



## Terms and Conditions

17/05/2024

Below are the Terms and Conditions upon which we provide garden design services (the 'Design Services'). The exact Design Services we will provide to you will depend on what you and we agree after the Initial Consultation(s) but may include all or some of sketches, drawings, 2D and 3D illustrations, and other design documents (including specification and tender documentation), consultancy, creative advice, design concepts, planting design.

## Definitions

'we', 'I', 'us', 'our' mean **Folium Gardens**.

'The client', 'You', mean the person or persons who request **Folium Gardens** to carry out work being liable to pay **Folium Gardens** fees jointly and severally.

'project', 'works', 'work' mean all hard and soft landscaping including design, preparation, construction and planting work.

'estimate' 'quotation', 'contract', 'Design Brief', 'proposal' mean the written documents sent to You which incorporate these Terms & Conditions.

'Design Documentation' mean the sketches, drawings, plans, illustrations or other documents created for you by us according to the agreed Design Brief.

'Design' or 'designs' means all drawings or concepts produced.

We, Rory Buckland, and partner, operating from 35 Garden Street, Llanbradach, Caerphilly, CF83 3LY are henceforth referred to as 'Folium Gardens'.

## Initial Consultation

Before we provide any Design Services to you, there is an initial consultation(s). We will visit you at your garden and we will discuss ideas and the garden's potential. There is no charge for the initial consultation.

## Design Fees & Payment Schedules

After the Initial consultation(s) we will provide you with a proposal in the form of a Design Brief document for the garden design outlining your requirements as discussed at the initial consultation(s), together with an estimate of our fees and a schedule of payments.

The Design will be produced according to the information contained within the Design Brief. Any required additions or amendments to the Design Brief should be notified to us in writing (or by email) by you before we commence any design work. We reserve the right to amend our estimate if the Design Brief changes and we will issue you with a new estimate for the design work.

The proposal/estimate will be based upon the condition of your garden at the time of our Initial consultation(s) and is valid for 28 days. Beyond this date we reserve the right to review our fees.

The estimate is based on our best assessment of the time it will take us to perform the Design Services requested, taking account the complexity of the design and the Design Services you have requested. If we find that it will take more time than we have estimated to complete the Design Services requested, such as if the design changes from that outlined in the proposal, or unseen issues emerge following the Site Survey, these extra hours will be charged for in addition, but we will not work these hours, or charge for them, without first discussing this with you and receiving your written agreement to proceed.

Fees described in the Estimate may be charged at an hourly rate or a fixed amount for specified work. Work in addition to that agreed in the fees estimate will be charged for at £60 per hour. Site visits and meetings are charged at £60 per hour (inc. travel time). Mileage is charged at 40p per mile. Electronic copies of Design documents are not charged for, all paper copies are charged at cost.

### **If you wish us to provide you with our Design services**

We will require your written / email confirmation that you accept the Proposal, as set out in the Design Brief, our Estimate and these Terms and Conditions to enable us to proceed with the Design Services you have requested.

**Acceptance of an Estimate is a legally binding contract to commission us to undertake Design Services and for you to make payment for all listed services to which you have agreed on our Estimate.**

If you do not wish us to carry out any of the listed services on the Estimate or any of the Phases of work on the Estimate, please inform us on receipt of the Estimate. By accepting the T&Cs you are contracting us to complete all the listed services on the Estimate and all Phases of work. The design process is not linear, so we reserve the right to amend the fees for works accordingly and issue you with a new estimate.

### **The Design Service**

We will provide Design Services to produce drawings, sketches, plans and other design documents (including specification and tender documentation) as set out in your Design Brief/proposal and Estimate.

We will use all reasonable care and skill in accordance with the professional standards expected of Garden Designers in carrying out the Design Services, in good time and use reasonable endeavours to meet any deadlines agreed in writing.

