



Ts and Cs

## Hibiscus Floral Design TERMS AND CONDITIONS

v. March 2023

"We" are:

Claire Higgs trading as Hibiscus Floral Design of Hibiscus Flower Studio, Pillerton Priors CV35 0PS

("Florist")

"You" are:

The customer purchasing Goods and/or Specified Goods from us (and where there is more than one person, they shall be jointly and severally liable).

("Client")

### 1. Definitions

In this agreement:

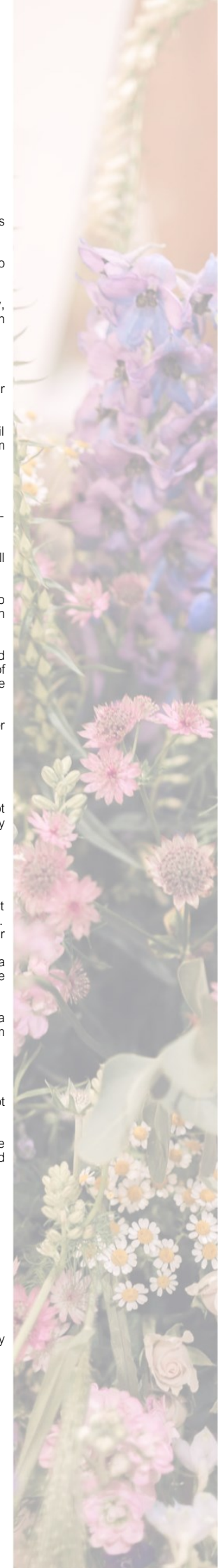
"Assignment"	means a combination of the Goods, Specified Goods and Extra Work you have instructed us to provide.
"Brief"	means the instructions you give to us to create the Goods and Specified Goods.
"Booking Fee"	means the sum paid by the Client at the commencement of the Assignment to secure the date of the delivery of the Goods, Specified Goods and any Extra Work to allow the Florist to commence work under the Brief
"Event"	means the occasion for which you have ordered the Goods.
"Extra Work"	means all of the work we do and the materials we buy to prepare or produce Specified Goods. This will usually mean creating bespoke designed flower and plant decorations and creations, including art work and design advice, or floral design solutions for interior or external spaces.
"Goods"	means any of the Goods we offer for sale on Our Website, or, if the context requires, Goods we sell to you. It includes Specified Goods.
"Intellectual Property"	means Intellectual Property of every sort, whether or not registered or registrable in any country, including Intellectual Property of kinds coming into existence after today; and including; among others, designs, copyrights, software, discoveries, know-how, together with all rights which are derived from those rights.
"Our Website"	means any website of ours and includes all web pages controlled by us.
"Quotation"	means a breakdown of the cost of your Assignment.
"Specified Goods"	means Goods which have been subject to Extra Work to your specific order.
"Terms"	means these Terms and Conditions.

### 2. Our Contract With You

- 2.1 We have set out in our Quotation what Goods and Extra Work you wish to receive from us and a date for your Event when we will deliver our Goods to you. We have set out the price and any requirements for the Assignment in our Quotation.
- 2.2 The Florist will use reasonable care and skill in performing the Assignment.
- 2.3 Verbal or email instructions by the Client to proceed will constitute an acceptance in full of these Terms. Variations to the Assignment may only be agreed in writing. Services outside the scope of the proposal will attract additional charges.
- 2.4 Any change of date or postponement of your Event will be agreed subject to our availability and will be deemed a cancellation by you and our cancellation terms shall apply unless we agree otherwise in writing.
- 2.5 We may change these Terms from time to time.

### 3. Extra Work

- 3.1 Our contract to supply Specified Goods is a contract for both the supply of Goods and the Extra Work you have asked us to do.
- 3.2 Extra Work is the bespoke design of your Goods to fit with your occasion or purpose specifications, design instructions or themes within your Brief.
- 3.3 The Extra Work shall be limited to the preparation of an initial design based on your Brief to us, and one round of amendments or revisions.
- 3.4 Wholesale redesign or significant changes to your Brief shall not be included as amendments or revisions and in that situation the contract will be terminated, and the Deposit forfeited. A new Quotation will then be provided by us, based on a new Brief and its design instructions.
- 3.5 Your final Brief will be sent to you for approval and sign off, and this will then allow the Specified Goods to be created. Any changes to the Brief thereafter may incur additional charges.
- 3.6 We only work with Goods provided by us. You cannot source any floral Goods for your Event yourself and if you do we will not work with them.
- 3.7 You will be entitled to a 45 minute initial consultation and a follow up consultation ( 1 1/2 hours in total ) and up to 1 hour of email amendments which are all included in our Quotation. Additional consultations are charged at £ 45.00 per hour
- 3.8 We will undertake Site visits where necessary. If you wish to meet us onsite and discuss then our hourly rate will be charged (£45.00) plus business mileage.



