

FENCING NORTH WEST

GENERAL TERMS AND CONDITIONS OF SALE OF FENCING NORTH WEST ABN 96 895 140 291

These General Terms and Conditions of Sale ("Conditions") shall apply to and form part of any contract for the supply of goods, products and materials and related services ("Goods") by GJ & MG Burgess t/as Fencing North West ABN 96 895 140 291 ("Fencing North West") or any Related Corporation of Fencing North West to the Purchaser.

1. Quotations, orders and contracts

- 1.1. All quotations are made and all orders for Goods are accepted by Fencing North West on and subject to the Conditions and any special terms and conditions which are agreed to by Fencing North West in writing. Unless otherwise expressly agreed by Fencing North West, previous dealings between Fencing North West and any Purchaser or the imposition of additional or alternative terms and conditions by a Purchaser shall not vary or replace these Conditions or be deemed in any circumstances whatsoever to do so.
- 1.2. Fencing North West may withdraw, revoke or vary a written quotation at any time prior to the Purchaser submitting an order which accepts the offer to sell comprised by the written quotation.
- 1.3. Fencing North West reserves the right to accept or decline, in whole or in part, any order for Goods placed by a Purchaser.
- 1.4. The agreement to supply Goods to the Purchaser starts on the date Fencing North West agrees to supply the Goods to the Purchaser. This may not be the date the order is received by Fencing North West.
- 1.5. Where in the period between acceptance of a quote and delivery of the relevant Goods, Fencing North West incurs an increase in the cost of producing and/or delivering the Goods, Fencing North West reserves the right to increase the quoted price of those Goods any time prior to delivery (a „price escalation“). The Purchaser shall accept any such price escalation.
- 1.6. These Conditions prevail over any terms and conditions of trade of the Purchaser whether or not any inconsistency arises.
- 1.7. Fencing North West acknowledges that the supply of Goods by Fencing North West under these Conditions to an individual, whose acquisition of the Goods is wholly or predominantly for personal, domestic or household use or consumption, will be a consumer contract for the purposes of the Australian Consumer Law (Consumer Contract).

2. Price

- 2.1. The price of Goods will be Fencing North West's current price at the time of delivery (or where clause 4.3(d) applies, the current price at the date of the invoice), subject to any contrary agreement (if any) between Fencing North West and the Purchaser regarding price.
- 2.2. Where Goods supplied to a Purchaser are of a kind ordinarily acquired for personal, domestic or household use, Fencing North West will provide a quotation or otherwise notify the Purchaser of a single total price, inclusive of GST, applicable to those Goods if the price is capable of being quantified. The Purchaser shall be liable to pay to Fencing North West all amounts on account of GST in the same manner and by the same means as all other charges.
- 2.3. The price of Goods specified by Fencing North West in any quotation:
 - 2.3.1. will remain valid for a period of 30 days for an order made by the Purchaser in accordance with the quotation, unless otherwise specified; and
 - 2.3.2. is subject to any other conditions specified in the quotation.
- 2.4. Unless otherwise indicated, all prices for Goods are exclusive of all applicable taxes and charges. The Purchaser shall be liable for all excise, sales, GST or any other tax, charge or government impost (domestic or foreign) upon the Goods or any part of the Goods, or upon the manufacture, use sale or delivery of the Goods in addition to the purchase price. Where Goods are subject to GST, the Customer must pay GST at the same time as payment for Goods is made.
- 2.5. Unless otherwise agreed, prices do not include the cost of delivery of Goods, including but not limited to costs incurred by Fencing North West arising out of late notification by the Purchaser of a change to agreed delivery schedule, storage charges where Goods are not collected immediately upon being made available and demurrage costs incurred by Fencing North West. Loading lengths (as defined by

Local State Transport Authorities) will be subject to any additional delivery charge.

- 2.6. Unless otherwise requested by the Purchaser in writing, prices quoted provide for Fencing North West's standard packing arrangements.

3. Payment

- 3.1. Unless Fencing North West grants credit to the Purchaser and subject to Fencing North West's right to withdraw credit, payment for Goods purchased from Fencing North West must be made by the Purchaser in immediately available funds on or immediately prior to delivery of the Goods.
- 3.2. Where the Purchaser has an approved credit account with Fencing North West, the Purchaser shall ensure that payment for the Goods is made to Fencing North West in accordance with the terms agreed between Fencing North West and the Purchaser. All payments are required to be made by the Purchaser by no later than 30 days after the date of Fencing North West's invoice or such other date for payment as Fencing North West and the Purchaser agree in writing.
- 3.3. Fencing North West reserves the right to charge interest on any amount overdue from the date it became due to the date payment is received at the rate of 12% compounded daily. All payments made by the Purchaser will first be applied to the accrued interest.
- 3.4. Fencing North West may set off any amount owed by the Purchaser to Fencing North West or any of its Related Corporations against any amount of money owed, or may become owing, by Fencing North West or its Related Corporations to the Purchaser. The Purchaser waives any right to set off any amount that is, or may become, owing by the Purchaser to Fencing North West against any amount owing by Fencing North West to the Purchaser. This clause overrides any other document or agreement to the contrary.
- 3.5. Payments made by credit card may be subject to a surcharge.

4. Default by Purchaser

- 4.1. Where the Purchaser is in default in the performance of any of its obligations under these Conditions and the Goods have not been supplied under a Consumer Contract, Fencing North West may refuse, without prejudice to any other rights it may have under these Conditions or at law, to supply or deliver further Goods to the Purchaser until such time as the Purchaser has remedied that default, and / or may choose to terminate the contract.
- 4.2. If the Goods have been supplied by Fencing North West under a Consumer Contract and the Purchaser is in default in the performance of any of its material obligations under these Conditions, Fencing North West may refuse to deliver further Goods until such time as the Purchaser has remedied that default and where:
 - 4.2.1. the Purchaser has not notified Fencing North West of any damage, inaccuracies or defects under clause 9 of this Contract; and
 - 4.2.2. the Purchaser does not remedy that default within 14 days of the Purchaser receiving written notification, or such other time as may be agreed by the parties,Fencing North West may terminate the contract in relation to Goods that have not been delivered.
- 4.3. If the Purchaser (including a Purchaser under a Consumer Contract) commences to be wound up or is placed under official management or into liquidation or has a receiver and/or manager appointed in respect of any of its assets or becomes insolvent, commits any act of bankruptcy or becomes subject to any other analogous event, Fencing North West may at its option exercise any or all of the following rights in addition to any other rights it may have under these Conditions or at law:
 - 4.3.1. suspend deliveries of further Goods to the Purchaser whether under this contract or otherwise;
 - 4.3.2. terminate the contract in relation to Goods that have not been delivered;
 - 4.3.3. withdraw any credit facilities which may have been extended to the Purchaser and require immediate payment of all moneys owed to Fencing North West by the Purchaser;
 - 4.3.4. issue an invoice for, and demand immediate payment of, Goods ordered by the Purchaser but not delivered.

