

TERMS OF ENGAGEMENT

1. Contract

This contract is made between the Designer, "RJ HORTICULTURE", henceforth "RJ HORTICULTURE"), and the Client ("you") as defined in the Proposal. The terms of this contract will override terms that you may have sent or may send to RJ HORTICULTURE or any other written correspondence or verbal communication including any advice or recommendation made before we accept the order. Any typographical, clerical or other errors or omissions in the catalogue, Proposal, price list, order or any other document may be changed without RJ HORTICULTURE incurring any liability.

2. Definitions

"Design or Designs" means all designs including drawings and other design documents produced by RJ HORTICULTURE when performing the Services;

"Fee(s)" means the fees set out in the Proposal or any variation to the Fee;

"Project Inspection" has the meaning given to it in Clause 4;

"Proposal" means the written document(s) that RJ HORTICULTURE 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 set of services to be provided by RJ HORTICULTURE under this contract as set out 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).

"Working Day" means any day from Monday to Sunday (inclusive) which is not Christmas Day, New Year's Day, Good Friday or a statutory bank or public holiday.

3. Services

3.1 Once the contract is accepted by you, RJ HORTICULTURE will provide the Services set out in the Proposal using reasonable skill and care in accordance with standards expected of a reasonable garden designer. RJ HORTICULTURE will provide the Services in a timely fashion but any time deadline set out in the Proposal is only an estimate.

3.2 This is a design and consultancy only agreement. RJ HORTICULTURE may assist you in communicating with third parties but it is your responsibility to contract directly with third parties to carry out the Works. RJ HORTICULTURE will not be responsible for the work undertaken by third parties, the manner in which the Works are being carried out nor any other aspect of their progress.

3.3 All specifications, figures, sizes and other descriptions in the Design are approximations only and should not be relied upon.

3.4 You may suspend the Services at any time given written notice by post or email. All sums due at the date of suspension will become due for immediate payment. Once RJ HORTICULTURE receive your further instructions we will use reasonable endeavours to reschedule the Services as soon as is practicable. This rescheduling will not be guaranteed to be at a time requested by you. Any additional cost incurred by RJ HORTICULTURE in complying with these instructions will be added to the total Fees unless such suspension was due to something RJ HORTICULTURE had done or failed to do.

4. Project Inspection

4.1 If RJ HORTICULTURE have specified in writing in the Proposal that we will carry out Project Inspection then the following Clause 4 will apply.

4.2 In consideration of payment of the fee specified in the Proposal, RJ HORTICULTURE will carry out Project Inspection.

4.3 Project Inspection means that RJ HORTICULTURE will conduct site inspections at appropriate intervals of the Works as agreed in the Proposal. RJ HORTICULTURE shall notify you of any discrepancies that we have noted between the Design and the actual Works being delivered in order that you may take steps to rectify such changes as you see fit.

4.4 RJ HORTICULTURE will not supervise or manage the Works. RJ HORTICULTURE 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 RJ HORTICULTURE will not take responsibility or liability for their work or the Works, and RJ HORTICULTURE will not accept any liability in respect of either the execution or performance of such third party contractor, or the 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 upon the prior consent of the other party. Any variation will only be effective once the details of the variation (which may take the form of a further Proposal) together with an additional Fee or any variation to the Fee have been put in writing and agreed by both parties, whereupon this will form a binding contract between the parties. RJ HORTICULTURE will then carry out the varied contract as if the variation was originally included in the Proposal. RJ HORTICULTURE may refuse to accept a variation if it reduces the value of the contract by ten per centum or more.

5.2 If you require services outside of the scope of the Proposal or at a higher level of service than that currently subscribed, then RJ HORTICULTURE will try to carry out such service at our convenience and for a fee that we will set at that time.

5.3 RJ HORTICULTURE may vary these terms and conditions by giving you 14 days' prior written notice if we are required to do so for reasons beyond our reasonable control.

6. Fees

6.1 The Fees 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 instalments in accordance with the payment schedule or in the circumstances set out in the Proposal.

6.2 Not less than 5 working days before the final date for payment, you may give RJ HORTICULTURE notice that you intend to pay less than the Notified Sum (a "Pay Less Notice"). Any Pay Less Notice shall specify the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated.

6.3 All invoices are exclusive of value added tax and delivery charges which shall be added to the invoice where applicable. If sent by post, the invoice shall be deemed to have been received three Working Days after posting. RJ HORTICULTURE reserve the right to charge interest at 8% 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 final date for payment. If you fail to pay an invoice by the final date for payment, RJ HORTICULTURE reserves the right to suspend all or any part of the Services until payment in full is received.

7. Your Obligations

7.1 You have certain obligations under this contract. **Failure to comply with these obligations may result in RJ HORTICULTURE suspending or terminating the contract.** If RJ HORTICULTURE incur any damages or fines through your failure to carry out your obligations, then you will repay RJ HORTICULTURE all such moneys on a full indemnity basis.

