

TAPESTRY DESIGN STUDIOS LIMITED - TERMS & CONDITIONS FOR MY GARDEN DESIGN

These are the terms and conditions (**Terms**) of Tapestry Design Studios Limited, a company registered in England and Wales (company number 10033611) whose registered office is at 41 High Street, Walton On the Naze, England CO14 8BG (referred to by **we, our** or **us**). These Terms set out the basis on which we agree to supply our "My Garden Design" services ("Services") to you (referred to by **you** or **your**).

The Services are available online at www.mygardendesign.co.uk (**Website**) for landscape gardeners and similar trade customers only.

1 Orders

- 1.1 To request our Services, you must first create a new account on our Website or login into your existing account. From there you must create a new project then:
 - (a) complete the online forms;
 - (b) upload photographs of your client's garden;
 - (c) upload measurements of the site. This can be done using a CAD programme such as SketchUp or using a hand drawn sketch (which does not need to be done to scale, we will scale using your measurements);
 - (d) complete the garden brief form either online or by printing it out, filling it in by hand and uploading it to the Website;
 - (e) uploading your company logo; and
 - (f) paying the price (which will be automatically calculated by via the Website).
- 1.2 The above request (**Order**) shall not be treated as having been accepted by us unless and until we have received your payment and sent a confirmatory email to you (**Order Confirmation**).
- 1.3 You are responsible for ensuring the accuracy of the information you submit to us and for checking our quotation and Order Confirmation are correct.
- 1.4 No Order which we have accepted may be cancelled by you.
- 1.5 These Terms apply to the exclusion of any other terms that you seek to impose.

2 Supply of Services

- 2.1 We shall supply the Services to you in accordance with our quotation in all material respects.
- 2.2 We shall use reasonable endeavours to meet any performance dates specified in our quotation and/or Order Confirmation, but any such dates shall be estimates only. We shall not be liable for any delay in supplying the Services.
- 2.3 We warrant to you that the Services will be provided using reasonable skill and care.
- 2.4 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.
- 2.5 After we have produced the design for you, you may request one round of minor revisions which will be included within the price. The second and any subsequent rounds of minor revisions, and any material revisions to our original design, shall be subject to a further charge, based on our hourly rate, the amount of which we will confirm by email. "Material revisions" mean non-minor revisions, i.e. ones which involve a reworking of over 10% of our original design or require us to spend more than an hour over and above the time taken to produce our original design.
- 2.6 Any personal data provided to us will be treated securely and in accordance with the General Data Protection Regulation and the Data Protection Act 2018. More information can be found in our privacy policy.

3 Your Obligations

- 3.1 You are responsible for:
 - (a) all communications with your client regarding our Services;
 - (b) surveying the site at which the landscaping works (**Works**) will be carried out for your client and providing us with accurate measurements;
 - (c) advising your client on any planning consent and building regulation approval required for the Works (whether or not they are based on our designs);
 - (d) obtaining and maintaining all necessary licences, permissions and consents which may be required in connection with the Works;

- (e) ensuring that the design of the Works (whether or not they are based on our designs) and the carrying out of the Works comply with the Construction (Design and Management) Regulations 2016; and
- (f) any changes you make to the designs we produce for you.

- 3.2 You shall co-operate with us in all matters relating to the Services.
- 3.3 You shall provide us with such additional information and materials as we may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.
- 3.4 If the performance of any of our obligations in supplying the Services is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligations (**Your Default**) then:
 - 3.4.1 we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy Your Default, and to rely on Your Default to relieve us from the performance of any of our obligations to the extent that Your Default prevents or delays our performance of any of our obligations;
 - 3.4.2 we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 3.4; and
 - 3.4.3 you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from Your Default.

