

# HEAD SQUARED AQUATICS - TERMS AND CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

- 1.1. In this agreement the following terms shall have the following meanings:
  - 1.1.1. 'the Contract Price' means the total price for all Goods and/or Services supplied by or on behalf of the Supplier to the Client under the relevant invoice relating to the Goods and/or Services;
  - 1.1.2. 'the Client' means any person who obtains Goods and/or Services from the Supplier;
  - 1.1.3. 'the Defects Liability Period' means the period within 12 months after completion of the Services;
  - 1.1.4. 'Delivery' means delivery of the Goods and/or Services to such destination as the Client shall notify to the Supplier;
  - 1.1.5. 'the Goods' means all products manufactured or supplied by or on behalf of the Supplier to the Client;
  - 1.1.6. 'the Goods and/or Services' means the Goods and/or the Services;
  - 1.1.7. 'Invoice Value' means the sum invoiced by the Supplier to the Client in respect of the Goods and/or Services, including any VAT and any amount for transport or insurance;
  - 1.1.8. 'the Services' means any services provided by or on behalf of the Supplier;
  - 1.1.9. 'the Site' means any area where the Goods and/or Services are to take place including without limitation the area any works are taking place and any routes the Staff may need to take to be able to provide those works;
  - 1.1.10. 'the Staff' means any director, employee, staff member, sub-contractor, or any other person who provides Services or on behalf of the Supplier;
  - 1.1.11. 'the Supplier' means the branch of Head Squared Aquatics the Client is contracting with;
  - 1.1.12. 'Water Feature' means the whole or part of a: water feature, waterfall, pond, lake and any other natural or unnatural area of water.
  - 1.1.13. 'the Parties' means the Client and the Supplier;
  - 1.1.14. 'VAT' means value added tax or any other sales tax.
- 1.2. Reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.
- 1.3. The headings contained in this agreement are for reference purposes only and shall not be incorporated into this agreement.

## **2. RIGHTS AND DUTIES OF THE SUPPLIER**

- 2.1. Subject to clause 2.2, the Supplier agrees to supply the Goods and/or Services to the Client in accordance with orders and/or requests received from the Client, or from any person held out by the Client of having the authority to make such an order and/or request, or from any person reasonably deemed to have the authority to make such an order and/or request on the Client's behalf.
- 2.2. The Supplier shall be entitled to vary the Goods and/or Services provided under this agreement where the Supplier deems it reasonably necessary to (on the giving of notice to the Client).
- 2.3. The Supplier will perform the Services with reasonable care and to the standards reasonably expected within the aquatics industry.
- 2.4. Time shall not be of the essence for performance of the Services.

## **3. CLIENT'S OBLIGATIONS**

- 3.1. To enable the Supplier to perform its obligations under this Agreement, the Client must:
  - 3.1.1. Co-operate fully with the Supplier;
  - 3.1.2. Provide any information reasonably required by the Supplier;
  - 3.1.3. Notify the Supplier of any material changes to the Site which may affect the Goods and/or Services to be offered;
  - 3.1.4. Provide Toilet and washing facilities for the Staff;
  - 3.1.5. Ensure a hose connected to a mains supply of water is provided for use by the Staff, or a tap is accessible to Staff which can reasonably have a hose connected to it without modification.
  - 3.1.6. Ensure that mains electricity is provided for use by the Staff via a safe 3 point connection. This connection must be capable of consistently providing up to 2000 Watts of electricity without tripping during the provision of Services.
  - 3.1.7. Provide for the duration of the works secure storage space for all parts, tools and any other equipment deemed necessary by the Supplier to provide the Services.
  - 3.1.8. Obtain all necessary permissions, permits, approvals and the like required to allow the Services to be performed lawfully, prior to the commencement of the Services; and
  - 3.1.9. Comply with all other requirements and proposals agreed between the Parties whether they are agreed in writing or otherwise.
- 3.2. The Client agrees to ensure the Supplier has sufficient access to every area required to complete all Services during the times notified by the Supplier to the Client. This includes without limitation:

- 3.2.1. all gates are unlocked prior to the Supplier's arrival or the means for the Supplier to unlock all gates are provided prior to the Supplier's arrival;
- 3.2.2. that the Supplier will have unrestricted access to all areas required to complete the Services;
- 3.2.3. that access to all areas receiving the Services will be a minimum of 1 metre wide and 2 metres high;
- 3.2.4. that suitable parking will be made available for the Supplier's vehicle within 30 metres of the area to be receiving the Services. The Client will pay in full any parking fees, charges, permits, or any other costs to park a vehicle.

