

genus plant sourcing

TERMS AND CONDITIONS OF TRADING OF GENUS SOFTWARES LTD T/A GENUS PLANT SOURCING

Please read carefully as this contract is made on these conditions and when you contract with Genus Softworks Ltd t/a Genus Plant Sourcing you will be taken to have accepted them.

1. GENERAL

- (a) These terms and conditions apply to the Supply of Plants and the Design of Soft Landscaping as defined in 1(b)(vii) below.
 - (b) Definitions
 - i. "The Parties" are the parties to the contract who are:-
 - ii. "The Customer" is the purchaser or purchasers of the Soft Landscaping and/or Design (use of verbs in the singular will be used even where there is more than one purchaser) and
 - iii. "Genus" is Genus Softworks Ltd (Registered No.4332333) t/a Genus Plant Sourcing registered office: Puddlesworth Lane, Stonehouse, Glos GL10 3AH
 - iv. "The Landscaping Project" is the contract for landscaping services between the Customer and his Ultimate Client (use of the masculine will be used throughout even when the Customer is a female or is a limited company or partnership) for which the Soft Landscaping detailed in the Contract are being supplied to the Customer.
 - v. "The Ultimate Client" is the client for whom the Customer is contracting with Genus to purchase Soft Landscaping but with whom the Customer accepts Genus has no contract.
 - vi. "The Design" is the detailed Soft Landscaping specification of the Landscaping Project drawn by Genus in response to a drawing (rather than a detailed specified list of plants) provided by the Customer.
 - vii. "The Soft Landscaping" are the plants, lawn turf, trees and other similar living material being the vegetation supplied by Genus to the Customer as distinct from the Landscaping Project as a whole.
 - viii. "The Kerbside" is the roadside near to the outside of the Ultimate Client's property or other place to which delivery is made by Genus at the request of the Customer.
 - (c) Any single condition adjudicated invalid by the Courts will not affect the validity of any other condition in the contract.
 - (d) Nothing in this contract will limit a Customer's statutory rights.
 - (e) Time of delivery of the Soft Landscaping and/or Design by Genus is not of the essence of the contract. So that in the event of late or non-delivery 11 will apply.
- ### 2. PAYMENT
- (a) Payment for the Design is in full and due immediately that part of the Contract has been completed.
 - (b) For all Contracts for Soft Landscaping where all or some of the plants comprising the same are being sourced from overseas the whole Contract price for such Soft Landscaping is due and payable in full on the Customer's placement of his order.
 - (c) For all Contracts for Soft Landscaping over £1000.00 (excluding VAT) a deposit of 25% of the Contract

price will be due and payable on Genus' acceptance thereof.

- (d) Unless the Customer has a credit account with Genus payment for the balance due under his Contract is due 7 clear days before delivery.
- (e) After any Customer has contracted with Genus on three successful occasions he will be offered a credit account whereupon payment of the balance of the Contract price will be due within 28 days of the date of Genus' invoice to the Customer.
- (f) The Customer will pay all monies outstanding, including VAT, on demand (interest on amounts overdue is at HSBC Bank base rate plus 2%) and will be liable for reasonable legal charges incurred by Genus in recovery of amounts due.
- (g) Where the Customer pays by credit card Genus reserves the right to add a surcharge equal to 2% to the contract price.
- (h) Genus is prepared to accept the Customer's request that Genus invoice the Ultimate Client direct and to accept payment from the Ultimate Client (if such a request is made on the making of this Contract) but nothing in any agreement to such an arrangement and/or variation in the terms of the payment relieves the Customer from liability to Genus should the Ultimate Customer fail to pay.

3. DELIVERY

- (a) The Delivery charges are for one delivery of all the Soft Landscaping as the subject matter of this contract in one consignment.
- (b) Delivery is to the Kerbside only and it is the Customer's responsibility to ensure that he has sufficient manpower and/or equipment to off load and to move the Soft Landscaping from the Kerbside.
- (c) Notwithstanding 3(a) above in the event that Genus' delivery men assist the Customer to move the Soft Landscaping from the Kerbside such assistance will be accepted by the Customer at his own risk and Genus will not accept any liability howsoever arising to the Ultimate Customer for damage to his property caused in the moving and the Customer now warrants that he is fully insured against any such accidental damage.
- (d) In the event that the Customer does not comply with 3(a) so that Genus' delivery men are obligated to assist the Customer to move the Soft Landscaping from the Kerbside then Genus reserves the right to charge the Customer an additional hourly rate equivalent to the gross hourly rate paid by it to those delivery men.

4. OWNERSHIP OF HARD AND SOFT LANDSCAPING

All the Soft Landscaping remains the property of Genus until full payment is made but whether or not payment has been made the risk in the Soft Landscaping passes to the Customer on delivery to the Kerbside.

