

**1. Definitions**

In these terms and conditions, the following words shall have the following meanings: "AHL" means Angel Horticulture Ltd; "Customer" means the person, organisation or other legal entity for whom AHL agrees to carry out Services; "Job" means an engagement of AHL by the Customer to provide Services in accordance with a Specification; "Materials" means any and all goods, products or other materials required to perform a Job (e.g. garden plants, fertiliser, pesticides, rock salt (commonly known as "grit") and seeds); "Price Quotation" means the charges quoted to the Customer by AHL for performance of a Job; "Services" means garden maintenance and/or other services, including the supply of Materials, as necessary; "Specification" means the specification for a Job agreed by AHL and the Customer, including a description of the work to be undertaken and its likely duration; "Design or Designs" means all designs including drawings and other design documents produced by us when performing the Services; "Project Inspection" has the meaning given to it in Clause 15; "Proposal" means the written 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; "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 Friday (inclusive) which is not Christmas Day, New Year's Day, Good Friday or a statutory bank or public holiday; "Terms" means these terms and conditions. These terms and conditions shall take precedence over any others that the Customer may seek to introduce.

**2. Engagement**

2.1 Subject to these Terms, AHL undertakes to provide the Services to the Customer in accordance with the Specification.

2.2 The Customer is entitled to make changes to the Specification at any time, subject to agreement in writing from AHL, and the Customer paying any and all additional associated charges and/or costs.

2.3 The Customer understands that AHL may occasionally have to make minor changes to the Specification in order to carry out the Services effectively. AHL will notify the Customer of such changes in advance wherever possible.

2.4 AHL will endeavour to comply with all times, dates, durations and other timings for a Job notified to the Customer but makes no guarantees to that effect.

2.5 Jobs will be undertaken by suitable AHL operatives or sub-contractors selected at the absolute discretion of AHL.

2.6 By engaging the services of AHL, the Customer accepts sole responsibility for monies owing to AHL, and no liability can be transferred to any other party, including those that the Customer may be acting for.

2.7 AHL reserves the right to terminate services at any time, including within a contract period; in this instance monies owing by the Customer to AHL will be limited to all works carried out by AHL up until the termination date.

### 3. Our Plant Guarantee

From March 1<sup>st</sup>, 2021, AHL commits to replacing any plants that die within twelve months of their original installation date, subject to the following conditions:

- 3.1 AHL has been engaged to maintain the planting scheme on a rolling annual contract.
- 3.2 AHL plant aftercare instructions must have been followed.
- 3.3 Plant failure must be notified within twelve months from original planting date.
- 3.4 Any issues of failing health in any plants should be notified as soon as possible in case issues can be rectified - please send photos to [hello@angelhort.com](mailto:hello@angelhort.com)
- 3.5 Plants are excluded where physical damage beyond our control has occurred e.g. bark damage caused by rabbits, damage by garden machinery, damage caused by falling trees/objects, disturbance to the root zone or contamination of the soil.
- 3.6 We will guarantee a plant to its natural tolerance of hardiness. Extreme weather conditions may invalidate the guarantee on certain plants e.g. Hebe, Grisselinia
- 3.7 AHL rarely plant bedding plants, but these plants are excluded from this guarantee due to their necessarily short lifespan.
- 3.8 Being completely beyond our control, we cannot be held responsible for damage/failures caused by any airborne pests and diseases such as box blight, fungal leaf spot or aphids.
- 3.9 Plants must not have been moved, or had their environmental conditions materially changed (by for example erecting a shed that turns a previously well-lit flowerbed into a shady area)
- 3.10 Replacement plants are excluded from a further guarantee period.
- 3.11 In certain circumstances AHL may decide to refund rather than replace plants.
- 3.12 AHL reserve the right to replace plants with different species of the same value. This may be necessary for example due to the unforeseen unsuitability of a particular plant species in its given location.
- 3.13 The dead or dying plants must be left in situ and available for inspection until the situation is resolved. In order to be covered by this guarantee they should not be moved or disposed of without prior agreement with AHL.

### 4. Price Quotations

4.1 A Price Quotation given by AHL shall only be legally binding on AHL (and then only for the time period stated on the Price Quotation) if it is made in writing and signed by an authorised representative of AHL.

4.2 A Price Quotation may be revised by AHL at any point following submission if: (i) the Customer requests (whether orally or in writing) AHL to carry out additional works not referred to in the Specification; or (ii) there is an increase in the price of Materials to be provided by AHL; or (iii) it is discovered that further works need to be carried out which were not anticipated when the Specification was agreed; or (iv) it is found to contain a manifest error or errors.

