

Fence World Ltd – Terms & Conditions of Trade

- 1. Definitions**
- 1.1. "Fence World" shall mean Fence World Ltd its successors and assigns or any person acting on behalf of and with the authority of Fence World Ltd.
- 1.2. "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Fence World to the Client.
- 1.3. "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4. "Goods" shall mean Goods supplied by Fence World to the Client (and where the context so permits shall include any supply of services as hereinafter defined) and includes Goods described on any invoices, quotation, work authorisation or any other forms as provided by Fence World to the Client.
- 1.5. "Services" shall mean all services supplied by Fence World to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6. "Price" shall mean the price payable for the Goods as agreed between Fence World and the Client in accordance with clause 3 of this contract.
- 2. Acceptance**
- 2.1. Any instructions received by Fence World from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by Fence World shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3. Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Fence World.
- 2.4. The Client shall give Fence World not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Fence World as a result of the Client's failure to comply with this clause.
- 3. Price And Payment**
- 3.1. At Fence World's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Fence World to the Client in respect of Goods supplied; or
- (b) Fence World's quoted Price (subject to clause 3.2) which shall be binding upon Fence World provided that the Client shall accept Fence World's quotation in writing within thirty (30) days of the quotation date.
- 3.2. Fence World reserves the right to change the Price in the event of a variation to Fence World's quotation.
- 3.3. At Fence World's sole discretion a deposit may be required.
- 3.4. Fence World may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed. Progress payment shall be made within twenty (20) working days of each monthly payment claim.
- 3.5. At Fence World's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment shall be due before delivery of the Goods; or
- (c) payment for approved Clients shall be made by instalments in accordance with Fence World's payment schedule; or
- (d) payment for approved Client's shall be due twenty (20) days following the end of the month in which an invoice or statement is emailed or posted to the Client's address or address for notices.
- 3.6. No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Fence World reserves the right to treat retentions as placing the Client's account into default.
- 3.7. Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed between the Client and Fence World.
- 3.8. GST and other tax and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
- 4.1. At Fence World's sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at Fence World's address; or
- (b) the Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.
- 4.2. At Fence World's sole discretion the costs of delivery are:
- (a) included in the Price; or
- (b) in addition to the Price; or
- (c) for the Client's account.
- 4.3. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Fence World shall be entitled to charge a reasonable fee for redelivery.
- 4.4. Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.5. Fence World may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.6. The failure of Fence World to deliver shall not entitle either party to treat this contract as repudiated.
- 4.7. Fence World shall not be liable for any loss or damage whatever due to failure by Fence World to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
- 5.1. If Fence World retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Fence World is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Fence World is sufficient evidence of Fence World's rights to receive the insurance proceeds without the need for any person dealing with Fence World to make further enquiries.
- 6. Underground Locations**
- 6.1. Prior to Fence World commencing any work the Client must advise Fence World of the precise location of the sites boundaries and all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pipes and any other services that may be on site.
- 6.2. Whilst Fence World will take all care to avoid crossing boundaries or damage to any underground services the Client agrees to indemnify Fence World in respect of all and any liability claims, loss, damage, costs and fines as a result of crossing boundaries or damage to services not precisely located and notified as per clause 6.1.
- 7. Compliance with Laws**
- 7.1. The Client and Fence World shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 7.2. The Client shall obtain (at the expense of the Client) all licences and approvals that may be required for the works.
- 7.3. The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8. Title**
- 8.1. Fence World and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Fence World all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to Fence World in respect of all contracts between Fence World and the Client.
- 8.2. Receipt by Fence World of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Fence World's ownership or rights in respect of the Goods shall continue.
- 8.3. It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until Fence World shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from Fence World to the Client Fence World may give notice in writing to the Client to return the Goods or any other obligations under the terms and conditions. Fence World will not be liable to the Client for any loss or damage the Client suffers because Fence World has exercised its rights under this clause.
- (c) the Client is only a bailee of the Goods and until such time as Fence World has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for Fence World; and
- (d) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that Fence World will be the owner of the end products; and
- (e) if the Client fails to return the Goods to Fence World then Fence World or Fence World's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Goods are situated as the invitee of the Client and take possession of the Goods, and Fence World will not be liable for any reasonable loss or damage suffered as a result of any action by Fence World under this clause.
- 9. Personal Property Securities Act 1999 ("PPSA")**
- 9.1. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods previously supplied by Fence World to the Client (if any) and all Goods that will be supplied in the future by Fence World to the Client.
- 9.2. The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Fence World may reasonably require to register a financing statement or financing charge statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Fence World for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) not register a financing charge statement or a change demand without the prior written consent of Fence World; and
- (d) immediately advise Fence World of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3. Fence World and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 9.4. The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 9.5. Unless otherwise agreed to in writing by Fence World, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 9.6. The Client shall unconditionally ratify any actions taken by Fence World under clauses 9.1 to 9.5.
- 10. Client's Disclaimer**
- 10.1. The Client hereby disclaims any right to rescind, or cancel any contract with Fence World or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by Fence World and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.
