

Midas Touch Gardens Website

Terms of Use and Privacy Policy

Terms of Use

Last updated: 01 September 2014

Introduction and your agreement to these Terms of Use :-

Welcome to the *Midas Touch Gardens* website a horticultural business with a focus on sustainability and other educational services, (together the “**Products and Services**”), which is located at www.midastouchgardens.com.au (this “**Website**”). This Website is owned and operated by Midas Touch Gardens Pty Ltd (“**MTG or the Company**”), an Australian company with Australian Business Number 12180684499.

These terms and conditions of use (these “**Terms of Use**”) are deemed to incorporate MTG’s privacy policy (the “**Privacy Policy**”), which is available on this Website and which you should read together with these Terms of Use. The provisions of the Privacy Policy apply as if set out in full in these Terms of Use.

These Terms of Use govern your access to and use of this Website, including any: (i) data, information, content or materials that are located on, form part of or are available through or in connection with this Website (the “**Website Material**”); and (ii) the services provided by this Website, described below in the section headed “Description of the Website Services” (the “**Website Services**”).

Where you are accessing or using this Website as an officer, employee, agent or other representative of a company or other business entity or third party, you represent and warrant that you have authority to do so and to contractually bind such company or other business entity or third party to these Terms of Use. You and any such company or other business entity or third party are deemed to be liable jointly and separately under these Terms of Use.

By accessing or using this Website you are deemed to agree to these Terms of Use. If you do not agree to these Terms Use, you must immediately exit and not access or use this Website, the Website Material or the Website Services.

Changes to these Terms of Use :-

MTG may from time to time (with or without notice to you) amend or update these Terms of Use at its sole discretion. Accordingly, you should ensure that you regularly review them. The Terms of Use applicable to your access to and use of this Website is the current version displayed on this Website at the time you access or use this Website. By continuing to access or use this Website after such changes, you are deemed to agree to be bound by such changes.

Description of the Website Services :-

This Website provides you with the ability to browse services available to you from MTG.

Use of this Website :-

You must apply for and obtain all approvals, licences and permits from any regulator, agency or other third party that may be necessary or desirable in relation to your use of this Website, the Website Materials or the Website Services

By accessing and using this Website, you warrant and represent to MTG that you are:
(i) legally entitled to do so and to make use of this Website, the Website Material and the Website Services; and

(ii) at least eighteen (18) years of age or older.

Availability of this Website :-

This Website, the Website Material and the Website Services are provided on an “as available” basis and MTG shall not be liable if this Website, the Website Material or the Website Services are unavailable for any period. MTG may (with or without notice to you) temporarily suspend access to this Website, the Website Material and / or the Website Services or indefinitely close down this Website at any time. MTG does not represent, warrant or undertake that this Website, the Website Material or the Website Services will be error, defect, “bug” or “virus” free.

Accuracy of this Website :-

This Website, the Website Materials and the Website Services are provided on an “as is” basis and MTG makes no representations, warranties or undertakings with respect to this Website, the Website Material or the Website Services, including as to the currency, accuracy or completeness of this Website, the Website Material or the Website Services.

Force majeure :-

MTG will not be in breach of these Terms of Use or otherwise liable to you or any other person for any unavailability or failure of this Website, the Website Material or the Website Services or any delay or other failure by MTG to comply with these Terms of Use that is caused by or arises from any event or circumstances beyond MTG’s control.

Trademarks :-

The trademarks, names, logos and service marks (collectively “**Trademarks**”) displayed on this Website are both registered and unregistered trademarks of MTG or its licensors. Nothing contained on this Website should be construed as granting any license or right to use any Trademark without the prior written permission of MTG.

External links :-

External links may be provided for your convenience, but they are beyond the control of MTG and no representation is made as to their content. Use or reliance on any external links and the content thereon provided is at your own risk.

Warranties :-

To the fullest extent permitted by applicable law, MTG excludes and makes no warranties, representations, statements or guarantees (whether express, implied in law or residual) regarding this Website, the Website Material or the Website Services (including any implied representations, warranties, terms or conditions or any statutory guarantees).

