



indoor plant hire specialists

## Terms and Conditions of Hire

### SECTION A: GENERAL TERMS

These Terms shall apply to all Services provided by Urban Garden to the Customer. Any order or instructions received by Urban Garden from the Customer for the supply of Services shall be deemed to incorporate these Terms and will constitute acceptance of these Terms.

#### 1. Interpretation

- 1.1. Defined Terms: In these Terms unless the context otherwise requires, the following words have the following meanings:

**Agreement:** means the agreement between the Parties for the provision of Services which agreement shall comprise these Terms, the Services Agreement and any other written agreement between the Parties setting out the terms of supply of the Services.

**Customer** means the person or entity hiring or purchasing Services from Urban Garden.

**Commencement Date** means the date that the Inventory is delivered to the Premises.

**Default Interest Rate** means 3% per month.

**Denial of Service Fee** means the sum of \$120.00 plus GST.

**GST** means goods and services tax payable at the applicable rate in accordance with the Goods and Services Tax Act 1985.

**Inventory** means all plant material and equipment hired by the Customer from Urban Garden including but not limited to decorative containers, saucers, trays, liners, plant walls, vertical gardens and other accessories used to stage plants.

**Installation Charge** means the installation charge specified in the Services Agreement.

**Inventory Maintenance** means regular scheduled maintenance of the Inventory including regular watering and feeding, cleaning, pruning and grooming of foliage, soil and containers, monitoring growth and development and replacing Inventory as required to maintain the standard of the display.

**Late Payment Service Fee** means \$25.00 plus GST per invoice per month.

**Minimum Hire Term** means the minimum hire term as specified in the Services Agreement.

**Monthly Services Charge** means the monthly services charge as specified in the Services Agreement.

**Parties** means Urban Garden and the Customer.

**PPSA** means the Personal Property Securities Act 1999.

**Premises** means the premises where the Services are to be carried out as specified in the Services Agreement.

**Services Agreement** means the services agreement attached to these Terms.

**Services** means the services supplied or to be supplied and Inventory hired or to be hired from time to time by Urban Garden to the Customer.

**Terms** means these terms of trade.

**Urban Garden** means Urban Garden Limited company number 1138571 NZBN number 9429036899944 trading as The Urban Garden.

- 1.2. PPSA Terminology: Words in these Terms which are defined in the PPSA, have the same meanings as in the PPSA respectively unless the context otherwise requires.

#### 2. Terms

- 2.1. The Customer acknowledges and agrees that by requesting Urban Garden to provide Services, whether by completion of any order form, acceptance of any quote or otherwise, the Customer is offering to purchase those Services and agreeing to and accepting these Terms. All orders are subject to acceptance by Urban Garden.
- 2.2. Services are supplied by Urban Garden to the Customer only on the terms set out in these Terms and any variations specifically agreed to by Urban Garden in writing. Urban Garden shall not be bound by any terms to the contrary set out in the Customer's order or elsewhere which purport to override these Terms.
- 2.3. Urban Garden may, before Urban Garden accepts an order from the Customer, require the Customer to procure a guarantee from a director or shareholder of the Customer or any other person, on such terms as Urban Garden may reasonably require.

#### 3. Hire Term

- 3.1. Subject to the terms of this Agreement, Urban Garden will provide the Services to the Customer for the Minimum Hire Term and thereafter this Agreement shall continue until terminated:
- (a) by either party giving to the other one (1) calendar months' notice in writing; or
  - (b) by Urban Garden pursuant to clause 11.

#### 4. Services

- 4.1. Urban Garden will provide the Inventory and carry out the Inventory Maintenance as specified in the Services Agreement.

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indoor plant hire specialists

4.2. The Customer will ensure that Urban Garden has access to the Premises during normal business hours to install the Inventory, carry out the Inventory Maintenance and remove the Inventory on termination of this Agreement.

