

## **TERMS AND CONDITIONS OF BUSINESS**

OF [HOUSE PROUD UK]

### **1 DEFINITIONS**

The following expressions shall have the following meanings:

**1.1** "Supplier" means [HOUSE PROUD UK] of [52 PHEASANTWOOD DRIVE, THORNTON, CLEVELEYS, LANCASHIRE, FY5 2AW];

**1.2** "Customer" means any person who purchases Services and/or Products from the Supplier;

**1.3** "Consumer" shall have the meaning ascribed in section 12 of the Unfair Contract Terms Act 1977;

**1.4** "Proposal" means a statement of work, quotation or other similar document describing the Services and/or the Products;

**1.5** "Services" means the services as described in the Proposal and include any materials required to complete the work;

**1.6** "Products" means any products supplied by the Supplier to the Customer;

**1.7** "Terms and Conditions" means the terms and conditions of supply of Services and/or Products set out in this document and any subsequent terms and conditions agreed in writing by the Supplier;

**1.8** "Order" means the formal acceptance by the Customer of the Proposal;

**1.9** "Agreement" means the contract between the Supplier and the Customer for the provision of the Services and/or Products incorporating these Terms and Conditions.

### **2. GENERAL**

**2.1** These Terms and Conditions shall apply to the Agreement for the supply of Services and/or Products by the Supplier to the Customer and shall supersede any other documentation or communication between the Supplier and the Customer.

**2.2** Any variation to these Terms and Conditions must be agreed in writing by the Supplier.

**2.3** Nothing in these Terms and Conditions shall prejudice any condition or warranty, express or implied, or any legal remedy to which the Supplier may be entitled in relation to the Services and/or Products, by virtue of any statute, law or regulation.

**2.4** Nothing in these Terms and Conditions shall affect the Customer's statutory rights as a Consumer.

### **3. PROPOSAL**

**3.1** The Proposal for Services and/or Products is attached to these Terms and Conditions.

**3.2** The Proposal for Services and/or Products shall remain valid for a period of [30 DAYS].

**3.3** The Proposal must be accepted by the Customer in its entirety.

**3.4** The Customer shall be deemed to have accepted the Proposal by placing an Order with the Supplier.

**3.5** The Agreement between the Supplier and the Customer, incorporating these Terms and Conditions, shall only come into force when the Supplier confirms an Order in writing to the Customer. Prior to any confirmation the Supplier has the right to refuse any Order.

### **4 SERVICES, PRODUCTS AND DELIVERY**

**4.1** The Services and/or Products are as described in the Proposal.

**4.2** Any variation to the Services and/or Products must be agreed by the Supplier in writing.

**4.3** Any drawings, descriptions or specifications contained in advertising material, brochures or catalogues issued by the Supplier are for the sole purpose of giving an approximate idea of the Products and/or Services and will not form part of any Agreement unless otherwise agreed in writing by the Supplier.

**4.4** The Services and/or Products will be delivered to site between the hours of [08:00 HRS] and [18:00 HRS] on [START DATE AS AGREED BETWEEN THE SUPPLIER THE CUSTOMER IN QUESTION]. The Supplier may vary these times by intimating either in writing details of the change to the Customer, or by direct verbal communication with the customer.

**4.5** Dates given for the delivery of Services and/or Products are estimates only and not guaranteed. Time for delivery shall not be of the essence of the Agreement and the Supplier shall not be held liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery.

**4.6** When the outside temperature fall below minus 1 degree centigrade the Supplier may decide not to execute any outside work requiring the use of cement or mortar until temperatures have risen above this threshold. Similarly, the Supplier may also have no other option but to cease all outside work temporarily requiring the use of cement or mortar if the weather is not favourable.

## 5 PRICE AND PAYMENT

5.1 The price for Services and/or Products is as specified in the Proposal and is inclusive of [VAT] any other charges as outlined in the Proposal. No prices or payments agreed are subject to the addition of VAT whilst HOUSEPROUDUK are not a party to the VAT register.

If however HOUSEPROUDUK (The Supplier) do take the initiative and register on the VAT database/Register, then of course all costs for the hire of machinery, and the supply of materials & the like will be subject to VAT at the current rate in addition.

5.2 The price for any materials required to complete the Services is as specified in the Proposal.

5.3 The terms for payment are as specified in the Proposal, which is normally 50% upon delivery of the relevant machinery and materials to site. The remaining 50 % will then become payable upon completion of the works agreed by the Supplier & the Client.

5.4 The Customer must settle all payments agreed in the proposal for Services and/or Products [UPON COMPLETION OF THE WORK AGREED, AND IN ANY CASE NO LATER THAN WITHIN THE TWO FULL WORKING WEEKS THAT FOLLOW COMPLETION OF WORK] OR from the final invoice date.

5.5 If payment for completed work is not made within the allotted timescale, then Customer will pay interest on all late payments at a rate of [2%] per annum above the base lending rate of [HSBC BANK]. Current rates can be found by visiting their website [www.hsbc.co.uk](http://www.hsbc.co.uk)

5.6 The Supplier (HOUSEPROUDUK) is also entitled to recover all reasonable expenses incurred in obtaining payment from the Customer where any payment due to the Supplier is late.

5.7 The Customer is not entitled to withhold any monies due to the Supplier.

5.8 The Supplier is entitled to vary the price to take account of:

5.8.1 Any additional Services and/or Products requested by the Customer which were not included in the original Proposal;

5.8.2 Any increase in the cost of materials during the course of any of the works agreed to be carried out;

5.8.3 Any additional work required to complete the Services which was not anticipated at the time of the Proposal;

and any variation must be intimated to the Customer in writing by the Supplier, all initial work proposals & or additional works agreed either verbally or in writing between the Supplier and the client, must be signed for by the client in agreement.

## **6 CUSTOMER OBLIGATIONS**

**6.1** The Customer will provide access to the Supplier at the times specified in these Terms and Conditions and will co-operate with all reasonable requests by the Supplier.

**6.2** The Customer will provide electricity, water and toilet facilities to the Supplier for the purpose of completing the Services.

**6.3** The Customer will apply for, obtain and meet the cost of all necessary approvals and permissions required to complete the Services prior to the commencement of the work.

**6.4** The Customer will take all reasonable steps to ensure that the Supplier does not sustain any damage or loss to any equipment stored on site.

**6.5** The Customer shall be liable for any expenses incurred by the Supplier as a result of the Customers failure to comply with the obligations as defined by these Terms and Conditions.

**6.6** Upon completion of the Services the well-being of any Products such as plants, trees, shrubs or similar shall rest with the Customer.

**6.7** The Customer is responsible for the watering of Products such as plants, trees, shrubs & most importantly, newly laid turf or similar after planting/Laying.

**6.8** The Customer is responsible for identifying the location of underground services, pipes or other utilities and cannot hold the Supplier responsible for damage to these should this occur during the provision of the Services.

## **7 SUPPLIER OBLIGATIONS**

**7.1** The Supplier shall supply the Services and/or Products as specified in the Proposal & agreed and signed for by the customer.

**7.2** The Supplier shall perform the Services with reasonable skill and care and to a reasonable standard and in accordance with recognised codes of practice.

**7.3** The Supplier shall comply with all relevant health and safety regulations.

**7.4** The Supplier shall ensure that all necessary licences and permissions required to provide the Services and/or Products are current including but not limited to [SITE WASTE REMOVAL].

**7.5** The Supplier shall be responsible for all waste management and disposal required in the course of providing the Services and/or Products, providing the customer has met all expectations and agreements in relation to the 50 % deposit as laid out clearly in these terms & conditions.

**7.6** The Supplier shall hold valid employer and public liability insurance policies. Which must be made available to the customer upon request.

**7.7** The Supplier will take all reasonable care when salvaging existing plants but cannot be held responsible for their survival.

**7.8** Where a specified plant, tree, shrub or similar is unavailable the Supplier may substitute an alternative.

## **8 CANCELLATION**

8.1 The Customer may cancel an Order for Services and/or Products by notifying the Supplier in writing within [28 DAYS] of placing the Order & in any case, notification of the cancelled agreement must be made no later than [14 DAYS] prior to work commencement and any monies paid by the Customer will be refunded in full subject to the deduction of an administration charge of [10% or £200 whichever ever the lesser amount] or as determined by the Supplier.

8.2 If the Customer does not notify any cancellation within the time specified in Clause 8.1 any monies paid will not be refundable.

## **9 GUARANTEE**

9.1 In addition to the Customer's statutory rights, the Supplier guarantees that the Services and/or Products will be free from defects in materials and/or workmanship for a period of [2 years] from the date that the Services and/or Products were supplied.

9.2 Clause 9.1 does not apply:

9.2.1 If a fault arises due to any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Services and/or Products after risk has passed to the Customer;

9.2.2 If a fault arises due to willful damage, abnormal working conditions, failure to follow instructions, or failure to maintain properly, misuse, alteration or unauthorized repair, improper maintenance or negligence on the part of the Customer or a third party.

9.3 If the Services and/or Products are found to be defective in accordance with these Terms and Conditions then the Supplier shall, at their sole discretion, either repair, re-perform or replace the Services and/or Products or refund any monies paid for the defective Services and/or Products.

9.4 Where the Services and/or Products are defective upon delivery, or do not comply with the Agreement the Customer must notify the Supplier immediately, first of all verbally, then if necessary in writing, but no later than within [14 DAYS] from the date of delivery.

