

TERMS OF ENGAGEMENT

Contract

- 1.1. This contract is made between the Designer (“we”, “us”, “our”), and the Client (“you”, “your”) as defined in the Proposal each a “party” and together, “the parties”.
- 1.2. This contract comprises the Proposal and these terms and any variation agreed in accordance with these terms. In the event of inconsistency between the Proposal and these terms, the Proposal shall take priority.
- 1.3. The terms of this contract will override any terms that you may have sent or may send to us or any other written correspondence or verbal communication including any advice or recommendation made before you accept the Proposal.
- 1.4. Any typographical, clerical or other errors or omissions in the Proposal and/or any price list, catalogue, order or any other document may be changed without us incurring any liability.

1. Definitions

“Design or Designs” means all designs including drawings, specifications, models, plans, photographs brochures, notes of meetings and any other documents produced by us 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 letter or document(s) that we send to you together with these terms and conditions for the execution of the Services;
“Services” means the set of services to be provided by us 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 Friday (inclusive) which is not Christmas Day, New Year’s Day, Good Friday or a statutory bank or public holiday.

2. Services

- 1.1. Once this 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 competent garden designer. We will provide the Services with reasonable diligence in a timely fashion but any timescale or deadline set out in the Proposal is only an estimate.
- 1.2. 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.
- 1.3. All specifications, figures, sizes and other descriptions in the Design are approximations only and should not be relied upon.
- 1.4. 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 Fee unless such suspension was due to something we had done or failed to do either negligently or in breach of this contract.

3. Project Inspection

- 3.1. If we have specified in writing in the Proposal that we will carry out Project Inspection then the following Clause 4 will apply.
- 3.2. Project Inspection means that we will visit the Site at appropriate intervals as agreed in the Proposal to make visual inspections of the Works with respect to general compliance with the Designs. 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.
- 3.3. 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, delivery or

performance of such third party contractor, or the execution, delivery or performance of the Works once completed.

4. Variations

- 4.1. 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 in writing by both 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.
- 4.2. If you require services outside of the scope of the Proposal or on different terms than these terms, then we will try to carry out such service at our convenience and for a fee that we will set at that time.
- 4.3. 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.

5. Fees

- 5.1. 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, or unless the Fee is based on the value of the Works, or on the size of the Site where the Site is found to be larger once the Site has been measured.
- 5.2. The Fees will be payable in instalments in accordance with the payment schedule or as otherwise set out in the Proposal.
- 5.3. Payment shall be due upon receipt of an invoice by you. No later than 5 days after payment becomes due, you will notify us of the sum that you consider to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (a “Payment Notice”). Unless a Pay Less Notice is served pursuant to clause 6.3, you will pay the sum referred to in the Payment Notice (or, if you have not served a Payment Notice, the sum referred to in the invoice (the “Notified Sum”)) on or before the final date for payment of each invoice. The final date for payment shall be 14 days after the date on which payment becomes due.
- 5.4. Not less than 5 days before the final date for payment, you may give us notice that you intend to pay less than the Notified Sum (a “Pay Less Notice”). Any Pay Less Notice shall specify the sum that you consider to be due on the date the notice is served and the basis on which that sum is calculated. You will pay the amount, if any, specified in the Pay Less Notice on or before the final date for payment. If no Pay Less Notice is given, the amount payable shall be the sum referred to in the Notified Sum.
- 5.5. All invoices are exclusive of value added tax and delivery charges which shall be added to the invoice where applicable.
- 5.6. If sent by post, the invoice shall be deemed to have been received two Working Days after posting.
- 5.7. We 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.
- 5.8. If you fail to pay an invoice by the final date for payment, we may, after 7 days’ prior notice stating the ground or grounds relied upon, suspend the performance of all or any part of the Services until payment in full is received. We will be entitled to charge a reasonable amount in respect of costs and expenses that we may reasonably incur as a result of exercising the right of suspension.

