

TERMS AND CONDITIONS

1. Contract

- 1.1. This contract is made between the Designer (“we” or “us”), and the Client (“you”) as defined in the Proposal.
- 1.2. We consider these terms to set out the whole agreement between you and us for the supply of the Services.
- 1.3. Please check that the details in these terms and the Proposal are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please make sure that you ask us to confirm any changes in writing, as we only accept responsibility for statements and representations made in writing.
- 1.4. Please ensure that you read and understand these terms before you sign and submit an order, because you will be bound by the terms once a contract comes into existence between us, in accordance with clause 1.5.
- 1.5. These terms shall become binding on you and us when you accept a Proposal.

2. Definitions

The definitions in this clause apply to these terms:

‘Design or Designs’ means all designs including drawings produced by us when performing the Services;

‘Price(s)’ means the prices agreed between us in the proposal

‘Project Inspection’ has the meaning given to it in Clause 4;

‘Proposal’ means the written or emailed document(s) that we send to you together with these terms and conditions for the execution of the services, which will be agreed by both of us;

‘Services’ means the set of services to be provided by us under this contract, as ordered and confirmed with us in the Proposal;

‘Site’ means the location where the Works are to be carried out as set out in the Proposal

‘Works’ means all the hard and soft landscaping including preparation, construction and planting work undertaken at the Site to implement the Design(s).

3. Services

- 3.1. Once the contract is accepted by you, we will provide the Services using reasonable skill and care in accordance with standards expected of a reasonable garden designer. We will provide the Services in a timely fashion, but any time deadline given is only an estimate.
- 3.2. This is a design and consultancy only agreement. You are responsible for contracting directly with third parties to carry out any subsequent work. We will not be responsible for the work undertaken by third parties, the manner in which the Works are being carried out nor any other aspect of their progress.

- 3.3. All specifications, figures, sizes and other descriptions in the Design are approximations only and should not be relied upon.

4. Project Inspection

- 4.1. If we have specified in writing in the Proposal that we will carry out Project Inspection, then the following Clause 4 will apply.
- 4.2. In consideration of payment of the fee specified in the Proposal, we will carry out Project Inspection.
- 4.3. Project Inspection means that we will conduct site inspections at appropriate intervals of the Works, as agreed in the Proposal. We shall notify you of any discrepancies that we have noted between the Design and the actual Works being delivered, in order that you may take steps to rectify such changes as you see fit.
- 4.4. We will not supervise or manage the Works. We may if agreed in the Proposal assist you in communicating with third parties, but you will contract directly with the third parties. By undertaking Project Inspection, we will not take responsibility or liability for the work of third parties or the Works, and we will not accept any liability in respect of either the execution or performance of such third party contractor, or the delivery or performance of the Works once completed.

5. Design Changes

- 5.1. Changes requested after sending us your documents (excluding the stage at which you choose the option to be developed into the final design) are at extra cost. Allow 28 days from agreement with us of your change request for delivery of your revised documents.
- 5.2. We may vary these terms and conditions by giving you 14 days' prior written notice if we are required to do so for reasons beyond our reasonable control.

6. Prices and Payment Terms

- 6.1. The Prices for the Services include VAT and delivery by first class post within the UK. For customers outside the UK, an additional charge will be made, as agreed between us in advance.
- 6.2. Payment is in advance of services being supplied, once the contract has been agreed.
- 6.3. We accept payment by personal cheques drawn on UK banks only and by PayPal. PayPal enables you to use credit or debit cards, and we do not receive details of your card.
- 6.4. We present cheques on commencing the design.
- 6.5. Without limiting any other remedies or rights that we may have, if you do not pay us on time, we may cancel or suspend our performance of the Services until you have paid the outstanding amounts.

7. Delivery

- 7.1. Depending on the size and complexity of your site, we will endeavour to produce designs approximately 4 weeks from receipt of your full information, photographs and measurements.

- 7.2. We will present a scale plan of your original garden and design options to you within approximately 14 days for your comments, from which we can provide your final design.
- 7.3. Delivery is by first class post unless otherwise agreed.

