

TERMS AND CONDITIONS

Please read all these terms and conditions.

As we can accept your order and make a legally enforceable agreement without further reference to you, you must read these terms and conditions to make sure that they contain all that you want and nothing that you are not happy with. If you are not sure about anything, just phone us on 01380 848524.

Application

1. These Terms and Conditions will apply to the purchase of the services and goods by you (the **Customer** or **you**).
2. Nic Payne Gardens of 1 South Farm, eAll Cannings, Wiltshire, Sn10 3JX with email address charlie@nicpaynegardens.co.uk; telephone number (01380 848524) (the **Supplier** or **us** or **we**).
3. These are the terms on which we sell all Services to you. By ordering any of the Services, you agree to be bound by these Terms and Conditions.

Interpretation

4. **Consumer** means an individual acting for purposes which are wholly or mainly outside his or her trade, business, craft or profession;
5. **Contract** means the legally-binding agreement between you and us for the supply of the Services;
6. **Delivery Location** means the Supplier's premises or other location where the Services are to be supplied, as set out in the Order;
7. **Goods** means any goods that we supply to you with the Services, of the number and description as set out in the Order;
8. **Order** means the Customer's order for the Services from the Supplier as set out in the Customer's order or in the Customer's written acceptance of the Supplier's quotation;
9. **Services** means the services, including any Goods, of the number and description set out in the Order.

Services

10. The description of the Services and any Goods is as set out in our website, catalogues, brochures or other form of advertisement. Any description is for illustrative purposes only and there may be small discrepancies in size or colour of any Goods supplied.
11. In the case of Services and any Goods made to your special requirements, it is your responsibility to ensure that any information or specification you provide is accurate.
12. All Services are subject to availability.
13. We can make changes to the Services which are necessary to comply with any applicable law or safety requirement. We will notify you of these changes.

Customer responsibilities

14. You must co-operate with us in all matters relating to the Services, provide us and our authorised employees and representatives with access to any premises under your control as required, provide us with all information required to perform the Services and obtain any necessary licences and consents (unless otherwise agreed).
15. Failure to comply with the above is a Customer default which entitles us to suspend performance of the Services until you remedy it or if you fail to remedy it following our request, we can terminate the Contract with immediate effect on written notice to you.

Basis of Sale

16. The description of the Services and any Goods in our website, catalogues, brochures or other form of advertisement does not constitute a contractual offer to sell the Services or Goods.
17. When an Order has been made, we can reject it for any reason, although we will try to tell you the reason without delay.
18. A Contract will be formed for the Services ordered, only upon the Supplier sending an email to the Customer saying that the Order has been accepted or, if earlier, the Supplier's delivery of the Services to the Customer.
19. Any quotation or estimate of Fees (as defined below) is valid for a maximum period of 30 days from its date, unless we expressly withdraw it at an earlier time.
20. No variation of the Contract, whether about description of the Services, Fees or otherwise, can be made after it has been entered into unless the variation is agreed by the Customer and the Supplier in writing.
21. We intend that these Terms and Conditions apply only to a Contract entered into by you as a Consumer where we, the Supplier and you the Customer, enter the Contract at any of the Supplier's business premises, and where the Contract is not a contract (i) for which an offer was made by the Customer in the Supplier's and the Customer's simultaneous physical presence away from those premises, or (ii) made immediately after the Customer was personally and individually addressed in the Supplier's and the Customer's simultaneous physical presence away from those premises. If this is not the case, you must tell us, so that we can provide you with a different contract with terms which are more appropriate to you and which might, in some way, be better for you, eg by giving cancellation rights pursuant to consumer protection law. Business premises means immovable retail premises where we carry on business on a permanent basis or, in the case of movable retail premises, on a usual basis.

Fees and Payment

22. The fees (Fees) for the Services, the price of any Goods (if not included in the Fees) and any additional delivery or other charges is that set out in our price list current at the date of the Order or such other price as we may agree in writing. Prices for Services may be calculated on a fixed fee or on a standard rate basis.
23. Fees and charges include VAT at the rate applicable at the time of the Order.
24. Payment for Services must be made within 30 days of invoice. You must pay in cash or by submitting your credit or debit card details with your Order and we can take payment immediately or otherwise before delivery of the Services.

