

Terms and Conditions Hackmann Lawn & Landscape

These Terms & Conditions ("Terms") apply to any work performed and materials supplied by Hackmann Lawn & Landscape ("Hackmann"). The written estimate of work provided to you ("Estimate") and Terms together constitute the entire agreement ("Agreement") between you ("Customer", "You" or "Yours") and Hackmann and shall govern unless expressly modified or excluded in writing by both parties. The Agreement supersedes all prior or contemporaneous agreements or understandings between you and Hackmann.

1. **Scope of Work.** Hackmann shall carry out and complete the work, and deliver the goods, identified in the Estimate in a workman like manner in the time and manner described in the Estimate, subject to these Terms, and shall have no obligation to execute any additional work unless otherwise agreed in writing between the parties. The written Estimate, and the description of the work and drawings contained therein if any, shall control and govern Hackmann's delivery of goods and performance of the work.

2. **Cooperation of Customer.** You shall (i) cooperate with Hackmann in all matters relating to the performance of work in the Estimate and provide such access to your premises, and such office accommodation and other facilities as may reasonably be requested by Hackmann, for the purposes of performing the work in the Estimate; (ii) respond promptly to any Hackmann request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Hackmann to perform the work in accordance with the requirements of the Estimate and these Terms; (iii) and obtain and maintain all necessary licenses, permits and consents and comply with all applicable laws in relation to the work before the date on which the work is to start. **Hackmann is not responsible for delays caused by Customer's failure to cooperate or for any violations of law, ordinance, covenants, or other restrictions related to the performance of work occasioned by your failure to obtain all required authorizations, consents, permits, etc. in advance of Hackmann performing the work in the Estimate.**

3. **Estimate.** The Estimate provided for lawn maintenance, landscaping or any other services is valid for 30 days from the time made by Hackmann. Acceptance of the Estimate expressly constitutes acceptance of these Terms & Conditions and represents a binding contract between the parties.

4. **Payment.** Customer shall pay Hackmann the full amount of the Estimate, including all taxes and fees as follows:

- a. 1/3 deposit down upon signing of the Invoice by the Customer. This deposit is not refundable if the Estimate includes anything other than labor services. For avoidance of doubt, if the Estimate calls for the purchase of plants, trees, etc., then the 1/3 deposit is not refundable.
- b. If the project lasts longer than seven days, then 1/3 due after seven days after project has started.
- c. Any remaining balance is due upon completion of the work described in the Estimate.
- d. If you are billed on a monthly basis, payment is due within 30 days of receipt for the previous month's services unless the Estimate provides for a different payment deadline. If Customer fails to make payment within 15 days of the due date, customers account will become inactive. There is a \$50.00 charge to reactivate the account.
- e. Send an Advanced Payment for your annual maintenance services prior to 3/1 and receive a 5% rebate on 12/31. Any Advance Payment remaining balance will be refunded on 12/31 or upon cancellation of services. Rebates will be applied to open invoices. Any remaining rebate balance will be refunded by check. **Renewal agreement quantities are estimated. Advance payment customers will receive account credit for services not*

rendered, while exceeding services will incur a charge at the end of the season.

5. **Terms for Mowing.** The Hackmann shall provide the mowing terms of this Agreement in the Estimate and shall generally be for April thru November; services will be performed on a weekly basis as needed. Upon termination, neither party shall have any further obligations to the other except for those obligations that shall survive termination of this Agreement, as set forth below.

6. **Customer Representation and Obligations.** The Customer warrants the site is free of underground condition including, without limitation pipes, cables, stumps, sprinklers, invisible fence, sewage drains and waste materials except as specifically disclosed to Hackmann prior to the signing of the Estimate. Where latent/underground problems exist Hackmann shall be entitled to charge for additional work/supplies/equipment necessary to complete the work or may suspend the work until the condition has been remedied. Customer shall provide Hackmann with access to any necessary electricity and water.

7. **Completion of Work.** Hackmann will use commercially reasonable efforts to complete a project in the time frame promised. However, Hackmann shall not be liable for any delay in the completion of the work under the Estimate. Lien waivers will be provided where Hackmann is a subcontractor after receipt of full payment. Hackmann shall be entitled to an award of its reasonable attorneys' fees and costs if it must pursue Customer for non-payment of the Estimate in addition to all its damages.

8. **Materials On-Site.** Materials delivered to site become the responsibility of the Customer. Hackmann accepts no responsibility for loss, damage or expense after delivery of materials to site for any reason. Any material brought to, or removed from the site, that is in excess to the Hackmann's requirements under the Estimate remain the property of Hackmann who shall have the right to enter the site for the purpose of removing excess materials.

9. **Maintenance after Completion.** Hackmann is only obligated to perform the work specified in the Estimate. The proper maintenance of the site shall be the obligation of the Customer following completion of the work by Hackmann, unless otherwise agreed in writing by the parties.

