

# MELROSE GARDEN DESIGN

## Terms and Conditions

Terms and conditions for the sale of Goods and Services. The client's attention is drawn in particular to the provisions of Clause 9.

### 1. Interpretation

1. Definitions. In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6;
<b>Contract</b>	the contract between the Supplier and the Client for the sale and purchase of the Goods and Services in accordance with these Conditions;
<b>Client</b>	the person or firm who purchases the Goods and Services from the Supplier;
<b>Force Majeure Event</b>	has the meaning given in clause 10;
<b>Goods and Services</b>	the Goods and Services (or any part of them) set out in the Order;
<b>Order</b>	the Client's order for the Goods and Services, as set out in either the Client's purchase order form or in the Client's written acceptance of the Supplier's quotation;
<b>Delivery</b>	The dispatch and acceptance of Goods or completion of Services
<b>Specification</b>	any specification or Brief for the Goods and Services, including any related material, plans and drawings, that is agreed in writing by the Client and the Supplier;
<b>Supplier</b>	Ben Melrose Garden Design Ltd. registered in England and Wales with company number 15003627.

2. Construction. In these Conditions, the following rules apply:

- i. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- ii. A reference to a party includes its personal representatives, successors or permitted assigns.
- iii. A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- iv. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- v. A reference to writing or written includes text messages and e-mails.

### 2. Basis of Contract

1. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2. The Order constitutes an offer by the Client to purchase the Goods and Services in accordance with these Conditions. The Client is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (Order Acknowledgement), at which point the Contract shall come into existence.
4. The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
5. Any sketches, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's portfolio or marketing literature are produced for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract or have any contractual force.



# MELROSE GARDEN DESIGN

6. A quotation for the Goods and Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for the period as stated on the quotation.

## 3. Goods and Services

1. The Goods and Services are described in the Order Acknowledgement.
2. The Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
3. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

## 4. Delivery

1. The Supplier shall use reasonable endeavours to ensure that:
  - i. each delivery of the Goods or completion of Services is accompanied by a delivery or completion note which shows the date of the Order, the date of the despatch or completion, all relevant Client and Supplier reference numbers and the type and quantity of the Goods and Services.
2. The Supplier shall deliver the Goods to and/or provide the Services at the Client's preferred address as set out in the Order, Order Acknowledgement or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Client that the Goods and Services are ready (Delivery).
3. Delivery of the Goods or Services shall be completed on the Goods' arrival at the Delivery Location or the completion of Services.
4. Any dates quoted for Delivery or Services are approximate only, and the time of Delivery is not of the essence. The Supplier shall not be liable for any delay in Delivery of the Goods and Services that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate Delivery instructions or any other instructions that are relevant to the supply of the Goods and Services.
5. If the Client fails to accept Delivery of the Goods and Services, then, except where such failure or delay is caused by a Force Majeure Event, Delivery of the Goods and Services shall be deemed to have been accepted by the Client 48 hours after attempted Delivery of the Goods and Services to the Delivery Location by the Supplier.
6. The Supplier may deliver the Goods and Services by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

## 5. Quality

1. The Supplier warrants that on delivery, the Goods and Services shall conform in all aspects with their description and any applicable Specification or Brief.
2. Subject to clause 5.3, if:
  - i. the Client gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods and Services do not comply with the warranty set out in clause 5.1;
  - ii. the Supplier is given a reasonable opportunity of examining such Goods and Services; and
  - iii. the Client (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Client's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
3. The Supplier shall not be liable for Goods and Services' failure to comply with the warranty set out in clause 5.1 in any of the following events:
  - i. the Client makes any further use of such Goods and Services after giving notice in accordance with clause 5.2;
  - ii. the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;



# MELROSE GARDEN DESIGN

- iii. the defect arises as a result of the Supplier following any drawing, design, Specification or Brief supplied by the Client;
  - iv. the Client alters or repairs such Goods and Services without the written consent of the Supplier;
  - v. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - vi. the Goods and Services differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
4. Except as provided in this clause 5, the Supplier shall have no liability to the Client in respect of the Goods and Services' failure to comply with the warranty set out in clause 5.1.
  5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
  6. These Conditions shall apply to any replacement Goods and Services supplied by the Supplier.

