



TERMS OF TRADE – FENCEMAKERS

1 INCORPORATION OF TERMS

1.1 The Terms of Trade shall be incorporated into each and every contract for the manufacture, supply and installation of fencing and/or gates which is entered into between Fencemakers and the Customer, by use of the words "Fencemakers' Terms of Trade are incorporated into this Agreement a copy of which is available on request."

1.2 These Terms of Trade:

- (a) are current from 1 January 2015;
- (b) apply to all Sale Contracts entered into between Fencemakers and the Customer from 1 January 2015; and
- (c) may be replaced by Fencemakers at any time and, upon such replacement, the newer terms of trade shall prevail over these Terms of Trade.

2 FORMATION OF CONTRACT

2.1 Supply & Install

- (a) A Customer may place a request for a Quote for a Supply & Install Job from Fencemakers either by telephone, facsimile or e-mail.
- (b) When making the request for a Quote for Supply & Install Job, the Customer must provide Fencemakers with the following details:
 - (i) the location of the Site;
 - (ii) the purpose for the fencing;
 - (iii) the location on the Site where the fencing is to be installed; and
 - (iv) telephone and e-mail contact details for the Customer.
- (c) Fencemakers shall contact the Customer within 5 business days to arrange an appointment at the Site with the Customer to:
 - (i) inspect the Site and assess the scope of Work; and
 - (ii) select the type of fencing material and style that the Customer wishes to purchase.
- (d) Fencemakers shall, within 7 days of the inspection, provide the Customer with an e-mail with a Quote setting out:
 - (i) the Contract Price for the Work; and
 - (ii) the projected commencement and completion date for the Work.
- (e) Notwithstanding clause 2.1(d) above, if the Customer makes a Custom Order, Fencemakers shall issue the e-mail with their Quote within 7 days of agreeing the specifications of the Customer Order with the Customer.
- (f) A Contract is formed between the Customer and Fencemakers upon the terms contained in these Terms of Trade when:
 - (i) the Customer sends an e-mail to Fencemakers accepting the Quote; or
 - (ii) the Customer submits a Purchase Order to Fencemakers in terms which are consistent with the Quote; or
 - (iii) the Customer pays the Deposit under clause 3.1(a) below; or
 - (iv) the Customer applies to GE Money for finance under clause 3.2 below.

2.2 Supply Only

- (a) A Customer may place a request for a Quote for a Supply Only Job from Fencemakers either by telephone, facsimile or e-mail.
- (b) When making the request for a Quote for Supply Only Job, the Customer must provide Fencemakers with the following details:
 - (i) the quantity and specifications of the fencing and gates required;
 - (ii) whether the Customer requires delivery of the Goods and, if so, the location for delivery; and
 - (iii) telephone and e-mail contact details for the Customer.
- (c) Fencemakers shall, within 5 days of receiving the request for Quote, provide the Customer with an e-mail with a Quote setting out:
 - (i) the Contract Price for the Goods; and
 - (ii) the projected date that the Goods will be completed and available for collection.
- (d) A Contract is formed between the Customer and Fencemakers upon the terms contained in these Terms of Trade when:
 - (i) the Customer sends an e-mail to Fencemakers accepting the Quote; or
 - (ii) the Customer submits a Purchase Order to Fencemakers in terms which are consistent with the Quote; or
 - (iii) the Customer pays the Deposit under clause 3.1(a) below; or
 - (iv) the Customer applies to GE Money for finance under clause 3.2 below.

3 PAYMENT OF CONTRACT PRICE

3.1 Standard Terms

- (a) Unless the Customer applies for finance under clause 3.2 below, the Customer shall pay 50% of the Contract Price ("the Deposit") upon the formation of Contract under clause 2.1(f) or 2.2(d) and the balance of the Contract Price:
 - (i) In the case of a Supply & Install Job, within 7 days of the date of Practical Completion;
 - (ii) In the case of a Supply Only Job, on or before the date that the Customer collects the Goods.
- (b) If the Customer fails to pay the Deposit in accordance with clause 3.2(a) above, Fencemakers may:
 - (i) terminate the Contract if the Deposit remains unpaid for a period exceeding 2 business days; or
 - (ii) suspend the Job until such time as the Deposit is paid and any schedules for the commencement date and completion date of the Job shall be extended by a period being the greater of:
 - A the period of delay in payment of the Deposit; and
 - B 5 business days.

