

# CHERRY LANE DESIGN AND HORTICULTURE PTY LTD

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## STANDARD TERMS AND CONDITIONS

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### LANDSCAPE DESIGN SERVICES

### PART B

Effective 1 April 2026

#### NOTICE TO CLIENT

These Standard Terms and Conditions (**Part B**) govern all landscape design services provided by Cherry Lane Design and Horticulture Pty Ltd. They form Part B of the Agreement and are incorporated into and must be read with **Part A** (the Schedule), which sets out the particulars of each engagement.

By executing Part A or instructing the Designer to commence the Services, the Client agrees to be bound by these Terms.

These Terms are published on the Designer's website and will be provided to the Client with each Part A.

## 1. DEFINITIONS AND INTERPRETATION

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In the Agreement, the following terms have the meanings given to them in this clause 1:

- 1.1. **Agreement** means the binding agreement for the provision of the Services, constituted by Part A and Part B read together.
- 1.2. **Approved Purposes** means the implementation of the landscape design at the Site, as described in Part A.
- 1.3. **Approval** means any development consent, construction certificate, complying development certificate, or other regulatory authorisation required under the *Environmental Planning and Assessment Act 1979* (NSW) or any other applicable legislation in connection with the Site or any works proposed to be carried out at the Site.
- 1.4. **Building Work** means building work within the meaning of the *Home Building Act 1989* (NSW).
- 1.5. **Business Day** means a day other than Saturday, Sunday, or a public holiday in New South Wales.

- 1.6. **Claim** means any action, claim, proceeding, demand, liability, loss, damage, cost, or expense of any kind, whether arising in contract, tort, equity, statute, or otherwise.
- 1.7. **Client** means the person or entity identified as the client in Part A. References to "you" and "your" in these Terms are references to the Client.
- 1.8. **Commencement Date** means the date specified in Part A as the commencement date, or if no such date is specified, the date on which the Designer receives an executed Part A and the Deposit.
- 1.9. **Confidential Information** means information disclosed by one party to the other in connection with the Agreement that is by its nature confidential or is designated by the disclosing party as confidential, but excluding information that is or becomes publicly available other than through a breach of the Agreement, or that the receiving party can demonstrate was independently developed by it.
- 1.10. **Copyright Act** means the *Copyright Act 1968* (Commonwealth).
- 1.11. **DBP Act** means the *Design and Building Practitioners Act 2020* (NSW).
- 1.12. **DBP Regulation** means the *Design and Building Practitioners Regulation 2021* (NSW).
- 1.13. **Deliverables** means all documents, drawings, plans, specifications, reports, and other materials produced by the Designer in the course of performing the Services, including all Design Drawings.
- 1.14. **Deposit** means the initial payment required from the Client before the Designer is obliged to commence the Services, as specified in Part A.
- 1.15. **Design Drawings** means the plans detailed and described in clause 3.2.3, which are prepared for concept, design-intent, and budget-pricing purposes only, are indicative in nature, must not be relied upon by the Client or the Client's installer as engineering or construction specifications, do not constitute structural engineering, Regulated Designs, or compliance documentation, and for which all final dimensions, design, and regulatory compliance remain the responsibility of the Client.
- 1.16. **Designer** means Cherry Lane Design and Horticulture Pty Ltd ACN 695 818 181. References to "we", "us", and "our" in these Terms are references to the Designer.
- 1.17. **EP&A Act** means the *Environmental Planning and Assessment Act 1979* (NSW).
- 1.18. **Fee** means the total amount payable by the Client for the Services as specified in Part A, exclusive of GST.
- 1.19. **Force Majeure Event** means any event or circumstance beyond the reasonable control of the affected party, including acts of God, natural disaster, epidemic, pandemic, fire, flood, storm, war, civil unrest, industrial action, act of government or regulatory authority, or failure of third-party utility services, but excluding financial difficulty of either party.
- 1.20. **GST** means goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).
- 1.21. **HBA** means the *Home Building Act 1989* (NSW).

- 1.22. **Intellectual Property Rights** means all present and future rights in relation to copyright, designs, patents, trademarks, know-how, trade secrets, and all other intellectual and industrial property rights, whether registered or unregistered, throughout the world.
- 1.23. **Licence** means the licence granted under clause 12.3.
- 1.24. **Part A** means the project-specific schedule issued by the Designer to the Client which incorporates these Terms and sets out the particulars of the engagement, including the Site, Services, Fee, program, and any project-specific conditions.
- 1.25. **Part B** means these Standard Terms and Conditions.
- 1.26. **Regulated Design** means a regulated design within the meaning of the DBP Act and the DBP Regulation, being a design for building work of a class prescribed by the DBP Regulation. The prescribed classes include building design, structural engineering design, mechanical services design, electrical services design, fire safety systems design, and hydraulic services design. Landscape design is not a prescribed class. The Deliverables do not constitute Regulated Designs.
- 1.27. **Residential Building Work** means residential building work within the meaning of the HBA.
- 1.28. **Services** means the landscape design services described in Part A.
- 1.29. **Site** means the property described in Part A at which the Services are to be provided.
- 1.30. **Variation** means any change to the scope of the Services agreed in Part A that is requested or required after Part A has been executed.

