

Jenks Oxford Terms & Conditions

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions **(Conditions)**.
Contract: the Customer's written acceptance of a quotation for the Works by the Contractor under condition 2.2.
Contractor: Jenks Oxford Limited incorporated and registered in England and Wales with company number 4978557 whose registered office is at Unit 4 Queenford Farm, Dorchester on Thames, Oxfordshire, OX10 7PH.
Customer: the person, firm or company who has requested a quotation for the Works from the Contractor.
Business Customer: A Customer being an individual or organisation acting on behalf of their trade, business or profession.
Consumer Customer: A Customer being an individual acting outside their trade, business or profession.
Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the Works.
Pre-existing Materials: all information and materials provided by the Contractor relating to the Works which existed prior to the commencement of the Contract.
Quotation: the written specification and costing for the Works as sent to the Customer.
Contractor's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Contractor or its subcontractors and used directly or indirectly in the Works which are not the subject of a separate agreement between the parties under which title passes to the Customer.
Works: the tree work operations and services to be provided by the Contractor as set out in the Quotation, together with any other tree work operations or services which the Contractor provides or agrees to provide to the Customer.
VAT: value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 Condition, and 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 separate legal personality).
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's acceptance of a quotation for the Works by the Contractor, constitutes an offer by the Customer to purchase the services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Contractor other than:
- (a) by a written acknowledgement issued and executed by the Contractor; or
 - (b) (if earlier) by the Contractor starting the Works,
- when a contract on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any other document shall not govern the Contract.
- 2.3 Quotations are given by the Contractor on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Contractor has not previously withdrawn it.

3. CANCELLATION OF CONTRACT DURING COOLING OFF PERIOD

- 3.1 The Consumer Customer has a statutory right to a "cooling off" period. This period begins the day after the contract between the Contractor and the Customer is formed and ends at the end of 14 calendar days after that date.

- 3.2 If the Customer wishes to cancel the contract within the cooling off period the Customer should inform the Contractor immediately by a clear statement (e.g. a letter sent by post, fax or email to the postal address, fax number or email address specified on the Quotation or otherwise notified to the Customer).
- 3.3 To meet the cancellation deadline, it is sufficient for the Customer to send his or her communication concerning the exercise of the right to cancel before the cancellation period has expired.
- 3.4 If any fees have been paid to the Contractor and the Customer exercises the right to cancel he/she will receive a full refund of any amount paid to the Contractor in respect of the contract.
- 3.5 The Contractor will refund money using the same method used to make the payment, unless the Customer has expressly agreed otherwise. In any case, the Customer will not incur any fees as a result of the refund.
- 3.6 The Contractor will process the refund due to the Customer as a result of a cancellation without undue delay and, in any case, within the period of 14 days after the day on which the Contractor is informed of the cancellation.
- 3.7 If the Agreed Date falls within the cooling off period the Customer must make an express request for provision of the Services to begin within the 14 calendar day cooling off period. By making such a request the Customer acknowledges and agrees to the following:
- (a) If the Services are fully performed within the 14 calendar day cooling off period, the Customer will lose the right to cancel after the Services are complete.
 - (b) If the Customer cancels the Services after provision has begun but before it is complete the Customer will still be required to pay for the Services supplied up until the point at which the Customer informs the Contractor of his/her wish to cancel. The amount due shall be calculated in proportion to the full price of the Services and the actual Services already provided.
- 3.8 Clause 4 applies to cancellation of the Services after the 14 calendar day cooling off period has elapsed.

4. CANCELLATION AFTER THE COOLING OFF PERIOD

- 4.1 The Customer may cancel or reschedule the Works at any time before the Agreed Date.
- 4.2 The Contractor may cancel or reschedule the Works at any time before the Agreed Date.

5. COMMENCEMENT AND DURATION

- 5.1 The Works shall be provided by the Contractor from the date of acceptance by the Contractor of the Customer's offer in accordance with condition 2.2 and shall continue to be provided until satisfactory completion of the Contractor's duties in the Works unless the Contract is terminated in accordance with condition 12.

