

General Terms & Conditions of Sale – Garden Consultance and Investment Asia

Article 1. Definitions

- **Appendix:** an appendix to these Terms and Conditions.
- **Article:** an article of these Terms and Conditions.
- **Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Terms and Conditions.
- **Customer:** the natural or legal person acting professionally to purchase the Products from the Supplier.
- **Force Majeure Event:** any extraordinary unforeseeable circumstance not attributable to the person claiming the (force majeure) event, including, but not limited to, (a) acts of God, flood, drought, earthquake or other natural disasters; (b) epidemic or pandemic; (c) terrorist attack, civil war, riot or civil unrest, war, threat of war or preparation for war, armed conflict, imposition of sanctions, embargo or severance of diplomatic relations (d) nuclear, chemical or biological contamination, or supersonic shock wave; (e) law or action taken by any government or governmental body, including the imposition of export or import restrictions, quotas or prohibitions; (f) collapse of buildings, fire, explosion, accident or breakdown of machinery; (g) labor or trade disputes, strikes, industrial action or lock-outs; (h) delay in or non-performance by suppliers or subcontractors; and (i) interruption or failure of utility services.
- **Intellectual Property Rights:** patents, rights on inventions, copyright and neighbouring rights, trade and service marks, company names and domain names, rights on format and trade dress, goodwill and the right to sue for unlawful use of a designation or unfair competition, rights on designs, rights on computer software, database rights, rights on the use of confidential information (including know-how and trade secrets) on in the protection of its confidentiality and all other intellectual property rights, in each case and whether registered or unregistered and including all applications and rights yet to be applied for or granted renewals or extensions of such rights, and rights to claim priority thereof, and all similar or equivalent rights or forms of protection that exist or will exist, now or in the future, anywhere in the world.
- **Order:** the Customer's order for the Products.
- **Order Confirmation:** has the meaning given to it in Article 2.3.
- **Products:** the products (or part thereof) as listed in the Order Confirmation.
- **Quotation:** the Supplier's non-binding offer relating to the sale of the Products.
- **Supplier:** GARDEN CONSULTANCE AND INVESTMENT ASIA LTD, a limited liability company incorporated under Hong Kong law, having its address of principal place of business at Room 605, 6th floor, Officeplus 93-103 Wing Lok Street, Sheung Wan , Hong Kong.
- **Specifications:** the specifications of the Customer for the Products, which the Customer communicates to the Supplier in such way that the Supplier is able to manufacture the Products in accordance with the Customer's individual requirements and which specifications are approved by the Supplier in writing by means of the Order Confirmation or otherwise.
- **Terms and Conditions:** the terms and conditions as laid out in this document and as amended from time to time in accordance with Article 12.4.

Article 2.Contract

2.1 These Terms and Conditions apply to any Contract, excluding the Customer's general and special terms and conditions (even if these terms and conditions provide otherwise). In case of contradiction, inconsistency or ambiguity between any provision of these Terms and Conditions and a written Contract, the provisions of the written Contract shall prevail over these Terms and Conditions.

2.2 The Order is an offer by the Customer to purchase the Products in accordance with these Terms and Conditions. With the Order, the Customer accepts these Terms and Conditions. The Customer shall ensure the Order is complete and correct.

2.3 The Supplier accepts the Order by confirming the Order by email (the "Order Confirmation"). At such moment, the Contract is concluded. If the Customer cancels the Order after the Order Confirmation, the Customer shall owe compensation to the Supplier to the amount of 25% of the value of the Order (excluding VAT). The penalty will be 35% of the value of the Order (excluding VAT) if production has started. The amount will be 75% of the value of the Order (excluding VAT) if production has been completely finished.

2.4 All illustrations in the Supplier's catalogue are only intended to give the Customer approximately an idea of the Products. They do not form part of the Contract and have no contractual value.

2.5 A Quotation by the Supplier for the Products is not a promise by the Supplier to supply the Products and does not bind the Supplier. A Quotation is only valid for a period of thirty (30) calendar days from the date of the Quotation.

