

# TERMS AND CONDITIONS

The following are the standard terms and conditions (the “Terms”) of any and all sales and/or installation contracts entered into by Elite Turf USA, LLC, affiliates or subsidiaries thereof (collectively hereinafter “Elite”), with any “Customer” (each a “Party” and collectively the “Parties”) in relation to sales and/or installation agreements (the “Work”).



## 1. Price

Unless otherwise and expressly agreed in writing, quoted prices shall be based solely on the specific tasks as explained in an agreed proposal, (the “Price) and the Work defined therein. Additional items not expressly identified as the responsibility of Elite are not included in the price, including but not limited to:

- a) Design Related Services, if applicable, and unless expressly authorized and delineated herein, including
  - i. Application and permit fees
  - ii. Application preparation for Zoning or Planning Boards
  - iii. Public meetings attendance as an expert witness
  - iv. Architectural services
  - v. Boundary survey
  - vi. Owner or contractor-initiated changes
  - vii. Required revisions.
  - viii. Improvements or changes to the design
  - ix. Geotechnical investigations
  - x. Wastewater management plan amendment services
  - xi. Excavation and boring equipment services and access
  - xii. Landscape restoration
  - xiii. Soil testing
  - xiv. Additional environmental impact statements or services
  - xv. Owner-initiated changes (valid only with a signed change order)
- b) Any costs associated with necessary charges relating to the delineation of the field.
- c) Shipping fees of turf, infill, pad, and silica sand, each of which is to be paid directly or as pass-through costs by Customer.
- d) Unless otherwise specified, the price does not include any field testing.
- e) Any alteration or deviation from specifications involving extra costs, of which alteration or deviation will be provided only upon executed change orders and will become an extra charge over and above the offered price.
- f) Site security.
- g) Repair or resurfacing existing asphalt parking lot or a staging area if damaged by truck traffic.
- h) Site restoration, sodding, landscaping, or grow-in.
- i) Permit fees, Inspection fees.
- j) Excavation or removal of contaminated/ impacted soils
- k) Testing or inspection fees if required
- l) Delays due to force majeure, supply chain disruptions or inclement weather.
- m) A vehicle to tow Elite maintenance equipment.
- n) Performance and Payment Bond fees.
- o) All applicable union labor and other labor law levies.

- q) Any drainage or base work
- r) Any and all taxes.
- s) Any additional markings and/or logos not listed in the inclusions
- t) Any work not listed in the inclusions

## **2. Payment Terms**

Customer agrees that Elite shall receive payment as follows:

- a) 30% of the Price upon the Customer's signed execution of a sales agreement.
- b) 30% of the Price upon shipment of the materials.
- c) 30% of the Price on or before fifteen days before the scheduled installation date.
- d) 10% of the Price upon substantial completion of the field, which shall be achieved when Customer is able to use the field for its intended purpose, even if punch list items remain and the Certificate of Completion has not been executed by Customer. Customer and/or any Contractor shall make themselves available at 48 (forty-eight) hours' notice for the final walk-through which shall confirm Substantial Completion, and their non-attendance shall expressly permit Elite to designate the field Substantially Complete at its sole discretion.

Customer must provide their Tax-Exempt Certification (if applicable) at or before the time of first payment. Customer agrees to pay any actual disbursements and expenses that we incur on behalf of the Customer, such as sub-consultant fees, printing fees, application/permit fees, or delivery charges. Customer understands and agrees that Time is of the Essence as to these payment terms and that any delay thereto, for any reason, may result in delays to the ordering and installation of the field. Accounts overdue beyond 30 days of invoice date will be charged at an interest rate the higher of 12.5% per annum or the maximum allowed by law, applied from the date payment was due. In the event that a dispute arises over the reasonableness or entitlement to fees charged by Elite, and/or in the event that Elite elects to pursue collection of payment of any monies owed or past due invoice, Elite shall be entitled to file an action in a court of competent jurisdiction to obtain payment of overdue monies or invoices, and shall be entitled to all costs, expenses, and attorney fees associated with collection thereof.

## **3. Damages**

Elite shall not be a party to any penalty clauses and/or liquidated damages provisions, and Customer agrees to indemnify and hold harmless Elite from any such action.

## **4. Hazardous Environmental Conditions**

It is acknowledged by both parties that no Elite Work will include any services related to the remediation at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials. Customer acknowledges that Elite is performing professional services for Customer and Elite is not and shall not be required to become an "arranger", "operator", "generator" or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA).

## **5. Warranties**

Sample Warranties for turf, pad, infill, or installation are indicative, and as such, may differ slightly in final form. Warranties are effective only upon completion of the Work and payment in full by Customer. The Parties agree that these warranties are intended to be the sole remedy for any defective pad, turf, or installation.

## **6. Documents**

All documents prepared or furnished by Elite in relation to any Work are instruments of Elite's professional service, and Elite shall retain an ownership and property interest therein. Elite grants Customer a license to use instruments of Elite's professional service for the purpose of constructing, occupying, and maintaining the project. Reuse or modification of any such documents by Customer without the written permission of Elite, shall be at Customer's sole risk, and Customer agrees to indemnify and hold Elite harmless from all claims, damages, and expenses, including attorneys' fees arising out of such reuse by Customer or by others acting through Customer.

#### **7. Capacity/Independent Contractors**

- a) At all times, Elite will act as an independent contractor and not as an employee. The Parties acknowledge that these Terms do not create a partnership or joint venture between them. Customer 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 Elite. Elite is responsible for paying and complying with reporting requirements for, all local, state, and federal taxes related to payments made by Customer under these Terms.
- b) Except as otherwise provided, Elite will have full control over working time, methods, and decision-making in relation to completion of the Work. Elite will work autonomously and not at the direction of Customer. However, Elite will be responsive to the reasonable needs and concerns of Customer.
- c) Except as otherwise provided, Elite will provide, at its own expense, any and all tools, machinery, equipment, raw materials, supplies, workwear, and any other items or parts necessary to complete the Work.

#### **8. Supersedes other Agreements**

These Terms, along with the agreed proposal, contain the entire agreement of the Parties with respect to the Work, and supersedes all previous agreements and understandings, whether written or oral, between the Parties with respect to its subject matter. The Terms are acknowledged as a necessary and agreed part of all Elite operations and as an inducement for Elite to do business with Customer, and they shall be incorporated as Appendix A-1 to any future contract between the Parties, and/or between either Party and another party (e.g. owner, master contractor, contractor, subcontractor) involved in the construction of the field, base, or any construction or project or part thereof for which Elite supplies and/or installs products or services. In the event that the terms of any other or subsequent contract shall conflict with these Terms, then these Terms shall govern, absent a signed agreement that explicitly and by name references and disallows Appendix A-1. It is agreed that there is no representation, warranty, collateral agreement, or condition affecting these Terms except as expressly provided herein.

#### **9. Severability**

Each of the terms and conditions provided in these Terms are separate and independent. If any provision of these Terms shall be determined to be invalid or unenforceable, the remainder of the Terms shall not be affected thereby and any such invalid or unenforceable provision shall be reformed so as to be valid and enforceable to the fullest extent permitted by law.

#### **10. Waiver**

The failure of Elite to insist, whether by conduct or otherwise, in any one or more instances, upon the performance of any of these Terms shall not be deemed or construed as a further or continuing waiver of any such condition or the breach of any other term or condition set forth herein.