#### 4. Intellectual Property and Confidential Information

- 4.1 The Intellectual Property in all work we do in the process leading to completion of the Specified Goods and in the completed Specified Goods belongs to us. You cannot photograph, copy, reprint or use the designs for any other purpose or Goods, save as set out below.
- 4.2 If you change or create derivative versions of the Specified Goods, the Intellectual Property in those changed or derived versions also belongs to us.
- 4.3 We now grant an exclusive non-commercial licence to you, to use the Intellectual Property, by the use and enjoyment of the Specified Goods only, for a period of 99 years. You may not assign this licence in any circumstances. This licence is personal and non-transferable unless agreed in writing.

#### 5. Prices

- 5.1 Prices for Goods and Specified Goods are available on enquiry, either through Our Website or by telephone or email. We are registered for VAT. The price for the Goods and Specified Goods is set out in our Quotation.
- 5.2 We have a minimum price policy which allows you to reduce the order for our Goods and Services up to 10 % of the price in the Quotation up until 30 days before the Event. If you reduce the order for our Goods and Services below that minimum point, you will still pay at least our minimum price - the quoted price less 10%.

#### 6. Payment

- 6.1 We require you to pay a Booking Fee of £75.00 on acceptance of your quotation. Verbal or email instructions by the Client to proceed will constitute an acceptance in full of these Terms and Conditions.
- 6.2 The balance payment is required to be paid by you 1 month before the wedding day, including where applicable, any delivery costs, before we will send any part of the order.
- 6.3 The price in the Quotation will be paid after invoices rendered from time to time. Payment terms are on invoice, and payment is not deemed to have been made until the price has been paid in full. If payment is not made in full and within time the services may be suspended and payment in advance may be required before the services are re-commenced.
- 6.4 The Florist reserves the right to require some or all of the price to be paid in advance of the commencement of the services where applicable and agreed in writing. If payment is not made in accordance with the above clauses, the Florist reserves the right to charge an administration fee of £50 to late payments together with interest at the rate prescribed by the Late Payment of Commercial Debt (Interest) Act 1998 from the date payment was due until the date payment is made.
- 6.5 If we owe you money (for any reason) we will credit your nominated bank account as soon as reasonably practicable but, in any event, no later than 14 days from the date that we accept that repayment is due.

#### 7. Cancellation and Refunds

- 7.1 You are purchasing Specific Goods, and there is no right to cancel a contract to supply Specific Goods and no refunds are available. If you do not wish to progress with the order, and ask to cancel or terminate the agreement, unless we have agreed otherwise in writing, you will be liable to pay the full Quotation price for the Goods.
- 7.2 Our discretionary policy is as follows:
  - 7.2.1. The Assignment can be cancelled by either party in writing or by email subject to the matters set out in this clause.
  - 7.2.2. If we cancel the Assignment, the Booking Fee and any other additional money paid at the time of cancellation will be repaid to the Client within 14 days of cancellation, and no further refunds, sum or compensation will be payable to you by us arising from such a cancellation.
  - 7.2.3. If you cancel the Assignment more than 6 weeks before the date of delivery for the Event, then the Deposit shall be forfeited. No further sums will be due from you to us.
  - 7.2.4. If you cancel the Assignment less than 6 weeks before the date of delivery for the Event, the Booking Fee shall be forfeited. In addition, a cancellation fee will be immediately due, which shall be 100% of the price less any monies already paid ie: You will be required to pay the full price in these circumstances.
- 7.3 The Assignment may be terminated by the Florist if payment of the price is not made in accordance with these Terms, or if the Client commits a material breach of any of these Terms and fails to remedy the breach within 14 days of being notified in writing, or if the Client enters into any form of insolvency arrangement. Upon termination the Client shall immediately pay any outstanding sums to the Florist.

#### 8. Liability For Subsequent Defects

- 8.1 Please examine the Goods you receive from us immediately you receive them. If you do not tell us of any defect or problem within 7 days of receipt of the Goods, we shall assume that you have accepted them.
- 8.2 If the Goods do not meet your Brief, and are defective, you may reject them and return them to us. Our Goods are perishable and designed to be at their best on the day of delivery for your Event. They are guaranteed only for the 24 hours of the day of your Event. The Goods must be returned to us as soon as any defect is discovered but not later than 7 days from receipt to you.
- 8.3 We will return your money subject to the following conditions:
  - 8.3.1. We receive the Goods with labels and packaging intact.
  - 8.3.2. You tell us who you are, where you are and set out the fault complained of in writing. We cannot return your money unless we know who sent the Goods back.

If any defect is found, then we shall:

- 8.4.1. repair or replace the Goods, or
- 8.4.2. refund the full cost you have paid including the cost of returning the Goods.
- 8.5 Our Goods are hand-created and natural products and are, therefore, unique. Part of the character and nature of such natural Goods is that they are subject to colour and shade variations. Therefore, defect shall not include:
  - Colour and natural variation from photographs and samples.
  - Errors not identified by you, or any changes requested, at the time or after the Brief has been approved.
  - Our Goods are perishable and designed to be at their best on the day of delivery. We do not guarantee them beyond that date.

