

NICHOLSONS

Nicholson Nurseries Ltd

Terms and Conditions – Effective from 24th October 2022

These terms and conditions apply to the supply of goods (including plants) and/or services by us.

1. ABOUT US

- 1.1. We are Nicholson Nurseries Ltd (trading as NICHOLSONS and NICHOLSONS LOCKHART GARRATT), a limited liability company registered in England and Wales with company number 04820053.
- 1.2. Our Plant Passport No. is UK/EC/14009
- 1.3. Our VAT number is 287 1335 86.
- 1.4. Our registered office and main place of business is located at The Park, North Aston, Bicester, Oxon. OX25 6HL.

2. HOW THESE TERMS APPLY

- 2.1. These are the terms of the legal contract between you and us. Please read them carefully, paying particular attention to the exclusions and limitations of liability.
- 2.2. Interpretation: In these terms:
 - 2.2.1 references to “goods” includes all plants, products and any deliverables or materials we supply to you;
 - 2.2.2 references to “services” includes all advice, contracting, delivery and other works we supply to you; and
 - 2.2.3 phrases such as including, include, in particular or any similar expression shall be construed as illustrative and not as exhaustive or exclusive.

3. QUOTATIONS AND ORDERS

- 3.1. **Subject to availability:** Goods are subject to availability at the time of ordering. Visitors are welcome to inspect the nursery by our office.
- 3.2. **Validity:** Unless otherwise specified:
 - 3.2.1 All quotations are valid for 30 days from the date on which they were given.
 - 3.2.2 All orders are valid for 6 months from acceptance. Delays beyond this may incur additional charges.
- 3.3. **Non-binding:** Quotations are not binding and are not offers to contract.
- 3.4. **Orders:** By accepting a quotation and placing an order you are making an offer to contract on those terms. If we accept your order, we will notify you to confirm this (at which point a “contract” between you and us is formed). Please note that, until an order is confirmed, product prices and delivery charges are subject to change.
- 3.5. **Conditions:** Quotations are provided on the following basis:
 - 3.5.1 Where the quotation is for various items or a scheme of works, it assumes that the whole scheme is to be undertaken. We reserve the right to change our rates if you only wish to purchase parts from the scheme of works.
 - 3.5.2 Where quantities or types of products/services have been calculated on the basis of drawings or instructions, the quotation shall be an estimate only. You accept that the actual quantities or types of product/service used (and the resulting cost) may vary.
 - 3.5.3 Products and services listed in the quotation are subject to availability. Plants and their characteristics (such as colour, height, pot size and corresponding cost) may vary from those listed in the quotation or shown online or in brochure.
 - 3.5.4 That the following statements are accurate:
 - 3.5.4.1 All spoil can be disposed of on site in accordance with applicable law and with ease, unless otherwise stated.
 - 3.5.4.2 There are good ground conditions, and the soils on site are suitable for the products/services requested.
 - 3.5.4.3 Unless stated, watering and maintenance is not included.
 - 3.5.4.4 Easy and available access will be provided to work areas and materials at all times.
 - 3.5.4.5 The only goods and/or services required are those in the quotation. If any of these are incorrect, the cost payable by you could increase.

4. PRICES

- 4.1. **Goods:** Prices for the supply of goods exclude delivery (unless otherwise stated). If the cost to us of supplying an order increases before delivery, we may need to increase the price accordingly – we will discuss this with you at the time. Unless otherwise agreed, orders only including goods are payable upon being placed.
- 4.2. **Services:** Prices for the supply of services will be calculated in accordance with the methods set out in Schedule 1 of these terms. A deposit of 20% of the order value (for orders over £10,000) is payable when placing an order for all contracting services (unless we state otherwise, e.g., because payment in full is required). The deposit will be deducted from our final invoice and any remaining balance will be returned to you.
- 4.3. **VAT:** All prices shown exclude VAT (unless otherwise stated). In the event the prevailing rate of VAT changes during the period between an order being confirmed and an invoice being issued (or, if earlier, the goods and/or services being provided), the amount of VAT you have to pay for those goods and/or

services may change.

