

1 Interpretation and Definitions

- 1.1 a) The “Company” shall mean Alastair Guy Playgrounds.
- b) The “Customer” shall mean you, the customer ordering and purchasing Goods and Services from the Company.
- c) The “Contract shall mean the contract for Goods and Services made between the Customer and the Company.
- d) The “Description” shall mean the description of the Goods and Services as set out in the Order.
- e) A “Force Majeure Event” shall mean an event or circumstance beyond a party’s reasonable control.
- d) The “Goods” shall mean the goods sold or supplied by the Company to the Customer under this contract.
- e) The “Order” shall mean the Customer’s order for Goods and Services as set out in the [project brief **OR** Customer’s purchase order form **OR** (insert other process)]
- e) The “Services” shall mean any services provided by the Company to the Customer (whether or not the Customer shall purchase goods) which is not covered by the definition of ‘goods sold or supplied’
- f) If you order Goods and Services on behalf of a company, organisation or other entity, you represent and warrant that you are authorised to bind the company, organisation or other entity to our agreement (including these terms and conditions).
- g) No employee of the Company or its agents has authority to make any warrant, statement or promise concerning the goods except in writing signed by a duly authorised employee of the Company.

2 Basis of Contract

- 2.1 These terms and 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods and Services in accordance with these terms and conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- 2.3 The Order shall only be deemed to have been accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

3 Project Procedure

- 3.1 Concept Design (level 1- Free) based on Customer Specification Documentation (Tender Pack/Brief/budget/site details) includes - Site visit and meeting, Concept Sketches and Estimate (validity period applies).
- 3.2 Contract Signature, Project Engagement Fee payment (10%) Staged payments begin (see payment terms clause 6.2)
- 3.3 Level 2 – Development of Detailed Design & Costing (Detailed Design Phase) (design changes incur further charges)
- 3.4 Final Designs and Cost agreed, Production begins.

4 Acceptance

- 4.1 In accordance with clause 2.3:
 - a) Any Estimate issued by the Company shall be open for acceptance at any time during the validity period which is shown on the Estimate. Beyond the validity period, the Company reserves the right to review our submission if requested and to provide a revised price.
 - b) Any Estimate is made on the understanding that it will be accepted in full. In the event of partial acceptance of the Estimate by the Customer, a revised written Estimate may be sent to the Customer by the Company.
 - c) Orders are accepted and estimates of delivery are given conditionally on the Company being able to secure the necessary labour or materials and without responsibility for delays or non-fulfilment arising through any breach of this Contract due to any cause beyond its reasonable control as defined in clause 12.1 below.
 - d) Illustrations contained in catalogues, price lists, promotional literature and other material are for the purpose of general description only and shall not form part of the Contract.
 - e) It is the Customers responsibility to check that the Contract is correct and to notify the Company of any mistakes immediately.
 - f) Alterations or additions to Orders, however made, shall not be binding until confirmed by the Company in writing.
 - g) The Company reserves the right to change products, specifications or prices without prior notice.
 - h) It is the Customer's responsibility to ensure that they comply with local planning regulations. The Company will not be responsible for any planning issues relating to the Customer site.

5 Prices

- 5.1 a) Prices are as per The Company's quotation valid at the date of Contract signature. The Company reserves the right to amend the pricing if the Contract does not proceed within the validity date of the Company's quotation (and if such delay is caused by the Customer). All prices, unless otherwise stated, are exclusive of VAT. The Customer shall pay VAT at the prevailing rate.
- b) If the Customer requires alteration to the Order, the price shall be varied accordingly and the Company entitled to recover any ancillary costs incurred.

6 Payment

- 6.1 Invoices shall be submitted by The Company in accordance with the payment schedule specified within the contract
- 6.2 Orders over £5000 GBP: require staged payments. Installation Payment: required by day of delivery.
- 6.3 Our payment terms request a 10% project engagement payment upon contract signature, and the remaining instalments paid in line with the payment schedule. All costs quoted by the Company are excluding VAT. VAT will be added at the applicable rate at that current time. Additional costs will be billed separately.
- 6.4 If for any reason the Company does not receive unconditional payment in full within 30 days of billing, the Company may charge the statutory interest rate, currently 8% plus Bank of England base rate, 30 days after the payment is due.
- 6.5 If the customer fails to pay any sum due under the agreed contract, The Company may, after giving the customer 7 days' notice of its intention to do so, cease all work in respect to the project or any part thereof until the payment is made. Any costs incurred by the Company due to late payment of invoices by the Customer will be charged to the Customer.
- 6.6 The Customer shall NOT be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Customer (whether or not the Goods or Services are to be provided by instalments and in such case each instalment is deemed to constitute a separate and distinct contract). In the case of any short delivery to the Customer or minor faults arising during installation, the Customer shall remain liable to pay the full invoiced price of all other Goods or Services supplied.

- 6.7 Payments can be made via cheque or BACS payment. BACS payment details are on the submitted invoices.

7 Retention of Title and Insurance

- 7.1 Title to Goods supplied shall remain with the Company, even when the Goods are processed further, until paid for in full. Risk or damage to, or destruction of, and responsibility for insurance of the Goods shall pass to the Customer at the time of despatch of the Goods by the Company.
- 7.2 In the case of a default in payment the Company shall be granted access rights in order to repossess any Goods that have not been paid for at the time of default.
- 7.3 The Company reserves the right to use all images and media created, in advancing the profile of the Company.

8 Equipment & Designs

- 8.1 a) All sizes and colours shown are approximate. Variations during the course of manufacture cannot be avoided and liability is not accepted for them.
- b) When Goods are offered and supplied to a Customer's designs and specifications no guarantee is given or implied of their suitability for the purpose for which they are intended.
- c) All designs supplied by the Company are protected by copyright and are the property of the Company. They may neither be copied nor duplicated without written consent. They may not be imparted or made accessible to a third person. Any further usage needs the consent of the Company. Unlawful usage is liable to prosecution and is obliged to compensation. The Company grants the Customer a royalty free indefinite non-exclusive licence to use any Goods purchased from the Company.

9 Delivery

- 9.1 a) In the case of a Contract including Installation and Commissioning; the Company will be responsible for the Play Area, including all equipment, Surfacing and Ancillaries until Practical Completion at which time it will transfer to the Customer.
- b) For the delivery of play equipment to mainland England and Wales, carriage will be charged at 10% of the Order value. For deliveries outside mainland England and Wales the price shall be calculated on application.
- e) The Customer shall be responsible for giving the Company clear and accurate instructions as to the place of delivery including a post code. Failure to do so shall incur any costs from incorrect deliveries.
- f) Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Company does not guarantee that the Goods will be delivered by such date or accept liability for failure to meet the date.
- g) The Company shall not be liable for any delay in deliver of the Goods that is cause by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instruction or any other instructions that are relevant to the supply of Goods.
- h) If delivery has been clearly arranged and the Customer is not available or prepared to accept delivery the Company may leave the Goods on the premises without the responsibility for loss or damage to them.
- i) Any alterations to the Order by the Customer may delay the completion of the Order.
- j) All deliveries by the company may be made via articulated lorry with the assumption that access is suitable, unless otherwise specified. If alternative delivery methods are requested, the cost for delivery is subject to change.

10 Risk

- 10.1 The goods are at your risk from the time of delivery.

11 Your right of cancellation

- 11.1 a) There shall be an administration charge for Orders or part Orders cancelled.
- b) Any cancellation made after a staged payment will result in forfeiting the payment.

12 Limitations of Liability

- 12.1 Nothing in these terms and conditions shall limit or exclude the Company's liability for:
- a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - b) Fraud or fraudulent misrepresentation;
 - c) Any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- 12.2 Subject to clause 12.1:
- a) The Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract
 - b) The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods and Services.

13 Termination

- 13.1 The Company shall have the right to terminate this Contract with immediate effect by giving written notice to the Customer if:
- a) The Customer failed to pay any amount due under the Contract on the due date for payment;
 - b) The Customer commits a breach of the contract and (if such breach is remediable) fails to remedy the breach within a reasonable time of a written notice to do so;
 - c) The Customer 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 solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - d) The Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.2 On termination of the Contract for any reason the Customer shall immediately pay the Company all of the Company's outstanding unpaid invoices and interest.
- 13.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

14 Force Majeure

- 14.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failing to perform, any of its obligation under the Contract if such delay or failure result from a Force Majeure Event.
- 14.2 If the period of delay or non-performance continues for 12 weeks, the party not affected may terminate this Contract by giving 4 weeks written notice to the affected party.

