



### 1 Definitions

- 1.1 "McNamara Fencing Contractors" means Crestware Industries Pty Ltd ATF CFS Trust T/A McNamara Fencing Contractors, its successors and assigns or any person acting on behalf of and with the authority of Crestware Industries Pty Ltd ATF CFS Trust T/A McNamara Fencing Contractors.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by McNamara Fencing Contractors to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Goods as agreed between McNamara Fencing Contractors and the Client in accordance with clause 4 below.

### 2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with McNamara Fencing Contractors' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and McNamara Fencing Contractors.

### 3 Change in Control

- 3.1 The Client shall give McNamara Fencing Contractors not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by McNamara Fencing Contractors as a result of the Client's failure to comply with this clause.

### 4 Price and Payment

- 4.1 At McNamara Fencing Contractors' sole discretion the Price shall be either:
- as indicated on any invoice provided by McNamara Fencing Contractors to the Client; or
  - the Price as at the date of delivery of the Goods according to McNamara Fencing Contractors' current price list; or
  - McNamara Fencing Contractors' quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 4.2 McNamara Fencing Contractors reserves the right to change the Price if a variation to McNamara Fencing Contractors' quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to McNamara Fencing Contractors' in the cost of materials and labour) will be charged for on the basis of McNamara Fencing Contractors' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At McNamara Fencing Contractors' sole discretion a deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by McNamara Fencing Contractors, which may be:
- on delivery of the Goods;
  - by way of installments/progress payments in accordance with McNamara Fencing Contractors' payment schedule;
  - thirty (30) days following the end of the month in which the Goods/Equipment were supplied;
  - the date specified on any invoice or other form as being the date for payment; or
  - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by McNamara Fencing Contractors.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to one & a half percent (1.5%) of the Price- Visa & Mastercard only), or by any other method as agreed to between the Client and McNamara Fencing Contractors.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to McNamara Fencing Contractors an amount equal to any GST Warrant SA must pay for any supply by McNamara Fencing Contractors under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5 Delivery of Goods

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- the Client or the Client's nominated carrier takes possession of the Goods at McNamara Fencing Contractors' address; or
  - McNamara Fencing Contractors (or McNamara Fencing Contractors' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 5.2 At McNamara Fencing Contractors' sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection 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 McNamara Fencing Contractors shall be entitled to charge a reasonable fee for redelivery and/or
- 5.4 McNamara Fencing Contractors may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time or date given by McNamara Fencing Contractors to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and McNamara Fencing Contractors will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

### 6 Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on

Delivery and the Client must insure the Goods on or before

- Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, McNamara Fencing Contractors is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by McNamara Fencing Contractors is sufficient evidence of McNamara Fencing Contractors' rights to receive the insurance proceeds without the need for any person dealing with McNamara Fencing Contractors to make further enquiries.
- 6.3 If the Client requests McNamara Fencing Contractors to leave Goods outside McNamara Fencing Contractors premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 Where the Client is to supply McNamara Fencing Contractors with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. McNamara Fencing Contractors shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 6.5 Where McNamara Fencing Contractors is instructed to manufacture custom Goods on behalf of the Client, the Client shall be responsible for the suitability of the design. All custom made Goods will not be subject to return or credit in accordance with clause 18.3.
- 6.6 Where the Client has supplied materials for McNamara Fencing Contractors to complete the works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. McNamara Fencing Contractors shall not be responsible for any defects in the works, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

### 7 Fencing Risk

- 7.1 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs. If the Client fails to comply with this clause then McNamara Fencing Contractors accepts no responsibility for installation decisions that need to be made by McNamara Fencing Contractors in the Client's absence.
- 7.2 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow McNamara Fencing Contractors clear access along the proposed fence line prior to commencement of work by McNamara Fencing Contractors unless otherwise agreed in writing between McNamara Fencing Contractors and the Client. Under no circumstances will McNamara Fencing Contractors handle removal of asbestos product.
- 7.3 Whilst McNamara Fencing Contractors will take all due care during installation McNamara Fencing Contractors will not accept any responsibility for tiles or pavers damaged during installation.
- 7.4 Where fencing is installed on a retaining wall McNamara Fencing Contractors shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 7.5 McNamara Fencing Contractors shall not be responsible for digging land out under fence lines nor removal of soil from the work site.
- 7.6 McNamara Fencing Contractors reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.

