



## Landscape and Snow Contractors

### **LANDSCAPE MANAGEMENT SERVICES TERMS & CONDITIONS**

These Landscape Management Services Terms and Conditions ("Terms") are the only terms that govern the sale and provision of Services (as defined below) by Earth Development, LLC ("Earth"). The accompanying quote, proposal, order acknowledgement or invoice ("Order") and these Terms (together, the "Agreement") comprise the entire agreement between Earth and the customer ("Customer"), and supersede all prior or contemporaneous communications, understandings or agreements (whether verbal or written). Earth and Customer are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

These Terms prevail over, and Earth expressly rejects, any of Customer's general terms or conditions of purchase, regardless of whether or when Customer submitted its order or alternate terms. Neither the failure of Earth to object upon receipt of Customer's terms and conditions nor the fulfillment of Customer's order will (i) constitute acceptance of Customer's terms and conditions or (ii) serve to modify or amend these Terms. If there is any conflict or inconsistency between these Terms and those set forth in the Order, then the specific modification(s) noted in the Order will govern and control.

THESE TERMS ARE SUBJECT TO CHANGE BY EARTH WITHOUT PRIOR WRITTEN NOTICE AT ANY TIME, IN ITS SOLE DISCRETION. ANY CHANGES TO THESE TERMS WILL BE IN EFFECT AS OF THE "LAST UPDATED DATE" REFERENCED ON THE EARTH WEBSITE LOCATED AT [EARTHDEVELOPMENTINC.COM](http://EARTHDEVELOPMENTINC.COM) (THE "SITE"). CUSTOMER SHOULD REVIEW THESE TERMS PRIOR TO PURCHASING ANY PRODUCT OR SERVICES THAT ARE AVAILABLE, AND CUSTOMER'S PURCHASE OF ANY PRODUCT OR SERVICES AFTER THE "LAST UPDATED DATE" WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF AND AGREEMENT TO SUCH CHANGES.

1. **Services.** During the Term (as defined below), Earth shall perform the landscape management services described in the Order, which generally consist of lawn mowing, trimming, fertilization and general clean-up, landscape plant bed management, trimming/shaping of shrubs, spring/fall property clean-up and various related landscaping services (collectively, the "Services") for Customer, at the location(s) identified in the Order (the "Service Location(s)"). Unless expressly set forth in an Order, this Agreement excludes watering and trash removal. Customer may request changes to the Services at any time upon written request to Earth, provided that the Parties shall enter into a written amendment to the Order documenting any adjustments to the Services and resulting changes to the Fees, Service Location(s) and/or other terms prior to implementation of any such change(s). Earth shall provide all necessary and adequate personnel, materials, tools, equipment and vehicles necessary to perform the Services at the Service Location(s). Earth shall make the final determination of when Services are necessary at any Service Location. Customer acknowledges that Services may be delayed or unavailable in the event of extreme weather conditions. Earth reserves the right to delay or stop work during such extreme conditions so as not to create unsafe working conditions for its employees and contractors.

2. **Fees and Payment.** Subject to the terms and conditions of this Section 2, and as the sole consideration for the performance of the Services under this Agreement, Customer shall pay Earth all properly invoiced fees in accordance with and as set forth in the Order and/or in this Agreement (the "Fees"). Customer shall also be responsible to pay Earth an administrative fee of up to \$250 for each request for changes to the Services. Customer will be responsible for all taxes related to the Services unless and until Customer has a tax resale certificate on file with Earth. Time and material fees shall be based on hours of service (rounded up to the nearest hour). Earth may, in its sole discretion, increase Fees by up to

five percent (5%) at the beginning of each contract year upon written notice to Customer (which notice may be contained in the first invoice of the season).

