Terms and conditions

Background

A. The Contractor operates a business which provides landscape construction and maintenance services.

B. The Client wishes to engage the Contractor to provide the Agreed Works.

C. The Contractor accepts the engagement upon and subject to the terms and conditions of this agreement.

Operative part

1 Performance

1.1 The Contractor agrees to complete the Agreed Works for the Agreed Price in accordance with this agreement.

1.2 The Contractor must (and must ensure that its Personnel) complete the Agreed Works:

(a) with due care, skill and expedition;

(b) in accordance with any applicable Laws; and

(c) using materials of merchantable quality and suitable for the purpose for which they are used.

1.3 The Contractor warrants that it will obtain and maintain all necessary approvals, qualifications, registrations, permits, licences and consents required by Law to carry out and complete the Agreed Works.

1.4 The Contractor will be responsible for the supply and performance of all Personnel and equipment, necessary for the proper performance of the Agreed Works unless otherwise agreed by the parties.

1.5 If the Client provides any item for the Contractor's use in respect of the Agreed Works, the Contractor is not required to provide any warranty in relation to the item supplied by the Client and the Client indemnifies the Contractor for all Losses, damages or costs incurred by the Contractor arising from or in connection with the use of the item in respect of the Agreed Works.

2 Commencement Date

The Contractor must begin carrying out the Agreed Works on the Commencement Date or as otherwise agreed in writing between the parties.

3 Completion Date

Completion Date

3.1 The Contractor must achieve Practical Completion of the Agreed Works on or before the Completion Date.

Extension of time

3.2 The Contractor will be entitled to a reasonable extension of time to the Completion Date if the completion of the Agreed Works has been delayed by an event:

(a) beyond the Contractor's control that was not reasonably foreseeable at the time the Contractor entered into this agreement;

(b) that was caused by the Client or an authorised representative of the Client; or

(c) that was not caused in any way by the Contractor's default.

3.3 If the Contractor wishes to claim an extension of time under this clause, the Contractor must give the Client written notice of the extension of time detailing both:

(a) the cause of the delay; and

(b) the extension of time required,

after the Contractor becomes aware of the cause and the extent of the delay.

4 Agreed Price and Payment

Agreed Price

4.1 In consideration of the Contractor completing the Agreed Works, the Client agrees to pay to the Contractor the Agreed Price, adjusted by any additions or deductions mutually agreed in writing or otherwise pursuant to this agreement.

Deposit

4.2 The Client must pay the Contractor the deposit (if any) stated in the Contract Particulars agreeing to the quote in writing or on such other date as notified by the Contractor.

Payment process

4.3 The Contractor is entitled to make a claim (or progress claim) for payment as specified in and in accordance with the Contract Particulars, subject to any agreed variation to the Agreed Price by the parties that is compliant with clause 8 or otherwise pursuant to this agreement.

4.4 A claim (or progress claim) is to state:

(a) the amount claimed;

(b) the amount of any mutually agreed addition or deduction; and

(c) if applicable, the portion of the Agreed Works relating to the claim (or progress claim).

4.5 The Contractor is entitled to issue a claim (or progress claim) provided that any such claim relates to a portion of the Agreed Works that has been completed up to and including the date that the Contractor issues the claim or progress claim.

4.6 The Client must pay a claim (or progress claim) to the Contractor within five (5) Business Days after receipt of a valid Tax Invoice from the Contractor in respect of the claim (or progress claim).

Interest

4.7 If the Client fails to pay any amount that is due and payable under this agreement within five (5) Business Days, including but not limited to any claim (or progress claim) made under this clause 4, the Client must pay the Contractor interest on the overdue amount at the Default Rate.

5 Site access and safety

5.1 The Client must provide the Contractor and its Personnel with access to the Site to the extent necessary to perform the Agreed Works, including reasonable access to the Site in order to inspect the Agreed Works after the Completion Date.

5.2 The Client must ensure that the Site in respect of the Agreed Works is a safe working environment.

5.3 Notwithstanding anything else in this agreement, the Contractor is entitled to charge a reasonable fee including in connection with any cost or Losses incurred or suffered by the Contractor for any delays or rescheduling costs if for any reason access to the Site is unsafe or restricted contrary to the Client's obligations under clauses 5.1 and/or 5.2.

