

The Garden Project Co— Terms and Conditions

These Terms and Conditions apply to the sale of all Services by us, The Garden Project England Ltd, trading as The Garden Project Co, a company registered in England and Wales under number 12212739, whose registered office address is Bowden House, 36 Northampton Road, Market Harborough, Leicestershire, LE16 9HE ("the Company/We/Us/Our").

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

- “Customer/You/Your” means the business or corporate body, consumer, or individual purchasing the Product(s). Where an individual is entering into the contract on behalf of a business, the individual confirms they have the authority to enter into this contract on behalf of that business and the business will be our Customer in the context of the contract;
- “Consumer” is as defined in the Consumer Rights Act 2015;
- “Materials” means the materials as detailed within the Proposal which shall be used to provide the Services.
- “Property” means the property at which the Services are to be carried out;
- “Proposal” means our estimate for providing the Services, which unless otherwise stated, remains open for acceptance for a period of 30 days and constitutes our entire scope of works; and
- “Services” means the landscaping and/or any other Services we will provide as specified in the Proposal.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

- 1.2.1 “writing/written” includes emails and similar communications;
- 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 1.2.3 “these Terms and Conditions” refers to these Terms and Conditions as amended or supplemented at the relevant time;
- 1.2.4 a clause refers to a clause of these Terms and Conditions;
- 1.2.5 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

1.3 The headings used in these Terms and Conditions are for convenience only and will have no effect upon their interpretation.

1.4 Words imparting the singular number include the plural and vice versa. References to persons include corporations.

2. How the contract is Formed

2.1 Where necessary, we will arrange a survey of the property. At the time of the survey, the property should be made available and fully accessible, and our Proposal will be based on any findings at this time. Any dimensions provided are subject to re-measure at this time. Any findings that have changed since the survey, were not evident at the time of survey or where a survey was not possible will be added to the contract price.

2.2 These terms and conditions govern the sale of all Services provided by us and will form the basis of the contract between you and us.

2.3 Following an initial meeting in order to discuss the necessary works, we will provide to you a Proposal.

2.4 A legally binding contract between you and us will be created when you accept our Proposal. Before accepting our Proposal, please ensure that you have read these terms and conditions carefully. If you are unsure about any part of these terms and conditions, please ask us for clarification. No terms or conditions issued or referred to by you in any form will in any way vary or add to these terms and conditions unless we agree otherwise in writing.

2.5 Our Proposal is based on the information provided to us at the time we prepare it. If any errors or discrepancies become evident which affect our price, we reserve the right to make adjustments to it.

3. Design

- 3.1 We will ensure that our Services are provided with reasonable care and skill and in accordance with best trade practice. Our Services, and any guidance we provide, will be from a landscape design perspective only; you must gain specialist advice from architects, building control or other specialist contractors where applicable.
- 3.2 We will provide you with a set number of designs, as agreed within our Proposal, which will need to be approved by you in writing. We will accommodate a maximum of one minor revision to your chosen design, to be at our discretion. Any further alterations, any changes to the original brief, any changes required after you have approved the design, works required outside of our normal working hours or any additional visits required above the allowance included for in our Proposal will be chargeable at our hourly rate applicable at the time.
- 3.3 If you require any additional services after accepting our Proposal, we reserve the right to provide you with a further Proposal, which must be accepted by you in writing before we will proceed.
- 3.4 We can work from developers’ or architects’ plans at your request. These will be based on the relevant developer’s specification and measurements. All decisions relating to the final design and build are your and the developer’s responsibility. We will have no liability where we have relied on measurements provided to us where these are found to be incorrect.
- 3.5 We will provide our designs and plans digitally and have included for this in our Proposal. If you require a printed design, or a different format to that in our Proposal, this shall be chargeable.
- 3.6 We may provide suggestions for Materials or other services to be provided to you by a third party. You are under no obligation to accept these suggestions but if you decide to, you will need to ensure the relevant supplier is suitable for your needs. A separate contractual relationship will be created between you and the supplier, under separate terms and conditions, for the Materials and any fault with them.
- 3.7 Any timescales we provide are to be considered an estimate only and are not of the essence of the contract.

4. The Services

- 4.1 The Services will be carried out during our normal working hours (Monday to Friday, 8am – 4:30pm, excluding bank holidays), unless otherwise agreed. Any Services required outside of these hours may incur additional costs.
- 4.2 We will require you to grant us unrestricted access to the property at all reasonable times for the purposes of taking measurements and or carrying out the Services, and for any subsequent remedial work if required.
- 4.3 We will provide the Services in accordance with the specification set out in the accepted Proposal (as may be amended by written agreement between you and us from time to time, however we shall not be liable to begin amendments until we have received written confirmation from you).
- 4.4 We will ensure that the Services are performed with reasonable care and skill and to a reasonable standard which is consistent with all relevant codes of practice, best trade practice and all current building regulations.
- 4.5 We will ensure that no parts of the property suffer damage as a result of our provision of the Services. This does not apply to any damage caused to any existing decorations which is reasonably commensurate with the carrying out of works in the usual way. We will make good any other damage that occurs at no additional expense to you, as soon as is reasonably possible.
- 4.6 Any dates given by us are estimates only and unless otherwise agreed by us in writing, we shall have no obligation to complete the works by a specified date.
- 4.7 From time to time, we may take photos of the Services for marketing and social media purposes. We will use all reasonable endeavours to remove any identifying features such as any persons. If you are unhappy with our posts, let us know as soon as possible and we will remove or edit them.

