



## 1. TERMS OF ENGAGEMENT

1.1 We are Will's Norfolk Lawns Limited (company number: 13245414) (referred to as "**we**", "**us**", "**our**" in these Conditions). Our telephone number is 01603 552 002 and our email address is info@willsnorfolklawns.co.uk.

1.2 These Conditions shall apply to our provision of particular goods, and the Services (as defined below), as more particularly described in our estimate to you (or other written summary of the work) ("**Estimate**") and our agreement with you shall consist of our Estimate and these Conditions (the "**Agreement**").

1.3 In the event of any conflict or ambiguity between these Conditions and the Estimate, the order of prevalence, to the extent required in respect of such conflict or ambiguity shall be the Estimate, and then these Conditions.

1.4 In these Conditions:

1.4.1 "**Applicable Laws**" means all applicable laws, statutes, regulations and standards applying to the person or circumstances in question, including standards imposed, or notice issued, by any governmental or regulatory authorities and all generally applicable industry standards as amended from time to time.

1.4.2 "**Consumer**" means a natural person acting for purposes outside their trade, business or profession (and to the extent permitted by Applicable Laws, a Consumer shall be acting inside their trade, business or profession where they instruct us to perform Services at a Premises which the Customer holds purely for an investment purpose, or at a Premises which the Customer is using for a purpose other than as their main residential dwelling);

1.4.3 "**Customer**", "**you**", "**your**" means the person or firm who purchases Services from us, as set out in the Estimate;

1.4.4 "**Controller**", "**Data Subject**", "**Personal Data**", "**Processing**", "**Processor**" and "**Supervisory Authority**" shall each have the meaning given in the Data Protection Legislation;

1.4.5 "**Data Protection Legislation**" means all applicable data protection and privacy legislation in force from time to time in the UK; and

1.4.6 A reference to "**writing**" or "**written**" includes email but not fax.

## 2. BASIS OF AGREEMENT

2.1 Following an enquiry by you to us in respect of the services supplied by us to you ("**Services**"), we shall provide you with our initial Estimate and these Conditions. Our Estimate will set out the basis on which we shall supply our Services, and the proposed charges for doing so ("**Charges**"). We reserve the right to issue our Estimate in any format, including by email, or as a separate document from time to time.

2.2 Should you wish to proceed on the basis of our Estimate and these Conditions, you should confirm this to us in writing. This confirmation shall be your order for Services ("**Order**"). The Order constitutes an offer by you to purchase our Services in accordance with the Estimate and these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 us issuing our written acceptance of the Order to you;

2.3.2 us performing any act consistent with supplying the Services,

at which point and on which date the Agreement shall come into existence (the "**Commencement Date**").

2.4 Any samples, drawings, photographs, descriptive matter or advertising issued by us, and any descriptions contained on our website or in our marketing materials, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.

2.5 These Conditions apply to the Agreement to the exclusion of any other terms that you seek to impose or incorporate, or

which are implied by law, trade custom, practice or course of dealing.

2.6 Any Estimate given by us shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, unless otherwise stated.

## 3. SUPPLY OF GOODS AND SERVICES

3.1 We shall supply the Services, and any accompanying goods, to you in accordance with the Estimate and these Conditions in all material respects.

3.2 We shall use all reasonable endeavours to meet any performance dates specified in our Estimate, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 We reserve the right to amend the Agreement (or any part thereof) if necessary to comply with any Applicable Laws, or if the amendment will not materially affect the nature, or the quality, of the Services, and we shall notify you in any such event.

3.4 We warrant to you that the Services will be provided:

3.4.1 using reasonable care and skill; and

3.4.2 in accordance with all Applicable Laws, each to the extent that they apply to the Services being provided by us to you.

