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MIRIA HARRIS

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## Terms of Business

## 1. Contract

1.1 This contract is made between Miria Harris Design Limited (Landscape, Garden and Floristry Design), whose principal address is at Unit 5, The Energy Centre, Bowling Green Walk, London, N1 6AL (“we” or “us”), and the Client as stated in the Fee Proposal (“you”). The terms of this contract will override terms that you may have sent or may send to us or any other written correspondence or verbal communication including any advice or recommendation made before we accept the order. Any typographical, clerical or other errors or omissions in the Proposal, Design or any other document may be changed without us incurring any liability.

## 2. Definitions

- “Design or Designs” means all designs including drawings produced by us when performing the Services;
- “Consultancy” means all advice given within the scope of the Design or proposed Design Services
- “Fee(s)” means the fees set out in the Proposal or any variation to the Fee;
- “Terms” means the terms set out in this document
- “Project Liaison” has the meaning given to it in Clause 5;
- “Proposal” means the written document(s) that we send to you together with these Terms of Business for the execution of the Services, which will be agreed by both of us;
- “Services” means the set of services as set out in the Proposal to be provided by us under this contract / Terms of Business
- “Site” means the location where the Works are to be carried out as set out in the Proposal;
- “Works” means all the hard and soft landscaping including preparation, construction and planting work undertaken at the Site to implement the Design(s).

## 3. Services

3.1 Once the Proposal is accepted by you, all Services set out in the Proposal are provided are subject to these Terms and will be carried out using reasonable skill and care. We will provide the Services in a timely fashion but any time deadline set out in the Proposal is only an estimate.

3.2 The Services are for landscape / garden / planting / floristry design and associated consultancy only. We will assist you in communicating with contractor, surveyors and any other suitably qualified “third party(ies)”, but it is your responsibility to contract directly with third parties to carry out the Works. We will not be responsible for the work undertaken by third parties, the manner in which the Works are being carried out nor any other aspect of their progress.

3.3 The design including the provision of construction drawings for water features (such as but not limited to ornamental pools, swimming pools or ponds) or children’s play equipment and garden structures (such as but not limited to trampolines, swings, pergolas and sheds) is beyond the scope of this contract. We can offer advice on the inclusion of such features within the scope of a Design, facilitate introductions to specialist contractors, and if requested, provide visualisations of features, equipment and structures for the purposes of design intent, but these do not constitute detailed design or statements of feasibility. Should the Client wish to build or have structures installed by third parties or by the Client themselves, we take no responsibility for the feasibility of, and construction or installation, the manner in which any construction or installation is carried out nor any other aspect of their progress. You will indemnify us from and against any costs, claims, damages, liabilities and expenses incurred by us arising from any construction or installation of water features, children’s play equipment or garden structures supplied and installed by yourselves or third parties.

3.4 All dimensions and levels shown on drawings supplied are to be confirmed by contractors on site before materials are purchased or the Works begin. No responsibility will be taken for scaling from drawings which are supplied by us for design purposes only, unless stated otherwise.

3.5 You may suspend the Services at any time, but all sums due at the date of suspension will become due for immediate payment.

3.6 You will be required to sign off on all Designs, schedules of work and plant lists before the Works commence. Any changes to the Design after works have commenced may incur additional costs or fees. Once a third party contractor has been formally instructed by You, all works itemised on the schedule, plant list and on plan are deemed to have been approved by you.

3.7 Any variation to the Design after works have commenced on-site will need to be documented on plan or in writing. We will not take responsibility for any design changes, aesthetic or otherwise, implemented by third party contractors, without our formal instruction.

3.8 Any further changes to the Design after works have commenced on site may incur additional costs or fees.

## 4. Supply of Plants, Furniture and Other items

4.1 We can supply you with a plant list for you to source your own plants, or we can arrange for them to be supplied to you through third parties.

4.2 Upon delivery of plants, their care is your responsibility. We can advise you on suitable maintenance regimes and produce Maintenance Schedules if requested to do so, but we cannot accept responsibility for loss, damage or failure of plants due to negligence, pest and disease or acts of god.