Article 3.Products

3.1 The Products are described in the Supplier's catalogue.

3.2 The Customer does not have the ability to make changes to the Products described in the Supplier's catalogue, without prior written approval of the Supplier.

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Article 4.Delivery

- 4.1** The delivery of the Products shall be accompanied by a delivery note indicating the Order number, type and quantity of the Products (including the code numbers of the Products, if applicable).
- 4.2** Delivery of the Products is made in accordance with the Incoterm stated on the Order Confirmation.
- 4.3** All delivery dates are approximate and time of delivery is not of vital importance. Delays in delivery of the Products do not entitle the Customer to (a) refuse to take delivery of the Products; (b) claim damages; or (c) terminate the Contract. The Supplier shall not be liable for any delay in delivery of the Products or failure to deliver the Products to the extent such delay or failure is due to a Force Majeure Event or the Customer's failure to provide the Supplier with the necessary delivery instructions.
- 4.4** If, after thirty (30) calendar days following the agreed delivery date, the Customer has still not taken receipt of the Products or collected the Products, the Supplier may resell or otherwise dispose of all or part of the Products to a third party, and charge the Customer for any reduced value for the Products.
- 4.5** The Supplier may deliver the Products in several partial deliveries, which may be invoiced and paid for separately. Each partial delivery shall constitute a separate Contract. A default or delay in a partial delivery does not entitle the Customer to refuse subsequent partial deliveries.

Article 5.Quality

- 5.1** The Supplier guarantees that the Products will correspond to their description and the Specifications, if applicable. The Supplier does not provide the Customer with any warranties relating to the Products other than those included in Appendix 1 to these Terms and Conditions.
- 5.2** The Customer may reject the Products that do not comply with Article 5.1 provided that (a) none of the circumstances listed in Article 5.4 apply; and (b) the Customer notifies the Supplier in writing. The Customer must report visible defects to the Supplier in writing immediately upon delivery, and in any case within twenty-four (24) hours of delivery. Hidden defects must be reported in writing to the Supplier by the Customer within three (3) calendar days after the Customer becomes aware or should have become aware of the hidden defect. If the Supplier so requests, the Customer shall return the non-conforming Products to the Supplier at its expense in accordance with Article 5.6.
- 5.3** If the Customer does not report any defects in accordance with Article 5.2, the Customer shall be deemed to have accepted the Products.
- 5.4** The Supplier shall not be liable for the failure of the Products to meet the warranty terms and conditions set out in Article 5.1 and Appendix 1 if (a) the Customer continues to use the Products after the notification pursuant to Article 5.2; (b) the defect occurred because the Customer did not follow the Supplier's oral or written instructions for the maintenance and use of the Products or (in the absence of instructions) did not comply with the practices in this respect; (c) the Customer modified the Products without the Supplier's written consent; (d) the defect occurred as a result of normal wear and tear or age, intentional damage, negligence or abnormal maintenance or use conditions; (e) the Products deviate from their description because of modifications required by law or regulatory standards; or (f) the Products were damaged during transportation, if the Supplier was not responsible for the transportation of the Products in accordance with the applicable Incoterm.
- 5.5** If the Customer refuses the Products in accordance with Article 5.2 and the Customer's complaint is, in the opinion of the Supplier, justified, the Supplier shall decide to either: (a) replace the non-conforming Products; (b) repair the non-conforming Products; or (c) refund the price for the non-conforming Products in full.
- 5.6** The Customer may not return the Products to the Supplier without first receiving prior written approval to do so from the Supplier. If the Supplier agrees to the return of the Products, the Customer shall return the Products in their original packaging.
- 5.7** Except as provided for in this Article 5, the Supplier shall not be liable to the Customer for Products that do not comply with the warranty terms and conditions set out in Article 5.1 and Appendix 1.
- 5.8** These Terms and Conditions shall also apply to Products that the Supplier delivers to the Customer as a replacement for non-conforming Products.

