

Terms and Conditions

1. Contract

This contract is made between The Cheshire Garden whose principal address is Truwood House, Bromfield Industrial Estate, Mold CH7 1XB ("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. Time for performance of the Services shall not be of the essence.

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 or the Works, and we will not accept any liability in respect of either the execution, delivery or performance of such third party contractor, or the execution, delivery or performance of the Works once completed.

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 a non-refundable advance payment of the price for the Services. The advance payment will be non-refundable and will be required to cover (amongst other things) our costs to third parties and costs for materials and other expenses. The amount of advance payment required 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 7 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 the specification set out in the Proposal, please let us know within 7 days of receipt of the Design. In the event of a default or error in the performance of the Services we will (at our sole option) either:

- re-perform the Services; or
- provide you with a full or partial refund, depending on what we (in our sole discretion) consider reasonable in the circumstances.

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;

- where it was not obvious that any loss would happen and nothing you said to us before we accepted your order meant we should have expected it (so, in the law, the loss was unforeseeable);
- any loss suffered due to a Force Majeure Event (defined later); or
- any losses you could have avoided by taking reasonable action. (For example, damage to your own property, which was caused by goods or services we supplied and which you could have avoided by following our instructions regarding preparation of the site.)

10.4 Our total liability to you for all losses arising under or in connection with this contract (not already excluded under this clause 10), whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the total Prices paid by you for the Services under this contract.

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

10.6 Nothing in this contract shall exclude or limit in any way our liability for death or personal injury caused by our negligence or fraud or fraudulent misrepresentation, or breach of 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.

10.7 Except to any extent expressly stated elsewhere in this contract, we exclude all terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982

10.8 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. Time for delivery shall not be of the essence.

10.9 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 (a "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.

11.3 If any Services that have been scheduled are cancelled or postponed for any reason with:

- on less than 14 days' notice by you, a cancellation fee of an amount equal to 50% of Price for those scheduled Services will be payable by you;
- on less than 7 days' notice, a cancellation fee of an amount equal to 75% of Price for those scheduled Services will be payable by you,

in each case, the parties agree that the cancellation fee payable shall be a genuine estimate of losses suffered by us for the cancellation of those schedule Services.

11.4 If scheduled Services are delayed by you by more than three months for any reason, a revised Price or Proposal for those Services will be issued.

12. Force Majeure

12.1 In this clause 12, Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation: (i) acts of God, flood, drought, earthquake or other natural disaster; (ii) epidemic or pandemic; (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iv) nuclear, chemical or biological contamination or sonic boom; (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (vi) collapse of buildings, fire, explosion or accident; (vii) any labour or trade dispute, strikes, industrial action or lockouts; (viii) non-performance by suppliers or subcontractors; (ix) death or incapacity of the designer working on the Designs; and (x) interruption or failure of utility service.

12.2 Neither party will be regarded as in breach of this Proposal if the failure is as a result of a Force Majeure Event. If the Force Majeure Event continues for a period of one 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 Event 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 precontract 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 21 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 In the event of you engaging a Contractor to carry out garden maintenance and following the planting of plants/placing of new items, you will comply with all reasonable instructions provided by the Contractor and/or manufacturer for the care of such plants/items. In relation to plants you shall water and feed them at the times and by the means specified by the Contractor.

21.11 Save where the same forms part of the Services, you shall be responsible for the care of all plants/items at all times after they have been planted/placed by the Contractor. The Contractor shall have no liability to the Client for any plant which dies or fails to flourish as a result of any act or omission by you or any inclement weather conditions, other unfavourable environmental condition or matter outside of the reasonable control of the Contractor.

21.12 If the contract is terminated for any reason whatsoever (save than by you in accordance with clause 11.2 above), you remain responsible for either (i) the cancellation costs for the Goods we incur with our suppliers or (ii) full payment of any Goods that were ordered by either party prior to termination of the contract, whichever is 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.