Disclaimer of liability :-

To the fullest extent permitted by applicable law, MTG shall not be responsible for and disclaims all liability for any loss, liability, damage (whether direct, indirect or consequential), personal injury or expense of any nature whatsoever which may be suffered by you or any third party (including your company), including where attributable, directly or indirectly, to your access and use of this Website, the Website Materials, the Website Services, or your or your company’s information or material being transmitted over MTG’s systems.

Neither MTG nor any third party or data or content provider shall be liable in any way to you or to any other person, firm or corporation whatsoever for any loss, liability, damage (whether direct or consequential), personal injury or expense of any nature whatsoever arising from any delays, inaccuracies, errors in, or omission of any Website Material or the transmission

thereof, or for any actions taken in reliance thereon or occasioned thereby or by reason of non-performance or interruption, or termination thereof.

Nothing in these Terms of Use is intended to exclude, restrict or modify any statutory rights under the *Competition and Consumer Act 2010* (Cth) (the **CCA**) or any other applicable legislation which may not be excluded, restricted or modified by agreement and the exclusions of and limitations on MTG's liability in these Terms of Use do not apply in respect of any such statutory rights.

Where MTG's liability with respect to any statutory rights may not be excluded, but may be restricted or modified by agreement, MTG's liability is limited to:

(i) in the case of a supply of Products and Services, MTG (at its election) doing any one or more of: replacing the Products and Services or supplying equivalent Products and Services; repairing the Products and Services; paying the cost of replacing the Products and Services or of acquiring equivalent Products and Services; or, paying the cost of having the Products and Services repaired; and

(ii) in the case of a supply of services, MTG (at its election) doing either or both of: supplying the services again; or, paying the cost of having the services supplied again.

Indemnity by you :-

You must indemnify and hold harmless MTG (and its officers, employees and representatives) against all losses, liabilities and costs (including legal expenses) sustained, incurred or suffered by MTG (or its officers, employees and representatives) as a result of your breach of these Terms of Use or any violation by you of any laws or the rights of any person.

Product promotion :-

By using this Website you consent to MTG sending promotional deals, product education and other information and materials, including direct marketing information and materials, to your account and / or email address, subject to the terms of MTG's Privacy Policy.

Conflict of terms :-

If there is a conflict or contradiction between these Terms of Use and any other relevant terms and conditions, policies or notices published or referred to on this Website, the other relevant terms and conditions, policies or notices which relate specifically to a particular section or module of this Website shall prevail in respect of your use of the relevant section or module of this Website.

Applicable laws (choice of venue and forum) :-

Use of this Website shall in all respects be governed by the laws of the state of New South Wales, Australia, regardless of the laws that might be applicable under principles of conflicts of law. You agree that the courts located in New South Wales Australia shall have exclusive jurisdiction over all controversies arising under or in connection with these Terms of Use and agree that venue is proper in those courts, and that you will not commence proceedings against MTG in any other jurisdiction.

Collection and use of data :-

You grant full ownership of any data generated from using this Website to MTG.

Confidentiality :-

By accessing this Website, you agree:

(i) to treat as strictly confidential and only use the Website Material solely for the purposes expressly contemplated by these Terms of Use;

(ii) not, without the prior written consent of MTG (which may be withheld in MTG's absolute discretion), to publish, use or otherwise disclose to any person any Website Material, except for the purposes expressly contemplated by these Terms of Use;

(iii) maintain adequate security for the Website Material while in your possession or control, including protecting the same against any use, disclosure, access, damage or destruction, which is inconsistent with these Terms of Use; and

(iv) not make use of the Website Material to the commercial, financial or competitive disadvantage of MTG or any Supplier / Wholesaler.

Rights cumulative :-

The rights, powers, privileges and remedies provided under any provision of these Terms of Use are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of these Terms of Use or by applicable law or otherwise.

Waiver :-

No failure to exercise nor any delay in exercising by MTG of any right, power, privilege or remedy under these Terms of use shall impair or operate as a waiver thereof in whole or in part. No single or partial exercise of any right, power privilege or remedy under these Terms of Use shall prevent any further or other exercise thereof or the exercise of any other right, powers, privilege or remedy.

