

ARCHITECTURAL PLANTS LIMITED

TERMS AND CONDITIONS OF BUSINESS

The following terms and conditions shall apply to and are incorporated into the quotation attached (referred to in these terms and conditions as the "Quotation") and shall apply unless expressly modified or excluded in writing and signed by Architectural Plants.

Nothing in these terms and conditions shall affect the Client's statutory rights.

The Client's attention is drawn to the limitation of Architectural Plants' liability in clause 8.

1. DEFINITIONS

"Client" means the individual, legal person, entity or organisation specified in the Quotation who buys or agrees to buy goods and services from Architectural Plants under the Contract;

"Contract" means the contract between the Client and Architectural Plants to carry out the Works on the terms set out in the Contract Documents;

"Contract Documents" means the Quotation, these terms and conditions, any specification, bill of quantities, plans or drawings and any other document referred to in the Quotation or agreed in writing between the Client and Architectural Plants to be a Contract Document;

"Contract Price" means the price to be paid by the Client for the Works as set out in the Quotation and payable in accordance with clause 2.3 (*Payment*) of these terms and conditions;

"Goods" means all goods, plants and other materials supplied by Architectural Plants to the Client for or in connection with the Works;

"Site" means the location where the Works are to take place;

"Architectural Plants" means Architectural Plants Limited, a company limited by guarantee registered in England and Wales with company number 2516000,0 at registered office Stane Street, North Heath, Pulborough, West Sussex, Rh20 1DJ; and

"Works" means the gardening, landscaping and design services and any Goods provided by Architectural Plants to the Client as specified in the Contract Documents.

Any reference in these terms and conditions to a communication or agreement being "in writing" shall include communication or agreement by email or other electronic communication. For these purposes the email

address for Architectural Plants is enquiries@architecturalplants.com and the email address for the client shall be as specified in the Quotation or as otherwise notified to Architectural Plants.

2. QUOTATION

2.1 The Quotation shall remain valid for a period of two calendar months after the date of the Quotation and thereafter lapses automatically.

2.2 The Contract shall come into existence upon the Client and Architectural Plants both signing a copy of the Quotation or otherwise indicating in writing their acceptance of the Quotation.

2.3 In the event of any inconsistency between these terms and conditions and the wording of the Quotation, the wording in the Quotation shall prevail.

3. PAYMENT

3.1 Payment of the Contract Price will be due from the Client on the terms and at the times set out in the Quotation.

3.2 All amounts payable by the Client under the Contract are inclusive of amounts in respect of value added tax chargeable from time to time (VAT).

3.3 Without limiting any other right or remedy of Architectural Plants, if the Client fails to make any payment due to Architectural Plants under the Contract by any due date for payment (the "Due Date"), Architectural Plants shall have the right to charge interest on the overdue amount at the rate of 2% per cent per annum above the then current base rate of the Barclays Bank accruing on a daily basis from 14 days after the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

4. ARCHITECTURAL PLANTS'S OBLIGATIONS

4.1 Architectural Plants shall carry out and complete the Works using reasonable care and skill and in accordance with the Contract.

4.2 Architectural Plants shall have the right to make any changes to the Works which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Works, and Architectural Plants shall notify the Client in any such event. In the event such changes

- result in an increased cost to Architectural Plants, clause 6.1 shall apply.
- 4.3 Architectural Plants will carry out a Site risk assessment and will carry out the Works in accordance with all applicable Health and Safety regulations. Architectural Plants will take reasonable steps to minimise environmental disturbance, nuisance and pollution.
- 4.4 Architectural Plants shall have no liability (on any basis whatsoever) to the Client if Architectural Plants is required to suspend work either on a temporary or permanent basis to comply with any applicable law or safety requirement. Notwithstanding the foregoing, the Client shall remain liable to pay for any Works performed by Architectural Plants up to (and including) the date of suspension.
- 4.5 Subject to clause 4.6 and 4.8, Architectural Plants warrants that on completion of the Works, all Goods:
- (a) conform in all material respects to their description in the Contractual Documents;
 - (b) are of a satisfactory quality;
 - (c) are fit for the purpose and the conditions of the Site;
 - (d) are free of material defects in design, material and workmanship; and
 - (e) comply in all material respects with all applicable statutory and regulatory requirements.
- 4.6 The warranty in clause 4.5 does not apply to any defect in the Goods arising from fair wear and tear, wilful damage, accident, negligence by the Client or a third party, use of the Goods in a way other than as recommended by Architectural Plants, failure of the Client to follow instructions given by Architectural Plants or any alteration or repair carried out by the Client without Architectural Plants's prior written approval.
- 4.7 In the unlikely event that any of the Goods do not conform to these terms and conditions, the Client should let Architectural Plants know as soon as possible after completion of the Works. Architectural Plants will arrange for a date convenient for both the Client and Architectural Plants on which to come and inspect the relevant Goods and, once Architectural Plants has confirmed the relevant Goods contravene these terms and conditions, Architectural Plants will replace or repair them (as appropriate).
- 4.8 The Client understands that:

- (a) natural products, including but not limited to stone, timber and aggregates are likely to vary in appearance and the Client should not expect a consistent colour, texture, surface or dimension from such materials. It should also be noted that all materials will weather naturally and unevenly over a period of time. Architectural Plants recommends the Client discusses in detail with Architectural Plants these natural variations before entering into the Contract; and
- (b) timber, plants and other natural products are liable to be affected by subsequent weed growth, disease or infestation, change shape or colour, or otherwise affected or changed after installation due to the natural properties of such items or their interaction with the environment in which they are placed. The changes listed in this sub-clause are not due to any defect in such items.

The warranty in clause 4.5 does not therefore extend to replacing such natural products in the circumstances set out in sub-clauses (A) and (B) above (to the extent such circumstances are not the result of any default or negligence by Architectural Plants), in each case the full costs of which shall be borne by the Client.

5. THE CLIENT'S OBLIGATIONS

- 5.1 The Client undertakes to obtain any and all necessary planning or other consents and permissions (including, where necessary, permission for access to or over any adjacent or neighbouring land or buildings and the consent of the owners or occupiers of any adjacent or neighbouring land or buildings) for the Works and to fulfil any statutory requirements necessary for or relating to the Works. The Client agrees to reimburse Architectural Plants on demand for any and all costs and expenses (including, but not limited to, loss of profit or indirect or consequential loss) reasonably incurred by Architectural Plants as a result of the failure of the Client to comply with its obligations under this Clause 5.1.

- 5.2 The Client warrants that the Site is free from springs, flooding, rock, tree stumps not specifically to be removed, mine workings, covered wells or other cavities, running sand, service pipes and cables, sewage or land drains, foundations of former buildings archaeological remains and/or relics or other hazards or obstructions which are not discoverable on visual inspection of the surface of the Site or made known in writing by the Client to Architectural Plants prior to the date upon which Architectural Plants commences the Works.
- 5.3 If applicable, all underground services (including, but not limited to, water pipes, electricity cables, sewers, or telecommunication cables) near to the works must be accurately identified to Architectural Plants in writing before Architectural Plants commences the Works. To the maximum extent permitted by law, Architectural Plants accepts no liability for any damage to such services as a result of or arising from the Works.
- 5.4 The Client agrees to provide Architectural Plants, its employees, agents, consultants and subcontractors (as applicable) with access to:
- (a) the Site during the hours of 7.30a.m. to 6.00p.m. on Monday to Friday (inclusive) for the duration of the Works, and at any time outside of those hours as may be agreed between the Client and Architectural Plants from time to time; and
 - (b) mains electricity and water necessary to carry out the Works. The Client agrees to bear the cost of any such water and electricity used by Architectural Plants.
- 5.5 The Client agrees to provide such information to Architectural Plants as Architectural Plants may reasonably request for the purposes of fulfilling its obligations under the Contractual Documents.

6. VARIATION

- 6.1 Without prejudice to clauses 4.2 and 4.7, if the cost to Architectural Plants of undertaking the Works materially increases as a result of an increase in the price of materials, rates for wages, other charges or costs, the price of labour, or other services required for completion of the Works, Architectural Plants will notify the Client before undertaking any

work to which the material increase applies. In such circumstances, Architectural Plants and Client will seek to reach agreement in writing as to an appropriate increase to the Contract Price to reflect the increase in cost to Architectural Plants. If an agreement in writing is not reached between the Client and Architectural Plants within a reasonable time, Architectural Plants has the right to discontinue the Works and the Client agrees to pay Architectural Plants all costs Architectural Plants has reasonably and properly incurred in fulfilling the Contract prior to the date on which Architectural Plants discontinues the Works.