6 Insurance

Contractor's insurance

6.1 The Contractor must effect and maintain during the term of this agreement:

(a) public liability insurance; and

(b) all insurances required to comply with the Workers' Compensation and Rehabilitation Act 2003.

6.2 If requested by the Client, the Contractor must provide evidence that it has effected and maintained the insurance required under clause 6.1 within five (5) Business Days.

Client's insurance

6.3 The Client must effect and maintain during the term of this agreement, home and contents insurance for the existing structures on Site and its contents with a reputable insurer upon usual and reasonably terms.

6.4 If requested by the Contractor, the Client must provide evidence that it has effected and maintained the insurance required under clause 6.3 within five (5) Business Days.

7 Workplace health and safety

The Contractor must comply with all applicable obligations under the *Work Health and Safety Act 2011.*

8 Variations

Variation of the Agreed Works

8.1 The Agreed Works may be varied by the parties subject to the terms of this clause 8.

8.2 Either party may give the other party a written request to vary the Agreed Works.

8.3 A variation for the purposes of this clause 8 may include any of the following:

(a) an increase, decrease, substitution or omission of the tasks forming the Agreed Works;

(b) a change in the method or process for, or the sequence of, the carrying out of the Agreed Works;

(c) a change to the specification of the materials to be provided;

(d) any changes in levels, dimensions, specifications or the scope of the Agreed Works.

Agreement as to variation

8.4 The Contractor will not be entitled to any change to the Agreed Price and is not obliged to undertake any works or incur any costs in respect of a variation to the Agreed Works unless the following is agreed in writing between the parties:

(a) the specific details of the variation to the Agreed Works;

(b) any changes to the Agreed Price, including when the increase or decrease in the Agreed Price will be accounted for; and

(c) any changes to the Completion Date or estimated delay caused by the variation.

8.5 The Contractor is entitled to suspend the performance of the Agreed Works until the Contractor and the Client have agreed in writing the details outlined in clause 8.4.

9 Suspension

9.1 The Contractor may suspend carrying out the Agreed Works if the Client fails to pay the whole or any part of the Agreed Price due to the Contractor, by providing written notice to the Client.

9.2 If the Contractor exercises the right to suspend carrying out the Agreed Works in accordance with this clause:

(a) the Client must pay to the Contractor on demand, any Loss, damage or costs reasonably incurred by the Contractor arising from or in connection with the suspension of the Agreed Works; and

(b) the Contractor is not liable for any Loss or damage suffered by the Client arising from or in connection with the suspension of the Agreed Works.

10 Latent Conditions

10.1 Notwithstanding anything else in this agreement and if the Site contains any Latent Condition/s, the Contractor is entitled to recover on demand from the Client any amount incurred for:

(a) any variation to the Agreed Works which is required to be undertaken due to the Latent Condition; and

(b) any additional costs and expenses incurred by the Contractor as a result of or in connection with the Latent Condition.

10.2 The Contractor must inform the Client in writing of any relevant matters relating to clauses 10.1(a) and (b) prior to recovering any amount from the Client in relation to any Latent Condition/s on the Site.

11 Termination

11.1 The agreement may be terminated by agreement between the parties in writing.

11.2 The Contractor is entitled to terminate this agreement by written notice to the Client if the Client:

(a) commits a material breach of any term of this agreement and the breach is irremediable or otherwise not remedied within 10 Business Days of being notified by the other party;

(b) repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

(c) is or is presumed to be insolvent, bankrupt or otherwise unable to pay its debts as and when they become due and payable.

11.3 If this agreement is terminated in accordance with clauses 11.1, 11.2 or any other reason except for the breach of this agreement by the Contractor, the Contractor is entitled to give to the Client a claim for the unpaid value of the Agreed Works carried out by the Contractor up to, and including, the date on which this agreement terminated, including for all reasonable costs and expenses incurred by the Contractor arising from or in connection with the termination of this agreement.

11.4 The Client must pay all amounts under clause 11.3 within five (5) Business Days after receipt of the claim for the unpaid value of the Works.