4.4. **VAT Reverse Charge:** We will assume that you are the “end user” or an “intermediary supplier”, for the purposes of the VAT reverse charge, unless you let us know to the contrary.

4.5. **Pricing errors:** We try to ensure all our pricing is correct, but there may be circumstances where an error has taken place. We are under no obligation to sell products at an incorrect price and will contact you to confirm if the actual price is acceptable or arrange an order cancellation and refund.

5. YOUR ORDER

- 5.1. **Amending an order:** Once an order has been placed it is final. We may (at our discretion) allow you to make changes, but reserve the right to increase our unit rates or add an amount to offset the additional costs incurred.
- 5.2. **Substitutions:** We reserve the right to substitute plants where the specified plant is not available, or to omit them altogether and deduct the cost from the final bill.
- 5.3. **Changes in law:** We reserve the right, at all times, to change the goods or services to be supplied to you if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the services and will notify you in writing as soon as reasonably practicable of such amendments (including any consequent revisions to our fees).

6. OUR PRODUCTS AND SERVICES

- 6.1. **Our promise:** We aim to provide high quality plants, goods and services. We will ensure that our goods and services are fit for their usual purposes, and they conform in all material respects to their description and (if applicable) sample. Where we provide services, these shall be provided with reasonable skill, care and diligence and unless otherwise agreed in writing, we will delegate the provision of the services to the most appropriate professional staff. If you are consumer, this promise is in addition to your other legal rights.
 - 6.2. **Timber:** All the timber we use in fencing and tree stakes etc is treated to the UC4 standard – making it suitable to be in permanent contact with the ground. This does not offer a guarantee of longevity.
 - 6.3. **Tree work standards:** Arboricultural work shall be completed in line with BS3998 ‘Recommendations for Tree Work’ (where appropriate) unless agreed otherwise with you.
 - 6.4. **Plant Healthy Nursery:** We are a certified Plant Healthy Nursery demonstrating our commitment to growing, trading and managing plants to high standards of plant health and biosecurity. Due to our certification, some of our plants may need to be inspected by an external organisation after we have delivered them to you and we reserve the right to ask for your reasonable cooperation with this.
 - 6.5. **Plant guarantee:** If our plants are not of satisfactory quality and we are responsible, we will provide you with a replacement. However, we can offer to guarantee the success of your plants. This guarantee is not included as standard and will result in an additional charge.
 - 6.6. **Professional advice and opinion:** The advice which we will give you will be our professional opinion and will be based on the facts and matters known to us at the time that we give you such advice. However, our advice may change based on new information and facts that subsequently emerge, either from you or any other party.
 - 6.7. **Professional standards and conduct:** We are a member of numerous professional bodies including: the Institute of Chartered Foresters (ICF); Chartered Institute of Ecology and Environmental Management (CIEEM); the Arboricultural Association (AA); and the Landscape Institute (LI). Nothing in these terms shall require us to perform the services in a manner that would put us in breach of the codes of ethics or conduct of any professional body we belong to from time to time (including, but not limited to those listed above). We reserve the right to cease providing the services immediately at any time where continuing would (in our reasonable opinion) result in us breaching such codes of ethics or conduct.
 - 6.8. **Sub-contractors:** We reserve the right to appoint sub-contractors to provide some or all of the services on our behalf at any time. All such sub-contractors work under our instruction and will report to us in respect of any services they provide. All sub-contractors will be required to comply at all times with these terms and the costs of the services provided by sub-contractors will be included within our fees, unless otherwise agreed in writing.
 - 6.9. **Conflicts of interest:** We will check for any potential conflicts of interest before accepting your instructions but cannot guarantee that we will be able to identify all situations where there may be a conflict of interest prior to entering into a contract with you. Should a conflict of interest arise, we will immediately inform you and then establish procedures to safeguard all interests involved. If you know of, or subsequently become aware of a conflict of interest, you must notify us as soon as possible.
 - 6.10. **Warranties:** We do not offer any warranties or guarantees other than those contained within these terms (and all other warranties are excluded).
- #### 7. PAYMENT AND INVOICES
- 7.1. **Ownership:** Legal and beneficial title to goods shall not pass until payment

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for those goods and for any other goods or services previously or subsequently supplied by us to you has been made in full (in cash or cleared funds).

