

## Terms and Conditions

### 1. Contract

This contract is made between The Cheshire Garden whose principal address is 45 City Road, Chester, CH3 3AE (“we” or “us”) and the Client as defined in the Proposal (“you”).

### 2. Definitions

“**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 or any variation which we have agreed;

“**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 work to be carried out 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 set out in the Proposal using reasonable skill and care in accordance with the standards expected of a reasonable garden designer. We will provide the Services within a reasonable time, but any time period referred to within the Proposal is only an estimate.

3.2 This is a design and consultancy agreement only. You are at all times responsible for contracting directly with third parties to carry out any additional work. We will not be responsible for work undertaken by third parties, as to the time and manner in which the Works are being carried out.

3.3 Any specifications, figures, sizes and other descriptions in the Design are approximations only.

### 4. Project Inspection

4.1 If we have specified in writing in the Proposal that we will undertake Project Inspection, then the following clause 4 will apply.

4.2 In consideration of the payment of the fee specified in the Proposal, we will undertake Project Inspection.

4.3 Project Inspection means that we will conduct Site inspections at appropriate intervals and third party 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 to assist you in considering whether or not you wish to take steps to rectify the position as you see fit.

4.4 We will not supervise or manage the third party Works. We may if agreed in the Proposal assist you in communicating with third parties, but you will contract directly with the third parties and by undertaking Project Inspection we will not take responsibility or liability for the work of third parties.

## 5. Variations

5.1 Either party will be entitled to vary or amend the scope of the Services or the Proposal with the consent of the other party. Any variation will only be effective once both parties have agreed the variation in writing by means of an additional Proposal, including any additional fees incurred as a result of the variation, whereupon this will form a binding contract between the parties. We will then carry out the varied contract as if the variation were originally included within the Proposal. We reserve the right to refuse to accept a variation if it reduces the value of the contract by more than 10%.

5.2 We may vary these Terms and Conditions by giving you 14 days prior written notice that we require to do so for reasons beyond our reasonable control.

## 6. Prices and Payment Terms

6.1 The Prices for the Services are set out in the Proposal and will become fixed on the acceptance of the Proposal by both parties unless varied in accordance with these terms. The fees will be payable in accordance with the payment schedule or in the circumstances set out in the Proposal. All invoices shall be paid by you upon receipt of the invoice. If sent by post, the invoice shall be deemed to have been received 2 working days after posting. We reserve the right to charge interest at 5% per annum above the base rate of the Bank of England on any outstanding amounts (calculated on a daily basis) that remain payable after the due date. If you fail to pay an invoice by the due date, we may after 7 days prior notice suspend the performance of Services until payment in full is received.

6.2 Where we are providing Services to you, we will ask you to make an advance payment of the price for the Services. The advance payment will be to cover our costs to third parties and for materials and other expenses and is dependent on the scale of the work that we carry out for you. We will invoice you for the balance of the services in accordance with the terms set out in the Proposal. Payment of the advanced payment represents that you accept these Terms and Conditions.

6.3 We may, by giving notice to you at any time up to 28 Business Days before commencement of the Services, increase the prices of the Services to reflect any increase in the cost of the Services that is due to:

- Any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- Any request by you to change the delivery date(s), quantities or types of Services ordered, or the Specification;

- Any delay caused by you or failure by you to give us adequate or accurate information or instructions.

## **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 endeavour to present a scale plan of your original garden and design options to you within approximately 14-28 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 will allow us reasonable access to both you and the Site at agreed times in order to carry out the Services.

8.2 You will provide us within reasonable 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 obligation affecting the Site. If you do not, or if you provide us with incomplete, incorrect or inaccurate information or instructions, we reserve the right to cancel the contract upon written notice and make an additional charge in a reasonable sum to cover any extra work required.

8.3 You agree that the Services are for domestic and private use and you will not use the Services for any commercial purpose without our prior written agreement.

8.4 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.

8.5 Prior to the commencement of the Services you will be responsible to advise us of any adverse conditions, hazards or other relevant feature or installation on site which may cause harm or injury in the performance of the Services and or the Works.

8.6 You will be responsible for any planning permission or licences in respect of the Works and 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 physical and structural aspects such as drainage, tree surgery, soil retention, retaining walls and site levels.

8.7 In the event that we are unable to provide the site survey drawings you will be responsible to provide such as we may require in order to perform the Services.

## **9. Intellectual Property Rights and Licence**

9.1 The copyright, design right and all other intellectual property rights in any materials or other documents or items that we prepare or produce for you in connection with the Services will belong to us absolutely.

9.2 Upon payment of the full amount due in respect of the Services, 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 locations 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-licence the use of the whole or any part of those Designs, or transfer them to anyone else without our prior written consent.

9.3 The provisions of this clause 9 will remain in full force and effect after termination of this contract for whatever reason.

## **10. Liability**

10.1 In the event of any fault or defect arising in the Services, we shall have the right to remedy such fault where possible by resupplying the Services. In the event that you do not advise us of any defect in the Services within 30 days after completion of the Services or the provision of the delivery of the relevant part of the Services, you shall be deemed to have accepted the Services.

10.2 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 default or fault in the Services we will:

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

10.3 We will not be liable in any way whatsoever whether that be under contract, tort or otherwise for any indirect or consequential loss or damage, loss of revenue, loss of profit, loss of goodwill, costs, expenses or other claims for consequential compensation (even if due to our negligence such loss is reasonably foreseeable or if you have been advised of the possibility of suffering such loss) that you may suffer as a result of the Services provided under this contract.