3.2 Application For Finances With GEM Visa Card

- (a) The Customer may apply for finance with GE Money under the GEM Visa Card arrangement.
- (b) If the Customer's application for finance is accepted, the Customer shall pay the full Contract Price.
 - (i) in the case of a Supply & Install Job, on the date of Practical Completion; or
 - (ii) in the case of a Supply Only Job, then the date that Fencemakers notifies the Customer that the Goods are available for collection,by way of charge against their GEM Visa Card.
- (c) If the Customer's application for finance is rejected, elect to either:
 - (i) terminate the Contract; or
 - (ii) proceed with the contract in compliance with clause 3.1 above.
- (d) If the Customer does not provide Fencemakers with notice of their election under clause 3.2(c) within 3 business days of the finance rejection, the Customer shall be deemed to have terminated the Contract.

3.3 Payments By Credit Card

- If:
 - (a) the Customer has obtained a GEM Visa Card; or
 - (b) the Customer has paid the Deposit by way of credit card,then the Customer irrevocably authorizes Fencemakers to charge that credit card for all monies outstanding on the Contract Price on the date of Practical Completion notwithstanding:

- (i) any defect that may exist in the Goods or in the installation of the Goods; or
- (ii) any delay in the completion of the Job.

3.4 Overdue Amounts

- (a) Any amount not paid by the due date will incur interest at a rate of 16% per annum calculated daily and compounded monthly.
- (b) The Customer agrees to pay all costs and expenses (including but not limited to legal fees and disonor fees) incurred by Fencemakers in connection with the recovery of overdue amounts and enforcing any security provided for in clause 9.
- (c) The Customer acknowledges that any warranties given by Fencemakers under clause 10 do not come into effect until the Contract Price and any accrued interest have been paid in full.

3.5 No Set-Off

Notwithstanding any claims that the Customer may have against Fencemakers, the Customer shall not set-off or deduct any amounts from the Contract Price payable to Fencemakers.

4 ITEMS TO BE PROVIDED FOR BY CUSTOMER (SUPPLY & INSTALL JOBS)

In the case of a Supply & Install Job, the Customer shall comply with the following:

4.1 Access & Possession Of Site

- (a) The Customer shall provide Fencemakers with exclusive access and possession to the Site during the period that Fencemakers has scheduled to carry out the Work.
- (b) The Customer warrants that:
 - (i) The Customer has legal authority to grant Fencemakers with access and possession to the Site; and
 - (ii) the Customer has obtained all council and governmental approvals for Fencemakers to carry out the work for the Job.

4.2 Site Plan

- (a) The Customer shall, on the request of Fencemakers and at the Customer's own expense, furnish a copy of the Site plan to Fencemakers which shall provide details of where the service utilities (water, gas, electricity and telephone) lines are situated on and under the surface of the land.
- (b) Fencemakers will accept no responsibility for any damage to any underground services if the Customer has not provided Fencemakers with a Site plan pursuant to clause 4.2(a) above and any costs for the repair of those underground services shall be borne by the Customer.
- (c) If Fencemakers encounters any unexpected obstructions beneath the surface of the ground that cannot be readily overcome by Fencemaker's existing equipment on the Site, the Customer shall:
 - (i) remove the obstruction and carry out any other remedial works (at the Customer's own cost) necessary for Fencemakers to complete the Work; or
 - (ii) request a variation to the Contract under clause 7.

4.3 Secure Fencing For Equipment & Materials

If the Job will require more than one business day of work, the Customer shall, at the Customer's own cost, provide Fencemakers with a securely fenced off area located on the Site for the purposes of storing Fencemakers's plant and equipment and materials delivered to the Site in connection with the Work.

4.4 Access To Electricity

- (a) The Customer shall ensure that Fencemakers has access to the following:
 - (i) electricity;
 - (ii) water; and
 - (iii) toilet facilities.
- (b) If the work includes the installation of an electric gate, the Customer shall ensure that Fencemakers is given full access to the electricity power board and the electrical wiring on the Site.

4.5 Safe Work Site

The Customer warrants to Fencemakers that:

- (a) there are no hazards on the Site or near to the Site where Fencemakers is required to operate;
- (b) the Site complies with all occupation health and safety laws and requirements.