4.8 The Services shall be considered complete on our notification to you that they have been successfully completed.

5. Delivery

5.1 We will provide an estimated delivery date (and installation date where applicable) for the Materials. However, it is possible for delays to be incurred due to unavoidable breakages occurring during the manufacture of the Materials, and we cannot be held liable for any costs incurred by any delays as a result.

5.2 Most orders will be delivered by lorry or large van, so it is important that you tell us about any restrictions on access at the time of your order and/or survey.

5.3 All deliveries will be delivered to the address stated on the order and this will typically be kerbside delivery, depending on the vehicle used.

5.4 We can only deliver to mainland UK addresses. If no one is available at the Property at the time of delivery, the driver will retain the Materials, and we will await further instructions. The redelivery will be chargeable and this must be paid before the redelivery can take place. If the Materials are to be left without you being present, then full payment must be received prior to delivery, and we cannot accept responsibility for incorrect delivery or loss of Materials where you (or someone suitable that is nominated by you) are not present to accept the Materials.

5.5 Delivery will be deemed to have taken place when the Materials have been delivered to the agreed delivery address and you (or someone identified by you) have taken physical possession of the Materials.

5.6 We cannot be held responsible if the items are lost, stolen or become damaged after the delivery has taken place. Please notify us at the time we quote if there are any access restrictions both within and outside the Property. Please also notify us within 24 hours of delivery if there are any defects, damage, missing or incorrect items so we can investigate.

5.7 We require a minimum of 48 hours' notice if the agreed delivery date is to be changed. If we receive less than 48 hours' notice, we reserve the right to charge for any costs we incur as a result.

6. Installation

6.1 Any installation programme we agree is to be treated as an estimate only. We may be delayed by factors outside of our control so unless we agree otherwise in writing, we will have no obligation to complete our Services by a specified date.

6.2 We may instruct you to take reasonable steps to protect the Property including, but not limited to, the removal of valuable and/or delicate items from areas where our work is to be carried out and we cannot be held responsible if you fail to do so. We will not move furniture or other obstacles to gain access to the required parts of the Property if this work is more than minimal (which will be decided at our sole discretion).

6.3 You are responsible for ensuring that:

6.3.1 the Property is suitable for our Services to be carried out;

6.3.2 the installation team and any delivery vehicles have unrestricted access to the Property, with suitable adjacent parking, on the agreed dates and at the agreed times. Our price is based on being able to complete our Services in one continuous visit or where we are carrying out our Services in phases, each phased visit is to be continuous;

6.3.3 parking permits, if required, have been organised in advance;

6.3.4 we have access to adequate electricity and water facilities, within 5m of the installation, at no cost to us; and

6.3.5 if any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, these have been obtained by you before we begin the Services.

6.4 If you fail to comply with any of your obligations outlined above, or if we are otherwise delayed for any reason beyond our control, we will not be held liable for any delays and we will charge for any costs we incur as a result, such as for storage or non-productive

visits to the Property.

7. Fees and Payment

7.1 The fees payable for the Services shall be as detailed in the Proposal.

7.2 We reserve the right to issue any final invoice at any time if the Services are delayed through no fault of our own. We also reserve the right to request 100% of the quoted fee up front at our sole discretion.

7.3 We reserve the right to charge for expenses, mileage and travelling time to attend property visits at your request. Should we incur any additional costs due to material price increases or any other reasons outside of our control we reserve the right to pass these costs onto you.

7.4 All invoices are payable in full, within 14 days from the date of invoice, without set off, withholding, retention or deduction, unless otherwise agreed by us.

7.5 The time of payment is of the essence of the contract. If you fail to make any payment to us by the due date then, without prejudice to any other right or remedy available to us, we will have the right to suspend the Services and charge you interest on a daily basis at the rate of 8% per annum above the Bank of England base rate from time to time in force, both before and after judgment, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. We also reserve the right to charge for any costs we incur in attempting to recover the debt.

7.6 All prices quoted are in pounds sterling and subject to VAT at the current rate.

7.7 No certification (if applicable) will be issued until payment has been received by us in full for each phase completed.

8. Cancellation and Termination

8.1 If you are a Consumer, you have a legal right to a 14-day "cooling off" period within which you can cancel the contract for any reason. This period begins once the contract between you and us is formed, as set out in clause 2, and ends 14 calendar days afterwards. However, for any Materials which are custom made to order, you will have no legal right to cancel under this clause

8.1.

8.2 If you wish to cancel the contract, you may do so at any time by giving notice to us, provided that:

8.2.1 If cancellation takes place more than 60 days before the start date, the design costs shall be non-refundable but no other money shall be payable;

8.2.2 If cancellation takes place more than 30 days but less than 60 days before start date, you shall be charged 50% of the total price;

8.2.3 we shall be immediately entitled to payment or to withhold payment for 100% of the total price if cancellation takes place within 30 days of the start date.

