

Interpretation

Company	Customer	Installation Site/the Site	Garden Building	Non-Structural Elements	Optional Extras	Structural Elements
National Garden Construction Ltd (Company number 11151729) principal place of business is Unit C12 Sandy Business Park, Gosforth Close, Sandy, Beds SG19 1RB.	The person(s) firm or company who purchases a Garden Building from the Company.	The site specified by the Customer for installation of the Garden Building.	The Garden Lodge(s) or Office(s) or Studio(s) or Annexe(s) or Extension(s) specified in the Order Form and/or Order Acceptance Confirmation (which for the avoidance of doubt shall not include any Optional Extras).	Any parts of the Garden Building which are not either Structural Elements or Optional Extras including (without limitation) all internal cladding, windows and doors.	The optional extras supplied by third parties made available to the Customer and specified in the Order Form.	The floor, roof and external walls of the Garden Building.

1. The Contract

- The Company agrees to sell and the Customer agrees to purchase the Garden Building subject to these terms and conditions.
- The Customer agrees that the quotation accepted by the Customer, any site survey form, and these terms and conditions constitute the entire contract between the Company and the Customer and there are no representations, warranties, conditions and terms of obligations (implied or otherwise) whether written or oral, express or implied by custom or otherwise other than those specifically provided for in clauses 1.2, 1.3 and 1.4 hereof.
- The quotation issued by the Company and which the Customer accepts shall not be amended, modified or varied except and unless set out in writing and signed by a Director of the Company.
- There will be no amendment, modification or variation to the contract as set out in Clause 1.2 hereof, except and unless set out in writing and signed by a Director of the Company. The Customer will indemnify the Company for any costs (including labour, materials and other consequential costs and charges) incurred as a result of changes requested or caused by the Customer, including changes to the installation date.
- Following the Pre Build meeting with the client, should the Customer wish to make any alterations requiring the preparation of new designs (including but not restricted to alterations to the kitchen layout), a fee of £1000 plus VAT will be charged for the preparation of such new designs, payable prior to the commencement of such drawings.
- Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the Garden Building, which is not confirmed in writing by the Company as provided for in Clause 1.4 above, is followed on or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- Any typographical or clerical error or omission in any document issued by the Company shall be subject to correction without any liability on the part of the Company.
- The headings in this Contract are for convenience only and shall not affect their interpretation.
- In these Terms where two or more individuals are included in the expression "the Customer" any obligation upon them shall be deemed to be a joint and several obligation.

2. Orders

- All orders shall be on a written quotation form which is accepted by the Customer by way of the Customer's signature on the quotation form and either a) payment to the Company of the requisite deposit, or b) instruction of the Company to apply for Planning Permission in accordance with the procedure set out in clause 4 hereof. No contract will be concluded until the Customer has either made payment of the initial deposit provided for in clause 9 hereof, or the said Planning Permission instructions have been confirmed.
- If for whatever reason the procedure set out in clause 2.1 above is not followed, the Customer in accepting delivery and installation of the Garden Building shall be bound by these terms and Conditions.

3. Customer Warranties

The Customer warrants that:

- It is the proprietor of the Installation Site;
- it will grant the Company suitable access to the Installation Site at all times as required in order to perform this contract;
- the Installation Site and any access routes to the Installation Site have the capacity to support a maximum load of 10 tonnes;
- the Installation Site is accessible and free from any dangers, and in particular that the Installation Site is sound, level and free from any obstructions;
- The Installation Site has not been subject to subsidence, landslip or land-heave;
- Prior to the commencement of installation, it has obtained all required consents for the installation of the Garden Building including (without limitation);
 - consent from any mortgagee or chargee of the Property; and
 - consent or planning permission from any local or public authority;
- The installation of the Garden Building does not contravene any planning or other regulation or legislation.
- the Company will have unrestricted access to an adequate supply of electricity at all times during the installation at the Installation Site;

The Customer hereby agrees at all times to keep the Company indemnified against all claims costs demands and liabilities arising as a result of the Customer's breach of any warranty in this Clause 3 including (without limitation) the costs incurred by the Company as a result of any delay whilst such consents are obtained.

The customer agrees that any and all communications with, or queries to, the Company, will be made direct to a member of the Company in person, by letter, by email, by fax or by telephone. The Company will respond as soon as reasonably practicable. The Company is unlikely to respond as promptly to postings on social media.

