

Terms and Conditions of product supply

OUR TERMS

1. THESE TERMS

1.1 **What these terms cover.** These are the terms and conditions on which we supply products to you, whether these are services or digital content.

1.2 **Why you should read them.** Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms [or require any changes], please contact us to discuss.

2. INFORMATION ABOUT US AND HOW TO CONTACT US

2.1 **Who we are.** We are Alison Marsden, Gardening by Design, a sole trader established in England and Wales.

2.2 **How to contact us.** You can contact us by writing to us at contact@gardeningbydesign.co.uk.

2.3 **How we may contact you.** If we have to contact you we will do so by telephone or by writing to you at the email address or postal address you provided to us in your order.

3. OUR CONTRACT WITH YOU

3.1 **How we will accept your order.** Our acceptance of your order will take place when we email you to accept it or confirm the order via the means that you placed it for example telephone, email, SMS or electronic messaging, at which point a contract will come into existence between you and us.

3.2 **If we cannot accept your order.** If we are unable to accept your order, we will inform you of this in writing and will not charge you for the product. This might be because the product is out of stock, because of unexpected limits on our resources which we could not reasonably plan for, because we have identified an error in the price or description of the product or because we are unable to meet a delivery deadline you have specified.

3.3 **Your order number.** For digital products only we will assign an order number to your order and tell you what it is when we accept your order. It will help us if you can tell us the order number whenever you contact us about your order.

4. YOUR RIGHTS TO MAKE CHANGES

If you wish to make a change to the product you have ordered please contact us. We will let you know if the change is possible. If it is possible we will let you know about any changes to the price of the product, the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to go ahead with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract (see clause 7- Your rights to end the contract).

5. OUR RIGHTS TO MAKE CHANGES

5.1 **Updates to digital content.** We may update or require you to update digital content, provided that the digital content shall always match the description of it that we provided to you before you bought it.

6. PROVIDING OUR DIGITAL CONTENT

6.1 When we will provide the products.

(a) **If the product is a one-off purchase of digital content.** We will make the digital content available for download by you as soon as we accept your order, this is "delivery" of the content to you.

(b) **If the products are ongoing services or a subscription to receive digital content.** We will supply the services or digital content to you until either the services are completed or the subscription expires (if applicable) or you end the contract as described in clause 7 or we end the contract by written notice to you as described in clause 9.

(c) **Digital content remains our intellectual property.** We provide our content to you for your personal use only on a non-exclusive, revocable licence which means that we are granting permission for its use for you to benefit from it personally. It also means that we can withdraw that permission if you breach these terms; you must not pass on, sell, distribute or otherwise exploit our content for commercial gain. You must not pass on or distribute the content or internet urls, links, passwords or other information allowing another person to access the content.

- 6.2 **We are not responsible for delays outside our control.** If our supply of the products is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused by the event, but if there is a risk of substantial delay you may contact us to end the contract and receive a refund for any products you have paid for but not received.
- 6.3 **Reasons we may suspend the supply of products to you.** We may have to suspend the supply of a product to:
- deal with technical problems or make minor technical changes;
 - update the product to reflect changes in relevant laws and regulatory requirements;
 - make changes to the product as requested by you or notified by us to you (see clause 5).
- 7. YOUR RIGHTS TO END THE CONTRACT**
- 7.1 **You can always end your contract with us.** Your rights when you end the contract will depend on what you have bought, whether there is anything wrong with it, how we are performing and when you decide to end the contract:
- If what you have bought is faulty or misdescribed you may have a legal right to end the contract, see clause 10;**
 - If you want to end the contract because of something we have done or have told you we are going to do, see clause 7.2;**
 - If you have just changed your mind about the product, see clause 7.3.** You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions;
 - In all other cases (if we are not at fault and there is no right to change your mind), see clause 7.6.**
- 7.2 **Ending the contract because of something we have done or are going to do.** If you are ending a contract for a reason set out at (a) to (c) below the contract will end immediately and we will refund you in full for any products which have not been provided and you may also be entitled to compensation. The reasons are:
- we have told you about an upcoming change to the product or these terms which you do not agree to;
 - we have told you about an error in the price or description of the product you have ordered and you do not wish to proceed; or
 - you have a legal right to end the contract because of something we have done wrong.
- 7.3 **Exercising your right to change your mind (Consumer Contracts Regulations 2013).** For most products bought online you have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.
- 7.4 **When you don't have the right to change your mind.** You do not have a right to change your mind in respect of:
- digital products after you have started to download or stream these;
 - services, once these have been completed, even if the cancellation period is still running;
 - products sealed for health protection or hygiene purposes, once these have been unsealed after you receive them;
 - sealed audio or sealed video recordings or sealed computer software, once these products are unsealed after you receive them; and
 - any products which become mixed inseparably with other items after their delivery.
- 7.5 **How long do I have to change my mind?** How long you have depends on what you have ordered and how it is delivered.
- Have you bought services?** If so, you have 7 days after the day we email, or otherwise contact, you to confirm we accept your order. However, once we have completed the services you cannot change your mind, even if the period is still running. If you cancel after we have started the services, you must pay us for the services provided up until the time you tell us that you have changed your mind.
 - Have you bought digital content for download or streaming?** if so, you have 14 days after the day we email you to confirm we accept your order, or, if earlier, until you start downloading or streaming. If we delivered the digital content to you immediately, and you agreed to this when ordering, you will not have a right to change your mind.

