

Landscaping and Pool Fencing Service Agreement

**PERTH POOL FENCING: As identified in Item 1 of the Schedule.
Customer as Identified by the party signing to the contract**

Landscaping and Pool Fencing Service Agreement

THIS AGREEMENT is dated As Per the Date of Signing

BETWEEN:

1. **PERTH POOL FENCING:** contact details as identified in Item 1 of the Schedule.
2. **CUSTOMER:** As identified in Item 2 of the Schedule.

RECITALS

- A. Perth Pool Fencing carries on the business of providing landscaping, paving, fencing, and related outdoor construction services.
- B. The Customer wishes to engage Perth Pool Fencing to provide certain services at the site described in the Schedule.
- C. Perth Pool Fencing agrees to perform the services for the Customer on the terms and conditions set out in this Agreement.

NOW THE PARTIES AGREE AS FOLLOWS:

1. Definitions and Interpretation

1.1 Definitions

- (a) "Agreement" means this service agreement including the Schedule.
- (b) "Services" means the work described in Item 3 of the Schedule.
- (c) "Site" means the location for the Services, as set out in item 4 the Schedule.
- (d) "Latent Condition" means a physical condition on the Site not reasonably foreseeable by Perth Pool Fencing at the time of entering into this Agreement.
- (e) "Completion" or "Practical Completion" means the stage when the Services are complete except for minor defects:
 - (i) which do not prevent the Services from being reasonably capable of being used for their intended purpose;
 - (ii) which the Perth Pool Fencing has identified and undertaken to rectify within a reasonable time; and
 - (iii) for which all relevant approvals (if any) have been obtained.
- (f) "PPSA" means the Personal Property Securities Act 2009 (Cth).

1.2 Interpretation

- (a) In this Deed unless the context indicates a contrary intention;
- (b) headings are for convenience only and shall not affect interpretation;

- (c) references to any party to this Deed shall include its transferees, successors or permitted assigns and licensees;
- (d) each Schedule (if any) to this Agreement hereby incorporated into this Agreement, provided that if there is any inconsistency between any such Schedule and the provisions of this Agreement, the provisions of this Agreement shall prevail.

2. Engagement

- 2.1 The Customer engages Perth Pool Fencing to carry out the Services described in the item 3 of the Schedule and Perth Pool Fencing agrees to do so in accordance with the terms of this Agreement.

3. Schedule

- 3.1 Particulars of the engagement, including details of the parties, scope of works, pricing, payment terms, timeframe, and warranties, are set out in item 3 of the Schedule.

4. Payment

- 4.1 The Customer must pay Perth Pool Fencing in accordance with the payment terms specified in item 8 the Schedule.
- 4.2 If payment is not received by the due date, Perth Pool Fencing may charge interest on the overdue amount as set out in item 9 of the Schedule.
- 4.3 Payment must be made by bank transfer or credit card.

5. Variations

- 5.1 Any variation to the Services must be agreed in writing.
- 5.2 Perth Pool Fencing shall, upon becoming aware of the need for a variation, give written notice to the Customer identifying:
 - (a) the nature and reasons for the proposed variation;
 - (b) any impact on the price and timeframe for completion; and
 - (c) any conditions required for the variation to proceed.
- 5.3 The Customer must respond to the variation proposal within five (5) business days of receipt. If the Customer accepts the variation, Perth Pool Fencing will proceed in accordance with the agreed change.
- 5.4 If no agreement is reached, Perth Pool Fencing may choose not to proceed with the variation, or may terminate the Agreement by providing written notice pursuant to this Clause.

6. Latent Conditions

- 6.1 If Perth Pool Fencing encounters a Latent Condition, it will notify the Customer in writing as soon as practicable.
- 6.2 Perth Pool Fencing is entitled to a reasonable extension of time and adjustment to the price for dealing with a Latent Condition.

7. Timeframes and Extensions of Time

- 7.1 Perth Pool Fencing agrees to carry out the Services within the timeframe stated in item 6 of the Schedule, subject to extensions of time.
- 7.2 Perth Pool Fencing is entitled to an extension of time for delays caused by:
- (a) adverse weather;
 - (b) variations;
 - (c) delay by the Customer;
 - (d) latent conditions;
 - (e) other events beyond Perth Pool Fencing's control.
- 7.3 Perth Pool Fencing will notify the Customer of any claim for an extension of time in writing as soon as reasonably practicable.

8. Suspension of Work

- 8.1 If the Customer fails to make a payment when due or commits a substantial breach of this Agreement, Perth Pool Fencing may suspend work upon 5 business days' notice.
- 8.2 Work will resume promptly upon rectification of the breach or payment of the overdue amount.
- 8.3 The Customer indemnifies Perth Pool Fencing against any costs, loss or damage incurred by Perth Pool Fencing as a result of any suspension under this clause.

