

## **HCP SCHEME TERMS AND CONDITIONS**

### **1 DEFINITIONS**

<b>Application Form</b>	HTA's application online form for participation by Applicants in the Scheme
<b>Applicant</b>	the applicant as named on the Application Form
<b>Conditions</b>	these terms and conditions
<b>Contract</b>	the contract between HTA and the Applicant for the provision by HTA of the Services in connection with the Scheme, in accordance with these Conditions.
<b>Contribution Sum</b>	the contribution sum as specified on the Applicant's Application Form
<b>Fee</b>	The fees as specified at clause 6.1
<b>HTA</b>	Horticultural Trades Association, registered in England and Wales with company number 00169606, of Horticulture House, Chilton, Didcot, OX11 0RN
<b>HCP</b>	Horticultural Crop Protection Limited, registered in England and Wales with company number 14502535, of Bga House, Nottingham Road, Louth, Lincolnshire, United Kingdom, LN11 0WB
<b>Original Purpose</b>	financial support for the day-to-day operations of HCP
<b>Services</b>	the invoicing, collection, holding and onward payment, after deduction of the Fee, of Contribution Sums, by HTA to HCP, pursuant to the Scheme
<b>Scheme</b>	HTA's scheme for the collection and processing of financial donations to support the operations of HCP, as set out in more detail in the Scheme Particulars
<b>Scheme Particulars</b>	the scheme particulars for the Scheme as published on HTA's website at: <a href="https://hta.org.uk/hcp/scheme-particulars">https://hta.org.uk/hcp/scheme-particulars</a>

### **2 INTERPRETATION**

- 2.1 These terms and conditions apply to all Applicants applying to HTA to make contributions to HCP pursuant to the Scheme.

### **3 BASIS OF CONTRACT**

- 3.1 A completed Application Form signed on behalf of the Applicant constitutes an offer by the Applicant for the provision by HTA of the Services, in connection with the Scheme, in accordance with these Conditions, and in consideration of the Fee.
- 3.2 The Applicant's offer is accepted by HTA upon the issue by HTA of an invoice to the Applicant for the Contribution Sum.
- 3.3 These Conditions apply to the Contract to the exclusion of any other terms that the Applicant seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

### **4 SUPPLY OF SERVICES**

- 4.1 HTA shall supply the Services to the Applicant in connection with the Scheme in accordance with the Application Form, these Conditions and the Scheme Particulars in all material respects.
- 4.2 In the event of any conflict between the Scheme Particulars and these Conditions, these Conditions shall prevail.
- 4.3 HTA shall use reasonable endeavours to meet any performance dates specified in the Scheme Particulars, but any such dates shall be estimates only and time is not of the essence.
- 4.4 HTA reserves the right to amend the Services, the Scheme Particulars and these Conditions if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and HTA shall notify the Applicant in any such event.
- 4.5 HTA warrants to the Applicant that the Services will be provided using reasonable care and skill.

### **5 APPLICANT'S OBLIGATIONS**

- 5.1 The Applicant shall:
  - 5.1.1 ensure that the information it provides in the Application Form is complete and accurate;
  - 5.1.2 co-operate with the HTA in all matters relating and pertaining to the provision by HTA of the Services;
  - 5.1.3 provide to HTA such additional information as HTA may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.

### **6 FEES, ONWARD PAYMENTS TO HCP, GENERAL**

- 6.1 HTA shall deduct and retain for itself £1 from every Contribution Sum received.
- 6.2 HTA shall transfer each Contribution Sum received less the Fee to HCP in accordance with the Scheme Particulars.

- 6.3 HTA does not undertake nor guarantee to process Contribution Sums to HCP which are received later than 31 October 2023.
- 6.4 If Contribution Sums have not been received by 31 October 2023 HTA will issue a credit note for the invoiced sum.
- 6.5 if Contribution Sums are received after 31 October 2023, HTA will either refund the Contribution Sum back to the Applicant or transfer it to HCP, at HTA's complete discretion.
- 6.6 The Applicant is entitled to revoke or cancel its Application Form at any time up until it has paid a corresponding Contribution Sum. Application Forms are non-cancellable from the time of receipt by HTA of the corresponding Contribution Sum.
- 6.7 HTA may amend details of the Scheme Particulars at will and without notice upon publication at: <https://hta.org.uk/hcp/scheme-particulars> , except that any amendment to the Original Purpose shall be subject to approval with and agreement of the Applicant.

## **7 APPLICANT ACKNOWLEDGEMENTS**

- 7.1 The Applicant acknowledges and accepts that Contribution Sums:
  - 7.1.1 are entirely voluntary and in no way a condition of HTA membership, assistance or any other benefit;
  - 7.1.2 are not in consideration of any favourable terms or benefits beyond those already provided by HTA membership, and/or any contracts or agreements with HTA whatsoever;
  - 7.1.3 do not oblige HTA to demand or require contributions from other businesses or HTA members; and
  - 7.1.4 are made by the Applicant entirely voluntarily and are not in return for any advantage bestowed upon the Applicant by HTA nor in return for any preferential treatment of the Applicant nor any less preferential treatment of any non-Applicant.

## **8 DATA PROTECTION**

The parties do not envisage that any personal data (as defined in UK Data Protection legislation) shall be transferred pursuant to an Application or in connection with the Services. In the event Personal Data will, in fact be transferred, the Parties agree to co-operate, collaborate and agree on any necessary data protection measures as required by the Data Protection legislation.

## **9 LIMITATION OF LIABILITY**

- 9.1 HTA has not obtained specific insurance cover in respect of its own legal liability for claims arising out of or in connection with the Scheme. The limits and exclusions in this clause reflect this and the Applicant is responsible for making its own arrangements for the insurance of any loss.
- 9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 9.3 Nothing in this clause 9 shall limit the Applicant's payment obligations under the Contract.
- 9.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 9.4.1 death or personal injury caused by negligence;
  - 9.4.2 fraud or fraudulent misrepresentation; and
  - 9.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.5 Subject to clause 9.4 (Liabilities which cannot legally be limited), this clause 9.5 sets out the types of loss for which liability is wholly excluded:
- 9.5.1 loss of Contribution Sums.
  - 9.5.2 loss of profits.
  - 9.5.3 loss of sales or business.
  - 9.5.4 loss of agreements or contracts.
  - 9.5.5 loss of anticipated savings.
  - 9.5.6 loss of use or corruption of software, data or information.
  - 9.5.7 loss of or damage to goodwill; and
  - 9.5.8 indirect or consequential loss.
- 9.6 HTA accepts no liability or responsibility to obtain or deliver any manner of benefit, membership, output or action from HCP either for itself or for the Applicant in return for, or as a result of payment of the Contribution Sum.
- 9.7 HTA accepts no liability nor responsibility for the recovery or refund, in whole or in part, of any Contribution Sum paid to HCP, for any reason.
- 9.8 HTA will not make representations on behalf of Applicants to HCP relating to any Contribution Sums.
- 9.9 HTA has given commitments as to compliance of the Services in clause 4. In view of these commitments, the terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 9.10 This clause 9 shall survive any termination or expiry of the Contract.

## 10 GENERAL

- 10.1 **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.
- 10.2 **Confidentiality.**

- 10.2.1 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 9.3.
- 10.2.2 Each party may disclose the other party's confidential information:
  - 10.2.2.1 to its employees, officers, representatives, contractors, 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, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.2; and
  - 10.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.2.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 10.3 **Third party rights.**
  - 10.3.1 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.
- 10.4 **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
- 10.5 **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.