6. CONTRACTOR'S OBLIGATIONS

- 6.1 The Contractor shall use reasonable endeavours to
- (a) manage and complete the Works;
 - (b) meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence of the Contract;
 - (c) observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 7.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract;
 - (d) ensure that the area in which the Works are being undertaken is left clear of materials and debris at the end of each day during the Works and on completion of the Works.

7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- (a) co-operate with the Contractor in all matters relating to the Works;
 - (b) provide, for the Contractor, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises and other premises as requested by the Contractor;
 - (c) provide, in a timely manner, any information as the Contractor may request and ensure that it is accurate in all material respects;
 - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the purpose of the Works, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the Works, and informing the Contractor of all of its obligations and actions under this condition 7.1(d);

- (e) inform the Contractor of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises;
- (f) inform the Contractor of any underground or overhead services within the proposed area of the Works prior to commencement;
- (g) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Works and conforms to all relevant United Kingdom standards or requirements;
- (h) obtain and maintain all necessary licences and consents, including any consents required to enable the Contractor to lawfully access any neighbouring or other premises in order to carry out the Works, and comply with all relevant legislation in relation to the Works, the installation of the Contractor's Equipment and the use of the Customer's Equipment in relation to the Contractor's Equipment in all cases before the date on which the Works are to start;
- (i) ensure that, where the trees in the contract are or may be protected by the local or regional authority, obtain consents from the relevant authorities where it will remain the responsibility of the Customer unless The Contractor is authorised by the Customer to carry out this service in the contract;
- (j) and keep, and maintain the Contractor's Equipment in accordance with the Contractor's instructions as notified from time to time and not dispose of or use the Contractor's Equipment other than in accordance with the Contractor's written instructions or authorisation.

7.2 If the Contractor's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Contractor shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

7.3 The Customer shall be liable to pay to the Contractor, on demand, all reasonable costs, charges or losses sustained or incurred by the Contractor (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Contractor confirming such costs, charges and losses to the Customer in writing.

7.4 The Customer shall not, without the prior written consent of the Contractor, at any time from the date of the Contract to the expiry of six months after the termination of the Contract, solicit or entice away from the Contractor or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Contractor in the provision of the Works.

7.5 Any consent given by the Contractor in accordance with condition 7.4 shall be subject to the Customer paying to the Contractor a sum equivalent to 20% of the then current annual remuneration of the Contractor's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Customer to that employee or sub-contractor.

8. CHANGE CONTROL

8.1 If either party wishes to change the scope or execution of the Works, it shall submit details of the requested change to the other in writing.

8.2 If either party requests a change to the scope or execution of the Works, the Contractor shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Contractor's charges arising from the change; and
- (c) any other impact of the change on the terms of the Contract.

8.3 The Contractor may, from time to time and without notice, change the Works in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Works. If the Contractor requests a change to the scope of the Works for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

8.4 The Contractor has no obligation to change the works unless and until the parties have agreed in writing on the necessary variations to its charges, and any other relevant terms of the Contract to take account of the change.

