

HANDY GARDENER GLOUCESTER - TERMS AND CONDITIONS

1. Definitions and Interpretations

1.1 "Agreement" shall mean these agreed Terms and Conditions for the supply of Products and provision of Services.

1.2 "Consumer" shall mean the person who deals as a consumer as defined by section 2(3) of the Consumer Rights Act 2015.

1.3 "Customer" shall mean the person that orders the Products and Services from the Supplier and who is defined as a consumer in accordance with section 2(3) of the Consumer Rights Act 2015.

1.4 "Order" shall mean the formal acceptance of the Proposal by the Customer.

1.5 "Products" shall mean all Products supplied by the Supplier in the course of this Agreement.

1.6 "Proposal" shall mean the written estimate of the Products and Services that the Supplier offers to the Customer.

1.7 "Services" shall mean all Services supplied by the Supplier in the course of this Agreement.

1.8 "Supplier" shall mean the party contracted to provide the Products and Services under this Agreement and who is defined as a "Trader" in accordance with section 2(2) of the Consumer Rights Act 2015.

1.9 "Terms and Conditions" shall mean this agreed written contract between the Supplier and the Customer.

1.10 "Works" shall mean the work carried out as part of this Agreement and the physical location of the work being carried out.

1.11. Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

1.12 "Schedule 1" shall mean and apply to written estimate/s and subsequent invoice/s which replaces it.

1.13 Reference to any statutory provisions in this Agreement shall include any statutory provisions, which amends or replaces it.

2. Introduction

2.1 No addition, alteration, substitution or waiver of these terms and conditions will be valid unless expressly accepted in writing by the Supplier or a person authorised to sign on the Supplier's behalf.

2.2 No oral discussion or agreement shall be valid or capable of altering these Terms and Conditions.

3. Proposal

3.1 The Proposal given on or attached to these Terms and Conditions will only remain valid for a period of 30 days.

3.2 The Proposal must be accepted by the Customer in its entirety and without modification.

3.3 Acknowledgment and acceptance of this Proposal is made by the Customer placing an Order within the period specified in paragraph 3.1 above, at which time the Customer will be bound by these Terms and Conditions. Such contract is hereinafter referred to in these Terms and Conditions as "an Order".

3.4 An Order is only accepted once the Supplier confirms acceptance to the Customer in writing. Goods / materials must be paid for in advance together with a deposit to book labour. Such deposits are detailed in schedule 1.

3.5 The Supplier reserves the right to refuse any Order.

4. Products and Services Specification

4.1 The Products and Services provided by the Supplier to the Customer are those detailed in Schedule 1 (being written estimate/s or invoice/s) of these Terms and Conditions.

4.2 If the Customer wishes to vary any of the Products and Services provided the written consent of the Supplier must be obtained. The Supplier must be informed in writing within 15 days of acceptance of the Order of any changes, alterations, reductions or cancellations.

4.3 The Supplier reserves the right to make additional charges for any agreed written variation to Schedule 1 of these Terms and Conditions.

4.4 Any descriptions, promotional material, drawings or sketches provided by the Supplier or third parties are for illustrative purposes only and to provide an outline of what will be provided, unless agreed in writing between the parties.

4.5 The Supplier will begin delivering the Products and Services at the time and date specified in Schedule 1 of these Terms and Conditions. The Supplier reserves the right to vary the time and date, and shall inform the Customer of any variation.

4.6 The start date for delivery of the Products and Services is an estimate only and is not guaranteed by the Supplier. The start date shall not be of the essence in this Agreement.

4.7 The Supplier shall not be liable for any costs; damages or losses caused either directly or indirectly by any delay in delivering the Products and Services to the Customer.

5. Price

5.1 The price for the Products and Services provided is inclusive of Value Added Tax (VAT) and such other charges that may apply.

5.2 If the rate of VAT increases between the date of the Order and the date of delivery and/or completion the Supplier will add the necessary additional amount of value added tax to the price of the Products and Services.

5.3 If the price of the Products and Services increases for any other reason between the date of the Order and the date of completion the Supplier will notify the Customer of this. Where possible the Supplier will attempt to source cheaper alternative Products or Services.

6. Title and Payment

Payment is due on date of invoice / service date for regular customers.

6.1 For project work and unless otherwise stated in the Order payment for the Products and Services comprised in each Order shall become due 7-30 days before delivery date.

6.2 The Supplier will be entitled to claim all additional costs (including, but not limited to legal costs) incurred in obtaining payment from the Customer where the Customer is late paying the Supplier.

6.3 Title to the Products comprised in the Order shall not pass to the Customer until the Customer has paid the full price. Furthermore the Supplier reserves the right to sue for the price once payment becomes due notwithstanding that title may not have passed.

