

UNIQUE ENVIRONMENTS LIMITED - LANDSCAPING Terms & Conditions of Contract

By accepting the quoted project, you accept Unique Environments Limited's Terms and Conditions below.

1. Definitions

- 1.1. "Contractor" shall mean "Unique Environments Limited or any person acting on behalf of and with the authority Unique Environments Limited.
- 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described in the Letter of Engagement.
- 1.3. "Services" shall mean all services supplied by the Contractor to the Client and includes any advice or recommendations and shall include any supply of Goods.
- 1.4. "Price" shall mean the price payable for the Goods and services as agreed between the Contractor and the Client.
- 1.5. "Site" shall mean the location at which the Services are to be completed.
- 1.6. "Commencement Date" shall mean the date at which the Contractor is to begin the Services as indicated on the Letter of Engagement.

2. Acceptance

- 2.1. Any instructions received by the Contractor from the Client after they have been provided with a Letter of Engagement setting out the scope of work of the Services and/or provision of Goods shall constitute acceptance of this Contract and the terms set out in the Letter of Engagement.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

3. Price And Payment

- 3.1. The Price shall be as indicated on invoices provided by the Contractor and is to be paid at the rate, and at the times indicated. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

- 3.2. Payment shall be due either ten working days from the date of the invoice or on the 20th of the next month ("the due date"), as indicated on the Letter of Engagement. If the Price remains unpaid after the due date, the Contractor reserves the right to halt work until payment is made, or at its sole discretion, to cancel the agreement entirely.
- 3.3. The Contractor may, at their sole discretion, require that a non-refundable deposit be paid before they commence with providing the Services. If a deposit invoice is sent and remains unpaid before the date that the agreed upon Services are due to commence, the Contractor may suspend or terminate the supply of Services to the Client and any of its other obligations under this Contract. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 3.4. Discounts applied to the Clients account are administered at the Contractor's discretion. Discounts may be revoked, and the full amount owing may be charged to the Client if an invoice remains unpaid after the due date.
- 3.5. The Contractor's hours of business are between Monday to Friday, 7am to 5pm. Services provided outside of these business hours or on a Public Holiday are subject to an Out of Business Hours Fee of \$350.00 and the Contractor may charge for their time at a rate indicated on the Letter of Engagement or as agreed between the parties.
- 3.6. If, in the course of providing the Services for the Client, the Contractor incurs parking or travel costs, these costs shall be payable by the Client.
- 3.7. The Client will be charged for the time that the Contractor spends preparing the Site Specific Safety Plan, Risk Assessments, and all requirements relating to the health and safety of the Contractor and its employees and agents in providing the Services at rate of \$75.00 per hour.
- 3.8. The Contractor will provide to the Client an estimated timeline of the Services and will quote the Price in accordance with that timeline. The Contractor reserves the right to charge as indicated on the Letter of Engagement, in addition to the quoted price, in the event that unforeseen circumstances cause the Contractor to exceed the timeline for the completion of Services, as well as for any additional costs the Contractor incurs as a result of the delay, such as equipment rental costs.
- 3.9. Payment will be made by cash or by direct credit only.

- 3.10. The Contractor reserves the right to charge a cancellation fee of 25% of the Price if less than 48 hours' notice of cancellation is given leading up to the Commencement Date of the Services.
- 3.11. Without prejudice to the Contractor's other remedies at law and further to Clause 3.10 of this Contract, the Contractor reserves the right to charge the Client on an hourly basis, as indicated on the Letter of Engagement for all services the Contractor has provided prior to cancellation. Furthermore, the Contractor also reserves the right to charge the Client 50% of the estimated costs for all services set out in the Letter of Engagement but not provided to the Client as a result of the Client's cancellation. The Contractor may also charge the Client for any costs relating to the purchase and use of Goods incurred by the Contractor.
- 3.12. In the event that the Client cancels the Contract for any reason, the Client acknowledges that they are obligated to pay in full the costs of all Goods ordered on behalf of the Client in anticipation of providing the Service. The Client acknowledges that they will have no claim of ownership, even after payment of the Contractor's costs, in any Goods that have not been delivered to the Site or installed prior to cancellation.
- 3.13. If the Contractor cannot gain full access to the Site on the Commencement Date, the Client will be charged at the rates indicated on the Letter of Engagement for travel time and for any time the Contractor spends on Site but unable to work as a result of the lack of access.

