



Contract Reference: 2511202215SK

Total Contract Amount £47,150.00 + VAT

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 7 (LIMITATION OF LIABILITY).

1. Parties

West Malling Parish Council (Customer)
Site: Norman Road Playing Fields, West Malling.

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**). Where deposits are required (deposit on agreement) within the payment terms set out in this contract, the total deposit will be due as per the payment terms in this contract found in section 5.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, any descriptions or illustrations contained in the Supplier's catalogues or brochures or provided by the Supplier, 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 Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 30 Business Days from its date of issue.

3. Supply of Services

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates requested by the Customer, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Work will be booked where possible to meet preferred start dates.
- 3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier will test for underground services prior to starting excavations unless advised otherwise. The Supplier will take care during all excavation work but will not be responsible for any damage.
- 3.5 The Customer may place an order with the Supplier for annual maintenance. An invoice will be submitted on completion of the annual maintenance, due immediately and payable no later than days from the date of invoice.
- 3.6 The Supplier undertakes to guarantee all works carried out by the Supplier for a period of 3 years. The warranty is in respect of workmanship and materials and the warranty starts from the date of completion of the project.
- 3.7 The warranty mentioned at 3.6 is subject to the surface being treated with reasonable care and that the Suppliers maintenance instructions have been followed. Written notice of any claim must be received within the warranty period.
- 3.8 The warranty mentioned at 3.6 does not guarantee against incursions of the weed "Horsetail/Marestail" (*Equisetum arvense*). Nor does it cover deterioration due to wear and tear, use of the court for any reason other than sports, nor damage caused by vandalism, additional construction projects, iron pyrite staining or Acts of God, including lightning strikes, extreme winds or other violent storms.
- 3.9 The Customer will notify the Supplier promptly of any defects or problems that may arise and the Supplier will be provided with the opportunity to correct these defects. The Supplier will not be liable for any defects that have been left for any prolonged period of time and neglect will invalidate the warranty.
- 3.10 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with access to electricity and water as near to the working area as possible at no charge to the Supplier;



- (e) provide access to the Supplier, its employees, agents, consultants and subcontractors, to toilets and washroom facilities;
- (f) undertake that all access routes will be of sufficient quality to enable lorry movements to the site;
- (g) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (h) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (i) comply with all applicable laws, including health and safety laws;
- (j) keep all materials, equipment, documents and other property of the Supplier at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (k) Upon completion the Supplier will remove debris and excess materials and plant but will not be responsible for any reseeded or damage to roads or driveways used for access unless warned of the unsuitability of the roads or driveways prior to the commencement of works.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. Charges and payment

5.1 The Supplier will provide a quotation for the works to be undertaken. On acceptance the Customer will pay:

- **10% deposit on agreement**
- **20% on delivery of fencing**
- **20% on completion of surface prep and installation of fencing**
- **45% on completion of asphalt works**
- **5% on completion of colour spray and line markings**
- **All monies are payable within 7 days of invoice date**
- Preferred payment method is bank transfer.
Sovereign Sports LTD Account number: 52750147 Sort code: 403106
International Bank Account Number (IBAN): GB 06 HBUK 403106 52750147
Branch Identifier Code (SWIFT): HBUK GB 4108E
- **CHEQUE payments are no longer accepted.**
- **LATE PAYMENTS will incur a £50.00 charge**
- **Additional payment fees will be billed upon completion of the contract.**
- **Colour coatings, grass installations, line marking, and court fitting installations will only be completed once all outstanding invoices have been cleared.**

- 5.2 The Supplier reserves the right to increase the Charges should there be any change to the specifications, or any extra works required by the Customer or should any unseen additional matters be raised. Any additional works must be agreed in advance by the parties. In the event that additional works are carried out without charges being agreed in advance, these additional works will be charged as per Sovereign Sports day work rates in force from time to time.
- 5.3 In the event of non-payment, The Supplier reserves the right to suspend the services. Any costs incurred as a result of any suspension shall be charged over and above the agreed price.
- 5.4 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 8, the Customer 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 5.4 will accrue each day at 14% a year above the Bank of England's base rate from time to time, but at 14% a year for any period when that base rate is below 0%. Late payments will incur a £50 charge.
- 5.5 All amounts due under the Contract 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).

6. Retention of Title

The Supplier will remain the owner of any materials delivered to the site and will retain the right to remove any materials that are not used during the course of construction.

7. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the



- Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 7.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.3 Subject to clause 7.2, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap of £5,000,000.
- 7.4 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 8 shall survive termination of the Contract.
- 8. Termination**
- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party two months' written notice.
- 8.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of that party being notified in writing to do so;
 - (b) the other party 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), 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;
 - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) 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 Contract has been placed in jeopardy.
- 8.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 8.2(b) to clause 8.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.
- 9. Consequences of termination**
- 9.1 On termination of the Contract:
- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 9.2 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. General**
- 10.1 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 10.2 Assignment and other dealings.**
- (a) The Supplier may at any time assign, subcontract, delegate or deal in any other manner with any or all of its rights and obligations under the Contract.



- (b) The Customer shall not assign, transfer, subcontract delegate or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 10.3 **Entire agreement.** The Contract 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.
- 10.4 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 10.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 10.6 **Governing law.** The Contract, 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.
- 10.7 **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 Contract or its subject matter or formation.

Total Contract Value £ 47,150.00 + VAT

Signed on behalf of the Customer **Date:**



