

# **CHELSEA GARDEN AND HOME (PTY) LTD**

**COMPANY REG. 2013028 44207**

## **TERMS & CONDITIONS:**

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## **1. DEFINITIONS**

1.1. "Company" means Chelsea Garden & Home (Pty) Ltd.

1.2 . "Customer" means the party who or which purchases the Products from the Company, and includes the Customer's representatives, agents, designers, architects and permitted assigns.

1.3. "CPA" means the Consumer Protection Act, 68 of 2008.

1.4. "Contract" means any contract or agreement arising out of the acceptance of any offer, whether that contract arises out of an offer made by the Company and accepted by the Customer, or an offer made by the Customer and accepted by the Company, and includes the terms and conditions of any agreement between the parties regarding installation, if applicable.

1.5. "Products" means the products sold to the Customer by the Company which form the subject matter of the Contract.

## **2. IMPORTANT NOTICES**

2.1. This document contains the terms and conditions on which the Company sells the Products or provides the services to Customers. If the Customer is a consumer for the purposes of the "CPA", then the provisions of clauses 11.6.3 and 12.3 will not apply to the Customer for the provision of the services or the sale of the Products to the Customer by the Company.

2.2. Nothing in this agreement is intended to, or must be understood to unlawfully restrict, limit or avoid any rights or obligations, as the case may be, created for either of the Customer or the Company in terms of the CPA.

### **3. GENERAL**

These standard terms and conditions form the entire agreement between the parties regarding the subject matter hereof, save insofar as any incidental documentation may be required for reference purposes to establish variables which are specific to a contract and are not recorded herein. No other terms or conditions, whether express, tacit or implied shall apply to a contract irrespective of the circumstances under which the contract arose. No alteration or variation of these terms and conditions shall be of any force or effect unless and until recorded in writing and signed by the Company and the Customer. All provisions and the various clauses of this contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this contract which becomes unenforceable in any jurisdiction, whether due to being null and void, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as not forming part of the contract and the remaining provisions and clauses of this contract shall remain of full force and effect.

### **4. QUOTATIONS**

4.1. Quotations submitted by the Company will, unless otherwise stated therein, be capable of acceptance so as to bring into existence a contract, within a period of 10 (ten) days from the date of the relevant quotation, where after it will be subject to withdrawal and/or alteration by the Company.

4.2. The Company's distributed publications are maintained as sources of general information and are not binding in any way.

4.3. All prices quoted exclude VAT, charges for installation of the Products, surcharge and delivery, unless otherwise stated therein.

4.4. Notwithstanding clause 4.1 above and clause 5.1 below, quoted prices in respect of Products may be increased by the Company at any time, prior to delivery, in the event of a change in the Customer's order made by Customer.

4.5. Where quoted prices specifically include installation charges, such charges may be increased at any time prior to commencement of installation, due to an increase in labour charges, transportation, equipment or insurance costs or due to a revision or variation by the Customer of the installation project.

4.6. An increase in the quoted prices will be communicated to the Customer within a reasonable period of time from the time that the Company becomes aware of the increase.

### **5. ACCEPTANCE OF CONTRACT**

5.1. A contract shall come into existence when the Customer provides the Company with written notice of its acceptance of any quotation given by the Company, within 7 (seven) days thereof, or when the Company accepts in writing any order for the Products placed by a Customer.

5.2. The Customer's order or acceptance of a quote is binding on the Customer and in the event that the Customer cancels the order or accepted quote, the Company may charge the Customer a reasonable cancellation fee.

5.3. Notwithstanding what is contained in clause 5.2, the Customer may not cancel an order or accepted quote where that quote or order relates to Products that the Company has been

expressly or implicitly required or expected to procure, create or alter specifically to satisfy the Customer's requirements.

5.4. The Customer acknowledges that it is aware that the Company's sales- persons have no authority to vary these terms or conditions of sale and the Company assumes no liability and shall not be bound by any statements, warranties or representations made by such sales persons save as expressly stated in writing and signed by a manager or director of the Company, duly authorised.

5.5. The Customer may only cancel a contract if agreed thereto by the Company in writing and upon payment of reasonable charges based upon expenses already incurred and commitments made by the Company.

## **6. PURCHASE PRICE & PAYMENT**

6.1. The purchase price of the Products shall be paid to the Company in full and without set-off upon presentation of the Company's tax invoice relating thereto.

6.2. Should the Customer fail to make any payment on due date then all amounts owing by the Customer to the Company from whatsoever cause, whether or not the date for payment has arrived, will immediately become due and payable by the Customer and the Customer shall immediately forfeit all discounts of whatsoever nature which may have been expressly granted to it by the Company.