- 7.6 **Ending the contract where we are not at fault and there is no right to change your mind.** Even if we are not at fault and you do not have a right to change your mind, you can still end the contract before it is completed, but you may have to pay us compensation. A contract for digital content is completed when the product is downloaded or streamed and paid for. A contract for services is completed when we have finished providing the services and you have paid for them. If you want to end a contract before it is completed where we are not at fault and you have not changed your mind, just contact us to let us know. The contract will end immediately and we will refund any sums paid by you for products not provided but we may deduct from that refund (or, if you have not made an advance payment, charge you) reasonable compensation for the net costs we will incur as a result of your ending the contract.
- 8. HOW TO END THE CONTRACT WITH US (INCLUDING IF YOU HAVE CHANGED YOUR MIND)**
- 8.1 **Tell us you want to end the contract.** To end the contract with us, please let us know by email. Email us at contact@gardeningbydesign.co.uk. Please provide your name, home address, details of the order and, where available, your phone number and email address.
- 8.2 **Deductions from refunds if you are exercising your right to change your mind about receiving our services.** We may deduct from any refund an amount for the supply of the service for the period for which it was supplied, ending with the time when you told us you had changed your mind. The amount will be in proportion to what has been supplied, in comparison with the full coverage of the contract.
- 8.3 **When your refund will be made.** Your refund will be made within 14 days of your telling us you have changed your mind.
- 9. OUR RIGHTS TO END THE CONTRACT**
- 9.1 **We may end the contract if you break it.** We may end the contract for a product at any time by writing to you if you do not make any payment to us when it is due and you still do not make payment within 7 days of us reminding you that payment is due.
- 9.2 **You must compensate us if you break the contract.** If we end the contract in the situations set out in clause 9.1 we will refund any money you have paid in advance for products we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of your breaking the contract.
- 10. IF THERE IS A PROBLEM WITH THE PRODUCT**
- 10.1 **How to tell us about problems.** If you have any questions or complaints about the product, please contact us. You can write to us at contact@gardeningbydesign.co.uk.
- 10.2 **Summary of your legal rights.** We are under a legal duty to supply products that are in conformity with this contract. See the box below for a summary of your key legal rights in relation to the product. Nothing in these terms will affect your legal rights.

Summary of your key legal rights

If your product is **digital content**, the Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality:

- if your digital content is faulty, you're entitled to a repair or a replacement.
- if the fault can't be fixed, or if it hasn't been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back
- if you can show the fault has damaged your device and we haven't used reasonable care and skill, you may be entitled to a repair or compensation

If your product is **services**, the Consumer Rights Act 2015 says:

- you can ask us to repeat or fix a service if it's not carried out with reasonable care and skill, or get some money back if we can't fix it.
- if you haven't agreed a price beforehand, what you're asked to pay must be reasonable.
- if you haven't agreed a time beforehand, it must be carried out within a reasonable time.