## **4. DEFECTS LIABILITY**

- 4.1. The Client must notify the Supplier of any defects identified with the provision of the Goods and / or Services within Defects Liability Period. The Supplier must rectify any defects so notified to it by the client within two months at its own cost.
- 4.2. The Client must grant access to the site at a reasonable time and date to carry out any remedial works during required during the Defects Liability Period;
- 4.3. The Client must not appoint any alternative contractors to remedy any defects with the Goods and / or Services within the Defects Liability Period until after termination of the rectification period set out in clause 4.1. After termination of the rectification period, the Client may appoint alternative contractors to remedy any defects, but must carry out only necessary works to remedy non-trivial defects and is under a duty to minimise the costs of doing so.

## **5. DELIVERY AND RISK**

- 5.1. Any delivery dates quoted whether verbally or otherwise are estimates only and in regard to any such date time shall not be of the essence.
- 5.2. Delivery of the Goods to the Client's address or any other place stipulated by the Client shall constitute delivery and the risk therein shall pass upon such delivery to the Client.
- 5.3. The Client must ensure that delivery of the Goods is complete prior to signing to acknowledge acceptance. Where the delivery has been signed as complete by the Client, the Supplier shall not be liable for any missing items.
- 5.4. The Supplier shall be entitled to make partial deliveries by instalments and this Agreement shall apply to each partial delivery.

## **6. TITLE**

- 6.1. Full legal title in the Goods shall not pass to the Client until the Supplier has received payment for the all monies owed by the Client to the Supplier (including any interest accruing and owing to the Supplier).

- 6.2. The Client shall store the Goods separately from other goods and shall ensure the Goods are clearly labelled. The Supplier shall be entitled to require the Goods to be detached from any other goods.
- 6.3. During such time as title in the Goods remains in the Supplier, the Supplier shall be entitled to inspect the Goods and/or repossess them at any time and may enter the premises where they are stored or are reasonably thought to be stored to do so.
- 6.4. Once the risk in the Goods has passed to the Client, the Client shall ensure that the Goods are insured with a respectable insurer, for the full retail value of the Goods as new. This insurance shall be in the joint names of both the Parties, or the Client shall ensure that the Supplier's interest in the Goods is adequately noted on the insurance policy.

## **7. PAYMENT FOR THE GOODS AND/OR SERVICES**

- 7.1. The Client agrees to pay the Contract Price to the Supplier.
- 7.2. Where no time for payment has been specified for any payment to be made by the Client to the Supplier, the payment will fall due within 7 days after the supply of the Goods and/or Services.
- 7.3. If the Client fails to pay the invoiced amount for any Goods and/or Services within the time specified in an invoice, the Supplier may, without prejudice to any other right or remedy it may have, cancel or suspend any further delivery to the Client under any order or sell or otherwise dispose of the Goods that are the subject of any order by the Client and apply the proceeds of sale to the overdue payment.
- 7.4. Where a payment under this Agreement becomes overdue the Supplier shall be entitled to charge:
  - 7.4.1. a one-off administration fee of up to £40 to cover costs relating to the overdue payment; and
  - 7.4.2. interest on the overdue payment from the date when payment becomes due from day to day until the date payment is received by the Supplier at a rate of 10% per annum or 4% per annum above Bank of England Base Rate (whichever is higher).
- 7.5. Payments must be made in pounds sterling to a bank account notified by the Supplier to the Client from time to time.
- 7.6. Where the Client has a credit account, a deposit may still be payable for the Goods and/or Services. The Supplier at its sole discretion can determine the required time of payment and amount of any deposit.

## **8. PRICE VARIATION CLAUSE**

- 8.1. Where the Supplier is required to pay higher material or labour costs due to circumstances outside its control, it shall retain the right to vary the Contract Price.