6.3. Unless otherwise agreed in writing, any amount not paid on due date shall bear interest at a rate of 2% (two percent) above the publicly quoted basic rate of interest.

6.4. In the event that a Customer is a foreign person and a fluctuation of more than 5% (five percent) occurs in the rate of exchange between the South African Rand and the currency applicable to the foreign Customer in any period of 30 (thirty) days, the Company shall have the right but not the obligation to increase the purchase price of the Products *proportional* to any such fluctuation, upon 7 (seven) days' written notice to the Customer.

## **7. DELIVERY AND LEAD TIMES**

7.1. Unless otherwise quoted or agreed in writing, the Company is not responsible for delivering the Products and the Customer is responsible for costs related to the delivery of the Product.

7.2. The Customer acknowledges that delivery dates given in advance are estimated and will be made subject to prior orders on file with the Company. The Company will use its best endeavours to ensure that delivery is completed as soon as is reasonably possible after the estimated delivery date. Notwithstanding the foregoing, the Company shall not be liable for failure to perform or delay in performance hereunder resulting from any cause beyond the Company's control, fire, labour difficulties, transportation difficulties, interruptions in power supply (including but not limited to what may be termed "load shedding" or "black-outs") and delays in usual sources of supply, major changes in economic conditions, breakdown of machinery or any cause beyond the Company's control, or whether caused by negligence or otherwise. The provisions of clause 11.2 below shall apply hereto as if specifically amended.

7.3. Subject to a quote or written agreement between the parties providing to the contrary, risk in and to the Products shall pass to the Customer upon delivery.

7.4. The Customer shall immediately upon receipt of the Products from the Company be allowed to inspect the Products and the Customer must inform the Company of any errors by way of written notice, to be received by the Company within 5 (five) days of receipt of the Products by the Customer. Should the Customer fail to notify the Company of any claim the Customer may have in terms hereof within the specified 5 (five) day period such failure shall constitute a complete waiver of any such claim.

7.5. Any of the Products delivered to the Customer in error will only be considered for return by the Company provided that such Products are undamaged, have not been tampered with in any way and are not defaced in any way.

7.6. If the Customer, due to some fault of its own, cannot accept or should it request the Company in writing to suspend or delay delivery of the Products, the Company reserves the right to claim any additional costs involved from the Customer.

7.7. If special access is required for delivery of Products, the Company reserves the right to charge additional delivery fees. "Special access" refers to rope access or complicated access where more than the standard delivery personnel and equipment are required.

## **8. INSTALLATION AND ASSEMBLY**

The Company is under no obligation to effect installation or assemble the Products at the premises of the Customer. However, if the Company agrees in writing, to effect installation or assembly of the Products, the following terms and conditions shall apply, unless otherwise agreed in writing:

8.1. the Company may use any contractor or sub-contractor of its choice to effect installation or assembly.

8.2. Any deposit in respect of the installation or assembly, which may be requested by the Company will, in addition to any other rights which the Company may have in law, be forfeited by the Customer as liquidated damages in the event of a breach by the Customer of any of the terms of the contract.

8.3. To the extent applicable, the Company shall not commence installation or assembly unless the area to which the Products will be installed or assembled has been prepared according to the specifications of the Company. The Company shall not be responsible for any delays or additional costs arising out of the failure of the Customer to procure that the relevant area complies with the specifications of the Company.

8.4. the Company will use its best endeavours to ensure that installation or assembly is completed as soon as is reasonably possible after the date on which installation or assembly commences, but time for the completion of installation or assembly shall only be of the essence if a completion date is agreed in writing with the Company. Notwithstanding this, no responsibility will be accepted by the Company for delays due to forces beyond its reasonable control.

8.5. The Customer indemnifies and holds harmless the Company against any and all liability which may arise in the event of death or injury to, or pecuniary loss suffered by, any contractor, sub-contractor or employee of the Company in the course and scope of his/her employment in connection with the installation or assembly, as a result of the negligence or wilful misconduct of the Customer, its officers, employees and or agents.

## **9. RETURNS**

Please refer to our Returns Policy on our website.

## **10. OWNERSHIP**

Notwithstanding prior delivery and the passing of risk, ownership of and title to the Products shall remain vested in the Company until the purchase price, and any other amounts owing to the Company in respect of the Products or the installation thereof (if applicable), have been paid in full and without set-off, on which date ownership of the Products will be deemed to be transferred to the Customer. Until the date of transfer of ownership, the Customer will not do or omit to do anything which may adversely affect the Company's proprietary rights in and to the Products. Without limiting the generality of the foregoing, the Customer shall notify its Landlord (if applicable) that the Products are owned by the Company. In addition, the Customer agrees that until the date of transfer of ownership, regardless of whether or not such Products have been installed, that the Products shall at all times remain separately identifiable regardless of whether the Products have been installed or not.