Article 6.Ownership and risk

- 6.1** Any risk associated with the Products shall pass to the Customer in accordance with the Incoterm stated on the Order Confirmation.
- 6.2** Ownership of the Products shall pass to the Customer only after the Supplier has received full payment for the Products.
- 6.3** For so long as ownership to the Products has not passed to the Customer, the Customer shall (a) store the Products separately from any other Products belonging to the Customer so that the Products remain readily identifiable as the property of the Supplier; (b) not remove, damage or deface the packaging of the Products or the identification marks on the Products; (c) keep the Products in good condition and insure them against all risks for the full price of the Products from delivery; (d) promptly notify the Supplier if any of the circumstances provided for in Articles 9.1(b) to Article 9.1(d) occur; and (e) keep the Supplier informed from time to time regarding the Products and the Customer's financial position.
- 6.4** Under no circumstances may the Customer resell or use the Products before the Supplier has received full payment for the Products.
- 6.5** At any time before ownership of the Products has passed to the Customer, the Supplier may require the Customer to return all Products in its possession to the Supplier, and if the Customer fails to do so immediately, the Supplier may proceed to recover the Products itself (whether the Products are located with the Customer or a third party).

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Article 7. Price and payment

7.1 The price for the Products shall be the price stated on the Order Confirmation.

7.2 The Supplier may increase the price for the Products at any time before delivery by notifying the Customer if the cost of the Products has increased because of (a) a request by the Customer to change the agreed delivery date(s), quantities or type of Products ordered; (b) a delay due to the Customer; or (c) shipping costs.

7.3 The price for the Products does not include value-added tax (VAT), which the Customer must additionally pay to the Supplier upon receipt of a valid VAT invoice. Depending on the Incoterm stated in the Order Confirmation, either the Customer or the Supplier shall be responsible for the costs and expenses of packaging, insurance and transportation of the Products.

7.4 Unless otherwise agreed between the parties in the Order Confirmation, the Customer must pay for the Products in advance payment according to the time schedule as agreed upon in the Order Confirmation.

7.5 If the Customer fails to pay the amounts due to the Supplier under the Contract by the due date for payment, then, without prejudice to Article 9, the Customer shall pay interest on the outstanding amount from the due date until full payment of the outstanding amount, whether before or after a court order. Interest under this Article 7.5 shall accrue at the statutory interest rate as provided by the Law of 2 August 2002 on Combating Late Payment in Commercial Transactions (as amended from time to time) and each month commenced shall count as a full month. The outstanding amount shall additionally be increased by a lump-sum compensation of ten percent (10%) of the outstanding amount, with a minimum of €250 to cover the Supplier's costs for recovering the outstanding amount.

7.6 Unless the Customer disputes the Supplier's invoice in writing within eight (8) calendar days from the invoice date, the Customer shall be deemed to have accepted the Supplier's invoice. In the event of a dispute, the Customer shall provide the Supplier with the reasons for the dispute and the evidence supporting the dispute. If the Customer disputes only part of the invoice, the Customer must pay the undisputed amount of the invoice on the due date for payment.

7.7 The Customer must pay all amounts under the Contract in full without set-off, compensation, counter-claim, deduction or withholding.

Article 8. Liability

8.1 References to liability in this Article 8 include any liability arising out of or in connection with the Contract, including contractual liability, tort liability (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in these Terms and Conditions excludes or limits the liability of the parties that cannot be excluded or limited by law, including liability for (a) any wrongdoing affecting the life or physical integrity of any person; (b) fraud or deceit; or (c) wilful misconduct.

8.3 To the maximum extent permitted under applicable law, the total liability of the Supplier per Order shall be limited to the amounts actually paid by the Customer to the Supplier for that Order.

8.4 To the maximum extent permitted under applicable law, the Supplier shall not be liable for (a) loss of profits;

8.5 (b) loss of turnover or business; (c) loss of agreements or contracts; (d) loss of anticipated savings; (e) loss of or

8.6 damage to software, data or information; (f) loss of or damage to goodwill; and (g) indirect or consequential damages.

8.7 To the maximum extent permitted under applicable law, the Customer agrees, and accepts, not to hold the directors, employees, independent service providers, representatives and consultants of the Supplier personally liable for or in connection with the Contract.

