

T C LANDSCAPES LIMITED - STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings unless the context otherwise requires:

- "Buyer"** the person whose order for the Goods and/or Services is accepted by TCL in accordance with **Condition 2.2**
- "Contract"** the contract between TCL and the Buyer for the sale and purchase of the Goods and/or supply of the Services formed in accordance with **Condition 2**
- "Goods"** any goods which TCL supplies to the Buyer (including any of them or any part of them) under a Contract
- "Insolvent"** the Buyer is Insolvent where:
- being a company or limited liability partnership, it: proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up; is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006; has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income; ceases to trade; ceases to trade or
 - being an individual or a partnership, he or it (including any of its partners): proposes, makes or is subject to an individual or partnership voluntary arrangement or a composition with his creditors generally, or an application to a court of competent jurisdiction for protection from his or its creditors generally; has a bankruptcy order made against him; is subject to an order by a court of competent jurisdiction for its winding up; enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; has a receiver appointed over any of his or its assets or income; ceases to trade; is unable to pay his or its debts within the meaning of sections 267 and 268 Insolvency Act 1986; or
 - it is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.
- "Services"** any services which TCL provides to the Buyer (including any of them or any part of them)
- "Terms and Conditions"** these standard terms and conditions of sale together with any special terms agreed in writing between the Buyer and TCL

1.2 all headings are for ease of reference only and shall not affect the construction or interpretation of the Terms and Conditions;

1.3 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. FORMATION AND INCORPORATION

2.1 Subject to **Condition 2.6**, the Contract will be upon the Terms and Conditions to the exclusion of all other terms and conditions and any previous oral or written representations, including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract.

2.2 Each order or acceptance of a quotation or bill of quantity for Goods and/or Services will be deemed to be an offer by the Buyer to purchase Goods and/or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by TCL, as evidenced by way of a written acknowledgement of order. No contract will come into existence until a valid written acknowledgement of the order is issued by TCL.

2.3 Any quotation or bill of quantity is valid for a period of 30 days only from its date, provided that TCL has not previously withdrawn it.

2.4 The Buyer must ensure that the terms of its order and any applicable specification of the Goods and/or Services intended for purchase meet its requirements and are complete and accurate.

2.5 Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of the Terms and Conditions.

2.6 Save as otherwise expressly provided in the Contract, no variation to the Terms and Conditions shall be effective unless it is in writing and signed by a duly authorised representative on behalf of TCL.

3. THE GOODS AND SERVICES

3.1 The quantity, description and specification of the Goods and/or Services will be as set out in the applicable bill of quantity.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by TCL (or the manufacturer of the Goods) and any descriptions or illustrations contained in TCL or manufacturer's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services represented by or described in them. They will not form part of the Contract and this is not a sale by sample.

3.3 TCL may make any changes to the specification, design, materials or finishes of the Goods and/or provision of the Services which are required to conform with any applicable legal, safety or other statutory or regulatory requirements or do not materially affect their quality or performance.

4. PRICE

4.1 The price for the Goods and/or Services will be the price specified in the applicable bill of quantity and is, subject to a minimum order value (currently £1,500 exclusive of VAT), inclusive of:

- delivery and installation on the UK mainland; and
- any costs of packaging and carriage of the goods.

4.2 These will be at extra cost where the order is below the minimum order value.

4.3 The price specified in the bill of quantity will be exclusive of any value added tax or other applicable sales tax or duty.

4.4 In respect of playground services, TCL's pricing is based on the assumption that the installation of the Goods and/or completion of the Services will take place on a grass surface. TCL reserve the right to levy additional charges if the surface is non-grass.

4.5 TCL's pricing is based on the assumption that there is easy access to the site. TCL reserve the right to levy additional charges if the access to the site is poor.

4.6 TCL will be entitled to increase the price of the Goods and/or Services following any changes in the quantity, description or specification made at the request of the Buyer and agreed by TCL or to cover any extra expense as a result of the Buyer's instructions or lack of instructions, or to comply with the requirements referred to in **Condition 3.3**.

5. PAYMENT

5.1 Unless stated otherwise in the applicable bill of quantity:

5.1.1 25% of the price for the Goods and/or Services is payable as a non-refundable deposit at the point of acceptance by TCL of the Buyer's order; and

5.1.2 TCL may invoice the Buyer for the balance of the price of:

- the Goods on or at any time after delivery; and
 - the Services on or at any time after completion of performance, or, where performance of the Services takes place over a period of more than 4 weeks, monthly in arrears
- and, subject to **Condition 5.2**, payment is due in pounds sterling 30 days after service of each such invoice.

5.2 Time shall be of the essence in respect of the payment dates set out in **Condition 5.1** and any dates which may be substituted for them by the agreement in writing of the parties. All sums payable to TCL under the Contract will become due immediately upon termination of the Contract.

5.3 No payment will be deemed to have been received until TCL has received cleared funds. TCL may appropriate any payment made by the Buyer to TCL to such of the invoices for the Goods and/or Services as TCL thinks fit, despite any purported appropriation by the Buyer.

5.4 All payments to be made by the Buyer under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Buyer is required by law to make any such deduction or withholding.

6. DELIVERY

6.1 Unless otherwise stated in the applicable bill of quantity, delivery of the Goods will be made ex-works as defined in INCOTERMS 2000 during TCL's usual business hours. The Services will be performed at the place specified in the applicable bill of quantity as the place at which the Services are to be performed.

6.2 TCL will use reasonable endeavours to deliver and/or perform each of the Buyer's orders for the Goods and/or Services within the time agreed with the Buyer and, if no time is agreed, then within a reasonable time, but the time of delivery and/or performance will not be of the essence. If, despite those endeavours, TCL is unable for any reason to fulfill any delivery or performance on the specified date or within a reasonable time, TCL will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will TCL have any liability to the Buyer for any loss howsoever caused (including as a result of negligence). Any delay in delivery and/or performance will not entitle the Buyer to cancel the order unless and until the Buyer has given [14] days' written notice to TCL requiring the delivery and/or performance to be made and TCL has not fulfilled the delivery and/or performance within that period.

6.3 The Buyer will provide at its expense at the point of delivery adequate and appropriate equipment and manual labour for off-loading the Goods.

6.4 If the Buyer fails to take delivery of any of the Goods when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Goods to be delivered and/or Services to be performed on time, the Goods and/or Services will be deemed to have been delivered or performed on the due date and (without prejudice to its other rights) TCL may:

- store or arrange for storage of the Goods until actual delivery or sale in accordance with **Condition 6.4.2** and charge the Buyer for all related costs and expenses (including storage and insurance); and/or
- following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract or account to the Buyer for any excess achieved over the price under the Contract, in both cases having taken into account any charges related to the sale.

6.5 TCL may deliver the Goods by separate instalments and/or perform any Services in stages. Each separate instalment or stage will be invoiced and paid for in accordance with the provisions of the Contract. Each instalment or stage will be a separate Contract and no cancellation or termination of any one Contract relating to an instalment or stage will entitle the Buyer to repudiate or cancel any other Contract, instalment or stage.

7. RISK / OWNERSHIP

7.1 Risk of damage to or loss of the Goods will pass to the Buyer on delivery (or deemed delivery in accordance with **Condition 6.4**).

7.2 Ownership of the Goods will not pass to the Buyer until TCL has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to TCL from the Buyer on any account.

7.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

- hold the Goods on a fiduciary basis as TCL Service's bailee;
- store the Goods (at no cost to TCL) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as TCL Service's property;
- not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- maintain the Goods in satisfactory condition insured on TCL Service's behalf for their full price against all risks to the reasonable satisfaction of TCL, and will whenever requested by TCL produce a copy of the policy of insurance.

7.4 The Buyer's right to possession of the Goods will terminate immediately if the Buyer becomes Insolvent or if TCL serves notice to terminate the Contract.

7.5 TCL will be entitled to recover payment for the Goods notwithstanding that title in any of the Goods has not passed from TCL.

7.6 The Buyer grants TCL, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7.7 Where TCL is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer will be deemed to have sold all goods of the kind sold by TCL to the Buyer in the order in which they were invoiced to the Buyer.

8. WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY

THIS CLAUSE 8 SHALL NOT APPLY WHERE THE BUYER IS A CONSUMER, IN WHICH CASE CONDITION 9 SHALL APPLY INSTEAD.

Warranty

8.1 TCL will, free of charge, within a period of 12 months from the date of performance of Services which are provided to the reasonable satisfaction of TCL to not have been provided with reasonable care and skill, re-perform such Services.

8.2 TCL is not the manufacturer of the Goods and provides no warranty in relation to the Goods, save where any of the Goods are sold with the benefit of a manufacturer's warranty, in which case TCL will use its reasonable endeavours to pass on the benefit of this warranty to any Buyer who proves (to the reasonable satisfaction of TCL) that they have purchased Goods which are damaged or defective.

8.3 Any natural materials used in the Goods may carry natural imperfections such as surface cracks, shakes, knots and holes which are not covered under the terms of this or any manufacturer's warranty.

8.4 The obligations set out in **Conditions 8.1 and 8.2** will not apply where:

- the Goods have been improperly altered in any way whatsoever, or have been subject to wear and tear, severe weather conditions, abnormal usage, acts of god, misuse, vandalism or unauthorised repair;
- any maintenance schedules relating to the Goods have not been complied with;
- any instructions as to storage of the Goods have not been complied with in all respects; or
- the Buyer has failed to notify TCL of any defect or suspected defect within [14] days of the delivery of the Goods or performance of the Services where the defect should be apparent on reasonable inspection, or within [14] days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection.

8.5 The manufacturer warranties referred to in **Condition 8.2** shall be made available to the Buyer as soon as is reasonably practicable following a written request received from the Buyer to TCL.

8.6 Any Goods which have been replaced will belong to TCL. Any repaired or replacement Goods or re-performed Services will be liable to re-performance, repair or replacement under the terms specified in **Conditions 8.1 and 8.2** for the unexpired portion of the relevant warranty period.

Exclusion of Liability

8.7 TCL does not exclude its liability (if any) to the Buyer for any matter which it would be unlawful for it to exclude or attempt to exclude its liability.

8.8 Except as provided in **Conditions 6.2 and 8.1 to 8.7**, TCL will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss or any indirect or consequential loss howsoever caused arising out of, or in connection with, otherwise under, the Contract.

8.9 Subject to **Condition 8.7** and without prejudice to **Condition 8.8**, the aggregate liability of TCL howsoever caused arising out of, or in connection with, otherwise under, the Contract (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) shall in no event exceed the total price for the Goods and Services paid or payable by the Buyer.

8.10 Except as set out in **Conditions 6.2 and 8.1 to 8.7**, TCL excludes to the fullest extent permissible in law, all warranties, conditions, stipulations, express (other than those set out in the Contract) or implied, statutory, customary or otherwise, but for such exclusion, would or might subsist in favour of the Buyer.

8.11 In respect of playground services, the European Standard EN1176 and EN1177 recommend impact attenuating materials, depths and critical fall heights for play equipment. Any recommendations made by TCL in relation to the Goods and/or Services purchased by a Buyer will be in accordance with these standards, however TCL shall not be liable for:

- any specifications, designs or requests received from the Buyers; and
- any Goods purchased by the Buyer from TCL which are manufactured by a third party

9. WARRANTY, EXCLUSION OF LIABILITY AND INDEMNITY WHERE THE BUYER IS A CONSUMER

THIS CONDITION 9 APPLIES ONLY WHERE THE BUYER IS A CONSUMER. IT IS IN ADDITION TO THE BUYER'S OTHER RIGHTS RELATING TO DEFECTIVE PRODUCTS AND SERVICES GIVEN BY LAW AND DOES NOT AFFECT A CONSUMER'S STATUTORY RIGHTS.

9.1 TCL will, free of charge, within a period of 12 months from the date of performance of Services which have not been provided with reasonable care and skill or are otherwise defective, re-perform such Services.

9.2 TCL will, free of charge, within a period of 12 months from the date of purchase of Goods which are damaged or defective or do not comply with the agreed specification due to defects in material, workmanship or design, repair, or at TCL option replace, such Goods.

9.3 The obligations set out in **Conditions 9.1 and 9.2** will not apply where:

- the Buyer has improperly altered the Goods in any way whatsoever, or has subjected them to wear and tear, severe weather conditions, abnormal usage, acts of god, misuse, vandalism or unauthorised repair;
- the Goods have been improperly installed or connected (other than by TCL);
- any maintenance schedules relating to the Goods have not been complied with;
- the Buyer has not complied with any instructions as to storage or use of the Goods in all respects; or
- the Buyer has failed to notify TCL of any defect or suspected defect within [30] days of the delivery of the Goods or performance of the Services where the defect should be apparent on reasonable inspection, or within [30] days of the same coming to the knowledge of the Buyer where the defect is not one which should be apparent on reasonable inspection.

9.4 Any Goods which have been replaced will belong to TCL. Any repaired or replacement Goods or re-performed Services will be liable to repair or replacement or refund under the terms specified in **Condition 9.1** for the unexpired portion of the relevant warranty period.

9.5 Any natural materials used in the Goods may carry natural imperfections such as surface cracks, shakes, knots and holes which are not covered under the terms of this or any manufacturer's warranty.

9.6 In addition where a Good is sold with the benefit of a manufacturer's warranty, TCL will use its reasonable endeavours to pass on the benefit of this warranty.

10. FORCE MAJEURE

10.1 TCL shall not be in breach of the Contract or otherwise liable to the Buyer for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to any cause preventing TCL from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of TCL.

11. TERMINATION

11.1 If the Buyer:

- commits a breach of the Contract which cannot be remedied; or
 - commits a breach of the Contract which can be remedied but fails to remedy that breach within [30 days] of a written notice setting out the breach and requiring it to be remedied, being given by TCL,
- TCL may terminate the Contract immediately by giving written notice to that effect to the Buyer.

11.2 TCL may terminate the Contract immediately by giving written notice to that effect to the Buyer if the Buyer becomes Insolvent.

11.3 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination and will continue to be enforceable notwithstanding termination.

11.4 TCL will be entitled to suspend any deliveries and/or performance otherwise due to occur following service of a notice specifying a breach under **Condition 11.1.2**, until either the breach is remedied (if applicable) or the Contract terminates, whichever occurs first.

12. GENERAL

12.1 The rights and remedies set out in the Terms and Conditions are in addition to and not exclusive of any rights and remedies provided by law.

12.2 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term shall be deemed to be severed from the Contract and this shall not affect the remainder of the Contract which shall continue in full force and effect.

12.3 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy.

12.4 The Buyer shall not, without the prior written consent of TCL, be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract or to sub-contract any of its obligations under the Contract.

12.5 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

12.6 The Contract constitutes the entire agreement between the parties and supersedes any prior agreement or arrangement in respect of its subject matter.

13. GOVERNING LAW AND JURISDICTION

13.1 The Contract will be governed by English law.

13.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of England for the determination of any dispute arising out of or in connection with the Contract.

tcl creating outdoor spaces