6. Your Obligations

- 6.1. 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.
- 6.2. You will provide us at the time of asking with the necessary information and give decisions and/or approvals as necessary in order that we can properly carry out the Services. Such information will include but not be limited to your requirements, programme and budget for the Works and the services you require. 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.

TERMS OF ENGAGEMENT

You will be liable for any costs that we may suffer if this warranty is not true.

- 6.3. You will allow us reasonable access to both you and the Site at the agreed times in order to carry out the Services.
- 6.4. 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.
- 6.5. 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.
- 7.6. 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.

7. Intellectual Property Rights and Licence

- 7.1. 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.
- 7.2. 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.
- 7.3. We 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.
- 8.5. We shall not be liable for any use of the Designs other than for the purposes for which they were prepared and provided by us.

8. Limitation and/or Exclusion of Liability

- 9.1. In the event of any fault or defect arising in the Services, we shall have the right to remedy such fault where possible by re-supplying the Service. In the event that you do not advise us 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 we can accept no responsibility for that contract or the supplies under it.
- 9.3. As far as permitted by law, in no circumstances shall we be liable, in contract, delict (including negligence) for breach of statutory duty or howsoever it arises for (i) any loss of profits, business, contracts, revenues or anticipated savings or (ii) 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 caused by the negligence of either party or its employees.
- 9.6. 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.

- 9.7. You will hold us, the Designer, and not any employee or consultant employed by us liable for any matter whatsoever or howsoever arising at any time from the performance of the Services.
- 9.8. Our maximum liability arising under or in connection with this contract whether in contract, delict (including negligence) for breach of statutory duty or howsoever it arises (other than in relation to death or personal injury caused by negligence or liability for fraud and any other liability that by law cannot be excluded) shall not exceed the amount stated in the Proposal.
- 9.9. We shall have no liability under or in connection with this contract after the expiry of 5 years from the date of completion of the Services.
- 9.10. Without prejudice to any other exclusion or limitation of liability in these terms, our liability shall be limited to that proportion of loss and/or damage as it would be just and equitable for us to pay having regard to the extent of our liability for the same and on the assumptions that all other consultants, advisers, contractor and subcontractors involved in the Works and the Site are deemed to have provided contractual undertakings on terms no less onerous than these terms in respect of the carrying out of their obligations in connection with the Works and the Site and will be deemed to have paid to you such proportion of such loss and damage which it would be just and equitable for them to pay having regard to the extent of their responsibility for the same; and there are no exclusions of or limitations of liability nor joint or co-insurance provisions between you and any other persons referred to in this clause.
- 9.11. The provisions of this clause 9 shall remain in full force and effect after termination of this contract for whatever reason.

9. 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.

11. Termination

- 11.1. The Services will start on the date specified in the Proposal. Either party may terminate this contract immediately by giving the other party written notice if the other becomes insolvent or sequestrated, makes any arrangement or composition with its creditors, enters into administration, has any petition filed against it for compulsory liquidation or sequestration, 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. In the event that termination is due to your breach, any licence that we have given you under Clause 8 will end and you must stop using any Designs immediately.
- 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. We may also assist you in the cancellation of any third party contracts but you may still have to pay sums under those third party contracts subject to the terms of any those contracts.

12. Right to Cancel

- 12.1. If you are an individual acting for purposes which are wholly or mainly outside of your trade, business, craft or profession, you can cancel this contract for any reason by giving us notice within 14 days of signing the contract.
- 12.2. To exercise the right to cancel, you must inform us of your decision to cancel this contract by sending us written notice of cancellation.
- 12.3. You may use the cancellation form attached to the end of these terms, but you do not have to use this.
- 12.4. You may send the written notice to us by post or email or you can deliver it in person. The notice should be sent or delivered to the name and address set out in the cancellation form attached.
- 12.5. The written notice will be considered to have been given on the day it is posted or sent by email, whether or not we actually receive it.

