

Terms and Conditions

V3-2022



1. Interpretation and Formation of Contract

These Conditions shall apply to the provision of any Services by the respective Supplier(s). In addition, and without prejudice to the foregoing: Addendum A shall apply in circumstances where the Customer has opted to receive Design Services and/or Landscaping Services; and (iii) Addendum B shall apply in circumstances where the Customer has opted to receive Maintenance Services. In the event of a conflict between the provisions of Addendum A or Addendum B and these Conditions, the provisions of Addendum A or Addendum B (as applicable) shall take precedence.

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Glasgow are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5 ([Charges and payment](#)).

Commencement Date: has the meaning given in the Quotation.

Conditions: these terms and conditions as amended from time to time in accordance with clause 11.5.

Contract: the contract between the Supplier and the Customer for the supply of Services which comprises the Quotation and these Conditions. For the avoidance of doubt, any estimate (not Quotation) provided by the Supplier is subject to change until such point that a Quotation is issued).

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Customer: the person or firm to whom the Supplier provides Services.

Customer Default: has the meaning set out in clause 4.2.

Data Protection Legislation: Data Protection Legislation: all legislation and regulatory requirements in force from time to time relating to the use of personal data and the privacy of electronic communications, including, without limitation (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation, as well as (ii) the General Data - Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to data protection and privacy (for so long as and to the extent that the law of the European Union has legal effect in the UK)

Design Services: means the design services as specified in the Quotation.

Deliverables: the deliverables set out in the Quotation produced by the Supplier for the Customer.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks and all other intellectual property rights, in each case whether registered or unregistered.

Landscaping Services: means the landscaping services as specified in the Quotation.

Quotation: the document which, without limitation, includes details on the Services to be provided by the Supplier and the relevant proposed Charges and which is signed by both the Supplier and Customer to form a Contract.

Services: means the Design Services, and/or Landscaping Services supplied by the Supplier to the Customer as set out in the Quotation

Specification: the description or specification of the Services agreed between the Supplier and the Customer within the Quotation.

Supplier: means North Hill Gardens Limited (company number SC573703) in respect of the provision of any Design Services and North Hill Garden Design Limited (company number SC481233) in respect of the provision of any Landscaping Services.

Supplier Materials: has the meaning set out in clause 4.1. **Error! Reference source not found.**

2. Basis of contract

2.1 These Conditions shall apply in respect of the provision of any Services from the Supplier to the Customer to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.

3.2 The Supplier shall use its reasonable endeavours to meet any dates set out in the Quotation but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. Customer's obligations

4.1 The Customer shall:

- (a) ensure that the terms of the Quotation and any information it provides in the Specification are complete and accurate;



- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required for the Supplier to provide the Services before the date on which the Services are due to start; and
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
5. **Charges and payment**
- 5.1 The Charges for the Services shall be as set out in the final Quotation (any such Quotation valid for 30 days from the date of issue).
- 5.2 Unless otherwise agreed in writing between the Parties, the Supplier shall invoice the Customer as specified within Quotation
- 5.3 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 7 days of the date of the invoice; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract and failure to pay on time may result in the Supplier suspending Services.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
6. **Intellectual property rights**
- 6.1 Unless agreed otherwise within the Quotation, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 6.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.



7. Data protection

7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 7, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the Data Protection Legislation from time to time in force in the UK and any other law that applies in the UK.

8. Limitation of liability:

8.1 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.2 Subject to clause 8.1, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap.

8.3 In clause 8.2:

- (a) **cap.** The Total Charges in the contract year in which the breaches occurred;
- (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it;
- (c) **total charges.** The Total Charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods actually supplied by the Supplier, whether or not invoiced to the Customer; and
- (d) **total liability.** The Supplier's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.

8.4 This clause 8.4 sets out specific heads of excluded loss:

- (a) Subject to clause 8.1, the types of loss listed in clause 8.4(b) are wholly excluded by the parties.
- (b) The following types of loss are wholly excluded:
 - (i) Loss of profits
 - (ii) Loss of sales or business.
 - (iii) Loss of agreements or contracts.
 - (iv) Loss of anticipated savings.
 - (v) Loss of use or corruption of software, data or information.
 - (vi) Loss of or damage to goodwill.
 - (vii) Indirect or consequential loss.

8.5 This clause 8 shall survive termination of the Contract.

9. Termination

9.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

9.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

9.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 9.2(b) to clause 9.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

9.4 The Supplier may terminate any Services by providing the Customer with 14 days' written notice for convenience.

10. Consequences of termination

10.1 On termination of the Contract:



- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - (b) the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 10.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 10.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
11. **General**
- 11.1 **Force majeure.**
Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11.2 **Assignment and other dealings.**
- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
 - (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 11.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- (d) Notwithstanding the other provisions of this Clause 11.3, the Supplier reserves the right to make reproductions of images and photos created during the provision of any Services for marketing, promotional, competition and editorial purposes.
- 11.4 **Entire agreement.**
- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy



provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.8 **Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case)
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

11.9 **Third party rights.**

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.

11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with Scots law.

11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



ADDENDUM A

This Addendum applies, in addition to the Conditions, where the Customer has opted to receive Design Services and/or Landscaping Services. For the avoidance of doubt (i) where Design Services are to be provided, the Contract for those Services shall be formed between the Customer and North Hill Gardens Limited; and (ii) where Landscaping Services are being provided, the Contract for those Services will be between the Customer and North Hill Garden Design Limited.

