

# ANNE SMITH DESIGNS

Comment [U1]:

## TERMS AND CONDITIONS OF BUSINESS

**YOUR ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8.**

### 1. INTERPRETATION

1.1 The definitions in this clause apply to these Terms:

**Beyond Control Event:** has the meaning given in clause 9. **Completion:** our submission of the Design to you. **Design:** our garden design and specifications for you as detailed in the Services. **Order:** your written acceptance of our Quotation as referred to in clause 2.6. **Quotation:** our quotation for the Services as referred to in clause 2.5. **Services:** the services, including the provision of the Design and any related specifications, that we are providing to you as set out in the Order. **Terms:** the terms and conditions set out in this document. **We/us:** Anne Smith trading as Anne Smith Designs. **Writing or written:** includes faxes and e-mail.

1.2 Headings do not affect the interpretation of these Terms.

1.3 These Terms only apply to our contracts with consumers.

### 2. BASIS OF SALE

2.1 We consider these Terms and the Order to set out the whole agreement between you and us for the supply of the Services. Please check that the details in these Terms and on the Order are complete and accurate before you commit yourself to the contract. If you think that there is a mistake, please let us know straight away and make sure that you ask us to confirm any changes in writing, as your acceptance of our Quotation is taken as confirmation that the Order is correct.

2.2 Please ensure that you read and understand these Terms before you place the Order, because you will be bound by the Terms once a contract comes into existence between us, in accordance with clause 2.7.

2.3 Any samples, drawings, descriptions or advertising we supply are supplied solely to provide you with an approximate idea of the services they describe and do not form part of the contract between you and us for the supply of the Services.

2.4 If any of these Terms are inconsistent with any term of the Order, the Order will prevail.

- 2.5 Our Quotation is not an offer by us to carry out the Services for you. Our Quotation is given on the basis that a binding contract shall only come into existence in accordance with clause 2.7.
- 2.6 We will issue you with a Quotation upon request, free of charge, following our initial consultation. A Quotation from us shall be valid for a period of 2 calendar months from its date of issue, unless we notify you in writing that we have withdrawn it during this period. If you wish to proceed on the basis of our Quotation you must accept it in writing, at which point the Quotation shall then be the Order.
- 2.7 Your Order is an offer by you to enter into a binding contract with us, which we are free to accept or decline at our absolute discretion. A contract shall be made between us and these Terms shall become binding on you and us on the earlier of our acceptance of your Order in writing or our notification to you that we are able to provide the Services
- 2.8 You may at any time before any agreed completion date amend or cancel an Order by providing us with written notice. If you amend or cancel an Order, you will be liable to pay to us all costs we reasonably incur in fulfilling the Order until we receive your amendment or cancellation unless the amendment or cancellation is due to our failure to comply with these Terms, in which case you shall have no liability to us for it.
- 2.9 If we revise or amend these Terms you will be subject to the terms in force at the time that you place your Order, unless any change to these Terms is required by law or government or regulatory authority in which case it will apply to any Order you have already placed that we have not yet fulfilled. If the Services are ongoing, we will give you prior notice of any changes to these Terms and you can choose to cancel the Order without penalty before the new Terms affect you.

### **3. QUALITY OF SERVICES**

- 3.1 Unless we are prevented from doing so by a Beyond Control Event, we will provide the Services to you and they will:
- (a) conform in all material respects with their description;
  - (b) be carried out with reasonable care and skill;
  - (c) be fit for any purpose we say the Services are fit for, or for any purpose for which you use the Services and about which you have informed us, or we could reasonably expect you to use the Services;
  - (d) be free from material defects in design, material and workmanship;

- (e) comply with all applicable statutory and regulatory requirements for supplying the Services in the United Kingdom; and
  - (f) (if applicable) include goods which are of satisfactory quality.
- 3.2 The provisions of clause 3.1 apply only to the Design and Services as detailed in your Order and are in addition to your legal rights in relation only to Services which are not carried out with reasonable skill and care or which otherwise do not conform with these Terms.
- 3.3 These Terms apply to any replacement Services we supply to you in the unlikely event that the original Services do not conform to these Terms.
- 3.4 You must provide us, in sufficient time, with any information and instructions relating to the Services that is or are necessary to enable us to provide the Services in accordance with these Terms.
- 3.5 If you do not, or you provide us with incomplete, incorrect or inaccurate information or instructions, we may cancel the Order by giving you written notice, or we may make an additional charge of a reasonable sum to cover any extra work that is required. If we cancel the Order we may charge you a reasonable sum for any work undertaken or costs incurred by us up to the time of cancellation.
- 3.6 The Services that we are supplying to you are only for domestic and private use, and you agree not to use the Services for any commercial purpose.

#### **4. PROVISION OF SERVICES**

- 4.1 Subject to clause 7.2, we will supply the Services to you from the date set out in the Order.
- 4.2 We will make every effort to complete the Services on time but there may be delays due to circumstances beyond our control. In this case we will complete the Services as soon as reasonably possible.
- 4.3 We may have to suspend the Services if we have to deal with technical problems, or to make improvements to the Service. We will let you know in advance where this occurs, unless the problem is urgent or an emergency.

#### **5. DEFECTIVE SERVICES**

- 5.1 In the unlikely event that the Services do not conform to these Terms, please let us know as soon as possible after we have carried them out. We will:

- (a) provide you with a full or partial refund, depending on what is reasonable; or
- (b) re-perform the Services.

