




RG ROGER GLADWELL LANDSCAPE & DESIGN

Landscape Design and Construction Contractors

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1st February 2023

TERMS & CONDITIONS

1. General

- 1.1 The term **Contractor** shall mean RG Landscape & Construction Ltd registered with the company No 4478633 and shall supply its services to the client upon these terms and conditions.
- 1.2 The term **Client** shall mean name and initial of individual customer, who will be responsible for all payments to the contractor unless otherwise notified in writing prior to commencement.
- 1.3 The term **Price** shall mean the amount payable by the client for the project as detailed in the written estimate supplied by the Contractor to the Client or as may be amended by the Contractor from time to time.
- 1.4 The term **Project** shall mean the agreed work to be carried out by the Contractor for the Client, the details of which are contained in the estimate.
- 1.5 These conditions apply to the exclusion of any other terms that the Client may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. Client's and Contractor's Obligations

- 2.1 The Client to provide water and electricity at no charge to the Contractor.
- 2.2 The Client shall provide access to site and all other reasonable cooperation in matters relating to the services during Contractor's normal working hours and storage space for materials during the work's progress.
- 2.3 The Contractor is not able to accept responsibility for any damage to or cost involved with any underground hazards, obstructions or services not made known to the Contractor by the Client in writing or apparent on visual inspection. The Client shall make any such hazards, obstructions or services known to the Contractor.
- 2.4 All or any Special Conditions, of which the Contractor has been informed by the Client, are noted in the estimate. It is very important and the responsibility of the Client to ensure the Contractor is made aware of any special / statutory Bylaws / Conditions / Permissions that may be involved.
- 2.5 If the Contractor's performance of any of its obligations under these conditions is prevented or delayed by any or omission by the Client or failure by the Client to perform any relevant obligation including non-payment of any invoices raised by the Contractor in accordance with these conditions:
- 2.6 The Contractor shall without limiting its other rights or remedies have the right to suspend performance of the services until the Client remedies the default.
- 2.7 The contractor shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Contractor's failure or delay to perform any of its obligations as set out in this condition.
- 2.8 The Client shall reimburse the contractor on written demand for any costs or losses sustained or incurred by the Contractor arising directly or indirectly from the Client's default.
- 2.9 The Contractor warrants that, subject to the Force Majeure clause below, for a period of 12 months after practical substantial completion of the Project (Warranty Period) any items supplied by the Contractor to the Client (e.g. decking, paving etc.) but excluding any living plant material shall:
 - a) conform in all material respects with their description;
 - b) be free from material defects in design, material and workmanship; and
 - c) be fit for any purpose held out by the Contractor.
- 2.10 The Contractor shall not be liable for the failure of any items to comply with the warranty given above in any of the following events:
 - a) the defect arises because the Client failed to follow the Contractor's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the items in question or (if there are none) good trade practise regarding the same;
 - b) the Client alters or repairs such items without the written consent of the Contractor;
 - c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; orthe defect arises as a result of weather conditions.

www.rogergladwell.co.uk

VAT Registration No. 732 2112 84 Registered Office as shown
Registered in England and Wales No. 4478633



3. Force Majeure

3.1 The Contractor is not able to accept responsibility for the well-being and maintenance of living plant material, including turf, following practical substantial completion of the Project unless a maintenance contract is in existence. Plant stock is guaranteed until it comes into leaf, thereafter the responsibility lies with the client. Unless agreed otherwise, watering of plant stock is the responsibility of the client after planting.

3.2 The Contractor will not guarantee any second-hand materials; the manufacturers guarantee applies only.

3.3 Under no circumstances will the Contractor guarantee products against weather deterioration.

* Specified materials, such as bricks and sleepers, will only be guaranteed by the Contractor in accordance with supplier's warranty of the material.

3.4 If necessary the Contractor reserves the right to substitute any plant with another of equal value and growth / habitat / colour.

3.5 After practical substantial completion the Contractor is unable to accept responsibility for any damage through the elements, including drought, wind, rain and frost.

3.6 Stone: Due to the natural characteristics of all the stone we supply variations will occur in colour, bedding and texture. The Contractor will not guarantee natural stone paving, in any form, against weather deterioration. Where examples have been supplied exact resemblances of the product supplied cannot be guaranteed. All work is carried out to the tolerances set by the relevant British and European Standards (+ or – 2m).