## 4. CUSTOMER'S OBLIGATIONS

4.1 You shall:

4.1.1 ensure that the terms of the Order are complete and accurate;

4.1.2 co-operate with us in all matters relating to the Services;

4.1.3 before the date on which the Services are due to commence, provide us with all necessary information and documentation in respect of the premises or site where the Services are to be performed ("**Premises**"), including where required accurate plans, designs or other documentation in respect of the Premises to identify the position of any utilities and hidden structures;

4.1.4 provide us, our employees, agents, consultants and sub-contractors with access to the Premises, and such other facilities as reasonably required by us in relation to the performance of the Services;

4.1.5 provide us with such information as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

4.1.6 prepare the Premises for the supply of the Services, including the removal of litter and stones, and any other items or objects which may prohibit, hinder or delay the provision of the Services;

4.1.7 promptly engage with or reply to any enquiries raised by us; and

4.1.8 comply with any additional obligations as set out in the Estimate.

4.2 If our performance of any of our obligations under the Agreement is prevented or delayed by any act or omission by you, or failure by you to perform any relevant obligation ("**Customer Default**"):

4.2.1 without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations;

4.2.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 4.2; and

4.2.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

## 5. RECOMMENDATIONS

5.1 During or following the provision of the Services, we may recommend a particular product or service which is provided from a third-party (for example a particular type of lawn food). For the avoidance of doubt, any recommendation made by us does not amount to a warranty, representation, guarantee or other statement about the quality, workmanship, fitness for purpose, description, specification or capability of that particular product or service, whether this is for the purposes notified by the Customer or otherwise.

5.2 If the Customer purchases any product or service recommended by us, we will have no liability in relation to any defect, error, fault or other problem in connection with that recommended product or service, any damage which is caused by, or related to such product or service, or as to any costs incurred by the Customer in remedying such.

## 6. CHARGES AND PAYMENT

6.1 The Charges for the Services, including how such Charges shall be calculated, shall be as set out in the Estimate, and will be calculated on one of the following bases:

- 6.1.1 a fixed fee basis ("**Fixed Fee**"); or
- 6.1.2 any other such basis as is agreed between you and us in writing from time to time.

6.2 Where we are instructed on a Fixed Fee basis, the Charges shall be based on the following assumptions:

- 6.2.1 that all information, access to the Premises and communication we request shall be promptly provided by you in a format as is reasonably required by us;
- 6.2.2 that you shall at all times comply with your obligations under the Agreement, as are set out at clause 4.1 or otherwise;
- 6.2.3 that the Services shall be limited to the specification which is set out in our Estimate; and
- 6.2.4 any other assumptions relating to the calculation of the Charges which are set out in our Estimate,

and in the event that we experience delays or difficulties in providing our Services, or you do not comply with the terms set out under the Agreement (or any part thereof), we reserve our rights as set out under clause 4.2, or to revise the Charges to account for the additional costs or liabilities that have or will be incurred by us in providing the Services.

6.3 Unless otherwise agreed by us in writing, we will be entitled to invoice you for the Charges (and any other sums due) under the Agreement:

- 6.3.1 following our acceptance of the Order, and before commencement of the Services ("**Pre-Payment**"), at which point we may, at our sole discretion, apply a discretionary 5% discount to our Charges;
- 6.3.2 on completion of the Services (or each part of the Services as is set out in our acceptance of your Order); or
- 6.3.3 by means of direct debit, in accordance with clause 6.4.

6.4 **We may accept payment by Direct Debit Instalments.** For some Services, we may accept payment in instalments, which will be payable by direct debit. Where this is available, this will be as is agreed between you and us from time to time, and will be subject to the following provisions:

- 6.4.1 a deposit may be due at the time of placing your Order;
- 6.4.2 each payment instalment shall be payable on the dates, and/or at the intervals, set out in our acceptance of your Order. Time for payment shall be the essence of the Agreement;
- 6.4.3 unless you tell us otherwise, and with reasonable notice prior to the due date for an instalment being due, and there being a valid reason for us to not collect the instalment when due, we will continue to collect the direct debit instalments on the instalment dates set out in clause 6.4.2;

