

# EDEN PLAY TERMS AND CONDITIONS

Eden Play is the trading name of Eden Playgrounds Ltd (Co Number 15111676)

## 1. PRICING AND PAYMENT:

### 1.1 PAYMENT TERMS:

Eden Play's standard payment terms are a 50% non-refundable advance deposit and 50% final payment due immediately on departure from site and in any event payment must be received within 7 days of departure from site. Any alteration to these Standard Payment Terms must be agreed in writing by Eden prior to Order Acceptance. Late payment will render the warranty invalid. Eden reserves the right to charge interest and debt collection charges on late payment of invoice. If the Customer fails to make any payment due to Eden Play under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at a rate of 2% per calendar month until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. All terms are subject to credit approval. All pricing should be considered private and confidential between both parties. You will be liable to indemnify Us to any legal costs incurred by Us, as a result of any delay or default in payment of any monies, due and owing to Us, or otherwise incurred as a result of any other breach of contractual obligation owed by You to Us. You means customer/client with who we have contracted for the purchase supply and/or installation of goods and/or services. Us means Eden Play.

### 1.2 VAT:

The price is subject to VAT at the current rate. Proof of VAT exemption will be required if claimed, prior to our Sales invoice. The Construction Industry VAT reverse charge applies, to ensure we apply VAT correctly we require confirmation from the paying entity at Order Acceptance stage.

### 1.3 ALTERATIONS TO QUOTATION:

The price is based on original designs, specification and measurements provided at the date of quotation (see below for design assumptions). Eden Play reserves the right to amend/change pricing to accommodate alternations to the original brief at any stage of the contract, up to completion of the work. Unless otherwise stated, all prices are based on the assumptions set out in our terms and conditions. Any quotation given by Eden Play shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue. A quotation can be withdrawn by Eden Play at any time.

### 1.4 PROPERTY:

The risk in the Goods shall pass to the Customer on delivery (even if installation has not yet occurred). Title to the Goods shall not pass to the Customer until Eden Play receives payment in full (in cash or cleared funds) for the Goods and Services that is has supplied to the Customer. Until title to the Goods has passed to the Customer, the Customer shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Eden Play's behalf from the date of delivery. Eden Play reserves the right to enter installed premises for the purposes of removing any goods which have been supplied but which have not been paid for.

Damage caused by removing the goods will be at the customer's risk. Equipment must not be used until full and final payment is received by Eden Play.

### **1.5 RETENTIONS:**

The price is based on 0% retention being withheld on completion of works. Withholding retention amounts will deem the warranty invalid.

### **1.6 PRICING:**

Eden Play may increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Eden Play that is due to any factor beyond the control of Eden Play (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs), any request by the Customer to change the delivery date(s) and dates for installation, quantities or types of Goods ordered or any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Eden Play adequate or accurate information or instructions in respect of the Goods or services. Due to shorter days and weather delays Eden Play reserves the right to amend quotations to reflect winter pricing. This may apply to any multi-day project that falls between November 1st and February 28th .

### **1.7 DISCOUNTS:**

The price indicates any discounts which have been applied to the quotation. Discounts cannot be applied retrospectively and are normally time limited.

## **2. DESIGN ASSUMPTIONS:**

### **2.1 BESPOKE DESIGNS & PRODUCTS**

Eden Play design, manufacture and install bespoke playground equipment and learning resources. No conformity to standards is implied. You must ensure that the design specification meets your requirements. You must risk assess the equipment before first use and on an ongoing basis. Full details of inspection requirements are set out in our Operation and Maintenance Manual.

### **2.2 DESIGN VISUALS, SAMPLES & PLANS:**

Design visuals are for illustrative purposes only. Any samples, plans, briefs, surveys, drawings, 3D designs, descriptive matter or advertising issued by Eden Play including illustrations or descriptions contained in catalogues, brochures and on our website are for the sole purpose of giving an approximate idea of the Services and/or Goods described in them and shall not form part of a Contract or have any contractual force.

### **2.3 PHOTOGRAPHIC EXAMPLES:**

Photographic examples provided as part of the consultation and design process are from previous installations and are not intended to be like for like examples.

### **2.4 SPECIFICATION FOR GOODS & SERVICES**

Eden Play reserves the right to amend the specification of the goods and/or services if required by any applicable statutory or regulatory requirements or as part of our continuous improvement process.

### **3. ASSUMPTIONS ON SITE:**

#### **3.1 ACCESS:**

The price assumes: • Unlimited access to site between 7am-8am and 7pm on the day of install. Please let us know if deliveries can be made before the install date as this will allow us to work more efficiently onsite. • Access for delivery of materials is available by articulated truck (max 2.5m wide x 12m length) into the installation area. It is your responsibility to inform us if this is not possible. We reserve the right to charge for additional costs incurred due to site delivery restrictions. • Access for delivery and unloading materials is available on the installation area. It is your responsibility to inform us if this is not possible. We reserve the right to charge for additional costs incurred due to site delivery restrictions.

