

PEEL FENCING (WA BN11574483 [hereinafter referred to as “the Supplier”]
TERMS and CONDITIONS of TRADE for the SUPPLY of GOODS and SERVICES to CUSTOMERS
[hereinafter referred to as “Terms”, “Goods/Services” and “the Customer”]

Application

Unless otherwise agreed in writing these terms apply to all dealings between the Supplier and the Customer.

1. Ordering and Acceptance

- 1.1 Whilst the Supplier may accept verbal or phone orders at the Supplier’s sole discretion, orders must normally be in writing and duly authorised by the Customer.
- 1.2 Any variations made by the Customer to the Goods/Services or variations to site or other conditions or events that occur before or during performance of the work will incur extra costs.
- 1.3 ‘The Customer’ in these Terms is the person, Supplier or body that instructs the Supplier to undertake the work irrespective of whether they are acting as an agent or in any other capacity on behalf of a property owner.
- 1.4 These Terms can only be amended with the written consent of the Supplier.
- 1.5 All orders for Goods/Services are accepted and supplied strictly on the Supplier’s Terms as contained herein and as may be amended from time to time to the total exclusion of anything to the contrary contained in the Customer’s order form, other documents and any other instructions from the Customer.
- 1.6 A binding contract will be established immediately the Customer instructs the Supplier to commence supply of Goods/Services and/or order Goods/Services from third parties for the Customer’s benefit and/or manufacture, construct or assemble any gates, fences or other Goods and the Customer will be liable for all costs in the event of cancellation which shall be payable immediately upon demand.
- 1.7 Each order placed by the Customer shall and be deemed to be a representation by the Customer that it is solvent and will remain solvent. The Customer shall inform the Supplier of any facts which could affect the Supplier’s decision to accept any order and/or to grant credit, such as, but not limited to, insolvency, potential insolvency or bankruptcy or the likelihood thereof. Failure to inform the Supplier of any such factors shall be deemed to create an inequality of bargaining position and be unconscionable, misleading and deceptive thereby rendering the person placing the order liable to pay all money owed by the Customer to the Supplier.
- 1.8 The Customer shall give the Supplier at least fourteen (14) days prior written notice of any change of ownership of the premises where the Supplier is undertaking fencing and/or other work and to any change in the Customer’s name, address and contact details.

2. Price & Payment

- 2.1 Any price lists that may be issued by the Supplier are subject to change without notice and the Supplier reserves the right to apply revised prices to orders not already invoiced or delivered to the Customer.
- 2.2 Estimates are not quotations and are subject to change. Unless stated otherwise GST and other applicable taxes shall be added to the price.
- 2.3 Quotations are based on costs at the time of the quotation and are subject to change if the Customer does not accept the quotation within the period specified in the quotation or within 30 days if no period is shown.
- 2.4 At the Supplier’s sole discretion, the Supplier may require a non-refundable deposit and/or payment in advance before procuring materials or commencing work on the Customer’s order and/or before delivery of the Goods/Services.
- 2.5 If the Customer requires urgent completion of an order and unless the urgency has been provided for in the quotation, the Supplier reserves the right to increase the price to cover all extra costs incurred by the Supplier.
- 2.6 The Supplier reserves the right to increase prices if the Customer requests changes to quantities, specifications, delivery dates and any other changes or fails to provide the Supplier with clear or adequate instructions or information.
- 2.7 The Customer shall be liable for the total cost of the contract irrespective of any arrangements made between them and any neighbours or other parties regarding fencing contributions.
- 2.8 The Customer shall not withhold any money owing to the Supplier as retention or default, alleged default or for any other reason.
- 2.9 Payment is strictly on the basis agreed in writing. If no specific payment terms have been agreed, payment must be made immediately upon request by the Supplier, time being of the essence as to this obligation.
- 2.10 Payment shall only occur when cleared funds have been received by the Supplier.
- 2.11 If payment by credit card is accepted by the Supplier the Customer shall pay the credit card commission.
- 2.12 Unless agreed otherwise by the Supplier in advance, Goods shall be invoiced to the Customer in full (or in part for partial delivery) immediately the Goods are available for collection, dispatch or installation.
- 2.13 The Supplier can, at its sole discretion and without prejudice to its other rights and remedies, withhold supply and demand immediate payment of all amounts owed if the Customer’s account is overdue or the Supplier is concerned over their ability to pay.
- 2.14 The Supplier can demand immediate payment of any or all amounts owed even if they are not currently due for payment if the Customer becomes, or in the Supplier’s opinion, appears to be bankrupt or insolvent or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors or a receiver, manager, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer.