(a) Invoices and Payment. Earth will invoice a Customer on a monthly basis, and Customer will incur a ten percent (10%) administrative fee if it requires billing on any other schedule. Unless otherwise agreed by Earth in writing, Customer agrees to make full payment of all Fees within thirty (30) days of the date of Earth's invoice, in U.S. Dollars. A DELINQUENCY CHARGE OF ONE AND ONE-HALF PERCENT (1-1/2%) PER MONTH OR EIGHTEEN PERCENT (18%) PER ANNUM OF ANY OUTSTANDING BALANCE NOT PAID WHEN DUE WILL BE ADDED UNTIL PAYMENT IS MADE IN FULL; provided, however, that the delinquency charge shall not exceed the maximum interest rate allowable by applicable law. Earth's receipt and acceptance of any payment less than the full amount due shall not waive any rights of Earth. Earth may set-off any amount due from Customer, whether or not under this Agreement, against any amount due Customer hereunder. Customer may not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Earth. All costs and expenses, including but not limited to collection fees and reasonable attorney's fees for the collection of any overdue amount due Earth, shall be paid by Customer.

(b) Record Requests. Subject to the terms and conditions of this Section 2(b), Customer may request copies of Earth's records and documentation related to any Services (and resulting Fees) for a period of thirty (30) days following the date such Services and Fees are invoiced to Customer. Earth has no obligation to respond to or comply with any Customer requests for records or documentation that are received at any time following this thirty (30) day request period. Customer will be charged a reasonable administrative fee at the time it submits any records request, and Earth will have a reasonable period of time (not less than seven (7) calendar days) to retrieve and deliver the requested documentation to Customer.

### 3. Term and Termination.

(a) Term. The initial term of this Agreement shall be a period of one (1) year commencing effective as of January 1<sup>st</sup> of the current calendar year and continuing through and until December 31<sup>st</sup> (the "Initial Term"). If agreed upon by Customer in the Order, upon expiration of the Initial Term, the Agreement shall automatically renew for successive one (1) year terms unless Customer provides written notice of nonrenewal at least sixty (60) days prior to the end of the then-current term (each, a "Renewal Term") and together with the Initial Term, the "Term"). If the Term is renewed for one or more Renewal Term, the terms and conditions of this Agreement during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any changes to these Terms (including changes in the fees in accordance with Section 2). If Customer provides timely notice of nonrenewal, then this Agreement shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this Section 3.

(b) Service Period. Notwithstanding the foregoing, Customer acknowledges and agrees that the service period(s) during which Earth is obligated to perform the Services (the "Service Period") starts April 1<sup>st</sup> and ends November 30<sup>th</sup> during each year of the Term.

(c) Termination. If Customer defaults in any payment when due, fails to perform any of its other obligations under this Agreement, becomes the subject of any bankruptcy or insolvency proceeding, or whenever, in Earth's discretion, there is doubt as to Customer's financial stability, Earth may, in its sole discretion and without prejudice as to its other lawful remedies, cancel or defer performance, demand immediate payment of all of Customer's outstanding invoices or account balances (plus any additional costs, expenses, losses or damages, including without limitation, lost profits, incurred by it as a result of such cancellation, delay, default or bankruptcy), condition future performance against payment of cash in advance and/or terminate any Order or this Agreement. Upon termination of the Agreement by Earth for any reason, Customer will immediately pay Earth for all Services completed prior to termination.

(d) No Early Termination. Customer may not cancel or defer its rights or obligations under this Agreement or any Order unless expressly agreed in advance in writing by Earth. If Customer cancels or terminates an Order prior to the expiration of the Term, Customer will be responsible for an early termination fee in the amount equal to the greater of (i) \$500 or (ii) ten percent (10%) of the remaining value of the Order through the end of the current Term (which amount will be determined by Earth based upon the documented service fees for similarly situated customers and/or locations) (the “Early Termination Fee”). If Customer fails to pay any amounts as and when due, Earth may, upon seven (7) days written notice and without prejudice as to its other legal rights or remedies, stop performing Services under any Order until all amounts due to Earth are paid in full (as confirmed in writing by Earth). If Services are stopped due to Customer non-payment for a period of more than thirty (30) days, this Agreement and all Orders will automatically terminate (and Customer shall be liable for the resulting Early Termination Fee(s)).

