

# HOUGH GARDENS

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## LANDSCAPE DESIGN SERVICES

### TERMS & CONDITIONS

The following conditions, provisions, and terms ("Terms and Conditions") govern the relationship between Hough Gardens and the Client in connection with the supply of Landscape Design Services. The Terms and Conditions herein shall be incorporated in all agreements between Hough Gardens Pty Ltd ABN: 20 636 074 247 "Hough Gardens", and its Customers (the person/s named as "the Customer" in the quotation, Invoice and/or Licence). In the event of any inconsistency between these Terms and Conditions and the further Conditions stated in the Quotation, Invoice or Licence, the further Conditions shall take precedence.

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1. "Additional Items" means any services performed of a type and nature not specifically referred to in a Quote;
- 1.2. "Agreement" means the documents comprising any Quotes and Terms and Conditions;
- 1.3. "Business Day" means a day on which the banks are open for general banking business in Melbourne, except Saturday, Sundays and public or statutory holidays;
- 1.4. "Client" means the person/s identified in a Quote;
- 1.5. "Contract Sum" means the amount specified in a Quote;
- 1.6. "Deposit" means a sum of money specified as a deposit in a Quote;
- 1.7. "Design Services" means the activities, work and services described in a Quote;
- 1.8. "GST" means GST within the meaning of the GST Act;
- 1.9. "Person" includes companies;
- 1.10. "Quote"/"Quotation" means any document labelled as such that precedes, accompanies, or follows the Terms and Conditions;
- 1.11. "Site" is the premises listed under "Site Address" in a Quote;
- 1.12. Headings are for convenience only and do not form part of these Terms and Conditions; and,
- 1.13. Reference to the singular includes the plural and the plural includes the singular.

## **2. ACCEPTANCE AND ENGAGEMENT**

- 2.1. The Client is deemed to have accepted and confirmed the accuracy of a Quote/emailed Agreement/New Client Form, and to have read and accepted the Terms and Conditions by responding by email to Hough Gardens together with paying any Deposit nominated in a Quote.
- 2.2. All work undertaken will be discussed and agreed prior to the start date and all work will be completed from the finalised design by Hough Gardens unless otherwise agreed.
- 2.3. Cancellation of work not received within 14 working days of the agreed start of work date, will be subject to a charge of 15% of the quoted price.

## **3. QUOTATIONS & PRICES**

- 3.1. Hough Gardens shall specify in a custom Quote the Landscape Design Services that will be provided to fulfill the Client's instructions and outline an estimate of Hough Gardens' charge for performance of such work.
- 3.2. Hough Gardens need not carry out provision of the Design Services until a Quote and the Terms and Conditions have been accepted by the Client.
- 3.3. Once the scope of works included in the Landscape Design Package has been completed; should you wish to continue with ongoing standard services provided by Hough Gardens Pty Ltd, please see the following rates for our standard services only. Hough Gardens Pty Ltd. has full discretion to adjust and customise these rates if the required services are considered beyond the standard level.
  - o Horticultural Services (\$85.00+GST per hour per person)
  - o Irrigation Services (\$110.00+GST per hour per person)
  - o Landscape Design Services (\$160.00+GST per hour per person)
  - o Outdoor Lighting Services (\$110.00+GST per hour per person)
  - o Pressure Washing Services (\$110.00+GST per hour per person)

## **4. VARIATIONS IN PRICES**

- 4.1. Subject to the below provisions, all prices in a Quote shall remain current for 30 days from the date the Client accepts a Quote and/or these Terms and Conditions.
- 4.2. Hough Gardens shall be entitled to vary any quotation previously provided to the Client if:
  - 4.2.1. The Client provides incomplete or inaccurate information to Hough Gardens preventing Hough Gardens from providing an accurate Quote;

- 4.2.2. Hough Gardens experiences delays in providing the Design Services by virtue of any action or inaction on the part of the Client where such delay is in excess of thirty days from the date of an Agreement;
  - 4.2.3. any works previously carried out by other persons upon the Site interferes with or prevents Hough Gardens from providing the Design Services in accordance with the timeframe as required by this Agreement;
  - 4.2.4. at the Client's request, Hough Gardens may agree to provide Additional Items after the commencement of this Agreement; and
  - 4.2.5. any cause beyond Hough Gardens' control causing a necessary variation.
- 4.3. If any supply by Hough Gardens is subject to Design Services Tax ("GST"), the Client must, unless the price in a Quote expressly states that GST is included, pay the relevant GST amount in addition to the amount appearing in a Quote.

