



TERMS AND CONDITIONS

Effective June 2012

These terms and conditions represent the agreement between **McNamara Fencing Contractors Pty Ltd (ACN 074 481 520)**, or **McNamara Fence Hire**, their servants, assignees, related companies, suppliers, agents or subcontractors ("the Company") and the person or legal entity to whom this quotation is addressed ("the Purchaser"), herein referred to as "the Quotation".

Quotations

1. The Quotation shall remain current for a period of 30 days, or as otherwise stated, from the date specified on the Quotation and are provided on the basis of E & OE. The Quotation is an "invitation to treat" only and does not represent a legal binding agreement between the Company and the Purchaser. The Company warrants that all proposed works (herein referred to as "the works") will be undertaken according to generally accepted industry standards unless specifically stated or requested by the Purchaser and agreed to by the Company.
2. The Quotation is based on a cleared, surveyed and marked alignment of the site for the works (where applicable). Unless noted in the Quotation, any costs incurred by the Company in respect of clearing and surveying the alignment will be payable in addition to the Purchaser's quoted amount. Adequate soil compaction and/or consistency to hold the works is also warranted by the Purchaser.
3. Unless stated in the Quotation, no allowance has been made for any obstructions, above or below the soil such as rock or shale, concrete, tree roots, broken posts or any other item(s) which may be encountered during the performance of the contract. Additional charges based on the Company's current hourly rates for labour plus any other required costs (all inclusive of GST) will be made to cover the costs incurred as a result of such obstructions.
4. Upon acceptance of the Quotation, a booking fee may be required.
5. At its discretion, the Company may elect to proceed with a quotation which is accepted after 30 days has elapsed. In such cases, the Company reserves the right to apply any price increases to the original quotation, where applicable.

Jurisdiction

6. The Purchaser acknowledges and agrees that this agreement shall be governed by the laws of South Australia, and the laws of the Commonwealth of Australia that are applicable to South Australia.
7. The parties to this agreement submit to the non-exclusive jurisdiction of the Courts of South Australia and the relevant Federal Courts and Courts competent to hear appeals from those Courts.

Credit Applications

8. The Company may require the Purchaser to complete an Application for Credit Form where the works are to be completed on account.
9. The Purchaser acknowledges and agrees that any credit to be provided to the Purchaser by the Company is to be applied wholly for commercial purposes.

Notices and permits

10. Any Notices to be given or Permits required as a consequence of the works must be provided to the Company by the Purchaser or their designate, within any specified time frames prior to the Company commencing work. The Company will not advocate on behalf of owners of contiguous properties to the works where this applies.

Undertaking works

11. The Purchaser, or their designate, is responsible for the supervision of the works and shall, where erection is involved, advise the erector of the location of all electrical cables, gas or water pipes, sewage, telephone lines and/or other service facility which is or may be affected by the proposed works.
12. The Purchaser agrees to fully indemnify the Company at all times against any claims or demands made by any person or authority in respect of such incorrect location or resultant damage.
13. Where the Company contractually assumes responsibility for services location, liability is strictly limited to the extent whereby services are reasonably detectable by a specialist services detection contractor. In respect of undetectable services (for example, PVC piping) the Purchaser, or their designate/s, must provide exact locations if the Company is expected to assume responsibility.
14. The Company accepts no responsibility for damage to finished surfaces (including paving, concrete and bitumen) unless specifically nominated as a result of undertaking the works described in the Quotation. Any trees, shrubs and landscaping in the vicinity of the works are the unconditional responsibility of the Purchaser and may be removed, without liability, by the Company if deemed necessary.
15. It is the responsibility of the Purchaser to restore paved surfaces unless specifically included in the Quotation.
16. Any waste removal, including excess soil, is the responsibility of the Purchaser unless specifically included in the Quotation.

Free access

17. The Quotation is provided on the basis of free access by the Company to the jobsite during normal working hours and also access to undertake the works continuously without breaking the Company's work schedule for the job, unless by prior agreement. Variations to this will incur additional charges.
18. Detention time may be charged at the Company's standard ruling rates in the event delays occur on the jobsite as a result of the Purchaser limiting access.