### 8 Concrete Risk

- 8.1 The Client acknowledges that variations of colour and texture are inherent in concrete. McNamara Fencing Contractors shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 8.2 Detailed drawings of any services that will be embedded in the concrete are to be provided to McNamara Fencing Contractors prior to commencement of any works. Whilst all due care will be taken no liability will be accepted by McNamara Fencing Contractors for damage to the services or any other element embedded in the concrete.
- 8.3 The Client acknowledges that the curing time for concrete can be affected by elements such as temperature or the weather as such McNamara Fencing Contractors offers no guarantee as to the length of time the curing process will take.
- 8.4 McNamara Fencing Contractors offers no guarantee against cracking of concrete.

### 9 Access

- 9.1 The Client shall ensure that McNamara Fencing Contractors has clear and free access to the work site at all times to enable them to undertake the works. McNamara Fencing Contractors shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of McNamara Fencing Contractors.

### 10 Underground Locations

- 10.1 Unless otherwise agreed in writing between the Client and McNamara Fencing Contractors it shall be the Client's responsibility to advise the precise location of the underground services on the site and clearly mark the same prior to commencing any works. 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 pumping mains, and any other services that may be on site.
- 10.2 Whilst McNamara Fencing Contractors will take all care to avoid damage to any underground services the Client agrees to indemnify McNamara Fencing Contractors in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.
- 10.3 Clause 10.2 shall not apply where McNamara Fencing Contractors has been engaged to act as the service locator, (McNamara Fencing Contractors maintains insurance against damage to services whilst acting as the service locator).

### 11 Title

- 11.1 McNamara Fencing Contractors and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid McNamara Fencing Contractors all amounts owing to McNamara Fencing Contractors; and
  - the Client has met all of its other obligations to McNamara Fencing Contractors
- (c) Receipt by McNamara Fencing Contractors 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.

11.2 It is further agreed that:

- until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to McNamara Fencing Contractors on request.
- the Client holds the benefit of the Client's insurance of the Goods on trust for McNamara Fencing Contractors and must pay to McNamara Fencing Contractors the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- the Client must not sell, dispose, or otherwise part with Possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for McNamara Fencing Contractors and must pay or deliver the proceeds to McNamara Fencing Contractors on demand.
- the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of McNamara Fencing Contractors and must sell, dispose of or return the resulting product to McNamara Fencing Contractors as it so directs.
- the Client irrevocably authorises McNamara Fencing Contractors to enter any premises where McNamara Fencing Contractors believes the Goods are kept and recover possession of the Goods.
- McNamara Fencing Contractors may recover possession of any Goods in transit whether or not delivery has occurred.
- the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of McNamara Fencing Contractors.
- McNamara Fencing Contractors may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 12 Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by McNamara Fencing Contractors to the Client.
- 12.3 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which McNamara Fencing Contractors may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
- (b) indemnify, and upon demand reimburse, McNamara Fencing Contractors for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of McNamara Fencing Contractors;
- (d) not register, or permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of a third party without the prior written consent of McNamara Fencing Contractors;
- (e) immediately advise McNamara Fencing Contractors 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.
- 12.4 McNamara Fencing Contractors and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by McNamara Fencing Contractors, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by McNamara Fencing Contractors under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13 Security and Charge

- 13.1 In consideration of McNamara Fencing Contractors agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies McNamara Fencing Contractors from and against all McNamara Fencing Contractors' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising McNamara Fencing Contractors' rights under this clause.
- 13.3 The Client irrevocably appoints McNamara Fencing Contractors and each director of McNamara Fencing Contractors as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

- 14 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)
- 14.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify McNamara Fencing Contractors in writing of any evident defect/damage, shortage in quantity, or failure to comply