4 Price and Payment

- 4.1 Our prices are calculated on a square metre basis, according to the maximum width and length dimensions of your client's garden as shown in the information you submit to us and adjusted by us (on an approximate basis) according to the shape of the garden. No refunds will be made on the basis that our prices are based on an approximate (rather than exact) calculation of the metrage of your client's garden.
- 4.2 You shall pay the price by credit or debit card when placing the Order.
- 4.3 Any additional charges (as referred to in clause 2.5) must be paid (by credit or debit card) within 7 days of the date of our invoice.
- 4.4 Without limiting any of our other rights, if you fail to make any payment due to us for the supply of Services by the date payment is due, we shall have the right to charge interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate accruing on a daily basis compounded quarterly from the date payment is due
- 4.5 until the date of actual payment of the overdue amount, whether before or after judgment.
- 4.6 You shall pay all amounts due in full without any deduction and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of all or any part of the amount due to us.

5 Intellectual Property Rights

- 5.1 We will provide you with PDF and paper copies of the design documents we create for you.
- 5.2 The copyright, design rights and all other intellectual property rights in the design documents, and any other materials we prepare or produce for you in connection with the Services (together **Documents**), will belong to us absolutely but we hereby grant you a non-exclusive, royalty-free licence to use the Documents for the purpose of carrying out the Works and for promoting your services on your website.
- 5.3 You may not use the Documents for any other purpose except with our prior written consent.

6 Limitation of Liability

- 6.1 Nothing in these Terms shall limit or exclude our liability:
 - 6.1.1 for death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors; or
 - 6.1.2 fraud or fraudulent misrepresentation.
- 6.2 Subject to clause 6.1:
 - 6.2.1 we shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or contracts, or for any indirect or consequential loss whether arising from negligence, breach of contract or otherwise; and

- 6.2.2 our total liability to you in respect of all other losses arising under or in connection with the supply of Services, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price paid by you for the Services.
- 6.3 Except as set out in these Terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

7 Termination

- 7.1 Without limiting our other rights or remedies, we may terminate the supply of Services with immediate effect by giving written notice to you if:
- 7.1.1 you fail to pay any amount due for Services on the due date for payment;
 - 7.1.2 you commit any continuing or material breach of any of the provisions of these Terms and, in the case of such a breach which is capable of remedy, fail to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - 7.1.3 an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of your property or assets;
 - 7.1.4 you make any voluntary (or similar) arrangement with your creditors;
 - 7.1.5 (being a company) you have an administrator appointed, or you are subject to insolvency proceedings, or you go into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under these Terms);
 - 7.1.6 (being an individual) bankruptcy proceedings are commenced against you;
 - 7.1.7 you cease, or threaten to cease, to carry on business.
- 7.2 Without limiting our other rights or remedies, we shall have the right to suspend provision of the Services in any of the circumstances listed in clause 7.1.

8 Consequences of Termination

On termination of the Services:

- 8.1 you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- 8.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Services shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination or expiry; and
- 8.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

9 General

- 9.1 We shall not be responsible for any delays in performing, or for any failure to perform, any of our obligations under these Terms if the delay or failure was due to any cause beyond our reasonable control.
- 9.2 You shall not, without our prior written consent assign, transfer, charge, subcontract or deal in any other manner with any of our rights or obligations under these Terms.
- 9.3 Any notice or other information required or permitted to be given under these Terms shall be treated as having been validly given if served personally on that party or if sent by first class pre-paid post (to the last known address of that party) or by email. If the notice is sent by first class first class pre-paid post, it shall be treated as having been received 2 days after the date of posting. If the notice is sent by email, it shall be treated as having been received on the same day if sent during normal working hours (or on the next working day where sent outside such hours).
- 9.4 No waiver by us of any breach of these Terms by you shall be considered as a waiver of any subsequent breach of the same or any other provisions.
- 9.5 If any provision of these Terms is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by us from any competent authority then that provision shall be limited or eliminated to the minimum extent necessary so these Terms shall otherwise remain in full force and effect and enforceable.

- 9.6 Nothing in these Terms is intended or shall be deemed to constitute a partnership or joint venture of any kind between you and us, nor constitute us your agent. You shall have no authority to act as our agent or to bind us in any way.
- 9.7 These Terms shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 9.8 No variation of these Terms shall be binding unless made in writing and signed by you and us.
- 9.9 These Terms shall be governed by English law and the English Courts shall have exclusive jurisdiction to decide any dispute concerning these Terms.
- 9.10 References in these Terms to "writing" includes email (provided the email is supported by a valid server delivery receipt).