

Empire Tree and Garden Services

Terms & Conditions for the provision of Operational Arboricultural Services

1. Definitions

- 1.1 In these conditions the following meanings shall apply:
- 1.2 “Agreement” means the contract for the provision of Operational Services specified in the Schedule incorporating these conditions and made between the Client and the Service Provider to the exclusion of any other terms and conditions; In the event of conflict of terms the provisions of the Schedule shall prevail over the conditions.
- 1.3 “Client” means the individual or organisation particulars of whom are set out in the Schedule;
- 1.4 “Service Provider” means the individual or firm providing the Operational Arboricultural Services particulars of whom are set out in the Schedule;
- 1.5 “Operational Arboricultural Services” means the services to be provided to the Client by the Service Provider particulars of which are set out in the Schedule;
- 1.6 “Charges” means the charges (together with VAT at the prevailing rate) specified in the Schedule together with any additions or deductions which may be agreed in writing; and
- 1.7 “Variation” means any reasonable alteration, omission or addition required by the Client the impact on time, cost and practicality of such to be advised by the Service Provider to the Client in writing and only proceeded with upon the Clients written acceptance.

2. Service Provider’s Obligations

- 2.1 The Service Provider in consideration of the Charges shall exercise all reasonable skill and care and diligence in providing the Services and any agreed Variations.
- 2.2 If specified in the Schedule the Service Provider shall effect and maintain professional indemnity insurance in the sum specified in the Schedule and shall if required by the Client provide evidence of such cover.
- 2.3 The Service Provider may subcontract any part of the Services with the prior written consent of the Client (not to be unreasonably withheld).
- 2.4 The Service Provider acknowledges that the Services are provided as an independent contractor and no relationship of employee/employer or agency arises with the Client.
- 2.5 The Service Provider undertakes to maintain records of the Services provided for a period of two years from completion of the Services and provide copies on request to the client upon reimbursement of reasonable copying charges.

3. Charges and Terms of Payment

- 3.1 The Charges plus VAT shall (unless otherwise provided in the Schedule) be paid within 14 days of an invoice being submitted in accordance with the provisions of the Schedule.
- 3.2 If additional costs or delay is directly caused by discrepancies, errors or omissions in information supplied by the Client the Client shall pay to the Service Provider any such additional costs so incurred and allow a reasonable extension of time for the performance of the Services.
- 3.3 If the payment of any sum due is delayed the Service Provider shall be entitled to charge interest at the rate of 4% above the base rate of the Bank of England for the time being in force on the overdue amount and/or suspend further performance of the Services provided that the Service Provider shall not suspend performance unless it shall have given to the Client written notice requiring payment of the overdue sum within 7 days and the Client shall have failed to comply with such notice.
- 3.4 If any part of an invoice is disputed or queried by the Client the Client shall notify the Service Provider of the details of such dispute or query not less than 10 days prior to the due date of payment and of its intention to withhold payment. The payment of any undisputed part of the invoice shall not be delayed.
- 3.5 All arisings from duly agreed works shall remain the property of the client and may be returned to the client in the event of non-payment of invoice.

4. LIMIT OF SERVICE PROVIDER'S LIABILITY

- 4.1 If any part of the Services are performed negligently or in breach of the provisions of this Agreement then at the request of the Client (if the request is made within six months of the date of completion of the Services) the Service Provider will re-perform the relevant part of the Services subject to clauses 4.2 and 4.3 below.
- 4.2 Except in the case of death or personal injury caused by the Service Provider's negligence the Service Provider's liability under or in connection with this agreement whether arising in contract tort breach of statutory duty or otherwise shall not exceed the greater of the Service Provider Charges or the amount recoverable under the Service Provider's professional indemnity policy (if applicable.)
- 4.3 The Service Provider shall not be liable for any loss or damage or expenses of any nature incurred or suffered by the Client of an indirect or consequential nature including without limitation any economic loss, loss of profits turnover, business or goodwill.

5. FACILITIES AND ACCESS

- 5.1 The Client shall arrange for or grant the Service Provider access at all reasonable times to such premises as may be necessary for the provision of the Services and shall provide the Service Provider with such facilities (if any) as may be specified in the Schedule.

6. TERMINATION

- 6.1 If either party is in breach of its obligations and fails to remedy such breach (if capable of remedy) within 14 days of receiving written notice to remedy the breach then the Agreement may be terminated forthwith by the party not in default without prejudice to the accrued rights of the parties.
- 6.2 If either party shall become insolvent or bankrupt or have a receiving or administration order made against it or compound with its creditors or commence winding up (save for solvent amalgamation or reconstruction) the other party shall be at liberty by written notice to terminate the Agreement forthwith.

7. CONFIDENTIALITY

- 7.1 The Service Provider and the Client shall keep confidential all information of the other party whether marked as confidential or not, obtained under or in connection with the provision of the Services and shall not divulge the same to any third party save with the prior written consent of the other party. The provisions of this clause shall survive termination of the Agreement and continue to apply for a period of two years post termination.
- 7.2 The provisions of clause 7.1 shall not apply to information in the public domain (otherwise than by breach of this clause); or information obtained from a third party who is free to divulge the same or such confidential information is required to be divulged by law.
- 7.3 Both parties shall only divulge confidential information to such employees who have a need to know and are bound by similar obligations of confidentiality as set out in this clause 7.

8. INTELLECTUAL PROPERTY

- 8.1 Unless otherwise agreed in writing all intellectual property rights arising out of the provision of the Services shall vest in the Service Provider. Subject to the Service Provider having been paid all sums due under the Agreement the Service Provider shall grant to the Client a worldwide non-exclusive non-transferable royalty free licence to use and have used the intellectual property for any purpose.

9. FORCE MAJEURE

- 9.1 Neither party shall have any liability for delay or failure in performance which result from circumstances beyond the reasonable control of that party. The party affected by such circumstance shall notify the other party if such circumstance occurs. If such circumstance continues for a period of more than three months either party may terminate this Agreement by written notice.

10. **DISPUTE RESOLUTION**

10.1 Any dispute or difference which cannot be amicably resolved by the parties shall, where the Client complains of unethical or unprofessional conduct on the part of a Service Provider be referred to the non exclusive jurisdiction of the courts of England and Wales.

11. **THIRD PARTY RIGHTS**

11.1 No term of this Agreement is intended for the benefit of any third party, and the parties do not intend that any term of this contract shall be enforceable by a third party either under the Contracts (Third Parties) Act 1999 or otherwise.

12. **GOVERNING LAW**

12.1 This contract shall be governed by and construed under English law.

SCHEDULE

Service Provider: K Johnson MBE Empire Tree & Garden Services

Client:

Name:

Address:

(clause 1.5):

Charges (clause 1.6):

Facilities to be provided by Client:

Special conditions (if any):

IN WITNESS whereof the parties have hereunto executed this Agreement:

SIGNED by (or for and on behalf of) the said
Service Provider

SIGNED by (or for and on behalf of) the said
CLIENT

Date: