



*Haute Couture of Nature
A Landscaping Company*

TERMS AND CONDITIONS

DEFINITIONS

1.1 The definitions and rules of interpretation in this clause shall apply in these terms and conditions.

Commencement Date means the date that the Contractor shall commence work as agreed between the Contractor and the Client from time to time, but no later than 30 days from the date of the Quotation, unless otherwise agreed in writing between the Contractor and the Client.

Completion Date means the date the Works are intended to be completed as agreed between the parties from time to time.

Contractor means the contractor; Foliage Unlimited supplying the Quotation to which these terms and conditions apply.

Client means the person, firm or company who enters into a contract with the Contractor for the provision of landscaping works.

Intellectual Property means the plans, drawing and Specifications submitted by the Contractor (whether before or after the making of the contract).

Quotation means the written estimate provided by the Contractor for the completion of the Works.

Site means the location where the works are to be performed by the Contractor.

Specification means the documents including detailed plans and/or drawings describing the Works provided by the Contractor.

Works means the work to be carried out by the Contractor under the contract as set out in the Specification together with any other services which the Contractor agrees to provide to the Client.

1.2 Paragraph headings shall not affect the interpretation of these conditions.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

2. GENERAL

2.1 In these conditions of sale:

- (a) The company means Foliage Unlimited.
- (b) The customer means any person contracting with the company for the supply of products or services.
- (d) These conditions may only be modified by a variation in writing signed on behalf of the firm, signed by the owner.
- (e) Making a purchase will be taken as agreement to these conditions of sale.



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3. THE SCOPE OF THE WORK:

3.1 The contractor (FOLIAGE UNLIMITED) shall carry out and complete the landscape work described in the Contract documents in a good and workmanlike manner. He shall have no obligation to execute any further work unless otherwise agreed in writing between the parties. If there shall be any discrepancy between any specification and drawing, the description contained in the specification shall prevail over the drawing.

3.2 The client is responsible for obtaining any necessary planning permission for the works and for fulfilling statutory requirements.

3.3 These Conditions shall be deemed to be incorporated into any contract between the Client and the Contractor and shall take precedence over any other terms and conditions (unless identified and agreed in writing by the Client/Contractor, and any deletion, substitution or amendment to these terms shall not take place unless agreed in writing by the Contractor and the Client.

3.4 If there is any inconsistency between the drawings and/or plans and any description of the works in the Specification, the latter shall prevail.

3.5 The Contractor shall carry out and complete the landscape works described in the Specification with reasonable care and skill and in a proper and workmanlike manner. Should any inconsistencies be found between the contract documents, these are to be highlighted and a revised price agreed prior to the Commencement Date. If any such inconsistency comes to light after the Commencement Date the Contractor shall be entitled to be paid a reasonable sum for any extra work or cost thereby incurred.

3.6 The Client shall obtain all permissions, give all notices and pay all fees required under any Act of Parliament or any regulation or byelaw of any local authority or statutory undertaker having any jurisdiction with regard to the Works and the Client shall indemnify the Contractor against any claim, proceedings, loss or expense resulting from the Client's breach of this clause in whole or in part. The Client must produce copies of all relevant approvals to the Contractor prior to the Commencement Date. If not produced, work should not commence.

4. VARIATIONS

4.1 Variations to the works as described will only be undertaken upon instructions given in writing by the Client to the Contractor. Oral instructions will not be instructed. It should be noted that site personnel have no authority to alter the contract in anyway. The price of any additional work, properly treated as a variation, will be based upon costs prevailing at the date of the instruction

4.2 The Client may issue to the Contractor reasonable instructions to vary and modify the quality and quantity of the Works. All instructions given by the Client must be given in writing. The Contractor is not under an obligation to carry out a verbal instruction until it is confirmed in writing, except in the case of an instruction being issued by the Client in an emergency e.g. health and safety matters. All instructions issued in an emergency shall be confirmed in writing within 3 days and the Contractor shall be entitled to be paid for work properly carried out in accordance with any such instruction.

