

# YardWorks, Inc. Terms & Conditions

## 1. Background:

- a. The Client is of the opinion that the Contractor has the necessary qualifications, experience and abilities to provide services to the Client.
- b. The Contractor is agreeable to providing such services to the Client on the terms and conditions set out in this Agreement.
- c. IN CONSIDERATION OF the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Contractor (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

## 2. Performance:

- a) The Parties agree to do everything necessary to ensure that the terms of this Agreement take effect.

## 3. Currency:

- a) Except as otherwise provided in this Agreement, all monetary amounts referred to in this Agreement are in USD (US Dollars).

## 4. Penalties for Late Payment:

- 1) Any late payments will trigger a fee of 6.0% per month on the amount still owing.
- 2) Any payments not received within two (2) months will be considered noncompliant and turned in to the District Magistrate or Court of Common Pleas.
- 3) YardWorks, Inc. is not required to send you a statement every month. If you would like a statement, please call and one will be sent to you.

## 5. Confidentiality:

- a) Confidential information (the "Confidential Information") refers to any data or information relating to the business of the Client which would reasonably be considered to be proprietary to the Client including, but not limited to, accounting records, business processes, and client records and that is not generally known in the industry of the Client and where the release of that Confidential Information could reasonably be expected to cause harm to the Client.
- b) The Contractor agrees that they will not disclose, divulge, reveal, report or use, for any purpose, any Confidential Information which the Contractor has obtained, except as authorized by the Client or as required by law. The obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Agreement.
- c) All written and oral information and material disclosed or provided by the Client to the Contractor under this Agreement is Confidential Information regardless of whether it was provided before or after the date of this Agreement or how it was provided to the Contractor.

## 6. Ownership of Intellectual Property:

- a) All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name (the "Intellectual Property") that is developed or produced under this Agreement, is a "work made for hire" and will be the sole property of the Client. The use of the Intellectual Property by the Client will not be restricted in any manner.
- b) The Contractor may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Contractor will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

## 7. Return of Property:

- a) In the event that this Agreement is terminated by the Client prior to completion of the Services the Contractor will be entitled to recovery from the site or premises where the Services were carried out, of any materials or equipment which is the property of the Contractor or, where agreed between the Parties, to compensation in lieu of recovery.

## 8. Capacity/Independent Contractor:

- a) In providing the Services under this Agreement it is expressly agreed that the Contractor is acting as an independent contractor and not as an employee. The Contractor and the Client acknowledge that this Agreement does not create a partnership or joint

## YardWorks, Inc. Terms & Conditions

venture between them, and is exclusively a contract for service. The Client is not required to pay, or make any contributions to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the Contractor during the Term. The Contractor is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to the Contractor under this Agreement.

### 9. **Right of Substitution:**

- a) Except as otherwise provided in this Agreement, the Contractor may, at the Contractor's absolute discretion, engage a third-party sub-contractor to perform some or all of the obligations of the Contractor under this Agreement and the Client will not hire or engage any third parties to assist with the provision of the Services.
- b) In the event that the Contractor hires a sub-contractor:
  - i) The Contractor will pay the sub-contractor for its services and the Compensation will remain payable by the Client to the Contractor.
  - ii) For the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of the Contractor.

### 10. **Autonomy:**

- a) Except as otherwise provided in this Agreement, the Contractor will have full control over working time, methods, and decision making in relation to provision of the Services in accordance with the Agreement. The Contractor will work autonomously and not at the direction of the Client. However, the Contractor will be responsive to the reasonable needs and concerns of the Client
- b) Weather is the number one related factor to the service under contract. Client understands delays due to but not limited to Acts of God, severe weather, abnormal rainfall, sudden changes in weather patterns, extreme heat/cold, flooding, drought, etc. May lead to but not limited to turf damage, rutting, skid marks, mud streaks, tire marks, etc.... The Contractor will at all costs avoid any and all unnecessary damage to Client's property.

### 11. **Equipment:**

- a) Except as otherwise provided in this Agreement, the Contractor will provide at the Contractor's own expense, any and all tools, machinery, equipment, raw materials, supplies, work wear and any other items or parts necessary to deliver the Services in accordance with the Agreement.

### 12. **Exclusivity:**

- a) The Client acknowledges this Agreement is exclusive and the Client will not be free, during and after the Term, to engage or contract with third parties for the provision of services similar to the Services until the term of the contract has lapsed.