In the Agreement, unless the context otherwise requires:

- 1.31. a reference to a person includes a natural person, corporation, trust, partnership, government authority, and any other entity;
- 1.32. the singular includes the plural and vice versa;
- 1.33. a reference to any legislation or legislative provision includes any amendment, consolidation, or re-enactment of that legislation or provision;
- 1.34. a reference to a clause, schedule, or annexure is a reference to a clause of, schedule to, or annexure to the Agreement;
- 1.35. the word "including" means "including without limitation" and does not limit the generality of any preceding words;
- 1.36. headings are for convenience only and do not affect interpretation;
- 1.37. a reference to writing includes email; and
- 1.38. a reference to dollars or "AUD" is a reference to Australian dollars.

## 2. AGREEMENT STRUCTURE

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- 2.1. These Terms constitute Part B of the Agreement. They are incorporated into and form part of Part A.

- 2.2. The Agreement comprises Part A and Part B, read together as one document. Part A sets out the particulars of the engagement. Part B sets out the standard legal terms that govern all engagements.
- 2.3. Where there is any inconsistency between Part A and Part B, Part A prevails to the extent of the inconsistency, except in relation to clauses 12 (Intellectual Property Rights), 13 (Confidentiality), 14 (Limitation of Liability and Indemnity), and 15 (Warranties), which cannot be varied by Part A without the express written agreement of the Designer.
- 2.4. The Client's execution of Part A, or the Client's written or oral instruction to the Designer to commence the Services, constitutes the Client's agreement to these Terms, including all provisions limiting the Designer's liability.
- 2.5. Part B is published on the Designer's website and is provided to the Client with each Part A. The Client is responsible for reading and understanding these Terms before executing Part A.
- 2.6. Nothing in this Agreement is intended to operate unfairly or to exclude rights that cannot be excluded under the Australian Consumer Law.

### **3. APPOINTMENT AND SCOPE OF SERVICES**

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- 3.1. The Client appoints the Designer, and the Designer agrees, to perform the Services on the terms of the Agreement from the Commencement Date.
- 3.2. The Services are limited to those described in Part A. By way of general description, the Services may include any or all of the following:
  - 3.2.1. initial site consultation and assessment;
  - 3.2.2. concept design and layout plans;
  - 3.2.3. Landscape Design Drawings illustrating proposed layout, design intent, and visual organisation of landscape elements at the Site. They may include indicative plans, dimensions, levels, planting layouts, materials, finishes, and typical non-structural landscape details for common landscape elements such as paving, paths, garden edging, planting works, mulching, surface drainage concepts, and small freestanding walls or planters generally not exceeding 600 mm in height.
  - 3.2.4. material and finish recommendations; and
  - 3.2.5. design iterations in the number specified in Part A.
  - 3.2.6. Disclaimer: Design Drawings are prepared for concept, design-intent, and budget-pricing purposes only, are indicative, must not be relied upon by the Client or the Client's installer as engineering or construction specifications, do not constitute structural engineering, Regulated Designs, or compliance documentation, and for which all final dimensions, design, and regulatory compliance remain the responsibility of the Client.
- 3.3. The Services do not include, and the Designer has no obligation to perform, any of the following:
  - 3.3.1. construction, building, or any physical works at or about the Site;

- 3.3.2. structural engineering, civil engineering, hydraulic engineering, or any other engineering design or certification;
  - 3.3.3. the preparation of Regulated Designs. The Designer is not a registered design practitioner under the DBP Act and does not prepare Regulated Designs. Where any element of the proposed landscape requires a Regulated Design, including structural engineering for a retaining wall, hydraulic design for drainage, or any other prescribed class of design work, the Client must procure that Regulated Design separately from a registered design practitioner before construction commences;
  - 3.3.4. building code compliance advice or assessment;
  - 3.3.5. development application advice, preparation, or lodgement under the EP&A Act or any other legislation;
  - 3.3.6. advice as to whether proposed works constitute exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW) or any other planning instrument;
  - 3.3.7. soil testing, geotechnical investigation, or site surveying;
  - 3.3.8. project management or supervision of contractors;
  - 3.3.9. the selection, engagement, or management of any contractor;
  - 3.3.10. certifier, inspector, or building surveyor functions;
  - 3.3.11. quantity surveying or construction cost estimation;
  - 3.3.12. advice on contractor licensing under the HBA, it being noted that any contractor performing Residential Building Work valued at more than five thousand dollars (AUD 5,000) at a residential property in New South Wales must hold a current contractor's licence under the HBA and the Client is solely responsible for verifying that any contractor engaged holds the appropriate licence; or
  - 3.3.13. irrigation design or installation, which is the subject of a separate written agreement.
- 3.4. Landscape design (as distinct from landscape architecture) is not a regulated profession in New South Wales. The Designer provides design services based on professional experience and knowledge, but the Designer is not a licensed architect, registered design practitioner, engineer, or building certifier. Nothing in any Deliverable constitutes professional advice in those regulated fields.
- 3.5. While landscape design itself is unregulated, many works that may be carried out by the Client following receipt of a Design Drawing are regulated. Retaining walls, swimming pools, structural decking, pergolas, driveways, sheds, and similar features may each require council Approval, engineering certification, and a licensed contractor to construct. Where a Design Drawing depicts any such feature, the depiction is indicative only. The construction of those elements must be managed by appropriately licensed and qualified persons, independently of the Designer's involvement.

