## **DEFINITIONS**

|  |
| --- |
| **Client, you, your** means the individual or organisation who purchases the performance of Services from the Contractor. |
| **Contract** means the contract between us and you for the performance of Services, comprising these Terms and Conditions and the Quote.  |
| **Contractor, we, us**, **our** means Zaid Ahmed trading as Best Gardens Services or the person detailed in the Quote. |
| **Data Protection Laws** means the Data Protection Act 2018 together with all other data protection laws applicable in the UK from time to time. |
| **Privacy Policy** means our privacy policy as may be updated from time to time, a copy of which can be found at www.bestgardens.co.uk. |
| **Quote** means our written quotation for the work to which these Terms and Conditions apply. |
| **Services** means any services provided by us to you in relation to gardening, maintenance and/or landscaping services as detailed in the Contract. |
| **Site** means the site or location where the Services will be provided as set out in the Contract. |

## **THE CONTRACT**

* 1. These Terms and Conditions may be updated from time to time and found on www.bestgardens.co.uk. If any provision in the Quote contradicts any of these Terms and Conditions, the provision in the Quote will take precedence to the extent of that contradiction.
	2. All orders are subject to acceptance by us and these Terms and Conditions will apply to any order issued by you to us and will prevail over any other terms and conditions whatsoever that may be issued by you. For the avoidance of any doubt, we expressly reject any terms and conditions purported to apply to the Contract by you. Acceptance of a Quote will be deemed to be acceptance of these Terms and Conditions. If you do not accept these Terms and Conditions, you must not enter into the Contract or accept delivery of any Services.
	3. We will only accept your order if we are satisfied with your credit worthiness. You consent to us conducting relevant credit searches, whether company and/or personal, as we deem necessary from time to time.
	4. Where this Contract is entered into by a consumer, nothing in these Terms and Conditions will affect your statutory rights as a consumer.
	5. The Quote will lapse ten (10) days (unless otherwise agreed between us) from the date of issue and may be withdrawn by us at any time without liability to you.

## Any goods stated in the Quote are provided subject to the availability and we reserve the right to offer alternative goods (e.g. plant material).

## **COMPLETION**

* 1. Any date quoted for the completion of the Services in the Quote or otherwise, is indicative only and given in good faith. We will use our reasonable endeavours to reach completion by the date quoted; however, completion dates are not binding on us.
	2. If the Services are delayed for any reason beyond our control (including unsuitable Site conditions or weather conditions, or our compliance with any instruction or request you make), then the anticipated completion date will be deemed extended for the period of the delay.
	3. In the case of a delay, we will be entitled to be paid reasonable abortive costs, except where the delay was solely caused by us.

## **PRICE AND TERMS OF PAYMENT**

* 1. We may adjust the prices: (a) on an annual basis to our then prevailing rates in our absolute discretion; (b) at any time on giving you at least thirty (30) calendar days' written notice if our costs increase due to market factors beyond our reasonable control (including, without limitation, an increase in the market price for raw materials, or an increase in our supply chain costs); and (c) at any time to include any additional charges for services, changes or variations that you have instructed or require us to provide, and which are in addition to or were not previously set out in the Contract, including in respect of the changes described in clause 8.
	2. We reserve the right to amend your credit terms at any time prior to or during the term of the Contract, including requesting advance, part or full payment of the Charges or requiring you to pay a deposit, as stated in the Contract or Quote, which may be applied by us against any amounts due and payable by you.
	3. We will aim to comply with your reasonable requests for postponement of delivery, but we will be under no obligation to do so.
	4. You agree to pay all invoices in full within seven (7) days of the date of the invoice, or as otherwise stated in the Contract. You will pay VAT where applicable and this will be itemised on invoices.
	5. If you think we have made a mistake in the amount of an invoice you must, within 7 days of the date of the invoice, notify us, and give us all relevant information to support your claim. If we agree with you, we will make an adjustment to your invoice as necessary.
	6. You are not permitted to deduct or set-off any amounts owed to us whatsoever.
	7. If you fail to pay an amount due and owing to us under the Contract by the due date for payment, you must also pay us interest on the unpaid amount at a rate equal to the prevailing base rate of Barclays Bank plc plus 2%, calculated daily from the next day after the due date, up to and including the date of payment. You will also be required to pay any costs incurred by us in the collection of any overdue amount. Where any payment is outstanding, without prejudice to such other rights and remedies as may be available, the Contractor will not be obliged to provide any further Services whatsoever to the Client and shall be entitled to cancel the Contract with immediate effect.