THE PARTIES INTEND THAT THE EARLY TERMINATION FEE CONSTITUTES COMPENSATION TO EARTH FOR THE ADMINISTRATIVE WORK, CHANGES TO SERVICE SCHEDULES AND CANCELLATION OF THIRD PARTY CONTRACTS THAT WILL OCCUR AS A RESULT OF THE CANCELLATION AND/OR EARLY TERMINATION OF ANY ORDER, AND NOT A PENALTY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE HARM AND DAMAGE TO EARTH’S BUSINESS OPERATIONS CAUSED BY CUSTOMER’S EARLY TERMINATION AND BREACH OF THIS AGREEMENT WOULD BE IMPOSSIBLE OR VERY DIFFICULT TO ACCURATELY ESTIMATE, AND THAT THE EARLY TERMINATION FEE IS A REASONABLE ESTIMATE OF THE ANTICIPATED OR ACTUAL HARM AND DAMAGE THAT MIGHT ARISE FROM A CUSTOMER BREACH, AND THAT CUSTOMER’S PAYMENT OF THIS EARLY TERMINATION FEE WILL BE CUSTOMER’S SOLE LIABILITY AND ENTIRE OBLIGATION TO EARTH IN THE EVENT OF CUSTOMER’S EARLY TERMINATION OF AN ORDER.

#### 4. Site Conditions.

(a) Customer shall clearly mark and identify boundaries of each Service Location, and shall provide Earth a professional survey of the Service Location or cause the Service Location to be staked if reasonably requested by Earth. Customer agrees to provide Earth with written notice of all concealed conditions on the property (including utility facilities). Customer shall notify Earth of, and provide copies upon request, of all environmental or geotechnical studies or similar information in Customer’s possession and control regarding the Service Location(s). Earth agrees to notify any utility companies (or their representatives) if the Services are, in Earth’s reasonable judgment, likely to affect underground utility lines or facilities, provided that Customer will be responsible for any costs or charges incurred by Earth in connection with such notification and/or any resulting modification to the Services. Customer shall provide Earth (and its subcontractors), utility companies and other similar third parties with access to the Service Location(s) at all reasonable times.

(b) An express condition to Earth’s performance of Services is that the Service Location(s) shall at all times be accessible to Earth’s equipment and materials. Customer shall be solely responsible for taking any and all measures necessary to provide Earth with a safe and suitable work environment, including, without limitation, any safety precautions reasonably requested by Earth prior to the provision of the Services. Customer acknowledges that a safe work environment is necessary for the performance of the Services and that Earth may, at Earth’s sole discretion, refuse to perform the Services in a work environment that it reasonably determines to be unsafe or unsuitable (including without limitation, poor site drainage, disrepair of retaining walls, cement or asphalt in walkways or parking surfaces or other site improvements at the Service Location). Earth shall not be liable for any delay in the completion of or inability to complete the Services resulting from Customer’s failure to provide a suitable work environment or legally compliant site.

(c) Pricing in the Order is based on industry standards for the type of services completed. If a Service Location has not been maintained by Customer to generally recognized industry standards, Earth

reserves the right to refuse performance of the Services and may, in its sole discretion, re-quote the Services based on the current condition of the Service Location.

5. **Warranties.** Earth represents and warrants that it shall perform the Services: (i) in accordance with the terms and conditions of this Agreement, (ii) using personnel of required skill, experience and qualifications, (iii) in a timely, workmanlike and professional manner, (iv) in accordance with all applicable laws, ordinances, rules and regulations and the highest professional and generally acceptable industry standards in the landscape management industry, and to the reasonable satisfaction of Customer. EARTH MAKES NO OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES, AND EARTH EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS LIMITED WARRANTY SHALL BE REPERFORMANCE OF THE SERVICES.

