall afford the Company an opportunity of examining the Goods and services before they are resold or otherwise dealt with further:- 11.1.1 the Client shall give the Company a reasonable opportunity of correcting any remedial defects or errors at the Company’s own cost; and 11.1.2 the Client shall at the Company’s request and cost return them to the Company on a regular basis that the Company will thereafter reimburse to the Client the cost of such return provided that it is reasonable; and 11.1.3 If the Client agrees an allowance with the Company in respect of such matters then such allowance shall be accepted by the Buyer in full and final settlement of all claims in respect of any such matters.</p> <p>11.2 The Company’s liability (if any) to the Client in respect of the Goods shall in all circumstances be limited at the Company’s option either to give a refund of the amount paid by the Client to the Company, or a reasonable credit or allowance for those of the Goods proved to be defective or replacing them at the agreed point of delivery.</p> <p>11.3 The Company shall not under any circumstances be liable to compensate the Client for any indirect or consequential loss whatsoever (including but not limited to loss of profit or liability to third parties).</p> <p>11.4 For the avoidance of doubt:- 11.4.1 the Company shall not be liable for any adverse effects resulting from the application to the Goods of any process, operation, or treatment unless the intended application has been approved in writing by the Company prior to Order Details being issued by the Company; 11.4.2 no liability shall be accepted by the Company for Goods processed in any way unless the prior written agreement of the Company has been obtained prior to Order Details being issued by the Company; 11.4.3 Goods may only be returned by the Client if so previously agreed by the Company in which case the Company’s certificate as to the quantity of returned Goods shall be final and binding.</p> <p>11.4.4 The Company shall accept no responsibility for any defects in the Goods which arise directly or indirectly by virtue of any external factors to include but not limited to weather, pests, diseases.</p> <p>12. SET OFF</p> <p>12.1 The Client shall not be entitled to set-off any claim against payment of any amounts owing to the Company.</p> <p>13. WAIVER</p> <p>13.1 Any concession, latitude, or waiver allowed by either party to the other at any time shall not prevent such party from subsequently exercising its full right under this contract in other respects.</p> <p>14. JURISDICTION AND COSTS</p> <p>14.1 The validity, construction and performance of these conditions and any contract between the Company and the Client shall be subject to and be construed in accordance with English Law and the Client shall submit to the exclusive jurisdiction of the English Courts and specifically to the jurisdiction of the County or High Court (as may be appropriate) nearest to the Company’s premises.</p> <p>14.2 The Client shall be responsible for all costs and disbursements (on a full indemnity basis) incurred by the Company in enforcing its rights under these conditions against the Client.</p> <p>15. INTERFERENCE</p> <p>15.1 The Client shall not alter, obscure, remove, conceal, or otherwise interfere with any markings or other identification or source or origin placed by the Company on the Goods or on their labelling or packaging.</p> <p>16. THIRD PARTY RIGHT</p> <p>16.1 If the Client uses or sells the Goods in such a manner so as to incur liability to any third party then such liability shall be the sole responsibility of the Client, which shall indemnify the Company from and against any such liability.</p> <p>16.2 The Client shall not make any representations, warranties or guarantees with reference to Goods supplied by the Company except such as are consistent with these conditions.</p> <p>16.3 The Client shall indemnify the Company against all claims, costs, losses, damages and expenses for which the Company may suffer or be liable arising out of the affixing on the Goods any trade-mark or registered name or other intellectual property identification on the Client’s instructions or (without prejudice to the generality of the foregoing) arising out of the use of intellectual property (including without limitation patent rights, trade-marks, copyright or registered designs) supplied by the Client or required by the Client to be used by the Company.</p> <p>17. SITE CONDITIONS</p> <p>17.1 All our prices are based upon free draining, un-compacted and uncontaminated ground with topsoil of specified or reasonable quality, free of debris, spread to the correct depth as specified or at least 300mm for shrub beds, 150mm for grass areas and 750mm for tree positions. We would also expect topsoil to be graded to the appropriate levels, including being spread to correct depths against kerbs, fence lines and any other existing structures. In accordance with best horticulture practice and British Standards landscape work should not proceed if weather and ground conditions are not appropriate (eg waterlogged or frozen ground) therefore we reserve the right to postpone the work until conditions are favourable.</p> <p>17.2 If the work is urgent and we are instructed by the client to proceed regardless of the quality implications then additional costs will be incurred due to inefficient working which will be recorded and charged at £27 per man-hour plus 40p per mile if additional journeys are required. We also require such instruction to override our advice in writing.</p> <p>17.2.1 Additional materials will be charged at cost plus 15% or 27% for plants and turf, which includes the supply and spread of grit sand to create an appropriate surface for laying turf if conditions are too wet or if topsoil quality does not allow the creation of a fine tilth.</p> <p>17.3 Should The Company be asked by the client to attend site before conditions are ready or acceptable, abortive costs will be levied, based on the rates above.</p> <p>17.4 Rectification of work damaged by other contractors will be charged for on a time and materials basis.</p> <p>17.5 Topsoil should be stripped in accordance with British Standards – please refer to our website for a full report on best practice for topsoil storage.</p> <p>17.5.1 If topsoil has been stored incorrectly, additional charges will apply for any work required by The Company to rectify the quality, including the addition of any material. Refer to 17.2.</p> <p>17.6 Horticulture work should proceed in the correct season (eg bare root planting November to March and seeding March to September). Delay beyond the season for reasons beyond our control may lead to failures which cannot be covered by any contractual Defect Liability Period. Also if The Company are not appointed to maintain the site during the Defect Liability Period then the company cannot accept responsibility for defects.</p>
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