3.7 Severe weather conditions (including drought) may cause the delay of start date and progress of the Contract. Delays caused by other companies on site may cause work to be rescheduled.

3.8 Maintenance is not included in this Contract unless specified.

4. Terms of Payment

4.1 All charges are payable in accordance with the invoice details.

4.2 The customer will settle any outstanding balances within the terms as noted on the invoice. (Payments by return or to a maximum of 7 days).

4.3 The Client shall pay all amounts due under this contract in full without any deductions or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Contractor in order to justify withholding payment of any such amount in whole or in part.

4.4 Without limiting any other right or remedy of the Contractor, if the Client fails to make any payment due to the Contractor by the due date for payment, the Contractor shall have the right to charge interest on the overdue amount at the rate of (4) per cent per annum above the then current HSBC base rate accruing on a daily basis from the due date until the date of the actual payment of the overdue amount, whether before or after judgement, and compounding.

5. Title

5.1 The title to all materials shall be retained by the Contractor until such time as the Contractor has received and cleared with its bank full payment according to the invoice / invoices applicable to said materials and services. The Contractor reserves the right to revoke these materials at any time until all outstanding balances have been cleared.

6. Prices

6.1 Unless otherwise expressly agreed in writing by the Contractor, all estimates and conditions are subject to revision without notice. The Contractor reserved the right to increase prices and the Price at any time prior to acceptance of any order placed.

6.2 The estimate of costs provided by the Contractor to the Client is purely an estimate of projected works and can vary at any time.

7. Delay or Disruption

7.1 The Contractor undertakes all reasonable endeavours to complete the work within a reasonable time or by a specified date (if agreed in writing). Under no circumstance shall the Contractor incur any liability to the Client for any untimely performance or delays arising from force majeure, adverse weather conditions or events beyond his reasonable control.

8. Limitation of Liability

8.1 Nothing in these Conditions shall limit or exclude the Contractor's liability for:

- a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession)

8.2 Subject to the above conditions:

- a) The Contractor shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this contract; and
- b) The Contractor's total liability to the Client in respect of all other losses arising under or in connection with the contract, tort (including negligence) breach of statutory duty, or otherwise, shall in no circumstances exceed the contract sum.

8.3 Except as set out in these conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this contract.

8.4 When a garden is built by the Contractor for competition purposes e.g. Hampton Court Flower Show, Chelsea Flower Show etc. the Contractor accepts no responsibility if the garden fails to achieve any accolades including medals and expects full and final payment on completion of the garden whatever the outcome.

9. Additional costs

9.1 In the event that additional costs be incurred due to change in taxation, expenses overheads or any other additional expenses related to the Project or in order to complete the Project such costs will be passed on the Client. In the event that such additional costs be incurred, the decision to pass on such costs will be at the discretion of the Contractor.

9.2 Subject to any written agreement of the Contractor, all Clients shall be subject to a credit limit of £20,000

9.3 Clients will be invoiced with percentage increments on all projects over £5,000.00 plus vat at the prevailing rate, as per the following structure:

- a) Project worth £5,001.00 - £10,000 = 25% payment upon commencement, 2 stage payments and balance upon final payment
- b) Projects worth £10,001.00 - £40,000.00 = 25% payment upon commencement, 3 interim payments of 20%, final payment of 15%
- c) Projects worth £40,001.00 = An individual payment plan to be arranged with 20% payment upon commencement
- d) Projects over £80,000.00 an individual payment plan will be arranged

9.4 Where any amendment is agreed to the scope of the Project the Contractor may at their discretion require any balance between the sum payable as the agreed advance proportion for the amended Project together with all arrears due to be paid before commencing work on the Project as amended.

9.5 Additional works at the request of the Client will incur an additional cost to the original estimate and will be invoiced to the Client at the discretion of the Contractor- these will be included in appropriate stage payment.

10. No Waiver

10.1 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

11. Removal of unenforceable terms

11.1 If any provision of these Terms is held by any court or other competent authority to be unenforceable in whole or in part, the validity of the other provision of these Terms and the remainder of the provision in question shall not be affected.

12. Planning and CIL

Planning

Please note that we only offer a basic planning service to the best of our ability and are not planning consultants. Specialist surveys and advice will be directed outside the company.

Community Infrastructure Levy (CIL)

The responsibility of CIL forms and payments lies with the client, we can direct to resources only.