Invalidity :-

If any provision of these Terms of Use is held to be illegal, void, invalid or unenforceable under the applicable laws of any jurisdiction, the legality, validity and enforceability of the remainder of these Terms of Use in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of these Terms of Use in any other jurisdiction shall not be affected.

Contacting MTG :-

All correspondence to MTG, including any queries you may have regarding this Website or these Terms of Use, should be sent to:

Email: deb@midastouchgardens.com.au

Phone: 0420 880 308

Privacy Policy

Last updated: 01 September 2014

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Welcome to the *Midas Touch Gardens* website (this "**Website**"). This Website is owned and operated by Midas Touch Gardens Pty Ltd ("**MTG**"), an Australian company with Australian Business Number 12180684499.

MTG is subject to the Australian Privacy Principles under the *Privacy Act 1988* (Cth).

This privacy policy ("**Privacy Policy**") is deemed to be incorporated into this Website's terms and conditions of use ("**Terms of Use**"), which are available on this Website and which you should read together with this Privacy Policy. The provisions of the Terms of Use apply as if set out in full in this Privacy Policy.

The Terms of Use, including this Privacy Policy, govern your access to and use of this Website and the collection, use and disclosure of personal information (ie information or an opinion about an identified individual, or an individual who is reasonably identifiable) (the "**Personal Information**") by MTG. By accessing or using this Website you are deemed to agree to the Terms of Use, including this Privacy Policy. If you do not agree to the Terms of Use or this Privacy Policy, you must immediately exit and not access or use this Website.

MTG may from time-to-time (with or without notice to you) amend or update this Privacy Policy. Accordingly, you should ensure you regularly visit this page and review this Privacy Policy.

Capitalised terms used but not defined in this Privacy Policy have the meaning given to them in the Terms of Use.

Collection of Personal Information :-

MTG only collects Personal Information to the extent necessary for one or more of MTG's functions or activities.

Personal Information collected by MTG may include:

- (i) registration information provided by users to MTG (which may include a user's: login ID and password; email address; name; title; organisation / company; business address; telephone number(s) and contact details);
- (ii) information regarding your browsing habits and usage of this Website (including via the use of "cookies" – see below); and
- (iii) other Personal Information users volunteer while using this Website or in the course of dealing with MTG by other forms of communication.

MTG generally collects Personal Information directly from you when you use this Website or in the course of dealing with you by telephone, email or written correspondence. MTG may also collect information from other sources, such as public records, government authorities and private organisations where permitted by the Australian Privacy Principles. This may include obtaining mailing lists from third-parties for direct marketing purposes.

Personal Information is predominantly stored in digital form on servers controlled by MTG. Personal Information may be held in paper-records, typically on a temporary basis to facilitate certain business processes before being securely destroyed.

You have the option of not identifying yourself or using a pseudonym when dealing with MTG (for example, when making basic enquiries). However, if you do not provide any Personal Information requested by MTG, MTG may not be able to provide you with access to and use

of this Website, the Website Material or the Website Services, or MTG's other goods and services.

Cookies :-

MTG may place a "cookie" (a small text file) on any computer you use to access this Website, which, among other things, assists MTG in providing you with an easy-to-use Website. When you revisit this Website, the cookie will enable MTG to recognise you as a previous user. More information on cookies can generally be found in the "help" (or similar) section of your computer's internet web browser.

Use of Personal Information :-

MTG may use your Personal Information for the purposes for which it is collected (that is, generally, for the purpose of providing you with the Website Materials, the Website Services, or MTG's other goods and services).

MTG may also use your Personal Information for related purposes, including: (a) to manage your account and MTG's relationship with you; (b) providing technical support in relation to the Website; (c) to obtain professional, financial, technical, administrative or other advice and services in connection with the operation of MTG's business; (d) to investigate, prevent or take action regarding any breach or suspected breach by you of the Terms of Use or any law or the rights of any person; (e) as required or authorised by or under law; and (f) for any other purpose to which you subsequently consent from time to time.

Use of your Personal Information for direct marketing is discussed below under the heading "Direct Marketing".