3. Site, Obstructions, Conditions and Safety

- 3.1 The Customer shall arrange to supply water and electricity at all times during construction and in the event these are not supplied the Customer shall be liable for all costs incurred by the Supplier as a result
- 3.2 The Customer is responsible for clearing the site of all obstructions, rubbish, mounds, reticulation and other hindrances unless this is included in the Supplier’s quotation
- 3.3 Prior to commencement of work the Customer is fully responsible for locating all underground obstructions and hazards and for informing the Supplier of their location even if the Customer or the Supplier has obtained “Dial Before You Dig” assistance or assistance from the Customer’s local or other authorities. Such obstructions and hazards include telephone, gas, water, electricity, stormwater, reticulation, asbestos and all other obstructions and hazards without limitation. The Customer has a Duty of Care responsibility to the Supplier and accepts full responsibility for all costs and claims made by any parties that may occur as a result of any damage, alleged damage or delays caused as a result of such obstructions.
- 3.4 In addition to the Customer’s responsibilities in 3.3 above, if the Customer instructs and/or insists that the Supplier erects/places fences, gates and/or other Goods in specific locations the Customer indemnifies and holds the Supplier harmless for all costs, claims and liabilities, without limitation, that may arise from any and all parties as a result of the Supplier obeying the Customer’s instructions or insistences.
- 3.5 No allowances have been made by the Supplier in any quotations or estimates for concealed obstructions. In the event these result in additional costs, delays or claims by third parties the Customer fully indemnify the Supplier for all costs, consequences and claims.

- 3.6 The Customer is responsible for securing the site from pets, farm and other animals and for the removal or protection of all plants, lawns, ornaments, pipes, ponds and all other fixtures, fittings and infrastructure. Whilst the Supplier will endeavour to exercise due care, no responsibility will be accepted for any losses or for claims by third parties.
- 3.7 The Customer at their expense is responsible for obtaining all permits required by the council or other authorities and shall fully indemnify the Supplier from all actions and penalties as a result of failure to do so.
- 3.8 The Customer shall at their own expense ensure that all boundary and survey pegs are in the correct position and shall fully indemnify the Supplier from all actions, costs and penalties incurred by the Supplier as a result of failure to do so.
- 3.9 Because fences will be constructed from standard components that yield the closest height all fence heights shall be nominal.
- 3.10 As a result of land undulation, fence heights along the fence line may vary and because of this all fence heights will be measured from bottom of fence to top of fence. As a result of land undulation gaps may be apparent under the bottom of the fence line and whilst the Supplier will endeavour to keep these to a minimum the Supplier does warrant these will be totally eliminated.
- 3.11 For Goods delivered by the Supplier and/or Services undertaken by the Supplier at the Customer's premises, or in other premises/sites as instructed by the Customer, the Supplier has a safe working environment policy for its personnel and others in the Supplier's care. The Customer shall promptly notify the Supplier in writing of all hazards and obstructions (without limitation) that may be encountered and the Customer shall fully indemnify the Supplier from all claims for personal injury and all other claims made by the Supplier's personnel and any other parties.

4. Delivery

- 4.1 Delivery of Goods takes place when the Customer collects the Goods from the Supplier's premises. If the Customer request the Supplier to deliver the Goods to the Customer's premises or to other premises or sites or to a third party or requests that a carrier collects the Goods, delivery shall take place when the Goods leave the Supplier's premises and the third party and/or carrier is deemed to be the Customer's agent.
- 4.2 Unless otherwise agreed by the Supplier the Customer is responsible for all deliver costs.
- 4.3 The Supplier reserves the right to deliver part orders at its entire discretion.
- 4.4 If the Customer is unable to take delivery of the goods the Supplier shall be entitled to charge for redelivery.
- 4.5 Delivery of goods to a third party nominated by the Customer is deemed to be delivery to the Customer.
- 4.6 For Goods delivered in instalments each delivery will be a separate contract and shall be invoiced separately.
- 4.7 A certificate purporting to be signed by an officer of the Customer confirming delivery shall be prima facie evidence of delivery as shall any signed delivery docket. The Customer shall not be relieved from its obligations to the Supplier for any delay in delivery and unless previously agreed in writing by the Supplier delivery shall not be the essence of the contract and the Supplier accepts no responsibility for any losses or alleged losses occurring as a consequence of any delay in delivery or inability to deliver or otherwise complete the Customer's order.
- 4.8 The Customer shall not be relieved from any obligation to accept Goods by reason of delay in delivery.
- 4.9 Unless agreed otherwise in writing by the Supplier the Goods shall be transported in a manner deemed appropriate for the nature of the Goods. If the Customer requests a specific mode of transportation the Customer shall be fully responsible for all extra costs incurred as a result of the Customer's instructions and absolves the Supplier from all liabilities as a result of the Customer's request.
- 4.10 If the Supplier, its employees or agents are required to enter any property during delivery or performance of Services, the Supplier accepts no responsibility for any damage to that property or to chattels or goods within it.