## 9. Delivery

- 9.1 Goods are delivered by us to the agreed location as set out in the Quotation.
- 9.2 We may deliver the Goods in instalments if they are not all available at the same time for delivery.
- 9.3 Goods are sent at our own risk until signed for by you or by any other person at the address you have given to us.
- 9.4 All Goods must be signed for on delivery by an adult aged 18 years or over. If no one of that age is at the address when the delivery is attempted, the Goods may be retained by the carrier.
- 9.5 When your Goods arrive, it is important you check immediately the condition and quantity. If your Goods have been damaged in transit, you must refuse the delivery and immediately contact us so that we may dispatch a replacement quickly and minimise your inconvenience. I will do all to rectify this at site
- 9.6 Signing "Unchecked", "Not checked" or similar is not acceptable.
- 9.7 Time for delivery specified on the order, if any, is an estimate only. If we agree with you to deliver on a particular day or at a particular time, we will do our best to comply. But no time given is to be treated as contractual. We are not liable to you for any expense or inconvenience you incur on account of delayed delivery or non-delivery.
- 9.8 Some Goods are so large and heavy that delivery times may be slightly longer. In this case, approximate delivery dates will be given when you place your order.
- 9.9 Where agreed in writing and in advance, we will provide your Goods in containers (such as vases, ceramics, bowls and bottles) or with props (such as candelabras and candle holders) which we loan to you to use the Goods at their optimum. Any containers or props provided to you remain our property and must be returned to us at the end of your usage. Any breakages by you (or your agents, employees, representatives of the venue or other suppliers) must be paid for or replaced "like for like".
- 9.10 If you pick up your Goods from us in person then:
  - 9.10.1 Goods are at your risk the moment they are picked up by you or your carrier;
  - 9.10.2 You agree that you are responsible for everything that happens after you take possession of the Goods, both on and off our premises, including damage to property of any sort, belonging to any person.
  - 9.10.3 If you have ordered a Moongate or Arch as part of the Goods to be provided for the Event, you must not attempt to move this item once we have placed it on site in its intended location. It is heavy and may cause damage to you or to the location if moved. Any relocation of the Moongate / arch by you or by anyone instructed or acting on your behalf is strictly prohibited, entirely at your own risk and not advised in any circumstances.

## 10. Disclaimers

- 10.1 In respect of any direct losses (in Contract or Tort) the total liability of the Florist will not exceed the return of all payments received, and thus, the limit of liability shall not exceed the value of the price paid.
- 10.2 The Florist's liability in respect of any loss of good will, loss of business, loss of profits, loss of anticipated savings, loss of use or for any other consequential, special or indirect loss or damage will be NIL.
- 10.3 Nothing in these Terms will exclude or limit liability for death or serious injury caused by the Florist's negligence.
- 10.4 If the Florist is limited or hindered from providing any Goods or services booked by the Client due to circumstances beyond its control eg government intervention, acts of god, civil disturbance, war, national or local disaster, strikes, labour disputes, epidemic and or pandemic, then the liability of the Florist to the Client shall not exceed the amount paid by the Client for the Goods and/or services. The Deposit shall be non-refundable, (being an approximation of the value of Goods and/or services already rendered and or expenses incurred) and the Florist shall (where the value of the Goods or Services already delivered to the Client or expenses incurred is greater than the value of the Deposit) be entitled to be paid additionally for all Goods and Services delivered to the Client up to that point. The Florist shall not be liable for any additional losses incurred by the Client in such circumstances.
- 10.5 The Florist shall use reasonable endeavours to meet any performance dates, but times shall be estimates only, save for the date of the Event itself.

## 11. Miscellaneous Matters

- 11.1 This agreement does not give any right to any third party under the Contracts (Rights of Third Parties) Act.
- 11.2 Each party will keep the confidential information of the other party and any third party confidential and secret, and only use it for the purposes of supplying the services or making proper use of the services. Each party recognises and accepts its obligations with regard to the control and the processing of personal data under the current data protection legislation and regulations. For more information on this, please see our privacy notice on Our Website.
- 11.3 You grant us consent to use any work including photographs created as part of the Assignment to show off our Goods and services and designs, together with the right to display images as part of our portfolio and to write about the Assignment on websites, and in our marketing materials. If you do not wish to grant this consent, you must confirm this in writing or by email within 7 days of entering into this agreement.
- 11.4 NOTE: The Florist operates a zero-tolerance policy to anti-social or abusive behaviour by the Client or their guests. If the Florist, or their staff, are subjected to unacceptable levels of verbal abuse, drunken or lewd behaviour or actual or perceived threats, we shall be entitled to immediately withdraw the services and leave the Event site.
- 11.5 Nothing in these Terms is intended to create a partnership or joint venture between the Florist and the Client, and no party has the right to act as agent for the other or to bind the other party in any way.
- 11.6 These Terms and any dispute under them shall be governed by the laws of England and Wales.