4. Planning Permission, Building Control and Build Over Agreements

- The Company if asked to do so, will advise the Customer upon the requirements for planning permission, to the best of its ability and knowledge. The accuracy of such advice is not guaranteed.
- If engaged to do so, the Company will arrange for a planning application for the proposed Garden Building to be submitted on behalf of the Customer. The Company cannot guarantee that permission will be obtained. Any contract for the preparation and/or submission of an application for planning permission by the Company will be in writing and save as provided for in these terms and conditions, will be treated as an entirely separate, and separable, contract.
- Other than as provided for in Clause 4.2 above, the Company does not take responsibility for obtaining planning permission. The Customer takes responsibility for ensuring that all appropriate permission and permits have been obtained before the start of construction.
- In the event that the Company is engaged to submit an application for planning permission, and that planning permission is refused, either the Company or the Customer will be entitled in that event to terminate the contract without penalty but subject to the provisions of these terms and conditions (and in particular clause 9.4) as to payment.
- The Company will advise the Customer upon the requirement for obtaining building control approval based on its understanding of the regulations, and will assist to the best of its ability in ensuring that such approval is obtained. The Company cannot guarantee the accuracy of its interpretation. The Company cannot guarantee that any necessary building control approval will be obtained.
- Due to the variations in interpretation of building control approval requirements, the Company cannot take responsibility for obtaining building control approval. The Customer accepts responsibility for ensuring that all appropriate building control approval is obtained.
- In the event that additional works are required in order to secure planning or building control approval, the Customer will indemnify the Company for any additional costs (including labour, materials and other consequential costs and charges) incurred as a result of any such additional works.
- In the event that the local water supplier or any other similar body seeks to exercise statutory powers available to them, and (without limitation to that generality) requires any works to be carried out to relocate or otherwise alter any drain, sewer or item of water infrastructure, the Customer will indemnify the Company for any additional costs thereby incurred (including labour, materials and other consequential costs and charges, and including any consequential costs of variations to the proposed Garden Building installation works).

5. Construction

- The Garden Building shall be erected by the Company at the Installation Site
- Any date(s) specified by the Company for the erection of the Garden Building is an estimate only and will be confirmed by the Company at least 5 working days before installation. This date shall not be of the essence. Where no dates are specified, installation will be within a reasonable time. Subject to the other provisions of these terms and conditions the Company will not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery or in the actual installation of the Garden Building, nor will delay in installation entitle the Customer to terminate or rescind the Agreement. Any liability of the Company for non-delivery of the Garden Building shall be limited to refunding the deposit (if any).
- The Company shall use all reasonable endeavours not to cause damage to the Customer's property, however the Company will not be liable for any damage caused.
- If in the reasonable opinion of the Company the installation site is not accessible or does not otherwise comply with Clause 3 the Company may without limiting its rights and in its absolute discretion defer installation to a later date or the Company may cancel the Agreement with immediate effect whereupon the Customer's deposit will be returned less the cost of all the Company's charges and expenses in connection with the Agreement up to the time of such cancellation.
- Unless the company has been engaged to connect the electricity supply it is the customer's responsibility to arrange for a qualified electrician to connect the Garden Building to the Customer's electricity supply and the Company excludes all liability in this respect. If the Company has agreed to lay or install cables or conducting media to and from the Garden Building it remains the Customer's responsibility to specify the type of cable/conducting media required and arrange for a qualified electrician to connect the Garden Building to the Customer's electricity supply.

6. Company Warranty

- The Company warrants that the Structural Elements of the Garden Building will be free from any significant defect for a period of 10 years from the date of erection of the Garden Building.
- If the Garden Building does not conform to these warranties the Company will take such steps as it deems necessary to bring the Garden Building into a condition where it is free from such defects, or, at the option of the Company, refund the purchase price of the Garden Building to the Customer. The liability of the Company shall not in any event exceed the total purchase price of the Garden Building. The taking of such steps in terms of this clause 6.2 shall constitute an entire discharge of the Company's liability under this warranty. If the Company opts to refund the purchase price any such refund is conditional upon the Customer providing the Company with access and all reasonable assistance that it reasonably requires in order to remove the Garden Building and upon such removal ownership of the Garden Building shall vest in the Company.
- The Company warrants the workmanship in installation of the Non-Structural Elements for a period of one month after completion of the installation. Any such defects in workmanship must be brought to the attention of the Company in writing within a period of one month after completion of the installation. The Company will thereupon take such steps as it deems necessary to bring the Garden Building into a condition where it is free from such defects. The Company will not be obliged to attend on more than one occasion for the adjustment of doors, joinery, settlement cracking or the like. Once such steps as referred to in this Clause 6.3 have been completed, the Company will not be obliged to attend again at the Garden Building to remedy any further alleged defects in workmanship.
- It will be entirely within the discretion of the Company to determine what works if any are required in terms of clauses 6.2 and 6.3 and it will be entirely for the Company in its reasonable discretion to determine whether and when such works have been completed and the Garden Building brought into a condition where it is free from defects.