#### 4. NATURE AND LIMITATIONS OF DESIGN SERVICES

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**IMPORTANT NOTICE | PLEASE READ BEFORE ENGAGING THE DESIGNER**

The Design Drawings produced by the Designer are conceptual and indicative only. They communicate a design vision. They are not engineering plans, construction documents, or Regulated Designs. They must not be used as construction drawings without independent verification and certification by suitably qualified, licensed professionals.

The Client acknowledges that any use of the Deliverables for construction purposes without such verification is at the Client's sole risk.

- 4.1. The Designer's Design Drawings are conceptual and indicative in nature. All dimensions, setbacks, areas, levels, and specifications and construction details (including material grades, depths, and compaction notes) shown in a Design Drawing are approximate and are stated for design intent and budget-pricing purposes only. They do not constitute verified survey data, engineering specifications, or compliance certificates.
- 4.2. The Deliverables are not Regulated Designs within the meaning of the DBP Act. The Designer is not a registered design practitioner for the purposes of the DBP Act. A Design Drawing must not be used as or in substitution for a Regulated Design. Where the Client's project requires a Regulated Design (including for structural works, hydraulic services, or any other prescribed class), the Client must engage a registered design practitioner to produce that design, and lodge it via the NSW Planning Portal, before construction commences.
- 4.3. Where a Design Drawing depicts or refers to a structural element including a retaining wall, swimming pool, driveway, pergola, shed, or other built item, that depiction indicates the proposed placement and general form of the element only. It cannot be relied upon as structural or engineering advice, or any other technical or compliance matter applicable to the construction.
- 4.4. The Designer does not provide structural, geotechnical, civil, hydraulic, or any other engineering advice. Nothing in any Deliverable constitutes engineering or structural advice, and no reliance must be placed on any Deliverable for engineering or structural purposes.
- 4.5. The Client is solely responsible for obtaining all Approvals required by law before instructing any contractor to commence works at the Site. The appearance of any element in a Design Drawing does not indicate, represent, or warrant that the element is approved, approvable, or compliant with any applicable law, standard, or code.
- 4.6. The Designer does not provide advice on whether proposed works constitute exempt development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (NSW) or any other planning instrument. The Client must obtain independent advice from council or an accredited planning professional on that question.
- 4.7. The Designer does not engage, manage, or supervise any contractor in connection with the implementation of a Design Drawing. The obligation to verify the suitability of a Design Drawing for construction purposes lies with the contractor performing the works. The

Designer is not liable for any loss or damage arising from the way in which a contractor interprets, uses, or implements a Design Drawing.

- 4.8. The Designer's designs are based on information provided by the Client and on the Designer's observations during any site visit. The Designer does not conduct soil testing, surveying, or geotechnical assessment unless expressly agreed in writing in Part A. The Client must notify the Designer of all easements, covenants, heritage constraints, flood overlays, and any other site-specific constraint that may affect the design.
- 4.9. The Client is responsible for ensuring that, before any excavation or ground disturbance at the Site, all underground services are accurately located, including by obtaining current utility plans (such as via Before You Dig Australia or an equivalent service) and engaging a licensed service locator where appropriate. The Designer does not verify the location of underground services and prepares its plans based only on information available at the time of design, which does not identify underground services. The Client and the Client’s contractor are solely responsible for locating and protecting underground services, and the Designer excludes all liability for any loss, damage, injury, or cost arising from contact with or damage to any underground service at or near the Site.
- 4.10. If site conditions encountered during construction differ from those assumed in a Design Drawing, the contractor is responsible for obtaining appropriate professional advice. The Designer accepts no responsibility for additional costs arising from unforeseen or undisclosed site conditions.
- 4.11. **NSW BUILDING LEGISLATION RISK DISCLOSURE.** The following table sets out the principal legislative frameworks that commonly apply to landscape projects in New South Wales. This information is provided for the Client's general awareness only and does not constitute legal advice. The Client should obtain independent legal and planning advice specific to the Site and the proposed works. (This table is intended to highlight common regulatory risks but is not exhaustive)

Feature or Risk Area	Applicable Legislation and Client Responsibilities
<b>Retaining walls</b>	Retaining walls over 600 mm in height are generally not exempt development and require development approval under the EP&A Act and structural engineering certification. Construction must be performed by a licensed contractor under the HBA. Where the Designer depicts a retaining wall in a Design Drawing, this indicates indicative placement only. The Designer does not specify structural requirements, footing depths, or compliance specifications and accepts no liability in connection with the construction of any retaining wall.
<b>Swimming pools and spas</b>	Swimming pools require development approval under the EP&A Act. They are additionally governed by the <i>Swimming Pools Act 1992</i> (NSW), which requires compliant fencing and safety barriers meeting Australian Standard AS 1926.1, registration of the pool with the local council, and