## 5. Prices

5.1. The Customer shall pay all GST, taxes and levies on and in respect of the Services.

5.2. Urban Garden may increase the price of the Services from time to time provided that it has first given three (3) months written notice of such increase to the Customer.

5.3. If Urban Garden is unable to access the Premises and as result is required to reschedule Inventory Maintenance then Urban Garden shall be entitled to charge a Denial of Service Fee.

## 6. Payment

6.1. The Installation Charge shall be paid by the Customer in full upon execution of the Services Agreement.

6.2. The Monthly Services Charge shall be paid by the Customer by direct credit monthly in advance to Urban Garden's nominated bank account with the first payment due on the Commencement Date.

6.3. The customer may not deduct or withhold any amount (whether by way of set-off, counterclaim or otherwise) from any money owing to Urban Garden.

6.4. If full payment for the Services is not made to Urban Garden by the due date for payment, Urban Garden may, at Urban Garden's discretion (and without affecting any other rights Urban Garden may have), require the customer to pay, on demand the Late Payment Service Fee and, interest at the default interest rate on any amount outstanding. Interest will accrue at the default interest rate on a daily basis from the date when payment is due until the date when payment is actually made. The customer will also be liable to pay all expenses and costs (including legal costs as between solicitor and client) in connection with Urban Garden recovering or attempting to recover any overdue amount from the customer.

6.5. Urban Garden may, in its discretion, require payment of a deposit or payment in full by the Customer prior to ordering or supplying Inventory. Deposits or payments in advance are non-refundable

6.6. The Customer agrees that all payments made by the Customer to Urban Garden may be applied by Urban Garden to obligations owing by the Customer to Urban Garden in any manner as Urban Garden sees fit.

## 7. Performance

7.1. The Customer will promptly provide Urban Garden any required material, data, or other information to perform any tasks Urban Garden reasonably requests the Customer to carry out in order to supply the Services and will comply with any reasonable instructions from Urban

Garden.

7.2. If the Customer fails to provide or carry out any of the above requirements, Urban Garden will not be liable for any failure or delay in providing the Services and Urban Garden may charge, and the Customer will pay, any costs relating from such failure.

## 8. Customers Obligations

8.1. The Customer shall:

- (a) take proper and reasonable care of the Inventory;
- (b) not remove, deface or obscure any marks of identification or ownership of the Inventory;
- (c) satisfy itself that the Inventory is suitable for the Customer's intended use;
- (d) not bring or threaten to bring any claim against Urban Garden for loss or damage incurred or threatened against Urban Garden or arising directly or indirectly from the Customers use of the Inventory;
- (e) notify Urban Garden immediately if the Inventory is lost, stolen or damaged;
- (f) be responsible for and indemnify Urban Garden for any loss or damage to the Inventory including:
  - (i) in the case of damage, the full cost of all repairs to restore the Inventory to the condition it was at the Commencement Date (fair wear and tear excepted); or
  - (ii) in the case of loss or theft or irreparable damage howsoever caused, the full cost to Urban Garden to replace the Inventory.
- (g) not move or permit the Inventory to be moved from the Premises without Urban Gardens prior written consent.

8.2. The Customer agrees to fully indemnify Urban Garden for, and on demand pay Urban Garden, all costs (including costs calculated on a lawyer and own client basis), losses, damages, expenses and claims incurred or which Urban Garden is or becomes liable for as a consequence of or in connection with:

- (a) the Customer's failing to comply with or breach any of its obligations and/or warranties under the Agreement; and
- (b) any claim or legal proceedings the Customer or any other person brings against Urban Garden or any person acting as Urban Garden's agent in the exercise of the Urban Garden's rights under the Agreement; and
- (c) anything done or not done in good faith in the exercise or attempted exercise by Urban Garden of its rights under the Agreement; and
- (d) any amount that the Customer fails to pay on the due date for payment; and
- (e) the exercise, enforcement, preservation or

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attempted exercise, enforcement or preservation of any of Urban Garden's rights under the Agreement, or in suing for and recovering any moneys that the Customer owes or is liable to pay to Urban Garden or indemnify Urban Garden for; and

- (f) taking any actions or doing any things (including paying or incurring liabilities to pay any moneys) to protect or preserve Urban Garden's rights under the Agreement, including the security interest granted to Urban Garden pursuant to the Agreement.

in all cases on a full indemnity basis.