6. **Limitation of Liability.**

(a) Unless directly caused by the sole negligence or willful misconduct of Earth, its agents, subcontractors or representatives, Earth shall in no event be liable or responsible to Customer for any damages, losses or liabilities arising from: (i) any natural causes or Force Majeure Event (as defined below); (ii) any unseen, unknown or concealed conditions in, on or about the Service Location(s) or any condition at the Service Location(s) that are not caused by the Services performed by Earth; (iii) the performance of Services beyond the boundaries of the Service Location(s) if the boundaries were not properly staked or marked by Customer; (iv) use of products or performance of Services in conformance with any manufacturer directions, guidelines, warranty, standards or recommendations or otherwise in conformance with industry standards; or (v) Customer's failure to fulfill any of its own obligations or responsibilities under the Agreement. If Earth incurs any cost or expense attributable to any of the foregoing events, conditions or circumstances, such costs and expenses will be deemed "Additional Work" and billed to Customer at Earth's then-applicable hour rate(s).

(b) Customer shall indemnify, defend and hold Earth harmless from and against any losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest penalties, fines, fees, costs or expenses of any whatever kind (including reasonable attorneys' fees, fees and the costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers) incurred by Earth relating to, arising out of or resulting from: (i) any limitations or restrictions Customer has imposed upon the performance of the Services, or rejection of Services recommended to Customer (whether in the Order or other written communication); (ii) the site conditions at the Service Location(s) (excluding those caused by Earth); or (iii) Customer's own negligence, willful or intentional misconduct or breach of the Agreement.

(c) IN NO EVENT SHALL EARTH BE LIABLE TO CUSTOMER OR ANYONE CLAIMING BY, THROUGH OR UNDER CUSTOMER FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR STRICT LIABILITY, INCLUDING, WITHOUT LIMITATION, DELAY, LOST REVENUE, LOST PROFITS OR LOSS OF GOODWILL, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND EVEN IF EARTH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer must notify Earth within three (3) business days of any obvious or visible alleged damage resulting from the Services. Failure to report such damages in a timely manner shall constitute a waiver and release of claims relating thereto. Customer's aggregate recovery from Earth for any claim other than those excluded herein shall not exceed the Fees paid by Customer for the Services giving rise to such claim irrespective of the nature of the claim, whether in contract, tort, warranty or otherwise. If, for any reason, the foregoing limitations are found by a court to be invalid or inapplicable under any applicable state or federal law, Customer agrees

that Earth's total liability for all Losses of any kind or nature shall be limited to actual damages without regard to any punitive or exemplary damages provided by any applicable law.

7. **Confidential Information.** All non-public, confidential or proprietary information of Earth, including, without limitation, information relating to its products, specifications, technology, designs, processes, machinery, equipment, plans, policies, procedures, employees, assets, discoveries, know-how, trademarks, patents, copyrights, trade secrets, prices, marketing, expenses, business plans, financial statements, customers and suppliers and any other proprietary business and technical information, documents or data disclosed by Earth to Customer, whether disclosed orally or in writing or electronic or other form or media, and whether or not marked, designated or otherwise identified as confidential in connection with the Agreement is confidential, solely for the use in connection with the Agreement and may not be disclosed or copied unless Customer receives advance written authorization from Earth. Upon Earth's request, Customer shall promptly return all documents and other materials received from Earth. This Section does not apply to information that (a) is publicly available or becomes publicly available through no fault of Customer; (b) is already known to Customer at the time of disclosure; or (c) is rightfully obtained by Customer from a third party not obligated by an existing duty of confidentiality with respect to the information. Earth will be entitled to injunctive relief for any violation of this Section.

8. **Insurance.** During the Term, Earth shall, at its own expense, maintain and carry insurance in full force and effect which includes, without limitation, commercial general liability, umbrella and workers' compensation with financially sound and reputable insurers. Upon Customer's request, Earth shall provide Customer with a certificate of insurance from Earth's insurer evidence such insurance coverage.