	<p>certification by a licensed pool inspector. Where the Designer depicts a pool location in a Design Drawing, this indicates a proposed position only. The Designer accepts no responsibility for pool design, structural specifications, compliance with the <i>Swimming Pools Act 1992</i> (NSW), or any associated approval process.</p>
<p><b>Pergolas, decks, sheds and structures</b></p>	<p>Pergolas, decks, gazebos, sheds, and similar structures may be exempt development if they meet specific size and height thresholds under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> (NSW). Where they exceed those thresholds, development approval and a construction certificate are required. Construction constitutes Building Work under the HBA and must be performed by a licensed contractor. Where the Designer depicts any such structure in a Design Drawing, this indicates indicative placement and general form only.</p>
<p><b>Driveways and hardstand</b></p>	<p>New driveway crossings over a council kerb or footpath require council approval. Driveways and hardstand areas may also attract stormwater drainage obligations under applicable development control plans. Where the Designer depicts a driveway or hardstand area in a Design Drawing, this indicates a proposed position only. The Designer does not specify subbase depths, drainage design, or compliance requirements, and accepts no liability for any matter arising from the construction of a driveway or hardstand.</p>
<p><b><i>Design and Building Practitioners Act 2020</i> (NSW)</b></p>	<p>The DBP Act requires registered design practitioners to prepare Regulated Designs for prescribed classes of building work before construction commences. The prescribed classes under the DBP Regulation include building design, structural engineering design, mechanical services design, electrical services design, fire safety systems design, and hydraulic services design. Landscape design is not a prescribed class. The Deliverables do not constitute Regulated Designs. Where elements of the Client's landscape project require a Regulated Design, the Client must engage a registered design practitioner to produce that design and lodge it via the NSW Planning Portal before construction commences.</p>
<p><b><i>Home Building Act 1989</i> (NSW) contractor licensing</b></p>	<p>Any contractor performing Residential Building Work valued at more than five thousand dollars (AUD 5,000) at a residential property must hold a current contractor's licence under the HBA. Using an unlicensed contractor may void the Client's insurance, expose the Client to liability, and result in orders requiring work to be rectified or removed. The Client</p>

	should verify the licence of any contractor before engagement by searching the NSW Fair Trading licence register.
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## 5. DESIGNER'S OBLIGATIONS

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- 5.1. The Designer will perform the Services with reasonable care and skill and in accordance with the Agreement.
- 5.2. The Designer will use reasonable endeavours to deliver the Services within any timeframe specified in Part A, but all timeframes and program dates are estimates only and do not constitute a guarantee of performance.
- 5.3. The Designer will notify the Client promptly if the Designer becomes aware of any matter that is likely to materially affect the scope, cost, or program of the Services.

## 6. CLIENT'S OBLIGATIONS

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- 6.1. The Client will:
  - 6.1.1. provide the Designer with accurate, complete, and current information about the Site, the Client's requirements, and any constraints, encumbrances, or other features of the Site that may affect the design or the performance of the Services;
  - 6.1.2. give the Designer reasonable access to the Site for the purposes of any site visit required in connection with the Services;
  - 6.1.3. provide timely instructions, approvals, and feedback on design drafts and iterations so as not to delay the performance of the Services;
  - 6.1.4. obtain all Approvals required by law before instructing any contractor to commence works at the Site;
  - 6.1.5. ensure that any contractor engaged to perform works at the Site in connection with the Design Drawings holds all licences, insurances, and registrations required by applicable law; and
  - 6.1.6. pay all amounts owing to the Designer in accordance with the Agreement.
- 6.2. The Client's failure to comply with any obligation under clause 6.1 will entitle the Designer to:
  - 6.2.1. suspend performance of the Services until the Client complies;
  - 6.2.2. extend any program by the period of any resulting delay; and
  - 6.2.3. recover from the Client any additional costs incurred by the Designer as a direct result of the Client's non-compliance.

## 7. FEES AND PAYMENT

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- 7.1. The Client will pay the Fee to the Designer in the amounts and at the times specified in Part A.
- 7.2. All amounts stated in the Agreement are expressed in Australian dollars exclusive of GST. Where any supply made by the Designer under the Agreement is a taxable supply, the Client will pay to the Designer, in addition to the Fee or other consideration for that supply, an

amount equal to the GST payable on that supply. Payment of GST is conditional on receipt by the Client of a valid tax invoice.

- 7.3. The Client will pay the Deposit to the Designer before the Designer is obliged to commence the Services. The Deposit is applied against the Fee but is otherwise non-refundable except as expressly provided in clause 11.
- 7.4. For projects involving multiple stages, the Designer may issue invoices at milestone stages as specified in Part A. The Designer is not obliged to commence any subsequent stage until the invoice for the prior stage has been paid in full.
- 7.5. Unless Part A specifies a different payment structure, the standard billing schedule for landscape design services is:
  - 7.5.1. fifty percent of the Fee, inclusive of the Deposit, payable on execution of Part A;
  - 7.5.2. twenty-five percent of the Fee payable on delivery of the concept design to the Client for review; and
  - 7.5.3. the remaining twenty-five percent payable on delivery of the final Design Drawings.
  - 7.5.4. Invoices are payable within fourteen days of the invoice date unless Part A specifies a different payment term. Payment will be made by electronic funds transfer to the bank account nominated on the invoice.
- 7.6. If an invoice is not paid in full by the due date, the Designer may:
  - 7.6.1. suspend performance of all or any part of the Services by notice in writing, with immediate effect, until the outstanding amount is paid in full; and
  - 7.6.2. charge interest on the outstanding amount at the rate of two percent per annum above the cash rate target published by the Reserve Bank of Australia from time to time, calculated daily on the outstanding balance and compounding monthly, accruing from the due date until the date of payment in full.
- 7.7. Any suspension under clause 7.6.1 will not release the Client from any obligation under the Agreement, and the Client will be liable for any additional costs incurred by the Designer because of suspension and remobilisation following payment.
- 7.8. The Client is not entitled to withhold, set off, or deduct any amount from any payment due to the Designer, whether by way of counterclaim, abatement, or otherwise.
- 7.9. The obligation to pay the Fee is not conditional on the Client proceeding with any construction or other works following delivery of the Deliverables.