8.5 The Contractor may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with condition 9.

9. CHARGES AND PAYMENT

- 9.1 Condition 9.2 shall apply if the Contractor provides the Works on a time and materials basis. condition 9.3 shall apply if the Contractor provides the Works for a fixed price. The remainder of this condition 9 shall apply in either case.
- 9.2 Where the Works are provided on a time and materials basis:
- (a) the charges payable for the Works shall be calculated in accordance with the Contractor's standard daily or emergency fee rates, as applicable, as amended from time to time;
 - (b) the Contractor's standard daily fee rates for each individual person involved in the Works are calculated on the basis of an eight-hour day, worked between 7.00 am and 4.00 pm on weekdays (excluding public holidays);
 - (c) the Contractor shall be entitled to charge an overtime rate of 150% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Works outside of the hours referred to in condition 9.2(b);
 - (d) all charges quoted to the Customer shall be exclusive of VAT for Business Customers / inclusive of VAT for Consumer Customers, which the Contractor shall add to its invoices at the appropriate rate;
 - (e) the Contractor shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 9.2.
- 9.3 Where the Works are provided for a fixed price, the total price for the Works shall be the amount set out in the Quotation. The Contractor shall invoice the Customer for the charges payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 9.4.
- 9.4 For Business Customers, any fixed price excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Contractor engages in connection with the Works, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Contractor for the supply of the Works. Such expenses, materials and third party services shall be invoiced by the Contractor; and
 - (b) VAT, which the Contractor shall add to its invoices at the appropriate rate.
- 9.5 The Customer shall pay each invoice submitted to it by the Contractor, in full and in cleared funds, within 30 days of receipt (Business Customers) or within 14 days of receipt (Consumer Customers).
- 9.6 For Business Customers: Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Contractor on the due date, the Contractor may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Contractor may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Works until payment has been made in full.
- 9.7 Time for payment shall be of the essence of the Contract.
- 9.8 All sums payable to the Contractor under the Contract shall become due immediately on its termination, despite any other provision. This condition 9.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.9 The Contractor may, without prejudice to any other rights it may have, set off any liability of the Customer to the Contractor against any liability of the Contractor to the Customer.

10. THE CONTRACTOR'S PROPERTY

- 10.1 All materials, equipment and tools, drawings, specifications and data supplied by the Contractor to the Customer (including Pre-existing Materials and the Contractor's Equipment) shall, at all times, be and remain exclusive property of the Contractor, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Contractor, and shall not be disposed of or used other than in accordance with the Contractor's written instructions or authorisation.

11. LIMITATION OF LIABILITY

- 11.1 This condition 11 sets out the entire financial liability of the Contractor (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
 - (b) any use made by the Customer of the Works, or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions 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 Customer as a result of fraud or fraudulent misrepresentation by the Contractor; or
 - (c) for any liability incurred by the Customer as a result of any breach by the Contractor of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 11.4 Subject to condition 11.2 and condition 11.3
- (a) the Contractor shall not be liable for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (b) For Business Customers the Contractor shall not be liable for:
 - (i) loss of use; or
 - (ii) loss of corruption of data or information; or
 - (iii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (c) the Contractor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Works.

12. TERMINATION

- 12.1 Subject to condition 11.3, the Contract shall terminate automatically on completion of the Contractor's duties in the Works.
- 12.2 For Business Customers: Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
 - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.3 For Business Customers: On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest and, in respect of Works supplied but for which no invoice has been submitted, the Contractor may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, return all of the Contractor's Equipment and Pre-existing Materials. If the Customer fails to do so, then the Contractor may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

13. FORCE MAJEURE

The Contractor shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Contractor or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. VARIATION

Subject to condition 8, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15. WAIVER

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16. SEVERANCE

- 16.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

17. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

18. ASSIGNMENT

- 18.1 The Customer shall not, without the prior written consent of the Contractor, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 The Contractor may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

20. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

21. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address, fax number or email address given in the Contract (or such other address, fax number, email address or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

22. COMPLAINTS

If the Customer is unhappy with the execution of the Works they shall advise the Company within 5 working days of discovering the issue. The Company will then implement its Complaints Procedure.

With Effect From 1 October 2015 as we are a member of any Alternative Dispute Resolution Service (ADR) we must make our customers aware that as part of our Endorsement as a Which? Trusted Trader, we have access to The Ombudsman ADR service.

Where we cannot resolve any complaints using our own complaints procedure, as a Which? Trusted trader we use Ombudsman Services Ltd for dispute resolution. In the unlikely event of a complaint arising and you wish to refer the complaint to them please contact Which? Trusted traders in the first instance on 0117 981 2929.

23. GOVERNING LAW AND JURISDICTION

23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 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 or its subject matter.