## **5. ADDITIONAL ITEMS**

- 5.1. If the Client requests that Hough Gardens supplies or carries out Additional Items and Hough Gardens agrees to such a request, the Additional Items will be deemed to form part of the Design Services and the Client must pay:
- 5.1.1. if Hough Gardens has given a written quotation prior to performing or providing the Additional Items, the amount quoted; or
  - 5.1.2. in the absence of a written quotation, an amount calculated using Hough Gardens' standard supply and labour rates.
- 5.2. The Client acknowledges and agrees that any and all Design Services that are not specifically referred to in a Quote shall constitute Additional Items.
- 5.3. Any addition and/or alterations to the schedule/project shall be discussed with the Client and agreed upon in writing.
- 5.4. Any service provided by Hough Gardens to the Client in excess of that specified in the quotation shall be performed as soon as reasonably practicable.
- 5.5. Extra charges will apply if the customer changes require alterations to the works after the service is completed and/ or requires alterations to products after they have been delivered.
- 5.6. Errors and changes to the original plan by Hough Gardens are accepted on all quotes which will be discussed with the customer.

## **6. TERMS OF PAYMENT**

- 6.1. The Client is required to pay a Deposit to Hough Gardens equal to 50% of the cost as quoted to the Client. The Client acknowledges Hough Gardens is under no obligation to supply or carry out provision of the Design Services as requested by the Client until the Deposit specified in a Quote is received by Hough Gardens in full.
- 6.2. The Client must pay Hough Gardens, within seven (7) days of the date of Hough Gardens issuing an invoice for such payment to the Client, the total amount set out in the invoice/s issued by Hough Gardens to the Client whether for the remainder of the Contract Sum and/or the value of any Additional Items.
- 6.3. Hough Gardens may, at its absolute discretion, seek and recover from the Client and the Client agrees to pay:
  - 6.3.1. interest on all overdue invoices at the rate of 2% per month from the date of an unpaid invoice; (or 2% above the rate charged by Hough Gardens' principal banker?)
  - 6.3.2. any costs and expenses incurred in collecting or attempting to collect any amounts that are not paid by the Client when due including debt collector's expenses, and solicitor's fees on a solicitor/client basis.
- 6.4. The Client will be responsible for all payments to Hough Gardens, unless otherwise notified in writing prior to commencement.
- 6.5. Further works will not be completed until payments for subsequent works have been paid in full.
- 6.6. Payments are to be made to the correct BSB and Account Number via electronic funds transfer to Hough Gardens Pty Ltd. or through the Stripe payment method.
- 6.7. Hough Gardens Pty Ltd. will not accept payment plan/s or accept "Gift/s" or "Item/s of Value" as payment.
- 6.8. Hough Gardens Pty Ltd. understands and will exercise their statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if they are not paid according to agreed credit terms.

## **7. LIMITATION OF LIABILITY**

- 7.1. All liability and obligations imposed under statute are expressly excluded but only to the extent that this exclusion does not contravene the statute or cause any part of the Agreement to be void.
- 7.2. To the maximum extent permitted by law:
  - 7.2.1. Hough Gardens will not be liable to the Client or any other person or third party in respect of any consequential or other loss or damage (including loss

of profit, loss of income or loss to reputation) arising directly or indirectly from the provision of Design Services under this Agreement;

7.2.2. Hough Gardens' liability arising out of a connection with this Agreement whether under the law of contract, in tort, in equity under statute or otherwise, shall be limited in aggregate to an amount equal to the Contract Sum;

7.2.3. Hough Gardens shall not be liable to the Client for any statements, representations, guarantees, conditions, or warranties not expressly contained in a Quote.

## **8. SUSPENSION AND/OR TERMINATION BY HOUGH GARDENS**

8.1. Hough Gardens shall be entitled to suspend and/or terminate the supply of Design Services forthwith by written notice to the Client upon the occurrence of any one of the following events:

8.1.1. where full payment of any invoice issued by Hough Gardens to the Client, whether for the whole or part of the Contract Sum and/or the value of any Additional Items, has not been received by Hough Gardens in keeping with clause 6.1 and 6.2 above;

8.1.2. where the Client, being an individual, commits an act of bankruptcy or, being a corporation, goes into liquidation or has a receiver or administrator appointed to control its affairs, is deemed unable to pay its debt, or has a petition presented for its winding up or for an administrative order; or

8.1.3. where the Client is in material breach of any of the Terms and Conditions and:-

- (a) Hough Gardens has given the Client a written notice demanding the breach be remedied within fourteen (14) days and the Client fails to comply with such notice; or
- (b) such breach cannot be remedied; or
- (c) such breach evinces an intention on the part of the Client that it does not wish to be bound by the terms of this Agreement.