- 6.5. The Company provides no warranty in relation to the materials and construction of Non-Structural Elements, which are manufactured by third parties. Any issues relating to the manufacture of the Non-Structural elements must be referred to the manufacturer. The Company will use all reasonable endeavours to assign the benefit to the Customer of any manufacturer's warranty relating to the Non-Structural Elements capable of assignment.
- 6.6. The Company provides no warranty in relation to any Optional Extras save that it will use all reasonable endeavours to assign the benefit to the Customer of any manufacturer's warranty relating to the Optional Extras capable of assignment. Any issues relating to Optional Extras must be referred to the manufacturer.
- 6.7. All warranties, conditions and other terms implied by statute or Common Law (save for conditions implied by Section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Agreement.
- 6.8. For all claims under the warranties given in this Clause 6, the Company will be entitled to levy a call out charge payable by the Customer of £200 plus VAT if the Company in its sole and reasonable discretion determines that there is no fault on the part of the Company, or that the fault lies with the Customer or with a third party. For the avoidance of doubt, the Company will make no charge in respect of claims accepted by it under Clauses 6.1, 6.2 or 6.3.
- 6.9. The warranty given in this Clause 6 shall not apply to any defects in the Garden Building arising as a result of any breach of the Customer's Warranties set out at Clause 3 above or as a result of any subsidence, landslip or land-heave affecting the Installation or any other form of instability affecting the Installation Site.
- 6.10. Nothing in these terms and conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 6.11. The Company is a member of the Independent Warranty Association and will work within the rules of that Scheme. The Customer will be entitled to the benefits of registration by the Company in said Scheme.
- 7. Alteration in Specification**
The Company reserves the right to make any minor changes in the specification of the Garden Building which do not materially alter their aesthetics, quality or function or where it is necessary to conform to any applicable safety or other statutory requirements.
- 8. Property and Risk**
- 8.1. Title and keys for the Garden Building shall not pass to the Customer until the Company has received payment in full (whether in cash or cleared funds) of all sums due to it in respect of the Garden Building. Until such time as payment has been made in full by the Customer, title to the Garden Building, all materials or items supplied for its construction, and all materials delivered by or to the Company on site, remain the property of the Company. In the event of non-payment in terms of Clause 10 hereof, the Customer if called upon to do so will provide the Company with access and all reasonable assistance that it reasonably requires in order to remove the Garden Building and/or any such materials.
- 8.2. Risk in the Garden Building shall pass to the Customer upon handover of the keys and responsibility for effecting and maintaining insurance cover passes to the Customer at that time.
- 9. Payment**
- 9.1. The price of the Garden Building and any Optional Extras shall be set out in the Order Acceptance Confirmation. The price shall be inclusive of any value added tax unless stated otherwise but excludes any other applicable tax which the Customer shall pay in addition to the price.
- 9.2. All prices quoted are valid for 90 days from the date of quotation. Any orders placed after this 90 day period has elapsed may be subject to price changes.
- 9.3. In cases where the Company is not contracted to apply for planning permission, payment arrangements are as follows:
25% deposit of all sums payable to the Company is payable on ordering the Garden Building from the Company. Said payment must be received by the Company no later than 5 working days prior to the commencement of building works.
A stage payment of 25% is due on commencement of ground works.
A further stage payment of 45% is due upon commencement of the plaster board.
The final balance is payable at the time the keys to the Garden Building are handed over to the Customer.
Time is of the essence in making payment.
- 9.4. In cases where the Company is contracted to apply for planning permission, payment arrangements are as follows:
The Company offers a free planning service on the following terms and conditions.
The only cost to be borne by the Customer in relation to a first planning application will be the applicable local authority planning fees. Payment of a sum equivalent to the applicable local authority planning fees shall be payable to the Company on commencement of a planning application.
In the event that planning permission is refused, and the Customer does not wish to proceed further, the Company will make no charge (other than payment to the local authority of the relevant fee referred to above).
In the event that planning permission is refused and the Customer wishes to lodge an appeal to the local authority against such refusal, the Company will charge a sum of £900 plus VAT for the lodging and conduct of the appeal.
In the event that planning permission is granted, but the Customer intimates that it does not wish to proceed with construction of the Garden Building, or fails to confirm in response to the Company's reasonable enquiries that it wishes to proceed, the Company will charge the Customer a sum of £3000 plus VAT (in addition to the local authority fees referred to above), payable with immediate effect.
Once planning permission has been granted, a payment of 25% is due prior to commencement of building works. Said payment must be received by the Company no later than 5 working days prior to the commencement of building works.
A stage payment of 25% is due on commencement of ground works.
A further stage payment of 45% is due upon commencement of the plaster board.
The final balance is payable at the time the keys to the Garden Building are handed over to the Customer.
Time is of the essence in making payment.