4.3 If the variation will alter the cost of carrying out the Works, the Contractor will provide a written Quotation and cost breakdown for the cost of carrying out the variation and the effect it will have on the Completion Date. The Client and the Contractor will agree an adjustment to the Contract Sum in writing. If



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the Client receives the amended Quotation and wishes to proceed, the Client shall confirm his instruction to proceed in writing, accepting the new Quotation and the extended Completion Date.

4.4 Where any additional or substituted work is of a similar nature to the Works, such works should be valued to the cost breakdown set out in the Quotation. Otherwise such work shall be valued at fair rates and prices agreed prior to execution and any additional payment due to the Contractor or any extension to the Completion Date shall be added to the Contract Sum and Completion Date respectively.

5. PAYMENT

5.1 The client accepts that they will pay to the contractor the contract sum together with any Tax properly chargeable upon the contract sum.

5.2 All accounts are net and do not provide for any discounts or retentions unless otherwise agreed.

5.3 All accounts are payable within thirty days from date of invoice. Interest will be charged, if payment delayed beyond forty-five day at 14% p.a. until actual payment.

5.4 The Contractor shall be entitled to receive interim payments at the intervals stated in the Quotation. If no payment interval is agreed the first interim payment shall be due within 28 days of the first agreed valuation date. If no valuation dates are stated or agreed the Contractor may invoice monthly and payment shall become due 30 days after receipt by the Client of the Contractor's monthly applications.

5.5 Without prejudice to the Contractor's other rights and remedies, if the Client shall fail to pay as provided in the above clauses, the Contractor shall be entitled to suspend Works 7 days after giving notice to that effect to the Client.

5.6 The Client shall pay to the Contractor any Tax properly chargeable on the supply to the Client of any goods and services under these terms. The Client may at any time request appropriate evidence of the Contractor's current tax registrations and status. Should the Contractor fail to provide evidence then the Client may withhold amounts attributable to the taxes on any outstanding payment.

5.7 When contract sum is more than Rupees Fifty Lakhs, the Client will pay an advance to the contractor against the required bank guarantee.

6. THE SITE

6.1 The Client warrants that the site is free from springs, flooding, rock, tree stumps not specified to be removed, mine workings, covered wells or other cavities, running sand, service pipes and cables, sewage or land drains, foundations of former buildings or other hazards or obstructions which are not discoverable upon visual inspection of the surface of the site or made known in writing by the Client to the Contractor prior to the date upon which the Contractor submits the quotation overleaf. If the Client breaches the above



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warranty the Contractor shall be entitled to make a reasonable charge for all additional work necessarily and properly executed by the Contractor as a result.

6.2 Adequate access to the site must be made available by the Client to the Contractor to enable the work to be carried out in a regular and economic manner.

6.3 The client must make available water and electricity so as to allow smooth flow of landscaping.

7. DELAY/ DISRUPTION

7.1 The Contractor undertakes to use all reasonable endeavours to complete the works within a reasonable time. the Contractor shall incur no liability however for any delays or non-performance arising from adverse weather conditions, strikes, lock-outs, war or other hostilities or any active event beyond his reasonable control in whole or in part.

8. COMMENCEMENTS, COMPLETION, DELAY AND DISRUPTION

8.1 The Client shall give to the Contractor full possession of the Site together with proper and adequate access to allow the Contractor to carry out and complete the Works and the Contractor shall commence the Works on Site on the Commencement Date.

8.2 The Contractor shall take possession of the Site and commence the Works on the Commencement Date and shall proceed with due diligence and use reasonable endeavours to complete the Works by the Completion Date.

8.3 If it becomes reasonably apparent to the Contractor that the progress of the Works is being delayed and/or the Works will not be completed by the Completion Date, the Contractor shall within 7 days of any event or occurrence giving rise to such delay notify the Client in writing of the cause and duration of such delay. The Completion Date will be extended by a fair and reasonable amount of time if the Contractor:

- a) Has to spend extra time completing the Works because of variations made to the Specification.
- b) the Works are delayed by any act or omission of the Client.
- c) cannot finish the Works on time for reasons beyond his control such as excessively adverse weather conditions, and/or variable Site conditions and/or any delay caused by the Client and/or late delivery of supplies to site.