10. **Warranties and Exclusions.** Hackmann warrants the shrubs and trees supplied by Hackmann in connection with the Estimate for a period of one year from the date of the Estimate, provided that such warranty shall be void if the Customer fails to take reasonable care of the plants (including, without limitation, watering, spraying, cultivating, and pruning). Hardscape warranty is good for three years from the Estimate date **for workmanship only**, except that there is no warranty related to settling around new foundation over digs or utility trenches. This warranty covers a one-time replacement only. Annuals, perennials, and sod, as well as any transplanted materials will not be warranted and are sold AS-IS. Hackmann shall not be liable for any damage or delays caused by Acts of God (including, without limitation, extreme cold or draught, flooding, storms, rain, etc.). Hackmann's sole responsibility under this warranty in Section 10 shall be, at its discretion, to repair or replace or to issue a refund for the shrub, tree or work affected. **THE WARRANTY SET FORTH IN THIS SECTION 10 IS STRICTLY LIMITED TO ITS TERMS AND IS (TO THE EXTENT PERMITTED BY LAW) IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, SPECIFICALLY EXCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Failure to timely pay the amounts owed under the Estimate shall void any warranty hereunder. Hackmann is not responsible for any damage to concrete or asphalt surfaces from skid loaders, trucks or other traffic or equipment.

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11. Damages. Under no circumstances shall Hackmann be liable for any special, incidental, or consequential damages. **Both Parties expressly waive their right to a jury trial related to the work performed under the Agreement or any claim arising under the Agreement.**

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Contractor agrees that by accepting the Work Order and any payment for services or materials listed in the Work Order, Contractor accepts and agrees to these Terms and Conditions. These Terms and Conditions govern the relationship between Hackmann Lawn & Landscape, LLC ("Company") and the Contractor. For purposes of the Work Order and the Terms and Conditions, the Contractor is the entity performing the work under the Work Order. The Work Order and the Terms and Conditions are together the sole agreement between the Company and Contractor. Contractor agrees they are an independent contractor only of the Company.

CONTRACTOR'S EXPENSES. Contractor is engaged as an independent contractor and will not be considered an employee of The Company. Contractor will provide their own equipment as noted above, as well as any other tools or supplies necessary to deliver the services Contractor is engaged to provide. Contractor must provide transportation for themselves and their employees. Contractor will be responsible for payments to their employees for their work and any required withholding, and pay overtime according to law.

SUPERVISION. Contractor will be responsible for the work assigned to themselves and for the conduct of themselves and their employees and will provide adequate supervision to them. Contractor will assure that their work and the work of their employees is provided in a good and workmanlike fashion and in accordance with the standards established by The Company. Within these limits, the Contractor may perform the job as they see fit. Contractor agrees to coordinate with The Company and that The Company has the right to oversee the quality and timeliness of the work. However, The Company will have no obligation to provide supervision or control of Contractor's manner of performing the work or of their employees.

BILLING AND ADVERTISING. The Company will be responsible for billing customers for the work by Contractor hereunder and for collecting from those customers. It will continue its advertising and sales promotion activities to obtain and maintain new accounts.

TAXES. The Company will not be responsible for any withholdings of income taxes, Social Security, or the like from amounts paid to Contractor under this Agreement. It will not be providing Workers' Compensation Insurance for Contractor. Its obligation to Contractor will be solely those outlined in this Agreement. The Company will send IRS form 1099 to Contractor at their last known address, after the end of the calendar year as provided by law.

CHARGING AGAINST COMPANY. The contractor will not use the name of The Company or attempt to use the Company's credit to buy or charge fuel, parts, tires, or anything else that would benefit the Contractor. If anything is charged to Company without authorization, Contractor can expect The Company to take whatever legal action is necessary to seek reimbursement and will be responsible for all expenses incurred by the Company, including attorney's fees.

DAMAGES. Contractor understands that they will be fully responsible for any damages to the property of any of The Company's customers which is done by Contractor or any of his employees. The Company may withhold funds to repair such damage from any amounts owed by The Company to the Contractor. If the amount of the damage exceeds any amount owed by The Company to the Contractor when the amount of the damage is ascertained, then the Contractor shall pay over to The Company the difference within 30 days after that. If payment is not made, The Company may pursue collection by legal means, and the Contractor shall also be responsible for The Company's costs and attorney's fees.

INSURANCE: Upon execution of this Agreement and before commencing any work or services regarding the Project, the Contractor shall carry Commercial General Liability Insurance in an amount not less than \$1,000,000.00 for each occurrence/\$ 2,000,000.00 aggregate. The Contractor will also carry business automobile insurance, workers' compensation insurance, and any other insurance required by applicable law.

INDEMNIFICATION: To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractors sole expense), and hold harmless The Company, its representatives, members, designees, officers, employees, agents, successors, and assigns (Indemnified Parties), from and against any and all claims for bodily injury, death or property damage, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorney's fees and costs, and consultant fees and costs) (Claims) which arise or are in any way connected with the work performed, materials furnished, or services provided by Contractor or its agents.

MISCELLANEOUS: These Terms and Conditions and the Work Order will construed according to Missouri Law. The Agreement may be amended only by a writing signed by both parties.