Any (liability) claim (including any extracontractual liability claim) for or in connection with the Contract shall be brought by the Customer exclusively against the Supplier.

8.8 This Article 8 shall survive termination of the Contract.

Article 9. Termination

9.1 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect, without court intervention and without respecting any (notice) period or paying any (termination) fee, by giving written notice to the Customer if (a) the Customer commits a serious breach under the Contract and, if the breach is remediable, fails to remedy the breach within fourteen (14) calendar days of being given written notice to do so;

9.2 (b) the Customer takes any step or action in connection with its insolvency, liquidation or dissolution (either voluntarily or by court order, unless for the purposes of solvency restructuring); the Customer enters into a composition or arrangement with its creditors (other than in connection with solvency restructuring), or obtains a moratorium; a receiver or administrator is appointed in respect of the Customer's assets (or any part of its assets); the Customer ceases to conduct its business or any other similar event; (c) the Customer suspends, threatens to suspend, discontinues or threatens to discontinue all or a substantial part of its business operations; or (d) the Customer's financial position deteriorates to such an extent that the Supplier may reasonably believe that its ability to perform the Contract is at risk.

9.3 Without limiting its other rights or remedies, the Supplier may delay delivery of the Products (without judicial intervention) if (a) any of the circumstances provided for in Articles 9.1(b) to 9.1(d) occur, or the Supplier has reasonable grounds to believe that any of those circumstances will occur; or (b) the Customer fails to pay any amount due to the Supplier under the Contract when due for payment.

9.4 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect, without judicial intervention and without respecting any (notice) period or paying any (notice) fee, by giving written notice to the Customer if the Customer fails to pay any amount due to the Supplier under the Contract when due for payment.

9.5 Upon termination of the Contract pursuant to Article 9.1 or Article 9.3, the price for the Products shall remain payable (even if the

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Supplier has not yet delivered the Products to the Customer) by way of compensation to the Supplier. The foregoing is without prejudice to the right of the Supplier to claim additional damages in accordance with Article 9.6 or otherwise if its damages exceed the price for the Products.

9.6 Upon termination of the Contract (for whatever reason), the Customer shall immediately pay all unpaid invoices of the Supplier and interest to the Supplier and, in respect of the Products which the Supplier has already supplied to the Customer but for which it has not yet issued an invoice, the Supplier shall issue an invoice, which the Customer shall pay immediately upon receipt.

9.7 Termination of the Contract (for any reason) will not affect the rights, remedies, obligations and liabilities of the parties that arose prior to termination, including the right to claim damages for any breach under the Contract that existed prior to termination.

9.8 Any provision of the Contract expressly or implied as intended to become or remain in force on or after termination of the Contract shall remain in full force and effect.

Article 10. Intellectual property

The Supplier is and shall remain the sole and exclusive owner of all Intellectual Property Rights relating to the Products (including improvements, new versions, developments, modifications or amendments to the Products). Nothing in these Terms and Conditions shall be deemed to constitute an implied or express transfer of, or the granting of a licence for, the Supplier's Intellectual Property Rights to the Customer.

Article 11. Force majeure

The Supplier does not breach the Contract and is not otherwise liable for any breach or delay under the Contract if such violation, breach or delay is due to a Force Majeure Event. The deadline for performance of its obligations shall in such case be extended accordingly. If the period of non-performance or delay exceeds ninety (90) calendar days, either party may terminate the Contract subject to thirty (30) calendar days' written notice to the other party.

Article 12. General

12.1 Transfers and other transactions. The Supplier may assign, transfer, pledge, encumber, sub-contract, delegate or otherwise deal with all or any of its rights or obligations under the Contract at any time. The Customer may not assign, transfer, pledge, encumber, sub-contract, delegate or otherwise deal with all or any of its rights or obligations under the Contract, except with prior written consent from the Supplier.