9.5 If the Customer has not paid for the Services and/or Products in full by the date the defect notification being made in writing, then the Supplier has no obligation to remedy the defect in terms of this Clause 9.

## **10 INTELLECTUAL PROPERTY RIGHTS**

All intellectual property rights, registered or unregistered, including but not limited to patents, trademarks, design rights and know-how remain the property of the Supplier and cannot be used by the Customer without the written permission of the Supplier.

## **11 PROPERTY AND RISK**

**11.1** Risk in the Products or in any property or materials used to provide the Services shall pass from the Supplier to the Customer when the Products or property or materials leave the premises of the Supplier or on delivery if the Supplier is transporting the items.

**11.2** Title or ownership of any property or materials belonging to the Supplier remains with the Supplier until payment is received from the Customer in full.

**11.3** The Customer must store any property or materials belonging to the Supplier separately from any other property or materials belonging to the Customer or a third party.

## **12 DEFAULT**

**12.1** The Agreement shall continue until the Services and/or Products have been provided in terms of the Proposal or any subsequent date as mutually agreed in writing by both parties or until terminated by either party in accordance with these Terms and Conditions.

**12.2** The Customer may terminate the Agreement if the Supplier fails to comply with any aspect of these Terms and Conditions and this failure continues for a period of [4 FULL WORKING WEEKS, 1 FULL WORKING WEEK BEING NORMALLY 5 FULL 8 HR DAYS] after notification of non-compliance is given.

**12.3** The Supplier may terminate the Agreement if the Customer has failed to make over any payment due within [2 FULL WORKING WEEKS, 1 WORKING WEEK BEING NORMALLY 5 FULL 8 HR DAYS] of the sum being requested.

**12.4** Either party may terminate the Agreement by notice in writing to the other  
If:

**12.4.1** The other party commits a material breach of these Terms and Conditions and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

**12.4.2** The other party commits a material breach of these Terms and Conditions which cannot be remedied under any circumstances; or

**12.4.3** The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

**12.4.4** The other party ceases to carry on its business or substantially the whole of its business; or

**12.4.5** The other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

**12.5** In the event of termination the Customer must make over to the Supplier any payment for work done and expenses incurred up to the date of termination.

12.6 Any rights to terminate the Agreement shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of the Agreement as at the date of termination.

### **13 WARRANTIES**

13.1 The Supplier warrants that the Products will, at the time of delivery, correspond to the description given by the Supplier.

13.2 The Supplier warrants that the Services will be performed using all reasonable skill and care.

13.3 Without prejudice to clause 13.1 and clause 13.2 and except as expressly stated in these Terms and Conditions, all warranties whether express or implies, by operation of law or otherwise, are hereby excluded in relation to the Service and/or Products to be provided by the Supplier.

### **14 LIMITATION OF LIABILITY**

14.1 Nothing in these Terms and Conditions shall exclude or limit the liability of the Supplier for death or personal injury, however the Supplier shall not be liable for any direct loss or damage suffered by the Customer howsoever caused, as a result of any negligence, breach of contract or otherwise in excess of the price of the Service and/or the Products.

14.2 The Supplier shall not be liable under any circumstances to the Customer or any third party for any indirect or consequential loss of profit, consequential or other economic loss suffered by the Customer howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise.

14.3 For the avoidance of doubt, time shall not be of the essence where professionalism & or high quality workmanship are concerned, and the Supplier shall incur no liability to the Customer in respect of any failure to complete the Services or supply the Products by any agreed completion date.

### **15 INDEMNITY**

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise directly or indirectly from the Customer's breach of any of its obligations under these Terms and Conditions.

### **16 FORCE MAJEURE**

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the party shall be entitled to a reasonable extension of its obligations.

**17 ASSIGNMENT**

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

**18 SEVERANCE**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**19 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions.

**20 NOTICES**

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Proposal or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post, and where practicable a proven signature must be provided as evidence to that communication having been served and received.

**21 ENTIRE AGREEMENT**

These Terms and Conditions supersede any previous agreements, arrangements, documents or other undertakings either written or oral.

**22 GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the law of [England OR Scotland] and the parties hereby submit to the exclusive jurisdiction of the [English OR Scottish] courts.