## 5. Project Liaison

5.1 If we have specified in writing in the Proposal that we will carry out Project Liaison then the following Clause 5 will apply.

5.2 Project Liaison means that we will conduct site inspections at appropriate intervals of any third party work. We shall notify you of any discrepancies that we have noted between the Design and the actual Works being delivered in order that you may take steps to rectify such changes as you see fit.

5.3 We will not supervise or manage the Works. We may, if agreed in the Proposal assist you in communicating with third parties; including where necessary participating in any ITT (invitation to tender) process. However, you will contract directly with the third parties and by undertaking Project Liaison we will not take responsibility or liability for either the execution or performance of such third party contractor, or the delivery or performance or safety or fitness for purpose of the Works once completed.

## 6. Variations

6.1 Either party will be entitled to vary or amend the scope of the Services or the Proposal upon the prior consent of the other party. Any variation will only be effective once the details of the variation (which may take the form of a further Proposal) together with an additional Fee or any variation to the Fee have been put in writing and agreed by both parties, whereupon this will form a binding contract between the parties. We will then carry out the varied contract as if the variation was originally included in the Proposal. We may refuse to accept a variation if it reduces the value of the contract by ten percent or more.

6.2 If you require services outside of the scope of the Proposal or at a higher level of service than that currently subscribed, then we will try to carry out such service at our convenience and for a fee that we will set at that time.

6.3 We may vary these Terms by giving you 14 days' prior written notice if we are required to do so for reasons beyond our reasonable control.

6.4 If the scope of the Services extends beyond a timescale agreed to upon retaining the Services, then a variation to the Fee Proposal will be negotiated at such time.

## 7. Fees and Expenses

7.1 The Fees for the Services are set out in the Fee Proposal and will become fixed on the acceptance of the Proposal by both parties unless varied in accordance with these terms, or unless the Fee is based on the value of the project, or on the size of the Site and this is found to be larger once the Site has been measured.

7.2 The Fee Proposal is based on known conditions at the time of quoting. No allowance has been made to cover extra work that may be required due to unknown features or unforeseen changes that may impact on the Design and Consultancy.

7.3 The Fees will be payable in accordance with an agreed payment schedule or in the circumstances set out in the Proposal. All invoices shall be paid by you upon receipt of the invoice. We reserve the right to charge interest at 8% per annum above the base rate of the Bank of England on any outstanding amounts (calculated on a daily basis) that remain payable after a period of 14 days from date of the invoice. If you fail to pay an invoice, we may, after seven days' prior notice, suspend the performance of the Services until payment in full is received.

7.4 Reasonable expenses to cover travel, accommodation, print and any production costs will be charged to the client and invoiced appropriately.

## 8. Your Obligations

8.1 You have certain obligations under this contract. Failure to comply with these obligations may result in us suspending or terminating the contract. If we incur any damages or fines through your failure to carry out your obligations, then you will repay us all such monies on a full indemnity basis.

8.2 You will provide us at the time of asking with the necessary information in order to carry out the Services. You warrant the accuracy of this information and that the information is not subject to any third party rights that would prevent us from using this information. You will be liable for any costs that we may suffer if this warranty is not true.

8.3 You will allow us reasonable access to both you and the Site in order to carry out the Services.

8.4 You will notify us in writing of any issues or alterations which may affect the Services as soon as possible to enable us at the earliest opportunity to investigate and rectify where necessary.

8.5 On commencement of the Services, You will be responsible for informing us as to whether your garden is located within a Conservation Area or within the curtilage of a Listed Building and if this is not something you are aware of, then we can advise you on how to make the necessary checks.

8.6 If as part of the Works, remedial work is required to tree(s) at the Site (including but not limited to cutting down, lopping or pruning), then we can advise you on how to make the necessary checks that such tree(s) is not subject to any type of protection order. However, you are responsible for making such checks and the arrangement of any planning permission, notices or licences in respect of the Works, either directly or through suitably qualified third parties.