8. Your Obligations

- 8.1. You must provide us, in sufficient time, with any information and instructions relating to the Services that is or are necessary to enable us to provide the Services in accordance with these terms. This will include you notifying us in advance of any legal obligations affecting the site, including matters such as planning permission, building regulations or tree preservation orders and of any other special requirements relating to children, pets, disabled access, allergies, unusual climatic or soil conditions etc. If you do not, or if you provide us with incomplete, incorrect or inaccurate information or instructions, we may cancel the Contract by giving you written notice, or we may make an additional charge of a reasonable sum to cover any extra work that is required.
- 8.2. We generally supply the Services for domestic and private use, and you agree not to use the Services for any commercial purpose without our prior written agreement.
- 8.3. Nothing in this contract shall require us to provide advice or services in connection with the presence of or risk of contamination or pollution by harmful substances. You will be solely responsible for determining what investigations and actions should be taken in relation to such substances and shall commission such professional third party advice as you consider necessary.
- 8.4. Although we may give you general advice as to how the design may be constructed, and will endeavour to accommodate any special requirements of the site which you have specified, you are responsible for the construction of the design, and may need to seek specialist advice about structural aspects such as drainage, soil retention, retaining walls and site levels.

9. Intellectual Property Rights and Licence

- 9.1. The copyright, design right and all other intellectual property rights in any materials and other documents or items that we prepare or produce for you in connection with the Services will belong to us absolutely.
- 9.2. We will grant you a non-exclusive, perpetual, non-transferable and personal licence to use the Designs for your own internal business or residential purposes at the location set out in the Proposal, but for no other purpose. You may not allow any third party to use any of those Designs; use those Designs on behalf of or for the benefit of any third party; sub-license the use of the whole or any part of those Designs; or transfer them to anyone else without our prior written permission.
- 9.3. The provisions of this clause 8 shall remain in full force and effect after termination of this contract for whatever reason.

10. Liability

- 10.1. In the unlikely event that the Services do not conform with these terms, please let us know within 30 days of receipt of the Design. In the event of a defect or fault in the Services, we will:

- (a) provide you with a full or partial refund ,depending on what is reasonable; or
- (b) re-perform the Services.

If you do not notify us within 30 days, you shall be deemed to have accepted the Services.

- 10.2. We have not surveyed your garden and cannot be held responsible for ground conditions, requirements for additional drainage, or the presence of services which may cross your garden.
- 10.3. Subject to clause 9.4, if either of us fails to comply with these terms, neither of us shall be responsible for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these terms.
- 10.4. Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, losses that fall into the following categories: loss of income or revenue; loss of business; loss of anticipated savings; or loss of data.
- 10.5. This clause does not include or limit in any way our liability for: death or personal injury caused by our negligence; or fraud or fraudulent misrepresentation; or any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.
- 10.6. We will use reasonable endeavours to comply with any specified delivery dates, but no such dates are guaranteed, and we exclude liability for any loss (whether direct, consequential or otherwise) resulting from any delay in the delivery of the Services.
- 10.7. The provisions of this clause 9 shall remain in full force and effect after termination of this contract for whatever reason.

11. Cancellation

We comply with the Consumer Protection (Distance Selling) Regulations 2000. Because the designs are made to your specification, there is no right of cancellation or refund under these regulations (see regulation 13) once the Design has been purchased by you.

12. Force Majeure

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Force Majeure Event). This will include (but not be limited to) the death or incapacity of the garden designer working on the Design(s). If the Force Majeure event continues for a period of one month or more, we will take reasonable steps to bring the Force Majeure Event to an end, or if this is not possible, either party may terminate the contract, without either party sustaining any financial liability other than you being liable to pay our reasonable fees incurred up to the date of termination.

13. Waiver

If either party chooses not to take up any right of action at any time then this will not prevent that party from taking action on the same or similar point at another time.

14. Proper Law

These terms and conditions will be governed by and construed in accordance with the laws of England and Wales.

15. Contracts (Rights of Third Parties) Act 1999

A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

16. Severability

If any term of this contract shall be held to be invalid, illegal or unenforceable, the remaining terms shall remain in full force and effect and such invalid, illegal or unenforceable term shall be deemed not to have been part of this contract.

17. Entire Agreement

This contract, the Proposal and any variation to the Proposal in accordance with clause 4 above contains the entire understanding between the parties and supersedes all previous agreements between the parties. It is expressly provided that nothing in this contract excludes any liability for pre-contract statements or representations made fraudulently.

18. Data Protection

We will only use the personal information you provide to us to provide the Services, or to inform you about similar services which we provide, unless you tell us that you do not want to receive this information. We will not pass your data to third parties.

19. Privacy

We do not share your details with any third parties other than when order details are processed as part of the order fulfilment, or with your permission. We may contact you by post, telephone or email in connection with your design request.