9. **Subcontractors.** Earth shall have the right to hire, and delegate its obligations under this Agreement to, subcontractors to perform the Services under this Agreement, provided that Earth shall remain fully responsible for the performance of all of its obligations under this Agreement and for the performance of its subcontractors and such subcontractors compliance with this Agreement.

10. **Relationship of Parties.** Earth is, and shall act in all respects as, an independent contractor and shall have exclusive control over the manner and method of performing the Services including the manner in which its subcontractors perform the Services. Nothing herein shall authorize or empower either Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party, or to bind the other Party in any manner, or make any representation, warranty, or commitment on behalf of the other Party.

11. **Force Majeure.** For purposes of this Agreement, "Force Majeure" means any act, event or condition materially and adversely affecting the ability of a Party to perform or comply with any of its material obligations, duties or agreements required under this Agreement, if such act, event, or condition is beyond the reasonable control of the nonperforming Party or its agents relying thereon, is not the result of the willful or negligent action, inaction or fault of the Party relying thereon, and the nonperforming Party has been unable to avoid or overcome the act, event or condition by the exercise of due diligence, including, without limitation: (1) an act of God, epidemic, landslide, lightning, earthquake, fire, explosion, storm, flood or similar occurrence; (2) an act of public enemy, war, blockage, insurrection, riot, general unrest or restraint of government and people, civil disturbance or disobedience, sabotage, act of terrorism or similar occurrence; (3) a strike, work slowdown, or similar industrial or labor action; (4) a significant change in economic conditions; (5) an order or judgment (including without limitation a temporary restraining order, temporary injunction, preliminary injunction, permanent injunction, or cease and desist order) or other act of any federal, state, county or local court, administrative agency or governmental office or body which prevents a Party from performing its obligations as contemplated by this Agreement; or (6) adoption or change (including a change in interpretation or enforcement) of any federal, state or local law after the date of this Agreement, preventing performance of or compliance with the obligations hereunder.

Neither Party shall be liable to the other for damages without limitation (including liquidated damages) if such Party's performance is delayed or prevented due to an event of Force Majeure. In such event, the

affected Party shall promptly notify the other of the event of Force Majeure and its likely duration. During the continuation of the Force Majeure event, the nonperforming Party shall (1) exercise commercially reasonable efforts to mitigate or limit damages to the performing Party; (2) exercise commercially reasonable due diligence to overcome the Force Majeure event; (3) to the extent it is commercially reasonable, continue to perform its obligations under this Agreement; and (4) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure event requires. In the event of a delay in either Party's performance of its obligations hereunder for more than sixty (60) days due to an event of Force Majeure, the other Party may, at any time thereafter, terminate this Agreement.

12. **Assignment.** Customer may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Earth.

13. **Survival.** All terms and provisions of this Agreement that should by their nature survive the expiration or termination of this Agreement shall so survive.

14. **Governing Law; Venue; Jurisdiction.** This Agreement and performance under it will be governed by and construed in accordance with the laws of the State of Wisconsin, without regard to choice of law principles. Venue and jurisdiction for any action or claim arising out of or relating to this Agreement shall be in the state and federal courts located in Brown County, Wisconsin. The Parties consent to the venue and jurisdiction of such courts and waive any objections to such venue and jurisdiction. In the event of a dispute between the Parties, or if Earth is otherwise forced to engage attorneys regarding any matter arising out of this Agreement, Earth shall be entitled to recover from Customer all reasonable costs incurred including staff time, court costs, attorneys' fees and other related expenses incurred in Earth's engagement with such attorneys.

15. **Entire Agreement.** These Terms and the Order constitute the entire agreement between the Parties with respect to the subject matter contained herein and supersedes any and all previous agreements between the Parties, whether written or oral, with respect to such subject matter. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from the Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

16. **Execution.** This Agreement may be executed in multiple parts counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email of a portable document format (.pdf) copy, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Each Party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

Last Updated Date: January 27, 2023