8.2. Any suspension and/or termination shall be without prejudice to and shall not affect any rights of Hough Gardens against the Client that have accrued up to the time of suspension or termination (as the case may be).

## **9. VARIATION AND/OR TERMINATION BY THE CLIENT**

- 9.1. The Agreement may only be cancelled and/or varied by the Client with the written consent of Hough Gardens.
- 9.2. To the extent permitted by law, Hough Gardens may require, as a condition of such consent, that the Client pay reasonable charges for such cancellation/variation, which considers expenses incurred by Hough Gardens to the date of cancellation and/or variation.

## **10. PRIVACY**

- 10.1. The Client hereby authorizes Hough Gardens to collect, retain, record, use and disclose consumer and/or commercial information about the Client, in accordance with the Privacy Act 1988 (Cth).
- 10.2. Each party shall keep confidential all processes, information or data disclosed to it which belongs to the other and shall not disclose the same to any person, firm, or company without prior written authority of the other party.

## **11. DISPUTE RESOLUTION**

- 11.1. Without prejudice to either party's rights under relevant legislation in Victoria regulating building work, both parties agree that:
  - 11.1.1. The Client and Hough Gardens will initially use all reasonable endeavours to resolve any dispute arising under this Agreement within 10 Business Days of a party being advised by written notice of such a dispute;
  - 11.1.2. If the parties are unable to resolve the dispute within the above timeframe, the parties may either agree to refer the matter to mediation or some other form of alternative dispute resolution or commence legal proceedings.

## **12. APPLICABLE LAW**

- 12.1. The Agreement is governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of the Courts of Melbourne, Victoria.

### **13. MISCELLANEOUS**

- 13.1. Any and all statutory and local governments consents (including but not limited to planning or building approvals) relevant to the implementation of the Services provided must be obtained by the Client at their sole cost.
- 13.2. It is the responsibility of the customer to ensure Hough Gardens are made aware of any special/statutory bylaws/conditions/permissions that may be involved.
- 13.3. Hough Gardens will not be responsible or liable for any structural considerations, the appearance of finish features, or overall management of works where an outside party has provided advice, drawings, or supervision, unless agreed to in writing by Hough Gardens in writing prior to the start of the project.
- 13.4. Hough Gardens retain the right to share the landscape design work they have performed for the purpose of their website and or company marketing materials, without remuneration or reimbursement to the customer.
  - 13.4.1 No mention of name, address or personal information will be used in any publication of these photographs.

### **14. SEVERANCE**

- 14.1. If any part of this Agreement is found to be void, voidable, or not enforceable, that part shall be struck out without affecting or eroding the enforceability or validity of the remaining parts and such severance shall not detract from the obligations each party has accepted under this Agreement.

### **15. ENTIRE AGREEMENT**

- 15.1. This Agreement contains the entire agreement between Hough Gardens and the Client. The parties agree that any negotiations that lead to the formation of this Agreement have been accurately incorporated in this Agreement.
- 15.2. In entering into this Agreement, the parties hereby acknowledge that they have not made any warranties or representations to each other except as incorporated in this Agreement.
- 15.3. No variation of these terms and conditions shall be binding on Hough Gardens unless in writing and signed by the customer and director of Hough Gardens.
- 15.4. The contract may not be assigned or transferred by the customer without the prior consent of Hough Gardens in writing signed by the director.
- 15.5. By accepting the quotation provided by Hough Gardens, or scheduling a booking, the customer accepts these terms and conditions and all aspects of the agreed contract that make up these terms and conditions.

- 15.6. The payment of the landscape design works deposit will be deemed as acceptance of these terms and conditions.
- 15.7. These terms and conditions and contract data represent the entire agreement between the parties in relation to the service provided and supersedes all previous written or oral communication.

## **16. GUARANTEE**

- 16.1. The person signing this Agreement on behalf of the Client hereby guarantees the payment of all monies that become due and payable under this Agreement. This guarantee will continue following the termination of this Agreement until all monies owing to Hough Gardens are paid in full.

## **17. NOTICES**

- 17.1. A notice from one party to another shall be deemed to have been served upon the receiving party if:
- 17.1.1. the notice is delivered personally to the other party;
  - 17.1.2. the notice is posted to the other party to the address provided in a Quote, whereby delivery will be deemed to have occurred on the third Business Day following the posting of the notice.

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Client Full Name

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Client Signature

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Date