However, any timings set out in the Brief/proposal or Estimate or otherwise indicated to you are only estimates and we shall not be held liable in any way for any losses you incur as a result of us not meeting these deadlines. Timings may be affected by events outwith our control and may be affected by you if you take longer than might reasonably be expected in responding to any relevant questions or are not able to arrange meeting(s) promptly as and when needed.

The degree to which you can rely on the accuracy of figures, sizes and volumes set out in the various elements of the Design Documentation will be set out on the relevant document in each case.

During the first design Phase, a 'draft drawing' will be produced, and at this stage, we will discuss additions or amendments to the design(s) with you which will be actioned for you to approve prior to moving to the second design Phase. Once we receive your written approval and the draft designs are agreed by you, we proceed to 'Concept Masterplan' and finalise the designs. As this stage, if further discussions, meetings and/or amendments are required, beyond that which have initially been agreed, these may be subject to additional charges. Any amendments requested by you after the 'Concept Masterplan' is completed will be charged at £60 per hour.

### **Carrying out of hard or soft landscaping and garden build**

The Design Services do not extend to the carrying out of any hard or soft landscaping works, nor to the inspection or supervision of any landscaping works undertaken by third parties.

The terms of a separate contract(s) will have to be agreed between you and the contractor you wish to appoint. We will not be held liable for any works undertaken by third parties such as surveyors or landscapers.

We can assist you, where requested, on the choice of a contractor. We may recommend contractors with whom we have had direct experience, but any recommendations are made in good faith only, and we shall have no liability whatsoever for any defects in the contractor's work or of any goods supplied, or be in anyway held liable in the event of a dispute between you and your contractor.

After you have appointed your contractor, and agreed the work with them, any changes to the design requested by you during the construction stage may affect your contract with the contractor and all resulting cost implications and extensions of time (if any) will need to be agreed between you and your contractor. We shall have no liability whatsoever for any additional costs that result from any change(s) you request to the designs.

Where detailed structural work is involved such as retaining walls, foundations and buildings including matters covered by the Party Walls Act, it is recommended that you seek professional advice from a building surveyor and/or structural engineer in addition to your appointed

Contractor. We accept no responsibility and cannot be held liable if you do not seek appropriate advice before and during the construction works.

### **Project monitoring**

Whilst we will not supervise or manage your contractor's works, if you request our project monitoring services, we will make agreed site visits during the construction works, to liaise between you and your contractor, if you request us to, and to help ensure that construction is progressing in accordance with the design. We will notify you of any discrepancies between the design and the actual works being delivered so that you may take steps to rectify such changes as you see fit.

We will provide you with an estimate of the number of anticipated visits in advance and these will be charged as per the agreed cost per site visit (including travel time to site).

### **Garden Lighting**

If lighting is required in the garden we can produce an outline lighting plan for a qualified electrician to then cost a full electrical specification for you. All electrical works must be carried out and signed off by a qualified electrician. We accept no responsibility and cannot be held liable if you do not seek appropriate professional advice before and during the installation works. The contract between you and your appointed electrician including the cost and payment terms will be an entirely separate contract between you and the electrician you appoint to this service and we shall have no liability whatsoever for any defects in the contractor's work or of any goods supplied, or be in anyway held liable in the event of a dispute between you and your contractor.

### **Ponds and Water Features**

All electrical works and fitting of pumps etc must be carried out and signed off by a qualified electrician. We accept no responsibility and cannot be held liable if you do not seek appropriate professional advice before and during the installation works.

Depending on the size and complexity of a pond or water feature, this may need to be referred to a specialist for full design, technical specification and installation. The contract between you and your appointed water specialist including the cost and payment terms will be an entirely separate contract between you and the water specialist you appoint to this service, and we shall have no liability whatsoever for any defects in the contractor's work or of any goods supplied, or be in anyway held liable in the event of a dispute between you and your contractor.

### **Your obligations**

You will provide us with all necessary information to perform the Design Services in good time and allow us reasonable access to both you and the site at agreed times.

You will make all necessary arrangements to enable us, by arrangement, to visit and view the garden, and to ensure it is safe and that we have unimpeded access to the garden during working hours for the duration of our involvement in the project.

To provide any necessary facilities to perform the Design Services including during the construction phase, water, electricity, use of lavatory.

You will retain legal ownership or equivalent authority for work to be carried out at the property.

You will be responsible for making any necessary checks to ascertain any planning permission, tree protection order, restrictive covenants or other legal issues that may affect the site, Design Services or building the design. You will inform us of any points you find in good time.

You agree that you will cover any fines or damages and indemnify us from and against any costs, claims, damages liabilities and expenses arising from any breach of planning permission, tree-work or licences in respect of the project, if these consents are not obtained.

You will inform us if there are any third-party rights or other reasons preventing us from including any information you provide to us in the Design Documents.

If you become aware of any issues or potential issues with or affecting the design, the Design Documents or the Design Services, you will notify us in writing as soon as possible to enable us to investigate, rectify or take any other necessary action to minimise the effect of any such issue on either of us.

As between us, you will be liable for the accuracy for the information you provide to us.

You will not require us to provide advice or any services connected to or in the presence of contamination or pollution by harmful substances. As between us, you will be responsible for determining what investigations and remedial actions need to be carried out and commission such professional third-party advice as is reasonable.

You will be responsible for carrying out correct and regular horticultural maintenance to facilitate the ongoing establishment and care of the garden after completion.

## **Payment terms**

The fees payable for our Design Services are as set out in the estimate.

Payment will be made by you to us in instalments during the performance of the Design Services, as set out in the estimate. Payments are due on receipt of invoice.

Any goods or materials supplied by us, such as planters, will require payment at least 14 days in advance.

Payment is by cash or BACS, but cheques may be accepted by prior arrangement. We are not registered for VAT.

We reserve the right to charge interest on all overdue payments and unpaid amounts where payment is not received as per the terms of an invoice with interest accruing at the rate of 8% above the base rate of the Bank of England (calculated on a daily basis) until full payment is received. Any costs and expenses incurred to recover full payment will also be charged to you.

We reserve the right to suspend providing the Design Services until any outstanding invoiced fees are settled, whether or not payment is late.

If you agree to any services charged at an hourly rate, please confirm our current hourly rates before proceeding.

If you fail to make any payment by the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to cancel or suspend the contract we have with you.

## **Starting and ending the contract**

**The contract for Design Services will start on the date we confirm in writing (by email) we have received and agree your acceptance of these terms and conditions and the Design Brief proposal and Estimate of our fees.**

**Under the terms of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, you have the right to cancel our contract without giving any reason within 14 days of accepting our Estimate.**

**Your 14 days 'cooling off' period begins the day after you enter a contract with us. If you do wish to cancel your contract, please e-mail [rjb@foliumgardens.uk](mailto:rjb@foliumgardens.uk) and state specifically that you wish to cancel.**

If Design Services are mutually agreed to commence before the 14 day 'cooling off' period expires, then the 'cooling off' period becomes void. No Works will be undertaken until after the 14 day 'cooling off' period expires unless you provide written confirmation of your agreement to waive your right to cancel.

Either party may terminate this contract at any time by giving the other party at least 7 days advance written notice. In such circumstances, you will be required to pay for the Design Services performed before receipt of the termination notice, but you will not be entitled to any licence to use or benefit from the Design Services not delivered and paid for before receipt of the termination notice.

If you opt to delay or abandon the work altogether, the balance of payments for any design fee or outstanding design hours spent will be due to us immediately.

Any license that we have granted under the Copyright and Intellectual Property Rights clause will cease and you must stop using the Designs immediately.

All design works commissioned are fully chargeable, whether or not you are prevented from or decide not to install any design element.

If one of us is in breach of a significant provision of this contract (material breach), then the other party will have the right to terminate the contract by written notice. If the breach is capable of remedy, the notice will only take effect 14 days after receipt if such breach is not remedied. If the breach is incapable of remedy, the notice will take effect on receipt.

