

Terms and Conditions of Contract, Ivor Kilby Gardens Limited, 2025

1. GENERAL

1. These Terms and Conditions apply to all Works and Contracts with, and concerning Ivor Kilby Gardens Limited
2. In accepting any Quotations for Works or Estimates for Works; you thereby accept these Terms and Conditions.

2.DEFINITIONS

2.1 The definitions and rules of interpretation in this clause apply in these Terms and Conditions.

- **Works:** in reference to project outcomes, all activity, materials, work, projects, processes involved with delivering outcomes. Works may refer to activities carried out by sub-contractors on behalf of Ivor Kilby Gardens Limited.
- **Start Date:** the date that Ivor Kilby Gardens Limited shall commence work on site.
- **Completion Date:** the date the Works are intended to be completed as agreed between the parties from time to time.
- **Client:** the person, group, or company who enters a Contract with Ivor Kilby Gardens Limited
- **Intellectual Property:** Ivor Kilby Gardens Limited's ethos and all drawings, specifications, images and publications created by/with/for Ivor Kilby Gardens Limited, in reference or not, to projects and Works.
- **Quotation:** the written estimate for Works provided by Ivor Kilby Gardens Limited, applicable to these Terms and Conditions
- **Site:** the location where the works are to be performed by Ivor Kilby Gardens Limited.
- **Specification:** the documents and drawings which give reference to Works to be carried out by Ivor Kilby Gardens Limited. These may detail any aspect of Works, and are likely to be (jointly/ severally) aligned to British Standards, the design ethos of Ivor Kilby Gardens Limited and adapted to individual sites as applicable.

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

2.3 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.

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

3. SCOPE OF WORKS and SPECIFICATION:

3.1 Ivor Kilby Gardens Limited shall carry out and complete the Works described in the Contract documents in an appropriate way, to a very high standard of completion. Any discrepancies between specifications, drawings and on site discussions with the client will should be settled by accepting that the Specification is superior to all other documents.

3.2 The client is responsible for obtaining any necessary planning permission for the works and for fulfilling statutory requirements or permits required for Works to be carried out.

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 Ivor Kilby Gardens Limited shall carry out and complete the 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.

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. QUOTATION

4.1 A Quotation shall remain open for acceptance by the client within four weeks of the date of Quotation and thereafter lapses automatically.

5. VARIATIONS

5.1 Variations to the Works (as described by the Specification/ Scope of Works) will only be undertaken upon instructions given in writing by the Client to Ivor Kilby Gardens Limited. Oral instructions will not be instructed unless they have been subsequently confirmed in writing and accepted by both parties. It should be noted that site personnel and sub-contractors have no authority to alter the contract in anyway. The price of any additional work, treated as a variation, will be based upon costs prevailing at the date of the instruction, and the base of such prices may not align with any previous pricing for Works. Pricing for all works lies with Ivor Kilby Gardens Limited and Ivor Kilby Gardens Limited may or may not share detailed pricing structure with the client.

6. CONTRACT SUM

6.1 Ivor Kilby Gardens Limited shall provide the Quotation in writing specifying the Works to be carried out and the appropriate costings for the Works, including the Total for Works sum in £ (Sterling).

6.2 The Quotation shall remain open for acceptance for four (4) weeks from the date it is provided. If the Quotation is not accepted by the Client in writing within this period, the Quotation will lapse and as such is deemed to have been withdrawn.

6.3 If the Client accepts the Quotation within the period (4.1) the price contained in the Quotation shall become the 'Contract Sum' except as expressly provided in these terms. A binding contract will come into existence when the Client accepts the Quotation.

6.4 The Client may issue to Ivor Kilby Gardens Limited reasonable instructions to vary and modify the extent, actuals and quantities of the Works. All instructions given by the Client must be given in writing and subsequently confirmed by Ivor Kilby Gardens Limited. Ivor Kilby Gardens Limited is under no 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 Ivor Kilby Gardens Limited shall be entitled to be paid for work properly carried out in accordance with any such instruction.

6.5 If the variation will alter the cost of carrying out the Works, Ivor Kilby Gardens Limited will provide a written Quotation and cost breakdown for the cost of carrying out the variation and the effect it will have on Works timescales. The Client and Ivor Kilby Gardens Limited will agree an adjustment to the Contract Sum in writing. If the Client receives the amended Quotation and wishes to proceed, the Client shall confirm their instruction to proceed in writing, accepting the new Quotation.

6.6 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 Ivor Kilby Gardens Limited or any extension to the Works timescale shall be added to the Contract Sum and Scope of Works.

7. CANCELATION

7.1. Provided you have been supplied with a notice as prescribed by such Regulations (which, if applicable, should be attached to and is hereby incorporated in this contract document), such right to cancel will expire 14 days after receipt of the said notice.

7.2 Should the client wish to cancel the quotation after this time the following penalties apply:

1. a) 20% deposit of the contract sum is non-refundable.
2. b) Cancellation on or after the commencement date, Ivor Kilby Gardens Limited will be entitled to be paid either the 20% deposit or if greater, the costs for work and/or materials supplied and materials ordered up to the date of determination of the Ivor Kilby Gardens Limited and (for either of the above) a flat charge of £250 (Plus VAT), owing to loss of the cancellation day's time.