## 9. Limitation of Liability

- 9.1. The Customer acknowledges that Urban Garden shall not be liable for any loss of any kind whatsoever suffered by the Customer nor shall Urban Garden be liable for any loss or damage caused to the Customers servants, agents, contractors, employees, visitors tenants or other persons.
- 9.2. Subject to the exclusion of liability in clause 9.1, the maximum aggregate liability of Urban Garden for all claims made by the Customer, whether as a result of a breach of the Agreement or on any other ground or terms whatsoever will not exceed an amount equivalent to three months Monthly Services Charge.
- 9.3. The Customer will indemnify Urban Garden against any liability, losses, damages, or expenses incurred or suffered by Urban Garden as a result of claim made by a third party against Urban Garden in respect of any loss or liability arising out of the provision of the Services.
- 9.4. Any implied condition or warranty (including any warranty under the Sale of Goods Act 1908) is excluded.
- 9.5. The Customer is acquiring the Services for the purposes of a business and accordingly the Consumer Guarantees Act 1993 does not apply to the Services or the Agreement.

## 10. Personal Property Securities Act 1999

- 10.1. The Customer acknowledges that title to ownership of the Inventory remains with Urban Garden at all times.
- 10.2. Any products purchased from Urban Garden remain the property of Urban Garden until paid for in full.
- 10.3. Hire of the Inventory or the purchase of products from Urban Garden may create a security interest.
- 10.4. As and when required by Urban Garden, the Customer will, at its own expense, provide all reasonable assistance and all relevant information to enable Urban Garden to register its security interest, maintain such registration, and enforce its rights pursuant to its security interest.
- 10.5. The Customer will not change its name without giving Urban Garden 7 days prior written notice.
- 10.6. The Customer waives its right to:
  - (a) receive a statement of account pursuant to

s116 of the PPSA;

- (b) receive notice of Urban Garden's proposal to retain collateral under s120(2) of the PPSA and to object to that proposal under s121 of the PPSA;
- (c) receive notice from Urban Garden under s114(1) of the PPSA that Urban Garden intends to sell certain Services in which it has a security interest;
- (d) to receive notice of the removal of an accession under s129 of the PPSA;
- (e) to apply to the Court for an order concerning the removal of an accession under s131 of the PPSA; and
- (f) to reinstate a security agreement under s133 and/ or 134 of the PPSA.

## 11. Default and Enforcement Rights

- 11.1. Notwithstanding anything contained in these Terms or any other written agreement between Urban Garden and the Customer, if:
  - (a) the Customer fails to pay any amount owing on the due date;
  - (b) the Customer fails to comply with the Terms;
  - (c) Urban Garden believes that the Inventory may be at risk;
  - (d) the Customer commits an act of bankruptcy;
  - (e) the Customer enters into an arrangement or composition with its creditors;
  - (f) the Customer does anything that would make it liable to be put into liquidation;
  - (g) a resolution is passed or an application is made for the liquidation of the Customer;
  - (h) a receiver or statutory or official manager, or a person in a similar position, is appointed over all or part of the Customer's assets and undertaking; or
  - (i) any act of insolvency is committed. then Urban Garden:
    - (i) shall be entitled to refuse to provide any further Services to the Customer;
    - (ii) may exercise any or all of its rights pursuant to any security interest it has;
    - (iii) shall be entitled to enter the Premises and remove all Inventory; and
    - (iv) may by written notice to the Customer cancel the Agreement; and

any rights exercised by Urban Garden pursuant to this clause shall not in any way limit the Customer's liabilities under the Agreement including without limitation the Customer's obligations and liabilities pursuant to the indemnities contained in the Agreement and/or to pay damages for any breach nor preclude Urban Garden from exercising any other

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right or remedy (in equity or in law) that may be available to it.

