



TRADING TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **The Supplier** is Eastick Fencing Pty Ltd (ACN 602 825 169) as trustee for Eastick Family Trust trading as Eastside Fencing of Factory 3, 5 Clare Street, Bayswater 3134 in the State of Victoria.
- 1.2. **The Customer** includes any person engaging the Supplier on behalf of and with the authority of the person or entity that the Order is provided for.
- 1.3. **The Order** shall be defined as any request for the provision of Services by the Customer to the Supplier which has been accepted by the Supplier.
- 1.4. **The Services** are the residential fencing and associated works to be carried out at the Premises, including any advice or recommendations given.
- 1.5. **The Goods** are the parts, components and materials provided by the Supplier and used up by the Supplier in performing the Services.
- 1.6. **The Premises** are the land or land and buildings where the Services are to be carried out, or which are the subject of the Services to be performed.
- 1.7. Reference to **loss and damage** includes indirect, reliance, special or consequential loss and/or damage including i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
- 1.8. **Major failure** is as defined under the *Competition and Consumer Act 2010 (Cth)*.
- 1.9. **GST** refers to goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

2. GENERAL

- 2.1. These terms and conditions together with the Supplier's quotation constitutes the agreement between the Supplier and the Customer ("**the agreement**").
- 2.2. Any Order is deemed to incorporate these terms and conditions; which may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these terms and conditions will prevail.
- 2.3. The parties acknowledge the operation of the *Fences Act 1968 (Vic)* as may be in force and as amended from time to time and its application in respect of the agreement.
- 2.4. The terms and conditions are binding on the Customer, and the Customer's heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.
- 2.5. In these terms and conditions, the singular shall include the plural, the neuter gender shall include the masculine and feminine and words importing persons shall apply to corporations and vice versa.
- 2.6. Where more than one Customer completes this agreement each shall be liable jointly and severally.
- 2.7. 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 and the offending provision shall be deemed as severed from these terms and conditions.

- 2.8. The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer in accordance with the terms herein.
- 2.9. The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.
- 2.10. The Customer acknowledges that the Supplier may detail these terms and conditions on its website. In this event, the terms and conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such terms and conditions and/or amendments.

3. QUOTATIONS AND PLACEMENT OF ORDERS

- 3.1. Any quotation given by the Supplier will expire after thirty (30) days.
- 3.2. A written quotation from the Supplier will include a scope of works detailing the specific Services to be performed by the Supplier.
- 3.3. The Supplier does not represent that it will provide any Services unless it is included in the quotation.
- 3.4. As a condition of acceptance the Supplier shall require the payment of a deposit in the sum of 50% of the total contract price in respect of the Price for the Services. The Supplier may not be deemed to have accepted the Customer's request for Services unless or until such deposit has been paid.
- 3.5. The payment of deposits as detailed at paragraph 3.4. shall be exempt for local councils only.
- 3.6. The Supplier may agree to provide, on request from the Customer, additional Services not included or specifically excluded in the quotation given or in the Customer's Order. In this event, the Supplier shall be entitled to make an additional charge. Additional Services include, but is not limited to additions alterations or amendments to the quote or scope of works.
- 3.7. All prices quoted are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

4. PRICE AND PAYMENT

- 4.1. Customers must make full payment to the Supplier on completion of the Services, unless otherwise specified or agreed between the parties in writing.
- 4.2. GST will be charged on the Services provided by the Supplier that attract GST at the applicable rate.
- 4.3. The Supplier reserves the right to change the Price in the event of a variation. Notice will be provided in writing by the Supplier within a reasonable time.
- 4.4. At the Supplier's sole discretion the Price shall be either:
 - 4.4.1. The Supplier's quoted Price for the Order (subject to clause 4.3 above); or
 - 4.4.2. As detailed on invoices provided by the Supplier to the Customer in respect of Services supplied.

5. PROVISION OF THE GOODS AND SERVICES

- 5.1. The Supplier reserves its right to:
 - 5.1.1. Decline requests for any Services requested by the Customer.
 - 5.1.2. Cancel or postpone appointments at their discretion.
- 5.2. Unless specified by the Supplier to the contrary in the Order or quotation, the Supplier does not warrant that it will be capable of providing the Services at specific times requested by the Customer during the term of the agreement.
- 5.3. Subject to otherwise complying with its obligations under the agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Services and of satisfying the Customer's expectations of those Services.
- 5.4. The Customer grants full access to the Supplier and its servants and agents to the Premises and shall ensure a supply of water and/or electricity (at no cost) to enable the Supplier to carry out the Services.
- 5.5. The Customer warrants that it is either the owner of the Premises or is acting with the express authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier in respect of this warranty; including any claim for loss and damage by the owner of the Premises against the Supplier.

6. DEFAULT

- 6.1. In this clause the “**default date**” is the day after the date of completion of the Services to the Customer.
- 6.2. In this clause the “**outstanding balance**” is the Price of the Order, less any payments made by the Customer prior to the default date.
- 6.3. The Customer will be liable for a dishonoured cheque fee of \$40.00 for each cheque issued by the Customer and rejected by the Supplier's bank.
- 6.4. A signed statement from a duly authorised representative stating the amount due by the Customer is sufficient proof of the amount owing by the Customer to the Supplier unless proven otherwise by the Customer.
- 6.5. If the Supplier does not receive the outstanding balance by the default date the Customer will be liable for:
 - 6.5.1. Interest on the outstanding balance from the default date at the rate of twelve per centum (12%) per annum calculated on a daily basis;
 - 6.5.2. An account keeping fee of \$15.00 to be charged at the end of each calendar month after the default date until the outstanding balance has been paid;
 - 6.5.3. Any debt collection or recovery costs incurred by the Supplier; and if the Supplier's debt collection agency (“**the agency**”) charges commission on a contingency basis then the Customer shall pay as a liquidated debt the commission payable by the Supplier to the agency, at the agency's prevailing rate as if the agency achieved one hundred per cent recovery and the following formula shall apply:

$$\begin{array}{r}
 \textit{Total Debt including} \\
 \textit{Commission and GST} \\
 = \\
 \textit{Original Debt} \times 100 \\
 \hline
 100 - \textit{Commission \% charged by the agency (including} \\
 \textit{GST)}
 \end{array}$$

(n.b. in the event where the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au).

- 6.5.4. Any charges reasonably made or claimed by the Supplier's or the agency's lawyer for legal costs on the indemnity basis.

7. RISK AND LIABILITY

- 7.1. The Customer will ensure when placing Orders that there is sufficient information and specifications to enable the Supplier to execute the Order, including, but not limited to advising or providing plans detailing any concealed easements, pipes or wiring and the like to the Supplier.
- 7.2. The Customer warrants that the Supplier will provide the Services in accordance with the scope and detail provided for within the quotation.
- 7.3. The Customer warrants that if it has any specific cosmetic expectations or appearance requirements, these must be expressed in writing to the Supplier to be provided and considered as part of the Supplier's quotation.
- 7.4. The Supplier accepts no responsibility for any misunderstanding or interpretation on the part of the Customer in respect of the scope and detail provided for within the quotation.
- 7.5. The Supplier will take all care but accepts no responsibility for damage to underground cables or pipes (e.g. water, electricity, telephone) during the provision of the Services. The Customer acknowledges that it is their responsibility to make the Supplier aware of the exact positioning of the aforementioned cables and pipes.
- 7.6. In accordance with paragraph 7.5. above, the Customer acknowledges that Dial Before You Dig alone is not a suitable investigative tool to determine the location of underground cables or pipes in residential premises.
- 7.7. The Supplier recommends that the Customer engage a third party to physically mark the positioning of essential services within the Premises before proceeding with the Services, in order to minimise the risk of damage.
- 7.8. If requested, the Supplier is able to organise the process detailed at paragraph 7.7. on the Customer's behalf. The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.
- 7.9. The Supplier warrants that it will endeavour to build any new fence as close as possible to the position of the existing fence, unless all parties are in agreement in respect of an alternative position, or if the boundary is changed and is clearly marked and agreed to in writing by all parties prior to the provision of the Services.
- 7.10. The Customer acknowledges and grants the Supplier a tolerance of 50mm if required to build around items on the fence line.
- 7.11. The Customer acknowledges that all heights listed on the Supplier's quotations are measured from lowest land level, and many vary depending on land fall.
- 7.12. The Customer acknowledges that underground or hidden obstructions found when digging post holes (e.g. rocks, concrete, pipes, tree roots) will result in extra charges. If and when an obstruction is found, the Supplier shall endeavour to contact and notify the Customer of the extra charges before construction continues.
- 7.13. In the event that the Supplier is unable to make contact with and give notice to the Customer of the extra charges detailed at paragraph 7.12. herein, the Customer acknowledges that construction will continue and any extra charges shall be added to an invoice rendered to the Customer by the Supplier.
- 7.14. The Customer acknowledges that cracks in concrete and/or paving may occur during the provision of the Services. The Supplier warrants that it will take all reasonable care to avoid said cracking, and the Customer shall indemnify the Supplier against any loss arising from same.
- 7.15. The Customer acknowledges that the Supplier is not responsible for re-attaching old fence wings, gates or clotheslines. If requested, the Customer acknowledges that such additional Services are not included or specifically excluded in the quotation given or in the Customer's Order and the Supplier shall be entitled to make an additional charge for same.

- 7.16. The Customer acknowledges that excess soil, old bricks, rocks, concrete or old pipes found while digging will not be removed by the Supplier.
- 7.17. The Supplier will endeavor to remove all fence offcuts, strapping and/or leftover materials within five (5) business days after the completion of the Services.
- 7.18. The Customer acknowledges that any failure to collect the leftover materials within the five (5) business days detailed at paragraph 7.17 above will not entitle it to withhold payment for the Services or otherwise default in making payment in accordance with the Supplier's agreed payment terms.
- 7.19. The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any loss and damage incurred as a result of delay or failure to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.
- 7.20. The Customer warrants that the Premises is in a safe condition for the Supplier's servants and agents to perform the Services, and the Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury and loss and damage arising from or in connection with failing to keep the Premises safe to work in, including but not limited to injury caused by any feature or condition of the Premises, whether or not any such feature or condition is reasonably obvious and whether or not the feature or condition is known to the Customer.
- 7.21. The Customer acknowledges that the Supplier is not responsible for removal, replacing and/or repair of any item within 600mm of either side of the fence line. These items include, but are not limited to, watering systems, plants, trees, pool equipment or gates.
- 7.22. The Customer acknowledges that the Supplier is not responsible for restoring garden beds following the provision of the Services.
- 7.23. The Customer acknowledges that the Supplier will act wholly in accordance with the Customer's instructions insofar as the height of construction is concerned. The Supplier accepts no responsibility if and when a fence is ordered to be cut down due to a failure to obtain the relevant permit or observe relevant planning laws.
- 7.24. The Customer is responsible for obtaining all permits required for the provision of the Services and shall indemnify the Supplier for any/all charges associated with the removal or amendment to any structure erected due to an incorrect or deficient permit.
- 7.25. The Customer acknowledges that any internal boundary fence with a height over 2 metres shall require a permit, and further, that height allowances for front fences shall vary depending on the relevant local council and if the Premises is situated on a main road. The Supplier is not liable to provide any insurance cover in relation to the provision of the Services. The Customer is responsible to effect whatever insurance cover required at his or her own expense.
- 7.26. Subject to the Supplier's warranty for defective services, the Supplier's liability for any loss and damage associated with, arising from or in connection with the Services may not exceed the Price of the Order, including but not limited to personal injury and damage to property.

8. MATERIALS AND SPECIFICATIONS

- 8.1. The Customer acknowledges that the Supplier's provision of Services are governed by the following standard materials and specifications.

MATERIALS AND SPECIFICATIONS FOR STANDARD PALING FENCES

- 8.2. **Materials:** All treated pine supplied by the Supplier is CCA treated low grade sawn timbers (H3 hazard level). For arsenic free treatment or kiln dried dressed timber, the Customer acknowledges that it shall make specific requests for inclusions in the Supplier's quotation.
- 8.3. **Posts:** 125mm x 75mm mixed species hardwood class 1 or 2. 600-700mm deep holes with 10kg cement/soil mix.

- 8.4. **Plinths:** 150mm x 25mm sawn treated pine. For 150x38mm plinth, please see option #3 detailed in the Supplier's quotation.
- 8.5. **Rails:** 75mm x 50mm sawn treated pine.
- 8.6. **Palings:** 150mm x 12mm sawn treated pine base paling at 40mm gaps, 100 x 12mm sawn treated pine cover paling.
- 8.7. **Fence Construction:** Posts spaced at an average of 2.7m apart, 600-700mm deep holes with 10kg cement/soil mixed. Plinths, rails and palings fixed using EP galvanized nails.
- 8.8. **Colorbond:** Supplied by Metroll. Brochure supplied upon request.

