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**Gardenex, PetQuip, CHA and  
Federation of Garden & Leisure Manufacturers Ltd  
TERMS & CONDITIONS**

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## 1. INTERPRETATION

THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.

### 1.1 **Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in the UK when banks in London are open for business.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 4 (Charges and payment).

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.5.

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from the Supplier.

**Customer Default:** has the meaning set out in clause 3.2.

**Data Controller:** has the meaning set out in section 1(1) of the Data Protection Act 1998.

**Data Subject:** an individual who is the subject of Personal Data.

**Order Form:** the Customer's order for Services as set out in the Customer's order form.

**Personal Data:** has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing Services under the Contract.

**Processing and process:** have the meaning set out section 1(1) of the Data Protection Act 1998.

**Services:** the services to be supplied by the Supplier to the Customer as set out in the Order Form.

**Supplier:** the Federation of Garden & Leisure Manufacturers Ltd on behalf of Gardenex, PetQuip and the Commercial Horticultural Association as specified on the Order Form,.

### 1.2 **Interpretation:**

1.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.5 A reference to **writing** or **written** includes emails and faxes.

## 2. BASIS OF CONTRACT

2.1 The Order Form constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

- 2.2 The Order Form shall only be deemed to be accepted when the Supplier issues written acceptance of the Order Form at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### **3. CUSTOMER'S OBLIGATIONS**

- 3.1 The Customer shall:
- (a) ensure that the terms of the Order Form and any information it provides in the Order Form is complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services by the deadlines provided;
  - (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
- 3.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 3.2; and
  - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 3.3 In the event that the Department for International Trade (DIT) Tradeshow Access Support funding is granted, a single claim is made on behalf of the whole British group to DIT. Therefore the Customer must comply with the deadlines for the submission of appropriate

documentation in order for the grant (if the Customer is eligible and supplies appropriate proofs) to be secured and paid to the Customer, minus any outstanding payments owed to the Supplier at that time.

- 3.4 If the Customer is claiming a government grant to exhibit at an exhibition, the Customer must submit an exhibitor questionnaire to DIT prior to presenting its claim to the Supplier for grant, if eligible and within one month of the exhibition, or any right to funding will be withdrawn.
- 3.5 The Customer must acquaint itself with and comply with all terms and conditions laid down by the exhibition organisers and with all local technical requirements and safety regulations.
- 3.6 The Customer is responsible for taking out suitable and adequate insurance against any risks associated with taking part in the exhibition or the event and/or the cancellation thereof.

#### **4. SUPPLY OF SERVICES**

- 4.1 Upon receipt of a completed Order Form the Supplier shall use reasonable endeavours to meet the Customers' requirements as specified in the Order Form.
- 4.2 While the Supplier will endeavour to meet the Customer's requirements, the Supplier is unable to guarantee that the Customer will receive a specific space, a site or size of stand at an exhibition or specific participation at any other event.

#### **5. CHARGES AND PAYMENT**

- 5.1 The Customer is liable for the cost of the non-refundable exhibitor support package fee or management fee on receipt of the completed Order Form.
- 5.2 The Supplier shall invoice the cost of the exhibitor support package or management fee and send a further invoice to the Customer for the space, stand build or place allocated at the exhibition or event or other services supplied as relevant.
- 5.3 The Customer shall pay each invoice submitted by the Supplier:
  - (a) within 14 days of the date of the invoice; and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, andtime for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under Clause 8, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue

sum, whether before or after judgment. Interest under this Clause 5.5 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

- 5.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) by the Customer; the Supplier reserves the right to set any government grant due to the Customer against any monies owed to the Supplier.

## **6. DATA PROTECTION AND DATA PROCESSING**

- 6.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data.
- 6.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 6.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 6.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 6.5 The Supplier warrants that, having regard to the state of technological development and the costs of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
    - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (ii) the nature of the data to be protected; and
  - (b) take reasonable steps to ensure compliance with those measures.
- 6.6 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 6.7 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- (a) is on terms which are substantially the same as those set out in the Contract; and
  - (b) terminates automatically on termination of the Contract for any reason.

**7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of damage to goodwill; and
  - (g) any indirect or consequential loss.
- 7.3 Subject to clause 8.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to £1,000,000.
- 7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.5 This clause 7 shall survive termination of the Contract.

**8. TERMINATION**

- 8.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 8.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause (b) to clause (d) or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**9. CONSEQUENCES OF TERMINATION**

- 9.1 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 9.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

**10. CANCELLATION**

- 10.1 Any requests to amend or cancel an Order Form must be made in writing by the Customer at the earliest opportunity.
- 10.2 If the Customer seeks to make any amendment to an Order Form or makes a request for cancellation, then all such correspondence shall be acknowledged by the Supplier and the Supplier shall notify the Customer the outcome of such request.
- 10.3 In all circumstances where the Customer requests to amend or cancel an Order Form the Supplier shall retain the non-refundable exhibitor support package or management fee.
- 10.4 Within 90 days of the exhibition or the event the Customer becomes liable for the full cost of the space, stand build or other services ordered at an exhibition or event. In the unlikely event that the Supplier is able to secure a full or partial repayment of the costs payable for the exhibition space, stand build or other services ordered then this amount (minus any additional costs incurred by the Supplier) will be repaid to the Customer.

11. **GENERAL**

11.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

11.2 **Assignment and other dealings.**

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

11.3 **Confidentiality.**

- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause (b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11.3; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

11.4 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

11.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).



- 11.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.8 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or emailed to the person who signed the Order Form with a read receipt.
  - (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 10.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email to the person who signed the Order Form with a read receipt or by fax, at receipt of email or fax on the next Business Day after transmission.
  - (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 11.9 **Third party rights.**
- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.