8. COMMENCEMENT OF WORKS

8.1 Commencement date is subject to change by Ivor Kilby Gardens Limited, possibly with limited prior notice.

9. PAYMENT

9.1 Payment terms for Works may apply. If so- they will be set out in a supporting document included with the Quotation for Works. By agreeing to the Quotation, the Client accepts any payment terms set out. If no payment terms are included in the Quotation- payment details and due dates for payments will be included on invoices for Works sent to the Client from Ivor Kilby Gardens Limited. By agreeing to the Quotation, the Client accepts that they will complete payment according to invoices.

9.2 Should the Client not adhere to payment terms as above then Ivor Kilby Gardens Limited may suspend Works 5 days after giving notice to that effect to the Client.

9.3 The Client shall pay to Ivor Kilby Gardens Limited Value Added Tax 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 Ivor Kilby Gardens Limited current VAT registration status. Should the Contractor fail to provide evidence then the Client may withhold amounts attributable to VAT on any outstanding payment.

9.4 Interest on all payments due from the Client to Ivor Kilby Gardens Limited shall accrue and be payable from the date when payment first becomes due, daily until (and including) the date of actual payment at a rate of 7% of the missed payment amount (Contract Sum) for the Works outstanding.

10. THE SITE

10.1 The Client must inform Ivor Kilby Gardens Limited to the presence of any of the following prior to Ivor Kilby Gardens Limited providing a Quotation for Works: asbestos, 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. If the Client breaches the above warranty, Ivor Kilby Gardens Limited shall be entitled to make a reasonable charge additional to any existing Quotation for Works for all additional work necessarily and properly undertaken by Ivor Kilby Gardens Limited.

10.2 Asbestos known to be on site will require a survey, and further procedures as governed by the HSE Code of Practice, 2012. Works affected by the discovery of asbestos will follow HSE management guidance and all costs associated will be the responsibility of the client. Works affected may have a resulted delay in time frames.

10.3 Adequate access to the site must be made available by the Client to Ivor Kilby Gardens Limited to enable the work to be carried out in a regular and economic manner. If access to site is hindered at the start or during the Works then the client is liable for costs in delay, (see clause 11).

10.4 The client is responsible for informing neighbours of potential disruption prior to work commencing. The client is liable to any costs in delay, see clause 11.

10.5 The client is responsible for any ensuring the safety of the Ivor Kilby Gardens Limited's staff and Sub-contractors from pets and/or livestock. Barriers or removal of pets/ livestock from the site is necessary. Any excrement should be removed by the client. Should animal

excrement make the site environment unsafe we reserve the right to stop Works or charge for the removal of waste in order to continue a set £120 fee for each day.

10.6 The client is responsible for providing access to water and electricity for the entirety of the Works. The availability of these, for intended Works, should be discussed with Ivor Kilby Gardens Limited prior to the submitting of Quotations- it may be possible to undertake works (with prior notice) and agreement by Ivor Kilby Gardens Limited if there is no access to mains water and electricity. Any delay caused by lack of these amenities will be subject to additional costs-see clause 11.

10.7 Ivor Kilby Gardens Limited will remove all construction waste and materials from site and undertake an appropriate clean and tidy of the site on completion of the Works.

11. DELAY/ DISRUPTION

11.1 Ivor Kilby Gardens Limited will make all reasonable endeavours to complete the Works within a reasonable time. Ivor Kilby Gardens Limited shall incur no liability however for any delays or non-performance arising from force majeure, adverse weather conditions, strikes, lock-outs, war, clauses 10.3, 10.4, 10.6 or other hostilities or any active event beyond Ivor Kilby Gardens Limited's reasonable control in whole or in part.

12. COMMENCEMENTS, COMPLETION, DELAY AND DISRUPTION

12.1 The Client shall give to Ivor Kilby Gardens Limited full possession of the Site together with proper and adequate access to allow the Ivor Kilby Gardens Limited to carry out and complete the Works.

12.2 Ivor Kilby Gardens Limited 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.

12.3 If it becomes reasonably apparent to Ivor Kilby Gardens Limited that the progress of the Works is being delayed and/or the Works will not be completed by the Completion Date, then Ivor Kilby Gardens Limited will endeavour to make the Client aware.

1. a) Has to spend extra time completing the Works because of variations made to the Specification.
2. b) the Works are delayed by any act or omission of the Client
3. 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 (such as , see clause 10.3, 10.4, 10.6) and/or late delivery of supplies to site.

12.4 Ivor Kilby Gardens Limited 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 12.3 and such additional costs shall be added to the Contract Sum.

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

12.6 Nothing in these terms limits or excludes the liability of Ivor Kilby Gardens Limited;

(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 Ivor Kilby Gardens Limited.

12.7 Subject to clauses 12.5 and 12.6, the Contractor shall not be liable for:

(a) loss of use; or

(b) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses including loss of enjoyment and injury to feelings; or

(c) loss of profits or business.