5. Intellectual Property

- 5.1 All intellectual property rights, including but not limited to, patents, drawings, designs, processes, trade marks and copyright to Goods and/or Services developed by the Supplier and/or licensed to the Supplier remain with the Supplier and/or the grantor of the license.
- 5.2 All intellectual property rights that apply to all other Goods sold by the Supplier remain with the maker/developer of those Goods.

6. Force Majeure

The Supplier shall not be liable for any default or delay due to any act of God, war, power, equipment failure, terrorism, strike, lock-out, industrial action, fire, flood, storm, tempest or any other events, without exception, beyond the Supplier's control.

7. Risk & Insurance

- 7.1 All risks pass to the Customer upon delivery as defined in the Delivery clause and it is the Customer's responsibility to arrange insurance for goods in transit as well as ex-delivery.
- 7.2 If the Customer requests the Supplier to deliver goods to unattended premises or to an unattended location they shall be left at the Customer's sole risk.
- 7.3 If any goods are damaged, destroyed or stolen during or after delivery and prior to payment being received by the Supplier and ownership passing to the Customer, the Supplier is entitled to payment in full and for any other money owed to the Supplier.
- 7.4 In the event that the goods are damaged, destroyed or stolen during or after delivery and prior to payment being received by the Supplier, the Supplier is entitled to the insurance proceeds for the goods. Presenting these Terms to the Customer's insurers is sufficient evidence of the Supplier's rights to the insurance proceeds.

8. Defects

For any defect claims the Supplier has agreed to accept, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods/Services or repairing them except where the Customer has acquired the Goods/Services as a consumer within the meaning of the Commonwealth Competition & Consumer Act 2010 and amendments thereto.

9. Supplier's Liability

The Supplier's maximum liability for any and all claims will not exceed the price received by the Supplier in respect of the Goods/Services provided by the Supplier. The Supplier shall not be liable for any further payments either to the Customer or to any other parties for any alleged losses, damages, indirect and/or consequential loss and/or expense except where the Customer is defined as a consumer within the meaning of the Commonwealth Competition & Consumer Act 2010 and amendments thereto.

10. Warranty, Suitability for Purpose and Selection of Goods

- 10.1 Goods manufactured by the Supplier are warranted as free from faulty workmanship and materials for six months from date of delivery. Such warranty excludes damage caused by accidents, impacts, neglect, misuse, fading of coating and corrosion to goods installed in premises less than 3km from the ocean, estuary or waterways and for damage caused by pool and other chemicals and sunscreens. The Customer shall prepay freight and other removal costs for warranty work that requires the goods to be returned to the Supplier's or other premises.
- 10.2 For goods not made by the Supplier the sole warranty shall be the warranty, if any, that is provided by the manufacturer or importer of those goods and the Supplier shall have no further liabilities whatsoever.

10.3 If the Customer is defined as a consumer within the meaning of the Commonwealth Competition & Consumer Act 2010 and amendments thereto these Terms shall be subject to protection of consumers' rights legislation and nothing in these Terms shall affect the Customer's statutory rights.

10.4 If the Customer or any other party attempts to repair, mal-operate, abuse, neglect or modify the Goods or otherwise interferes in any way with the Goods or their components, electronic and other control hardware, motors, and/or mechanisms the Supplier shall be relieved of its warranty and all other obligations.

10.5 No warranty as to Suitability for purpose or otherwise is implied into any contract between the Supplier and the Customer save those stipulated by law. The Customer indemnifies and holds the Supplier harmless against any losses or costs incurred or actions or liabilities suffered or brought against the Supplier directly or indirectly as a consequence of any contract made between the Supplier and the Customer.

10.6 If the Customer requests the Supplier's help in the selection of Goods all such help shall not be considered as advice or a warranty or an expert opinion or a declaration of suitability for purpose unless the Customer has in advance totally informed the Supplier in writing of all facts, risks, operating environment and all changes that may occur thereto. Unless the Customer has fully advised the Supplier of all such facts the Supplier accepts no liability whatsoever and the Customer fully indemnifies the Supplier from any and all claims made by the Customer or any other parties.