8.4 The Contractor shall be entitled to claim any reasonable additional costs incurred as a result of the Completion date being extended due to any events that may occur in clause 11.3 and such additional costs shall be added to the Contract Sum.

8.5 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the contract.

8.6 Nothing in these terms limits or excludes the liability of the Contractor;

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by the Contractor.

8.7 The Contractor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of the contract shall be limited to the amount of monies actually received by the Contractor under the contract.



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9. MATERIALS ON SITE

9.1 Materials delivered to site become the responsibility of the Client, and the Contractor accepts no responsibility for loss, damage or expense after delivery of the materials to site for any reason, including pilfering while materials are on site during the course of the contract works, where such losses are beyond the Contractor's reasonable control.

9.2 All materials bought on site by the Contractor, which prove to be in excess of his requirements, shall remain the property of and shall be removable by the Contractor who shall have the right to enter the site for that purpose.

10. MATERIALS

10.1 Where any materials have been incorporated into the Works or the Site, the property in such materials and goods shall pass to the Client immediately upon their incorporation notwithstanding that the value of such materials and goods may not have been included in any interim payment or final payment or any payment received by the Contractor in respect thereof.

10.2 Unfixed materials and goods delivered, placed on or adjacent to the Site and intended for use in connection with the Works shall remain the property of the Contractor until the value of such materials and goods have been included in any interim or final payment and the amount has been discharged whereupon such materials and goods shall become the property of the Client.

10.3 The Client and the Contractor may agree payment for offsite materials and goods in which case such materials and goods shall become the property of the Client upon payment and shall be so identified.

10.4 The Intellectual Property submitted by the Contractor shall remain the property of the Contractor. It may not be used by the Client, nor reproduced or communicated to a third party without the Contractor's express prior written consent.

11. MAINTENANCE AFTER COMPLETION

11.1 The Contractor undertakes to execute the basic requirements for the initial establishment of planting and grass areas, but, following the practical completion of the contract, the responsibility for proper maintenance of the site passes to the Client. (Guidance on maintenance operations will be supplied on request).

11.2 The Contractor provides three month maintenance subsequent to completing the contract. This is inclusive in the works contract. Any damage of plants or work due to negligence from the contractor will be replaceable by the contractor.



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12. PLANTING:

The Contractor guarantees that all plants and trees will be inherently healthy when supplied. Planting and maintenance guidance is available on request, however responsibility for loss or damage after the three month free maintenance, cannot be accepted since site conditions are beyond the Contractors control

12.1 We offer an establishment guarantee of 3 months on all stock we have supplied and planted.

12.2 Our guarantee policy:

(a) The above establishment guarantee is subject to certain conditions described below. In the rare occurrence of plant failure we will do our utmost to replace the plant with one of the same specification. Where exact replacements are not available an alternative choice will be offered. We will remove the original plant and replant the new one in its place at no extra charge.

(b) All trees must be secured using a stake and tie at the time of planting.

(c) This warranty does not cover malicious damage, vandalism and/or failure by the client, his employees/staff or subcontractors to provide adequate water to the plant(s) during the course of the warranty period. Acts of God such as storm, excessive wind, flooding, drought, earthquake and the like are not covered by the warranty.

(d) For plants that are selected by the client or the client's agent that are unsuitable for the soil, location or conditions in which they are planted, this guarantee does not apply. We will always try to advise as accurately as possible however all advice given is given to the best of our knowledge.

(e) At no time will The Company be responsible for more than the value of the original plant(s) and delivery.

13. DETERMINATION

13.1 Subject to clause 14.2, the contract shall determine automatically upon the Completion of the Works in accordance with the Specification.