6.4.4 each instalment shall be charged to the credit or debit card, or collected from the bank account, which you have provided us with details of as part of placing your order, and by placing an order and agreeing to pay by direct debit, you authorise us to do so;

6.4.5 instalments will be payable regardless of how much or whether you use the Services (or any part thereof); and

6.4.6 should you want to cancel your order, this may only be done in accordance with this Agreement. Subject to the remaining provisions of this Agreement, we will deduct an amount for the period following cancellation for which the Services were not provided, from your outstanding balance due to us. This will not count as a payment, and it may be the deduction does not cover all of your outstanding balance to us. If following us having deducted such an amount, there is still an amount due from you to us, you'll need to continue making your payments on the date they're due until your balance is paid in full;

6.4.7 if you are due a refund in accordance with this Agreement:

- (a) if this is a full refund, we will cancel any remaining payments and refund any payments you've already paid to the card used to make the payment; or
- (b) if this is a partial refund, and this is more than the outstanding balance due on your Order, we'll deduct the amount from your balance, and then refund the difference to the card you used to pay; or
- (c) if this is a partial refund, and this is less than the remaining balance due on your Order, we'll deduct the amount from the outstanding balance, and spread the remaining balance evenly over the remaining payments.

6.5 Subject to clause 10.2, we reserve the right to increase the Charges on an annual basis with effect from each anniversary of the Commencement Date. We will inform you of any such increase by written notice on or before each anniversary of the Commencement Date. We will seek to agree any such increase with you, but in the absence of agreement between you and us, the increase in the Charges will be in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.

6.6 Any additional Services (such as waste removal) to be provided beyond those set out in the Estimate shall either be the subject of a further estimate from us, or in the absence of such, be charged at our standard rates at the time of performance. We will charge an additional fee for any materials that may be required to provide such additional Services.

6.7 Unless otherwise agreed in writing, and save for where you are making payment by Direct Debit in accordance with clause 6.4, you shall pay each invoice submitted by us:

- 6.7.1 within 7 days of the date of the invoice; and
- 6.7.2 time for payment shall be of the essence of the Agreement.

6.8 Unless otherwise agreed in writing, payment of each invoice shall be made:

- 6.8.1 in cash; or
- 6.8.2 in full and cleared funds to a bank account nominated in writing by us; or
- 6.8.3 by Direct Debit in accordance with clause 6.4; or
- 6.8.4 for Pre-Payment only, by cheque.

6.9 All amounts payable by you under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Agreement by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the