11. Default, Interest, Costs and Penalties

11.1 The Supplier shall be entitled to charge interest at two and a half percent (2.5%) a month from the day the account becomes overdue and compounded monthly until all outstanding money have been paid in full.

11.2 If an account is more than thirty days overdue, administration costs of twenty five dollars (\$25) or ten percent (10%) (whichever is the greater) up to a maximum of two hundred and fifty dollars (\$250.00) shall be charged to the Customer and payable immediately.

11.3 The Customer shall indemnify and reimburse the Supplier for all costs and disbursements in collecting outstanding debts from the Customer which shall include dishonour fees, full legal costs on a solicitor-own-client basis, collection agency costs, investigators costs, court, judgement enforcement and bailiff fees, search agent costs, time, travel and all other collection costs.

11.4 If the Customer breaches any of its obligations the Supplier may exercise all its rights plus suspend or terminate the supply of Goods/Services. The Supplier will not be liable for any loss or damage suffered by the Customer any parties as a result of exercising its rights.

11.5 The Supplier may sell any property of the Customer which it holds to offset money owed by the Customer and will not be liable for any alleged loss as a consequence of such a sale. The Supplier is only liable to account for any balance from the sale proceeds after all outstanding debts and costs of sale have first been met.

12. Security for Payment

12.1 If the Supplier allows the Customer extra time to pay money or perform obligations for which no guarantees or other securities have been provided, the Supplier may require security for payment including a guarantee by the property owner, any director or other persons connected with the Customer for past as well as future indebtedness.

12.2 In the event the Customer breaches these Terms the Customer agrees that the Supplier may at its sole discretion register a caveat on the property in which the Supplier is undertaking the contractual work with full rights to recover all costs and amounts owing.

12.3 Any requirement for security or guarantees is without prejudice to other rights or remedies the Supplier may have and does not affect the reservation of title in Goods/Services supplied to the Customer.

13. Personal Property Securities Act 2009 ("PPSA") and Personal Property Securities Register ("PPSR")

13.1 If any clauses in these Terms contravene any provisions in the PPSA, or amendments thereto, such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these Terms.

13.2 The Customer and all other parties such as, but not limited to, the owner(s) of the property where the Supplier's Goods are located, the Customer's bankers, finance companies and insolvency officials are hereby notified that ownership and possession of Supplier's Goods are subject to "Perfected Security Interests on the PPSR".

13.3 The Supplier may have and is entitled to have a "Purchase Money Security Interest" ("PMSI") and/or other Security Interests on the PPSR for Goods delivered but not paid for and ownership and possession remains with the Supplier until all money has been paid in full and all other obligations of the Customer to the Supplier have been satisfied.

13.4 In the event that the Supplier's Security Interests have not been perfected the Customer acknowledges and agrees that these Terms create a Security Interest in the Secured Property and consents to the Supplier registering a Security Interest on the PPSR and to provide all assistance required by the Supplier to register, perfect and retain the integrity of the Supplier's Security Interests.

13.5 The Customer must not create or permit any other parties to create any form of Security Interest including, but not limited to, a Financing Statement, a Financing Change Statement on the Supplier's Goods on the PPSR or in any other Register or charge document.

13.6 With regard to Section 64 of the PPSA the Customer warrants that under no circumstances shall the Customer permit a bank or other financial institution to register a "super priority security interest" or any other priority security interest on the PPSR on the Supplier's unpaid-for Goods that may be in premises or on sites that are not under the Supplier's direct control.

14. The Commonwealth Competition & Consumer Act 2010 ("CCA")

These Terms are not intended to have the effect of contracting out of any provisions of the CCA and amendments thereto except where permitted by law. If the Customer buys Goods/Services as a consumer these Terms shall be subject to protection of consumers' rights legislation and shall not affect the consumer's statutory rights. If any clauses in these Terms contravene any provisions in these Acts such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these Terms.

15. Passing of Title/Reservation of Title in Goods/Services

15.1 Notwithstanding delivery of the Goods and the passing of risk to the Customer title remains with the Supplier until all money has been paid in full and the Customer has fulfilled all its obligations to the Supplier.

15.2 Until all events in 15.1 occur title to the Supplier's Goods that may be in Customer's possession remains with the Supplier as unpaid vendor and the Customer may only hold the Goods as fiduciary agent and bailee for the Supplier's benefit. Whilst holding the Goods as fiduciary agent/bailee, the Customer shall ensure they remain identifiable as the Supplier's Goods and safely store and insure them for loss or damage for the Supplier's benefit.

