

AAA Fencing and Supplies - Terms and Conditions of Contract

1. DEFINITIONS

In the following "I/you" means the individual, partnership or corporation that we are supplying goods and/or services to. "We" and "Us" and "The Company" means AAA Fencing and Supplies and Colourbond Fencing. "Contract Works" means all the work and supply of materials necessary to perform this Contract in accordance with its terms.

2. CONDITIONS

- 1.1 The company has the right to amend any quote if not accepted in writing within thirty (30) days of the date of this quote.
- 1.2 The height of fences provided in the quote may vary if the top of the fence needs to be dressed.
- 1.3 Fence removal costs in this quote are based on cutting posts to ground level. If you require removal of all remnants of fence, additional costs will apply.
- 1.4 "Removal of existing" is removal of fence only unless otherwise stated. Attachments to the fence line such as pergolas etc are not included.

3. BOUNDARIES AND POSITION OF FENCES

It is your responsibility to provide the correct location of the boundary fence line, to indicate the position of the survey pegs and to supply a plan of the site to assist in the location of the fence line. You are responsible to pay the costs if a check survey is to be undertaken by a licenced land surveyor. In any event, you continue to be responsible for the position of the fence and any claims arising there from. You indemnify the Company in relation to any claims made against the Company by any party in relation to any fence constructed on the basis of information obtained from you.

4. SITE

- 4.1 Unless otherwise provided for on the quotation, the fence line must be clear of all obstructions and must provide reasonable working space. Where new posts are to be fitted in existing concrete, tiles, or pavers, repairs and/or reinstatement of the surface is your responsibility and will be at your cost.
- 4.2 Spoils from any holes that are required to be dug will remain on site and are generally spread around the hole.
- 4.3 The following items will incur extra charges (amounts include GST):
 - (a) Removal of obstacles and/or vegetation on or below fence line necessary for completion of works by us - \$65 per man/per hour; Any above fence line must be requested.
 - (b) Rock or debris that requires the use of electric jackhammer to remove - \$65 per man/per hour. Plus jackhammer hire - minimum charge \$85 (up to 2 hours) \$250 per day. This includes any rock encountered in the excavation/digging of postholes.
 - (c) Any postholes that require a mechanical excavator the price of this will be subject to negotiation.

5. UNDERGROUND SERVICES

You are responsible for locating and notifying us in writing of the position of all underground obstructions. You must identify electrical and telephone cables, water and gas supplies, storm water, sewerage and drainage pipes and similar obstructions and shall indemnify us, or our contractors, servants or agents against any claim or demands by any person or authority in respect of any damage which may be caused by us in the course of the works, if such location and notification to us has not been made or not been accurately made. Any costs incurred will be at an additional charge.

6. ELECTRICITY AND WATER SUPPLY

You must provide at no cost to us, electricity and water for the purposes of construction. In the event that power and water are not provided any extra costs incurred by us including generator hire or cartage, loss of time or additional labour, may be charged to you.

7. VARIATIONS

- 7.1 If the number of metres quoted varies, the price is adjusted to meet the actual metres installed.
- 7.2 Verbal variations are considered contractual.
- 7.3 If only part of a quotation is accepted and the work is less than 12 metres in total, we reserve the right to charge at a higher rate.

8.0 INSURANCE

You shall insure and keep insured your existing premises, if any, and all other works in progress against loss and damage and shall keep us harmless against all liability for damage to existing premises or to movable property thereon or therein or for any injury to any person on the existing premises, provided such damage and/or injury shall not have been caused through our default or negligence.

9. DEFAULT

- 9.1 If you breach any clause of this Contract or in the case of an individual bankrupt or seek relief under the *Bankruptcy Act*, or in the case of a company you become insolvent, wound up or placed into administration, then we may:
 - (a) terminate this Contract; and/or
 - (b) commence proceedings for recovery of all moneys due and

owing; and/or

- (c) repossess our goods and you hereby expressly consent to us (or our agents or employees) to enter onto your premises where the goods are located for the purposes of recovering same.

9.2 If you shall make a default in any of the following respects:

- (a) You delay us by not giving us possession of the Site of Works;
- (b) You obstruct progress of the Contract Works by us;
- (c) You fail to make a payment to us when it is due;
- (d) You commit any other substantial breach of this agreement, and you shall continue the default for seven (7) days after notice in writing has been served on you specifying and detailing the default;

We may without prejudice to any rights and remedies we have:

- (e) suspend the whole or part of the Contract Works for the period such default continues and the period of suspension shall automatically operate as an extension of the date or time or times for completion; or
- (f) terminate this agreement and in that case we shall be entitled to all such payments and/or loss or damage as if this agreement has been rescinded by us at common law for breach or repudiation by you.

9.2 If we have exercised or given notice of exercise of our right of suspension we may at any time thereafter exercise our right of termination of contract but only after giving further written notice as above required. In any case, we shall be entitled to recover from you any loss or damage we may sustain by reason of the matters aforesaid.

10. DISPUTE RESOLUTION

10.1 Prior to either party commencing proceedings to recover damages or other orders, the aggrieved party must:

- (a) notify the other party in writing stating:
 - (i) the issues in dispute;
 - (ii) the steps required to resolve the dispute; and
 - (iii) the time within which the other party must respond to the notice, being a period not less than five (5) business days;
- (b) the parties must attempt to resolve their issues in dispute in good faith.

10.2 If the dispute for which notice has been given has not been resolved within a reasonable period being a period of not less than fourteen (14) days after the notice issued, either party shall be at liberty to apply to the following entities:

In Queensland:

- (a) The Building Services Authority;
- (b) The Queensland Civil and Administrative Tribunal;
- (c) The Queensland Courts.

In New South Wales:

- (d) New South Wales Office of Fair Trading;
- (e) The Consumer Trading and Tenancy Tribunal;
- (f) The New South Wales Courts.

11. WARRANTIES

We warrant that:

- (a) The work will be performed in a proper and workman like manner and in accordance with the scope of the work set out in the Contract.
- (b) All materials supplied by us will be good and suitable for the purposes for which they are used and that, unless otherwise stated in the contract, those materials will be new.
- (c) The work will be done in accordance with, and will comply with the relevant state legislation.
- (d) The work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time.
- (e) The work and any materials used in doing the work will be reasonably fit for the specified purpose or result that you have stipulated.

12. RETENTION OF TITLE

- a. Title in all goods supplied remain with us until we receive all moneys owing to us.
- b. You hereby irrevocably agree to all us to enter your property at any time to remove our goods and we shall not be liable to you in any way and for any reason as a result of our entry into your property.
- c. If the fence is constructed on a property of which you are not the owner as a result of any agreement between yourself and the owner you shall not and you are not entitled to transfer title to our goods until we have been paid in full and we confirm that you are entitled to do so.

13. PAYMENTS

- 13.1 Payment is due on the day of completion.
- 13.2 An account is considered overdue after 7 Days.
- 13.3 Overdue accounts may attract interest, charged monthly and compounding daily in the same way as calculated by the Australian Taxation Office.