7.2. Until title to the goods referred to in clause 7.1 above has passed you:

7.2.1 shall hold those goods on a fiduciary basis as our bailee;

7.2.2 shall store those goods separately from all other goods held by you so that they remain readily identifiable as our property;

7.2.3 shall not remove, deface or obscure any identifying mark or packaging on or relating to those goods;

7.2.4 shall (unless found to be defective on delivery) maintain those goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

7.2.5 shall notify us immediately if you become insolvent;

7.2.6 shall give us such information relating to those goods as the we may reasonably require from time to time; and

7.2.7 may deal with or use the goods and others in which they are incorporated as fiduciary bailee of us in the normal course of your business and dispose of them by way of bona fide sale at full market.

7.3. If before title to goods passes to you, you become insolvent, or we reasonably believes that you may be about to become insolvent, and we notify you accordingly, then, and without limiting any other right or remedy we may have:

7.3.1 your right to resell or use the goods pursuant to clause 8.3.7 shall cease immediately;

7.3.2 provided that the goods have not been resold, or irrevocably incorporated into another product, we may at any time require you to deliver up those goods; and

7.3.3 if you fail to deliver up those goods promptly in accordance with clause 7.3.9, we may enter any of your premises (or the premises of any third party where those goods are stored) in order to recover them.

7.4. **Payment methods:** We prefer payment by BACS – details of which will be on the Invoice. We also accept payment by major debit or credit cards (except American Express). If we are unable to take payment, we may cancel your order.

7.5. **Due date:** Unless otherwise stated, invoices are due within 14 days of their date and in full and in cleared funds to a bank account nominated in writing by you.

7.6. **Late payment:** If any payment is not made on the due date, we may suspend any further provisions of goods and/or services under the contract until payment is made (without prejudice to any of our other rights) and we reserve the right to cancel the contract in relation to such further provisions of goods and/or services and recover any goods already supplied at your expense.

7.7. **Interest:** Invoices not paid within 56 days of their due date shall incur interest at a rate up to 8% above the Bank of England base rate per annum until paid.

7.8. **Interim invoices:** Interim invoices will be submitted for jobs lasting longer than a month. These are also subject to the same terms as above.

8. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

8.1. **Estimates only:** Delivery and performance dates and times provided by us or our couriers are only estimates and are not guaranteed. If the time of a delivery or performance of services is essential, you must agree this with us in writing before placing your order. Once an item has been dispatched, we will attempt to contact you by email to confirm it is on its way. We may deliver goods by instalment and are not obliged to deliver products in the same chronological order as they were purchased. Delays in delivery will not be a ground for termination of the contract.

8.2. **Click and collect:** If you choose to pick up goods using our Click and Collect option, our only responsibility is to make the goods available for collection (you are responsible for organising transport using a suitable vehicle).

8.3. **Large items:** Deliveries of larger items are kerbside only.

8.4. **Changes:** We reserve the right to make changes to dates and timings if necessary (including due to adverse weather, unforeseen circumstances or other emergency works being required). We will try to notify you as soon as possible to minimize any disruption.

8.5. **Bare root plants:** All bare root plants are only available for shipping between November and March. If you place an order with us outside of these months, payment and dispatch will be placed on hold until the plants are ready for dispatch.

8.6. **Quantities:** If the delivery is 5% more or less than the quantity of products ordered, then you may not reject them and instead a pro rata adjustment shall be made to cost of the order.

8.7. **Checking and watering:** You must check plants and other goods upon delivery or collection and (where necessary) are responsible for watering them soon after.

8.8. **Missed or failed deliveries:** If you are not available, we will either leave the delivery in a safe place (or with a neighbour), or else leave a note or contact you to arrange redelivery. In some cases, our courier will contact you to agree a delivery slot, in which case it is your responsibility to be available at that time (and if you miss an agreed delivery slot, there may be an additional charge for

redelivery).

8.9. **Redelivery:** If you fail to contact us or agree a redelivery slot, we may store the goods (for which there will be a charge) and/or bring the contract to an end. If we end the contract then our only liability to you will be to refund the price have you already paid, minus our attempted delivery costs and any loss of value in the goods (which, for perishable plants, could be their full value).

9. FORESTRY CONTRACTING, LANDSCAPING AND GARDEN SERVICES

9.1. **After care:** once work is complete, you are responsible for the well-being of all plants, unless we have agreed to maintain them.

9.2. **Weeds:** we try to deal with invasive perennial weeds during planting, but there is no guarantee they will not return.

9.3. **Watering:** you are responsible for watering and checking all plants and turf once these are planted or laid on site.

9.4. **Replanting:** The condition and wellbeing of any old plants you ask to be salvaged and replanted is your responsibility.

9.5. **New lawns:** Newly laid turf and/or seeded lawns may be subject to slumping after laying. We make efforts to prevent this, but it is sometime unavoidable and is not our responsibility. If remedial work is required then this will be charged at our usual day rate, unless otherwise agreed.

9.6. **Tree Preservation Orders, Conservation Areas and Felling Licenses:** You are responsible for ensuring our work will not breach any laws or regulations (e.g. Tree Preservation Orders (TPOs) or Conservation Areas). If you suspect the site is subject to a TPO or is in a conservation area, you must inform us when placing an order. We can check for the presence of (TPOs and conservation areas). We can also make applications on your behalf (though additional charges may apply).

9.7. **Other investigations and private covenants:** Other than investigating the existence of TPOs and conservation areas upon request, we shall not carry out any investigation into land ownership or applicable covenants, restrictions or other laws or regulations. You are responsible for ensuring all necessary rights, licences and permissions are in place for us to access the site and carry out the work.

9.8. **Felling:** Quotes for the felling of trees do not include the removal of stumps. If required, we can quote for this as a separate service. If contamination is found within the lower stem (e.g. wire, concrete, gravel, nails etc.) the stem will be left as low to the grounds as reasonably practical as dictated by the nature and extent of contaminants.

9.9. **Stump Grinding:** Stump grinding is not included in the quotation unless otherwise specified. Due to the nature of stump grinding the stumps will be ground down to approximately 150/200mm below the surface level depending on which machine is used. Under no circumstances are roots included in the grinding unless they are exposed above the surface level and are part of the discussed quotation. In all cases grindings will be left on site and used to back fill the hole, unless specified at time of quotation. There will be no guarantee that planting can be undertaken in the same place once the stump is removed.

10. YOUR COMMITMENT TO US

10.1. To enable us to perform the services or supply the goods in accordance with these terms, you undertake to:

10.1.1 **Errors in information:** Ensure that all information provided to us is complete and accurate and to notify us immediately if this ceases to be the case. If we cannot complete a delivery because you have given us incorrect or incomplete information, this will count as a missed delivery and you are responsible for contacting us with correct information, or else we may end the contract in the manner described in clause 8.9 above.

10.1.2 **Access:** Give us and/or our employees, agents, consultants or appointed sub-contractors free and clear access to your property as reasonably required in order to provide the services (this includes free and available parking for our contractor's vehicles).

10.1.3 **Preparation:** Ensure that your premises are prepared sufficiently to enable to us provide the services, including ensuring that the premises comply with all applicable health and safety laws. Often our delivery of goods and/or services entails the carrying of material over gardens and through properties. Please make sure that walls and surfaces are adequately protected (builder's polythene is a good method) and that fragile objects (such as pots etc.) are moved. Our staff will be more than happy to move heavier objects for elderly or disabled clients. Lawns tend to recover rapidly but very wet weather can give rise to very muddy conditions. We are able to provide boards to protect lawns, though this is not included as standard and may incur an additional cost. Please contact us for further details.

10.1.4 **Documentation:** Provide us and/or our employees, agents, consultants or appointed sub-contractors or appointed sub-consultants with such information as we and/or they may reasonably require in order to provide the services, including (but not limited to) any previous survey data or relevant support information for the work area and supply such information as quickly and accurately as possible.

