



HIGHLEAF Ltd Terms and Conditions 2017

1. 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 Managing Director/ Contractor; **Highleaf Ltd** 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.

Acceptance in Writing means either in the form of a letter or email.

Warranty Conditions means the instructions as per the manufacturers description at the time of sale. Acts of God such as storm, excessive wind, flooding, drought, earthquake and the like are not covered by the warranty.

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.



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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 **Highleaf Ltd.**
- . (b) The customer means any person contracting with the company for the supply of products or services.
- . (c) These conditions may only be modified by a variation in writing signed on behalf of the company by either a Senior Administrator or Company Director.
- . (d) Making a purchase will be taken as agreement to these conditions of sale.

3. THE SCOPE OF THE WORK:

3.1 The contractor (**Highleaf Ltd.**) shall carry out and complete the landscape work described in the Contract documents in a professional and workmanlike manner. They 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 professional 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.



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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 within thirty days of the date shown and thereafter lapses automatically.

5. VARIATIONS

5.1 Variations to the works as described will only be undertaken upon instructions given in writing or, if agreed verbally, by the Client to the Managing Director. It should be noted that only the Managing Director has the 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

6. CONTRACT SUM

6.1 The Contractor shall provide the Quotation in writing specifying the Works to be carried out and a breakdown of the cost of the Works.

6.2 The Quotation shall remain open for acceptance for 30 days (or such other period as may be agreed in writing) from the date it is provided by the Contractor. If the Quotation is not accepted by the Client in writing within this period, the Quotation will lapse and be deemed to have been withdrawn.

6.3 If the Client accepts the Quotation in writing within the period stipulated in clause **3.2** 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 in writing.

6.4 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 or verbally to The Managing Director or Senior Administrator. The Contractor is not under an obligation to carry out a verbal instruction until it is either confirmed in writing by the client or as a verbal instruction by the Managing Director / Senior Administrator. In the case of an instruction being issued by the Client in an emergency e.g. health and safety



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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.

6.5 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 affect it will have on the Completion Date. The Client and the Contractor 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 his instruction to proceed in writing, accepting the new Quotation and the extended Completion Date.

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 the Contractor or any extension to the Completion Date shall be added to the Contract Sum and Completion Date respectively.

7. RIGHT TO CANCEL

7.1 If this contract is made at a location which is not the usual place of business of the Company, you may have rights to cancel the same under the Consumer Contracts etc. Regulations 2013. 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.

8 PAYMENT

8.1 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 14 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 14 days after receipt by the Client of the Contractor's monthly applications.

8.2 Where monthly payment periods apply the first interim payment shall not become due until 28 days after the Commencement Date, thereafter payment shall become due 28 days after receipt by the Client of the Contractors application.

8.3 Fortnightly or weekly payment periods shall apply as above **6.2**, but after 14 days or 7 days respectively.



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8.4 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.

8.5 Interest on all payments due from the Client to the Contractor shall accrue and be payable from the date when payment first becomes due on a daily basis until the date of actual payment at a rate equivalent to 4% over the base lending rate for the time being of National Westminster Bank plc and shall accrue at such rate after as well as before any judgment.

9. THE SITE

9.1 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 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.

9.2 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.

10. DELAY/ DISRUPTION

10.1 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 force majeure, adverse weather conditions, strikes, lock-outs, war or other hostilities or any active event beyond their reasonable control in whole or in part.

11. COMMENCEMENTS, COMPLETION, DELAY AND DISRUPTION

11.1 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.

11.2 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.



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11.3 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 either in writing if requested or verbally 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.

11.4 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.

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

11.6 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.

11.7 Subject to clauses 11.5 and 11.6, 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.

11.8 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



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contract shall be limited to the amount of monies actually received by the Contractor under the contract.

12. MATERIALS ON SITE

12.1 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 Contractors reasonable control.

12.2 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.

13. MATERIALS

13.1 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.

13.2 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.

13.3 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.

13.4 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.

14. MAINTENANCE AFTER COMPLETION

14.1 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)



15. 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 after the first growing season, cannot be accepted since site conditions are beyond the Contractors control

15.1 We offer an establishment guarantee of 3 months on all stock we have supplied and planted. Deciduous items planted outside the growing season (from September through to March) have an extended guarantee to the end of the May.

