

HOUGH GARDENS

HORTICULTURAL MAINTENANCE SERVICES

TERMS & CONDITIONS

The following conditions, provisions, and terms ("Terms and Conditions") govern the relationship between Hough Gardens Pty Ltd. ABN: 20 636 074 247, and the Client in connection with the supply of a Quotation, Invoice, and or Service Booking for Horticultural Services. In the event of any inconsistency between these Terms and Conditions and the further conditions stated in the Quotation, Invoice or Service Booking, the further conditions shall take precedence.

1. DEFINITIONS AND INTERPRETATION

- 1.1. "Agreement" means the documents comprising any Quotes, Invoices, Scheduled Bookings, and Terms and Conditions;
- 1.2. "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;
- 1.3. "Client" means the person/s identified in a Quote, Invoice or Service booking;
- 1.4. "GST" means GST within the meaning of the GST Act;
- 1.5. "Person" includes companies;
- 1.6. "Site" is the premises listed under "Site Address" in a Quote, Invoice, or Service booking;
- 1.7. Headings are for convenience only and do not form part of these Terms and Conditions; and,
- 1.8. 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/mailed Agreement/New Client Form, and to have read and accepted the Terms and Conditions by responding by email to Hough Gardens.

3. STANDARD RATES FOR SERVICES

- 3.1. The following rates are for 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.
- Horticultural Services (\$85.00+GST per hour per person)
 - Irrigation Services (\$110.00+GST per hour per person)
 - Landscape Design Services (\$160.00+GST per hour per person)
 - Outdoor Lighting Services (\$110.00+GST per hour per person)
 - 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 Pty Ltd. Shall be entitled to vary any quotation previously provided to the Client if the Client provides incomplete or inaccurate information to Hough Gardens preventing Hough Gardens Pty Ltd. from providing an accurate Quote.

5. ADDITIONAL ITEMS

- 5.1. If the Client requests that Hough Gardens supplies or carries out Additional Items outside of the quoted scope of works, and Hough Gardens agrees to such a request, the Additional Items are subject to further charge and will be quoted and invoiced separately.
- 5.2. Any addition and/or alterations to the schedule/project shall be discussed with the Client and agreed upon in writing.
- 5.3. 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.
- 5.4. 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.
- 5.5. Any quantity of soil for the preparation of garden beds or landscape areas greater than that outlined within the quote will be charged to the customer at a cubic metre rate.

6. TERMS OF PAYMENT

- 6.1. The Client must pay Hough Gardens, within seven (7) days of the date of Hough Gardens Pty Ltd. issuing an invoice.
- 6.2. The Client will be responsible for all payments to Hough Gardens, unless otherwise notified in writing prior to commencement.
- 6.3. Further works will not be completed until payments for subsequent works have been paid in full.
- 6.4. 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.
- 6.5. Hough Gardens Pty Ltd. will not accept payment plan/s or accept "Gift/s" or "Item/s of Value" as payment.
- 6.6. 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. SITE REQUIREMENTS

- 7.1. The customer shall provide water and electricity, if required, at no charge to Hough Gardens Pty Ltd.
- 7.2. The customer shall provide clear access to the site during normal working hours and storage space for materials during the contract progress.
- 7.3. It is the customers responsibility to clear the area to be landscaped of all debris, building materials and other obstructions unless Hough Gardens have been contracted and agreed to do so.
- 7.4. Hough Gardens will not take responsibility for any damage to (or cost involved with) any underground hazards, obstructions or services not made known to Hough Gardens Pty Ltd. in writing or apparent on visual inspection. This must be advised or visually brought to the attention of any staff or contractor on site/s during the first visit or in the duration of time on site where and when required.
- 7.5. Delays caused by other companies on site may cause work to be rescheduled and charges may be made in certain circumstances.
- 7.6. It is the responsibility of the customer to ensure proper installation and access to conduits throughout the site to ensure reasonable completion of the works outlined within the quotation, including but not limited to; irrigation, lighting, low-voltage cabling, internal conduits.
- 7.7. Hough Gardens Pty Ltd. or any parties associated with the business will not be responsible for any existing faults or maintenance issues related to the existing irrigation systems.