## **8. VARIATIONS**

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- 8.1. The Client may request a Variation by notice in writing to the Designer at any time.
- 8.2. On receipt of a written Variation request, the Designer will, within a reasonable time, provide the Client with a written assessment of the proposed Variation, including the scope of the additional work, any additional fee payable, and any adjustment required to the program.
- 8.3. A Variation does not take effect, and the Designer is not obliged to perform any additional work, unless and until the Client accepts the Designer's written assessment in writing.

- 8.4. The Designer is not bound by any verbal or informal instruction purporting to constitute a Variation request or approval.
- 8.5. If the Designer proceeds with a Variation at the Client's written request (including email), this constitutes acceptance of the Variation assessment.
- 8.6. Where the Client requests a change to the design brief, the Site, or the scope of the Services after design work has commenced, the Designer may charge for all work rendered abortive by that change, including work completed that must be redone, at the rate specified in Part A or, if no rate is specified, at the Designer's standard rate applicable at the time.

## **9. PROGRAM AND DELAYS**

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- 9.1. Any program or timeframe stated in the Agreement is an estimate only. The Designer does not warrant that the Services will be completed by any date specified in Part A.
- 9.2. The Client will provide all information, instructions, site access, and approvals necessary to allow the Designer to progress the Services without interruption. Delay caused by the Client's failure to comply with this obligation entitles the Designer to extend the program by the period of the delay and to recover from the Client any additional costs directly attributable to the delay.
- 9.3. If the Client requests that the Services be suspended for any period, the parties will agree in writing on the terms of the suspension, including any suspension fee and any remobilisation fee payable on resumption.
- 9.4. If a project that has been put on hold at the Client's request for more than sixty days requires the Designer to re-familiarise itself with the project on resumption, the Designer may charge a reasonable remobilisation fee for that work.
- 9.5. The Designer will not be liable for any delay in performance caused by a Force Majeure Event. The Designer will notify the Client promptly in writing upon becoming aware of a Force Majeure Event that is likely to affect performance of the Services, including the nature of the event and its expected duration.

## **10. SUSPENSION**

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- 10.1. The Designer may suspend performance of all or any part of the Services immediately by notice in writing to the Client if:
  - 10.1.1. the Client fails to pay any invoice by the due date and does not remedy that failure within seven days of receiving a written notice of default from the Designer;
  - 10.1.2. the Client is in material breach of any other obligation under the Agreement; or
  - 10.1.3. a Force Majeure Event affecting the Designer continues for more than thirty consecutive days.
- 10.2. Suspension under clause 10.1 does not affect any right or remedy of either party that has accrued prior to suspension.
- 10.3. The Designer will not be liable to the Client for any loss, damage, or additional cost arising from a suspension under this clause, and the Client will be liable for all additional costs

incurred by the Designer in connection with suspension and remobilisation following payment or remedy of the relevant breach.

## **11. TERMINATION**

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- 11.1. The Client may terminate the Agreement at any time by notice in writing to the Designer.
- 11.2. On termination by the Client under clause 11.1:
  - 11.2.1. all work in progress will cease with immediate effect;
  - 11.2.2. the Client will pay the Designer for all Services performed up to and including the date of termination, calculated on a pro-rata basis by reference to the agreed Fee or, where a pro-rata calculation is not practicable, on the basis of the Designer's reasonable assessment of the time and resources expended;
  - 11.2.3. if the amount already paid by the Client (including the Deposit) is less than the amount owing under clause 11.2.2, the Client will pay the difference to the Designer within fourteen days of receiving the Designer's final invoice;
  - 11.2.4. the Deposit represents a genuine pre-estimate of the Designer's upfront costs and is non-refundable to the extent permitted by law.; and
  - 11.2.5. if any amount remains outstanding to the Designer at the date of termination, the Licence will not arise and the Client will have no right to use any Deliverable for any purpose.
- 11.3. The Designer may terminate the Agreement immediately by notice in writing to the Client if:
  - 11.3.1. the Client fails to pay any amount due under the Agreement and does not remedy that failure within seven days of receiving a written notice of default from the Designer;
  - 11.3.2. the Client is in material breach of any provision of the Agreement and, where the breach is capable of remedy, fails to remedy it within fourteen days of receiving written notice from the Designer specifying the breach and requiring it to be remedied;
  - 11.3.3. the Client is insolvent, enters into any arrangement with creditors, has a receiver, administrator, or liquidator appointed, or is otherwise subject to any form of insolvency administration; or
  - 11.3.4. a Force Majeure Event affecting the Designer continues for more than sixty consecutive days.
- 11.4. On termination by the Designer under clauses 11.3.1 or 11.3.2:
  - 11.4.1. all amounts owing by the Client under the Agreement become immediately due and payable; and
  - 11.4.2. the Designer retains all accrued rights and remedies.
- 11.5. On termination by the Designer under clause 11.3.4, the Designer will refund to the Client the amount of any Deposit or prepaid Fee that has not been earned at the date of termination, as reasonably assessed by the Designer.