12.2 Confidentiality. The Customer undertakes to keep confidential and not disclose to third parties any confidential information relating to the Supplier's activities, assets, business, customers, clients or suppliers at all times during the term of the Contract, as well as for a period of two (2) years thereafter, except as permitted by this Article 12.2. The Customer may disclose the Supplier's Confidential Information (a) to its employees, representatives, contractors, subcontractors or consultants who need such information to exercise or perform the Customer's rights and obligations under the Contract (provided that the Customer ensures that its employees, agents, contractors, subcontractors or consultants to whom it discloses the Supplier's Confidential Information also comply with this Article 12.2); or (b) to the extent required by law, a court or a governmental or regulatory authority. The Customer may not use the Supplier's confidential information for any purpose other than for the exercise or performance of its rights and obligations under the Contract.

12.3 Entire Agreement. This Contract constitutes the entire agreement between the parties and supersedes all previous oral or written agreements, arrangements and communications between the parties relating to its subject matter.

12.4 Amendments. The Supplier may amend these Terms and Conditions at any time by giving written notice to the Customer. Unless the Customer disputes the amendment in writing within fourteen (14) calendar days of the Supplier's notification, the Customer shall be deemed to accept the amendment.

12.5 Waiver. Any waiver of right or remedy must be applied for in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise a right or remedy, or the single or partial exercise of a right or remedy, does not constitute a waiver of that or any other right or remedy, nor does it prevent or limit the further exercise of that or any other right or remedy.

12.6 Divisibility. If any provision or sub-provision of the Contract is or becomes invalid, illegal or unenforceable, such provision or sub-provision shall be deemed deleted, but this shall not affect the validity or enforceability of the rest of the Contract. If any provision or sub-clause of the Contract is deemed to have been removed in accordance with this Article 12.6, the parties shall negotiate in good faith to replace the provision or sub-clause with a new provision or sub-clause that, as far as possible, replaces the commercial purpose of the original provision or sub-clause.

12.7 Notices. Any notice under or in connection with the Contract must be in writing and delivered to the other party (a) in person or by registered mail to the other party's (corporate) office; or (b) by e-mail to the e-mail address used by the other party for the Order. A party may change its (e-mail) address for notifications in accordance with this Article 12.7. A notice shall be deemed to have been received (a) if delivered personally, at the time the notice is left at the other party's address; (b) if delivered by registered mail, at 9.00 AM on the third (3rd) business day after posting, unless proof of earlier receipt can be provided; and (c) if delivered by e-mail, at the time of transmission.

12.8 Applicable law. The Contract, and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Contract, its subject matter or formation, shall be governed by and construed in accordance with Hong Kong law.

12.9 Dispute resolution. Each party irrevocably agrees that the courts in the Districts in which the Supplier has its principal place of business, shall have exclusive jurisdiction to settle any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the Contract, its subject matter or formation.

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Appendix 1: Warranty terms and conditions

Article 1. Warranty period

1.1 The following Products are subject to a warranty period of two (2) years:

- Cushions, poufs, rugs and protective covers;
- Cords (ropes); and
- Ceramic, glass and HPL table tops.

1.2 The following Products are subject to a warranty period of five (5) years:

- Aluminum window frames;
- Ferrari Batyline; and
- Sunbrella fabrics.

Article 2. Start of warranty period

The warranty commences at the time of delivery of the Products in accordance with Article 4 of the Terms and Conditions.

Article 3. Object of the warranty

The warranty does not apply to the following materials:

3.1 Teak: This is a natural material and can discolor, shrink, expand and crack due to weather conditions. The natural oils in teak can stain other materials such as cushion textiles.

3.2 Aluminum/steel/stainless steel: Scratches and stains resulting from normal residential use, (internal) rust caused by condensation, accumulated water or abnormal environmental conditions are not covered by the warranty.

3.3 Outdoor textiles (cushions): Textile colors may vary in production batches within a certain tolerance and such variations are not considered non-conformity of the Product. Traces of normal residential use, minimal shrinkage and discoloration caused by improper washing are not covered by the guarantee. The carrying capacity of the cushion filling can decrease over time, as can creasing in the cushion cover. Both are considered the result of normal residential use and are therefore not covered by the warranty.

3.4 Ceramic/HPL: Stains from (acid) food, liquids, UV exposure from sunlight through glass and damage from contact with hot materials are not covered by the warranty.