## **9. MAINTENANCE PACKAGES**

- 9.1. Maintenance packages are for a minimum term of 12 months. The price of a maintenance package is calculated on a fixed monthly basis and is payable monthly in advance or may be paid 12 months in advance. Where payment is made 12 months in advance any cancellation fees are calculated as if payment had been made on a monthly basis without any discount applied.
- 9.2. Cancellation prior to the completion of 12 months will be subject to a cancellation fee determined at the Supplier's sole discretion. Cancellation fees are charged at 50% of the price of the remaining visits to completed under the package.
- 9.3. On cancellation of a maintenance package all visits will cease with immediate effect.
- 9.4. Subject to Clause 9.5, the Supplier agrees to complete all services as set out under the maintenance schedule.
- 9.5. Where any Services or any part thereof under a maintenance visit cannot be carried out due to any reason outside the direct control of the Supplier, those services will be deemed as successfully completed in full under this contract. At the Supplier's sole discretion, any Services not completed during a failed visit under this Clause may be carried out during a separate visit.

## **10. ENDANGERED AND PROTECTED SPECIES**

- 10.1. All costs associated with the protection of endangered or protected plants and/or species are to be borne in full by the Client. Where appropriate, the Supplier will complete its obligations under this Agreement once all mitigation works required under the law have been completed by the Client.

## **11. HAZARDOUS WASTE**

- 11.1. All costs associated with the testing, movement, storage, removal, dumping or any other process relating to waste classified as hazardous or reasonably suspected by the Supplier of being classified as hazardous are to be borne in full by the Client. Where appropriate, the Supplier will complete its obligations under this Agreement once all mitigation works required under the law have been completed by the Client. Ground Works
- 11.2. Where any works require ground excavation, any estimated costs may reasonably be varied by the Supplier to take into account ground conditions. All costs associated with any such variation will be borne by the Client.

## **12. GROUND WORKS**

- 12.1. Where any works require ground excavation, any estimated costs may reasonably be varied by the Supplier to take into account ground conditions. All costs associated with any such variation will be borne by the Client.

## **13. MATERIAL CHANGES TO SITE**

- 13.1. Where the Supplier reasonably deems that the works can no longer be offered as a result of any material changes to the Site, the Supplier may terminate this agreement.
- 13.2. Where the works may still be carried out after material changes to the Site but, which will result in an increase in cost of carrying out the works, the Client agrees to pay for all such cost increases in full.

## **14. TERMINATION**

- 14.1. The Supplier may terminate this agreement summarily by notice in writing to the Client if:
- 14.1.1. the Client commits any material breach of any of the provisions of this agreement and, in the case of a breach capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 14.1.2. the Client makes any voluntary arrangement with its creditors or becomes subject to an administration order;
  - 14.1.3. the Client is declared bankrupt or insolvent;
  - 14.1.4. the Client goes into liquidation, except for the purposes of amalgamation or reconstruction;
  - 14.1.5. a receiver is appointed over any of the property or assets of the other party.
- 14.2. For the purposes of clause 14.1.1, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance provided that time of performance is not of the essence.
- 14.3. The Supplier shall be entitled to terminate this agreement by giving not less than 30 days' written notice to the Client if there is at any time a material change in the management, ownership or control of the Client.

## **15. TERMINATION CONSEQUENCES**

- 15.1. On the expiry or other termination of this agreement:
- 15.1.1. all outstanding invoices shall become immediately payable by the Client;

- 15.1.2. any invoices not yet submitted for Goods or Services, or both, shall become immediately payable on receipt of invoice; and
- 15.1.3. the Supplier shall be entitled to keep the full amount of any deposit paid by or on behalf of the Client.