TERMS OF ENGAGEMENT

- 12.6. If you cancel this contract under this clause 12 we will refund you any money you have paid to us in connection with this agreement without undue delay and within 14 days after the day on which we are informed about your decision to cancel this contract, except in the circumstances following in clause 12.7. We will make the reimbursement using the same means of payment as you used for the initial transaction, unless you have expressly agreed otherwise; in any event you will not incur any fees as a result of the reimbursement.
- 12.7. You will have to pay for goods or services provided before you cancelled this contract if you agreed in writing to us 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
- 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
- 12.8. If you cancel this agreement, any related credit agreement (for example a credit agreement that we have provided or arranged in connection with this agreement) will automatically be cancelled.
- 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. Applicable Law and Disputes**
- 1.1. These terms and conditions will be governed by and construed in accordance with the laws of Scotland and the parties submit to the exclusive jurisdiction of the courts of Scotland.
 - 1.2. In the event of any complaint or dispute between the parties, the parties will contact each other in the first instance and seek to resolve any such issues in good faith.
 - 1.3. If the parties cannot resolve any dispute through direct discussion, then save for a dispute solely concerning unpaid fees, they will attempt to resolve the dispute through an agreed Alternative Dispute Resolution (ADR) procedure.
- 16. Notices**
Notices to the address specified in the Proposal must be given in writing either by hand, by first class post, or by email. Post will be judged to have arrived 2 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.
- 20. Professional Membership**
As a member of the Society of Garden Designers, we are obliged to comply with its Code of Professional Conduct. Please do tell us if you are not happy with any aspect of the Services. We will try to resolve any problems quickly and to your satisfaction. If you are not satisfied after speaking to us, you are entitled to raise the issue with the Society of Garden Designers. A copy of the Society's Complaints Procedure is available on request.
- 21. Professional Indemnity Insurance**
We will maintain professional indemnity insurance with a limit of indemnity not less than the amount stated in the proposal for the duration of the Services and for the period of 5 years from the completion of the Services provided such insurance remains available to us on commercially reasonable terms and at commercially reasonable premium rates. We will inform you if such insurance ceases to be available on commercially reasonable terms and at commercially reasonable premium rates in order that the parties can discuss the best means of protecting their respective positions.

NOTICE OF THE RIGHT TO CANCEL

You may cancel this contract within 14 days without giving any reason.

The cancellation period will expire after 14 days from the day on which you sign this contract.

To exercise the right to cancel, you must inform us of your decision to cancel this contract by a clear statement in a letter or email. If you wish you may use the cancellation form below provided for this purpose but you do not have to.

Your written cancellation notice may be delivered personally to us or sent (including by electronic mail) to the person named and at the address below indicating that you wish to cancel the contract.

If you wish to cancel the contract the cancellation notice should be sent to:

***Anna Blackwood
Blackwood Gardens
2 Redside Cottages
North Berwick
EH39 5PE***

TERMS OF ENGAGEMENT

blackwoodgardens@gmail.com

If you send the cancellation notice by post it will take effect as soon as it is posted to the address given above. If you send the cancellation notice by email it will take effect on the date the email is sent to the email address set out above.

If we have provided any services to you with your written agreement, before the end of the 14-day cancellation period, you may be required to pay for the services provided before the contract is cancelled.

CANCELLATION FORM

If you wish to cancel the Contract you **MUST DO SO IN WRITING** and deliver your notice personally or send it to the person named below by post or by email. You may use this form if you want to but you do not have to.

(Complete, detach and return this form **ONLY IF YOU WISH TO CANCEL THE CONTRACT.**)

To: ***Anna Blackwood
Blackwood Gardens
2 Redside Cottages
North Berwick
EH39 5PE
blackwoodgardens@gmail.com***

I/We [*] hereby give notice that I/we [*] wish to cancel my/our [*] contract with
Anna Blackwood
for the supply of services and/or goods described in the Proposal dated [
[*] delete as appropriate

Signed: _____ (only if this form is notified on paper)

Name of consumer: _____

Address: _____

Date: _____