- supply of the Services at the same time as payment is due for the supply of the Services.
- 6.10 If you fail to make a payment due to us under the Agreement by the due date, then, without limiting our remedies under clause 10, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 6.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 6.11 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7. DATA PROTECTION**
- 7.1 If you are a Consumer, we will process your Personal Data in accordance with our Privacy Policy, which can be found here: <https://willsnorfolklawns.co.uk/privacy-policy/>.
- 7.2 If you are not a Consumer, the provisions of clauses 7.3 to 7.6 (inclusive) shall apply.
- 7.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace a party's obligations or rights under the Data Protection Legislation.
- 7.4 The parties acknowledge that for the purposes of the Data Protection Legislation, you are the Controller, and we are the Processor.
- 7.5 Without prejudice to the generality of clause 7.3, you will ensure that you have all necessary and appropriate consents and notices in place to enable lawful transfer of any Personal Data to us and/or lawful collection of the Personal Data by us on your behalf for the duration and purposes of the Agreement.
- 7.6 Without prejudice to the generality of clause 7.3, we shall, in relation to any Personal Data processed in connection with our performance of our obligations under the Agreement:
- 7.6.1 process that Personal Data only on your documented written instructions unless we are required by the Data Protection Legislation or any other Applicable Laws to otherwise process that Personal Data;
- 7.6.2 ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 7.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 7.6.4 not transfer any Personal Data outside of the United Kingdom unless your prior written consent has been obtained and the following conditions are fulfilled:
- (a) either you or us have provided appropriate safeguards in relation to the transfer;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) we comply with reasonable instructions notified to us in advance by you with respect to the processing of the Personal Data;
- 7.6.5 assist you, at your cost, in responding to any request from a Data Subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 7.6.6 notify you without undue delay on becoming aware of a Personal Data Breach;
- 7.6.7 at your written direction, delete or return Personal Data and copies thereof to you on termination of the Agreement unless required by the Data Protection Legislation or any other applicable law to store the Personal Data; and
- 7.6.8 maintain records and information to demonstrate compliance with this clause 7.
- 7.7 You consent to us appointing any third party processor of Personal Data under this Agreement.
- 8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**
- 8.1 Nothing in this clause 8 shall limit your payment obligations under the Agreement.
- 8.2 Nothing in the Agreement limits or excludes any liability which cannot legally be limited or excluded, including but not limited to liability for fraud or fraudulent misrepresentation, and death or personal injury caused by our negligence, or the negligence of our employees, sub-contractors or agents.
- 8.3 You agree that Will's Norfolk Lawns will be providing the Services to you under this Agreement. You agree that you shall not bring a claim in contract, tort, negligence, for breach of statutory duty or otherwise against any of the officers, consultants, employees or agents of Will's Norfolk Lawns Limited. Such officers, consultants, employees or agents assume no personal liability for the provision of the Services and shall be entitled to rely on these Conditions insofar as they limit or exclude liability.
- 8.4 Considering the obligations of the Customer, and in particular the obligations of the Customer to prepare the Premises for the receipt of the Services as set out under clause 4.1.6, we shall not be liable for any damages, expenses, costs, charges, or any other liabilities:
- 8.4.1 that arise due to a failure of the Customer to perform their obligations under the Agreement, including but not limited to the Customer's failure to perform any of its obligations set out under clause 4.1; or
- 8.4.2 arising due to damage to any property, whether a Customer's or a third party's, which is caused by stones, debris or any other items which are left in, on or surrounding a Customer's lawn or on the Premises generally, save for where such items were placed there by us, or our employees, agents or subcontractors.
- 8.5 This clause 8 shall survive termination of the Agreement.
- 8.6 Consumers**
- 8.6.1 If you are a Consumer, we are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these Conditions, we are responsible for loss or damage you suffer that is a foreseeable result of our breach or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, on the Commencement Date, both we and you knew it might happen, for example, if you discussed it with us prior to us issuing our Estimate.
- 8.6.2 We are not liable for business losses. Where we provide our Estimate and the Services on the basis of this being to a Consumer, we shall have no liability to you for any loss of profit, loss of business, business interruption or loss of business opportunity.
- 8.6.3 If you think there is something wrong with any Services, or any products within those Services that we have provided to you, you must contact us.
- 8.6.4 You can also ask us to repeat or fix a service if it is not carried out with reasonable care and skill, or get some money back if we can't fix it.
- 8.6.5 We honour our legal duty to provide you with products that are as described to you on our website and in our acceptance of your Order, and that meet all the requirements imposed by law. If we have supplied you with goods as part of our Services, the Consumer Rights Act 2015 says goods must be as described, fit for purpose and of a satisfactory quality. Your legal rights entitle you to the following:

- (a) Up to 30 days: if your goods are faulty, you can get a refund;
- (b) Up to six months: if your goods can't be repaired or replaced, then you're entitled to a full refund, in most cases;
- (c) Up to six years: if your goods do not last a reasonable length of time, you may be entitled to some money back.
- (iv) you alter or repair the subject matter of any defect or other faults without our written consent; or
- (v) the defect or other fault arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage, use or working conditions.

## 8.7 Non-Consumers

8.7.1 If you are not a Consumer, subject to clause 8.1 and clause 8.2, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Agreement for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of or damage to goodwill; and
- (f) any indirect or consequential loss.