- 9.5. For the avoidance of doubt, in all circumstances the full price of the Garden Building will be payable before the keys are handed over notwithstanding that any Optional Extras may not have been installed or are not functional.
- 9.6. The Customer shall make the full payment due without any deduction whether by way of set-off, counterclaim or otherwise and no payment shall be deemed to have been received until the Company has received cleared funds.
- 9.7. The Company reserves the right to alter its price at any time.
- 10. Non-payment and Termination**
- 10.1. If the Customer fails to make the full payment on the due date then without prejudice to its other rights and remedies the Company may charge interest from the due date until payment on the amount unpaid at the rate of 5% per annum above the Lloyds TSB base lending rate from time to time compounded monthly until payment is made in full. For the avoidance of doubt, such interest charge is a reasonable estimate of the Company's loss and is compensatory and not penal.
- 10.2. Notwithstanding the above, and without prejudice to the company's right to seek payment or damages in terms of clause 10.1, if full payment has not been made on the due date the Agreement may be terminated forthwith by the Company serving not less than 48 hours written notice to the Customer, whereupon the Company shall be entitled to remove the Garden Building and for such purpose the Company shall have an irrevocable licence or authority to enter upon the Installation Site with such transport as may be necessary to recover the Garden Building. The Customer shall render all reasonable assistance to the Company to enable the electricity supply to be disconnected and to dismantle and remove the Garden Building from the site.
- 10.3. If the Company takes the action permitted by Clause 10.2 the Customer shall pay a removal charge being £2500 plus VAT together with the cost of arranging for an electrician to disconnect the power supply. Such removal charge is a reasonable estimate of the cost to the Company and is compensatory and not penal.
- 10.4. For the avoidance of doubt, the Customer shall not be entitled to terminate this contract once entered into, nor any contract in respect of planning permission as referred to in Clause 4.2, save as expressly permitted to by operation of law. In the event that the Customer does seek to terminate the contract, or any contract in terms of Clause 4.2, prior to completion, the Company will be entitled to damages for its whole consequential losses whether direct or indirect and however caused. The Company shall in that event be entitled to retain any stage payments made in terms of clauses 9.3 or 9.4 as representing a reasonable estimate of costs incurred to that point, but without prejudice to the Company's right to pursue other or further losses incurred by it.
- 11. Photographs and Publicity**
The Customer agrees to permit the Company to take such photographs or other images (whether digital or otherwise, and however stored) of the Garden Building and its environment as the company sees fit. The Customer agrees that the property in such photographs and images rests with the company, even where other property owned by the Customer, or images of the Customer him or herself feature incidentally in the image. The Company shall be entitled to use such images and/or the general location of the Garden Building for purposes of advertising or promotion as it sees fit in its sole discretion, and the Customer hereby expressly consents to such use. The Company shall not use the Customer's name or precise address without the further express consent of the Customer.
- 12. Enforceability and Severability**
Any provision of these Terms which is held to be illegal, invalid, unenforceable or unreasonable whether in whole or part shall to the extent necessary be deemed severable and the other provisions of these Terms and Conditions shall remain unaffected.
- 13. Assignment**
- 13.1. The Customer shall not be entitled to assign or transfer the benefit of the Agreement or any part of it without the Company's prior written consent.
- 13.2. The Company may assign the Agreement or part of it to any person, firm or company.
- 14. Damages**
Save as described in these terms and conditions the Company shall not be liable to the Customer for any loss or damage whether direct or indirect and however caused. In any event the Company's liability to the Customer in respect of the non performance of any of the Company's obligations shall be limited to the price of the Garden Building.
- 15. Force Majeure**
The Company shall not be liable to the Customer or deemed to be in breach of these terms and conditions because of any delay or failure to perform any of the Company's obligations if the delay or failure was due to any cause beyond the Company's control.
- 16. Insolvency**
If the Customer shall go into liquidation whether compulsory or voluntary (except the purposes of a bona fide reconstruction or amalgamation), or if a petition shall be presented or an order made for an administrator, or if a receiver, administrative receiver or manager shall be appointed over any part of the assets or undertaking of the Customer, or the Customer being an individual shall become bankrupt or make any arrangement with its creditors, then without limiting the Company's remaining rights the Customer shall become immediately liable for full payment of all sums then due together with all losses arising to the Company as a result of such circumstances arising, and shall be entitled to give notice to the Customer to terminate the Agreement pursuant to Clause 10.2.

17. **Notices**

Any Notices to be given shall be in writing and be deemed to be given if left at the last known address of the Company of the Customer as the case may be or sent to the same by first class post or facsimile and shall be deemed to have been received one working day after post, fax or delivery as the case may be.

18. **Waiver**

No failure or delay on the part of the Company to exercise any right or remedy under these Terms shall be construed or operate as a waiver thereof. The rights and remedies provided are cumulative and are not exclusive any rights or remedies provided by law.

19. **Governing Law**

Any claim or dispute arising out of these Terms shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English courts.