9. Site Conditions

- 9.1 The Customer must ensure the Site is accessible (e.g. all furniture moved out of the way and clear access from roadside to the work areas) and safe for Perth Pool Fencing to carry out the Services.
- 9.2 If there are any pre-existing conditions or obstructions, the Customer must inform Perth Pool Fencing prior to commencement.

10. Occupational Health & Safety (OH&S)

- 10.1 Perth Pool Fencing will comply with all applicable OH&S laws and take reasonable steps to ensure the safety of its workers and subcontractors.
- 10.2 The Customer must provide a safe working environment and comply with all relevant OH&S obligations relevant to the Site.

11. Completion and Final Certificate

- 11.1 Upon completion of the Services, Perth Pool Fencing will issue a notice of completion.
- 11.2 The Customer must inspect the Services within 5 business days and either accept completion or notify of any defects.
- 11.3 A final invoice will be issued upon completion and is payable in accordance with the Schedule.

12. Warranties and Defects

- 12.1 Perth Pool Fencing warrants the Services will be performed with due care and skill.
- 12.2 All warranties relating to workmanship provided by Perth Pool Fencing are for a period of 12 months from the date of Practical Completion.

- 12.3 Perth Pool Fencing will remedy at its own cost and within a reasonable time any defects notified during the defect liability period set out in item 10 of the Schedule.
- 12.4 The Perth Pool Fencing warrants that the Services will be carried out:
- (a) with due care and skill;
 - (b) in accordance with all applicable laws and regulations; and
 - (c) using materials that are fit for purpose and of acceptable quality.
- 12.5 The warranties in this clause do not apply to defects or damage caused or contributed to by:
- (a) fair wear and tear;
 - (b) misuse or negligence by the Customer or any third party;
 - (c) failure to properly maintain the works;
 - (d) use of the works for a purpose other than that intended or recommended by the Perth Pool Fencing;
 - (e) alterations or repairs made without the Perth Pool Fencing's written approval;
 - (f) events of force majeure, including but not limited to fire, flood, earthquake, storm, or other act of God.
- 12.6 The Perth Pool Fencing's liability under this clause is limited to the repair or rectification of the defective work or, at the Perth Pool Fencing's discretion, a refund of the portion of the price paid for the defective work.

13. Risk and Insurance

- 13.1 Risk in the Services passes to the Customer on completion.
- 13.2 Perth Pool Fencing must maintain public liability insurance as described in item 11 of the Schedule.

14. Dispute Resolution

- 14.1 If a difference or dispute (together called a 'dispute') between the parties arises in connection with the subject matter of the Contract, including a dispute concerning a claim:
- (a) in tort;
 - (b) under statute;
 - (c) for restitution based on unjust enrichment or other quantum meruit; or
 - (d) for rectification or frustration,
 - (e) or like claim available under the law governing the Contract,
- then either party shall, by hand or by registered post, give the other a written notice of dispute adequately identifying and providing details of the dispute.
- 14.2 Notwithstanding the existence of a dispute, the parties shall, subject to subclause 14.5, continue to perform the Contract.
- 14.3 Within 14 days after receiving a notice of dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

- 14.4 If the dispute has not been resolved within 28 days of service of the notice of dispute, that dispute shall be and is hereby referred to mediation. The parties agree that any dispute arising under this Agreement must first be referred to mediation before either party may commence court proceedings.
- 14.5 Nothing herein shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief.

15. Termination

- 15.1 Perth Pool Fencing may terminate this Agreement by written notice to the Customer if the Customer commits a substantial breach of this Agreement and fails to remedy that breach within 5 business days of receiving written notice requiring it to do so.
- 15.2 For the purposes of Clause 15.1, a "substantial breach" includes (without limitation):
- (a) failure to make any payment by the due date;
 - (b) failure to provide access to the Site or otherwise prevent performance of the Services;
 - (c) provision of inaccurate or misleading information material to the performance of the Services;
 - (d) failure to comply with any material obligation under this Agreement;
 - (e) if the Customer becomes insolvent, is declared bankrupt, enters into administration or liquidation, or a receiver or manager is appointed.
- 15.3 Upon termination under this clause, Perth Pool Fencing is entitled to payment for all work performed to the date of termination, including any costs incurred as a result of demobilisation, materials ordered, and any reasonable cancellation costs.

16. Intellectual Property

- 16.1 All intellectual property created by Perth Pool Fencing remains the property of Perth Pool Fencing unless otherwise agreed.