## **YOUR OBLIGATIONS**

* 1. You, at your own cost, will assume all responsibility for all conditions of the Site above and below the surface including all environmental matters as may be applicable to the Site. We will be entitled to inspect the Site and perform additional works (at your cost) required to ensure the deliverables are still possible.
	2. You warrant that you have sought and obtained all necessary consents, licenses and approvals required for the performance of the Services, and you will be deemed to have made all necessary due inspections, risk assessments. You are solely responsible for applying for, obtaining and complying with all obligations imposed by any law, Act of Parliament, statutory instruments, and all necessary third-party consents or obligations in relation to the provision of the Services, including the Town and Country Planning Acts.
	3. Unless otherwise expressly agreed in writing between the parties, you warrant that the Site and site access (including ground conditions and weather conditions and vehicular access) are suitable for the safe and effective performance of the Services.
	4. You will at all times ensure that we have sufficient access to the Site to do all things required to be done under the Contract including delivery and unloading, of equipment needed for the performance of the Services. You will provide adequate facilities at the Site including electricity toilet facilities and water on the Site if required. You will bear the cost for providing electricity, toilet facilities and water. Where you provide on Site storage, you will ensure that the facility is safe and secure.
	5. You will be responsible for obtaining any necessary permissions, consents or authorisation from any owner or occupier of the Site or any other land where access is required for the entry into the Site and performance of the Services.
	6. You will indemnify us in full for all costs, damages, losses and liabilities incurred by us as a result of a claim made by any person firm or company (including us) arising out of or in connection with this clause 5, except where such costs, damages, losses and liabilities arise solely and directly from our negligent act or omission.
	7. You, at your own cost, will be responsible for all rubbish removal unless otherwise detailed in the Quote.
	8. You, at your own cost, will be responsible for the maintenance of all living material following completion of the performance of Services.
	9. You will notify us of any known hazards or obstructions on the Site prior to submission of a Quote.
	10. Without limiting our other rights and remedies, any breach of this clause 5 by you will be deemed a material breach not capable of remedy and will give us the right to terminate the Contract immediately by notice to you.
	11. You will indemnify us in full for all costs, damages, losses or liability howsoever caused arising out of or connected with the failure by you to comply with clause 5.2.