9. WARRANTY

- 9.1. The Supplier warrants that the Customer's rights and remedies in the agreement arising from a warranty against defects are in addition to other rights and remedies under any applicable law in relation to the goods and services to which the warranty relates.
- 9.2. The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* as may be amended from time to time.

Warranty for Services

- 9.3. The Supplier provides a twelve (12) month warranty on all workmanship, gate frames and dressed or kiln dried timbers.

Limited Warranty for Rough Sawn Timber

- 9.4. The Supplier offers a limited warranty on all rough sawn timbers. Warped or twisted timber, knot holes and splits are common in rough sawn timber and will not be replaced by the Supplier unless they are a structural risk to the fence.
- 9.5. The Customer acknowledges that the Supplier will not honor the aforementioned limited warranty if excess soil, crushed rock or any other foreign materials have been built up 200mm or higher against the fence.

Manufacturer's Warranty for Colourbond Fencing

- 9.6. Metroll provides a ten (10) year manufacturer's warranty on all colorbond fencing supplied.
- 9.7. In respect of all claims under warranty, the Supplier reserves its right to inspect the Services alleged to be defective.
- 9.8. The Supplier provides the following warranty to Customers in respect of Services supplied:
"Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service you are entitled:
 - *To cancel your service contract with us; and*
 - *To a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract."

Claims made under Warranty

- 9.9. Claims for warranty should be made in one of the following ways:
 - 9.9.1. The Customer must send the claim in writing to the Supplier's address PO Box 5008, Ringwood, Victoria, 3134;
 - 9.9.2. The Customer must email the claim to the Supplier to sales@eastsidefencing.com.au;
 - 9.9.3. The Customer must contact the Supplier on the Supplier's business number 03 8802 0402.

10. TERMINATION AND CANCELLATION

Cancellation by Supplier

- 10.1. The Supplier may cancel any Order to which these terms and conditions apply at any time before payment of the Price in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any deposit or sum advanced in respect of the Price. The Supplier shall not be liable for any loss and damage whatsoever arising from such cancellation.
- 10.2. Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
 - 10.2.1. Any money payable to the Supplier including any progress payment becomes overdue for payment; or
 - 10.2.2. The Customer 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
 - 10.2.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

- 10.3. The Customer may cancel any Order by providing no less than twenty-four (24) hours' notice to the Supplier before the Services were due to be performed.
- 10.4. In the event that the Customer cancels the Order, the Customer shall be liable for loss and damage suffered by the Supplier; but limited to:
 - 10.4.1. The Price of the Order; or
 - 10.4.2. Any costs or expenses incurred by the Supplier, including the cost of purchasing the Goods from a third party to meet the Customer's Order.
- 10.5. The Supplier may retain any deposit or other sum paid by the Customer in respect of the Price of the Order and offset such sum or deposit in satisfaction or partial satisfaction of any loss and damage suffered by the Supplier as a result of the Customer's cancellation of the Order.

11. SECURITY AND CHARGE

- 11.1. The Customer hereby charges in favour of the Supplier all his/her estates and interests in real property, including present and future estates or interests, to secure the obligations of the debtor under the agreement.
- 11.2. The Customer consents to the Supplier lodging a caveat or registering a mortgage over the real property to secure the obligations of the debtor under the agreement.
- 11.3. The Customer irrevocably appoints the Supplier as the duly constituted attorney of the Customer and to execute in his/her name any documents, including any mortgage of real property or caveat in registrable form.

12. ENTIRE AGREEMENT

- 12.1. The agreement as defined herein constitutes the whole agreement between the Customer and the Supplier.
- 12.2. The agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.
- 12.3. All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by it or on its behalf that are in conflict with any clauses in this document in any way.

12.4. Nothing in these terms and conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010 (Cth)* or the *Fair Trading Acts* in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

NAME: NAME:

POSITION HELD:..... POSITION HELD:.....

SIGNATURE: SIGNATURE:

DATE:/...../20... DATE:/...../20...