4. Goods

- 4.1. All Goods supplied by the Contractor shall remain the property of the Contractor until the Price has been paid in full. Until such payment is made, the Client will hold the Goods as Bailee for the Contractor and the Contractor shall be entitled to unrestricted access to the Site to remove and take possession of all works and materials supplied under this Contract at any time if payment is not made after falling due.
- 4.2. The Client acknowledges that the risk of loss, damage, or deterioration of Goods pass to them upon the Client taking possession of the Goods. The Client shall insure the Goods for their full price, and shall not sell, dispose, or part with possession of them or do anything else inconsistent with the Contractor's ownership of the Goods, from delivery, until the Price is fully paid.

4.3. Any expenses, losses, or costs incurred by the Contractor in the enforcement of this clause shall be paid for by the Client, including all legal fees and debt collection agency fees.

5. Variations

- 5.1. The Contractor reserves the right to change the Price in the event of a variation to the Services. Any variation from the plan of scheduled works or specifications will be charged as indicated on the Letter of Engagement, or as specified by the Contractor and will be shown as variations on the invoice. Variations may include, but are not limited to any change to the scope, quality or timing or the work, any circumstance that changes the cost of performing the work from that reasonably foreseeable at the time of the initial quotation, any variation due to unforeseen circumstances that were not visible at the quoting stage, or as a result of increases to the Contractor in the availability or cost of materials and labour.
- 5.2. The Contractor will advise the Client as soon as practicable of any change to the contract price arising out of any variation. The Contractor may at their sole discretion on written notice withhold performance of any work that the Contractor reasonably considers to be a variation until the Contractor has received the Client's written instruction, or where the Contractor has submitted a price for a variation, the Client's agreement to that submitted price.

6. Default & Consequences Of Default

- 6.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twenty percent (20%) per calendar month plus any costs, including legal costs, debt collection costs, and dishonour costs, the Contractor incurs in recovering the overdue payment.
- 6.2. Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation under these Terms and Conditions, the Contractor may choose to suspend or terminate the supply of services to the Client and any of its other obligations under this Contract. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 6.3. Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of the Services which remain unfulfilled and all amounts owing to

the Contractor shall, whether or not due for payment, become immediately payable in the event that:

- 6.3.1. any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
- 6.3.2. the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or a receiver, manager, liquidator or similar person is appointed in respect of the Client or any asset of the Client.
- 6.4. The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

7. Security And Charge

- 7.1. If the Site is sold or disposed of prior to all payments being made to the Contractor, the Client shall, from the sale proceeds, pay any sum remains owing under this Contract.
- 7.2. Where the Client and/or the Guarantor (if any) is the owner of land or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their interest in the said land or any other asset to the Contractor to secure all sums payable to the Contractor under this Contract. The Client and/or the Guarantor acknowledge and agree that the Contractor shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments have been met.
- 7.3. The Client and/or the Guarantor agree to irrevocably appoint the Contractor or the Contractor's nominee as the Client's and/or Guarantor's attorney to perform all necessary acts to give effect to the provisions of this clause.
- 7.4. The Client and/or Guarantor shall indemnify the Contractor from and against all the Contractor's costs and disbursements that they incur as a result of exercising their rights under this clause.

8. Client Acknowledgments

- 8.1. The Contractor will take all reasonable steps that is available to them to perform the Services safely. The Client is solely responsible for keeping the site clear of any item that could be damaged in the process of the Service. The Client accepts that minor damage may occur as a result of providing the Service and the Contractor will not be liable for any

reasonable damage to property that occurs as a result of performing the Service.