15.2 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 customer or the customer'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 and without a site visit.
- . (e) Damage by pests and diseases is not covered.
- . (f) At no time will The Company be responsible for more than the value of the original plant(s) and delivery.

15.3 We will do our best to plant where the customer instructs us to however if planting is attempted and deemed not possible due to, including but not limited



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to, underground obstructions, inappropriate planting conditions or roots, we will discuss this with the customer. Should we be unable to make contact then the customer will become liable for any re-delivery and/or re-planting charges.

16. HARDY PLANT GUARANTEE

16.1 All hardy plants purchased are guaranteed for the first three months from purchase against failure due to unidentifiable causes subject to:

. (a) The company being advised at the first sign of any problems and as a result inspecting the plant if necessary.

. (b) Plants and Trees must be suitably sited, planted, staked and irrigated in order to be covered by the guarantee.

16.2 In the case of unidentifiable failure, we will replace the plant free of charge, or refund the purchase price, on evidence of the original purchase (receipt) being provided.

17. GRASS SEED

17.1 The Contractor guarantees that grass seed supplied has been tested and conforms to current EEC Regulations. It should be understood that a sward cannot be made in one season and that several seasons and careful cultivation, weeding and feeding are essential. No land is free from weeds and accumulated weed growth and dormant weed cannot be eradicated in a few cultivations. Therefore, when the Contractor undertakes to cultivate land it does not accept responsibility for subsequent weed

18. DETERMINATION

18.1 Subject to clause 18.2, the contract shall determine automatically upon the Completion of the Works in accordance with the Specification.

18.2 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 11** 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 proceedings or the appointment of a receiver and/or;



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- . c) Failure by the Client to give access to the site under **Clause 11.1**; and /or
- . d) Breach of the Client's warranty under **Clause 9.1** and /or
- . e) Failure by the Client to accept a quotation issued under the terms of clause **9.2**; and /or
- . 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 the Contractor 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.

18.3 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 Contractor's employment under these Conditions.

19. 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 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 as noted by the manufacturer. It should be noted that timber products can be prone to some natural movement in extreme weather conditions for which the contractor can accept no liability. Acts of God such as storm, excessive wind, flooding, drought, earthquake and the like are not covered by the warranty.

20. OUR COMMITMENT

20.1 We cannot guarantee that all our stock is healthy and ready for planting at the time of supply, as this is determined by the nursery from which it has been purchased, however, we will select stock which we deem to be the healthiest at



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the time of purchase.

20.2 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.

21. SUPPLY OF PRODUCTS

21.1 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.

22. 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 affects the quality of work supplied but has a positive effect on the environment and in most cases offers savings on project costs.

23. 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.

24. DISPUTES

24.1 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 24.2** and thereafter to the exclusive jurisdiction of the English Courts.

24.2 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.

25. DATA PROTECTION



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25.1 This section sets out how the Company **Highleaf Ltd.** collects your personal data, how the Company uses it and who The company shares it with. Under the Data Protection Act 1998 (the "Act"), your data controller is **Highleaf Ltd.**

25.2 Use of your personal data

. (a) By contacting **Highleaf Ltd.** and providing your personal data you agree to your name, postal address, email address and other personal data you supply ('personal data') being used by The company **Highleaf Ltd.**

. (c) You agree to your personal data being used by **Highleaf Ltd.** and by the companies we use to help us organise and administer your application and account so that we can send you updates and information by e-mail about The Company: (i) marketing and promotional materials about goods and /or services on offer at The company and /or **Highleaf Ltd.**

25.3 Access to Personal Data: The Act gives you the right to access information held about you by the Company. Your right of access can be exercised in accordance with the Act. Any access request may be subject to a fee of £10 to meet our costs in providing you with details of the information we hold about you.

26. SEVERANCE

26.1 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.

27. ASSIGNABILITY

27.1 The Client shall not assign, delegate or otherwise deal with any of his rights and obligations under the contract without the prior written consent of the Contractor.

27.2 The Contractor is entitled to assign its rights and conditions under the contract in whole or in part at any time.

28. RIGHTS OF THIRD PARTIES

28.1 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.



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29. ENTIRE AGREEMENT

29.1. 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.

29.2. 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.

29.3. The Client and the Contractor 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)).

30. GOVERNING LAW AND JURISDICTION

30.1 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.

30.2 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.