4.6 Breach Of Customer's Obligations

- (a) If the Customer breaches any of its obligations under clause 4.1 to clause 4.5 above, Fencemakers may suspend work on the Job until such time as the Customer rectifies the default and any schedules for the commencement date and completion date of the Job shall be extended by a period being the greater of:
 - (i) the period of delay caused by the Customer's default; and
 - (ii) 5 business days.
- (b) If the Customer fails to rectify a breach for a period exceeding 14 days, Fencemakers may terminate this Contract and, upon such termination, Fencemakers shall be entitled to forfeit the Deposit and shall be released from any further obligations under the Contract.

5 FENCEMAKER'S OBLIGATION FOR SUPPLY & INSTALLATION JOB

5.1 In the case of a Supply & Install Job, Fencemakers shall:

- (a) manufacture and fabricate the Goods according to the specifications set out in the Quote;
- (b) supply all fittings required for the installation of the Goods at the Site; and
- (c) install the Goods at the Site according to the specifications set out in or referred to in the Quote with all due care and skill.

5.2 While Fencemakers shall take every reasonable step to ensure that the Job is commenced and completed by the dates set out in the written Quote (as varied by clause 2.1(d) or clause 7 of these Terms of Trade), Fencemakers shall not be liable to the Customer for any Loss if Fencemakers is unable to adhere to these timeframes.

6 FENCEMAKER'S OBLIGATIONS FOR SUPPLY ONLY JOB

6.1 In the case of a Supply Only Job, Fencemakers shall:

- (a) manufacture and fabricate the Goods according to the specifications set out in the Quote; and
- (b) deliver or make the Goods available for collection by the Customer upon receipt of payment of the balance of the Contract Price.

6.2 In the case of delivery, Fencemakers shall deliver the Goods within 5 business days of receipt of payment of the balance of the Contract Price to the site nominated by the Customer in the request for Quote.

6.3 In the case of Goods being collected:

- (a) Fencemakers shall make the Goods available for collection from Fencemaker's Premises from the date that Fencemakers receives payment of the balance of the Purchase Price; and
- (b) the Customer shall be responsible for their own costs for the collection of the Goods from Fencemaker's Premises.

6.4 If the Customer fails to accept delivery of the Goods or collect the Goods from Fencemaker's Premises, then Fencemakers may charge the Customer a daily storage fee being the greater of:

- (a) 5% of the Sale Price; and
- (b) \$100.00,

for each day that the Goods remains at the Fencemakers Premises after Fencemakers has attempted delivery of the Goods under clause 6.2 above or the Goods are made available for collection under clause 6.3;

6.5 The Customer:

- (a) acknowledges that the storage fees and the delivery fees payable to Fencemakers under clause 6.4 above shall be payable to Fencemakers on demand with interest accruing on those amounts from the date of the demand a rate of 16% per annum accruing daily, and compounding monthly