5.2 These Terms will apply to any replacement Services we supply to you.

## **6. INTELLECTUAL PROPERTY RIGHTS**

The copyright, design right and all other intellectual property rights in any materials and other documents or items that we prepare or produce for you in connection with the Services will belong to us absolutely. You may not use the materials, documents or other items detailed above for any commercial purpose.

## **7. PRICE AND PAYMENT**

7.1 The price of the Services will be as set out in the Order and includes VAT if applicable. If the rate of VAT changes between the date of the Order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Services in full before the change in the rate of VAT takes effect.

7.2 A deposit of 50% of the price of the Services is payable upon our acceptance of your Order in accordance with clause 2.7.

7.3 The balance of the price for the Services is payable upon Completion. We will invoice you for the Services at Completion. You must pay the invoice in full in cleared monies within 14 calendar days of the date of the invoice by cheque made payable to "Anne Smith". Should any cheque be returned from our bank unpaid an additional charge of £25.00 will be payable by you to cover our bank charges and administration costs in dealing with this. All materials, including plants, shall belong to us until payment in full has been received.

7.4 If you do not make any payment due to us by the due date for payment (as set out in clause 7.3), we may charge interest to you on the overdue amount at the rate of 2% a year above the base lending rate of our bank from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with the overdue amount.

7.5 Without limiting any other remedies or rights that we may have, if you do not pay us on time, we may cancel or suspend our performance of the Services or any other outstanding Order until you have paid the outstanding amounts.

7.6 Clauses 7.4 and 7.5 shall not apply for the period of the dispute if you dispute the payment owing in good faith and let us know promptly after you have received the invoice that you dispute it.

## **8. LIMITATION OF LIABILITY**

8.1 Subject to clauses 8.2 and 8.3, if either of us fails to comply with these Terms, neither of us shall be responsible for any losses that the other suffers as a result, except for those losses which we or you could reasonably foresee would result from the failure to comply with these Terms.

8.2 Neither of us shall be responsible for losses that result from our failure to comply with these Terms including, but not limited to, loss of income, loss of business, loss of anticipated savings or loss of data. However, this clause 8.2 shall not prevent claims for foreseeable loss of, or damage to, your physical property.

8.3 This clause does not include or limit in any way our liability for:

- (a) death or personal injury caused by our negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability; or
- (e) any other matter for which it would be illegal or unlawful for us to exclude or attempt to exclude our liability.

8.4 For the avoidance of doubt, the limitations in this clause 8 apply only to the Services. If the Design is altered in any way without our prior written consent at any time after Completion, including when it is implemented, we will not be responsible or liable to you for any loss resulting from this whatsoever. This includes any loss resulting from changes to or replacement of planting due to natural wastage and any part of the Design not implemented by us.

## **9. EVENTS OUTSIDE OUR CONTROL**

9.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by events outside our reasonable control (Beyond Control Event).

- 9.2 A Beyond Control Event includes any act, event, non-occurrence, omission or accident beyond our reasonable control and includes, in particular (without limitation), the following:
- (a) strikes, lock-outs or other industrial action; or
  - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war or threat or preparation for war; or
  - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; or
  - (d) impossibility of the use of public or private transport; or
  - (e) impossibility of the use of public or private telecommunications networks.
- 9.3 Our obligations under these Terms are suspended for the period that the Beyond Control Event continues, and we will extend the time to perform these obligations for the duration of that period. We will take reasonable steps to bring the Beyond Control Event to a close or to find a solution by which our obligations under these Terms can be performed despite the Beyond Control Event.

## **10. TERMINATION**

- 10.1 Either of us may terminate the arrangement between us at any time by providing the other party with 30 calendar days' prior notice in writing.
- 10.2 Termination will not affect either party's outstanding rights or duties, including our right to recover from you any money you owe us under these Terms for work carried out and costs incurred by us up to the date of termination.

## **11. POST COMPLETION MATTERS**

- 11.1 We will on request, subject to our acceptance of a further Order, oversee implementation and final sign off of the Design for a further charge to be calculated on a time spent basis.
- 11.2 We reserve the right to photograph the final implementation of the Design for our own records.

## **12. ASSIGNMENT**

You may not transfer any of your rights or obligations under these Terms to another person without our prior written consent, which we will not withhold

unreasonably. We can transfer all or any of our rights and obligations under these Terms to another organisation, but this will not affect your rights under these Terms.

### **13. NOTICES**

All notices sent by you to us must be sent to Anne Smith trading as Anne Smith Designs at Vectis, 1 Palmers Court, Southwell, Nottinghamshire NG25 0JG or parisanne@vectis01.fsnet.co.uk. We may give notice to you at either the e-mail or postal address you provide to us in the Order. Notice will be deemed received and properly served 24 hours after an e-mail is sent or three days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that the letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that the e-mail was sent to the specified e-mail address of the addressee.

### **14. DATA PROTECTION**

We will only use the personal information you provide to us to provide the Services, or to inform you about similar services which we provide, unless you tell us that you do not want to receive this information. We will not pass your data to third parties.

### **15. GENERAL**

- 15.1 If any court or competent authority decides that any of the provisions of these Terms are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.
- 15.2 No waiver by us of any of these Terms shall be effective unless we expressly say that it is waived and we tell you so in writing.
- 15.3 A person who is not party to these Terms shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.
- 15.4 These Terms shall be governed by English law and you and we both agree to the non-exclusive jurisdiction of the English courts.

**We acknowledge receipt of a copy of these Terms and confirm our acceptance of them.**

..... **Customer**

..... **Date**