Neither of us will be held in breach of this contract for any failure resulting from any circumstance beyond our reasonable control, including due to COVID or other pandemic (Force Majeure). If the Force Majeure continues for one week or more, we will discuss possible remedial actions for the period the Force Majeure exists. If this is not possible, either party may terminate the contract upon written notice to the other without either party sustaining any financial liability, other than to pay all outstanding fees and disbursements.

## **Notifications**

Written notices and invoices will be delivered by us:

- (1) to the address in the Design Brief/Proposal/Estimate by hand or first class post or
- (2) by email (if this has been used as a regular means of communication with you during the design process). It will be delivered to the email address most recently used by you to contact us.

If sent by first class, recorded delivery post, the notice or invoice will be treated as delivered two working days after posting; if sent by email, the invoice or notice will be deemed delivered at 9.00 am the day after sending.

Any notifications that you send to us by mail must be followed up by other means of verifying receipt of the notice such as a phone call or e-mail. We cannot be sure of receiving post within a reasonable time frame and other means of sending information should be preferred.

## **Copyright and Intellectual Property Rights**

All sketches, designs, concepts, plans and other documents prepared by us, and any development or modification of them, that constitute the Design documents remain the intellectual property of *Folium Gardens* and are subject to copyright which remains ours notwithstanding the payment in full for the Design Services.

On your payment of our design fee(s), we will grant you a non-exclusive, perpetual, non-transferable licence for use of the Design Documents relevant to that payment by you or on your behalf in relation to the site set out in the Proposal.

You will not, nor allow any third party, to use, publish, reproduce, recreate or transfer the designs or the Design Documents for another site or any other purpose whatsoever without prior written permission from us. If permission is granted you shall ensure that any use by you or any third party is only to the extent we have permitted and in accordance with any condition of approval, such as the addition of a credit or payment of a fee.

Having first asked your permission to take photographs, those taken by us are copyrighted to us and we reserve the right to use photographs of the garden, before, during and after completion in our promotional material, to illustrate our work, and on our website. However, if you expressly requests in writing that photographs of your garden are not to be used, we will agree to such request.

Unless otherwise agreed in writing, we reserve the right to refer to the work and to reproduce photographs and other illustrations relating to the work for publicity and other marketing purposes.

As the Design Services are bespoke to you and your site, you may only transfer your rights or obligations to any third party with our prior written permission.

The provisions of this clause will remain in full force and effect after termination of this contract.

## Issues or Liabilities

If any fault or defect arises in the Design Services or Design Documents, we shall have the right to remedy such fault where possible by re-supplying the Design Services. If you do not advise us of any fault or defect within 30 days after receipt of the relevant part of the Design Documents, you will be deemed to have accepted the Design Services or relevant part thereof and that these are of acceptable professional quality.

So far as permitted by law, we shall not be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof:

- i) For any loss of profits, business, contracts, revenues or anticipated savings, or
- ii) For any special, indirect or consequential damage of any nature whatsoever.

Nothing in this contract shall affect your statutory rights as a consumer, nor limit either party's liability for death or personal injury arising from the proven negligence by themselves, their agents or employees. The provisions of this clause will remain in full force and effect after termination of this contract.

## Supply of Goods and Plants

Until payment in full of the amount on the Invoice, including Delivery charges and VAT, has been received for the goods to be supplied, and no other sums whatsoever are due, the property and title to all goods remains with us.

You agree that if you fail to make payment in full by the date the payment is due as stated on the invoice, that we are authorised to seek to recover any goods including to enter the location where the goods are held to take possession of the goods.

If you cancel or terminate the contract for the supply of goods, you remain responsible for either, the cancellation costs incurred by us for the goods that we have ordered on your behalf from our supplier (if these can be returned by us), or for full payment of any goods that were ordered prior to cancellation or termination of the contract and which cannot be returned by us to our supplier.

**Plants are classed as perishable goods and orders cannot be changed or cancelled, in whole or in part, in any way after your order is confirmed.** Plants which have been grown or acquired especially for your order, that are not typically stocked by our supplier, or which have been put aside especially for your order, may not be changed or cancelled under any circumstance.