- until the amount is paid in full; and
- (b) in the case of a Customer who has obtained finance from GE Money under clause 3.2, the Customer irrevocably authorizes Fencemakers to charge their GE Money Visa Card for the storage fees on a daily basis.
- 7 VARIATIONS BY CUSTOMER**
- 7.1 If the Customer requires a variation to the Contract, the Customer must submit the details of their request to Fencemakers in writing.
- 7.2 The Customer may not, under any circumstances, vary the contract to bring forward the commencement date or completion date for the Work.
- 7.3 Fencemakers shall reply to the Customer's request for variation within 7 days of receipt of the variation request to:
- (a) accept the variation request together with details of the changes to the Contract Price in which case, the Customer must accept the changes to the Contract Price proposed by Fencemakers within 3 business days or shall be deemed to have withdrawn their variation request; or
- (b) reject the variation request.
- 7.4 If, in Fencemakers opinion, the variation request from the Customer will materially change its works program, Fencemakers may suspend the Work until the variation request is resolved and any schedules for the commencement date and completion date of the Work shall be extended by a period being the greater of:
- (a) the period of delay caused by the Customer's request for variation; and
- (b) 5 business days.
- 7.5 If the Customer's variation request results in an increase to the Contract Price, Fencemakers may demand the upfront payment of the amount of the Contract Price increase.
- 7.6 If the Customer fails to pay the amount of the Contract Price increase, Fencemakers may suspend all Work until such time as the Customer has paid the Contract Price increase and any schedules for the commencement date and completion date of the Job shall be extended by a period being the greater of:
- (a) the period of delay caused by the Customer's default; and
- (b) 5 business days.
- 7.7 If Fencemakers has rejected the Customer's variation request, the Customer may terminate this Contract by notice in writing of not less than 7 days PROVIDED THAT:
- (a) the Customer shall pay Fencemakers for all work carried out up to the date of termination; and
- (b) the Customer shall release Fencemakers of any further obligations under the Contract (including the warranties for goods and workmanship).
- 8 TITLE & RISK**
- Title and risk in any goods supplied by Fencemakers to the Customer does not pass to the Customer until the Goods have been paid for in full.
- 9 SECURITY AND CHARGE**
- 9.1 Personal Property Security Interest**
- (a) Fencemakers may register its security interest over Fencemakers' property which is in the possession of the Customer on the Personal Property Security Register and the Customer shall indemnify Fencemakers for the costs of registering those interests.
- (b) The Customer agrees:
- (i) that these terms are a security agreement for the purposes of the Personal Property Securities Act;
- (ii) to provide Fencemakers with all necessary information to enable Fencemakers to register its security interest on the Personal Property Security Register in a manner which complies with the Personal Property Securities Act;
- (iii) to waive the right to receive notice of a verification statement in relation to any registration by Fencemakers of a security interest over Fencemakers' property which is in the possession of the Customer;
- (iv) that sections 95, 96, 118, 121(4), 125, 127, 129(2), 129(3), 130, 132, 134(2), 135, 136(3), 136(4), 136(5), 137 142 and 143 do not apply to enforcement of the security interest created under these terms.
- 9.2 Lien Over Land**
- (a) As security for any amounts due to Fencemakers from time to time, the Customer charges all of its legal and equitable interest of whatsoever nature held in any and all real property to Fencemakers.
- (b) The Customer agrees to do all things reasonably required by Fencemakers to perfect its security over any real property.
- (c) The Customer consents unconditionally to Fencemakers lodging a caveat or caveats noting its interest in any real property held by the Customer.
- 10 WARRANTIES**
- 10.1 24 Month Warranty**
- (a) Fencemakers shall provide the Customer with a 24 month warranty for the Goods in respect of:
- (i) any defects in the fabrication and manufacture of the Goods; and
- (ii) in the case of a Supply & Install Job, workmanship for the installation of the Goods which are made:
- (b) the 24 month warranty commences from:
- (i) in the case of a Supply & Install Job, the date of Practical Completion; or
- (ii) in the case of a Supply Only Job, the date that the Goods are delivered to the Customer or made available for collection by the Customer.
- (c) Due to the nature of the Goods, some minor scuffing and scratching is unavoidable and shall not be deemed a defect in the Goods.
- 10.2 Confirmation Of Warranty Claim**
- (a) Upon the receipt of a warranty claim, Fencemakers shall be entitled to inspect the Goods which are allegedly defective.
- (b) Fencemakers shall conduct its inspection and provide the Customer with notice of the acceptance or rejection of the warranty claim within 14 days of receiving the warranty claim.
- 10.3 Repair/Replacement Of Goods Under Warranty**
- (a) In the case of Supply Only Jobs, Fencemakers will repair the defective Goods or supply the Customer with replacement for the defective Goods within 14 days of accepting the warranty claim.
- (b) In the case of Supply & Install Jobs, Fencemakers will repair the defective Goods or supply and install replacements for the defective Goods within 28 days of accepting the warranty claim.
- (c) Fencemakers shall use its best endeavours to ensure that the replacement items match the colour to within 10 nanometers (as measured by a spectrometer) of the original Goods.
- 10.4 Exclusions**
- Fencemaker will not accept any warranty claims for:
- (a) in the case of a Supply Only Job, any defects brought about by the installation or handling of the Goods by a third party;
- (b) in the case of a Customer Order, any defects arising from the design of the Goods which are supplied to Fencemakers by the Customer – including but not limited to structural weaknesses in the Goods or the susceptibility of Goods to corrosion;
- (c) any defects in the Goods (including corrosion or discoloration) where the Customer has rejected recommendations by Fencemakers for extra protective coatings or treatments to the Goods.
- 10.5 Limitation Of Liability**
- Fencemakers's liability for:
- (a) personal injury howsoever occasioned and arising out of the use of the Goods; and
- (b) consequential loss howsoever occasioned and arising out of the use of the Goods, are expressly excluded.