Variations

19. Any variation, alteration or modification of the work or materials must be in writing and signed by the Purchaser or their authorised representative and the Company reserves the right to vary the quoted price for any variations as necessary.

Responsibility for payment

20. Upon acceptance of the Quotation, payment will be the responsibility of the person or legal entity to whom the Quotation is directed. Such acceptance will be taken as an authority to proceed with all work including, if applicable, demolition of existing fences and/or structures. The legal entity to whom the Quotation is addressed is assumed to have obtained the agreement of all relevant property owners, occupants and authorities from whom approval is required, where applicable.
21. Any delays incurred as a result of failure to obtain such approval where required may be an additional cost to the Purchaser.

Progress claims

22. The Company, at its discretion, shall be entitled to render to the Purchaser progress claims based on a pro-rata value of work completed. Such claims are to be paid by the Purchaser



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upon submission of the Company's invoice, subject to the Company's payment terms.

Payment on completion

23. Pursuant to any credit agreement between the Company and the Purchaser, the Company's payment terms apply upon completion of the works. Any dispute or concern regarding the works are to be delivered to the Company in writing, no later than 7 days following completion of the works, prior to any further action being undertaken.
24. Should the Company incur legal and/or other expenses including any reasonable internal costs as well as any payments to an Agency licensed under the *Commercial & Private Agents Act 1986* (SA) (as amended) or a legal practitioner in obtaining or attempting to obtain payment of all or part of any amount(s) due, the Purchaser is liable for the payment of those expenses on a Solicitor-Client basis. These are due and payable immediately when advised to the Purchaser.
25. An overdue charge, calculated on a daily basis at the current National Australia Bank published overdraft rate plus 2%, may be charged on any overdue amount on the account and further in consideration of any grant of credit, the Purchaser expressly undertakes to pay all such overdue charges.
26. The Purchaser agrees to pay the Company's costs and expenses incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including any debt recovery fees and legal costs on an indemnity basis. Such costs and expenses will be due and payable by the Purchaser to the Company irrespective of whether pursuit of the recovery action, claim or remedy is successful.
27. The Purchaser acknowledges and agrees that payments by the Purchaser will be applied by the Company as follows:
 - a. Firstly, in payment of any and all collection costs and legal costs, where applicable.
 - b. Secondly, in payment of any overdue charges incurred in accordance with clause 25.
 - c. Thirdly, in payment of the outstanding invoice(s).

Ownership of goods

28. Property in the goods supplied shall remain vested in the Company and shall not pass to the Purchaser until all monies owing by the Purchaser to the Company, together with all collection and repossession and legal costs incurred, have been paid in full, plus any Government charges or taxes where applicable.
29. Notwithstanding the above, the goods are at the entire risk of the Purchaser from the time of delivery. In the event the Purchaser defaults in the payment of any monies owing hereunder, the Company and its employees or agents reserve the right to enter, without notice, upon the premises occupied by the Purchaser (or any Receiver, Receiver and Manager, Administrator, Liquidator or Trustee in Bankruptcy of the Purchaser) or any other premises where the goods are known to be located to repossess the goods and for this purpose the Purchaser shall grant all reasonable access rights and the Company and its employees or agents shall be entitled to do all things required to protect its position. This includes any installed materials and any visual evidence of the installed item(s) having been installed will not be rectified after removal.
30. The Purchaser will be responsible for the Company's costs and expenses incurred in exercising its rights under clause 29. Where the Company exercises any power to enter the premises, that entry will not give rise to any action of trespass

or similar action on the part of the Purchaser against the Company, its employees, servants, or agents.

31. For the avoidance of doubt, the Company's interest constitutes a "purchase money security interest" pursuant to the *Personal Properties Securities Act 2009* (SA).

Continuing trade

32. If the Purchaser trades with the Company on an ongoing or repeat basis then these terms and conditions, together with any variations thereto, will apply. Applicable Law is that of the State of South Australia.