## **OUR OBLIGATIONS**

* 1. We will use reasonable endeavours to meet any performance dates for the Services specified in the Contract or the Quote, but any such dates will be indicative only and time will not be of the essence.
	2. We are not liable for any delay, failure or inability to perform the Services, howsoever caused.
	3. We warrant to you that the Services will be provided using reasonable care and skill. We will carry out the work while soil and weather conditions are suitable and will only use machinery and tools suitable for the Site conditions and the work to be carried out.
	4. We will take reasonable steps to minimise environmental disturbance, nuisance and pollution. Some noise may be unavoidable.
	5. We will notify you if we discover any obstructions or hazards during the course of the work and advise on the implications of the discovery of such obstructions or hazards, if any.
	6. To the extent we are responsible under the Contract for any poor performance of the Services, our liability in such respect will be limited to re-performing or completing the Service (as applicable).
1. **TERMINATION**
	1. The Contract may be terminated by either party, by giving week’s notice in writing, using the contact details provided in the Contract.
	2. Notwithstanding any other provisions of the Contract, if you:
2. fail to pay any sums due and payable under the Contract in full by the due date;
3. commit a breach that we consider in our absolute discretion to be a material or repeated breach of the Contract;
4. being a Company or other entity, have a petition presented for your winding up; pass a resolution for voluntary winding up (other than for the purpose of a bona fide amalgamation or reconstruction); enter into a voluntary arrangement with your creditors; become subject to an administration order; have a receiver appointed for all or any of your assets; or are subject to any other analogous process in any jurisdiction;
5. being an individual or a firm, become bankrupt, insolvent or enter into voluntary arrangements with your creditors;
6. are subject to any other analogous process in any jurisdiction, then we have the right in our absolute discretion to (i) suspend all or any further Service under the Contract and/or (ii) terminate the Contract immediately by notice to you. Any deposits or part payments for materials paid will be non-refundable.
	1. Upon termination of the Contract pursuant to clause 7.1, all and any sums payable in relation to the Services performed to the date of termination and owing at the time of termination, will become due immediately regardless of any provision of the Contract to the contrary.
	2. Termination of all or part of the Contract for whatever cause and however it arises, will not affect either of the parties' rights and remedies that have accrued as at the date of termination, including the right to claim damages or any other remedy in respect of any breach of the Contract that existed at or before the date of termination.
	3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after the date of termination will remain in full force and effect after the date of termination.

## **CHANGES AND SUBCONTRACTING**

* 1. If you require any variations or changes (a **Change**) to the Services or if we have to perform a Change in order to execute your instructions, we may adjust your Quote based on the Changes and we will include this in your invoice. We will aim to confirm any adjustment to your Charges with you in advance of performing the Change, but if you do not give us reasonable advance notice of the Change and we are required to perform it without such confirmation, you will be deemed to have accepted our adjustment to the Charges.
	2. We may subcontract any part of our obligations under the Contract

## **TITLE AND RISK**

* 1. Any equipment we use in providing the Services will remain our property and you will have no right, title or interest in or to such equipment.
	2. The risk of loss, theft, damage or destruction of goods will pass to you on the earlier of the delivery of such goods to the Site or the payment in full for such goods.

## **LIMITATION OF LIABILITY**

* 1. Without prejudice to clause 10.2, our maximum aggregate liability for breach of the Contract (including any liability for the acts or omissions of our employees), whether arising in contract, tort (including negligence), misrepresentation or otherwise, will in no circumstances exceed the aggregate amount received by us by way of payment made under the Contract during the 12 consecutive months preceding the claim.
	2. Nothing in the Contract will exclude or in any way limit: (a) either party's liability for death or personal injury caused by its own negligence; or (b) either party's liability for fraud or fraudulent misrepresentation.
	3. The Contract sets out the full extent of our obligations and liabilities in respect of the provision of any Service. There are no conditions, warranties or other terms, express or implied, including as to quality, fitness for a particular purpose or any other kind whatsoever, that are binding on us except as specifically stated in the Contract. Any condition, warranty or other term which might be implied into or incorporated within the Contract, whether by statute, common law or otherwise, is expressly excluded to the fullest extent permitted by law.
	4. Without prejudice to clause 10.2, we will not be liable under the Contract for any loss of profit, loss of revenue, loss of business, or for any indirect or consequential loss or damage, in each case, however caused, even if foreseeable.
	5. If you have any claim against us under the Contract, you must give us notice as soon as reasonably practicable after the claim first arises.
	6. Unless otherwise specified in the Quote or notified to the Client, the Contractor is not responsible for irrigation of planted material and lawns and does not accept liability for the loss of planted material due to lack of irrigation or adverse weather conditions.

## **DESIGNS AND COPYRIGHT**

* 1. The designs, specifications, drawings, photographs, and statements as to dimensions, suitability, performance or otherwise issued by us in connection with the provision of Services are offered in good faith but are intended to be approximate only and subject to no conditions nor will it carry any guarantee or warranty as to dimensions, quality, fitness, performance or suitability.
	2. The copyright in drawings, designs, specifications, photographs, data and literature relating to the Services will remain our property.