17. Promotional Use

- 17.1 The Customer acknowledges and agrees to Perth Pool Fencing taking photographs of completed work and use them for marketing purposes.

18. Goods and Services Tax (GST)

- 18.1 Unless otherwise expressly stated, all amounts payable under this Agreement are exclusive of GST.
- 18.2 If a party (the Supplier) makes a taxable supply under this Agreement, the party liable to pay for the supply (the Recipient) must also pay the Supplier an amount equal to the GST payable on that supply, in addition to any consideration otherwise payable.
- 18.3 The additional amount under clause 18.2 is payable at the same time as the consideration for the supply to which it relates, subject to the Supplier providing a valid tax invoice.

19. Personal Property Securities Act (PPSA)

- 19.1 If Perth Pool Fencing supplies goods or materials as part of the Services, ownership of those goods and materials remains with Perth Pool Fencing until full payment is received.

- 19.2 The Customer acknowledges that this Agreement constitutes a security agreement under the Personal Property Securities Act 2009 (Cth) (PPSA) and that Perth Pool Fencing may register a security interest on the Personal Property Securities Register in respect of any goods or materials supplied.
- 19.3 The Customer must do all things reasonably required by Perth Pool Fencing to ensure that any security interest is enforceable and perfected.
- 19.4 To the extent permitted by law, the Customer waives its right to receive any notices or information under the PPSA.

20. Security of Payment (WA)

- 20.1 This clause applies if the Services are subject to the Building and Construction Industry (Security of Payment) Act 2021 (WA) (the Act).
- 20.2 Perth Pool Fencing may issue payment claims under the Act in respect of work performed or related goods and services supplied under this Agreement.
- 20.3 The Customer must respond to any payment claim with a payment schedule within the time required by the Act. If the Customer fails to do so, it may become liable to pay the claimed amount in full.
- 20.4 If a payment dispute arises, either party may refer the matter for adjudication in accordance with the Act.
- 20.5 This clause does not limit Perth Pool Fencing's rights under any other provision of this Agreement or at law.

21. Title and Risk

- 21.1 Title to any materials or goods supplied by Perth Pool Fencing does not pass to the Customer until full payment has been received.
- 21.2 Until title passes, the Customer must keep the materials separate from other goods and clearly marked as the property of Perth Pool Fencing.

22. Engineering, Design and Approvals

- 22.1 The Customer is responsible for all design, engineering certification, permits, approvals, and compliance with relevant legislation in connection with the Services.

23. Damage or Delay by Customer's Contractors

- 23.1 The Customer is responsible for any damage to the Services or delay in the provision of the Services caused by the Customer's contractors or other parties engaged by the Customer.
- 23.2 Perth Pool Fencing is entitled to claim an extension of time and/or reasonable compensation for any loss incurred as a result of such damage or delay.

24. Application of Legislation

- 24.1 The parties acknowledge and agree that this Contract is for standalone landscaping / pool fencing works and does not form part of a contract for the construction, alteration or improvement of a dwelling.
- 24.2 Accordingly, the parties acknowledge that the Home Building Contracts Act 1991 (WA) does not apply to this Contract.

- 24.3 Nothing in this clause prevents either party from complying with any other applicable laws or regulatory requirements.

25. Compliance with Laws and Standards

- 25.1 Perth Pool Fencing will carry out the Works in accordance with applicable laws and regulations in force at the time of construction, including the *Building Act 2011 (WA)*, the *Building Regulations 2012 (WA)*, and, where applicable, *Australian Standard AS 1926.1 – Swimming Pool Safety Barriers*.
- 25.2 Perth Pool Fencing is not liable for any changes in the law or standards that occur after the date of this Contract, or for any compliance issues arising from site conditions, client-supplied information, or modifications made by others after completion of the Works.

26. Permits and Approvals

- 26.1 The Client is responsible for obtaining all required permits, approvals, or certifications from the relevant local authority.
- 26.2 If agreed in writing, Perth Pool Fencing may assist in the permit application process, but does so as agent for the Client and makes no warranty or representation that any permit will be issued.

27. Client Acknowledgements

- 27.1 The Client acknowledges that:
- (a) pool safety barrier laws may change over time;
 - (b) responsibility for ongoing compliance, maintenance, and certification of the pool fencing rests with the Client upon completion of the Works; and
 - (c) local authorities may carry out periodic inspections for which Perth Pool Fencing is not liable.
- 27.2 Perth Pool Fencing is not liable for any non-compliance resulting from subsequent landscaping, construction, or site alterations after the completion date.

28. Contract Price and Excluded Items

- 28.1 The Contract Price excludes the cost of building permits, applications, or inspection fees. Any such items required during the course of the Works shall constitute a variation.