### 8.7.2 Defects

If any defects or other faults appear with respect to the Services or products thereto within the period of 28 days from which we completed the relevant part of Services for which you are seeking rectification ("Rectification Period") due to our failure to comply with our obligations under the Agreement:

- (a) Such defects, faults or grounds for which the Customer is bringing the relevant claim (as applicable) shall be specified by the Customer in writing not later than the expiry of the Rectification Period;
- (b) Within a reasonable time of receipt of such information, the defects, or other faults shall, subject to us being given reasonable opportunity to examine such defects or other faults, be made good by us, unless we inform you in writing that in our sole and reasonable opinion, we are unable to make good the specified defects or faults;
- (c) When the defects or other faults in the Services have been made good, we shall issue a notice to that effect. Completion of that making good shall for the purposes of the Agreement be deemed to have taken place on the date stated in that notice;
- (d) Once we have made good any defects or other faults with the Services, we shall have no further liability to you for such defects or other faults;
- (e) The terms of this Agreement shall apply to any defects or other faults made good by us (in whatever context such making good was required);
- (f) We shall not be liable for any defects or for any other faults whether within the Rectification Period or otherwise, in any of the following circumstances:
  - (i) you continue to use the subject matter of the defect or other fault (to the extent which is reasonable) after giving notice of it being defective in accordance with clause 8.7.2(a);
  - (ii) the defect or other fault arises because you failed to follow our oral or written instructions for the use and maintenance of the subject matter of the defect or the other fault;
  - (iii) the defect or other fault arises as a result of us following any drawing, design, instruction or specification supplied by you;

8.7.3 Unless you notify us that you intend to make a claim in respect of an event within the notice period, we shall have no liability for that event. The notice period for an event shall start on the day on which we completed the relevant part of Services for which you are seeking to bring claim, and shall expire 28 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

### Applicable to all customers

8.8 Unless otherwise agreed between us in writing, and subject to clause 8.2, clause 8.4 and clause 8.7.1, our total liability to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Agreement shall be limited to the Charges actually paid by you to us under this Agreement.

8.9 Without prejudice to any other term of the Agreement, we shall not be liable to you under this Agreement for any losses or damage suffered by you unless such loss or damage is attributable to:

- 8.9.1 the Services we have provided; or
- 8.9.2 any services which are provided by a third party, which are directly reliant upon our Services, and the damage or loss is proven to have originated from our provision of our Services.

## 9. CANCELLATION

9.1 Please note that this clause 9 will only apply to those persons dealing as Consumers and in circumstances where the Agreement has been concluded away from our premises (for example, online or by telephone).

9.2 You have a right to cancel the Agreement (without giving any reason) within 14 calendar days of the Commencement Date (the "Cancellation Period").

9.3 You do not have a right to cancel the Agreement once the Services have been completed, even if the Cancellation Period is still running.

9.4 In order to exercise your right to cancel, you either must inform us of your decision by a clear statement using the contact details set out in clause 1.1 above. You must inform us of your decision to cancel before the expiry of the Cancellation Period.

9.5 If you cancel the Agreement in accordance with clause 9.4 above, we will refund you any amount of the Charges (or any other sums) that you have paid to us prior to your cancellation (subject to certain deductions in accordance with clause 9.6 below).

9.6 If you would like us to start work within the Cancellation Period, you must specifically inform us of this. You will still have the right to cancel during the Cancellation Period (if the Services have not been completed), but if you do cancel, you will be required to pay us, or we will deduct from your refund, an amount to cover the Services we have already performed or completed (including, without limitation, any costs). In these circumstances, you acknowledge and agree that we are authorised to commence the Services during the Cancellation Period.

9.7 If you are entitled to a refund because you have exercised your right to cancel during the Cancellation Period, we will make such refund within 14 days of the date on which we are informed of your decision to cancel the Agreement. We will make the refund using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise. In any event, you will not incur any fees as a result of the refund.

9.8 Please note that if you are not cancelling the Agreement as a Consumer under this clause 9 we reserve the right to impose a charge up to the total aggregate Charges for the Services to reflect the costs we will have incurred during that time.

## 10. TERMINATION

- 10.1 Without affecting any other right or remedy available to it, we may terminate the Agreement by giving you 14 days' written notice.
- 10.2 On receipt of notice from us that we are increasing our Charges in accordance with clause 6.5, and without affecting any other right or remedy available to it, you may terminate the Agreement by giving us 14 days' written notice.
- 10.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 10.3.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- 10.3.2 the other party (not being a Consumer) takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.3.3 the other party (not being a Consumer) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 10.4 Without affecting any other right or remedy available to us, we may terminate the Agreement with immediate effect by giving written notice to you if you fail to pay any amount due under the Agreement on the due date for payment and remain in default 7 days after being notified that payment is due.
- 10.5 Without affecting any other right or remedy available to it, we may suspend the supply of Services under the Agreement or any other contract between you and us if:
- 10.5.1 you fail to pay any amount due under the Agreement on the due date for payment;
- 10.5.2 you become subject to any of the events listed in clause 10.3.2 to clause 10.3.4, or we reasonably believe that you are about to become subject to any of them.

## 11. CONSEQUENCES OF TERMINATION

- 11.1 On termination or expiry of the Agreement:
- 11.1.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable you immediately on receipt;
- 11.1.2 you shall return all of the Materials. If you fail to do so, then we may enter the Premises (or any other premises at which such materials are being stored) and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 11.2 Where the Agreement has been terminated by us in accordance with clause 10, and our Charges have been calculated on a Fixed Fee basis, we reserve the right to submit an invoice for the full value of the Charges as agreed in our estimate. Such an invoice shall be payable immediately on receipt by you.
- 11.3 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the

Agreement which existed at or before the date of termination or expiry.

- 11.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

## 12. OTHER IMPORTANT TERMS

- 12.1 **Intellectual property rights.** All intellectual property rights in or arising out of or in connection with the Services (other than intellectual property rights in any materials provided by you) shall be owned by us. You grant us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use any photographs, videos or other media of our completed Services, or any part thereof, and any materials used in the provision of the Services at any time, for our genuine marketing or promotional purposes (including re-producing all or any part of any designs, drawings, plans or similar materials we or any third party produce as part of the provision of the Services).
- 12.2 **Unexpected events.** Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.3 **Assignment and other dealings**
- 12.3.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under the Agreement. If you are a Consumer, we will provide you with written notice of our intention to exercise our rights under this clause, and we will ensure that your rights under the Agreement remain unaffected.
- 12.3.2 Unless you are a Consumer and we have provided our written consent, you shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Agreement.
- 12.4 **Joint and Several Liability**
- 12.4.1 Unless expressly provided otherwise, the person(s) to whom the Estimate is address ("**Co-Obligors**") are:
- (a) responsible for, and guarantee payment of, our Charges, and performance of the Customer's obligations under this Agreement, including where the Premises are owned, rented, leased or otherwise held by a different person or entity to those who are listed in the Estimate; and
- (b) jointly and severally liable for their obligations and payment of all applicable Charges under this Agreement.
- 12.4.2 We may take action against, or release or compromise the liability of a Co-Obligor, without affecting the liability of any other Co-Obligor.
- 12.5 **Confidentiality**
- 12.5.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.5.2.
- 12.5.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.5; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 12.5.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Agreement.
- 12.6 Entire agreement (applicable only to non-Consumers)
- 12.6.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.6.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.
- 12.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 12.7 **Variation.** Except as set out in these Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.8 **Waiver.** A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.9 **Severance.** If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement deleted under this clause 12.9 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.10 **Notices**
- 12.10.1 Any notice or other communication given to a party under or in connection with the Agreement shall be:
- in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - sent by email to its main email address.
- 12.10.2 Any notice or communication shall be deemed to have been received:
- if delivered by hand, at the time the notice is left at the proper address;
  - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause (c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.10.3 This clause 12.10 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 12.11 **Third party rights.** Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 12.12 **Governing law.** The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.13 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.