## **CONFIDENTIALITY AND DATA PROTECTION**

* 1. “Confidential information” means all information in respect of our business and financing including, but not limited to, any ideas, business methods, finance, prices, financial marketing development or manpower, plans, drawings, market opportunities, product information, design rights, customer information, trade secrets, details, computer systems and software know-how on any medium and software listings of any party and other matters connected with the products or services manufactured, marketed, provided or obtained by us.
	2. You will not use our confidential information for any purpose other than to perform your obligations under the Contract and you undertake to not disclose to any person any confidential information concerning our business, affairs, customers, clients or suppliers, except:
1. to your employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out your obligations under the Contract. You will ensure that your employees, officers, representatives, subcontractors or advisers to whom you disclose our confidential information comply with this [clause 12](http://uk.practicallaw.com/4-318-4952#a879620); and
2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
	1. You will not disclose personal data to us other than to the extent necessary for the performance of the Contract. We will process any such personal data as a data controller in compliance with Data Protection Laws and in accordance with our Privacy Policy.

## **GENERAL**

* 1. Force Majeure. We will not be in breach of the Contract nor liable for delay or failure to perform, any of our obligations if such delay or failure result from events, circumstances or causes beyond our reasonable control (e.g. war, acts of terrorism, extreme weather conditions, earthquakes, fire, floods, disease, epidemic or pandemic, traffic congestion, mechanical breakdown (including of machinery, plant equipment and vehicles), shortage or unavailability of materials, adverse weather conditions or Site conditions, any road blockades, or industrial action).
	2. We will aim to tell you promptly about any event of force majeure, which affects our performance of the Contract and will try to mitigate the effect of such event. If we are unable to perform our obligations for a continuous period of four weeks, we may terminate the Contract or such part of the Contract that relates to the affected Service (as applicable) immediately by giving notice to you.
	3. Assignment. You will not, without our consent in writing assign your rights and obligations under the Contract.
	4. Waiver. Our failure or delay to exercise a power or right does not operate as a waiver of such power or right unless provided in writing.
	5. Amendment. We may change these Terms and Conditions (other than clause 4.1) by giving you notice and/or by publishing such changes on our website. Other than changes permitted by clause 13.5, no other provision of the Contract will be amended unless agreed by both parties.
	6. Severability. If any provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. Any modification to or deletion of a provision or part-provision will not affect the validity and enforceability of the rest of the Contract, which will remain in full force and effect.
	7. Entire Agreement The Contract constitutes the entire agreement between the parties and supersedes and extinguishes any and all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral, relating to its subject matter. You agree that you will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
	8. Notices. Notices will be effective and sufficiently served, if delivered in writing by pre-paid post, as an email or delivered by hand to the address of the other party as referred to in the Contract. Notice will be deemed to have been received: (a) if sent by post, 2 working days after posting; (b) if sent by email, 1 business day after transmission; and (c) if delivered by hand, atthe date of delivery.
	9. Third Party Rights. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to any third party.
	10. Disputes and Complaints. The parties will attempt, in good faith, to resolve any dispute arising out of or in connection with the Contract (**Dispute**) promptly by negotiation and within 28 days after the Dispute has been raised (**Dispute Notice**). If, within 28 days of the Dispute Notice, the parties have failed to agree on a resolution, either party may refer the Dispute for mediation.
	11. Notwithstanding clause 13.10, either party may commence or continue court proceedings in respect of such unresolved Dispute or issue.
	12. Interpretation, Governing Law & Jurisdiction. These Terms and Conditions will be interpreted without reference to their headings. Any reference to “include”, “including”, “such as” or “in particular” or any similar term will be construed without limitation. A reference to a statute or statutory provision is a reference to it as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted. Unless otherwise stated, a reference to a day means a calendar day. The Contract and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law. You irrevocably submit to the exclusive jurisdiction of the English courts.