#### **3.2 PARKING / UNLOADING:**

The price is based on free parking being available for Eden Play vans. Please advise if parking is an issue. Additional charging may apply if free parking is not available. We ask that you reserve us parking spaces for our installation vans and a space for a skip as close as possible to the install site. Please inform us if this is not possible.

#### **3.3 CLEAR AND SUITABLE ACCESS:**

It is Your responsibility to ensure clear and suitable access for all deliveries and collections. Access to site should be clear. Please inform Eden Play prior to quotation if access to site is not clear e.g. if it is via steps, through a building or other obstacles are in the way.

#### **3.4 SITE CLEARANCE:**

The area should be free and clear of obstacles, including rubbish, debris or aggregate. Unless stated in our proposal it is your responsibility to remove any existing equipment within our install site.

#### **3.5 WELFARE FACILITIES:**

It is Your responsibility to inform us if Welfare facilities are not available either onsite or nearby prior to Order Acceptance. Eden Play can provide Welfare facilities where required this will be chargeable.

#### **3.6 INDUCTION:**

If an induction is required for our staff please inform us in advance.

#### **3.7 CREDENTIALS:**

You will make Eden Play aware prior to Order Acceptance if any credentials are required e.g. DBS numbers.

#### **3.8 POLICIES AND PROCEDURES:**

You will make Eden Play aware of any policies and procedures that our team are required to adhere to at the Order Acceptance stage. Please advise on your policy regarding use of mobile phones for contractors on your premises. Our teams are fully briefed on our own Health & Safety protocols at work, but we ask that you also ensure they are aware of any special procedures you have which need to be adhered to and also are made aware of the school's emergency procedures and types of alarm.

### **3.9 MANHOLE COVERS:**

Unless specifically highlighted prior to installation, existing man hole covers/access points will be ramped down or overlaid with surfacing. Please advise if recessed manholes are required.

### **3.10 SKIPS:**

It is Your responsibility to provide a location on site to locate a skip (up to 8 yard) and suitable access for the skip.

### **3.11 REMOVAL OF EXISTING STRUCTURES AND SURFACING:**

Unless specified in our quotation Eden Play will not remove any existing structures or surfacing.

### **3.12 DRAINAGE:**

Eden Play will install equipment and surfacing as per our proposal and construction plan (as appropriate). Eden Play take no responsibility of liability for any existing or future drainage issues in the vicinity of our installations.

### **3.13 FALL HEIGHT:**

Unless stated our structures are not automatically provided with fall height protection. If the structure is dependent on the size of the user You must carry out your own risk assessments to determine whether the equipment is suitable for use. Where your existing surfacing is used it is your responsibility to ensure it is fit for purpose and meets the requirements of EN1177. It is your responsibility to advise us if the area where equipment is to be sited requires Critical Fall Height Testing to evaluate the shock absorbing qualities of the surfacing. This is particularly the case where we install on turf.

### **3.14 EXCAVATION WORK AND SURROUNDING AREA:**

Unless stated the price does not include the excavation through unforeseen material and additional costs may be incurred in these instances. Where Eden Play undertakes preparation works, it is assumed that all excavation will be through soft material. The quotation does not include any provision for reinstatement of surrounding areas to Eden Play works except where expressly requested and priced accordingly. CBR tests will not be carried out as standard.

### **3.15 SITE SECURITY:**

Eden Play assume that security is provided by You. If necessary, a site compound or container will be provided by You when the install is taking place over multiple days. We assume it is safe to leave material and plant overnight.

### **3.16 NOMINATED PROJECT POINT OF CONTACT**

You are responsible for the provision of a single point of contact for the project. This person will have the authority to speak on behalf of the organisation and provide direction and amendments as necessary. Eden Play understandably cannot accept conflicting direction from multiple persons. If this occurs and the project is delayed whilst clarification is confirmed then this may incur a cost.

### **3.17 PHOTOGRAPHY:**

Eden Play reserves the right to undertake and utilise photography of completed sites in promotional literature and online.

### **3.18 SIGN OFF:**

It is Your responsibility to sign off work prior to us leaving site. If no-one is available to sign off the works this will nullify your guarantees and warranties and should a future revisit be required we reserve the right to charge all reasonable costs incurred for labour, travel and accommodation.

### **3.19 REVISTS:**

On rare occasions re-visits to site may be necessary. To avoid a revisit charge any snags must be notified to us in writing and with photographic evidence within 24 hours of our departure on site. Final payment cannot be withheld and we reserve the right not to revisit until full and final payment is received.