29. Limitation of Liability

- 29.1 To the maximum extent permitted by law, Perth Pool Fencing's liability for any breach of this Contract (including any implied warranties or obligations) is limited to re-performing the affected portion of the Works or refunding the applicable portion of the Contract Price, at Perth Pool Fencing's election.
- 29.2 Perth Pool Fencing is not responsible for any delay, refusal, or failure by any local government authority to inspect, approve, or certify the Works.

30. General

30.1 Entire Deed

This Agreement constitutes the sole and entire deed between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.

30.2 Amendment

No variation or waiver of, or any consent to any departure by a party from, a provision of this Agreement is of any force or effect unless it is confirmed in writing signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

30.3 No Reliance

The parties warrant that they have made their own enquiries in respect of the matters contained in this Agreement and do not rely on any representation by any party or any other person whatsoever.

30.4 No Merger

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time. No provision of this Agreement which requires action by a party after completion shall merge on completion.

30.5 Waiver

The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by this Agreement does not operate as a waiver of that power or right, nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Agreement.

30.6 Severance

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision, are and continue to be valid and enforceable in accordance with their terms.

30.7 Further Assurance

Each party must do, sign, execute and deliver all agreements, documents, instruments and acts reasonably required of it or them by notice from another party effectively to carry out and give full effect to this Agreement.

30.8 Counterparts & Execution

This Agreement may be executed by any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

Both parties acknowledge that this document may be executed and delivered in facsimile or electronic mail form and agree to accept the signed faxed or electronic mail agreement as original, valid and binding.

30.9 Remedies Cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of any other rights, powers or remedies provided by law.

30.10 Confidentiality

The parties must maintain absolute confidentiality concerning the existence and terms of this Agreement and the business or affairs of any of the released parties to this Agreement and no announcement or communication relating to such business affairs or the negotiations of the parties or existence, subject matter or terms of this Agreement may be made or authorised by or on behalf of a party without the prior written approval of the other party except that a party may make such disclosures in relation to this Agreement as may be reasonably necessary:

- (a) to its professional advisers, bankers, financial advisers and financiers or to any person whose consent is required under this Agreement or for a transaction contemplated by it upon those persons undertaking to keep confidential any information so disclosed; or
- (b) to comply with any applicable law or the requirement of any regulatory body.

30.11 Governing law and jurisdiction

This Agreement is governed by, and is to be construed in accordance with, the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria and any court hearing appeals from those courts.

30.12 Relationship of the parties

Nothing in this Agreement will constitute or be construed to constitute a party as the partner, agent, employee or representative of any other party or to create any trust relationship between them.

30.13 Binds heirs

This Agreement bind the Customer and its heirs, assignees, transferees and successors.

Schedule

Item.	Description	
1.	Perth Pool Fencing Details	<p>Greenscape P&L Pty Ltd (ACN 630 587 218) as the Trustee for Greenscape Trading Trust (ABN – 96 620 574 428) trading as “Perth Pool Fencing” .</p> <p>Address: 17 Ackworth Cres Warwick</p> <p>Phone: 0497701834</p> <p>Email: admin@ppfencing.com.au</p>
2.	Customer Contact details	As Per the Name and address on Quote and/or Invoice
3.	Description of Services	Fencing and Landscaping
4.	Site Address	As per the Quote and/or Invoice
5.	Commencement Date	As Agreed
6.	Timeframe for Completion	As Schedule allows
7.	Price and Basis (e.g., fixed, hourly, per sqm)	As Per Quote and/or Invoice
8.	Deposit and Payment Terms	<p>Staged Payments:</p> <ol style="list-style-type: none"> 1. Deposit: 50% payable within 7 days of the date of this Agreement. 2. Stage 1 25% 3. Stage 2 = Balance <p>Total as Per Final Invoice</p> <p>Payment Terms: All invoices are due and payable within seven (7) days of issue.</p>
9.	Interest on Late Payment	4% above the prevailing rate prescribed by the Penalty Interest Rates Act 1983.
10.	Defect Liability Period	12 months
11.	Public Liability Insurance Details	Amount \$10,000,000.00

12. Limitation of Liability	Perth Pool and Fencing's Liability is limited a value of 25% Of the Invoice Price
13. Dispute Resolution Jurisdiction	Western Australia
14. Special Conditions: (The parties agree to the following additional special conditions)	16.1 Perth Pool Fencing is not liable for any Council or Government Safety Requirements not Adhered to in the design or construction of works in invoice and or quote. 16.2 Perth Pool Fencing is not liable for any damages occurred in, around, under or above job site.