10.1.5 **Materials:** Keep all materials, equipment, documents and other property ("Materials") owned by us at your premises in safe custody at its own risk,

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maintain our Materials in good condition until returned to us, and not dispose of or use the Materials other than in accordance with our written instructions or authorisation.

10.1.6 **Plans:** Supply us with appropriate scale (eg 1:1250, 1:500) site plans (paper and electronic) as required plus all relevant and new mapping information as quickly and accurately as possible.

10.1.7 **Permissions:** Obtain and maintain all necessary licences, permissions and consents which may be required for the services before the date on which the services are to start.

10.1.8 **Queries:** Respond to queries from us and/or our employees, agents, consultants or appointed sub-contractors as promptly as possible.

10.1.9 **Health & Safety:** At all times comply with all applicable law, including health and safety laws in force, provide such information on all health and safety risk assessments and in particular, inform us in writing of any known hazards which are not immediately apparent and co-operate with any risk assessments of your premises we may conduct. You must also notify us of any reasonable policies (e.g. regarding health and safety) that our personnel will need to comply with.

10.2. **Property damage:** Every effort will be made to avoid damage to property (including products you have purchased from us), but we are not responsible for loss or damage that might have been avoided by your taking precautions or warning us of hazards. Where we are responsible for damage that could not have been avoided, our only liability will be to take reasonable steps to make good that damage or (at our option) to pay for the damaged property to be either repaired or replaced to an equivalent standard.

10.3. **Livestock and animals:** Livestock and other animals must be clear of any delivery/work sites. You are responsible for ensuring sites are secure to prevent either your own or any third party's animals from entering. The services may involve activities (such as felling or controlled fires), dangerous tools, equipment or materials, hazardous chemicals or poisonous plants, any which could cause injury or death to animal life (for which we accept no responsibility whatsoever and you shall be liable).

10.4. **Water:** A supply of water must be made available free of charge for us to use.

10.5. If the performance of any of our obligations under the contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation set out in clause 10.1 ("**Customer Default**") then, without limiting or affecting any other right or remedy available to us:

10.5.1 We will have the right to immediately suspend the performance of the services until you (in our reasonable opinion) have remedied the Customer Default;

10.5.2 We will be entitled to rely on the Customer Default to relieve us from the performance of any of our obligations, in each case to the extent that the Customer Default prevents or delays our performance of any of our obligations under the contract;

10.5.3 We will not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations; and

10.5.4 You shall, on written demand from us, reimburse us for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default, including (but not limited to) all fees payable in respect of the services provided to you up to and including the date on which we ceased to provide the services, reasonable travel expenses incurred by our employees, agents, consultants or sub-contractors.

11. COPYRIGHT AND INTELLECTUAL PROPERTY

11.1. The copyright and all other intellectual property rights in all documents (including drawings and plans) produced by us in providing the services to you will remain ours at all times. You must not copy or reproduce in whole or in part for any purpose any document in which we own the intellectual property rights without our explicit prior written consent.

11.2. We do not claim any rights of ownership to any documents belonging to you which may be supplied to us in the course of our delivering the services to you.

11.3. All our documents are prepared in accordance with our internal quality control procedures. Should our documents, drawings or plans be used for purposes other than that for which they have been prepared, we do not accept responsibility or liability for any subsequent consequences.

12. CONFIDENTIALITY

12.1. We shall not at any time disclose to any person any information concerning your contract and our business relationship with you, and confidential information about the business, affairs, customers, clients, or suppliers except as permitted in these terms in order to carry out our obligations under our contract with you or as may be required by law.

12.2. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.3. By accepting these terms, you acknowledge and accept that we are

required by our professional memberships to pass on all ecological data gathered during survey work and during the term of the project to the relevant local records centre, unless you instruct us otherwise in writing. Local record centres use ecological data to produce information and analysis of their area's habitats and species, and any data passed on will therefore subsequently be in the public domain.

12.4. This clause will be automatically overridden by any legal obligation to disclose information to an outside party e.g. notification of accidents under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995, notifiable pests, and diseases. However, wherever possible, we will contact you in advance of any formal reporting action.