5. CANCELLATION OR POSTPONEMENT OF THE WHOLE OR PART OF THE CONTRACT BY THE

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CUSTOMER BEFORE ANY WORK IN SOURCING THE SOFT LANDSCAPING HAS BEEN COMMENCED

- (a) In the event that the customer terminates the whole or any part of the Contract Genus will accept the same without penalty.
- (b) The customer may postpone the Contract for up to 6 months from the date for contractual delivery and Genus will use its best endeavours to deliver the Soft Landscaping on a later date elected by the Customer, but the Customer accepts that Genus' work schedule or the weather may prevent it from accepting the Customer's later date and may offer alternative dates to the Customer and the Customer will have to elect one of Genus' dates as the new contract date or 8(a) will apply.
- (c) Should the Customer postpone for more than 6 months then Genus may treat this as a termination by the Customer and 8(b) will apply.

6. CANCELLATION OR POSTPONEMENT OF THE WHOLE OR PART OF THE CONTRACT BY THE CUSTOMER AFTER ANY WORK IN SOURCING THE SOFT LANDSCAPING HAS BEEN COMMENCED

- (a) In the event that the Customer cancels the whole or any part of the Contract once plants have been bought or have agreed to be bought by Genus then the termination will be accepted by Genus but the Contract price in respect of the Soft Landscaping sourced will become immediately due and payable though without further penalty.
- (b) In the event that the Customer postpones the whole or any part of the contract once Soft Landscaping has been bought or agreed to be bought by Genus then the Contract price in respect of the same will become immediately due and payable and the risk in the Soft Landscaping will pass to the Customer and whilst Genus will use its reasonable endeavours to care for the Soft Landscaping it accepts no responsibility for its wellbeing and will not be responsible for any loss.

7. ALTERATION OF THE CONTRACT

- (a) **BY THE CUSTOMER:** The Customer may alter the Design or the specification of any of the Soft Landscaping prior to or during the duration of the Contract but only if a memorandum of such alteration and any changes to the Contract price is signed by both Parties subject to 6(a) and 6(b) above and 8(c) below.
- (b) **BY GENUS:** Genus reserves the right to alter the Contract in respect of any of the Soft Landscaping at any time but only if it becomes impossible or unduly difficult or dangerous or otherwise unreasonable for it to carry out the Contract in which case it will use its best endeavours to agree alterations to the Contract with the Customer and the Customer will accept one of Genus' proposed alterations so as to allow it to complete the Contract.

8. TERMINATION OF CONTRACT BY GENUS

- (a) As set out in 5(b) in the event that the Customer attempts to postpone the Contract for less than 6 months and the Customer will not accept the alternative delivery dates offered by Genus then Genus may elect to treat such postponement as a cancellation without penalty or without liability to

itself for any resultant loss howsoever caused and 6(a) will apply.

- (b) As set out in 5(c) in the event that the Customer attempts to postpone the Contract for longer than 6 months Genus may treat such longer postponement as a cancellation without penalty or without liability to itself for any resultant loss howsoever caused and 6(a) will apply.
- (c) As set out in 5(b), 5(c) and 6(b) above the Customer may at any time alter the Design or the specification of any of the Soft Landscaping but not so as to make it impossible or unduly difficult or dangerous or otherwise unreasonable for Genus to complete the Contract in which case Genus may treat the request to alter the Contract as the Customer's termination of the Contract and paragraph 6(a) will apply.
- (d) Where the Customer is in breach of Contract or is involved in insolvency proceedings Genus may elect to terminate the Contract immediately and repossess the Soft Landscaping without affecting any of its rights to recover monies due, damages for breach of contract or other remedies.

9. CUSTOMERS RESPONSIBILITIES

- (a) The Customer warrants that he is a professional gardener and/or garden designer and has knowledge of the specific needs for the care of the Soft Landscaping the subject matter of the Contract and will use his knowledge to ensure the Soft Landscaping is properly looked after immediately on delivery, planted properly and initially cared for.
- (b) The Customer undertakes to advise his Ultimate Client on the watering needs and other specific care of the Soft Landscaping and use his best endeavour to obligate the Ultimate Client to take good and proper care of the Soft Landscaping once the Customer has left site.

10. GENUS' RESPONSIBILITIES

- (a) Genus will use its best endeavours to source and provide healthy plants and unless the Customer notifies within 7 days of delivery of the failure of any individual plant the Customer is taken to have accepted that all the Soft Landscaping was healthy at the time of delivery but in respect of defects that could only be discovered at a later stage then the same must be reported in writing to Genus immediately upon discovery and within the first growth season after delivery and once these periods have elapsed the Customer will be taken to have accepted the plants.
- (b) Genus will replace any individual plants or plants complained of as outlined in 10(a) free of further charge.
- (c) Genus will provide basic advice as to the aftercare of the individual plants comprised in the Soft Landscaping on request but this does not relieve the Customer of his responsibilities under 9 above.

11. LIMITATION OF GENUS' LIABILITY

Does not extend to consequential financial loss caused.