12 Guarantee and limitation of liability

Consumer guarantee

12.1 If the Client is a consumer within the meaning of that term in the Australian Consumer Law, the Contractor makes each guarantee required as a provider to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the Agreed Works and the nature of the Client.

Limitation of liability

12.2 The Contractor otherwise excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms that are not expressly set out in this agreement to the maximum extent permitted by law.

12.3 The Client acknowledges and agrees that to the maximum extent permitted by law, the Contractor will not be liable for:

(a) any consequential, special, indirect, exemplary or punitive loss or damage, including without limitation, loss of profits or revenue, loss of opportunity or use, damage, loss or destruction of data, costs of cover and costs of delay; or

(b) any damage, Loss, cost or expense suffered or incurred by the Contractor arising from the Client terminating this agreement in accordance with the terms of this agreement; or

(c) any other Loss suffered by the Contractor or its Personnel in connection with this agreement,

regardless of whether the relevant Claim arises in contract, equity, negligence, tort or for breach of statute or otherwise.

12.4 To the maximum extent permitted by law, the maximum aggregate amount that the Contractor is liable to the Client in respect of any and all Claims under or in connection with this agreement is limited to 20% of the Agreed Price actually paid to the Contractor.

13 Indemnity

13.1 The Client indemnifies the Contractor and its Personnel, and must pay the amount of any Loss incurred or suffered by the Contractor or its Personnel arising from or in connection with:

(a) the use of the Site by the Contractor or its Personnel provided that such use is compliant with this agreement and any applicable Laws;

(b) a breach of a term of this agreement by the Client; and

(c) any wilful or negligent act or omission by the Client.

13.2 The Client's liability to indemnify the Contractor under clause 13.1 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Contractor or its Personnel contributed to the Loss.

13.3 The Client must pay all amounts under clause 13.1 in immediately available funds, in full without set-off or counterclaim and without any deduction for taxes unless prohibited by Law.

14 Dispute resolution

14.1 If a dispute between the parties arises out of or in relation to this agreement, then either party may give the other a notice of dispute.

14.2 Despite the existence of a dispute, all parties must, subject to this agreement, continue to perform this agreement.

14.3 Within ten (10) Business Days after receiving a notice of dispute, the parties must confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party must be represented by a person having authority to agree to any resolution of the dispute or methods of resolving the dispute. All aspects of every conference held under this clause 14.3, except the fact of its occurrence, will be subject to legal professional privilege.

14.4 If the dispute is not resolved within the following fifteen (15) Business Days after a conference is held in accordance with clause 14.3 (or any further period as the representatives may agree is appropriate), either party may refer the dispute to a court of competent jurisdiction.

14.5 Nothing in this agreement prejudices the right of a party to institute proceedings to enforce payment due or to seek urgent injunctive or declaratory relief in respect of a dispute under this clause 14 or any matter arising under or in connection with this agreement.

15 Intellectual Property

15.1 The parties agree and acknowledge that the Contractor owns the copyright and intellectual property in all works, ideas, concepts, designs, plans, drawings, specifications or other things, materials or information created, made, developed, generated or discovered by the Contractor or its Personnel in the course of the Contractor's engagement pursuant to this agreement (**Contract Materials**).

15.2 Other than as expressly stated in this agreement, the Client agrees that it does not have any rights, title and interest in the Contract Materials and is not permitted to use, reproduce or otherwise deal with any Contract Materials without the prior written consent of the Contractor.

16 Assignment and subcontracting

16.1 The Client is not entitled to assign this agreement or any right, benefit or interest under this agreement without the prior written consent of the Contractor.

16.2 The Contractor may subcontract any part of the Agreed Works but such subcontracting does not relieve the Contractor from the its obligations to the Client under this agreement.

17 GST

17.1 Terms defined in the GST Act have the same meaning when used in this clause, unless expressly stated otherwise.

17.2 A reference to a 'taxable supply' includes a mixed supply that is partly taxable to the extent that the supply is taxable.

17.3 Unless expressly stated otherwise, any consideration payable or to be provided or amount used in the calculation of a sum payable under this agreement has been determined without regard to GST.

17.4 If a supply made under or in connection with this agreement is a taxable supply, the recipient must pay to the party making the supply (**Supplier**) an additional amount equal to the Supplier's GST liability.

17.5 The additional amount payable under clause 17.4 must be paid at the same time and the same manner as the consideration to which it relates.

17.6 The Supplier must provide a valid Tax Invoice to the recipient.

17.7 The amount recoverable on account of GST under this clause by the Supplier will include any fines, penalties, interest and other charges incurred in relation to its GST liability arising under or in connection with this agreement.

17.8 If either party is required to pay, reimburse or indemnify the other for the whole or any part of any cost, expense, loss, liability or other amount that the other party has incurred or will incur in connection with this agreement, the amount must be reduced by the amount for which the other party can claim an input tax credit, partial input tax credit, or other like offset.

17.9 If at any time an adjustment is made between the Supplier or any other payer of GST and the relevant taxing authority on account of GST on any supply made or other matter or thing done under or in connection with this contract by the Supplier, a corresponding adjustment must be made as between the Supplier and the recipient and additionally, any payment required to give effect to that adjustment must be made.

17.10 This clause does not merge on completion.

18 Notices

18.1 All notices given under this agreement must be in writing, in English and may be delivered in person or by mail/email or by the medium specified in the addresses for service in set out in the Contract Particulars to a party, its representative or lawyer.

18.2 A party may change its particulars for service by notice in writing to the other parties.

18.3 A notice sent by post will be deemed:

(a) given on the day it is posted; and

(b) received six days after posting if posted from within Australia or 14 days after posting if posted from a place outside Australia.

18.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

18.5 For the purposes of clause 18.4, 'delivery' of an email means the time that an email reaches the recipient's server.

19 References to and calculations of time

19.1 Where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

19.2 Where something is done or received after 5.00 pm on any day, it will be taken to have been done or received on the following day.

19.3 Where a provision in this agreement requires anything to be done on a Saturday, Sunday or public holiday, that matter or thing may be done or will be taken to have been done on the next succeeding day that is not a Saturday, Sunday or public holiday.

20 General

20.1 No allowance is made for the replacement or repair of works or materials due to vandalism, theft, or damage by others force majeure.

20.2 Prices are subject to on-site inspections, prior to landscape works.

20.3 No allowance is made for making good damage to work caused by other parties.

20.4 No allowance is made for "contract insurance" or any other insurances other than $20 million Public Liability, Workers Compensation Insurance and General Equipment Insurance. Any other project specific insurances will be a variation to the contract.

20.5 Scope of work for the project, will be as per the quotation provided and agreed to in writing.

20.6 The terms and conditions provided with the quotation will form part of any contract, sub-contract or other agreement entered into for works.

20.7 The quantities provided for materials in a quotation are estimate only, and the final invoice will be provided with actual quantities used.

20.8 If you are undertaking works on or near a boundary, it is strongly recommended that you consult with your neighbours prior to commencement to address any potential concerns.

20.9 It is the responsibility of the property owner to provide any relevant information regarding boundary alignments or existing agreements before work begins.

20.10 In the absence of a boundary agreement with neighbouring properties, **all components of the retaining wall—including footings and drainage—must be fully contained within the Client's property boundaries**.

20.11 Any variation in the allowed lengths or heights will be reflected and adjusted in the final invoice accordingly.

20.12 If Build Over Sewer/Stormwater applications, relaxations, or operational works approvals are required by Council, these will incur additional costs beyond the quoted Council approval fee.

20.13 Any changes to engineering designs after approval will incur an amendment fee of **$200 + GST**.

20.14 If the job is required to be completed in stages, a re-mobilisation fee of **$850 + GST** will be charged for each additional mobilisation.

20.15 Items sourced from specified suppliers and made to order require full payment from the Client at the time of placing the order.

21 Excavation

21.1 No allowance has been made for the rectification or relocation of any existing services that may obstruct the works, unless explicitly stated in the tender.

21.2 Any delays caused by the discovery of services obstructing the works will be chargeable to the Client.

21.3 Excavation is based on standard soil conditions. No allowance has been made for excavation in rock, shale, excessive tree roots, or other hard-dig conditions. These will be treated as variations.

21.4 If unsuitable soils are encountered (e.g. soft spots, loose fill, high moisture content, unstable or reactive soils), additional excavation may be required to reach stable ground. Any deeper excavation, benching, backfilling, or compaction beyond the depths specified in the project description will be treated as a variation.

21.5 Unless otherwise specified, no allowance has been made for the removal of materials from the site. This includes, but is not limited to: fill, green waste, bricks, Besser blocks, and concrete. Site clean-up and disposal of such materials will be considered a variation.

21.6 No allowance has been made for traffic control. If required, it is the responsibility of the Client to provide this service, unless otherwise agreed and listed in quotation.

22 Turf and Vegetation Management

22.1 No allowance has been made for pest or disease control in turf areas.

22.2 The Contractor id not able to accept responsibility for the well-being and maintenance of living plant material, including turf, following practical substantial completion unless a maintenance contract is in existence. Maintenance is not included in the contract unless specified.

22.3 If necessary, the Contractor reserves the right to substitute any plant with another of equal value and growth/habitat/colour in accordance with the specification.

22.4 After practical substantial completion, The Contractor is not able to accept responsibility for any damage through the elements, including drought, winds, rain and frost to any products or material(s) including plants.

22.5 Upon practical substantial completion the responsibility for the care and watering of all plants, lawns, etc., is handed over to the Client and will require regular attention until established. Great care is taken to remove all weeds/roots from the site when being prepared, but The Contractor cannot accept responsibility for subsequent weed growth on completion of the project.

22.6 The Contractor is not responsible for damage caused by lawn grub, pests, weeds, lack of water.

22.7 No allowance has been made to repair or rectify any damage to existing structures or soft landscaping caused by machinery accessing or operating on the property.

22.8 This quote is based on the assumption that deliveries can be made via body truck and bulka bags, and that machine access is available to all ground-level landscaping areas.

22.9 All craneage and vertical movement of materials are to be arranged and provided by the Client unless otherwise quoted.

22.10 No allowance has been made for tree removal or stump grinding. These works are to be carried out by separate Contractors if required.

23 Concrete and Concrete Sleeper Walls

23.1 The Client acknowledges that variations of colour and texture are inherent in concrete. The Contractor shall not be liable for any loss, damages or costs howsoever arising from any variation of the colour or texture between different batches of product.

23.2 The Client acknowledges that the curing time for concrete can be affected by elements such as temperature, or the weather, and as such The Contractor offers no guarantee as to the length of time the curing process will take.

23.3 The Contractor shall not be liable for any defect in the Works if the Client does not follow recommendation to:

(a) water the concrete for a periodically to limit the risk of possible cracking due to weather conditions;

(b) no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;

(c) no heavy furniture to be placed on the concrete area for a minimum of twenty-four (24) hours.

23.4 The Client acknowledges that concrete is a naturally porous product and can be subject to staining. This is not treated as a defect of the product. Should the slab need to be upgraded, additional costs may apply.

23.5 The Contractor is not responsible for the effects on, or damage to its services caused by weather, animals, children, vehicles or any force or effect not associated with, or controllable by The Contractor.

23.6 It is up to the client to supply The Contractor with the most up to date plans. The Contractor takes no responsibility for defects resulting from incorrect or outdated plans supplied by the client and/or clients' employees.

23.7 The Contractor accepts no responsibility for the defects of any job that is a result of plumbing, formwork or steel fixing that has not been supplied by The Contractor. If any of the plumbing, formwork or steel fixing is incorrect we accept no responsibility for the finished concretes height, falls, drainage, steel coverage or aesthetics.

23.8 Rock Excavation Charges may apply with Concrete Sleeper Walls:

(a) If rock is encountered in pier holes and cannot be drilled using a 1.7T excavator, additional excavation will be charged at **$190 + GST per hour**.

(b) For hand excavation where rock is encountered, a rate of **$75 + GST per hour per labourer** (including jackhammer use) will apply.

23.9 If deeper piers are required due to unsuitable soil conditions, the following rates will apply:

(a) **100UC posts** – $125 + GST per lineal metre

(b) **150UC posts** – $165 + GST per lineal metre

(c) **200UC and 250UC posts** – Pricing available upon request, assessed on a job-by-job basis.

23.10 If water is encountered in pier holes, labour and pumping will be charged at **$60 + GST per hour** to remove water before concrete installation.

23.11 If site conditions change after the initial quotation and a concrete pump is required to install concrete, an additional fee of **$1,500 + GST** will apply.

23.12 Decorative concrete sleepers are a premium product and are priced higher than standard smooth grey sleepers. If decorative options are required, please advise prior to commencement so that appropriate selections and pricing adjustments can be made.

24 Fencing and Retaining Walls

24.1 In the absence of surveyor pegs, whilst all care to ensure correct alignment will be taken, The Contractor cannot take any responsibility for any inaccuracy.

24.2 Whilst the Supplier of any fencing and retaining walls will take all due care during installation the Supplier will not accept any responsibility for tiles or pavers damaged during installation.

24.3 The client agrees to notify the neighbour's and adjoining property owners by of works being carried out and where a party fence is to be removed. It is not the responsibility of The Contractor to retain pets within the boundary of adjoining premises. No responsibility will be taken for pets not securely retained within the site.

24.4 The Client is responsible for determining and supervising the alignment and location of the fence and any surveys required. Unless specified, the Client is responsible for leveling the ground to avoid any gaps under the fence.

24.5 Where fencing has been quoted, please allow up to 10 business days for site measurement and delivery of Colorbond materials following the completion of retaining walls.

25 Underground Services and Asbestos

25.1 Prior to The Contractor commencing the Works, the Client must advise of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.

25.2 Whilst The Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify The Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause.

25.3 No allowance has been made for the rectification or relocation of any underground services that may obstruct the works, unless otherwise stated in the tender.

25.4 Any delays caused by the discovery of obstructing services will be chargeable to the Client.

25.5 While every effort will be made to identify obvious services, any damage to unidentified or incorrectly marked services will be at the Owner's cost.

25.6 The Client acknowledges that, in the event asbestos or any other toxic substances are discovered at the site, it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify The Contractor against any costs incurred because of such discovery. Under no circumstances will The Contractor handle removal of asbestos product.

26 Machine-Related Property Damage

26.1 Every effort will be made to minimise damage during works; however, the Client acknowledges and accepts the risk of minor surface damage (such as to driveways, pathways, turf, or nearby structures) resulting from machinery accessing or operating on site.

26.2 The use of heavy machinery may cause ground disturbance, including cracking or rutting, particularly on soft, unstable, or sensitive surfaces.

26.3 We accept no liability for damage to existing structures, surfaces, or underground services unless it can be proven that such damage resulted from our negligence.

26.4 It is the Client's responsibility to inform us in advance of any areas requiring special protection or restricted machinery access.

26.5 Protective measures, such as ground mats or temporary barriers, can be provided upon request at an additional cost if arranged prior to the commencement of works.

27 General – *Continued.*

27.1 In this agreement:

(a) words in the singular include the plural and vice versa;

(b) words indicating any gender indicate the appropriate gender;

(c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;

(e) references to any document (including this agreement) include references to the document as amended, consolidated, supplemented, novated or replaced;

(f) the Background and Contract Particulars form part of this agreement;

(g) a reference to anything (including, but not limited to, any right) includes a part of that thing but nothing in this clause implies that performance of part of an obligation constitutes performance of the obligation;

(h) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;

(i) monetary references are references to Australian currency;

(j) no provision of this agreement will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of this agreement or that provision; and

(k) unless otherwise specifically provided in this agreement, references to indemnify and indemnifying any person against any matter or circumstance includes indemnifying and keeping the person harmless from all actions, Claims, demands, orders and proceedings from time to time made against that person and all loss or damage and all liabilities, payments, fines, penalties, costs or expenses (including reasonable legal costs and tax of any kind) made, suffered or incurred by that person as a consequence of or which would not have arisen but for that matter or circumstance.