- 11.6. Termination of the Agreement does not affect any rights or remedies of either party that have accrued prior to termination. Clauses 1, 7 (to the extent of any unpaid amounts), 12, 13, 14, 15, and 19 survive termination of the Agreement.

## **12. INTELLECTUAL PROPERTY RIGHTS**

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- 12.1. All Intellectual Property Rights in the Deliverables, including all Design Drawings, and in all work, material, and concepts created by the Designer in the course of performing the Services, vest in and remain the sole and exclusive property of the Designer absolutely. The Client acknowledges that nothing in the Agreement transfers, assigns, or licenses any Intellectual Property Rights to the Client other than the Licence granted under clause 12.3.
- 12.2. The Copyright Act vests copyright in artistic works, including drawings and plans, in the author of those works. The Designer is the author of all Design Drawings and all other Deliverables. The Client acknowledges that copyright in the Deliverables vests in the Designer and that the Client has no right, title, or interest in that copyright other than as expressly provided in this clause 12.
- 12.3. Subject to clause 12.4, and upon payment in full of all Fees and other amounts owing under the Agreement, the Designer grants to the Client a limited, non-exclusive, non-transferable, revocable licence to use the Deliverables solely for the Approved Purposes (the Licence).
- 12.4. The Licence is strictly conditional on all of the following conditions being satisfied:
- 12.4.1. the Client having paid all Fees and other amounts owing under the Agreement in full;
  - 12.4.2. the Client not being in breach of any term of the Agreement; and
  - 12.4.3. the Deliverables being used solely in accordance with clause 12.3 and not in breach of clause 12.6.
- 12.5. Until all conditions in clause 12.4 are satisfied, no Licence arises and the Client has no right to use any Deliverable for any purpose whatsoever.
- 12.6. The Licence does not permit the Client to:
- 12.6.1. use any Deliverable at any property other than the Site;
  - 12.6.2. reproduce, copy, adapt, modify, or create derivative works from any Deliverable;
  - 12.6.3. commercialise any Deliverable or any adaptation of a Deliverable;
  - 12.6.4. provide any Deliverable to any third party, except to a licensed contractor solely for the purpose of obtaining quotes for or performing the approved landscape works at the Site, subject to the conditions in clause 12.7; or
  - 12.6.5. retain or use any Deliverable following termination of the Agreement if any amount remains owing to the Designer.
- 12.7. The Licence terminates automatically and without notice if:
- 12.7.1. the Client uses any Deliverable otherwise than in accordance with clause 12.6;
  - 12.7.2. the Client fails to pay any amount owing under the Agreement and does not remedy that failure within seven days of written notice from the Designer; or

- 12.7.3. the Agreement is terminated for any reason and any amount remains owing to the Designer at the date of termination.
- 12.8. Where the Client shares a Deliverable with a contractor pursuant to clause 12.6.4 the Client must, prior to sharing, notify the contractor in writing that:
- 12.8.1. the Deliverable is and remains the property of the Designer;
- 12.8.2. the contractor must not copy, adapt, re-use, or commercialise the Deliverable; and
- 12.8.3. the Deliverable is indicative only and must be independently verified by the contractor before any construction work commences.
- 12.9. The Designer asserts its moral rights in all Deliverables as conferred under the Copyright Act. The Client must not:
- 12.9.1. falsely attribute authorship of any Deliverable to any person other than the Designer; or
- 12.9.2. subject any Deliverable or any reproduction of a Deliverable to derogatory treatment.
- 12.10. The Client acknowledges that any actual or threatened breach of this clause 12 will cause the Designer irreparable loss and damage for which an award of monetary damages alone would be an inadequate remedy. Accordingly, the Designer is entitled to seek injunctive or other equitable relief to restrain any such breach or threatened breach, without being required to prove actual damage or loss and without being required to give any undertaking as to damages.
- 12.11. Subject to clause 13, the Designer may use images and representations of completed works at the Site in its portfolio, website, marketing materials, and social media without further consent from the Client, unless the Client has notified the Designer in writing before such use that it does not consent to its property being depicted.

### **13. CONFIDENTIALITY**

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- 13.1. Each party must keep confidential all Confidential Information of the other party and must not use the Confidential Information of the other party for any purpose other than performing its obligations or exercising its rights under the Agreement.
- 13.2. A party may disclose Confidential Information of the other party:
- 13.2.1. to its officers, employees, and contractors who need to know the information for the purposes of the Agreement, provided those persons are bound by confidentiality obligations no less onerous than those in this clause; or
- 13.2.2. to the extent required by applicable law, by order of a court or tribunal of competent jurisdiction, or by a regulatory authority with jurisdiction over the disclosing party, provided the disclosing party gives the other party reasonable prior notice of the required disclosure where permitted by law.
- 13.3. The obligations in this clause 13 survive termination of the Agreement for a period of three years from the date of termination.