11. PRICE AND PAYMENT

- 11.1 **Where to find the price for the product.** For digital products the price of the product (which excludes VAT) will be the price indicated on the order pages when you placed your order. For services the price will be as indicated on the website page describing the service and confirmed by us before you commit your order.

- 11.2 **We will pass on changes in the rate of VAT.** If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.
- 11.3 **What happens if we got the price wrong.** It is always possible that, despite our best efforts, some of the products we sell may be incorrectly priced. We will do our best to rectify any error in pricing and may end the contract at our sole discretion if the error was obvious at the time you placed the order.
- 11.4 **When you must pay and how you must pay.** We accept payment by PayPal. When you must pay depends on what product you are buying:
- (a) For **digital content**, you must pay for the products before we deliver them by sending you a download link.
 - (b) For **services**, we may require you to make an advance payment of 25% of the price of the services, before we start providing them. We will invoice you for the balance of the price of the services when we have completed them or, if our services are to be delivered over a longer period of time, we will invoice you periodically for the services until the services are completed. You must pay each invoice within 14 calendar days after the date of the invoice.
- 11.5 **We can charge interest if you pay late.** If you do not make any payment to us by the due date we may charge interest to you on the overdue amount at the rate of 4% a year above the Bank of England base rate. 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 any overdue amount.
- 12. OUR LIABILITY**
- 12.1 **Our content is provided to you as a source of general information.** Our digital content is not advice which is specific to you and we cannot be held responsible for any results, or lack of results, in your garden. You should consider individual circumstances including climate, soil and situation, before applying it. Advice given one-to-one, whether onsite or remotely, is based on visual inspection and information that you provide about the garden. Further detailed assessment such as a survey, review of local planning constraints including Tree Preservation Orders or soil analysis may be needed before you undertake work on the garden.
- 12.2 **We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during the sales process.
- 12.3 **We do not exclude or limit in any way our liability to you where it would be unlawful to do so.**
- 12.4 **When we are liable for damage to your property.** If we are providing services in your property, we will make good any damage to your property caused by us while doing so. However, we are not responsible for the cost of repairing any pre-existing faults or damage to your property that we discover while providing the services.
- 12.5 If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill we will either repair the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to have in place the minimum system requirements advised by us.
- 12.6 **We are not liable for business losses.** We supply our digital products for domestic and private use as stated in section 6.1(c). If we supply any products and services and you use them for any commercial, business or re-sale purpose we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 13. ALTERNATIVE DISPUTE RESOLUTION**
- 13.1 **Alternative dispute resolution if you are a consumer.** Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. We will always strive to reach an amicable solution with you but disputes may be submitted for online resolution to the European Commission Online Dispute Resolution platform.
- 14. HOW WE MAY USE YOUR PERSONAL INFORMATION**
- 14.1 **How we will use your personal information.** We will use the personal information you provide to us:
- (a) to supply the products and services to you;

- (b) to process your payment for the products; and
 - (c) if you agreed to this during the order process or by joining our email mailing list, to give you information about similar products and services that we provide, but you may stop receiving this at any time by contacting us.
- 14.2 **We will only give your personal information to third parties where the law either requires or allows us to do so.**
- 15. **OTHER IMPORTANT TERMS**
- 15.1 **We may transfer this agreement to someone else.** We may transfer our rights and obligations under these terms to another organisation.
- 15.2 **You need our consent to transfer your rights to someone else (except that you can always transfer our guarantee).** You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.
- 15.3 **Nobody else has any rights under this contract (except someone you pass your guarantee on to).** This contract is between you and us. No other person shall have any rights to enforce any of its terms.
- 15.4 **If a court finds part of this contract illegal, the rest will continue in force.** Each of the paragraphs of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 15.5 **Even if we delay in enforcing this contract, we can still enforce it later.**
- 15.6 **Which laws apply to this contract and where you may bring legal proceedings.** These terms are governed by English law and you can bring legal proceedings in respect of the products in the English courts. If you live in Scotland you can bring legal proceedings in respect of the products in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of the products in either the Northern Irish or the English courts.