7. Delivery and Risk

7.1 Unless otherwise stated in the Order, the price quoted includes delivery to the address specified in the Order.

7.2 Whereas the Supplier will try to ensure compliance with any delivery times and dates given, such times and dates are an estimate only. The Supplier will not be responsible for any loss whatsoever arising from or consequential upon delay in delivery.

7.3 Risk in the goods shall pass to the Customer upon delivery.

8. Supplier Obligations

8.1 The Supplier will carry out all Works in accordance with the Proposal and subsequent Order.

8.2 The Supplier may where necessary sub-contract parts of the Works to suitably qualified sub-contractors. The Supplier will inform the Customer in writing prior to appointing the sub-contractor. Such written notice to the Customer will provide full details of the proposed sub-contractor.

8.3 The Supplier will comply with all relevant health and safety regulations, including (but not limited to) site safety and personal safety of employees, contractors and visitors.

8.4 The Supplier will at all times hold appropriate and valid insurance, including public liability insurance.

8.5 The Supplier shall ensure that all Works are carried out with reasonable care and

skill and to a reasonable standard.

8.6 The Supplier shall ensure that where required all relevant codes of practice are complied with.

8.7 The Supplier may at any time refuse or withdraw direct access to the Works where required for health and safety reasons.

8.8 If during the Works any issues are found that require additional time or materials and this causes an increase in costs the Supplier will send the Customer a further Proposal giving details of the extra costs and will only proceed with the Works once the Customer's written acceptance has been received.

8.9 The Supplier will have made provision in schedule 1 for the safe and proper disposal of all waste materials generated by the Works subject to completion and final payments having been made.

8.10 Depending upon the nature of the Products and Services provided, the Works may be weather dependent. Wherever possible the Supplier will seek to minimise any delay or disruption caused by unsuitable or inclement weather.

9. Customer Obligations

9.1 The Customer will permit the Supplier access during normal working hours to undertake the Works.

9.2 The Customer will remove all items necessary to allow the Supplier to commence the Works.

9.3 The Customer is responsible for all pipes, services and utilities whether located above or below ground. The Customer shall notify the Supplier of the exact location of any such services in the Works area prior to the commencement of the Works. The Supplier is not responsible for damage caused to any pipes, services or utilities where the Supplier has not been previously notified by the Customer of their existence and exact location.

9.4 The Customer will obtain all consents, licenses and permissions from landlords, local authorities and others, which are required before the Works can commence and in a timely manner so as not to delay the Works.

9.5 The Customer shall only access the immediate area of the Works with the Supplier's express permission.

9.6 If the Customer does access the Works they (and any third party under their control) shall observe all relevant health and safety regulations and follow the advice and directions of the Supplier at all times.

9.7 The Customer is responsible for the upkeep and maintenance of the planting and all other Products and Services provided as part of the Works once the Works have been completed. Unless an agreed paid schedule of on-going maintenance is agreed between the Customer and the Supplier.

10. Warranties and Guarantees

10.1 In addition to any statutory rights the Customer has as a consumer, the Supplier

warrants that the Products supplied and used will be free from defects.

10.2 The Supplier warrants that the Works will be carried out using all reasonable skill and care.

10.3 The Supplier guarantees the Products fitted shall be free from all defects for a period of 30-days after completion of the Works. This excludes any plants or grasses where aftercare has been neglected.

10.4 If the Products and Services provided by the Supplier are found to be defective the Supplier shall at their discretion re-perform, repair or reinstall the Products and Services.

11. Defects and Delays

11.1 The Supplier will not be responsible for defective Products and/or Services where caused by the negligence or poor workmanship of third party contractors not employed by the Supplier.

11.2 Where the Supplier has completed the Works and the Customer is unhappy with the results the Customer shall inform the Supplier and allow the Supplier up to 90 working days to further correct and complete the Works.

12. Exclusions

12.1 The Supplier does not exclude liability for death or personal injury.

12.2 The Supplier shall not be liable for any direct loss or damage suffered by the Customer howsoever caused, as a result of any negligence, breach of contract, misrepresentation or otherwise in excess one million pounds £1,000,000.

12.3 The Supplier shall not under any circumstances be liable for any indirect or consequential loss howsoever caused whether by negligence, breach of contract, misrepresentation or otherwise.

12.4 The Supplier or the Supplier's insurers shall not be liable or investigate any claim for loss unless the Customer provides written notice within 90 days of its occurrence and gives the Supplier or the Supplier's insurer every facility to investigate such occurrence.

12.5 The Supplier shall not be liable to the Customer for damage caused by the Customer or any third party failing to follow instructions given by the Supplier.