8.7 If your garden is in a Conservation Area, or within the curtilage of a Listed Building, then we can advise you on how to make the necessary checks as to whether any of the Works proposed in the new Design are subject to restrictions, require notices to be given to the relevant authority, or if the Works require listed building consent or planning permission. This includes, but is not limited to any work to existing garden structures (such as garden walls, external building walls or outbuildings), the inclusion of any new structures in the garden (such as bin or bikestores, sheds or play equipment). However, you are responsible for making such checks and the arrangement of any planning permission, notices or licences in respect of the Works, either directly or through suitably qualified third parties.

8.8 In the event that you wish, subject to additional fees, to appoint us to carry out any planning applications, or make checks on your behalf, we will act as your agent but you will indemnify us from and against any costs, claims, damages, liabilities and expenses incurred by us arising from any breach of planning permission or licences by yourselves or any third parties in respect of the Works and any undertaking of services will not guarantee a successful application.

8.9 Nothing in this contract shall require us to provide advice or services in connection with the presence of or risk of contamination or pollution by harmful substances. You will be solely responsible for determining what investigations and actions should be taken in relation to such substances and shall commission such professional third party advice as you consider necessary.

## 9. Intellectual Property Rights and Licence

9.1 We are the owner of all intellectual property rights in the Designs together with the rights in any developments and modifications in such Designs. We assert the moral rights that we may have in any Designs.

9.2 We will grant you a non-exclusive, perpetual, non-transferable and personal licence to use the Designs for your own internal business or residential purposes at the location set out in the Proposal, but for no other purpose. You may not allow any third party to use any of those Designs; use those Designs on behalf of or for the benefit of any third party; sub-license the use of the whole or any part of those Designs; recreate the Design at a different location or transfer them to anyone else without our prior written permission.

9.3 Unless otherwise agreed, publication of plans, sketches and photographs of your garden / landscape can be used in the promotion of work done by us (such as on [www.miriaharris.com](http://www.miriaharris.com)) after the Services have been completed, this includes publication on all Miria Harris social media, including but not limited to instagram, facebook, google +, pinterest and houzz.

9.4 The provisions of this clause 9 shall remain in full force and effect after termination of this contract for whatever reason.

#### 10. Liability

10.1 In the event of any fault or defect arising in the Services, we shall have the right to remedy such fault where possible by resupplying the Service. In the event that you or any third parties do not advise us of any defect in the Services within thirty days after completion of the Services or the provision or delivery of the relevant part of the Services, you shall be deemed to have accepted the Services or part thereof. Furthermore, in the event that a successful claim is made against us, the liability will be limited to the total sum of professional fees paid to us up to the time of the claim.

10.2 Once the Works have commenced on Site by third party contractors, the Client shall be deemed to have approved the Design(s) and we will not be liable for any indirect or consequential loss or damage, loss of revenue, loss of profit, loss of goodwill, costs, expenses, delays or other claims for consequential compensation (even if due to our negligence) that you or any third parties may suffer as a result of any defects in the Design(s), or variations to the Design(s) made by the Client or third parties that have not been approved by us.

10.3 If plants or other goods are provided to you by a separate supplier, those supplies will be provided under a separate contract with the supplier and we can accept no responsibility for that contract or the supplies under it.

10.4 All prices given for purchasing of plants, raw materials or work by third parties are estimates and not fixed quotes.

10.5 We will not be liable in any way whatsoever whether that be under contract, tort or otherwise, for any indirect or consequential loss or damage, loss of revenue, loss of profit, loss of goodwill, costs, expenses, delays or other claims for consequential compensation (even if due to our negligence) that you may suffer as a result of the Services provided under this contract.

10.6 Nothing in this contract shall affect the statutory rights of a consumer.

10.7 Nothing herein shall limit either party's liability for death or personal injury arising from the proven negligence by itself or its employees.

10.8 We will use reasonable endeavors to comply with any specified delivery dates but no such dates are guaranteed and we exclude liability for any loss (whether direct, consequential or otherwise) resulting from any delay in the delivery of the Services.