15.3 The Customer holds and agrees to hold the proceeds of any sale of the Goods on trust for the Supplier in a separate account into which no other money shall be paid; however failure to deposit the proceeds of sale into a separate account or to keep the money separate will not affect the Customer's obligation to deal with the proceeds as trustee of the proceeds for the Supplier.

15.4 For Goods on which title has not passed to the Customer, the Supplier can instruct the Customer to return them (or part of them) if the Customer's obligations under these Terms have not been fulfilled.

15.5 The Customer will not charge the Goods or grant or otherwise give any interest in the Goods until clean title passes to the Customer.

15.6 If the Supplier becomes aware of a breach of these Terms or of an insolvency event (or likelihood thereof) the Supplier and/or any representative of the Supplier may as the invitee of the Customer enter upon or into the premises and/or site where the Supplier believes the Goods are stored to inspect and/or remove them and the Supplier shall not be liable for any alleged loss or damage as a consequence of such inspection and/or removal and without being exposed to any claim by the Customer or any other parties for trespass, detinue, conversion, or for any other reasons.

15.7 The Supplier can issue proceedings to recover the price of the Goods even if ownership has not passed to the Customer.

16. Set Off and Application

16.1 The Supplier shall be entitled to set off against any money owed to the Customer an amount equal to the total of all money at such time then owed by the Customer or on the Customer’s behalf to the Supplier.

16.2 The Supplier shall be entitled to apply any money received from or on behalf of the Customer to any and all amounts owed by the Customer as it sees fit and the Customer waives any rights of notification of any such allocation.

17. Intellectual Property and Confidential Information

Unless otherwise agreed in writing all intellectual property rights in the Supplier’s Goods/Services remain with the Supplier.

18. No Waiver

No waiver by the Supplier of any rights or provisions of these Terms shall at any time be deemed or implied to limit or exclude any of the Supplier’s rights against the Customer under these Terms.

19. Privacy Act

The Customer and/or the guarantor/s agree and consent to the Supplier obtaining and exchanging credit information from the Customer’s Suppliers or other parties nominated by the Customer and for the Supplier to obtain reports and other information from credit reporting agencies and other sources on personal credit information about the Customer and/or guarantors in relation to credit provided by the Supplier and the ability of the Customer to pay its bills and perform its other obligations as and when they fall due.

20. Termination/Cancellation

The Supplier can cancel the Customer’s orders and discontinue work/delivery without notice if the Customer breaches any conditions of these Terms or becomes or is in jeopardy of becoming insolvent (or dies if the Customer is a natural person) and all outstanding money owing to the Supplier shall be payable immediately together with money owing to third parties for contracts entered into on the Customer’s behalf.

21. Notices

Notices from the Supplier to the Customer are served when delivered by hand, sent by mail, document exchange, facsimile or email and shall be treated as given when: if delivered by hand when delivered; if sent by mail or document exchange, 48 hours after posting; if sent by fax, and/or email when the fax machine confirms transmission; or when the email system confirms transmission. A notice given after 5pm and/or on a day which is not a Business Day is treated as given on the next following Business Day.

22. Disputes

If a dispute arises between the Supplier and the Customer and a solution thereto is contained in these Terms then such solution shall be a binding full and final settlement of the dispute. If no solution to the dispute exists in these Terms and the dispute cannot otherwise be resolved within 30 days from the date of the dispute arising then either party can refer the matter to a mediator. If neither party can agree on who should be the mediator then the dispute shall be referred to a mediator in accordance with the “Governing Law and Changes to Terms” clause in these Terms. The Customer shall be liable for the full costs of the mediation and if this contravenes the Governing Law the parties will equally contribute to the costs of the mediation.

23. Validity

Should any clause or clauses of these Terms be invalid for any reason then such clause or clauses or parts thereof shall be deleted without affecting the validity of the remaining portions of these Terms.

24. Governing Law and Changes to Terms

24.1 The laws of Australia apply to these Terms and to all contracts or other agreements between the Supplier and the Customer and are subject to the jurisdiction of the courts and tribunals of Western Australia.

24.2 These Terms can only be amended with the written consent of the Supplier.

24.3 The Supplier reserves the right to alter these Terms and such changes will be effective from the date these changes are notified to the Customer. The Customer will be deemed to have accepted these Terms and any changes thereto upon placing further orders with the Supplier.

24.4 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer’s consent.

I/we(name/s) hereby accept and shall be bound by these Terms in all dealings between us “the Customer” and **Peel Fencing** (“the Supplier”)

Name of signatory Signature Date