PROPOSAL

NAME OF SUPPLIER:

[NAME OF SUPPLIER]

BUSINESS ADDRESS OF SUPPLIER:

[ADDRESS OF SUPPLIER]

REGISTERED COMPANY ADDRESS OF SUPPLIER:

[REGISTERED COMPANY ADDRESS OF SUPPLIER]

NAME OF CUSTOMER:

[NAME OF CUSTOMER]

ADDRESS OF CUSTOMER:

[ADDRESS OF CUSTOMER]

DESCRIPTION OF PRODUCTS TO BE SUPPLIED:

[DESCRIPTION OF PRODUCTS]

DESCRIPTION AND SCOPE OF SERVICES TO BE SUPPLIED:

[DETAILS OF SERVICES]

LOCATION WHERE PRODUCTS AND SERVICES ARE TO BE SUPPLIED:

[LOCATION]

THE PRICE:

[PRICE - INCLUDING ANY MATERIALS AND VAT OR OTHER CHARGES DUE]

PAYMENT TERMS:

[DETAILS OF PAYMENT TERMS]

TIMING OF WORKS:

[TIMETABLE OF WHEN SERVICES WILL BE CARRIED OUT AND PRODUCTS SUPPLIED]

ADDITIONAL/SPECIAL TERMS:

[DETAILS OF ANY OTHER TERMS]

DETAILS OF ANY DRAWINGS/ PLANS TO BE ATTACHED:

[DETAILS OF DRAWINGS/ PLANS]

## **GUIDANCE NOTES**

These notes are provided to assist you in completing your document. They do not form part of the Terms and Conditions or Proposal.

### **ADDRESS OF CUSTOMER (Proposal)**

The address of the Customer.

### **ADDRESS OF SUPPLIER (1.1, Proposal)**

The business address of the Supplier.

### **AMOUNT (8.1)**

The amount payable as an administration charge should the Customer cancel the Order within the accepted timeframe.

### **DAYS (4.4)**

The days of the week when the work shall be carried out e.g. Monday to Friday.

### **DESCRIPTION OF PRODUCTS (Proposal)**

A description (including quantity) of the Products to be supplied.

### **DETAILS OF ANY OTHER TERMS (Proposal)**

Any additional or special terms relevant to the Proposal.

### **DETAILS OF PAYMENT TERMS (Proposal)**

Details of how payment should be made, e.g. "A deposit of £X shall be due by [DATE] with the balance due on completion of the works".

### **DETAILS OF PLANS/DRAWINGS (Proposal)**

Details of any drawings or plans that are attached to the proposal.

### **DETAILS OF SERVICES (Proposal)**

A description of the Services to be provided and scope of those Services e.g. describe the work to be done, safety precautions (including risk assessments, method statement, special hazards, environmental protection, waste disposal etc.) and any other attributes relevant to this Proposal.

### **England OR Scotland (22)**

The jurisdiction which will apply to the Agreement. If the site is in Scotland specify "Scotland"; if the site is in England or Wales specify "England".

### **GUARANTEE PERIOD (9.1)**

The time period in weeks or months that the Services and/or Products are under guarantee.

### **INTEREST RATE (5.5)**

The rate of interest charged on late payments, normally 5% above the base rate of the specified bank.

### **LICENCES (7.4)**

Details of the Licenses required to carry out the work, including:

Skip permit from the local authority

Waste Management license (SEPA for Scotland, Environment Agency for England and Wales)

Discharge of waste effluent permit

Tree Felling license from The Forestry Commission.

### **LOCATION (Proposal)**

The location where the Products and Services are to be supplied.

**NAME OF BANK (5.5)**

The name of the bank whose base rate is used to calculate late payment interest e.g. Barclays Bank for English jurisdictions and Bank of Scotland for Scottish jurisdictions.

**NAME OF CUSTOMER (Proposal)**

The name of the Customer.

**NAME OF SUPPLIER (1.1, Proposal)**

The name of the supplier.

**NUMBER OF DAYS (3.2)**

The number of days for which the Proposal shall remain valid after it has been issued.

**NUMBER OF DAYS (8.1)**

The number of days after placing the Order within which the Customer may cancel the Order.

**NUMBER OF DAYS (9.4)**

The number of days from the date of delivery within which the Customer must notify the Supplier of any claim under the guarantee.

**NUMBER OF WEEKS (12.2)**

The number of weeks after notice for non-compliance has been intimated after which the Customer may terminate the Agreement if the Supplier has not remedied the default, normally two weeks.

**NUMBER OF WEEKS (12.3)**

The number of weeks that a sum can remain outstanding before the Supplier can terminate the Agreement, normally eight weeks.

**PERIOD OF SETTLEMENT (5.4)**

The number of days from the date of invoice that payments must be made, normally 14 to 30 days.

**PRICE (Proposal)**

The total price for supplying the Products and Services, including VAT and any other charges.

**REGISTERED ADDRESS OF COMPANY (Proposal)**

The registered company address of the Supplier, if Supplier is an incorporated company. Delete if not relevant.

**TIMES (4.4)**

The hours during during which the work shall be carried out.

**TIMETABLE OF WHEN SERVICES WILL BE CARRIED OUT (Proposal)**

Details of the timetable for supplying the Products and Services, e.g. when work shall commence (and finish).

**VAT (5.1)**

If VAT is payable include the words "VAT and" in this clause.