Disclosure of Personal Information :-

MTG may disclose your Personal Information for the purposes for which it is collected (that is, generally, for the purpose of providing you with the Website Materials, the Website Services and MTG's other goods and services). This includes disclosing your Personal Information to the Suppliers/ Wholesalers to whom you have placed an order via the Website.

MTG may disclose your Personal Information for related purposes, including: (a) to third parties where necessary or desirable in connection with the provision of this Website, the Website Materials and the Website Services to you (including to a third party payment gateway operator); (b) to MTG's external advisors, service providers, subcontractors and suppliers, so that they can provide professional, financial, technical, administrative or other advice and services in connection with the operation of MTG's business; (c) to any person where necessary or desirable in connection with MTG investigating, preventing or taking action regarding any breach or suspected breach by you of the Terms of Use or any law or the rights of any person; and (d) to any person as required or authorised by or under law; and (e) to any other person to whom you subsequently consent from time to time.

Disclosure of your Personal Information for direct marketing purposes is discussed below under the heading "Direct Marketing".

Direct Marketing :-

Where you have consented to receive direct marketing communications (or an exception applies), MTG may use and disclose your Personal Information for direct marketing purposes including to provide you with information about: (a) this Website, the Website Materials and the Website Services; (b) MTG's other goods and services; (c) goods and services available from MTG's affiliated entities; and (d) to provide you with information about goods and services available from unrelated third party entities. If you do consent to receive direct marketing communications, you may withdraw that consent at any time by contacting MTG at deb@midastouchgardens.com.au

Where your Personal Information has been obtained from a third-party (such as from a mailing list), we will provide you with the option to request that you do not receive further direct marketing communications from us.

If you do not consent to receive direct marketing communications, or withdraw your consent to receive direct marketing communications, the price quoted for goods and services by MTG (including via this Website) may not reflect the maximum discount or the best possible price currently quoted on MTG's website.

Disclosure to overseas recipients :-

MTG does not typically disclose Personal Information to overseas recipients. MTG will only disclose Personal Information to overseas recipients in accordance with the Australian Privacy Principles.

Data quality :-

MTG will take reasonable steps to make sure that the Personal Information that MTG collects is accurate, up-to-date and complete; and that Personal Information MTG uses or discloses is accurate, up-to-date, complete and relevant. To assist MTG in doing so, users are encouraged to update their contact details when those details change and otherwise advise MTG if it appears any Personal Information held by MTG is not accurate, up-to-date and complete.

Security :-

MTG will take reasonable steps to protect the Personal Information that MTG holds from misuse, interference and loss and from unauthorised access, modification or disclosure. MTG will take reasonable steps to destroy or permanently de-identify any Personal Information that is no longer needed for any purpose.

Access to and correction of your Personal Information :-

You may request that MTG confirm whether it holds any Personal Information about you and, where applicable, request that MTG provide you with access to your Personal Information by contacting MTG using the contact details below.

MTG will require adequate proof of your identity before disclosing any Personal Information to you. In limited circumstances, MTG may require you to pay reasonable charges associated with giving you access to your Personal Information.

If you consider your Personal Information is inaccurate, out-of-date, incomplete, irrelevant or misleading, you may request correction of your Personal Information. If MTG is satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading, MTG will take reasonable steps to correct such Personal Information. If MTG does not agree to correct your Personal Information, you may request that MTG associate with your Personal Information a statement that the information is inaccurate, out-of-date, incomplete, irrelevant, or misleading.

MTG may refuse to provide you access to your Personal Information in limited circumstances, in accordance with the Australian Privacy Principles, but will provide you with reasons for its refusal to do so.

Complaints about the handling of Personal Information :-

You may contact MTG at any time if you have any questions or concerns about this Privacy Policy or about how your personal information has been handled using the contact details below.

If you have contacted MTG and your question or concern has not been able to be resolved to your satisfaction, you may make a complaint to MTG using the contact details below. We will

consider and respond to your complaint within a reasonable period. If you are not satisfied with our response, or you consider that MTG may have breached the Australian Privacy Principles or privacy laws, you are entitled to make a complaint to the Office of the Australian Information Commissioner.

Contacting MTG :-

The contact details for MTG are:

Email: deb@midastouchgardens.com.au

Phone: 0420 880 308