### **3.20 HEALTH AND SAFETY:**

It is your responsibility to ensure that all relevant risks and hazards have been brought to the attention of the Eden Play staff. This includes the presence of any asbestos containing materials, subterranean services that might be disturbed during construction, fire management measures, safe site access and egress, operation of electric gates or areas that might be contaminated with drug paraphernalia. It remains your responsibility to ensure all other contractors who may be operating on the site have been suitably liaised and co-ordinated. You should ensure you are fully aware of your duties under the Construction Design Management Regulations 2015.

## **4 GENERAL ASSUMPTIONS:**

### **4.1 SUBCONTRACTORS:**

Where preparation works are to be carried out by third parties and on inspection are not satisfactory for Eden Play installations e.g. incorrect depth for the area. Eden Play reserves the right to raise abortive charges and / or contra-charge the client for materials, hire of plant, equipment and labour to rectify the area. Eden Play reserves the right to fully re-price works to accommodate alterations as appropriate.

### **4.2 IDEMNITY INSURANCE:**

Eden Play do not offer professional indemnity insurance and are not responsible for the credibility / feasibility of specifications produced by other parties unless specifically asked for in writing.

### **4.3 INSTALLATION DATES:**

Eden Play will endeavour to meet all planned installation dates, however, other factors outside our control such as adverse weather conditions and equipment/material deliveries may affect this. LAD's will not be accepted as a result of non-completion.

## **5 ADDITIONAL CHARGES:**

Additional charges will be advised to the client via telephone or email. If no response is received within 1 working day the client will have been deemed to have accepted the revised price.

### **5.1 SITE INDUCTIONS:**

Charges may be incurred for site inductions lasting longer than 30 minutes.

## **5.2 SITE NOT READY:**

Additional charges may be incurred if Eden Play arrives on site on the agreed installation date and the site is not ready.

## **5.3 DOWNTIME:**

Issues preventing Eden Play from setting up or installing (i.e accessing site or waiting for the site to be cleared) will be charged at a rate of £200 per hour for the first two hours of Eden Play arriving on site.

## **5.4 ABORTED VISIT:**

If issues preventing Eden Play carrying out an installation are not resolved within 2 hours Eden Play reserve the right to leave site and charge an aborted visit at £1200 (plus VAT) per day until the issues are resolved.

## **5.5 UNDULATING GROUNDWORKS:**

The quotation allows for installation on level ground unless stated and the thickness of surfacing quoted only, any increase will be charged accordingly. Should the area require regulating, charges will apply for site levelling and haulage costs may apply if additional materials are required.

## **5.6 VARIATIONS IN MEASUREMENTS:**

Eden Play reserves the right to re-measure the site and amend the original quotation accordingly. Eden Play does not accept responsibility for taking off measures from drawings or diagrams provided as these may not be scaled accurately during reproduction. Increase in area will be charged pro rata.

## **5.7 INCORRECT SITE ADDRESS:**

Charges may be incurred for re-delivery of materials, hotel bookings and set-up charges.

## **5.8 BAD ACCESS:**

Please advise of bad access at Order Acceptance stage. Charges may apply if unknown.

## **5.9 SITE SECURITY**

You must advise us at the time of quotation if Heras fencing is required. We will then provide a price for Heras fencing within our quotation. It is Your responsibility to detail the area required to be fenced off prior to quotation. It is Your responsibility to ensure adequate or alternative exit routes are available where Heras fencing is erected. It is your responsibility to ensure that children, staff members, parents etc are kept away from the install site.

## **6 ICE & ADVERSE WEATHER CONDITIONS**

As with any play equipment and outdoor surface caution should be taken in icy or extreme weather conditions. Eden Play cannot be held responsible for accidents due to slips and falls.

## **7 CONDITIONS OF GUARANTEE**

The Operations & Maintenance Manual sets out the conditions of warranties and guarantees provided by Eden Play to the Customer.

## **8 INTELLECTUAL PROPERTY RIGHTS**

The Customer shall indemnify Eden Play against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Eden Play arising out of or in connection with any claim made against Eden Play for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Eden Play's use of the specification provided by the Customer.

## **9 LIMITATIONS OF LIABILITY**

Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- Death or personal injury caused by negligence - Fraud or fraudulent misrepresentation; and - Breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession). Eden Play shall under no circumstances whatever 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. Eden Play'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 the price paid by the Customer for the Goods and/or Services.

## **10 TERMINATION**

Without affecting any other right or remedy available to it, Eden Play may terminate the Contract with immediate effect:

- If the Customer fails to pay any amount due under the Contract on the due date for payment;
- Without limiting its other rights or remedies, Eden Play may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Eden Play if the Customer fails to pay any amount due under this Contract on the due date for payment.

On termination of the Contract for any reason:

- The Customer shall immediately pay to Eden Play all of its outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has yet been submitted, Eden Play shall submit an invoice, which shall be payable by the Customer immediately
- Eden Play will be entitled to retain any Deposit
- The Customer shall pay for any expenses and/or costs incurred by Eden Play up to the date of termination.
- The accrued rights and remedies of the parties as at termination shall not be affected, 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; and
- Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **11. 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