10.4 Nothing in this contract shall affect your statutory rights as a consumer.

10.5 This clause does not exclude or limit in any way our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation, or any statutory obligation or any other matter from 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 10 shall remain in full force and effect after termination of this contract for whatever reason.

## **11. Cancellation**

11.1 The Services will start on the date of any initial consultation undertaking with a view to the preparation of the Proposal. Either party may terminate this contract at any time by giving the other

party advanced written notice if the other becomes insolvent or bankrupt, makes any arrangement or composition with its creditors, has a petition filed against it for compulsory liquidation or bankruptcy, has a Receiver appointed over any or all of its assets, is unable to pay its/his/her debts as and when they fall due or otherwise ceases to carry on business.

11.2 If either party is in breach of any significant provision of this contract (material breach) then that party will give to the other party not less than 14 days written notice to allow them to correct that breach. If that party fails to remedy the breach within the notice period, then the other party will be entitled to terminate the contract with immediate effect at the end of that notice period.

## **12. Force Majeure**

Neither party will be regarded as in breach of this Proposal if the failure is as a result of a circumstance beyond that party's reasonable control (Force Majeure). This will include but not be limited to the death or incapacity of the designer working on the Designs. If the Force Majeure continues for a period of 1 week or more, both parties will discuss ways in which to alleviate the situation which will include the possibility of approaching a third party during the period that the Force Majeure exists or if this is not possible, to terminate the contract without either party sustaining any financial liability other than to pay all outstanding fees that are due up to the date of termination (including contracts that cannot be cancelled).

## **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 in the future.

## **14. Jurisdiction**

These Terms and Conditions will be governed by and construed in accordance with the Laws of England and Wales.

## **15. Notices**

Notices to the address specified in the Proposal must be given in writing either by hand or first class post. Post will be judged to have arrived 2 days after the date of posting. Notices sent by other means will be deemed received on delivery.

## **16. Contracts (Rights of Third Parties) Act 1999**

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

## **17. 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.

## **18. Entire Agreement**

This contract, the Proposal and any variation to the Proposal in accordance with clause 5 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.

## **19. Data Protection**

We will only use the personal information (Personal Data) you provide to us to provide the Services, or to inform you about similar Services which we provide, as long as you tell us in writing (via the opt in box on the client questionnaire) that you want to receive this information. We will not pass your data to third parties save with your express authority or in connection with referrals to third parties relating to the undertaking of the Works.

In respect of your personal data we will:

- Process that Personal Data only on your written instructions unless we are required by the laws of any member of the European Union or by the laws of the European Union applicable to us (Applicable Laws) to process Personal Data. Where we do so we shall promptly notify you of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit us from so notifying you;
- Ensure that we have in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- Notify you without undue delay on becoming aware of a Personal Data breach;
- On receipt of a written request by you, delete or return Personal Data and copies on termination of the agreement unless required by Applicable Law to store the Personal Data; and if no such request is made we will ensure that the data is kept and maintained in a secure location.
- Maintain complete and accurate records and information to demonstrate compliance with this clause.

## **20. 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.

## **21. Supply of Plants and/or Other Goods**

21.1 If the Proposal specifies that we will supply any goods or plants then this Clause 22 will be supplemental to our Terms and Conditions.

21.2 "Goods" means the plants and other goods listed in the Proposal;

21.3 You agree to order, and we agree to supply you with, the Goods as described, and at a price, set out in writing. You accept that such description is for guidance only and that there may be slight variations in colour, size and shape of the Goods.

21.4 If requested by you, we will arrange for the delivery of Goods to the Site. If we make the arrangements, then the cost of delivery will be set out in the Proposal and will be payable by you. We may deliver the Goods in instalments where necessary.

21.5 If in the unlikely event that the costs of supplying the Goods increases between taking your order and the delivery date, we will notify you as soon as possible and will agree the new price with you. If the new price is not acceptable, you will be entitled to cancel the order for such Goods.

21.6 From time to time it may not be possible to supply the Goods you have ordered. If this occurs, we shall offer you items of an equivalent quality, type, age and price to those we are unable to provide, where possible. You will be entitled to accept the equivalent item, choose another alternative or cancel that part of the order.

21.7 The risk in the Goods will pass to you once the Goods are delivered to the Site and you should ensure you have appropriate insurance cover in place.

21.8 Until we have received payment in full for the Goods supplied, the property in the Goods shall remain with us and you shall allow us to enter the location where the Goods are held to take repossession of the Goods.

21.9 If, at the time of delivery, any of the Goods have any defect or damage, please contact us immediately. We shall either repair or replace any Goods which were defective at the time of delivery to you. Our liability is limited to repair or replacement of such Goods by similar goods or plants of similar age and quality appropriate to the season in which they are replaced. We cannot accept responsibility for plants dying or becoming damaged due to neglect or use of inappropriate watering, fertilisation or soil conditions by you or at your property after delivering to you. In the event that you do not advise us of any defect or damage to the Goods within seven days after delivery, you shall be deemed to have accepted the Goods.

21.10 If you terminate the contract in accordance with clause 11.3 above, you remain responsible for either (i) the cancellation costs for the Goods we incur with our supplier or (ii) full payment of any Goods that were ordered prior to termination of the contract, whichever shall be the lesser.

We are a sole trader established in England and Wales. Our address is as stated above. You can contact us by telephoning 07534 414909 (mobile) or e-mail [jane.bingham@thecheshiregarden.co.uk](mailto:jane.bingham@thecheshiregarden.co.uk).