8.3 We may cancel the contract at any time and if we do, we will confirm this in writing. If we cancel the contract before providing the Services, we will refund any payments you have made in advance.

8.4 Either we or you may cancel the contract immediately if the other:

8.4.1 has committed a material breach of this contract, unless the breach is capable of remedy, in which case this right to terminate will be exercisable if the other party has failed to remedy the breach within 14 days after a written notice to do so; or

8.4.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.

8.5 Cancellation of the contract for any reason will not affect the rights and liabilities of the parties already accrued at that time and any clauses that are stated to continue in force after termination will not be affected.

9. Assignment and Sub-contracting

9.1 You may not, without our prior written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of

your rights or obligations under this contract.

9.2 We may at any time assign, transfer, charge, sub-contract, or deal in any other manner with all or any of our rights or obligations under this contract, without your prior consent. If we sub-contract any of our obligations, we will be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.

10. **Guarantee:** Any Materials supplied by us shall be subject to the extents and limits of the guarantee provided to us by the manufacturer's guarantee or warranty. Such guarantee will only be transferred to you when we have received payment in full. Lighting packages have a guarantee of 12 months.

11. Our Liability

11.1 Except in respect of death or personal injury caused by our negligence, we will not, by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained in the contract, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the contract. All warranties or conditions whether express or implied by law are expressly excluded, to the maximum extent permitted by law.

11.2 We cannot be held responsible for any failure or delay in providing our Services or for any costs or losses sustained or incurred where our failure or delay was caused by incorrect information supplied by you, or your failure to comply with any of the obligations detailed in these Terms and Conditions.

11.3 In the event of a breach by us of our express obligations under these Terms and Conditions, your remedies will be limited to damages, which in any event, will not exceed the fees paid by you under the contract.

11.4 We will use our own exclusive judgement when deciding upon artistic factors required for the provision of the Services. To the extent permissible by law, we will not accept liability, and no refunds will be offered, in the unlikely event that you are dissatisfied due to a matter of personal taste.

11.5 Nothing in these Terms and Conditions seeks to exclude or limit our liability for death or personal injury caused by our negligence (including that of our employees, agents or sub-contractors); or for fraud or fraudulent misrepresentation.

11.6 Nothing in these Terms and Conditions seeks to exclude or limit any of your rights as a Consumer. More information can be obtained from your local Citizens' Advice Bureau or Trading Standards Office.

11.7 If you wish to complain about any aspect of your dealings with us, please contact us in writing in the first instance so we can investigate.

12. Intellectual Property Rights

12.1 We own (and retain) all intellectual property rights subsisting in any and all designs we create.

12.2 Provided payment is made in accordance with the terms of payment above, we will grant you a non-exclusive license to use the intellectual property the subject of the contract, only for the purposes for which we are engaged by you. The license will become effective once the final design is provided. You may not sub-license these intellectual property rights without our prior written permission, nor allow another contractor to use such.

12.3 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of our intellectual property rights.

12.4 Any license granted shall be automatically revoked if you breach any of these terms and conditions or if the contract is cancelled in accordance with clause 8.

12.5 The license will apply only to the final design and will not extend to any draft concepts, images, designs or other material viewed by you. These cannot be used without our express permission.

12.6 You warrant that any document given to us will not cause us to

infringe the intellectual property or other legal rights of any third party.

12.7 We reserve the right to use any design created by us and take photographs of the property for our own promotional purposes. Please advise us when accepting our Proposal if you do not agree to this.

13. **Events Outside of Our Control (Force Majeure):** We will not be liable for any failure or delay in performing our obligations where that failure or delay results from any cause that is beyond our reasonable control. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storm, earthquake, acts of terrorism or war, pandemic, epidemic, governmental action, natural disaster, or any other event that is beyond our control.

14. **How We Use Your Personal Information:** All personal information that we may collect will be collected, used and held in accordance with the provisions of the Data Protection Act 2018 and any changes to it.

15. Other Important Terms

15.1 Nothing in the contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

15.2 The contract is between you and us. It is not intended to benefit any other person or third party in any way and no such person or party will be entitled to enforce any part of these Terms and Conditions.

15.3 Any part of these Terms and Conditions found to be unlawful, invalid or otherwise unenforceable would be severed from our contract. This will not affect the validity and enforceability of the remaining parts of the contract.

15.4 If the rights under these Terms and Conditions are not exercised or enforced following a breach of contract by either party, this does not mean that either of us has waived our right to do so at a later date.

15.5 Notices will be deemed to have been duly received and properly served 24 hours after an email is sent, or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

16. Governing Law and Jurisdiction

16.1 These Terms and Conditions (and the contract), including any non-contractual matters and obligations arising from them or associated with them, will be governed by, and construed in accordance with, the laws of England and Wales.

16.2 Any dispute, controversy, proceedings or claim between us and you relating to these Terms and Conditions (or the contract) (including any non-contractual matters and obligations arising from them or associated with them) will fall within the jurisdiction of the courts of England and Wales.