8. PLANT SELECTION, CARE AND MAINTENANCE

- 8.1. Hough Gardens are not able to accept responsibility for the well-being and maintenance of living plant material, including turf, if the amount of maintenance hours completed are less than our recommendation as horticultural specialists.
- 8.2. If necessary, Hough Gardens reserve the right to substitute any plant with another of equal value and growth/habitat/colour in accordance with the specification.
- 8.3. After practical completion, Hough Gardens are not able to accept responsibility for any damage through the elements, including drought, wind, rain and frost to any products or material(s) including plants.
- 8.4. Upon practical completion the responsibility for the care and watering of all plants, lawns, etc. is handed over to the customer and will require regular attention until established.
- 8.5. Great care is taken to remove all weeds/roots from the site when being prepared, but Hough Gardens cannot accept responsibility for subsequent weed populations on completion of the project.
- 8.6. Before, during or after the completed visit, severe weather conditions, including drought, storms, lightning, natural disasters, flooding, and earthquakes may cause damage to plants, turf, and other material as well as erosion of mulching and planting areas. Hough Gardens will not be held responsible for this damage. Hough Gardens Pty Ltd. will restore these areas to their original condition after signing a work order to approve such restoration.
- 8.7. Once material has been delivered to the site (e.g. soil, plants, tools) the customer will be responsible for any loss, theft, or vandalism of the materials.
- 8.8. Hough Gardens Pty Ltd. does not accept liability for efflorescence, colour or size variation in the products and materials which will be purchased or delivered as part of the work completed. Hough Gardens Pty Ltd. provides no warranty and accepts no liability whatsoever in respect of the condition or quality of the products and materials that are purchased and delivered to site from the supplier.
- 8.9. All materials, hard and soft landscapes, on site including plant/s remain the property of Hough Gardens until payment is received in full and Hough Gardens reserve the right to remove said property if the debt remains unpaid after 90 days.
- 8.10. Hough Gardens Pty Ltd. or any parties associated with the business will not be responsible for any plant senescence or death.
- 8.11. Hough Gardens will provide a 6 month guarantee on newly planted plants which have been planted ourselves, and consistently maintained within our recommendations.

- 8.12. Hough Gardens Pty Ltd. or any parties associated with the business will do everything necessary to implement best practice horticulture and will maintain the gardens accordingly.
- 8.13. Any plant or material replacement will be completed at the cost of the client at the agreed upon hourly rate per staff member.

9. SUSPENSION AND/OR TERMINATION BY HOUGH GARDENS

- 9.1. Hough Gardens may immediately suspend or terminate the Services forthwith by written notice to the Client if the Client does not pay any invoice issued by Hough Gardens – covering the Contract Sum, part of it, or Additional Items – within 7 days of the invoice date.

10. VARIATION AND/OR TERMINATION BY THE CLIENT

- 10.1. A minimum of 24 hours' notice is required for the cancellation or rescheduling of a maintenance visit. If not received within this timeframe, a fee of \$80 per hour of the scheduled visit is required.

11. PRIVACY

- 11.1. 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).
- 11.2. 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.

12. DISPUTE RESOLUTION

- 12.1. Without prejudice to either party's rights under relevant legislation in Victoria regulating building work, both parties agree that:
- 12.1.1. 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;
- 12.1.2. 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.

13. APPLICABLE LAW

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

14. MISCELLANEOUS

- 14.1. 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.
- 14.2. 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.
- 14.3. Hough Gardens accept no responsibility for works that have been carried out on land that is not under the ownership of the customer and it is assumed that all planning laws or regulations have been applied before the commencement of any works.
- 14.4. The customer indemnifies Hough Gardens for any and all future liabilities, losses, damages, costs or expenses which may be suffered, incurred or associated as a result of anything that may occur beyond the purchase of products and materials that are purchased and delivered as part of the project.
- 14.5. 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.
- 14.6. Hough Gardens Pty Ltd. or any parties associated with the business will ensure spaces are left clean and tidy to a high standard but will not be responsible for any existing staining, scuffing, scratching or marking whatsoever on surfaces within the garden spaces inclusive of internal spaces, public or otherwise.
- 14.7. Hough Gardens retain the right to photograph the landscape work they have performed for the purpose of their website and or company marketing materials, without remuneration or reimbursement to the customer.
- 14.7.1 No mention of name, address or personal information will be used in any publication of these photographs.
- 14.8. The responsibility and security of pets is the sole duty of the client and Hough Gardens will not be liable for the health and well-being of any pet.
- 14.9. The collection of dog dropping is not a responsibility of Hough Gardens unless otherwise agreed upon. We appreciate collection and disposal prior to any scheduled visits.

15. SEVERANCE

- 15.1. 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.

16. ENTIRE AGREEMENT

- 16.1. 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.
- 16.2. 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.
- 16.3. 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.
- 16.4. The contract may not be assigned or transferred by the customer without the prior consent of Hough Gardens in writing signed by the director.
- 16.5. 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.

Client name

Client signature

Date