Variation of terms and conditions

33. These Terms and Conditions may only be varied if approved in writing by a Director of the Company, or their authorised representative.
34. If the Company enters into a contract with the Purchaser, then any clauses contained in these terms and conditions which are not overridden specifically by any of the Purchaser's conditions shall remain operative.
35. If any provision or part of this contract is void or unenforceable for any reason, then that provision or part will be severed from this contract and the rest of this contract will be read as far as possible as if the severed part or provision had never existed.

Warranty

36. All terms and conditions relating to warranties are subject to the Company's warranty policy, which may be subject to change without notice and is available upon request.
37. The Company will not be required to undertake any works according to warranty where, in the opinion of the Company, monies relating to the works subject to warranty remain unpaid.

Temporary fencing

38. All temporary fencing quotations are provided on the following basis:
 - a. Clear access for a delivery vehicle to within 10 metres of the location where each temporary fencing panel is required.
 - b. Delivery and erection, dismantling and / or pickup is to be completed within normal business hours.
 - c. Appropriate notice for delivery, erection, dismantling and / or pickup is given by the Purchaser, in writing, of not less than seven days.
39. Any additional charges incurred as a result of the above, or any other delay as a result of the Purchaser's acts or omissions will be payable by the Purchaser, charged at the Company's standard ruling rates.
40. Any shortage or damage will be payable by the Purchaser at the Company's standard ruling rates.

Automation and access control works

41. In this section, unless otherwise indicated, "the Company" includes any specialist subcontractors engaged by the Company to undertake any automation or access control works on its behalf.
42. Unless specifically noted in the Quotation, the Purchaser is responsible for provision of the following:
 - a. An activated weatherproof 240V or 415V power source, mounted at the location of the installed equipment.
 - b. All concrete footings and / or pads where required.



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- c. Adequate and accessible work space must be provided or be available for the Company's technicians for installation of intercom power supplies and associated cabling. The Company will not be required to undertake any works where, in the Company's opinion, inadequate and accessible work space exists.
 - d. Restoration of paved surfaces (if required).
43. According to Australian law, underground 240V and 415V power cabling must be in a separate conduit and be buried a minimum of 600mm below ground level. The Company will under NO circumstances undertake work that, in the Company's opinion, is or results in an unsafe or potentially unsafe environment.
44. A Certificate of (Electrical) Compliance (COC) from an earlier installer's works may be requested by the Company before any electrical works are undertaken.
45. Where the Purchaser, or their designate, supplies low voltage cabling for intercom or automated systems, the following compliance requirements must apply:
- a. Low voltage intercom or automation cabling cannot be placed in the same conduit as 240V cabling. The depth of placement is not critical.
- b. The cabling must be in separate conduit with a minimum of 300mm separation from 240V (or higher voltage, if applicable) conduit if parallel and which are in the same trench to minimise audio and/or visual interference.
- c. In instances where non-compliance with the above is observed, and where remedial cabling should be required to rectify, the Company reserves the right to charge the Purchaser for the remedial cabling. The Company will not be responsible for any costs or defects in performance in the event the above requirements are not satisfied.
46. Where conduit only has been installed by the Purchaser or a third party, the Purchaser must ensure that adequate draw wires have also been provided prior to the Company's arrival on site.
47. If the Purchaser engages a third party to provide any cabling or conduit work, especially prior to concrete works and/or paving, the Company is to verify the correct cabling or conduit requirements prior to installation of any automation. The Company's standard callout charges will apply as an additional cost to the Quotation.
48. Any rectification works undertaken by the Company for incorrectly located or configured cabling will incur additional charges.

CONFIRMATION OF ACCEPTANCE OF QUOTATION

I hereby accept the quotation and authorise McNamara Fencing Contractors to proceed to supply all goods and services as stated. I hereby declare that I have read and understand the Terms and Conditions above.

Signature of authorised representative:

Name of authorised representative to accept quotation:

Company (if applicable):

Date:

Quotation number: