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## LANDSCAPING WORKS AGREEMENT - STANDARD TERMS AND CONDITIONS

THIS LANDSCAPING WORKS AGREEMENT is dated the \_\_\_\_\_ day of \_\_\_\_\_

DESIGN &  
ARCHITECTURE  
  
CONSTRUCTION  
  
PLANTING  
  
MAINTENANCE  
  
ENTRANCEWAYS

**BETWEEN** \_\_\_\_\_ ("the Client")

**AND** **GOOM LANDSCAPES LIMITED** ("the Contractor")

(The conditions of contract are attached.)

Schedule 1	
(1.1) Contract Sum:	_____
(4.3) Materials/Assistance to be provided by the Client:	N/A
(5.1) The Client shall give access to the Site on or before:	_____
(5.2) The period to be used for calculating the Completion Date is:	_____ (Subject to weather)
(6.1) Payment terms:	<b>INVOICES WILL BE ISSUED FORTNIGHTLY, PAYMENT WITHIN 7 DAYS OF INVOICE</b>
(10.1) Public liability insurance shall be effected for a minimum amount of \$	\$1,000,000.00
(12.1) Party to obtain permit or consents:	_____

**SIGNED** for and on behalf of the

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**CLIENT:** \_\_\_\_\_ by: \_\_\_\_\_

**CONTRACTOR** **GOOM LANDSCAPES LTD** by: \_\_\_\_\_

(Signature) \_\_\_\_\_

(Signature) \_\_\_\_\_

(Name)  
Please print \_\_\_\_\_

(Name)  
Please print \_\_\_\_\_

(Position/Designation) \_\_\_\_\_

**THE PARTIES AGREE:**

**1. INTERPRETATION**

In this Agreement unless the context indicates otherwise:

**1.1 Definitions:**

"Agreement" means this Landscaping Works Agreement;

"Completion Date" has the meaning assigned to it in clause 5.2;

"Contract Documents" means this Agreement and the documents referred to in and forming part of this Agreement;

"Contract Sum" means the amount stated in schedule 1 which is payable for the completion of the Landscaping Works subject to such adjustments as are provided for in the Contract Documents.

"Drawings" means all drawings set out in schedule 2 together with any modification of such drawings approved in writing by the Client;

"Landscaping Works" means all the work to be executed in accordance with this Agreement and as more particularly set out in the Drawings and Specifications;

"Site" means the land, buildings or other places made available by the Client to the Contractor for the purpose of carrying out the Landscaping Works;

"Specifications" means the specifications set out in schedule 3 together with any modifications of such specifications approved in writing by the Client.

**1.2 Headings:** clause and other headings are for ease of reference only and shall not be deemed to form any part of the context or to affect the interpretation of this Agreement;

**1.3 Plural and Singular:** words importing the singular number shall include the plural and vice versa;

**1.4 Schedules:** the schedules to this Agreement and the provisions and conditions contained in such schedules shall have the same effect as if set out in the body of this Agreement;

**1.5 Parties:** references to parties are references to parties to this Agreement;

**2. SCOPE OF THE AGREEMENT**

**2.1** Subject to the terms and conditions of this Agreement:

**2.1.1** the Contractor undertakes to carry out the Landscaping Works; and

**2.1.2** the Client undertakes to accept and pay for the Landscaping Works.

**3. CONTRACTOR'S RESPONSIBILITIES**

**3.1** The Contractor shall complete the Landscaping Works and provide labour, materials, transport and everything required so far as the necessity for the same is specified in or to be inferred from the Contract Documents.

**4. CLIENT'S RESPONSIBILITIES**

**4.1** The Client warrants that:

- (a) the Client is the owner of the Site or is authorised by the owner of the Site to carry out the Landscaping Works on the Site; and
- (b) the Contractor shall have free and unimpeded access to the Site for the purpose of carrying out the Landscaping Works, and that (except where agreed otherwise) the Site will be cleared of all debris prior to commencement of the Landscaping Works.

**4.2** The Client shall ensure that, if other contractors are to be allowed access to the Site during the term of this Agreement, this shall be by agreement with the Contractor, and the Client shall ensure that such other contractors are co-ordinated to allow maximum continuity of the Landscaping Works by the Contractor and cause as little inconvenience or delay as possible.

**4.3** The Client agrees to provide such material and/or assistance to, the Contractor as is specified in schedule 1.

## **5. COMMENCEMENT AND COMPLETION**

- 5.1** The Client shall give the Contractor access to the Site on the date stated in schedule 1 and the Contractor shall use all reasonable endeavours to ensure that the Landscaping Works commences within 5 days of access being granted. To this end, the Contractor shall advise the Client of any decision or instruction which needs to be made or given prior to the Contractor being able to proceed with the Landscaping Works.
- 5.2** The Completion Date shall be calculated by adding to the date on which the Contractor commences the Landscaping Works the period stated in schedule 1 and all extensions of time agreed. The Contractor shall use all reasonable endeavours to ensure that the Landscaping Works are completed within the period stated.
- 5.3** The Client shall grant an extension of time for completion of the Landscaping Works if the Contractor is fairly entitled to an extension by reason of a variation or wet weather or industrial action or the late supply of materials, instructions or assistance by the Client or unfavourable soil conditions which may affect the quality of the work, or any other circumstances not due to the fault of the Contractor.

## **6. CONTRACT SUM AND PAYMENT**

- 6.1** The Client shall pay to the Contractor the Contract Sum in the manner, at the rate and at the times provided in schedule 1. If no such provision is made in schedule 1, the Client shall pay a deposit of 10% of the Contract Sum on the execution of this Agreement and make instalment payments as per schedule 1, following the commencement of the Landscaping Works.
- 6.2** The Client shall pay the Contractor the amounts due under clause 6.1 on the 7<sup>th</sup> day following the date of receiving the invoice from the Contractor.
- 6.3** Where any monies owing under this Agreement are not paid by the due date, the Client shall pay interest equal to 1½ times the interest rate currently payable by the Contractor for overdraft facilities. This interest shall be paid from the date on which the amount became due, to the date of payment.
- 6.4** All materials supplied by the Contractor including materials incorporated into the Landscaping Works shall remain the property of the Contractor until payment has been made in full. The Contractor shall be entitled to full access to the Site to dismantle and remove all Landscaping Works and materials if payment is not made in accordance with this Agreement.
- 6.5** If the Site is sold or in any way disposed of prior to all payments being made to the Contractor, the Client shall hold the proceeds of such sale or disposition in trust for the Contractor to the extent that any monies remain owing under this Agreement.
- 6.6** In the event that the Contractor for the purposes of the Landscaping Works arranges or procures materials from a Subcontractor and the terms of the arrangements between the Contractor and the Subcontractor require payment by the Contractor, then the Contractor shall be entitled to request payment forthwith by the Client regardless of whether the work or materials are yet located on the Site.

## **7. VARIATIONS**

- 7.1** The Client may request modifications or amendments to the Landscaping Works (including the Drawings and Specifications) at any time during the term of this Agreement and the Contractor shall use its best endeavours to comply with all such requests, provided that the parties shall immediately negotiate in good faith to determine whether any such modifications or amendments are practicable and (where applicable) negotiate to agree upon an amended price.
- 7.2** Where any such modifications or amendments to the Landscaping Works are agreed between the parties in accordance with clause 7.1, they shall be recorded in writing and signed by both parties, whereupon they shall be deemed to be incorporated into this Agreement.
- 7.3** Where the parties do not reach agreement in accordance with clause 7.1, this Agreement shall remain unchanged and shall continue to be binding on both parties.

## 8. UNFORSEEN DIFFICULTIES

8.1 Where the Contractor encounters unforeseen difficulties in respect of the Site, including such matters as hidden rock, underground services, fill or toxic materials (which could not previously have been detected by the Contractor by a visual inspection of the Site), the Contractor shall immediately consult the Client and:

- (a) the parties may negotiate to determine the extent of the additional work required, and any resultant amendments to the price directly resulting from additional costs incurred; or
- (b) either party may immediately terminate the contract, whereupon the Client shall pay to the Contractor the value of all Landscaping Works completed at such date.

## 9. UNDERGROUND AND OVERGROUND SERVICES

9.1 The Client shall arrange for the searching of records to determine the existence and position of pipes, cables and other utilities on or about the Site, and the position of such utilities shall be indicated in the Contract Documents as accurately as the information available permits. For the purposes of this clause, the term “utilities” shall include any legal survey marks, as defined in the Regulations made under the Surveyors Act 1966, and which at any time have been set in or on the ground for the purposes of survey.

9.2 The Contractor shall be responsible for physically locating the position of such utilities and shall arrange with the controlling authorities for any necessary exploratory work, location, protection, isolation, offsetting, reinstatement or alteration required. The Contractor shall record any alteration which it makes to such utilities.

9.3 The Contractor shall be responsible for protecting all utilities whether indicated or not and for arranging their reinstatement or the repair of any damage resulting from its operations. The client agrees to pay all reasonable costs for any repairs to any damage to the underground utilities.

9.4 Where a utility is not indicated or is not substantially in the position indicated in the Contract Documents, any extra work in physically locating its position or altering or protecting or off-setting or reinstating it, shall be paid for by the Client.

## 10. PLANTS

10.1 As natural, growing matter, the health of plants (including trees and shrubs) is influenced by many factors outside our control. Where the Landscape Construction Quotation includes any plants and the relocating of plants the following applies:

### 10.2 Supply & Planting

- (a) Every reasonable effort will be made to source best quality specimens.
- (b) The Contractor will plant in accordance with best horticultural practice.
- (c) The Contractor will provide written instructions on how best to maintain any planting carried out.

### 10.3 Relocating Plants

From time to time the Contractor is asked to relocate plants as part of the landscaping works. All such relocating is undertaken to the appropriate horticultural standard, but on a “best endeavours” basis that there is no guarantee to the continued health and viability of the plant(s).

### 10.4 Our Plants Guarantee

#### 10.4.1 *Evergreen Trees:*

The Contractor will replace any evergreen trees supplied and planted by us, if found to be dead or dying within three months of planting (subject to 10.4.4 below).

#### 10.4.2 *Deciduous Trees:*

The Contractor will replace any deciduous trees supplied and planted by us, that has not ‘come into leaf’ during the first growing season (subject to 10.4.4 below).

#### 10.4.3 *Shrubs:*

The Contractor does not guarantee the continued health and viability of any shrub. However in the event of any shrub death, the Contractor will assess on site and at our sole discretion, replace the shrub at the Contractor’s cost.

#### 10.4.4 *Limitations of Guarantee:*

The guarantee excludes plant death resulting from exposure to drought conditions, high winds, abnormal winter conditions, under-watering, over-watering, adverse soil conditions, over-fertilizing, pest or stock damage, or any other condition or act over which the Contractor has no control.

**11. ESTIMATES**

- 11.1 It is often agreed as more efficient and practical to provide estimates for work.
- 11.2 All aspects detailed on the Landscape Construction Quotation as “estimated” will be invoiced on ‘time and material’ basis.
- 11.3 All actual materials used to complete this aspect will be detailed on each invoice claim.
- 11.4 All actual labour (time) spent working on this aspect will be detailed on each invoice claim.

**12. INSURANCE**

- 12.1 The Contractor shall maintain public liability insurance for the amount specified in schedule 1.

**13. LIABILITY**

- 13.1 The Contractor shall exercise reasonable skill, care and diligence in the discharge of its obligations under this Agreement but in respect of any loss or damage of whatsoever nature or howsoever caused, which in any way arises out of or is connected with the performance or non performance by or on behalf of the Contractor of such obligations, the liability of the Contractor and its employees or agents (whether in contract or in tort) shall be limited to any case of negligence or default on their part and shall consist solely of performance or reperformance as the case may be, by the Contractor of the obligation in question, to the exclusion of all other liability.

**14. COMPLIANCE WITH APPLICABLE LAWS AND SITE REGULATIONS**

- 14.1 The party that is to obtain the relevant permits and the party that is to pay for such permits is stated in schedule 1.
- 14.2 If the Contractor is unsuccessful in obtaining any permit, which the Contractor has undertaken to obtain under this Agreement, due to circumstances beyond the control of the Contractor:
  - (a) the parties may negotiate to determine any modifications required, and any amendments to the price directly resulting from any additional costs incurred; or
  - (b) either party may immediately terminate the contract, whereupon the Client shall pay to the Contractor the value of all Landscaping Works completed at such date.

- 14.3 Where the Consumer Guarantees Act 1993 applies to this Agreement, if the services are acquired by the Client for business purposes the Client agrees that the Consumer Guarantees Act 1993 does not apply. Nothing in this Agreement is intended to limit the rights of a consumer under the Consumer Guarantees Act 1993.

**15. CONFIDENTIALITY**

- 15.1 The Contractor shall keep all Drawings and Specifications used in connection with this Agreement confidential and shall not, without the prior written consent of the Client, disclose the same to any other person except in the proper performance of its obligations under this Agreement.

**16. DEFAULT AND TERMINATION**

- 16.1 Either party may terminate this Agreement forthwith or in the case of the Contractor suspend the carrying out of the Landscaping Works until further notice in the event that a liquidator, trustee and bankruptcy, receiver or receiver and manager is appointed in respect of the assets of the other party.
- 16.2 The Contractor may either terminate this Agreement forthwith or forthwith suspend the carrying out of the Landscaping Works until further notice in the event that the Client fails to make any payment due to the Contractor under this Agreement punctually by the due date and fail to make such payment within 10 days of being advised by the Contractor that such payment is due and has not been made.
- 16.3 In the event that this Agreement shall have been terminated or the carrying out of the Landscaping Works has been suspended pursuant to clause 14, the Client shall reimburse the Contractor all direct costs and expenses incurred as a consequence of such termination or suspension.

**17. FORCE MAJEURE**

- 17.1 No failure or omission by either party to carry out or observe any of the terms and conditions of this Agreement shall, except in relation to obligations to make payment hereunder, give rise to any claim against the party in question or deemed a breach of this Agreement if such failure or omission arises from any cause reasonably beyond the control of that party.

**18. RESOLUTION OF DISPUTES**

- 18.1 Any dispute or difference which may arise between the parties concerning the interpretation of this Agreement or in relation to any matter arising under this Agreement, which cannot be settled amicably and in good faith between the parties, shall be referred to arbitration under the Arbitration Act 1996.