- 11. Defects**
- 11.1. The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Fence World of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Fence World an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Fence World has agreed in writing that the Client is entitled to reject, Fence World's liability is limited to either (at Fence World's discretion) replacing the Goods or repairing the Goods.
- 12. Returns**
- 12.1. Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
- (b) Fence World has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
- (d) Fence World will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 12.2. Returned goods may (at Fence World's sole discretion), incur restocking and handling fees.
- 13. Warranty**
- 13.1. Subject to the conditions of warranty set out in Clause 13.2 Fence World warrants that if any defect in any workmanship of Fence World becomes apparent and is reported to Fence World within twelve (12) months of the date of delivery (time being of the essence) then Fence World will either (at Fence World's sole discretion) replace or remedy the workmanship.
- 13.2. The conditions applicable to the warranty given by Clause 13.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) Failure on the part of the Client to properly maintain any Goods; or
- (ii) Failure on the part of the Client to follow any instructions or guidelines provided by Fence World; or
- (iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) Fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and Fence World shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without Fence World's consent.
- (c) In respect of all claims Fence World shall not be liable to compensate the Client for any delay in either replacing or remedying the workmanship or in properly assessing the Client's claim.
- 13.3. For Goods not manufactured by Fence World, the warranty shall be the current warranty provided by the manufacturer of the Goods. Fence World shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 13.4. In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by Fence World as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. Fence World shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 14. Consumer Guarantees Act 1993**
- 14.1. If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Fence World to the Client.
- 15. Intellectual Property**
- 15.1. Where Fence World has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in Fence World, and shall only be used by the Client at Fence World's discretion.
- 15.2. The Client warrants that all designs or instructions to Fence World will not cause Fence World to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Fence World against any action taken by a third party against Fence World in respect of any such infringement.
- 16. Default & Consequences of Default**
- 16.1. Interest on sums not yet received from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 16.2. If the Client defaults in payment of any invoice when due, the Client shall indemnify Fence World from and against all costs and disbursements incurred by Fence World in pursuing the debt including legal costs on a solicitor and own client basis and Fence World's collection agency costs.
- 16.3. Without prejudice to any other remedies Fence World may have, if at any time the Client is in breach of any obligation (including those relating to payment), Fence World may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Fence World will not be liable to the Client for any loss or damage the Client suffers because Fence World has exercised its rights under this clause.
- 16.4. If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200)
- shall be levied for administration fees which sum shall become immediately due and payable.
- 16.5. Without prejudice to Fence World's other remedies at law Fence World shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Fence World shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Fence World becomes overdue, or in Fence World's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17. Security And Charge**
- 17.1. Despite anything to the contrary contained herein or any other rights which Fence World may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Fence World or Fence World's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Fence World (or Fence World's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Fence World elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Fence World from and against all Fence World's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Fence World or Fence World's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 17.1.
- 18. Cancellation**
- 18.1. Fence World may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Fence World shall repay to the Client any sums paid in respect of the Price. Fence World shall not be liable for any loss of damage whatever arising from such cancellation.
- 18.2. In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Fence World (including, but not limited to, any loss of profits) up to the time of cancellation.
- 19. Privacy Act 1993**
- 19.1. The Client and the Guarantor/s (if separate to the Client) authorises Fence World to:
- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
- (b) disclose information about the Client, whether collected by Fence World from the Client directly or obtained by Fence World from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 19.2. Where the Client and/or Guarantors are an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 19.3. The Client and/or Guarantors shall have the right to request Fence World for a copy of the information about the Client and/or Guarantors retained by Fence World and the right to request Fence World to correct any incorrect information about the Client and/or Guarantors held by Fence World.
- 20. Unpaid Fence World's Rights**
- 20.1. Where the Client has left any item with Fence World for repair, modification, exchange or for Fence World to perform any other Service in relation to the item and Fence World has not received or been tendered the whole of the Price, or the payment has been dishonoured, Fence World shall have:
- (a) a lien on the item;
- (b) the right to retain the item for the Price while Fence World is in possession of the item;
- (c) a right to sell the item.
- 20.2. The lien of Fence World shall continue despite the commencement of proceedings, or judgement for the Price having been obtained.
- 21. Construction contracts Act 2002**
- 21.1. The Client hereby expressly acknowledges that:
- (a) Fence World has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client; and
- (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or
- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
- (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to Fence World by a particular date; and
- (iv) Fence World has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if Fence World suspends work, it:
- (i) is not in breach of contract; and
- (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
- (iii) is entitled to an extension of time to complete the contract; and
- (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid and an adjudicator's determination has not been complied with.
- (c) if Fence World exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to Fence World under the Contractual Remedies Act 1979; or
- (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of Fence World suspending work under this provision.
- 22. General**
- 22.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 22.3. Fence World shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Fence World of these terms and conditions.
- 22.4. In the event of any breach of this contract by Fence World the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.5. The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Fence World.
- 22.6. Fence World may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7. Fence World reserves the right to revise these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Fence World notifies the Client of such change.
- 22.8. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Contractual Remedies Act 1979.
- 22.9. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 22.10. The failure by Fence World to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Fence World's right to subsequently enforce that provision.