## 6. Title and Risk

1. The risk in the Goods and Services shall pass to the Client on completion of delivery. Where the Client collects the Goods from the Supplier's premises, either itself or by using a third-party courier, the risk in the Goods and shall pass to the Client on collection of the Goods and Services from the Supplier's premises.
2. Title to the Goods and Services shall not pass to the Client until the Supplier receives payment in full (in cash or cleared funds) for the Goods and Services.
3. Until title to the Goods and Services has passed to the Client, the Client shall:
  - i. store the Goods separately from all other Goods held by the Client so that they remain readily identifiable as the Supplier's property;
  - ii. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - iii. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - iv. notify the Supplier immediately if it becomes subject to any of the events listed in clause 8.2; and
  - v. give the Supplier such information relating to the Goods as the Supplier may require from time to time.
  - vi. If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in clause 8.2, then, without limiting any other right or remedy the Supplier may have:
  - vii. the Client's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - viii. the Supplier may at any time:
    - i. require the Client to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - ii. if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

## 7. Price and Payment

1. The price of the Goods and Services shall be the price set out in the Order Acknowledgement.
2. The Supplier may, by giving notice to the Client at any time up to ten (10) Business Days before delivery, increase the price of the Goods and Services to reflect any increase in the cost of the Goods and Services that is due to:
  - i. any factor beyond the Supplier's control (including increases in taxes and duties, labour, materials, and other costs);
  - ii. any request by the Client to change the delivery date(s), quantities or types of Goods and Services ordered, or the Specification; or
  - iii. any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate or accurate information or instructions.
3. Unless otherwise agreed, the price of the Goods and Services is exclusive of the costs and charges of packaging, insurance and transport of the Goods and Services, which shall be invoiced to the Client.



# MELROSE GARDEN DESIGN

4. The price of the Goods and Services is exclusive of amounts in respect of value added tax (VAT). The Client 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 Goods and Services.
5. The Supplier may invoice the Client for the Goods and Services on or at any time after the completion of delivery.
6. Unless otherwise agreed, the Client shall pay the invoice in full and in cleared funds within ten (10) Business Days of the date of the Supplier's invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
7. If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 6% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
8. The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.

## 8. Termination and Suspension

1. If the Client becomes subject to any of the events listed in clause 8.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client.
2. For the purposes of clause 8.1, the relevant events are:
  - i. the Client suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - ii. the Client commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Client is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
  - iii. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Client, other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;
  - iv. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Client;
  - v. (being a company) the holder of a qualifying floating charge over the Client's assets has become entitled to appoint or has appointed an administrative receiver;
  - vi. a person becomes entitled to appoint a receiver over the Client's assets or a receiver is appointed over the Client's assets;
  - vii. (being an individual) the Client is the subject of a bankruptcy petition or order;
  - viii. a creditor or encumbrancer of the Client attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
  - ix. any event occurs, or proceeding is taken, with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.6 (inclusive);
  - x. the Client suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - xi. the Client's financial position deteriorates to such an extent that in the Supplier's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - xii. (being an individual) the Client dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.



# MELROSE GARDEN DESIGN

3. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and Services under the Contract or any other contract between the Client and the Supplier if the Client becomes subject to any of the events listed in clause 8.2.1 to clause 8.2.12, or the Supplier reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment.
4. On termination of the Contract for any reason the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
5. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
6. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 9. Limitation of Liability

1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
  - i. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - ii. fraud or fraudulent misrepresentation;
  - iii. breach of the terms implied by section 12 of the Sale of Goods and Services Act 1979;
  - iv. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
2. Subject to clause 9.1:
  - i. the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - ii. the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and Services.

## 10. Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 11. General

1. Assignment and other dealings.
  - i. The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
  - ii. The Client may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
2. Notices.
  - i. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
  - ii. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; 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; if delivered by commercial courier, on the date and at the



# MELROSE GARDEN DESIGN

- time that the courier's delivery receipt is signed; or, if sent by text message or e-mail, one Business Day after transmission.
- iii. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
3. Severance.
    - i. 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.
    - ii. If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
    - iii. Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
  4. Third party rights. A person who is not a party to the Contract shall not have any rights to enforce its terms.
  5. Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
  6. Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
  7. Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