## 14. LIMITATION OF LIABILITY AND INDEMNITY

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- 14.1. To the fullest extent permitted by applicable law, neither party is liable to the other for any indirect, consequential, special, or economic loss arising out of or in connection with the Agreement, including loss of profit, loss of revenue, loss of business opportunity, or loss of goodwill or reputation, whether that loss arises in contract, tort, equity, or otherwise, and whether or not the party was advised of the possibility of such loss.
- 14.2. Subject to clauses 14.1 and 14.5, the Designer's total aggregate liability to the Client for all Claims arising out of or in connection with the Agreement, whether in contract, tort, equity, statute, or otherwise, is limited to the total amount of the Fee actually paid by the Client to the Designer at the time the relevant Claim arises.
- 14.3. Without limiting clauses 14.1 and 14.2, the Designer is not liable to the Client for any Claim arising out of or in connection with:
- 14.3.1. any act or omission of any contractor, builder, landscaper, engineer, certifier, or other third party engaged by the Client in connection with the works;
  - 14.3.2. any failure by the Client or any other person to obtain any required Approval before commencing any works at the Site;
  - 14.3.3. the use of any Deliverable or Design Drawing for construction purposes without independent verification by a suitably qualified and licensed professional;
  - 14.3.4. any failure by the Client or any contractor engaged by the Client to comply with the HBA, the DBP Act, the *Swimming Pools Act 1992* (NSW), the EP&A Act, the National Construction Code, or any other applicable legislation, code, or standard;
  - 14.3.5. any loss arising from unforeseen, undisclosed, or inaccurately described site conditions, including underground services, soil instability, contamination, or flooding;
  - 14.3.6. any loss caused by inaccurate, incomplete, or misleading information provided to the Designer by the Client or any third party; or
  - 14.3.7. the engagement by the Client of an unlicensed contractor.
- 14.4. Where loss or damage arises from the concurrent acts or omissions of the Designer and one or more other persons, the Designer's liability to the Client is limited to its proportionate share of responsibility for that loss, determined by reference to the relative contribution of all persons responsible for the loss or damage.
- 14.5. Nothing in these Terms excludes, restricts, or modifies any right or guarantee available to the Client under the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Commonwealth)) that cannot lawfully be excluded or modified by agreement. To the fullest extent permitted by the Australian Consumer Law, the Designer's liability for a failure to comply with any applicable consumer guarantee is limited, at the Designer's election, to:
- 14.5.1. the re-supply of the relevant Services; or
  - 14.5.2. payment of the reasonable cost of having the relevant Services supplied again.

- 14.6. The Client indemnifies the Designer and its officers, employees, and contractors (each an Indemnified Person) against all Claims suffered or incurred by any Indemnified Person arising out of or in connection with:
- 14.6.1. any use by the Client of any Deliverable otherwise than in accordance with the Licence and the Agreement;
  - 14.6.2. any failure by the Client to obtain any required Approval before instructing a contractor to commence works at the Site;
  - 14.6.3. the engagement by the Client of a contractor who does not hold a valid contractor's licence required by applicable law;
  - 14.6.4. any misrepresentation, error, or omission in any information provided by the Client to the Designer in connection with the Agreement; or
  - 14.6.5. any breach by the Client of any term of the Agreement,
- except to the extent that a Claim is directly caused by the Designer's own negligence or material breach of the Agreement.

## **15. WARRANTIES**

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- 15.1. The Designer warrants that the Services will be performed with reasonable care and skill.
- 15.2. Except as expressly stated in clause 15.1, and to the fullest extent permitted by applicable law, the Designer excludes all representations, conditions, warranties, and terms (whether express, implied, statutory, or otherwise) in relation to the Services and the Deliverables, including any implied warranty of fitness for a particular purpose, correspondence with description, or satisfactory quality.
- 15.3. Without limiting clause 15.2, the Designer does not warrant that:
- 15.3.1. the Deliverables will result in any particular aesthetic, horticultural, or functional outcome;
  - 15.3.2. any proposed works depicted in the Deliverables will obtain any required Approval from any relevant authority;
  - 15.3.3. any plant species specified in a planting plan will be available, survive, or thrive at the Site;
  - 15.3.4. any indicative construction cost estimate stated by the Designer will reflect the actual cost of construction; or
  - 15.3.5. the Deliverables will be suitable for any purpose other than as indicative landscape design documentation.
- 15.4. The Client warrants to the Designer that:
- 15.4.1. all information provided by the Client to the Designer in connection with the Agreement, including information about the Site, its dimensions, constraints, and any encumbrances, is accurate, complete, and not misleading;
  - 15.4.2. no relevant information concerning the Site or the Client's requirements has been withheld from the Designer;

15.4.3. the Client has the right and authority to grant access to the Site for the purposes of the Agreement; and

15.4.4. the Client will not use the Deliverables otherwise than in accordance with the Licence and the Agreement

## **16. FORCE MAJEURE**

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16.1. A party is not liable for any failure or delay in performing an obligation under the Agreement to the extent that the failure or delay is caused directly by a Force Majeure Event, provided the affected party:

16.1.1. notifies the other party promptly in writing of the Force Majeure Event, its nature, and its expected duration;

16.1.2. uses reasonable endeavours to mitigate the effect of the Force Majeure Event on performance of its obligations; and

16.1.3. resumes performance as soon as reasonably practicable after the Force Majeure Event ceases or is mitigated.

16.2. Force Majeure Event does not relieve the Client of its obligation to pay any amount that has fallen due and owing to the Designer under the Agreement.

16.3. If a Force Majeure Event affecting the Designer continues for more than sixty consecutive days, the Designer may terminate the Agreement under clause 11.3.4.

## **17. PRIVACY**

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17.1. The Designer collects personal information from the Client (including the Client's name, contact details, and property address) in order to provide the Services and to administer the Agreement.

17.2. The Designer will use the Client's personal information solely for the purpose of providing the Services, communicating with the Client in connection with the Agreement, and, where the Client consents, for marketing purposes.

17.3. The Designer will not disclose the Client's personal information to any third party without the Client's consent, except to the extent required by law or as necessary to perform the Services.

17.4. The Designer handles personal information in accordance with the *Privacy Act 1988* (Commonwealth) and the Australian Privacy Principles.

## **18. DISPUTE RESOLUTION**

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18.1. A party claiming that a dispute has arisen under or in connection with the Agreement must give the other party a written notice specifying the nature and details of the dispute (Dispute Notice).

18.2. Within seven days of a Dispute Notice being given, senior representatives of each party must meet (in person or by telephone or video conference) and seek in good faith to resolve the dispute by negotiation.

- 18.3. If the dispute is not resolved within fourteen days of the Dispute Notice (or such longer period as the parties agree in writing), either party may refer the dispute to mediation. The mediator will be:
- 18.3.1. a person agreed in writing by the parties within seven days of the referral to mediation;  
or
  - 18.3.2. if the parties cannot agree on a mediator within that period, a mediator appointed by the Law Society of New South Wales on the application of either party.
- 18.4. The costs of mediation will be borne equally by the parties unless the mediator otherwise orders.
- 18.5. Nothing in this clause 18 prevents a party from seeking urgent interlocutory or other injunctive relief from a court of competent jurisdiction at any time, including relief in connection with a breach or threatened breach of clause 12.

## 19. GENERAL

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- 19.1. **ENTIRE AGREEMENT.** The Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, representations, statements, agreements, and understandings, whether oral or written.
- 19.2. **GOVERNING LAW.** The Agreement is governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the Federal Court of Australia and waives any objection to proceedings being brought in those courts on grounds of inconvenient forum.
- 19.3. **AMENDMENT.** Part B may only be amended by written agreement signed by both parties. Part A may be amended by mutual written agreement of the parties, subject to clause 2.3.
- 19.4. **WAIVER.** A waiver of any right under the Agreement must be in writing signed by the party granting the waiver. A waiver of a right on one occasion does not operate as a waiver of that right on any other occasion and does not extinguish any future breach of the same or any other provision.
- 19.5. **SEVERABILITY.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that provision will be severed from the Agreement and the remaining provisions will continue in full force and effect. The parties will use reasonable endeavours to replace the severed provision with a valid and enforceable provision that, to the greatest extent possible, gives effect to the parties' original intention.
- 19.6. **ASSIGNMENT.** The Client must not assign, novate, or otherwise transfer any right or obligation under the Agreement without the prior written consent of the Designer. The Designer may assign its rights and obligations under the Agreement to a related body corporate (as defined in the *Corporations Act 2001* (Commonwealth)) without the consent of the Client, provided the Designer gives the Client written notice of the assignment.
- 19.7. **NOTICES.** A notice given under the Agreement must be in writing and may be given by email or post. A notice to the Designer must be addressed to [steve@cherrylanehorticulture.com.au](mailto:steve@cherrylanehorticulture.com.au) or the Designer's registered office address. A notice to the Client will be sent to the email address or postal address specified in Part A. A notice sent by email is deemed given at the

time of transmission, provided the sender does not receive an automated notification of delivery failure within twenty-four hours of transmission.

- 19.8. **GST.** Where any supply made under or in connection with the Agreement is subject to GST, the party making the supply may recover from the recipient an additional amount equal to the GST payable on that supply, subject to the issue of a valid tax invoice.
- 19.9. **RELATIONSHIP OF PARTIES.** Nothing in the Agreement creates a partnership, joint venture, agency, employment, or fiduciary relationship between the parties. The Designer performs the Services as an independent contractor.
- 19.10. **FURTHER ASSURANCE.** Each party agrees to do all things and execute all documents reasonably necessary to give full effect to the Agreement.
- 19.11. **COUNTERPARTS.** Part A may be executed in any number of counterparts, each of which constitutes an original instrument, and all of which together constitute one document. Execution by electronic means, including by email or digital signature platform, is valid and binding.

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### Enquiries Regarding These Terms

#### Cherry Lane Design and Horticulture Pty Ltd

steve@cherrylanehorticulture.com.au | 0422 536 092 | cherrylanehorticulture.com.au