13.2 Without prejudice to its other rights and remedies, the Contractor may by written notice to the Client within 7 days determine its employment under the Contract by reason of any one or more of the following:

a) Failure by the Client to observe the provisions of clause 9 hereof; and/or

b) The Client becoming insolvent or committing any act of bankruptcy or, being a company, making an arrangement with its creditors, or (other than for the purposes of amalgamation or reconstruction), the commencing of winding up proceeding or the appointment of a receiver and/or;

c) Failure by the Client to give access to the site under Clause 9; and/or

d) Breach of the Client's warranty under Clause 7 and/or

13.3 The Contractor will be entitled to be paid by the Client for work properly carried out and/or materials supplied and materials ordered up to the date of determination of the Contractors employment under these Conditions.



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14. QUALITY OF ALL WORKMANSHIP

Will be in accordance with recognised constructional and horticultural practice and that materials supplied will be suitable for their intended use. Where normal ground conditions prevail, the contractor warrants a 3-month defects period from the date of practical completion for any workmanship found to be defective due to any cause other than neglect, damage or theft.

15. COMMITMENT

15.1 The Contractor guarantees that all stock is healthy and ready for planting at the time of supply.

15.2 All information and advice provided is provided at no cost and to the best of our knowledge.

16. REFUND AND EXCHANGE POLICY

16.1 An exchange or credit note will be given to any customer if they change their mind for plants that have not left the Nursery premises within 7 days of purchase.

16.2 We are unable to exchange plants that have been removed from the Nursery premises. But, If, variety needs to be changed, the client will need to pay delivery charges to send back the unwanted variety.

16.3 The customer agrees that the quality of the plant is satisfactory at the point of purchase.

17. SUPPLY OF PRODUCTS

17.1 All products are sold on the understanding of the following:

(a) No warranty is given or implied by law as to the quality or suitability of products supplied by the company, except as stated in writing by the company.

(b) The customer fully understands that plants are a living material and therefore an ever changing product.

(c) The customer fully understands that plants are a perishable product and will deteriorate in quality if not provided with the appropriated aftercare.

(d) The customer will provide adequate levels of water from the point of delivery to maintain the quality of the plant(s) and promote healthy growth and establishment.

18. WASTE

It is the Contractors policy to reduce unnecessary landfill and waste. Where possible, suitable materials will be recycled on site. This in no way effects the quality of work supplied but has a positive effect on the environment and in most cases offers savings on project costs.

19. EXCAVATION/FOUNDATIONS/ SPOIL Where reasonable inspection of below ground conditions is not possible prior to quotation, the contractor reserves the right to make fair and reasonable charges for extra costs arising from poor underground conditions, obstructions or objects.



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20. CONTRACTOR'S RESPONSIBILITY

In performing the Landscaping Services, the Landscaper shall be responsible for the following:

- a. Obtaining any permits required to perform the Landscaping Services.
- b. Oversight of the materials to be purchased to perform the Landscaping Services.
- c. Clean the Property and remove all debris after performing the Landscaping Services.
- d. In case of advance required, obtaining a bank guarantee of 10 percent of "contract sum".

21. PROMOTION

The Client hereby authorizes the Contractor to take photographs of the Client's property for the use of promoting the Contractor's Landscaping Services at the Contractor's discretion and grants the Landscaper the sole right in the intellectual property of any such photographs.

22. INDEMNIFICATION

The Client agrees to indemnify, defend, and protect the Contractor from and against all lawsuits and costs of every kind pertaining to the Landscaping Services, any false information delivered by the Client pertaining to the Property, or failure to deliver relevant information by the Client.

23. DISPUTES

23.1 Any dispute, question or difference arising under or in connection with this contract shall in the first instance be submitted to adjudication in accordance with clause 21.2 and thereafter to the exclusive jurisdiction of the Indian Courts.

23.2 The Client and the Contractor shall have the right to have the dispute or difference referred to such person or persons as the parties may agree to appoint. In event that the parties fail to agree upon an independent Adjudicator within 14 days after either party has given to the other written notice to concur in the appointment of an Independent Adjudicator, the Complaints Committee of the British Association of Landscape Industries shall, upon request from either party, offer an Adjudicator. The Adjudicator shall act as expert and shall not be bound to follow the principles of law but may decide the matter submitted to him according to what he considers fair and reasonable in all the circumstances. The costs of the proceedings shall be borne by both parties or as otherwise agreed with the Adjudicator.