13. FILES & DOCUMENT STORAGE

13.1. Unless otherwise agreed, we will store all documents relating to the services for such time as we are required by law or (where no legal restriction applies) for such time as we decide is reasonable, after which time the files will be destroyed. Files or papers may be preserved by any means of image processing at our discretion.

13.2. Alternatively, on request we can return the original documents to you, but retain the right to hold copies for such time as we decide is reasonable and for such time as we are required by law to hold such documents. We reserve the right to make a charge to you for returning documents or retrieving documents from archiving on your behalf.

14. DATA PROTECTION

14.1. Both parties will comply with all applicable requirements of all applicable data protection legislation from time to time in force in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) ("**UK GDPR**") Data Protection Act 2018 or any successor legislation (the "**Data Protection Legislation**"). This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2. The parties acknowledge that for the purposes of the Data Protection Legislation, you are the controller, and we are the processor (where controller and processor have the meanings as defined in the Data Protection Legislation).

14.3. You will ensure that you have all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data (as defined in the Data Protection Legislation) to us for the duration and purposes of our contract with you.

14.4. We will, in relation to any Personal Data processed in connection with the performance by us of our obligations under our contract with you:

14.4.1 At all times process any Personal Data obtained by us in performing the services or otherwise in accordance with the Data Protection Legislation;

14.4.2 Ensure that we have in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;

14.4.3 Ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

14.4.4 Not transfer any Personal Data outside of the European Economic Area unless your prior written consent for us to do so has been obtained;

14.4.5 Assist you, at your cost, in responding to any request from a Data Subject (as defined in the Data Protection Legislation) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

14.4.6 Notify you without undue delay on becoming aware of a Personal Data breach involving your Personal Data;

14.4.7 At your written direction, delete or return Personal Data and copies thereof to you on termination of your contract unless required or permitted by the Data Protection Legislation to store the Personal Data; and

14.4.8 Maintain complete and accurate records and information to demonstrate our compliance with this clause 14.

14.5. By entering into a contract with us:

14.5.1 You consent to us appointing sub-contractors as third-party processors of Personal Data in connection with our contract with you. We confirm that we have entered or (as the case may be) will enter with the sub-contractors into a written agreement incorporating terms which are substantially similar to those set out in this clause 14. As between you and us, we shall remain fully liable for all acts or omissions of any third-party sub-contractor appointed pursuant to this clause;

14.5.2 You consent to us sharing survey data obtained by ecologists during the course of our contract with you in accordance with our obligations as members of the professional bodies at clause 6.7; and

14.5.3 You indemnify us for all losses or expenses we incur as a result of any failure by you to comply with the Data Protection Legislation.

15. RETURNS AND CANCELLATIONS (THIS CLAUSE APPLIES TO CONSUMERS ONLY – BUSINESS CUSTOMERS SEE CLAUSE 16)

15.1. If you are a consumer, you have right to:

15.1.1 claim a refund, replacement, repair and/or compensation if you receive

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products which are faulty or not as described. You can also cancel the contract in some situations; or

15.1.2 if you purchase products online or remotely, you can change your mind and cancel the contract within 14 days of delivery and obtain a full refund. This cancellation right does not apply to perishable items (including living plants); products which have been sealed for health or hygiene reasons (and which you have unsealed); or to bespoke or customised products.

15.1.3 if you purchase services remotely, you can change your mind and cancel the contract within 14 days of delivery and obtain a full refund. If you ask us to supply services during this period, and then cancel, you will have to pay for any services already received (and our costs incurred in providing them) by the time you cancel. If the services are already complete, you must pay for them in full.

15.2. To cancel the contract you must contact us by calling us on 01869 340342 or emailing office@nicholsonsgb.com, alternatively you can complete our online cancellation form www.nicholsonsgb.com/cancellationform. You'll also have to return any products you've already received to us (at your own cost). Alternatively, we can collect products from you, but you will have to pay our reasonable collection costs.