### 5. Charges

5.1 Jobs are undertaken by AHL on a fixed price or hourly/daily basis and will be charged in accordance with the applicable Price Quotation.

5.2 Unless otherwise expressly stated by AHL, all charges will exclude the cost of Materials to be provided by AHL, the collection of any non-stock items and any applicable VAT, which will be additionally payable by the Customer.

5.3 All charges and other sums payable will be paid by the Customer by cash, cheque or BACS/bank transfer within 7 days of the date of invoice in accordance with the instructions given on the invoice. AHL reserves the right to charge interest on all unpaid invoices at a rate of 8% above the Bank of England Base Rate in force from time to time, calculated from the due date until the date of actual and full payment.

5.4 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, or unless the Fee is based on the value of the project, or on the size of the Site and this is found to be larger once the Site has been measured. The Fees will be payable in instalments in accordance with the payment schedule or in the circumstances set out in the Proposal.

## **6. Warranties**

6.1 AHL warrants that it will perform the Services with reasonable skill and care in a competent and professional manner and that all Materials provided by it will be industry recognised.

6.2 Save for those specifically stated in Clause 5.1, AHL hereby excludes all warranties, representations and other terms, express or implied, statutory or otherwise, relating to the provision of Services. For the avoidance of doubt, no warranties or representations are given as to the quality, quantities used, brand, effectiveness, duration of effectiveness or any other aspect of the Materials.

## **7. Liability**

7.1 In the event that AHL fails to perform the Services (or any of them) in accordance with these Terms (subject to Clause 7.2 and other than in one of the cases set out in 7.4 below), AHL's liability shall be limited to the performance or re-performance of the Services in question and only if AHL fails within a reasonable time to perform or re-perform such Services or such Services are incapable of being performed or re-performed shall AHL refund any charges and/or other sums paid to AHL by the Customer in respect of such Services.

7.2 Unless the Customer notifies AHL of its dissatisfaction with any of the Services within 3 (three) months of completion of the Services, the Job will be deemed to have been completed successfully to the entire satisfaction of the Customer.

7.3 Subject to Clauses 7.4, 7.5 and 7.6, AHL's maximum aggregate liability under or in connection with any Services will not exceed the aggregate total charges applicable to the Job in question.

7.4 AHL shall not be liable for any failure to perform or delay in the performance of its Services or any damage, injury or loss suffered by a Customer and/or a third party arising from: (i) any act or omission of the Customer, its agents, employees or contractors; or (ii) use of Materials provided by AHL and used by AHL in accordance with the suppliers' instructions and Customer's directions; or (iii) use of Materials provided by the Customer; or (iv) adherence to the directions of the Customer.

7.5 AHL will not be liable under these Terms for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

## Angel Horticulture Ltd | Terms & Conditions of business

7.6 Nothing in these Terms will exclude or in any way limit AHL's liability for fraud, or for death or personal injury caused by its negligence, or any other liability to the extent that the same may not be excluded or limited as a matter of law.

7.7 The Customer shall indemnify and hold harmless AHL from any and all loss, injury or damage suffered by AHL and caused by the actions or omissions (negligent or otherwise) of the Customer.

7.8 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 we can accept no responsibility for that contract or the supplies under it.

7.9 As far as permitted by law, in no circumstances shall we 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.

7.10 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.

7.11 The provisions of this clause 9 shall remain in full force and effect after termination of this contract for whatever reason.

### 8. Cancellation

8.1 If the Customer cancels a Job following acceptance of a Price Quotation, then AHL shall be entitled at its discretion to charge, and the Customer shall be liable to pay, the full charges for the cancelled Job (as set out in the Price Quotation) together with any related costs (e.g. the cost of Materials).

8.2 AHL may cancel a Job in writing with immediate effect: (i) if the Customer commits a breach of these Terms which is irremediable, or which is not remedied within 5 (five) days of notice by AHL of such breach; or (ii) if the Customer is unable to pay the Customer's debts when they fall due, or the Customer is otherwise deemed to be bankrupt or insolvent.

8.3 Upon cancellation of a Job, AHL shall have the authority to enter the premises of the Customer to take possession of any Materials and equipment owned by AHL.

### 9. Ownership of Materials

9.1 Title to any Materials provided by AHL shall not pass to the Customer until payment in full has been made by Customer in respect of the same. Until such time, AHL reserves the right to repossess, sell or otherwise deal with or dispose of any or all those Materials and is authorised to enter the premises of the Customer in order to do the same.