Delivery

25. We will deliver the Services, including any Goods, to the Delivery Location by the time or within the agreed period or, failing any agreement:
 - a. in the case of Services, within a reasonable time; and
 - b. in the case of Goods, without undue delay and, in any event, not more than 30 calendar days from the day on which the Contract is entered into.
26. In any case, regardless of events beyond our control, if we do not deliver the Services on time, you can require us to reduce the Fees or charges by an appropriate amount (including the right to receive a refund for anything already paid above the reduced amount). The amount of the reduction can, where appropriate, be up to the full amount of the Fees or charges.
27. In any case, regardless of events beyond our control, if we do not deliver the Goods on time, you can (in addition to any other remedies) treat the Contract at an end if:
 - a. we have refused to deliver the Goods, or if delivery on time is essential taking into account all the relevant circumstances at the time the Contract was made, or you said to us before the Contract was made that delivery on time was essential; or
 - b. after we have failed to deliver on time, you have specified a later period which is appropriate to the circumstances and we have not delivered within that period.

28. If you treat the Contract at an end, we will (in addition to other remedies) promptly return all payments made under the Contract.
29. If you were entitled to treat the Contract at an end, but do not do so, you are not prevented from cancelling the Order for any Goods or rejecting Goods that have been delivered and, if you do this, we will (in addition to other remedies) without delay return all payments made under the Contract for any such cancelled or rejected Goods. If the Goods have been delivered, you must return them or allow us to collect them from you and we will pay the costs of this.
30. If any Goods form a commercial unit (a unit is a commercial unit if division of the unit would materially impair the value of the goods or the character of the unit) you cannot cancel or reject the Order for some of those Goods without also cancelling or rejecting the Order for the rest of them.
31. We do not generally deliver to addresses outside England and Wales, Scotland, Northern Ireland, the Isle of Man and Channels Islands. If, however, we accept an Order for delivery outside that area, you may need to pay import duties or other taxes, as we will not pay them.
32. You agree we may deliver the Goods in instalments if we suffer a shortage of stock or other genuine and fair reason, subject to the above provisions and provided you are not liable for extra charges.
33. If you or your nominee fail, through no fault of ours, to take delivery of the Services at the Delivery Location, we may charge the reasonable costs of storing and redelivering them.
34. The Goods will become your responsibility from the completion of delivery or Customer collection. You must, if reasonably practicable, examine the Goods before accepting them.

Risk and Title

35. Risk of damage to, or loss of, any Goods will pass to you when the Goods are delivered to you.
36. You do not own the Goods until we have received payment in full. If full payment is overdue or a step occurs towards your bankruptcy, we can choose, by notice to cancel any delivery and end any right to use the Goods still owned by you, in which case you must return them or allow us to collect them.

Withdrawal and cancellation

37. You can withdraw the Order by telling us before the Contract is made, if you simply wish to change your mind and without giving us a reason, and without incurring any liability.
38. You can cancel the Contract except for any Goods which are made to your special requirements by telling us no later than 15 calendar days from the day the Contract was entered into. If you simply wish to change your mind and without giving us a reason, and without liability, except in that case, you must return to any of our business premises the Goods in undamaged condition at your own expense. Then we must without delay refund to you the price for those Goods and Services which have been paid for in advance, but we can retain any separate delivery charge. This does not affect your rights when the reason for the cancellation is any defective Goods or Services.

Conformity

39. We have a legal duty to supply the Goods in conformity with the Contract, and will not have conformed if it does not meet the following obligation.
40. Upon delivery, the Goods will:
 - a. be of satisfactory quality;
 - b. be reasonably fit for any particular purpose for which you buy the Goods which, before the Contract is made, you made known to us (unless you do not actually rely, or it is unreasonable for you to rely, on our skill and judgment) and be fit for any purpose held out by us or set out in the Contract; and
 - c. conform to their description.
41. It is not a failure to conform if the failure has its origin in your materials.
42. We will supply the Services with reasonable skill and care.