13. Indemnities

13.1 The Supplier undertakes to indemnify and hold the Customer harmless against all claims, proceedings, costs, expenses, damages and fines arising from the Supplier's negligent performance, breach or failure to perform its obligations under these Terms and Conditions.

13.2 The Customer will indemnify the Supplier against all claims, costs, damages or fines the Supplier may incur arising from the Customer's breach of its obligations under these Terms and Conditions.

14. Complaints

The Supplier aims to provide a high level of service. If the Customer has an enquiry or

complaint regarding the general service or specific Products and Services provided by the Supplier the Supplier should be contacted immediately.

15. Arbitration

15.1 Where the parties to this Agreement are in dispute for a period of more than 60 days and cannot resolve the dispute either party may refer the dispute to arbitration as detailed below.

15.2 The parties to this Agreement agree that Small Claims Mediation (UK) Ltd shall act as Arbitrator in the event of an unresolved dispute being referred to them.

15.3 The party referring the dispute to the Arbitrator shall inform the other party in writing at the same time as referring the dispute.

15.4 Both parties will continue to operate and honour the terms of this Agreement while the arbitration process is ongoing.

15.5 The decision of the Arbitrator is final and binding on the parties unless the decision is overruled in further arbitration or in a court of law.

15.6 The Arbitrator will also decide on the arbitration costs to be borne by the parties.

16. Cancellation and Cooling Off Period

16.1 In accordance with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (and any other relevant legislation). Where this Agreement is concluded at the Customer's home or office (either as a result of a solicited or unsolicited visit by the Supplier) the Customer has an initial minimum statutory 14 days "cooling off" period. This allows the Customer 14 days in which to change their mind and cancel the Order.

16.2 Subject to paragraph 16.1 above the "cooling off" period for the purposes of this Agreement is 14 days.

16.3 Furthermore for the purposes of this Agreement the Customer may cancel the Order within the "cooling off" period where the Agreement is concluded at a place other than the Customer's home or office, such as the Supplier's office.

16.4 The "cooling off" period runs from receipt of this Agreement by the Customer.

16.5 Notice of cancellation by the Customer must be given to the Supplier in writing. Please see the suggested form of cancellation at the end of this Agreement.

16.6 The Supplier reserves the right to retain monies or seek payment for all reasonable costs incurred in respect of the Order where the Customer has specifically requested in writing that goods or services be supplied within the initial "cooling off" period.

16.7 The Supplier will not supply any goods or services during the initial cooling off period unless a specific written request is received from the Customer to do so.

16.8 If the Customer seeks to cancel the Order outside the cooling off period stated in paragraph 16.2 above the Supplier reserves the right to retain any monies paid by the Customer to cover all reasonable expenses incurred by the Supplier.

16.9 If such retained monies do not cover the reasonable expenses incurred by the

Supplier the Supplier reserves the right to seek additional payment from the Customer to cover these reasonable expenses.

17. Termination

17.1 Either party may terminate this Agreement immediately in the event that:

17.1.1 Either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and obligations under this Agreement, and

17.1.2 Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy.

17.2 Furthermore this Agreement may be terminated in the event that:

(a) Either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986, or

(b) The Supplier becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or

(c) The Supplier has a receiver appointed to administer any of its property or assets, or

(d) The Supplier ceases or threatens to cease to carry on business, or

(e) Either party makes any voluntary agreement or enters into a compromise for the benefit of its creditors, or

(f) The Customer fails to make payment in accordance with the terms of this Agreement.

17.3 Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination.

18. Notices

18.1 Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party.

18.2 Any such notice shall be deemed to be effectively served as follows:

18.2.1 In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.

18.2.2 In the case of service by email, or facsimile transmission on the next working day.

19. Force Majeure

Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to Acts of God, war, civil disorder or industrial disputes. If such delay or failure continues for a period of at least Sixty (60) days the party not subject to the force majeure shall be entitled to terminate this Agreement by written notice to the other.

20. Waiver

Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

21. Assignment

Neither party may assign their rights under this Agreement without the prior consent in writing of the other party.

22. Severance

The paragraphs, sub paragraphs and clauses of this Agreement shall be read and construed independently of each other. Should any part of this Agreement or its paragraphs, sub paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub paragraphs and clauses.

23. Entire Agreement

This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreement between the parties.

24. The Consumer Rights Act 2015

These Terms & Conditions are specifically written in accordance with the Consumer Rights Act 2015. Should these Terms & Conditions conflict with the Act, the Consumer Rights Act 2015 shall prevail and apply.

25. Your Statutory Rights

Nothing in these Terms and Conditions shall affect the Customer's statutory rights.

26. Jurisdiction

These terms and conditions shall be construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English courts.