- with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow McNamara Fencing Contractors to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 14.3 McNamara Fencing Contractors acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, McNamara Fencing Contractors makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. McNamara Fencing Contractors' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, McNamara Fencing Contractors' liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If McNamara Fencing Contractors is required to replace the Goods under this clause or the CCA, but is unable to do so, McNamara Fencing Contractors may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, McNamara Fencing Contractors' liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Client by McNamara Fencing Contractors at McNamara Fencing Contractors' sole discretion;
  - limited to any warranty to which McNamara Fencing Contractors is entitled, if McNamara Fencing Contractors did not manufacture the Goods;
  - otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 14.1; and
  - McNamara Fencing Contractors has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, McNamara Fencing Contractors shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Goods;
  - the Client using the Goods for any purpose other than that for which they were designed;
  - the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Client failing to follow any instructions or guidelines provided by McNamara Fencing Contractors;
  - fair wear and tear, any accident, or act of God.
- 14.10 Notwithstanding anything contained in this clause if McNamara Fencing Contractors is required by a law to accept a return then McNamara Fencing Contractors will only accept a return on the conditions imposed by that law.
- 15 Intellectual Property**
- 15.1 Where McNamara Fencing Contractors has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of McNamara Fencing Contractors.
- 15.2 The Client warrants that all designs, specifications or instructions given to McNamara Fencing Contractors will not cause McNamara Fencing Contractors to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify McNamara Fencing Contractors against any action taken by a third party against McNamara Fencing Contractors in respect of any such infringement.
- 15.3 The Client agrees that McNamara Fencing Contractors may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which McNamara Fencing Contractors has created for the Client.
- 16 Default and Consequences of Default**
- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at McNamara Fencing Contractors' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes McNamara Fencing Contractors any money the Client shall indemnify McNamara Fencing Contractors from and against all costs and disbursements incurred by McNamara Fencing Contractors in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, McNamara Fencing Contractors' collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies McNamara Fencing Contractors may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions McNamara Fencing Contractors may suspend or terminate the supply of Goods to the Client. McNamara Fencing Contractors will not be liable to the Client for any loss or damage the Client suffers because McNamara Fencing Contractors has exercised its rights under this clause.
- 16.4 Without prejudice to McNamara Fencing Contractors' other remedies at law McNamara Fencing Contractors shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to McNamara Fencing Contractors shall, whether or not due for payment, become immediately payable if:
- any money payable to McNamara Fencing Contractors becomes overdue, or in McNamara Fencing Contractors' opinion the Client will be unable to make a payment when it falls due;
  - 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
- a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 17 Compliance with Laws**
- 17.1 The Client and McNamara Fencing Contractors 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.
- 17.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 17.3 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.
- 18 Cancellation**
- 18.1 McNamara Fencing Contractors 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 McNamara Fencing Contractors shall repay to the Client any money paid by the Client for the Goods. McNamara Fencing Contractors shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by McNamara Fencing Contractors as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19 Privacy Act 1988**
- 19.1 The Client agrees for McNamara Fencing Contractors to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by McNamara Fencing Contractors.
- 19.2 The Client agrees that McNamara Fencing Contractors may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Client; and/or
  - to notify other credit providers of a default by the Client; and/or
  - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - to assess the creditworthiness of the Client.
- 19.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 19.4 The Client consents to McNamara Fencing Contractors being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 19.5 The Client agrees that personal credit information provided may be used and retained by McNamara Fencing Contractors for the following purposes (and for other purposes as shall be agreed between the Client and McNamara Fencing Contractors or required by law from time to time):
- the provision of Goods; and/or
  - the marketing of Goods by McNamara Fencing Contractors, its agents or distributors; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 19.6 McNamara Fencing Contractors may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client;
  - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 19.7 The information given to the credit reporting agency may include:
- personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - details concerning the Client's application for credit or commercial credit and the amount requested;
  - advice that Wallmark SA is a current credit provider to the Client;
  - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - information that, in the opinion of McNamara Fencing Contractors, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - that credit provided to the Client by McNamara Fencing Contractors has been paid or otherwise discharged.
- 20 Building and Construction Industry Security of Payments Act 2009**
- 20.1 At McNamara Fencing Contractors' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 20.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.
- 21 General**
- 21.1 The failure by McNamara Fencing Contractors to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect McNamara Fencing Contractors' right to subsequently enforce that provision. 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of South Australia in which McNamara Fencing Contractors has its principal place of business, and are subject to the jurisdiction of the courts of Adelaide in that state.
- 21.3 Subject to clause 14 McNamara Fencing Contractors shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by McNamara Fencing Contractors of these terms and conditions (alternatively McNamara Fencing Contractors liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 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 McNamara Fencing Contractors nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 McNamara Fencing Contractors may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6 The Client agrees that McNamara Fencing Contractors may amend these terms and conditions at any time. If McNamara Fencing Contractors makes a change to these terms and conditions, then that change will take effect from the date on which McNamara Fencing Contractors notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for McNamara Fencing Contractors to provide Goods to the Client.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from McNamara Fencing Contractors on request.