

BOWLES & WYER

TERMS AND CONDITIONS OF CONTRACT

Applicable to all Work carried out by Bowles and Wyer Ltd (the **Contractor**) for clients who engage their services (the **Client**).

1. INTERPRETATION, APPLICATION AND COMMENCEMENT

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (Conditions).
 - a. **Contract:** the Client's acceptance of a quotation for the Work by the Contractor, on these Conditions in accordance with condition 1.3 below together with drawings and specifications (if any). Any inconsistency in or between the drawings, the specification, the schedules of work and any other documents forming part of the Contract shall be corrected and any such correction which results in an addition, omission or other change shall be treated as a variation, which is subject to the provisions of Condition 10.2 below.
 - b. **VAT:** value added tax chargeable under English law for the time being and any similar additional tax.
 - c. **Work:** the work to be carried out by the Contractor under the Contract together with any other services which the Contractor provides, or agrees in writing to provide to Client from time to time.
 - d. Headings in these Conditions shall not affect their interpretation.
 - e. A reference to a statute or statutory provision is a reference to it as it is in force for the time being taking account of any amendment, exclusion or re-enactment and includes any subordinate legislation for the time being made under it.
- 1.2 These conditions shall:
 - a. apply to and be incorporated into the Contract; and
 - b. prevail over any inconsistent terms or conditions contained, or referred to, in the Client's acceptance of a quotation, or specification or other document supplied by the Client, or implied by trade custom, practice of course of dealing.
- 1.3 The Client's acceptance of a quotation for the Work by the Contractor constitutes an offer by the Client to purchase the Work on these Conditions. No offer placed by the Client shall be accepted by the Contractor other than:
 - a. by written acknowledgment issued and executed by the Contractor; or
 - b. on receipt by the Contractor of the agreed deposit monies in respect of the Work, in full and in cleared funds; or
 - c. (if earlier) by the Contractor starting to carry out the Work. At which point a contract for the supply and purchase of the Work on these Conditions will be established.
- 1.4 The Work carried out under the Contract shall be provided by the Contractor to the Client from the date specified in the Contract or, where no date is so specified, such date as the parties may agree from time to time.

2. CONTRACTOR'S OBLIGATIONS

- 2.1 The Contractor will use all reasonable endeavours to carry out the Work in accordance, in all material respects, with the Contract.
- 2.2 The Contractor is not obliged to carry out work for the Client otherwise than as provided in the Contract.
- 2.3 In appropriate circumstances and at the Contractor's sole discretion the Contractor will produce to the Client daywork sheets recording time and materials and the Contractor will charge the Client accordingly.
- 2.4 The Contractor will notify the Client if in the Contractor's opinion Planning Permission is required for the Work. However the Contractor does not hold itself out as an advisor or an expert in Planning matters and no representation to that effect is given by the Contractor.

3. CLIENT'S OBLIGATIONS

- 3.1 The Client will provide the Contractor with all relevant and necessary information concerning the Work, the site, access thereto and (where appropriate) adjoining land.
- 3.2 The Client will make prompt decisions and will give clear instructions to the Contractor, when so requested, so as to facilitate the execution of the Work by the Contractor.
- 3.3 Where the Client is a corporate body or a firm or more than one person the Client shall, when so requested by the Contractor, nominate a representative who will give instructions to the Contractor.
- 3.4 The Client shall afford the Contractor unimpeded and timely access to the site of the Work to facilitate the execution of the Work by the Contractor.
- 3.5 If the Contractor's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, the Contractor shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 3.6 The Client shall be liable to pay to the Contractor, on demand, all reasonable costs (including legal costs), charges or losses sustained or incurred by the Contractor (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Contractor supplying a schedule of such costs, charges and losses to the Client in writing.
- 3.7 The Client shall not, without the prior written consent of the Contractor, at any time from the date of the Contract to termination of the Contract, solicit or entice away from the Contractor or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Contractor in the carrying out of the Work.
- 3.8 In the event that Planning Permission is required for the Work the Client agrees to apply for and obtain appropriate Planning Permission.

4. CHARGES AND PAYMENT

- 4.1 In consideration of the carrying out of the Work by the Contractor, the Client shall pay the charges as set out in the Contract (together with such additional charges as may be agreed between the parties from time to time).
- 4.2 A deposit of 30% (or such other percentage as the parties may otherwise agree) of the total price referred to in the Contract is payable to the Contractor prior to the commencement of the Work.
- 4.3 The prices referred to in the Contract are based on the then current prices of plants and materials (including the then current foreign exchange rates where such plants and materials are sourced from overseas). All plants and materials are supplied subject to their availability at the time the Contractor orders the same. In the Contractor's invoices plants and materials will be charged at the then current prices, taking into account the then current exchange rates for any foreign currency transactions.
- 4.4 All prices referred to in the Contract are liable to VAT.