12.8 Ivor Kilby Gardens Limited 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 Ivor Kilby Gardens Limited under the contract.

13. MATERIALS ON SITE

13.1 Materials delivered to site become the responsibility of the Client, and Ivor Kilby Gardens Limited 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 Ivor Kilby Gardens Limited reasonable control.

13.2 All materials brought on site by Ivor Kilby Gardens Limited, which prove to be in excess of requirements, shall remain the property of and shall be removable by Ivor Kilby Gardens Limited who shall have the right to enter the site for that purpose.

14. MATERIALS

14.1 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 Ivor Kilby Gardens Limited in respect thereof.

14.2 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 Ivor Kilby Gardens Limited 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.

14.3 Any excess “left over” materials on completion of the Works are the property of Ivor Kilby Gardens Limited and will be removed from site as stated in clause 10.7.

14.4 The Client and Ivor Kilby Gardens Limited 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.

14.5 The Intellectual Property submitted by Ivor Kilby Gardens Limited shall remain the property of Ivor Kilby Gardens Limited. It may not be used by the Client, nor reproduced or communicated to a third party without Ivor Kilby Gardens Limited’s express prior written consent. Costs may be associated with Ivor Kilby Gardens Limited agreeing for their Intellectual Property to be shared.

15. MAINTENANCE AFTER COMPLETION

15.1 Ivor Kilby Gardens Limited 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- unless otherwise agreed and contracted to Ivor Kilby Gardens Limited. (Guidance on maintenance operations will be supplied on request).

16. DETERMINATION

16.1 Subject to clause 16.2, the contract shall determine automatically upon the Completion of the Works in accordance with the Specification.

16.2 Without prejudice to its other rights and remedies, Ivor Kilby Gardens Limited 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:

1. a) Failure by the Client to observe the provisions of Clause 12 hereof; and/or
2. 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 proceedings or the appointment of a receiver and/or;
3. c) Failure by the Client to give access to the site under Clause 12.1; and/or
4. d) Breach of the Client’s warranty under Clause 10. and/or
5. e) Failure by the Client to accept a quotation issued under the terms of clause 10; and/or
6. f) Suspension of the Works, in whole or in part, for a period of 5 days, whether or not consecutive, due to any act, omission or default of the Client or anyone for whom the Client is responsible. Provided that Ivor Kilby Gardens Limited shall have stated the

default alleged in a written notice and the Client shall have failed to rectify the default within 7 days of the date of such notice and provided further that the notice of

determination shall not be given unreasonably or vexatiously.

16.3 Ivor Kilby Gardens Limited 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 Ivor Kilby Gardens Limited employment under these Conditions.

17. 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, Ivor Kilby Gardens Limited warrants a 12- 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. The contractor is unable to offer guarantees for products supplied outside its own manufacture. Unless otherwise stated, timber supplied will be pressure treated and or of hardwood construction to offer superior lifespan. It should be noted that timber products can be prone to some natural movement for which the contractor can accept no liability.

18. OUR COMMITMENT

All information and advice provided is provided at no cost and to the best of our knowledge with the understanding that no site visit has been made.

19. WASTE

It is Ivor Kilby Gardens Limited policy to reduce unnecessary landfill and waste. Where possible, suitable materials will be recycled or reused 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 and aesthetic value to the project.

20. EXCAVATION/FOUNDATIONS/ SPOIL

Where reasonable inspection of below ground conditions is not possible prior to quotation, Ivor Kilby Gardens Limited reserves the right to make fair and reasonable charges for extra costs arising from poor underground conditions, obstructions or objects.

21. DISPUTES

21.1 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 English Courts.

21.2 The Client and Ivor Kilby Gardens Limited shall have the right to have the dispute or difference referred to such person or persons as the parties may agree to appoint.

22. SEVERANCE

22.1 Each of the provisions of these conditions is separate and distinct from the others and if any of them is held by competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.

23. ASSIGNABILITY

23.1 The Client shall not assign, delegate or otherwise deal with any of their rights and obligations under the contract without the prior written consent of Ivor Kilby Gardens Limited.

23.2 Ivor Kilby Gardens Limited is entitled to assign its rights and conditions under the contract in whole or in part at any time.

24 RIGHTS OF THIRD PARTIES

24.1 This contract is made for the benefit of the parties to it and (where applicable) their successors in title and permitted assigns and is not intended to benefit or be enforceable by anyone else pursuant to the Contracts (Rights of Third Parties) Act 1999 or analogous legislation.

25. ENTIRE AGREEMENT

25.1 These terms, and any documents referred to herein, constitute the entire agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

25.2 The Client acknowledges that, in entering into this contract, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out in this contract or in the documents referred to in it.

25.3 The Client and Ivor Kilby Gardens Limited agree that all liability for and remedies in respect of any representations other than those expressly set out in this contract or the documents referred to in it are excluded (except always that nothing in this clause or elsewhere in these terms shall seek to limit liability for fraudulent misrepresentation(s)).

26. GOVERNING LAW AND JURISDICTION

26.1 This contract and any dispute or claim arising out of it or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales.

26.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the contract.