### 13. **Notice:**

All notices, requests, demands or other communications required or permitted by the terms of this Agreement will be given in writing and delivered to the Parties at the following addresses:

**YardWorks, Inc.**

914 Evergreen Street  
Brockway, PA 15824

or to such other address as either Party may from time to time notify the other, and will be deemed to be properly delivered (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, or (c) the following day after being deposited with an overnight courier.

### 14. **Indemnification:**

- a) Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted

## YardWorks, Inc. Terms & Conditions

successors and assigns that occurs in connection with this Agreement. This indemnification will survive the termination of this Agreement.

- b) The owner/customer shall indemnify, defend and hold harmless the contractor, its owners, employees and subcontractors from and against any and all claims, damages, reasonable attorneys' fees, costs and expenses which the contractor incurs as a result of a claim or claims brought by the owner or any third party, arising out of any wrongdoing, negligence and/or breach of contract by the owner alleged or otherwise, or any Act of God, including but not limited to extraordinary weather conditions, that is related, in any manner whatsoever, to the premises or the owner's involvement with the premises or the services.

### **19) Modification of Agreement:**

- a) Any amendment or modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement will only be binding if evidenced in writing signed by each Party or an authorized representative of each Party.

### **20) Time of the Essence:**

- a) Time is of the essence in this Agreement. No extension or variation of this Agreement will operate as a waiver of this provision.

### **21) Assignment:**

- a) The Contractor will not voluntarily, or by operation of law, assign or otherwise transfer its obligations under this Agreement without the prior written consent of the Client.

### **22) Entire Agreement:**

- a) It is agreed that there is no representation, warranty, collateral agreement or condition affecting this Agreement except as expressly provided in this Agreement.

### **23) Enurement:**

- a) This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

### **24) Titles/Headings:**

- a) Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement.

### **25) Gender:**

- a) Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.

### **26) Governing Law:**

- a) This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

### **27) Disputes:**

- a) Any disputes arising from this contract which have not been settled between the parties shall be subject to the laws of Pennsylvania and any legal action shall be handled through the Jefferson County Court of Common Pleas or the local Magisterial District Court. In the event that YardWorks, Inc. is required to take legal action against the customer, owner or their representative for any failure to make payment or any other breaches of the within contract, YardWorks, Inc. shall be entitled to recover all outstanding monies due, with legal interest, as well as reasonable attorney's fees, Court costs, Filing Fees or any other costs incurred by YardWorks, Inc. in collecting the monies due and any legal action taken by them. Under Pennsylvania Mechanic's Lien Law and other applicable law, the Contractor or other person or entity that helps to perform the work on your property or perform work under this contract, but is not paid for his or her work or supplies, has the right to place a lien on your home, land, or property where the work has been performed or to sue you in Court to obtain payment. This means that after a Court Hearing, your home, land, and property could be sold by a Court Officer and the proceeds of the sale could be

## YardWorks, Inc. Terms & Conditions

### 15. Severability:

- a) In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.

### 16. Waiver:

- a) The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions.

### 17. Life of Agreement:

- a) This Agreement shall be in effect from the date it is signed until December 31, 2023, unless the parties mutually agree to extend the term of the Agreement for an additional year thereafter. The terms of this contract may change without notification. Customer agrees to all changing terms and conditions set forth in this contract and its future changes. Customer is under contract for said amount of time and agrees to abide by the terms of this contract and any future updates being made.

### 18. Disclaimer / Permission for Advertising:

- a) Customer/Owner (representative) agrees that YardWorks, Inc. shall be permitted to take photographs or video of the premises or property of the Customer/Owner, and that YardWorks, Inc. shall be permitted to use the same in any advertising or promotion of the business of YardWorks, Inc., for the purposes of advertising and soliciting business for new customers, with YardWorks, Inc. having permission to use such photographs, video or other appropriate means to advertise the work done for Customer/Owner, either by newspaper, trade magazine, billboard, internet, television or other advertising that YardWorks, Inc. deems appropriate, with it being provided that YardWorks, Inc. will not provide any personal information regarding Customer/Owner in its advertising (with the exception that YardWorks, Inc. may disclose the name of a business where work was performed).

### 19. Home Improvement Contract (Residential Customers ONLY):

- a. An individual signing a home improvement contract, except as provided in the emergency provisions of section 7 of the act of December 17, 1968 (P.L. 1224, No. 387)<sup>7</sup>, known as the Unfair Trade Practices and Consumer Protection Law, shall be permitted to rescind the contract without penalty regardless of where the contract was signed, within three business days of the date of signing. Rescind notice to be written on this contract and signed by both parties.

