

Bide Landscape Architecture & Garden Design/Bide Visualisations

Terms and conditions of appointment

Summary of terms

For the purposes of this document any references to **'The Landscape Consultant'** refers to **Johanna Elvidge T/A Bide Landscape Architecture and Garden Design/Bide Visualisations**.

'The project' pertains to the garden/driveway/landscaped area to which the drawing supplied by the customer relates.

'The agreement' arises from written acceptance of the quotation and provision of a link to these terms and conditions of appointment by the landscape consultant.

'The Client' is the individual or individuals engaging the services of the landscape consultant.

1 The Landscape Consultant's Authority and Obligations

Duty of Care

- 1.1 The Landscape Consultant has exercised and shall continue to exercise reasonable skill, care and diligence in performing the Services expressly set out in this Agreement.

Code of Standards of Conduct and Practice for Landscape Professionals

- 1.2 Members of the Landscape Institute are required to conduct themselves in accordance with the current edition, at the time of acceptance of this Agreement, of the Institute's Code of Standards of Conduct and Practice for Landscape Professionals.

Landscape Consultant's Authority

- 1.3 The Landscape Consultant shall act on behalf of the Client in the matters set out or implied in this Agreement but has no authority without the Client's approval.

Duty to Inform and Collaborate

- 1.4 The Landscape Consultant shall advise the Client as soon as reasonably practical of any issue that may materially affect quoted date of delivery of the services covered by this Agreement.

Duty to Comply with Statutory Requirements

- 1.5 The Landscape Consultant shall comply with all statutory requirements.

Confidentiality and Publicity

- 1.6 The Landscape Consultant shall not disclose any confidential information relating to the Client's business or affairs which has been received verbally or in writing from the Client or their representative unless consent is obtained from the Client or disclosure is required by law or because of a dispute arising from this Agreement.

- 1.7 The Landscape Consultant shall obtain the Client's consent before publication of information about the project for marketing or publicity purposes, which the Client should not unreasonably withhold or delay.

2 The Client's Authority and obligations

Duty to Comply with Statutory Requirements

- 2.1 The Client shall comply with all statutory requirements.

Provision of Information, Decisions and Instructions

- 2.2 The Client shall confirm to the Landscape Consultant in writing the requirements to be incorporated as part of the Brief
- 2.3 The Client shall provide, as soon as reasonably practical, all information in the Client's possession, or reasonably obtainable, required to enable the Landscape Consultant to undertake the Services set out in this Agreement
This information shall be provided free of charge and the Landscape Consultant shall be entitled to rely on it.
- 2.4 The Client shall give decisions or take necessary action to enable the Landscape Consultant to undertake the Services set out in this Agreement and in accordance with the Programme. Any delay in the provision of information may cause delays in the services set out in the agreement being carried out within the agreed timeframe.

Appointment of Others

- 2.5 The Client shall confirm in writing to the Landscape Consultant the Services that are to be performed by Others on the Project including their roles and authority.
- 2.6 Where Others, as set out in Clause 2.6, are required to provide Services in connection with the Project set out in this Agreement the Client shall appoint and pay them under separate agreements and shall require them to collaborate with the Landscape Consultant.
- 2.7 The Landscape Consultant shall not be held liable for the work, performance, competence, products or solvency of Others appointed by the Client under Clause 2.7.
- 2.8 Where a Contractor is appointed by the Client, or where a contractor is the Client, the Landscape Consultant shall not be held responsible for the management, operational methods, performance, completion of the construction works, compliance with the construction contract or compliance with any relevant building regulations/legislation.

Confidentiality and Publicity

- 2.9 The Client shall not disclose any confidential information relating to the Landscape Consultant's business or affairs which has been received verbally or in writing from the Landscape Consultant or their representative unless consent is obtained from the Landscape Consultant or disclosure is required by law or because of a dispute arising from this Agreement.

3 Fees and Expenses

Calculation of Fees

- 3.1 The fees for the performance of the Landscape Consultant's Services under this Agreement and for any additional Services required shall be calculated in accordance with Clause 4 and set out in the Schedule of Fees and Expenses, including the method of payment.

Lump Sum Fees

- 3.2 Where this clause applies the fee shall be calculated on the basis of a total sum of money for the defined Services and payable in full on a pro-forma basis upon completion of the services set out in the Agreement.
- 3.3 Pricing shall be revised at 12 monthly intervals after the date of this Agreement, in accordance with changes in the Average Earnings Index and the Bank of England's base rate of inflation.

Additional Fees or Fee Adjustments

- 3.4 Fees for adjustment to, or addition to, the scope of Services as set out in this Agreement for reasons beyond the Landscape Consultant's control shall be charged on a time basis in accordance with Clause 3.2.
- 3.5 The Landscape Consultant shall inform the Client on becoming aware that Clause 3.4 will apply. Clause 3.4 shall not apply where additional or adjusted work is required as a result of the Landscape Consultant's breach of this Agreement.

4 Payment

Invoices/Payment Notices

- 4.1 The Landscape Consultant shall issue a pro forma invoice to the Client or the Client's Representative together with the drawings watermarked 'draft' upon their completion. Once payment of the full sum set out in the quotation has been received into the Landscape Consultant's nominated bank account non-draft drawings will be issued.
- 4.2 The sum set out in the payment notice shall be the 'notified sum' and the payment due date shall be the date of the Landscape Consultant's invoice/payment notice.