Governing law

27.2 This agreement will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

Reference to a party

27.3 Any reference to a party in this agreement includes**,** and any obligation or benefit under this agreement will bind or take effect for the benefit of**,** that party's executors, administrators, successors in title and assigns.

Time of the essence

27.4 Time will be of the essence as regards a date or period determined under this agreement except that a date or period may be altered by agreement in which case time will be of the essence for date or period as altered.

Entire agreement

27.5 This agreement represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.

Severability

27.6 If any part of this agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this agreement will remain otherwise in full force.

Amendments to be in writing

27.7 No amendment to this agreement has any force unless it is in writing.

Joint and several

27.8 An obligation of two or more persons under this agreement binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of this agreement will take effect for the benefit of those persons jointly and severally.

Set off

27.9 The Contractor is entitled to set off, withhold or deduct any amount payable to the Client under this agreement against any amount owing or likely to become owing to the Contractor.

Waiver

27.10 The failure of a party to this agreement to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

Counterparts

27.11 This agreement may be signed in counterparts. Each counterpart will be deemed an original and the counterparts taken together constitute one and the same instrument.

27.12 A copy of a counterpart sent by electronic communication (as defined in the *Electronic Transactions (Queensland) Act 2001* (Qld)):

(a) will be deemed an original counterpart;

(b) is sufficient evidence of the signing of the original; and

(c) may be produced in evidence for all purposes in place of the original.

No merger

27.13 The rights and obligations of the parties contained in this agreement will not be extinguished by or upon completion.

Further assurances

27.14 Each party will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of this agreement and the transactions to which it relates.

28 Definitions

The meanings of the terms used in this agreement are set out below.

Term	*Meaning*
The Contractor	Rise Landscapes Pty Ltd

Term	*Meaning*
Agreed Price	means the price for the Agreed Works as set out in the Contract Particulars and Quotation
Agreed Works	means the works to be carried out by the Contractor as set out the Quotation.
Australian Consumer Law	refers to the consumer law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth)
Business Day	a day other than a Saturday, Sunday or public holiday in Brisbane
Claim	includes all actions, suits, causes of action, arbitrations, debts, dues, costs, expenses, claims, demands, proceedings, complaints, objections, obligations, liabilities, interest, verdicts, orders and judgments either at law or in equity or arising under a statute available as at the Signing Date and whether or not the matter giving rise to those claims are known to the parties as at the Signing Date
Commencement Date	has the meaning set out in the Contract Particulars
Completion Date	has the meaning set out in the Contract Particulars
Contract Materials	has the meaning given to it in clause 15.1
Contract Particulars	the particulars set out under the heading 'Contract Particulars' in this agreement
Default Rate	10% per annum
Dispute	dispute between the Client and the Contractor in relation to matters the subject of the Original Contract
GST	has the same meaning as in the GST Act
GST Act	*A New Tax System (Goods and Services Tax) Act 1999* (Cth)
Latent Condition	means any physical condition on, under or around the Site which differs materially from the physical conditions reasonably expected by the Contractor at the time the parties entered into this agreement
Laws	all applicable Acts, ordinances, regulations, by-laws, orders, awards and proclamations applicable where the Agreed Work will take place, the common law, all relevant permits, licences and approvals, and standards that have the force of law in respect of the Agreed Work
Loss	any loss, damage, compensation, fine, penalty, charge, payment (including under worker's compensation, taxation or superannuation legislation, any industrial legislation, public liability, products liability and motor vehicle damage), costs or expenses (including any legal costs and expenses on a full indemnity basis) however it arises, and whether it is present or future, fixed or unascertained, actual or contingent, and including loss of profit, loss of revenue or loss of opportunity

Term	*Meaning*
Personnel	of a part means the officers, employees, contractors, agents and representatives of that party
Practical Completion	when the Agreed Works are completed in accordance with this agreement except for non-material Defects that do not prevent the works from being reasonably capable of being used for their intended purpose
Signing Date	the date that the last party to sign this agreement signs this agreement
Site	the property described in the Contract Particulars
Tax Invoice	has the same meaning as in the GST Act

Rise Landscapes Pty Ltd

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