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- 7.2. You will provide **RJ HORTICULTURE** at the time of asking with the necessary information in order to carry out the Services. You will warrant the accuracy of this information and that the information is not subject to any third party rights that would prevent **RJ HORTICULTURE** from using this information. You will be liable for any costs that **RJ HORTICULTURE** may suffer if this warranty is not true.
- 7.3. You will allow **RJ HORTICULTURE** reasonable access to both you and the Site at the agreed times in order to carry out the Services.
- 7.4. You will notify **RJ HORTICULTURE** in writing of any issues which may affect the Services as soon as possible to enable us at the earliest opportunity to investigate and rectify where necessary; and notify us as soon as possible of any structural alterations that may affect the Works.
- 7.5. If as part of the Works there are detailed structural works such as retaining walls, foundations and buildings, including but not limited to matters covered by the Party Walls Act 1996. It is recommended that you seek professional advice from a building surveyor and/or structural engineer before commencement of such works, in addition to your appointed contractor. **RJ HORTICULTURE** accepts no responsibility or liability in such matters but will co-operate and pass all relevant information to the appointed parties as soon as is reasonably practicable.
- 7.6. If as part of the Works there is a requirement that any remedial work is required to trees at the Site (including but not limited to cutting down or lopping), then you will make the necessary checks and arrangements that such tree is not subject to any type of protection order. You will also be responsible for any planning permission or licences in respect of the Works unless otherwise agreed in the Proposal. You will cover any fines or damages that are incurred by either party as a result of failing to make such arrangements and you will indemnify **RJ HORTICULTURE** from and against any costs, claims, damages, liabilities and expenses incurred by us arising from any breach of planning permission or licences in respect of the Works.
- 7.7. Nothing in this contract shall require **RJ HORTICULTURE** 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. Intellectual Property Rights and Licence

- 8.1. **RJ HORTICULTURE** are the owner of all intellectual property rights in the Designs together with the rights in any developments and modifications in such Designs. We assert the moral rights that we may have in any Designs.
- 8.2. Upon receipt of full payment of the Fees in cleared funds, **RJ HORTICULTURE** 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 the location 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-license the use of the whole or any part of those Designs; recreate the Design at a different location or transfer them to anyone else without our prior written permission.
- 8.3. **RJ HORTICULTURE** will be allowed to refer to you in any publicity after the Services have taken place provided we receive your written consent in advance (including the taking and publication of photographs of the Works and the Site).
- 8.4. The provisions of this clause 8 shall remain in full force and effect after termination of this contract for whatever reason.

9. Liability

- 9.1. In the event of any fault or defect arising in the Services, **RJ HORTICULTURE** shall have the right to remedy such fault where possible by re-supplying the Service. In the event that you do not advise **RJ HORTICULTURE** of any defect in the Services within 30 days after completion of the Services or the provision or delivery of the relevant part of the Services, you shall be deemed to have accepted the Services or part thereof.
- 9.2. If plants or other goods are provided to you by a separate supplier, those supplies will be provided under a separate contract with your supplier and **RJ HORTICULTURE** can accept no responsibility for that contract or the supplies under it.
- 9.3. As far as permitted by law, in no circumstances shall **RJ HORTICULTURE** be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof (i) for any loss of profits, business, contracts, revenues or anticipated savings or (ii) for any special indirect or consequential damage of any nature whatsoever.
- 9.4. Nothing in this contract shall affect the statutory rights of a consumer.
- 9.5. Nothing herein shall limit either party's liability for death or personal injury arising from the proven negligence by itself or its employees.
- 9.6. **RJ HORTICULTURE** 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.
- 9.7. The provisions of this clause 9 shall remain in full force and effect after termination of this contract for whatever reason.

10. Transfer of Rights

RJ HORTICULTURE will be entitled to transfer all or any of our rights or obligations under this contract. You will need our prior written permission before transferring any or all of your rights to a third party.

11. Termination

- 11.1. The Services will start on the date specified in the Proposal. Either party may terminate this contract at any time by giving the other party advance written notice if the other becomes insolvent or bankrupt, makes any arrangement or composition with its creditors, enters into administration, has any 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 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. Either party may terminate this contract at any time by giving the other party at least 7 days' prior written notice but you will have to pay for the Services carried out up to the date of expiry of the notice. **RJ HORTICULTURE** may also assist you in the cancellation of any third party contracts but **RJ HORTICULTURE** cannot guarantee that you will not have to pay such fees in full subject to the terms of any third party contracts. Any licence that **RJ HORTICULTURE** have given you under Clause 8 will end and you must stop using any Designs immediately.

12. Right to Cancel

- 12.1. You can cancel this contract for any reason by giving **RJ HORTICULTURE** notice within 14 days of signing the contract. This must be given in writing by post, email or delivered in person.
- 12.2. The written notice will be considered to have been given on the day it is posted or sent by email, whether or not **RJ HORTICULTURE** actually receive it.
- 12.3. If you cancel this contract under this clause 12 **RJ HORTICULTURE** will refund you any money you have paid to us in connection with this agreement, except in the circumstances following in clause 12.4
- 12.4. You may have to pay for goods or services provided before you cancelled this contract if you agreed in writing to **RJ HORTICULTURE** providing the goods or services before the end of the fourteen-day cancellation period referred to in clause 12.1 above. You may have to pay for the following types of services provided before the cancellation:

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Services of any kind

Goods needed in an emergency

Goods that are personalised or made to your specification and any services relating to those goods

Perishable goods (goods which decay or go bad quickly)

Goods that have been used or incorporated into the land

13. 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 garden designer working on the Design(s). If the Force Majeure 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 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 and disbursements that are due up to the date of termination (including contracts that cannot be cancelled).

14. 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 at another time.

15. Proper Law

These terms and conditions will be governed by and construed in accordance with the laws of England and Wales. In the event of any dispute **RJ HORTICULTURE** would ask that you contact us in the first instance to resolve any issues in good faith. If this matter is not referred or resolved within 28 days of the matter being raised then the parties will submit to the exclusive jurisdiction of the English Courts.

16. Notices

Notices are preferably given by email. Notices to the address specified in the Proposal must be given in writing either in person or by first class post. Post will be judged to have arrived 3 days from date of posting. Notices sent by other means will be deemed received on delivery.

17. Contracts (Rights of Third Parties) Act 1999

The parties to this contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it but this shall not affect any right or remedy of a third party that exists or is available apart from that Act.

18. 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.

19. 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.