- 8.2. The Client accepts and understands that to carry out the Service, it may be necessary for the Contractor to use heavy machinery or vehicles that could damage driveways and paths. The Contractor will not be liable for damage caused to driveways and paths. The Client shall ensure that the Contractor has free access to the work site to enable them to perform the Service.
- 8.3. Where the Goods concerned in the contract are protected by a local or regional authority it will be necessary for the Client to obtain consents from the relevant authorities. It will not be the responsibility of the Contractor to obtain these consents unless specifically instructed and authorised by the Client. The Contractor shall not be liable for any delays, costs, or losses the Client suffers as a result of the Client failing to obtain the necessary consents.
- 8.4. Investigation of covenants and boundaries is the responsibility of the Client. The Contractor shall not be liable for a breach of any such covenant or boundary. The Client must, at their own cost, obtain written permission from all relevant parties in relation to the Site prior to the commencement of the Service. The Contractor is not liable for any loss, damage, cost, or delay incurred as a result of the Client failing to obtain all necessary reports and permissions prior to the commencement of the Service.
- 8.5. The Contractor shall be under no liability for any damage caused to of underground pipes, wires or cables, sprinklers or similar while performing the Service, unless the exact location has been supplied to the Contractor prior to the commencement of the Service.
- 8.6. If subsurface or otherwise hidden obstructions exist at the Site, including subsurface utilities, boulders, tree stumps or construction debris, then any extra time required to complete the Service as a result of these obstructions will be considered a variation to the services and quoted by the Contractor in addition to the original price. The Contractor may also, at its discretion, engage with an appropriate subcontractor to carry out the Services at the Client's cost. The Contractor reserves the right to pass on the cost of any equipment damaged by such obstructions and to vary to Price for the Service accordingly.
- 8.7. The Client agrees not to enter, or allow any other party to enter, the Site while the Contractor is providing the Services unless authorised by the site Manager.

- 8.8. Lawn repairs are not included in the Price, unless noted otherwise in the scope of work by the Contractor.
- 8.9. The Client must give the Contractor no less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's details (including but not limited to, changes in the Client's address, email, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
- 8.10. All work carried out by the contractor is covered by \$5,000,000.00 public liability insurance for damage to persons or property that may result in the implementation of the contract.
- 8.11. The contractor's liability shall be limited to the maximum amount of the Price of the contract.

9. **Dispute Resolution**

- 9.1. The parties agree to resolve any dispute which has not been resolved through negotiation within 14 days, by way of mediation, which is to be conducted by an independent mediator appointed by agreement between both parties. If the parties are unable to agree upon a mediator then they agree to a mediator being appointed by the President of the Auckland District Law Society at that time at the absolute discretion of the President. The costs and expenses of the mediator shall be shared equally between the parties.
- 9.2. The Client must raise any issues regarding the Service within 7 days of the performance of the Service. Failure to do so shall constitute full acceptance of the Service provided.

10. **Limits of Liability**

- 10.1. The Client acknowledges that newly planted materials require more watering and upkeep to maintain. The Contractor will provide the Client watering and maintenance guidelines. The Contractor is not liable for any defects in the Good and Services caused as a result of the Client's failure to strictly abide by these guidelines.
- 10.2. The Client acknowledges that variation of natural materials is out of the Contractor's control and acknowledges that any such variation is not considered a defect.
- 10.3. The Contractor shall not be liable for any issues relating to the Good or Services provided if the Client is in default of this Contract at any time, or if any alterations or additional work is carried out without the Contractor's involvement or written consent.

- 10.4. The Contractor is not liable for any defects to the Goods due to the effects of normal corrosion, erosion or wear and tear or against damage or deficiencies caused by the faulty operations or maintenance of the Client, including the failure to properly maintain water or protect the Goods.
- 10.5. The Contractor is not liable for any defects in the Goods or Services if salt, weedkillers, chemical lawn products or similar materials are used by the Client at the Site. Goods located on the Site's boundaries, which may have been sprayed by a neighbour are also exempt from warranty.
- 10.6. The Contractor is not liable for any defects in the Good or Services affected by frost, fire, drought, flooding, ash debris and insect attack.
- 10.7. The Contractor is not liable for any defects in the Goods or Services if the Client requires the Contractor to perform the Services or install the Goods against the Contractor's advice.

11. **General**

- 11.1. If any provision of these terms and conditions shall be invalid or unenforceable the validity or enforceability of the remaining provisions shall not be affected.
- 11.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 11.3. The Contractor shall be under no liability whatsoever to the Client for any indirect or consequential loss or expense suffered by the Client arising out of a breach by the Contractor of these terms and conditions. In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages not exceeding the Price.
- 11.4. The Contractor may, at their sole discretion, license or sub-contract any part of its rights and obligations under this Contract.
- 11.5. The Contractor reserves the right to amend these Terms and Conditions periodically at their discretion.
- 11.6. Neither party shall be liable for any default due to any act of God, pandemic, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, or other event beyond the reasonable control of either party.
- 11.7. The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.