15 Infringements:

- 15.1 a) The Customer shall indemnify the Company against all damages, penalties, cost and expenses arising out of any claim by any third party for any infringement or alleged infringement of any third party's industrial or intellectual property rights in any work carried out in accordance with the Customer's specifications. In the event of a dispute arising between the Company and the Customer, the Law of England shall apply.

16 Guarantee and Maintenance

- 16.1 The Company warrants that on delivery, and for the period set out in the table below (**Warranty Period**), the Goods shall:
- a) Conform with their Description;
 - b) Be free from material defects in design, material and workmanship; and
 - c) Be fit for any purpose held out by the Company.

Type of Goods	Warranty Period (from date of invoice)
Installation & Site Works - covers workmanship and materials	1 year
against malfunction and breakage of movable parts, bearings, springs, nets, and general wear and tear.	2 year
against breakage; also any malfunction caused by the construction, processing and material selection.	2 years
on timber (with steel feet)	10 years
corrosion of stainless steel components and hot-dip galvanized.	15 Years

- 16.2 The warranty set out at clause 16.1 above does not cover excessive wear and tear and shall only apply if:
- a) The Goods have been properly kept, used and maintained in accordance with the manufacturers or Company's instructions and have not been modified unless with the Company's consent;
 - b) The fault is not due to accidental or wilful damage, interference with or maintenance of the Goods by persons other than the Company or its duly appointed Agent;
 - c) If the Goods have been manufactured to the Customer's design, the fault is not due to faulty design by the Company;
 - d) The defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; or
 - e) The Customer alters or repairs such Goods without the written consent of the Company.
- 16.3 All defective parts, once replaced by the Company shall become the property of the Company.

17 Playground Installation:

- 17.1 a) We state in all situations that installations are carried out by the Company. Due to the nature of our specialist timber equipment on site adjustments may be required.
- b) The Company cannot accept responsibility for ground conditions and therefore cannot accept responsibility for ground erosion, subsidence, settlement under equipment after installation. These should be viewed as maintenance issues as pedestrian traffic, weather and the ground conditions may cause these issues which the Company cannot control or be held responsible for.
- c) The Company cannot be held responsible for any accident occurring on site arising from improper use.
- d) The Company assumes that the proposed installation site is free from obstacles, in and above ground. In the event that items such as cables, water pipes or concrete sections are found on site of which the Company was not already aware as a result of its prior inspection and we have to spend extra time removing these obstacles then the Customer shall be liable for extra time taken and extra costs incurred.
- e) If we are contracted to remove concrete foundations or concrete slabs as part of the works, we will cost these works on the basis that they are not reinforced and are no larger than 150 mm in depth. The customer will be liable for any additional cost incurred.
- f) Any turf laid as part of the installation will be the customer's responsibility to water and maintain as soon as the turfing is completed. The Company will not be responsible for turf that has died due to lack of care by the customer.

18 Data Protection

- 18.1 Where you provide the Company with your personal data, the Company will process that data in accordance with the Data Protection Act 1998 (and any other relevant legislation).

19 Images

- 19.1 The product images are for illustrative purposes only and may differ from the actual products.

20 Design Changes

- 20.1 Level 1 – Free. The Company will provide the Customer with a Concept Design based upon the Customer Supplied Specification Documents and any other documentation or communication associated with the Customer’s Tender Pack or Design Brief which has been agreed with the Customer.
- 20.2 It is implied that the Design is agreed at Contract Signature and the installation will be based upon that Design.
- 20.3 Level 2 – Minor Adjustments to Concept Design with a cumulative time not exceeding 2 hours.
- 20.4 In the event that further changes following Contract Signature are required at the Customer’s request; the Company reserves the right to modify our price based on the scope and scale of the change.

21 Design Cost Rate Guide

- 21.1 Head Designer £90.00 per Hour
Assistant Designer £65.00 per Hour