- 6.2 Subject to clause 6.3, and unless otherwise specified in these terms and conditions, changes to the Contractual Documents may be agreed orally between the Client and Architectural Plants.
- 6.3 Any material changes to the Contractual Documents must be agreed in writing between Architectural Plants and the Client.

7. DURATION AND DELAY

- 7.1 Architectural Plants agrees to use reasonable endeavours to undertake the Works on the dates and at the times specified in the Quotation.
- 7.2 Architectural Plants shall use reasonable endeavours to complete or undertake the Works within a reasonable time or, if applicable, by the dates and times specified in the Quotation; however, any specific dates or times for completion of or undertaking the Works in the Quotation shall be an estimate only and Architectural Plants shall not be liable for any failure to complete or undertake the Works by the dates or times (if any) specified in the Quotation.
- 7.3 Architectural Plants will not be liable for any failure to perform, or delay in the performance of, its obligations under the Contract if any such non-performance or delay arises from severe weather conditions; fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; the failure of the Client to perform its obligations under Clause 5.1 or the existence of any of the items or conditions referred to in Clause 5.2; strikes, lockouts, war, civil commotion, riot, terrorist attack or threat of terrorist attack; impossibility of the use of railways, motor transport or other means of public or private transport; or any acts, decrees, legislation, regulations or the restrictions of any

government or branch thereof. In any of the circumstances listed in this clause 7.3, Architectural Plants and the Client shall agree an appropriate extension on time for completion of the Works.

8. LIMITATION OF LIABILITY

Other than in the case of death or personal injury caused by Architectural Plants's negligence; fraud or fraudulent misrepresentation; or any other matter for which it would be illegal or unlawful for Architectural Plants to exclude or attempt to exclude its liability, Architectural Plants shall under no circumstances be liable to the Client for any loss of profit or any indirect or consequential loss arising under or in connection with the Contract.

9. MATERIALS ON SITE

All goods or other materials brought on Site by Architectural Plants, which are in excess of those required for the Works, shall remain the property of Architectural Plants. The Client agrees to allow Architectural Plants access to the Site, upon Architectural Plants giving reasonable notice to the Client, to remove such goods and materials.

10. MAINTENANCE AFTER COMPLETION

Following completion of the Works, the responsibility for the proper maintenance of the Site passes to the Client and, unless otherwise agreed in writing between Architectural Plants and the Client, Architectural Plants has no obligation to maintain the Site following completion of the Works.

11. TERMINATION AND CANCELLATION

11.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.2 If the Quotation provides a date on which the Contract shall terminate, the Contract shall continue unless terminated in accordance with

these terms and conditions (or as otherwise agreed in writing between the Client and Architectural Plants) until such date when it shall terminate automatically, provided that any rights which have accrued up to the date of termination shall survive such termination.

11.3 If specified in the Quotation, and without prejudice to any rights that have accrued under the Contract or any of its rights or remedies, either party may terminate the Contract on giving not less than 4 weeks' written notice to the other party.

11.4 The Client may, at any time prior to 7 days before the commencement date for the Works specified in the Quotation, cancel the Contract by providing Architectural Plants with written notice. Architectural Plants will return the Client's deposit (if any) within 7 days after receiving such notice. If the Client gives written notice that they wish to cancel the Contract 7 days or less before the commencement date for the Works specified in the Quotation, Architectural Plants shall not be required to return any deposit paid by the Client to Architectural Plants or, if no deposit had been paid, the Client agrees to pay all costs Architectural Plants has reasonably and properly incurred in fulfilling the Contract prior to the receipt by Architectural Plants of such notice.

12. COPYRIGHT

All patents, copyright and related rights, trademarks and other forms of intellectual property in, arising out of or in connection with the Works or the Contract shall, unless otherwise agreed in writing between Architectural Plants and the Client, at all times be owned by and remain the property of Architectural Plants.

13. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Client and Architectural Plants. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Architectural Plants which is not set out in the Contract.

14. RIGHTS OF THIRD PARTIES

No person who is not a party to this agreement has any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15. SEVERABILITY

If any court or competent authority decides that any of the provisions of the Contract are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

16. ENGLISH LAW

The Contract and any non-contractual obligations arising under or in connection with it are governed by and construed in accordance with laws of England. Both the Client and Architectural Plants hereby submit to the exclusive jurisdiction of the English Courts.