## 16. WARRANTY

- 16.1. Subject to clause 16.2, the Supplier warrants that the Goods are of a satisfactory quality and reasonably fit for their normal purpose. The Supplier gives no other warranties in respect of the Goods, their condition or delivery, and any warranties implied by statute are excluded to the fullest extent permissible under law.
- 16.2. The Supplier does not offer any warranties as to the accuracy or completeness of the information contained in any of the Goods.
- 16.3. The Supplier agrees to exercise the reasonable skill and care of a competent pond designer and/or consultant (as appropriate).
- 16.4. This Agreement does not affect any statutory rights the Client may have.
- 16.5. Due to the nature of leak repair work and the possibility of multiple leak points, the Supplier does not warrant that any leak repair works will stop or reduce water losses within a Water Feature.
- 16.6. The Supplier does not warrant that where the Goods and/or Services relate to water systems in any way that the water feature or any part thereof will be clear, or free from debris weeds or any other animal plant or other living organism, or that any fish or other animals or plants living in the water feature will become, or remain healthy.
- 16.7. Pond or fish treatments may require more than one treatment to be effective. Where multiple treatments are required, the costs for these treatments will be borne in full by the Client.

## 17. LIMITATION OF LIABILITY

- 17.1. Subject to the sub-clauses below, the Supplier limits its liability in contract, tort, negligence, breach of statutory duty or otherwise to the Contract Price.
- 17.2. The Supplier accepts no liability for indirect or consequential loss, such as loss of profits, business, costs, expenses (unless such losses were reasonably foreseeable to both Parties when this contract was entered into) or any other form of economic loss.
- 17.3. Where the lining and/or construction of a pond is over five years old, the Supplier accepts no liability for any damage caused to this.
- 17.4. Although every effort is made to match new cement, concrete, renders, finishes, paints, colour-schemes, or any other pre-existing finish with that which is pre-existing, there may well

be a colour variation between the new finish and the pre-existing finish. The Supplier accepts no liability for any such colour variations.

17.5. Nothing in this Agreement shall exclude or restrict the liability of either party for:

17.5.1. death or personal injury resulting from that party's negligence; or

17.5.2. fraud or fraudulent misrepresentation.

17.6. Nothing in this Agreement shall exclude or restrict the liability of either party in respect of any liability which cannot be excluded or restricted by law.

## **18. ASSIGNMENT**

18.1. The Supplier shall be entitled to assign the rights and obligations under this Agreement at any time to any other party by notice in writing to the Client.

18.2. The Client may not assign the rights and obligations under this agreement without the prior written consent of the Supplier.

## **19. ENTIRE AGREEMENT**

19.1. This Agreement must be read in conjunction with all written materials provided by the Supplier to the Client prior to the date of this Agreement. Unless expressly provided elsewhere in this agreement, this agreement may be varied only by a document signed by both parties.

## **20. WAIVER**

20.1. Failure by the Supplier to enforce at any time or for any period any one or more of the rights conferred under this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all or any of the rights hereunder.

## **21. SEVERABILITY**

21.1. If any provision of this agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **22. FORCE MAJEURE**

22.1. This agreement shall be suspended in the event of national emergency, act of war (whether declared or undeclared), prohibitive governmental regulations, breakdown of plant machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies, Act of God, inclement weather, fire, the finding of endangered or protected plants or



species, or if any other cause beyond the reasonable control of the parties renders performance of this agreement impossible. If such period of suspension exceeds 100 days, then the Supplier may upon giving written notice to the Client require that this agreement be terminated forthwith, and all money due to the Supplier must be paid immediately.

## **23. THIRD PARTY RIGHTS**

23.1. The parties to this agreement do not intend that any term of it shall be enforceable by a third party as defined in the Contracts (Rights of Third Parties) Act 1999 under the provisions of that Act.

## **24. NOTICES**

24.1. Any notice required to be given under this Agreement shall be in writing and signed by the person giving it and may be delivered personally or sent by facsimile transmission or other electronic means or by first class post to the address set out above in respect of each of the parties or to such other address as may otherwise be notified by either party to the other as being an alternative address for service.

24.2. Any notice so served shall be deemed to be received:

24.2.1. if delivered personally, on the day of delivery;

24.2.2. if sent by facsimile transmission or other electronic means, on the day of transmission provided it is sent during business hours on a business day and if not on the next business day; and

24.2.3. if sent by post, 48 hours after the date of posting.

## **25. GOVERNING LAW AND JURISDICTION**

25.1. This agreement shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.

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