9.2 Risk in any Materials provided by AHL passes to the Customer on delivery.

### 10. Force Majeure

AHL shall not be held liable for breach if it is unable to perform any of its obligations hereunder as a result of any event(s) outside its reasonable control, including without limitation difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure; machinery

breakdown; adverse weather conditions; and Acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority.

## **11. Miscellaneous**

11.1 The Customer consents to the collection, storage and use by AHL of its personal data for administrative, data analysis and marketing purposes.

11.2 With the exception of any fraudulent misrepresentations made by either party to the other, these Terms are the complete agreement between AHL and the Customer with respect to the Services and supersede all previous agreements and understandings whether oral or in writing in relation to its subject matter.

11.3 If any provision of these Terms is held by a court to be invalid, such provision will be omitted, but the remainder of these Terms will continue to be binding upon the parties.

11.4 Except as set out in this Clause, these Terms do not create or infer any rights enforceable by any person who is not a party to these Terms.

11.5 Nothing contained within these Terms shall be deemed to constitute or create a partnership or joint venture between the parties.

11.6 These Terms shall be governed by and construed in accordance with the laws of Scotland and each party submits to the exclusive jurisdiction of the courts of Scotland.

## **12. Variations**

12.1. 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. We will then carry out the varied contract as if the variation was originally included in the Proposal. We may refuse to accept a variation if it reduces the value of the contract by ten per centum or more.

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

12.3. We 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.

## **13. Your Obligations**

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

13.2. You will provide us 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 us from using this information. You will be liable for any costs that we may suffer if this warranty is not true.

13.3. You will allow us reasonable access to both you and the Site at the agreed times in order to carry out the Services.

13.4. You will notify us 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.

13.5. 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 us 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.

13.6 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.

#### **14. Design & Consultancy Services**

14.1 The Customer is of the opinion that AHL has the necessary qualifications, experience and abilities to provide garden design and consultancy services to the Customer.

14.2 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 standards expected of a reasonable garden designer. We will provide the Services in a timely fashion but any time deadline set out in the Proposal is only an estimate.

14.3 This is a design and consultancy only agreement. We may assist you in communicating with third parties but it is your responsibility to contract directly with third parties to carry out the Works. We 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.

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

14.5 You may suspend the Services at any time, but all sums due at the date of suspension will become due for immediate payment. Once we 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 us in complying with these instructions will be added to the total Fees unless such suspension was due to something we had done or failed to do.

#### **15. Project Inspection**

15.1. If we have specified in writing in the Proposal that we will carry out Project Inspection then the following Clause 15 will apply.

15.2. In consideration of payment of the fee specified in the Proposal, we will carry out Project Inspection.

15.3. Project Inspection means that we will conduct site inspections at appropriate intervals of the 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 that you may take steps to rectify such changes as you see fit.

15.4. We will not supervise or manage the 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 their work or the Works, and we 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.

#### **16. Intellectual Property Rights and Licence**

16.1. We 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.

16.2. Upon receipt of full payment of the Fees in cleared funds, 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 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.

#### **17. Transfer of Rights**

We 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.

#### **18. 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.

#### **19. Proper Law**

These terms and conditions will be governed by and construed in accordance with the laws of Scotland. In the event of any dispute we 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 Scottish Courts.

#### **20. Notices**

Notices to the address specified in the Proposal must be given in writing either by hand, by first class post, or by email with a 'read receipt'. Post will be judged to have arrived 2 days from date of posting. Notices sent by other means will be deemed received on delivery.

#### **21. 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.

## **22. Party Wall Act 1996**

If you are required under the Party Wall Act 1996 to appoint a party wall surveyor, then you will be responsible for ensuring that such a surveyor is appointed and we will co-operate and pass all such relevant information to the surveyor as soon as is reasonably practicable.

## **23. 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.

## **24. Right of substitution**

24.1 AHL may at their discretion engage a third party sub-contractor to perform some or all of the obligations under this agreement and the Customer will not hire or engage any third parties to assist with the provision of services.

24.2 In the event that AHL hires a sub-contractor, AHL will pay the sub-contractor and the compensation will remain payable by the Customer to AHL.

24.3 For the purposes of the indemnification clause of this Agreement, the sub-contractor is an agent of AHL.

## **25. Indemnification**

Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amount whatsoever, which result from or arise out of any contact or omission of the indemnifying party, its respective directors, shareholders, affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with these Terms. This indemnification will survive the termination of these Terms.

## **26. Entire Agreement**

This contract, the Proposal and any agreed variation to the Proposal 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.