### 20. Special Notes / Additional Terms:

- A. Client may add services at any time to their agreement from the list of services, upon request. At the completion of any such additional services, Client, owner or their representative will receive an invoice for the additional services.
- B. The contract prices for services are based on the services that the Client, owner or their representative has selected. YardWorks, Inc. (YWI) will not change the contract price during the applicable year, unless additional services are requested and agreed upon or scope of work changes.
- C. Client, owner or their representative may choose to pay the remaining balance at any time in full without penalty. Simply total the remainder of your coupons and send them in with the payment. However, you will only receive a 10% (ten percent) discount by pre-paying annually. (Only applies to lawn maintenance Clients)
- D. Estimates: Estimates are approximations on what a specific job will cost. When YWI gives an estimate, the Client should understand there are complications that are unforeseen. ALL Estimates are NOT a NOT TO EXCEED Price.
- E. Invoices are net 15 (fifteen) from the date on the invoice. Any payments not received within 15 (fifteen) days from the date on the invoice are subject to a 6.00% or highest allowable by law finance charge and such finance charges are compounded monthly. This finance charge will go into effect at the end of the current month. Terms of this contract can change without notice. Any payments not received within two (2) months will be considered noncompliant and turned in to the District

## YardWorks, Inc. Terms & Conditions

Magistrate or Court of Common Pleas, Collections, and/or Legal. YWI is not required to send you a statement every month. If you would like a statement, please call and one will be sent to you.

F. A fuel surcharge may apply to all services.

Per-Time Clients need to call (814) 265-1391 as soon as possible to be added to our Client list.

- (a) Details of Project or Work: YWI will perform the services as requested and selected above and said project or work shall include the following labor and materials (Fill in on separate sheet of paper only if applicable):
- (b) Addendums (Change Orders): If a change to the work or services provided under this Contact is deemed necessary, the owner, Client or their representative agrees to sign and execute a written Change Work Order for any changes or additional work being requested, and such written changes shall be called a "Change Order", and that Change Order shall be signed and dated by both parties before it becomes binding and before YWI shall be required to perform any additional work or services. Substitutions/alternatives may be made as seen fit by the contractor during the execution of the addendum. Monies allocated for addendums may be allocated to additional addendums as the project progresses. Any additional monies or payments due for additional work under a Change Order shall be made in accordance with the elected payment option in this agreement, unless otherwise specifically provided for in the Change Order. Additional costs may incur due to delays for Change Orders.
- (c) Permits: The Client, owner or their representative shall be responsible for obtaining and providing the necessary permits that may be required by government agencies, local municipalities, or other offices before any landscaping, excavation or other landscape construction work is commenced. Any zoning permits, building permits or variances must be applied for and obtained by Client or owner before the commencement of the landscaping, construction, and/or excavation work. If YWI is requested or required to obtain any permits or other approvals for the work, then Client or owner shall be responsible for those additional costs or expenses for the same.
- (d) Indemnification. The owner/Client shall indemnify, defend and hold harmless the contractor, its owners, employees and subcontractors from and against any and all claims, damages, reasonable attorneys' fees, costs and expenses which the contractor incurs as a result of a claim or claims brought by the owner or any third party, arising out of any wrongdoing, negligence and/or breach of contract by the owner alleged or otherwise, or any Act of God, including but not limited to extraordinary weather conditions, that is related, in any manner whatsoever, to the premises or the owner's involvement with the premises or the services.
- (e) Disclaimer / Permission for Advertising. Client/Owner (representative) agrees that YWI shall be permitted to take photographs or video of the premises or property of the Client/Owner, and that YWI shall be permitted to use the same in any advertising or promotion of the business of YWI, for the purposes of advertising and soliciting business for new Clients, with YWI having permission to use such photographs, video or other appropriate means to advertise the work done for Client/Owner, either by newspaper, trade magazine, billboard, internet, television or other advertising that YWI deems appropriate, with it being provided that YWI will not provide any personal information regarding Client/Owner in its advertising (with the exception that YWI may disclose the name of a business where work was performed).
- (f) Disputes. Any disputes arising from this contract which have not been settled between the parties shall be subject to the laws of Pennsylvania and any legal action shall be handled through the Jefferson County Court of Common Pleas or the local Magisterial District Court or Jefferson County Court House. In the event that YWI is required to take legal action against the Client, owner or their representative for any failure to make payment or any other breaches of the within contract, YWI shall be entitled to recover all outstanding monies due, with legal interest, as well as reasonable attorney's fees, Court costs, Filing Fees or any other costs incurred by YWI in collecting the monies due and any legal action taken by them. Under Pennsylvania Mechanic's Lien Law and other applicable law, the Contractor or other person or entity that helps to perform the work on your property or perform work under this contract, but is not paid for his or her work or supplies, has the right to place a lien on your home, land, or property where the work has been performed or to sue you in Court to obtain payment. This means that after a Court Hearing, your home, land, and property could be sold by a Court Officer and the proceeds of the sale could be used to satisfy what you owe to the Contractor.
- (g) Life of Agreement. This Agreement shall be in effect from the date it is signed until December 31, of current year, unless the parties mutually agree to extend the term of the Agreement for an additional year thereafter. The terms of this contract may change without notification. Client agrees to all changing terms and conditions set forth in this contract and its future changes. Client is under contract for said amount of time and agrees to abide by the terms of this contract and any future updates being made.

