

SUNCOAST FENCING - TERMS & CONDITIONS

Interpretation

1 In these terms and conditions:

'**vendor**' means Suncoast Fencing ACN 75 122 937 026, which is the seller of the goods;

'**purchaser**' means the purchaser of the goods specified overleaf;

'**goods**' means the products and, if any, services specified overleaf;

'GST' means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999*; and

'**paid**' means receipt of cash or cleared funds.

Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA), and which by law cannot be excluded, restricted or modified.

General

2. These terms and conditions (which shall only be waived in writing signed by the vendor) shall prevail over all conditions of the purchaser's order.

Term of sale

3. The goods, and all other products sold by vendor are sold on these terms and conditions.

Vendor's quotations

4. Unless previously withdrawn, vendor's quotations are open for acceptance within the period stated or, when no period is so stated, within sixty (60) days after its date. The vendor reserves the right to refuse any order based on the vendor's quotation within seven (7) days after the receipt of the order.

Packing

5. The cost of any special packing and packing materials used in relation to the goods shall be at purchaser's expense even if such cost may have been omitted from any quotation.

Shortage

6. The purchaser waives any claim for shortage of any goods delivered if such a claim has not been lodged with vendor within seven (7) days from the date of receipt of goods by purchaser.

Drawings, etc.

7. All specifications, drawings, and particulars of weights and dimensions submitted to vendor are approximate only and any deviation shall not be taken to vitiate any contract with vendor or form grounds for any claim against vendor. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods. Where specifications, drawings or other particulars are supplied by purchaser, vendor's price is made on estimates of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by vendor and set out in this quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to unit prices set out in this contract.

Performance

8. Any performance figures given by vendor are estimates only. Vendor shall be under no liability for damages for failure to attain such figures unless specifically guaranteed in writing and any such written guarantee shall be subject to the recognised tolerances applicable to such figures.

Delivery

9. The delivery times made known to purchaser are estimates only and vendor shall not be liable for late delivery or non-delivery and under no circumstances shall vendor be liable for any loss, damage or delay occasioned to purchaser or its customers arising from late or non-delivery or late installation of the goods.

Loss or damage in transit

10. Vendor is not responsible for any loss or damage to goods in transit. Vendor shall render purchaser such assistance as may be necessary to prosecute claims against carriers for any such loss or damage provided purchaser shall have notified vendor and the carriers in writing immediately loss or damage is discovered on receipt of goods and have lodged a claim on the carrier within three (3) days of the date of receipt of the goods.

Guarantee

11. Vendor's liability for goods manufactured by it is limited to making good any defects by repairing the same or at vendor's option by replacement, within a period not exceeding twelve (12) calendar months after the goods have been dispatched provided that:

- (a) defects have arisen solely from faulty materials or workmanship;
- (b) the goods have not received maltreatment, inattention, interference or been incorrectly installed;
- (c) accessories of any kind used by purchaser are manufactured by or approved by vendor;
- (d) the seals of any kind on the goods remain unbroken; and
- (e) the defective parts are promptly returned free of cost to vendor.

12. If goods are not manufactured by vendor the guarantee of the manufacturer shall be accepted by purchaser and is the only guarantee given to purchaser for the goods.

13. Vendor shall not be liable for and purchaser releases vendor from any claims in respect of faulty or defective design of any goods supplied unless such design has been wholly prepared by vendor and the responsibility for any claim has been specifically accepted by vendor in writing and in any event vendor's liability hereunder shall be strictly limited to the replacement of defective parts in accordance with para 11 (a) of these conditions.

14. Vendor shall not be liable for goods of a consumable nature, or those having a low rated service life such as electric lamps or where unauthorised repair, alteration or installation of the goods, has been performed by purchaser or others.

15. Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded and vendor shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of vendor's negligence or in any way whatsoever.

16. Suncoast Fencing liability for a breach of a condition or warranty implied by Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA),

- (a) in case the goods, any one or more of the following:
 - (a) replacement of the goods or the supply of equivalent goods;
 - (b) repair of the goods
 - (c) payment of the cost of replacing the goods or acquiring equivalent goods;
 - (d) payment of having the goods repaired; or
- (b) in case of services:
 - (i) supplying of the services again; or
 - (ii) payment of the cost of having the services supplied again.

Suncoast Fencing liability under Schedule 2 to the Competition and Consumer Act 2010 (Cth) (CCA) is expressly limited to a liability to pay to the purchaser an amount equal to the cost of:

- (a) replacing the goods
- (b) obtaining equivalent goods; or
- (c) having the goods repaired, whichever is the lowest amount.

Trading Terms

17. **Non Account Customers are required to pay a 50% deposit on placement of order prior to receiving Computer Aided Drawings (CAD) for their approval, balance of invoice is to be paid prior to pick-up and or delivery.**

Prices

18. Unless otherwise stated all prices quoted by vendor are net, exclusive of sales tax. Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, cost of materials and other charges affecting the cost of production ruling on the date is made and any alterations either before acceptance of or during the currency of the contract shall be to the purchaser's account.

Payment

19. If GST is or becomes payable by vendor in respect of any supply of any goods or services made under or in connection with this contract, purchaser must pay vendor an additional amount equivalent to the amount of GST payable which amount must be paid at the **same** time as the payment of the purchase price. Vendor will issue to purchaser a GST tax invoice within fourteen (14) days of receiving any such **additional amount from purchaser**. Each party will comply with its obligations under the *Trade Practices Act 1974* in respect of any consideration payable for any supply made under or in connection with this contract.

20. The purchase price in relation to goods shall be paid on or before thirty (30) days from the date of the account statement for the goods unless other terms of payment are expressly stated in writing. If purchaser delays in paying purchase **price then purchaser agrees to pay** vendor interest on the overdue amount at the rate of 1.5% per month. The purchaser may not withhold, make deductions from or set-off against the purchase price for any reason.

21. Purchaser agrees to pay vendor all the costs, charges and expenses (including legal costs on a solicitor-client basis) incurred in the recovery of any overdue amount by purchaser from vendor.

Ownership and risk

22. Risk passes to purchaser on delivery. Purchaser must insure goods from the date of delivery. Ownership of goods in each delivery only passes to purchaser when all of the goods in:

- (a) that delivery is paid for in full; and/or
- (b) when all of the goods in all other deliveries are paid for in full.

Until then:

- (c) ownership of goods remains with vendor;
- (d) purchaser holds goods as bailee and fiduciary for vendor;
- (e) purchaser must store goods separately from its own goods; and
- (f) purchaser must keep records, which relate to goods separately from those, which relate to its own goods.

23. If any event referred to in clause 26 happens to purchaser then: (a) immediately on vendor's request purchaser must return to vendor my goods it does not own; (b) vendor may enter the premises at which those goods are stored and retake possession of them; and (c) vendor may resell those goods.

Termination

24. Vendor may terminate this contract with immediate effect by giving notice to purchaser if:
 - (a) purchaser breaches any term or condition of this contract and fails to remedy the breach within thirty (30) days after receiving notice requiring it to do so;
 - (b) purchaser breaches a material term or condition of this contract where that breach is not capable of remedy; or
 - (c) any event referred to in clause 26 happens to purchaser.
25. On termination of this contract purchaser must immediately pay to vendor all amounts due. Termination of this contract does not affect any accrued rights or remedies of either party.

Adverse financial position of purchaser

26. Purchaser must notify vendor immediately if:
 - (a) there is any change in the direct or indirect beneficial ownership or control of purchaser;
 - (b) it ceases to carry on business;
 - (c) it ceases to be able to pay its debts as they become due;
 - (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
 - (e) any step is taken to *enter into* any arrangement between purchaser and its creditors;
 - (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other li person of the whole or any part of its assets or business; or
 - (g) where purchaser is a partnership, any step is taken to dissolve that partnership.

Purchaser's property

27. Any property of purchaser under vendor's custody or control shall be entirely at the purchaser's risk as regards loss or damage caused to the property or by it.

Storage

28. Vendor reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the purchaser within fourteen (14) days of a request by vendor for such information.

Returned goods

29. Vendor shall not be under any obligation to accept goods returned by the purchaser and will do so on payment by purchaser of a restocking fee of 7% of the price of the goods.

Goods sold

30. All goods to be supplied by vendor shall be as described on the purchase order agreed by vendor and purchaser and the description on such purchase order modified as so agreed shall prevail over all other descriptions including any purchaser's specification or enquiry.

31. Purchaser *agrees not* to alter, remove or destroy any labels affixed to the goods (unless agreed to in writing and signed by vendor) and will indemnify and keep harmless vendor for any claims arising out of such alteration, removal or destruction.

Intellectual property rights

32. The *intellectual property* rights of vendor in goods offered or supplied by vendor shall remain the absolute property of vendor and vendor's designs and drawings shall not be reproduced or disclosed without vendor's written consent. Purchaser will not (without vendor's prior written consent) copy or allow other persons to copy any drawings or goods supplied by vendor.

33. Purchaser will indemnify and keep harmless vendor for all costs (including legal costs on a solicitor-client basis) incurred in the enforcement of its intellectual property rights or the recovery of damages if purchaser infringes vendor's intellectual property rights.

Cancellation

34. No order may be *cancelled except with* the consent in writing by vendor and on terms, which will indemnify vendor against all losses.

Place of contract

35. The contract for the sale of the goods is governed by and is to be construed in accordance with the law of Queensland. Purchaser and vendor irrevocably submit to the nonexclusive jurisdiction of the courts of Queensland.

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