1 General

- 1.1 As part of the Design Services, the Supplier will provide the Customer with a design proposal (at least 1 visualisation and mood board). Any supplementary documents (detailed drawings, cross-sections, documents required by City Council etc.) may be prepared for an additional cost which shall be agreed in writing.
- 1.2 The Supplier will produce up to 2 reasonable (as determined by the Supplier, acting reasonably) amendments to the initial designs. All further redesigns will be charged £45+vat per working hour.

2 Building and Construction

- 2.1 It is the obligation of the Customer to ensure that the Supplier has sufficient, conveniently located, access to in order to provide the Landscaping Services.
- 2.2 It is acknowledged and agreed that interference or obstruction from third parties may prevent the Supplier from being capable of providing the Landscaping Services. This prevention may impact on the timeline for the completion of the Landscaping Services for which the Supplier shall not be responsible.
- 2.3 The Customer shall ensure that, where required by the Supplier, the Supplier is afforded access to water, electricity and toilet facilities at no charge to the Supplier. Notwithstanding this, the Supplier reserves the right to rent facilities and/or a water tank

if required. Any additional costs for hire and delivery will be the responsibility of the Customer.

- 2.4 The Charges do not, unless specified in the Quotation, include waste disposal. Waste disposal can be organized by the Supplier in accordance with the costs set out in Clause 3 below.

3. Additional Items

- 3.1 Additional items including, without limitation, the following are not included within the Charges and will be chargeable in addition:
 - Portable Toilet
 - Greenery Waste
 - Rubbish Removal
 - Skip
 - Grab Hire
 - Water Tank

Where additional items are required, the Supplier will advise the Customer of the estimated costs in advance.

- 3.2 The Customer acknowledges that hazardous or harmful items cannot be put into a skip. These include (but are not limited to) TVs, computer monitors, asbestos, tyres, fluorescent tubes, fridges/freezers, mattresses, paint and paint tins, batteries, medical waste, gas cylinders, liquids, solvents, oil, petrol, diesel and explosives. For the avoidance of doubt, the Customer shall be liable to the Supplier for any costs or penalties incurred unless such costs or penalties arose as a result of the actions of the Supplier.
- 3.3 The Customer shall be responsible for ensuring that any permit for a skip is obtained. Any related charges will be borne by the Customer.
- 3.4 Neither animal nor human waste will be collected as part of any Landscaping Services.
- 3.5 In the event that any wasp, bee or any other pest nests are discovered during the course of the provision of the Landscaping Services, the Supplier will be entitled (but not obliged) to appoint specialists to remove if they are likely to cause disruption to the Landscaping Services. Any costs incurred by the Supplier will be reimbursed by the Customer.
- 3.6 Unless for reasons of gross negligence or deliberate actions, the Supplier is not responsible for loss or damage to personal equipment in the garden (for example water features, pumps and other decorations). The Supplier disclaims any liability for damage incurred to any personal items left on the construction site where the Landscaping Services are being provided.
- 3.7 For the avoidance of doubt, title in all goods/materials related to the Landscaping Services remains with the Supplier until such point that the Customer has made payment of the Charges in full. The Supplier reserves the right to remove all property from the Customer's property until full payment is made.



4. Risks

- 4.1 For the health and safety of individuals, it is the responsibility of the Customer to ensure that no one is provided with access to any site where the Landscaping Services are being carried out.
- 4.2 The Supplier shall not be responsible for damage caused to any utilities services or drainage unless explicitly made clear to the Supplier in writing in advance. It shall not be responsibility of the Supplier to survey the site of any works and the Customer shall use reasonable endeavours to provide the Supplier with geodetic maps and/or relevant information regarding any known hazards or underground obstructions, including tree roots and foundations. The Customer acknowledges and agrees that if any of these factors become apparent following the Quotation, the Supplier reserves the right to increase the Charges for the Landscaping Services.
- 4.3 Notwithstanding the provisions of Clause 13 of the Conditions, risk in any goods or materials, once delivered by the Supplier to the Customer's premises, shall sit with the Customer.

5. Materials

- 5.1 The Supplier does not provide warranty for materials (including flowers, plants, bushing, shrubs and other similar items) used in the course of the provision of the Landscaping Services and the Supplier disclaims all responsibility for the quality of materials. Notwithstanding the foregoing, if the materials are covered by a manufacturer warranty, the Supplier will contact the manufacturer on behalf of the Customer in order to attempt a replacement/rectification.
- 5.2 The Supplier offers a 1-year warranty from the point of completion of the Landscaping Services, excluding materials.
- 5.3 Without prejudice to Clause 5.2, upon completion of any Landscaping Services, the Customer shall have a period of 14 days to notify the Supplier if they do not consider that the Services have been provided in all material respects with the Quotation. After 14 days, the Customer will be deemed to have accepted that the Landscaping Services have been properly provided.
- 5.4 Title in any surplus materials, following completion of the Landscaping Services, will sit with the Supplier. For the avoidance of doubt, the Supplier is often required to place orders for set quantities. The Charges outlined within the Quotation only covers title to all materials required for the completion of the Landscaping Services.