10.9 We cannot be held liable for any damage to services (such as gas, electricity or drains) or property caused by third party contractors, or for delay in the Works being started or completed.

10.10 The provisions of this clause 10 shall remain in full force and effect after termination of this contract for whatever reason.

#### 11. Transfer of Rights

11.1 We will be entitled to transfer all or any of our rights or obligations under this contract and to use sub-contractors. You will need our prior written permission before transferring any or all the rights to a third party.

#### 12. Termination

12.1 If either party is in breach of any significant provision of this contract (a material breach) then that party will give the other party not less than 30 days' written notice to allow them to correct that breach. If that party fails to remedy the breach within the notice period, then the other party will be entitled to terminate the contract with immediate effect at the end of that notice period.

12.2 In the unlikely event that you should wish to cancel the Services before the completion of a project, then you will need to notify us as soon as possible in writing giving at least 30 days advance written notice. Please note, that in this event you will have to pay for the Services carried out up to the date of expiry of the notice. We may also assist you in the cancellation of any third party contracts but we cannot guarantee that you will not have to pay such fees in full subject to the terms of any third party contracts. Any licence that we have given you under Clause 9e will end and you must stop using any Designs immediately.

#### 13. Force Majeure

13.1 Neither party will be regarded as in breach of this Proposal if the failure is as a result of a circumstance beyond that party's reasonable control (Force Majeure). This will include (but not be limited to) the death or incapacity of the garden designer working on the Design(s). If the Force Majeure continues for a period of one week or more both parties will discuss ways in which to alleviate the situation which will include the possibility of approaching a third party during the period that the Force Majeure exists or if this is not possible to terminate the contract, without either party sustaining any financial liability other than to pay all outstanding Fees that are due up to the date of termination (including contracts that cannot be cancelled).

#### 14. Waiver

14.1 If either party chooses not to take up any right of action at any time then this will not prevent that party from taking action on the same or similar point at another time.

#### 15. Proper Law

15.1 These Terms of Business will be governed by and construed in accordance with the laws of England and Wales. In the event of any dispute we would ask that you contact us in the first instance to resolve any issues in good faith. If this matter is not referred or resolved within 30 days of the matter being raised then the parties will submit to the exclusive jurisdiction of the Courts of England and Wales.

#### 16. Notices

16.1 Notices to the address specified in the Proposal must be given in writing either by hand, by first class post, or by email provided that receipt of the email is acknowledged by us. Post will be judged to have arrived 2 days from date of posting. Notices sent by other means will be deemed received on delivery.

17. Contracts (Rights of Third Parties) Act 1999

17.1 The parties to this contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it but this shall not affect any right or remedy of a third party that exists or is available apart from that Act.

18. Party Wall Act 1996.

18.1 If you are required under the Party Wall Act 1996 to appoint a party wall surveyor, then you will be responsible for ensuring that such a surveyor is appointed and we will co-operate and pass all such relevant information to the surveyor as soon as is reasonably practicable.

19. Construction, Design, Management regulations, 2015.

19.1 All Services provided by Miria Harris Ltd. and Miria Harris Design Ltd. under this Terms of Business / contract will adhere to the CDM regulations that came into effect in 2015 governing the way construction projects of all sizes and types are planned.

20. Severability

20.1 If any term of this contract shall be held to be invalid, illegal or unenforceable, the remaining terms shall remain in full force and effect and such invalid, illegal or unenforceable term shall be deemed not to have been part of this contract.

21. Entire Agreement

21.1 This Terms of Business / contract, the Proposal and any variation to the Proposal contains the entire understanding between the parties and supersedes all previous agreements between the parties. It is expressly provided that nothing in this contract excludes any liability for pre-contract statements or representations made fraudulently.

21.2 You agree that you accept these Terms of Business on commencement of the Services, but you are kindly asked for avoidance of doubt to sign below.

Signature of Client in Acceptance of the above Terms of Business

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Print Name:

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