## 12. Privacy Act 1993

- 12.1. Urban Garden will hold any personal information received from the Customer for marketing, product development, account administration and credit purposes. Urban Garden may disclose personal information about the Customer to any person the Customer names as a credit referee or to any person for the purpose of securing Urban Garden's security interest granted pursuant to these Terms.

## 13. Intellectual Property

- 13.1. Urban Garden retains all rights to its intellectual property including but not limited to, copyright, patents, trademarks, and designs ("Intellectual Property").
- 13.2. The hire of the Inventory to the Customer does not give the Customer the right to use, disseminate or duplicate any of Urban Garden's Intellectual Property rights.

## 14. General

- 14.1. Severance: If any clause or part of a clause of these Terms is held to be invalid or unenforceable for whatever reason, to the extent not inconsistent with that invalid clause, the remaining provisions shall remain in full force and effect.
- 14.2. Entire Agreement: The Agreement constitutes the entire agreement of the Parties in respect of the Services and replaces any previous agreements and understandings and will prevail over any existing or subsequent terms and conditions set out in any document (including any Customer purchase order), unless agreed otherwise in writing by Urban Garden.
- 14.3. Waiver: No waiver of any breach of, or failure to enforce any provision of, the Terms at any time by any party will in any way limit the right of such party thereafter to enforce and compel strict compliance with the provisions of the Terms.
- 14.4. Force Majeure: Urban Garden shall not be liable for any delay in performing its obligations due in whole or in part by force majeure which shall include (but not be limited to) an act of God, weather conditions, natural disasters, strikes, lockouts, fire, war, suit, civil commotion, inability to obtain goods, services or supplies including the imposition of any export or import bans or any other cause beyond the reasonable control of Urban Garden.
- 14.5. Insurance and Health and safety Compliance: Details of Urban Garden's public liability insurance cover and health and safety policies are available upon request.
- 14.6. Amendment: Urban Garden may amend these Terms, from time to time, by notice to the Customer.
- 14.7. Joint and Several: If the Customer comprises more than one person, then each of them shall be jointly and severally liable for the obligations and liabilities of the Customer under these Terms.
- 14.8. Assignment: The Customer is not entitled to assign,

transfer or otherwise dispose of any of its rights or obligations under these Terms without Urban Garden's prior written consent. Urban Garden shall be entitled to assign, transfer or dispose of any or all of its rights and obligations under these Terms without the prior consent of the Customer.

- 14.9. Notice: Unless agreed otherwise in writing, all notices under the Agreement shall be served in writing to the last known address of the Parties.
- 14.10. Errors and Omissions: Errors and omissions of a clerical nature in quotations, invoices or statements shall be subject to correction.
- 14.11. Legislation: A reference to any legislation or to any provision of any legislation (including regulations and orders) includes that legislation or provision as from time to time amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under any such legislation or provision.
- 14.12. Governing Law: The Agreement shall be governed by, and construed in accordance with, the laws of New Zealand.

## 15. Confidentiality

- 15.1. Urban Garden acknowledges that in the course of providing Services it will have access to the Customer's Premises. Urban Garden agrees to treat as confidential any information relating to the Customer that comes into its possession, which by its nature, or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential information.
- 15.2. Urban Garden will not use or disclose any confidential information disclosed to it by the Customer except so far as may be reasonably necessary to enable it to fulfil its obligations or exercise its rights under these Terms or as required by law.

## 16. Security

- 16.1. Urban Garden will observe all reasonable security arrangements of the Customer as notified by the Customer to Urban Garden in writing and will take every reasonable precaution to ensure safe custody of any keys or security cards provided by the Customer for access to the Premises in the course of providing Services.
- 16.2. Urban Garden will not disclose any security arrangement or procedures or access codes of the Customer to any person or persons without the prior written approval of the Customer.