

LANDSCAPE WORKS AGREEMENT

between

(“Employer”)

and

LUIJTEN LANDSCAPING LTD

(“Contractor”)

This Landscape Works Agreement is published by the
Landscape Industries Association of New Zealand Inc (Landscaping New Zealand)
and can only be used by a member of the Association

THIS LANDSCAPE WORKS AGREEMENT is dated the day of 20

BETWEEN _____
("the Employer")

AND LUIJTEN LANDSCAPING LTD _____
("the Contractor")

THE PARTIES AGREE:

1. INTERPRETATION

In this Agreement unless the context indicates otherwise:

1.1 Definitions:

"Agreement" means this Landscape 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 Landscape 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 Employer;

"Landscape 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 Employer to the Contractor for the purpose of carrying out the Landscape Works;

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

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 Landscape Works; and
 - 2.1.2** the Employer undertakes to accept and pay for the Landscape Works.

3. CONTRACTOR'S RESPONSIBILITIES

- 3.1** The Contractor shall complete the Landscape 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 EMPLOYER'S RESPONSIBILITIES

- 4.1** The Employer warrants that:
 - (a) the Employer is the owner of the Site or is authorised by the owner of the Site to carry out the Landscape Works on the Site; and
 - (b) the Contractor shall have free and unimpeded access to the Site for the purpose of carrying out the Landscape Works, and that (except where agreed otherwise) the Site will be cleared of all debris prior to commencement of the Landscape Works.
- 4.2** The Employer 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 Employer shall ensure that such other contractors are co-ordinated to allow maximum continuity of the Landscape Works by the Contractor and cause as little inconvenience or delay as possible.

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

5. COMMENCEMENT AND COMPLETION

- 5.1** The Employer 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 Landscape Works commences within 5 days of access being granted. To this end, the Contractor shall advise the Employer of any decision or instruction which needs to be made or given prior to the Contractor being able to proceed with the Landscape Works.
- 5.2** The Completion Date shall be calculated by adding to the date on which the Contractor commences the Landscape Works the period stated in schedule 1 and all extensions of time awarded. The Contractor shall use all reasonable endeavours to ensure that the Landscape Works are completed within the period stated.
- 5.3** The Employer shall grant an extension of time for completion of the Landscape 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 Employer 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 Employer 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 Employer shall pay a deposit of 10% of the Contract Sum on the execution of this Agreement and make instalment payments on a fortnightly basis in respect of each 14 day period following the commencement of the Landscape Works. The amount of each instalment shall be equal to the total value of the Landscape Works properly executed at the expiry of the relevant 14 day period less any sums previously paid under this Agreement.
- 6.2** The Employer shall pay the Contractor the amounts due under clause 6.1 within 14 days of receiving the invoice from the Contractor.
- 6.3** Where any monies owing this Agreement are not paid by the due date, the Employer shall pay interest equal to 1 1/2 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 Landscape 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 Landscape 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 Employer 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.

7. VARIATIONS

7.1 The Employer may request modifications or amendments to the Landscape 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 Landscape 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 Employer 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 Employer shall pay to the Contractor the value of all Landscape Works completed at such date.

9. UNDERGROUND AND OVERGROUND SERVICES

- 9.1** The Employer 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.
- 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 Employer.

10. INSURANCE

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

11. LIABILITY

- 11.1** 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.

12. COMPLIANCE WITH APPLICABLE LAWS AND SITE REGULATIONS

- 12.1** The party that is to obtain the relevant permits and the party that is to pay for such permits is stated in schedule 1.
- 12.2** 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 Employer shall pay to the Contractor the value of all Landscape Works completed at such date.
- 12.3** Where the Consumer Guarantees Act 1993 applies to this Agreement, if the services are acquired by the Employer for business purposes the Employer 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.

13. CONFIDENTIALITY

- 13.1** 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 Employer, disclose the same to any other person except in the proper performance of its obligations under this Agreement.

14. DEFAULT AND TERMINATION

- 14.1** Either party may terminate this Agreement forthwith or in the case of the Contractor suspend the carrying out of the Landscape 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.

14.2 The Contractor may either terminate this Agreement forthwith or forthwith suspend the carrying out of the Landscape Works until further notice in the event that the Employer 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.

14.3 In the event that this Agreement shall have been terminated or the carrying out of the Landscape Works has been suspended pursuant to clause 14, the Employer shall reimburse the Contractor all direct costs and expenses incurred as a consequence of such termination or suspension.

15. FORCE MAJEURE

15.1 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.

16. RESOLUTION OF DISPUTES

16.1 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.

SIGNED for and on behalf of the
EMPLOYER _____by:

(Signature)

(Name)

(Position/Designation)

SIGNED for and on behalf of the
CONTRACTOR _____ by:

(Signature)

(Name)

(Position/Designation)

SCHEDULE 1

(1.1) Contract Sum: _____
_____ (plus GST)

(4.3) Materials/Assistance to be provided by the Employer:

(5.1) The Employer shall give access to the Site on: _____

(5.2) The period to be used for calculating the Completion Date is: _____ days

(6.1) Payment terms:

(10.1) Public liability insurance shall be effected for a minimum amount of \$ _____

(12.1) Party to obtain permit _____

Party to pay for permit _____

SCHEDULE 2

DRAWINGS

SCHEDULE 3

SPECIFICATIONS

CONTRACT VARIATION FORM

DATE: _____

CONTRACT No: _____

EMPLOYER: _____

SITE ADDRESS: _____

CONTRACTOR: _____

Under the terms of the Contract we issue the following variation for the work as detailed below.

Instructions. **\$Omit \$add**

Original Contract Price \$ _____

Value of previous variations no's \$ _____

Value of this variation \$ _____

Adjusted total \$ _____

Employer: _____

Contractor: _____

LANDSCAPE WORKS AGREEMENT SUMMARY OF CHECKS

The landscape works agreement sets out the requirements of both parties when entering into a contract for works and services, and whilst important legal requirements are covered within this agreement there are still a number of important points that you as the Contractor must ensure are completed to reduce wherever possible conflict and disputes from arising due to a lack of information being provided by either party.

The following therefore is a summary of procedures and checks that should be followed.

Specifications.

These should have a clear definition of the work that you intend to carry out so as to avoid any different interpretation by either party. Write it down !

Documentation

All documentation pertaining to the contract works should be initialled by both parties this includes, the works agreement, plans, specifications, any variations, and any other documentation that may form part of the contract agreement.

Certificate of Completion

Wherever possible this should be filled out and signed at the completion of the contract works, by doing this you are reducing the possibility of a dispute arising further down the track.

Variations

Any variation to the original contract agreement should be recorded and signed by both parties irrespective of whether it incurs an extra cost or not.

Remember if you do get into a dispute over the work carried your record of events will prove invaluable, and if you are unfortunate enough to get into dispute.

“ALWAYS SETTLE TODAY”

AS IT IS MORE EXPENSIVE TOMORROW

CERTIFICATE OF PRACTICAL COMPLETION

CLIENT : _____ **PHONE No:** _____

ADDRESS: _____

CONTRACT No: _____ **DATE:** _____

I _____ hereby certify that after inspection of the site and works carried out by
_____ that the works have been completed to my satisfaction in accordance
with the quote/agreement provided.

The completion of these works is subject to the following work being undertaken by the Contractor.

Dated _____

Signed for on behalf of the Client : _____

Signed for on behalf of the Contractor: _____