## **11. PRODUCTS AND WARRANTIES**

11.1. Exclusion of liability: Despite any warranty given by the Company, the Company will not be liable, to the extent permitted by law, regards any defect arising from: fair wear and tear, wilful damage, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, incorrect assembly, moving of Products in an assembled state, alteration or repair of the Products without the Company's express prior approval. Attachments, features or devices used on the Products that are not supplied or approved in writing by the Company.

11.2. Other than the warranties stated herein, the Customer acknowledges that the Company has made no representations or warranties to the Customer in connection with the agreement prior to the agreement being made.

11.3. All colour swatches on our online store are supplied as a reference only. Actual colours of Products, including fabrics, may vary. This is due to the fact that every computer monitor has a different capability to display colours and that everyone sees these colours differently. We try to edit our photos to show the samples as life-like as possible, but please understand the actual colour may vary slightly from your monitor. We cannot guarantee that the colour you see accurately portrays the true colour of the product.

11.4. It should be noted that products of ours that are made from iroko timber will take between 4 and 6 months to even in tone through oxidation. Over time, the wood weathers to a silver-grey tone and usually develops a few surface cracks when exposed to the elements. These cracks will not in any way affect the durability of the furniture, and are part of the natural weathered look.

## **12. LIMITATIONS**

12.1. In addition to any other specific exclusions of liability contained herein and unless otherwise expressly stated herein, the parties agree that the Customer shall have no claim against the Company for any loss or damage, of any nature, occasioned by any defect in any Products supplied, or any failure to provide adequate instructions in respect of any hazards that might arise from the use or incorrect use of the Products, save to the extent that the Consumer is a Consumer for the purposes of the CPA and such loss or damage is contemplated in section 61 of the CPA, and provided that nothing in these terms and conditions must be construed as in any way limiting

the rights of the Company to raise such defences as may be available to it at common law or in terms of any statute.

12.2. In the event that the Company provides advice regarding the application of the Products at the request of the Customer, the liability of the Company in respect of the non- suitability of the Products for the purpose for which they are used will be limited to the selling price of those Products.

12.3. The Customer hereby indemnifies and holds the Company harmless against any losses, expenses, costs or damages of whatsoever nature incurred by the Customer arising from any wilful misconduct or gross negligence of the Company.

### **13. DEFAULT**

13.1. Should the Customer fail to make payment upon due date of any amount due and owing, or commit any other breach of the terms of a contract, the Company shall be entitled, at its option without notice and without prejudice to any other right which it may have, including the right to claim damages arising out of the breach or the termination of the contract, to cancel such contract forthwith, and/or to declare all amounts owing by the Customer to be immediately due and payable; and/or to suspend the carrying out of any of its then uncompleted obligations until payment is made.

13.2. No relaxation which the Company may have permitted on any occasion in regard to the carrying out of the Customer's obligations shall prejudice or be regarded as a waiver of the Company's rights to enforce those obligations on any subsequent occasion.

### **14. GOVERNING LAW & JURISDICTION**

14.1 This agreement and any contract shall be subject to the laws of the Republic of South Africa.

14.2. In terms of Section 45 of the Magistrates Court Act of 1944, as amended, the Customer hereby consents to the jurisdiction of the Magistrates Court having jurisdiction in terms of Section 28 of the said Act in respect of any action to be instituted against the Customer by the Company in terms of the contract. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrates Court or any other court having jurisdiction.

14.3. In the event of the Customer committing any breach of the contract or in the event of the Company being required to take any legal action, the Customer agrees and undertakes to pay the Company's legal costs as between attorney and own client including collection commission, tracing fees, valuation charges, transport costs and other expenses in connection therewith.

### **15. SURETYSHIP**

In the event that the Customer is a juristic person, the signatory to this contract hereby unconditionally and irrevocably binds himself/herself to the Company as surety for and co-principal debtor of the Customer in respect of any and all of the Customer's duties and obligations under this contract, and renounces the benefit of the legal exceptions of exclusion and division, non- indebtedness, error in calculation and revision of accounts, the force and effect of which he/she acknowledges himself/herself to be fully acquainted with.

## **16. ACCEPTANCE**

The person accepting these standard terms and conditions hereby warrants that he/she has due authority to enter this contract on behalf of the Customer.

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