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- 4.5 All the Contractor's final invoices are payable within fourteen days of the invoice date. In the event of late payment of any initial invoice or interim invoice (as hereinafter referred to) the Contractor reserves the right to charge interest on all unpaid sums at either the rate of 1.5% per calendar month or in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.
- where the Work is completed within four weeks the Contractor will deliver a final invoice on completion of the Work.
 - where the Work is not completed within four weeks the Contractor will render an interim invoice on the expiry of four weeks starting from the date of commencement of the Work as specified in the Contract and will continue to render interim invoices at four weekly intervals. Such interim invoices are payable within fourteen days of the invoice date.
- 4.6 The Contractor reserves the right to make an additional charge in the event that:
- the Contractor incurs additional work or cost by reason of the Client breaching the warranty contained at condition 7 below;
 - the Contractor incurs additional work or cost by reason of being denied access to adjoining land (where appropriate) to check measurements or levels;
 - the Contractor incurs additional work or cost by reason of the site of the Work being wholly or partly obscured at the time of the Contractor's survey;
 - the Contractor's access to the site is impeded or obstructed so as to result in additional work or cost; or
 - it becomes impossible to complete the Work on the proposed completion date due to reasons wholly or partly beyond the Contractor's control.
- 4.7 All sums payable to the Contractor under the Contract shall become due immediately on its termination, despite any other provision. This condition 4.7 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
5. THE CONTRACTOR'S PROPERTY
- 5.1 All materials, drawings, plans, specifications and data supplied by the Contractor to the Client shall, at all times, be and remain the exclusive property of the Contractor but shall be held by the Client in safe custody at his own risk and maintained and kept in good condition by the Client until returned to the Contractor, and shall not be disposed of or used other than in accordance with the Contractor's written instructions and authorisation.
- 5.2 All plants and materials delivered to the site of the Work remain the property of the Contractor until fully incorporated into the Work. Any plants and/or materials delivered to the site of the Work which prove to be in excess of the Contractor's requirements remain the property of the Contractor who may enter the site of the Work and remove the same at any time on reasonable notice to the Client.
6. TERMINATION
- 6.1 Without prejudice to any other rights or remedies which the parties may have, including the right of the Contractor to claim damages for any incidental expenses and losses arising from the Client's default, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
 - the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty days of that party being notified in writing of the breach; or
 - the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies; or
 - the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or
 - a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
 - an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given of if an administrator is appointed over the other party; or
 - a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
 - a person has become entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
 - any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 4.1 (c) to (h); or
 - the other party suspends or ceases, or threatens to suspend or cease to carry on all or a substantial part of its business.
- 6.2 On termination of the Contract for any reason:
- the Client shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of the Work carried out but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;
 - The Client shall return all of the Contractor's equipment, and any plants and/or materials not fully incorporated into the Work. If the Client fails to do so, then the Contractor may enter the site of the Work and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
 - the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
7. WARRANTIES
- 7.1 The Client warrants that the site on which the Work is carried out is free of springs, covered wells, cavities, running sand, pipes, drains, wires, cables, foundations of former buildings, rock, tree stumps or other hazards or obstructions not discoverable on a visual inspection, or notified to the Contractor in writing.
- 7.2 The Contractor warrants that all plants are healthy at the time of practical completion of the Work and that grass seed supplied has been tested and conforms to current European Union regulations. Thereafter the Client is responsible for the plants unless the Contractor has entered into a maintenance agreement with the Client. Where the Client has entered into a maintenance agreement with the Contractor additional supplemental provisions will be agreed in relation to ongoing responsibilities. Save where specifically agreed in a separate ongoing

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maintenance agreement, the Contractor accepts no responsibility for losses suffered after planting or turfing caused by neglect, pollution, drought, frost, extreme adverse weather, shade, waterlogging, damage or site conditions (including subsequent weed growth).

- 7.3 The Contractor will use its reasonable endeavours to procure an assignment to the Client of the unexpired benefit of any third party guarantee which relates to tangible goods supplied to the Client by the Contractor in relation to the Work.
8. **LIMITATION OF LIABILITY – THE CLIENT’S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**
- 8.1 This condition 7 sets out the entire financial liability of the Contractor (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of:
- any breach of the Contract;
 - any use made by the Client of site on which the Work was carried out, the plants and materials or any part of them; and
 - any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in these Conditions limits or excludes the liability of the Contractor for death or personal injury resulting from negligence or for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Contractor.
- 8.4 Subject to conditions 6.2 and 6.3 the Contractor shall not be liable for loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of contract; loss of use; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 8.5 The total liability of the Contractor in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the total sum payable by the Client to the Contractor under the Contract.
- 8.6 The Contractor shall not be liable for any claim in relation to any building or joinery works carried out as part of the Work unless the Client has given the Contractor notice of such claim, specifying in reasonable detail the nature and value of the claim, within a period of 12 months from the date of completion of such works.
9. **FORCE MAJEURE**
- The Contractor shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omission or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Contractor or any other party,) failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, extreme adverse weather or default of suppliers or subcontractors.
10. **GENERAL**
- 10.1 The Contractor may, from time to time and without notice, change the Work in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Work. If the Contractor requests a change to the scope of the Work for any other reason, the Client shall not unreasonably withhold or delay consent to it.
- 10.2 No variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless agreed between the parties and evidenced in writing (which shall, for these purposes, include correspondence via email).
- 10.3 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Nothing in this condition shall limit or exclude any liability for fraud.
- 10.4 The Contractor shall be permitted to sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 10.5 Save where otherwise agreed, the Contract is personal to the parties and no party shall, without the prior written consent of the other party (such consent not to be unreasonably conditioned, withheld or delayed), assign, transfer or deal in any other manner with the Contract or any of its rights and obligations under or arising out of the Contract (or any document referred to in it), or purport to do any of the same.
- 10.6 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 10.7 The parties declare that they each have the right, power and authority and have taken all action necessary to exercise their rights and perform their obligations under the Contract.
- 10.8 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.9 If any provision of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract which shall remain in full force and effect.
- 10.10 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.11 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 10.12 The Contract shall be governed by and construed in accordance with the laws of England and Wales and each party irrevocably submits to the exclusive jurisdiction of the English courts.
- 10.13 If any dispute arises in connection with the Contract, the parties will attempt to settle it by mediation in accordance with the ADR Group's model mediation procedure. Unless otherwise agreed between the parties, the mediator will be nominated by the ADR Group.
- 10.14 The Contractor shall be permitted to sub-contract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- 10.15 Unless otherwise agreed in writing with the Client, the Contractor reserves the right to refer to the Work and to reproduce photographs and other illustrations relating to the Work for publicity and other marketing purposes.