If we agree to a change in an order for goods, a memorandum of such alteration to the order must be signed by both Parties.

If, at the time of delivery, any goods including plants, which we have arranged purchase and delivery of on your behalf, have any defect or damage, please contact us immediately. We will then inform our supplier of your concerns and seek replacement or refund as appropriate.



We only source goods and plants from third parties and therefore accept no liability for defective goods. In the event that you do not advise us of any defect or damage to goods within seven days after delivery, or, in the case of perishable goods such as plants, within 24hrs after delivery, you shall be deemed to have accepted the goods.

Where the goods supplied are living plants, we shall not be liable to make replacements or refunds for any plant once it has been removed from its pot or has been planted, nor shall we be liable for any alleged defect in the goods which you or any person acting on your behalf shall have rectified or attempted to rectify.

You are fully responsible for the health, care, maintenance and welfare of all plants from the point of delivery, and we cannot be held responsible in any way in that regard.

We cannot accept any liability for plants dying or becoming damaged due to factors including but not limited to neglect, extreme weather conditions including wind, rain, heat or drought, disease, pest attack, inappropriate watering, a change in soil conditions or fertilisation by you at your property after delivering to you and any replacement of failed plants is at our discretion. We will not accept any liability for any losses that arise. **Please refer to our our full Terms and Conditions of Sale for Plants.**

## **Our Insurance**

We have Public Liability to £2,000,000 and Professional Liability up to £500,000 is in place underwritten by HDI Global Specialty SE and Great Lakes Insurance SE via Maltings Insurance.

## **Confidentiality**

We will treat all personal and business information supplied by you as confidential and not disclose such information to a third party without your prior permission, except where required by law.

## **Limitation of Liability**

To the extent permitted by law, our liability to compensate you for any loss or damage howsoever caused is limited to our fees for Design Services.

Without prejudice to the forgoing

- If you require us to produce a design only and not perform any other Design Services, we shall have no liability for any dissatisfaction you may experience because of the way in which the design is implemented.
- We are not liable if works on site are delayed by other companies employed by you, including the contractor appointed by you, and reserve the right to reschedule the works and seek from you recovery of reasonable costs incurred as a direct result of delays caused by such companies.

- All start and finish dates are provisional only and necessarily weather dependent and may be affected by other causes beyond our control. Dates and timings will be offered in good faith but are not of the essence and no guarantees are or will be given and we shall have no liability for any losses in the event of a delayed start or finish date.
- We shall not be liable for any defects, discrepancies or deficiencies in the contractor's execution of the design.
- If asked by you to move or transplant trees, shrubs or other existing plants on site and if we are willing to do this, this is entirely at your risk and no responsibility will be accepted by us for the survival of these plants.
- We shall have no liability for any delay of defects in any goods supplied by or workmanship or services provided by or damage caused by your contractor or any third party whether recommended by us or not.

### **Miscellaneous**

This contract can only be amended or varied by either of us with the prior written agreement of the other.

### **Complaints**

We always endeavour to provide an efficient and wholly satisfactory service to all our clients, but if you have a concern, complaint or problem regarding the quality of any work carried out by us, or any goods supplied by us, in the first instance, please contact us to discuss this with us so that we can seek to address it on 07887897749, followed by in writing (email) to: [rjb@foliumgardens.uk](mailto:rjb@foliumgardens.uk) or by post to our address above.

On all correspondence, please state: (a) your name, (b) your address, (c) a description of the problem.

We will aim to resolve the matter promptly for you, and it is our intention to resolve any complaint fairly, amicably and to the satisfaction of all parties concerned at the earliest opportunity.

In the case of notices sent by email, should you not receive a response from us within 2 working days, please send a 'Second Request'. Emails can end up in spam folders and be unintentionally overlooked.

**We reserve the right to amend these terms and conditions at any time.**

**We appreciate your valued business and look forward to providing you with a quality, professional service.**