## YardWorks, Inc. Terms & Conditions

### 21. Payment:

- i) A service charge of \$100.00 will be charged for any returned check.
- ii) A credit card with a current expiration date must be on file. Cardholder acknowledges receipt of goods and/or services in the amount of the Total shown hereon and agrees to perform the obligations set forth in the Cardholder's agreement with the issuer. Should Client not pay invoice in total Client authorizes the charge of their credit card.
- iii) Purchasers shall be responsible for all costs of collection or legal action taken against purchasers for a breach of this contract or failure to pay, including without limitation, Court costs, Filing fees, reasonable Attorneys' fees or any other costs incurred by YWI in the event that it becomes necessary for YWI to resort to legal measures to collect any amounts owed under this agreement or any other breaches of this agreement.

### 22. Provision for Default and Cancellation:

Either party may terminate this agreement at any time with a 30 day advance written notice. Cancellation date will be the day such notice is received. In the event of cancellation, the Client will be responsible for all costs of services and material rendered/ordered up to the cancellation date. An early cancellation fee will apply to each service, fifty percent (50%) of total contract price with a \$250 minimum, and a final invoice will be sent to the Client within 30 days after notification for balance due on each service. There will be No Refunds issued for unused time or services set forth by this agreement.

### 23. Rock, Water, & Coal Clause:

Price for service including but not limited to; excavation, boring, trenching, and auguring, are for favorable working conditions. If conditions such as, but not limited to; rock, coal, clay, excessive rain fall, aquifers, high water table, archeological items, existing or abandoned construction elements and sink holes or any other unforeseen problems requiring additional materials, time and labor, the responsible individual will be notified and any additional costs will be added to the invoice.

If conditions are encountered on the site which are subsurface or otherwise concealed physical conditions which differ materially from those contemplated, or physical conditions of an unusual nature are encountered and cause a furtherance to the Contractor in time or materials, the Contractor will be entitled to an equitable adjustment in the contract price, an extension of the completion date, or both, by change order. Furthermore, the Contractor will not be held responsible for any damage to the following: Underground Sprinkler heads - Underground irrigation piping - Television Cable - Phone Cable - Low Voltage Cable, Cesspools/Septic Tanks or any buried utilities and/or services not installed in accordance with local building codes or common practices.

The owner will clearly identify boundaries of the property, shall provide surveys of the property describing physical characteristics, legal limitations and utility locations and/or cause the property to be staked if reasonably requested by the Contractor. The owner is obligated to provide notice of all concealed conditions, and shall provide and pay for water and electricity to the property.

Underground construction involves risk of damage to existing underground infrastructure in addition to the possibility of encountering unexpected subsoil conditions including, but not limited to, rock, coal, clay, excessive rain fall, aquifers, high water table, archeological items, existing or abandoned construction elements and sink holes. Reasonable effort has been made to locate or predict said risk but no warranty is expressed or implied as to what will be discovered or encountered during construction. Proposal is an estimate only and is based on similar projects where adverse conditions were not encountered. Any such adverse conditions which arise during construction will require additional work which will be billed at time and materials above and in addition to the amount shown on this proposal. By accepting this proposal, Client agrees to these potential additional charges which may include work by others, when necessary, in the opinion of the contractor.