11 MISCELLANEOUS

- 11.1 GST**
- (a) The parties acknowledge that the supply made by Fencemakers to the Customer will be subject to GST which will be added to invoices rendered.
- (b) The Customer must pay to Fencemakers an additional amount equal to the amount of the consideration multiplied by the applicable GST rate.
- 11.2 Force Majeure**
- The obligations of Fencemakers to perform any Sale Contract will be suspended for the duration of any delay arising from circumstances outside the reasonable control of Fencemakers, including but not limited to, war, accident, fire, storm, flood, earthquake, labour dispute, plant equipment breakdowns, unavailability of materials.
- 11.3 Severability**
- IF any provision of these Terms of Trade:
- (a) is declared void; or
- (b) if effective, would render either:
- (i) these Terms of Trade; or
- (ii) any provision in these Terms of Trade void or unenforceable
- THEN that provision shall have no force or effect whatsoever and shall be ineffective and severed from these Terms of Trade to the extent necessary to avoid that consequence without affecting the validity and enforceability of this Agreement.
- 11.4 Entire Agreement**
- The Terms of Trade represent the entire agreement between the Customer and Fencemakers with respect to the provision of goods. Any other arrangement purported to be made by the Customer to vary the terms of these Terms of Trade do not form part of a Sale Contract unless those variations are agreed to in writing by Fencemakers.
- 11.5 Applicable Law**
- These Terms of Trade shall be governed by and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the non-exclusive jurisdiction of its courts.
- 11.6 Amendment**
- These Terms of Trade may be varied by Fencemakers at any time PROVIDED THAT the varied Terms of Trade shall only apply to Sale Contracts entered into after the date of variation.
- 12 INTERPRETATION AND DEFINITIONS**
- 12.1** The terms defined have the same meanings when used throughout this Agreement.
- 12.2** Unless the contrary intention appears:
- (a) a reference to this Agreement or any other document includes any variation
- (b) or replacement of it;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, transferors, substitutes (including persons taking by novation) and assigns;
- (f) an agreement, representations or warranty on the part of or in favour of two (2) or more persons binds or is for the benefit of them jointly and severally;
- (g) if a period of time is specified and commences from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to time shall mean Western Standard Time;
- (i) a term or definition incorporated by reference into this Agreement remains in force notwithstanding that the document from which it was referred may at any time be no longer in force; and
- (j) gender reference includes all genders.
- 12.3** Headings are inserted for convenience and do not affect the interpretation of this Agreement.
- 12.4** The following words have the following meanings:
- "Business Day"** means any day on which trading banks in Western Australia are open for business;
- "Contract"** Means a contract formed between Fencemakers and the Customer pursuant to clause 2.1(f) or clause 2.2(d) of these Terms of Trade;
- "Contract Date"** means the date on which a contract is formed under clause 2.1(f) or clause 2.2(d) of these Terms of Trade;
- "Contract Price"** Means the price payable by the Customer to Fencemakers for the Job as set out in the written Quote from Fencemakers (as varied by clause 2.1(d) or clause 7 of these Terms of Trade)
- "Customer"** means any Person to whom Fencemakers supplies Goods;
- "Day"** means the period of time commencing at midnight and ending 24 hours later;
- "Fencemakers"** means Fencemakers Pty Ltd [ABN 30 128 322 903];
- "Fencemakers' Premises"** means 6 Century Road, Malaga, Western Australia or such other address that Fencemakers shall nominate from time to time;
- "GE Money"** means GE Capital Finance Australia Ltd [ABN 42 008 583 588] and GE Finance Australasia Pty Ltd 0ABN 88 000 015 485] and their related entities;
- "Goods"** means fencing and gates and other goods or products to be supplied by Fencemakers in connection with a Job;
- "Job"** means the work requested by the Customer which are the subject matter of a Contract.
- "Loss"** means any delay, loss, liability, damage, expense or cost, and includes, without limitation, direct or consequential loss or damage.
- "Person"** includes a firm, a body corporate, an unincorporated association and an authority;
- "Practical Completion"** means the date on which the installation of the Goods have been completed except for any defects or omissions which do not prevent the Goods from being used for their intended purpose;
- "Quote"** means a quote from Fencemakers issued under clause 2.1 or clause 2.2;
- "Site"** means the land area nominated by the Customer where Fencemakers is to carry out work in connection with a Job;
- "Supply Only Job"** means a Contract under which Fencemakers is only required to manufacture and fabricate Goods;
- "Supply & Install Job"** means a Contract under which Fencemakers is required to manufacture and fabricate Goods and install those Goods on the Site;
- "Terms of Trade"** means these terms and conditions of regulating the supply of goods and services by Fencemakers;