Payment of Notified Sum

- 4.3 The Client shall pay the notified sum on the date of issue of the invoice/ payment notice, which shall be the final date for payment, unless:

the Landscape Consultant becomes insolvent; or
there is an alternative agreement between the Client and the Landscape Consultant

- 4.4 The Client shall not delay payment of any undisputed part of the notified sum.

Late Payment

- 4.5 If the Client does not pay the agreed amounts when properly due the Landscape Consultant can apply interest on the full payment due in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 at a daily rate of 8% per year above the Bank of England base rate until payment is received.

5 Copyright and Entitlement

Copyright

- 5.1 Copyright in all original material prepared by the Landscape Consultant in the undertaking of the Services set out in this Agreement shall remain the property of the Landscape Consultant unless otherwise agreed in writing. The Landscape Consultant has the right to be identified as the author of the material.
- 5.2 Under The Registered Designs Regulations 2001 the Client may not register any part of the design by the Landscape Consultant without the written consent of the Landscape Consultant.

Entitlement

- 5.3 The Client shall have a licence to copy and use documents and drawings prepared by the Landscape Consultant in performing the Services under this Agreement. This entitlement applies to the construction, operation, maintenance, management, repair, promotion, leasing or sale of the Project provided that all fees due to the Landscape Consultant have been paid.
- 5.4 Entitlement to copy and use documents and drawings prepared by the Landscape Consultant relates only to that site or part of the site for which the design was prepared and does not permit the reproduction of the design to extend the project or for any other project except on payment of an agreed licence fee.

6 Liability and Insurance

Professional Indemnity Insurance

- 6.1 The Landscape Consultant shall maintain professional indemnity insurance with a limit of indemnity not less than £250,000.00 for a period of not less than 5 years after the date of cessation of business. A Broker's letter confirming the insurance cover shall be supplied by the Landscape Consultant for inspection by the Client if requested.

Supplementary Agreements

- 6.2 Nothing in this Agreement confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

Limit of Liability

- 6.3 No action in contract or in tort (delict in Scotland) arising out of this Agreement for a breach of statutory duty shall be commenced after the expiry of the 3 year period specified from the date of the last Services performed under this Agreement or the date of practical completion of construction of the Project, if before, or an earlier date if prescribed by law.
- 6.4 The Landscape Consultant's liability for loss or damage shall not exceed the amount of the Landscape Consultant's professional indemnity insurance specified in clause 6.1 provided the Landscape Consultant has notified the insurers of the relevant claims as required by the terms of the insurance.
- 6.5 No employee of the Landscape Consultant shall be personally liable to the Client for any negligence, default or other liability arising from the performance of the Services.

7 Suspension or Termination

Suspension of obligations

- 7.1 The Client may suspend the performance of the Services in whole or in part by giving not less than 7 days' notice in writing to the Landscape Consultant of the Services affected.
- 7.2 The Landscape Consultant may suspend performance of the Services set out in this Agreement by giving not less than 7 days' notice in writing to the Client of the intention to suspend and the reasons for doing so in the event:
- that the Client fails to pay fees due
 - that the Client is in breach of the obligations set out in Clause 2 of this Agreement;
 - Of force majeure or reasons beyond the Landscape Consultant's control that make it impossible or impractical for the Landscape Consultant to provide the agreed Services set out in this Agreement.

Termination

- 7.3 Either the Client or the Landscape Consultant may terminate the performance of the Services by:
- 7.3.1.1.1 giving reasonable notice in writing stating the reasons for doing so and the Services affected;

7.3.1.1.2 giving notice immediately if the other party is declared bankrupt, becomes bankrupt, enters into receivership, liquidation or administration;

7.3.1.1.3 giving notice immediately if the Landscape Consultant is unable to perform the Services due to death or incapacity of a sole practitioner.

8 Dispute Resolution

Mediation

8.1 Any difference or dispute arising from a written appointment under this Agreement may be settled by the Client and the Landscape Consultant through negotiation or mediation if suitable.

Adjudication

8.2 In the event of a dispute arising under this Agreement either party may give written notice at any time to the other of their intention to refer the dispute to adjudication.

8.3 An adjudicator shall be appointed by agreement between the parties within 2 working days of receipt of notice under Clause 9.2 or, failing agreement, within 7 days of the notice by the Construction Industry Council Adjudicator Nominating Body. The adjudicator shall conduct the adjudication in such manner as they consider fit, having regard to the Construction Industry Council's Model Adjudication Procedure, and subject to the following matters:

8.3.1.1.1 within 7 working days of notice under Clause 8.2 the parties shall agree and provide to the adjudicator a joint statement of undisputed facts (so as to reduce the area of dispute to a minimum);

8.3.1.1.2 the adjudicator shall act impartially and shall reach a decision within 28 days of referral of the dispute to them or such longer period as the parties may agree;

8.3.1.1.3 the parties shall accept the adjudicator's decision as binding upon them until such time as the dispute is finally resolved in accordance with a ruling under Clause 8.1 or by agreement; alternatively the parties may agree to accept the decision of the adjudicator as finally determining the dispute;

8.3.1.1.4 the adjudicator may allocate between the parties the costs relating to adjudication, including the fees and expenses of the adjudicator.

9 Governing Laws

9.1 This Agreement is subject to the law of England and Wales or Northern Ireland or Scotland as specified in the Memorandum of Agreement and the parties shall submit to the exclusive jurisdiction of the specified country of jurisdiction.