43. In relation to the Services, anything we say or write to you, or anything someone else says or writes to you on our behalf, about us or about the Services, is a term of the Contract (which we must comply with) if you take it into account when deciding to enter this Contract, or when making any decision about the Services after entering into this Contract. Anything you take into account is subject to anything that qualified it and was said or written to you by us or on behalf of us on the same occasion, and any change to it that has been expressly agreed between us (before entering this Contract or later).

Duration, termination and suspension

44. The Contract continues as long as it takes us to perform the Services.
45. Either you or we may terminate the Contract or suspend the Services at any time by a written notice of termination or suspension to the other if that other:
- a. commits a serious breach, or series of breaches resulting in a serious breach, of the Contract and the breach either cannot be fixed or is not fixed within 30 days of the written notice; or
 - b. is subject to any step towards its bankruptcy or liquidation.
46. On termination of the Contract for any reason, any of our respective remaining rights and liabilities will not be affected.

Privacy

47. Your privacy is critical to us. We respect your privacy and comply with the General Data Protection Regulation with regard to your personal information.
48. These Terms and Conditions should be read alongside, and are in addition to our policies, including our privacy policy and cookies policy which can be found In our office.
49. For the purposes of these Terms and Conditions:
- a. 'Data Protection Laws' means any applicable law relating to the processing of Personal Data, including, but not limited to the Directive 95/46/EC (Data Protection Directive) or the GDPR.
 - b. 'GDPR' means the General Data Protection Regulation (EU) 2016/679.
 - c. 'Data Controller', 'Personal Data' and 'Processing' shall have the same meaning as in the GDPR.
50. We are a Data Controller of the Personal Data we Process in providing the Services and Goods to you.
51. Where you supply Personal Data to us so we can provide Services and Goods to you, and we Process that Personal Data in the course of providing the Services and Goods to you, we will comply with our obligations imposed by the Data Protection Laws:
- a. before or at the time of collecting Personal Data, we will identify the purposes for which information is being collected;
 - b. we will only Process Personal Data for the purposes identified;
 - c. we will respect your rights in relation to your Personal Data; and
 - d. we will implement technical and organisational measures to ensure your Personal Data is secure.
52. For any enquiries or complaints regarding data privacy, you can e-mail: charlie@nicpaynegardens.co.uk.

Successors and our sub-contractors

53. Either party can transfer the benefit of this Contract to someone else, and will remain liable to the other for its obligations under the Contract. The Supplier will be liable for the acts of any sub-contractors who it chooses to help perform its duties.

Circumstances beyond the control of either party

54. In the event of any failure by a party because of something beyond its reasonable control:
- a. the party will advise the other party as soon as reasonably practicable; and
 - b. the party's obligations will be suspended so far as is reasonable, provided that that party will act reasonably, and the party will not be liable for any failure which it could not reasonably avoid, but this will not affect the Customer's above rights relating to delivery and the right to cancel below.

Excluding liability

55. We do not exclude liability for: (i) any fraudulent act or omission; or (ii) death or personal injury caused by negligence or breach of the Supplier's other legal obligations. Subject to this, we are not liable for (i) loss which was not reasonably foreseeable to both parties at the time when the Contract was made, or (ii) loss (eg loss of profit) to your business, trade, craft or profession which would not be suffered by a Consumer - because we believe you are not buying the Services and Goods wholly or mainly for your business, trade, craft or profession.

Governing law, jurisdiction and complaints

56. The Contract (including any non-contractual matters) is governed by the law of England and Wales.
57. Disputes can be submitted to the jurisdiction of the courts of England and Wales or, where the Customer lives in Scotland or Northern Ireland, in the courts of Scotland or Northern Ireland respectively.
58. We try to avoid any dispute, so we deal with complaints as follows: If a dispute occurs customers should contact us to find a solution. We will aim to respond with an appropriate solution within 5 days.