15.3. If our products are not of satisfactory quality, as described or fit for their usual purpose, then you can

15.3.1 reject them, provided you notify us within 30 days of delivery; or

15.3.2 have them repaired or replaced (though we will decide which is most appropriate).

15.4. If we cannot repair or replace a faulty product, we will agree to either reduce the price (by issuing a partial refund) or allow you to return the product and receive a full refund. If the product has already been used, we may reduce amount of the price reduction or refund to reflect that use.

15.5. Where the product consists of multiple units or instalments, only some of which are unsatisfactory, you may choose to only reject the unsatisfactory parts.

16. TERMINATION (THIS CLAUSE APPLIES TO TRADE/PRIVATE AND BUSINESS CUSTOMERS – CONSUMER CUSTOMERS SEE CLAUSE 15)

16.1. **Termination.** Without affecting any other right or remedy available, either party may terminate the contract with immediate effect by giving written notice to the other party if:

16.1.1 The other party is in material breach of its obligations under this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within 10 business days of receiving written notice requiring it to do so; or

16.1.2 The other party becomes insolvent.

16.2. On termination of your contract:

16.2.1 We will immediately stop any work being undertaken for you;

16.2.2 You shall immediately pay to us all of our outstanding unpaid invoices, expenses, and interest; and

16.2.3 In respect of the services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt.

16.3. Termination shall not affect any rights and remedies that have accrued as at termination.

16.4. Any provision of the contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

17. FORCE MAJEURE

17.1. We will not be liable for any delays in performance caused by acts, events, omissions or incidents beyond our reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our workforce or any other party), failure of utility service or transport network, act of God, war, riot, civil commotion, pandemic or epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT systems, plant or machinery, fire, flood, storm, or default of our suppliers or subcontractors. We will be entitled to a time extension for such performance. If such a situation should last in extent of two months, then either party will have the right to terminate the contract.

18. LIMITATION IN LIABILITY

18.1. What we are liable for:

18.1.1 All professional advice work undertaken by us is covered by our professional indemnity insurance. Our company insurance details are available on request. If we are negligent or breach our contract with you, then subject to clause 18.2.2 and 18.2.3, we will be responsible for any loss or damage you suffer that is a direct and foreseeable result (i.e. an obvious consequence) of our breach of contract or our negligence. However, our maximum liability under the contract will not exceed the amount you have paid to us under the contract (or if no payment has yet been made, our liability shall be limited to the contract value) alternatively if the loss or damage relates to a particular product, the price of the relevant product.

18.1.2 We are also liable for any losses the law doesn't allow us to exclude (including fraud, and personal injury or death caused by negligence).

18.2. What we are not liable for:

18.2.1 Except as set out above, we are not responsible for any other loss or damage you suffer. This includes loss or damage which is not directly caused by our breach of contract or negligence, and/or which is not foreseeable at the time of contracting.

18.2.2 We shall not be liable under our contract with you for loss of profit, loss of revenue, business interruption, loss of goodwill, loss of business, loss of anticipated saving, or special, indirect, or consequential damage suffered by you arising out of or in connection with the contract, whether or not such losses were foreseeable at the time of entering into the contract.

18.2.3 We also are not liable for plants once they have been delivered and accepted; nor for the replacement of any plants that fail to grow due to unsuitable soil conditions, inappropriate choice of plant for site conditions, inappropriate planting, or maintenance (unless you demonstrate this is a direct result of your following our written instructions).

19. LETTERS OF RELIANCE

19.1. Should you require a signed letter of reliance from us, you must request this in writing. We will only provide letters of reliance to a maximum of two assignees of our contract and only if the report being passed on is still valid.

20. COMPLAINTS

20.1. We will aim to ensure that all work undertaken for you will be performed in a professional, efficient, friendly, and cost-effective manner.

20.2. Should you not be satisfied with our level of service, our Complaints Handling Procedure can be made available to you on request.

20.3. Any complaints regarding the quality of the plants, materials or workmanship should be made as soon as possible and not later than 7 days from collection, delivery or completion of the contract.

20.4. Complaints should be referred to the project manager of your contract, in the first instance.

21. THIRD PARTY RIGHTS

21.1. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of our contract with you.

22. ASSIGNMENT

22.1. We may at any time assign, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under our contract with you.

22.2. You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under our contract with you without our prior written consent (at our absolute discretion).

23. NOTICES

23.1. Communications and notices regarding your order and our contract with you will be in writing (which includes email).

24. NO WAIVER

24.1. If either you or we delay or fail to exercise any right or remedy, or only do so in part, that shall not stop us exercising that right or remedy at a later date.

25. VARIATION

25.1. Except as set out in these terms, no variation of our contract with you shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

26. ENTIRE AGREEMENT

26.1. Unless otherwise agreed by us in writing, these terms and the documents referred to in them constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to its subject matter.

27. GOVERNING LAW

27.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, is governed by and shall be construed in accordance with the law of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction in relation to any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with our contract with you or its subject matter or formation.

Updated 20th October 2022

Schedule 1 – Charges for services

Charges: The charges for our services (“Fees”) are exclusive of VAT and will be calculated according to one or more of the methods outlined below:

Time Spent Basis	<p>Our Fees will be calculated on a time spent basis. The time taken to complete any work for you will be strongly influenced by factors outside our control, including (but not limited to):</p> <ol style="list-style-type: none"> i. changing circumstances following the initial instructions ii. positions taken by parties in negotiations iii. adjustments to instructions which are required as a project or job develops. <p>Our Fees will be calculated according to the time involved, the value and experience of the professional staff undertaking the work and the nature and complexity of the work. Time spent providing the services to you will be recorded and details provided on request. Our current charge-out rates are available on request.</p>
Fixed Fees	<p>Where appropriate we will be happy to quote a fixed fee for a defined body of work. The precise details of the instruction, precise scope of the work to be undertaken and the agreed Fees will be confirmed with you in writing. A programme for the work will also be agreed. Any amendments to the agreed fixed fee will be confirmed to you in writing.</p>
Flat Fee plus Commission	<p>Where appropriate we may quote a flat fee for a defined body of work with an added commission percentage of income won as a result of such work eg grant income. The precise details of the instruction, scope of the work to be undertaken and the agreed fee and commission will be confirmed with you in writing. A programme for the work will also be agreed. Any amendments to the agreed fixed fee and commission will be confirmed to you in writing. If deemed more suitable to the project; we may agree percentage uplift only.</p>
Commission Only	<p>Where appropriate we may quote on a commission only basis, which will be an agreed percentage of income won as a result of our work eg grant income. The precise details of the instruction, scope of the work to be undertaken and commission will be confirmed with you in writing. A programme for the work will also be agreed. Any amendments to the agreed commission will be confirmed to you in writing. If deemed more suitable to the project; we may agree percentage uplift only.</p>

In case of unusual complexity or urgency (such as court work) we reserve the right to charge an enhanced rate. Any enhancement in our rate will be agreed in advance with you and will in any event be shown on your account.

By accepting these terms you consent to us carrying out a credit check on you or your business. If the credit result raises concerns, we reserve the right to terminate the Contract immediately. We will notify you promptly if this course of action is taken.

Charges Review: Charge rates will be reviewed in August each year and may be increased. In addition we reserve the right to make further changes to the charge rates at any time of the year should market conditions dictate or to reflect staff development.

Any substantial changes will be notified to you in writing giving the amount and date such changes are effective.

Expenses: We may charge you for the following expenses incurred in providing services – this will be made clear in the quotation:

- Travelling: charged at 45p per mile;
- Miscellaneous items purchased specifically for you: e.g. photographs and re-prints, maps and plans;
- Additional reports over and above what would be expected;
- The use of specialist equipment or software: e.g. Drone; LandCADD;
- Any other expenses reasonably and properly incurred by us in providing services to you.

Unless otherwise agreed by us in writing, the expenses listed above are in addition to our Fees and VAT. Our rates for specific expenses are available upon request.

In certain cases we will incur charges on your behalf; examples are statutory fees and fees of other professionals/sub-contractors. We will recharge these to you (including VAT where appropriate) in addition to our Fees.