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- 4.4. The Purchaser as beneficial owner charges in favour of Fencing North West all of its interest in all of the present and future real property of the Purchaser as security for the due and punctual payment of all debts and monetary liabilities owed by the Purchaser to Fencing North West pursuant to a contract on or including the terms of these Conditions. The Purchaser consents to Fencing North West lodging a caveat to note its interest. Upon demand by Fencing North West, the Purchaser agrees to immediately execute a mortgage on terms satisfactory to Fencing North West to more particularly describe the security interest conferred by this clause. Should the Purchaser fail within a reasonable time of such demand to execute such mortgage then the Purchaser irrevocably appoints Fencing North West as its attorney with authority to do on its behalf anything that it may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any real property of the Purchaser.
- 4.5. All costs incurred by Fencing North West relating to any action taken by Fencing North West to recover monies due from the Purchaser (including, without limitation, legal or other debt collection costs) shall be payable by the Purchaser on demand.
- 5. Specifications, materials or special orders**
- 5.1. All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Fencing North West or elsewhere are approximations only. They are intended by Fencing North West to be a general description for information and identification purposes and do not create a sale by description.
- 5.2. Fencing North West shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after Fencing North West has ordered special materials or commenced tooling for manufacture.
- 5.3. Unless otherwise stated on a quotation, Goods will be supplied by Fencing North West within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne, the Purchaser must pay for that fraction on a pro rata basis.
- 5.4. In the case of goods or components not of Fencing North West's manufacture, Fencing North West shall give the Purchaser, and use its best endeavours to enforce at the cost of and for the benefit of the Purchaser, such warranties and guarantees as Fencing North West has obtained from its suppliers.
- 5.5. Where Fencing North West is required to order special material or qualities for which a supplier of Fencing North West requests minimum order quantities, the Purchaser may be requested to accept an increase of the minimum quantity required to be ordered by Fencing North West to fulfil the order and if so requested the Purchaser shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.
- 5.6. If Fencing North West is required to process the Purchaser's goods or materials then Fencing North West does not give any warranty or assurance that materials supplied by the Purchaser are suitable for such processing. Subject to the rights of Consumers as set out in clause 11.2, Fencing North West accepts no responsibility and shall not in any way be liable to the Purchaser for any damage done or caused to such materials or goods, except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Fencing North West or any of its officers, employees or agents.
- 5.7. Notwithstanding any other provision of these Conditions, it is a term of the contract made between Fencing North West and the Purchaser that Fencing North West has discretion to refuse to supply Goods to the Purchaser (without liability to the Purchaser) where:
- 5.7.1. Goods are unavailable or insufficient for any reason whatsoever;
- 5.7.2. the Purchaser has failed to comply with terms on which Fencing North West has agreed to provide credit to the Purchaser;
- 5.7.3. the Purchaser or a Related Corporation of it has breached a contract with Fencing North West or a Related Corporation of it including these Conditions; or
- 5.7.4. Fencing North West considers it necessary or desirable to do so for any reason at all.
- 5.8. Subject to the rights of Consumers set out in clause 11.2, unless the Goods have been supplied to the Purchaser by Fencing North West under a Consumer Contract, the Purchaser agrees that it does not rely on the skill or judgement of Fencing North West in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to Fencing North West and Fencing North West has acknowledged in writing that the Goods will be fit for the particular purpose.
- 6. Delivery and Risk**
- 6.1. Unless otherwise agreed, Fencing North West shall deliver Goods to the Purchaser as follows:
- 6.1.1. Fencing North West reserves the right to arrange transport by any means in its absolute discretion;
- 6.1.2. delivery will be made during Working Hours to the location agreed by the parties ("Delivery Point");
- 6.1.3. Fencing North West or its transport contractor will deliver the Goods so close ("Drop Spot") to the Delivery Point as, in the opinion of Fencing North West or its transport contractor, it is safe or prudent to do so and delivery occurs and risk in the Goods passes to the Purchaser when Fencing North West's or its transport contractor's delivery vehicle arrives at the Drop Spot;
- 6.1.4. Fencing North West reserves the right to charge the Purchaser any costs which it incurs as a result of any delay by the Purchaser in unloading the Goods or where unloading of the Goods cannot be effected, including, if applicable, a return delivery fee at the prevailing freight rates;
- 6.1.5. the unloading of Goods at a Drop Spot is the Purchaser's responsibility at its own cost and risk but Fencing North West or its transport contractor may, without liability to the Purchaser, unload the Goods at the Drop Spot if the Purchaser requests Fencing North West to do so or is absent from the Drop Spot at the time Fencing North West or its transport contractor wishes to unload and, subject to the rights of Consumers set out in clause 11.2, the Purchaser releases and forever discharges Fencing North West and its transport contractor from and against any claim, cause of action or liability arising out of the unloading of Goods at the Drop Spot;
- 6.1.6. where the Purchaser attends Fencing North West's premises to acquire the Goods, Fencing North West may, in its absolute discretion:
- 6.1.6.1. deliver the Goods into or onto the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down in or on the Purchaser's vehicle; or
- 6.1.6.2. deliver the Goods by setting them down alongside the Purchaser's vehicle in which case risk in the Goods passes to the Purchaser and delivery is effected when the Goods are set down alongside the Purchaser's vehicle notwithstanding that Fencing North West's staff may, on request, assist the Purchaser to load the Goods into or onto the Purchaser's vehicle.
- 6.2. Goods ordered for collection will be held for a maximum period of 10 Business Days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at Fencing North West's option) the Purchaser's site or store or to a store selected by Fencing North West and all costs incurred by Fencing North West in relation to the holding and delivery of the Goods shall be charged to and be paid by the Purchaser.
- 6.3. The Goods are at the Purchaser's risk from the time at which they are delivered to the Purchaser or its nominee.
- 6.4. Handling Safety – Fencing North West product may be sharp and heavy. It is recommended that heavy-duty cut resistant gloves and appropriate manual handling techniques or a lifting plan be used when

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- handling material. Material Safety Data Sheets are available from www.fencingnorthwest.com.au.
- 6.5. Dates and times quoted for delivery are estimates only. Maximum lengths for products vary by State and Territory and delivery of such will be determined by Fencing North West on a case by case basis.
- 6.6. Fencing North West shall not be obliged to complete any order in one delivery and expressly reserves the right to deliver by instalments. Where Fencing North West delivers by instalments each instalment shall be deemed to be sold to the Purchaser under a separate contract. Failure to deliver any one instalment by the time quoted for delivery of that instalment (if any) shall not entitle the Purchaser to repudiate the order.
- 6.7. Where Fencing North West or its transport contractor enters the Purchaser's premises or the premises of a third party nominated by the Purchaser as a delivery point, the Purchaser:
- 6.7.1. releases Fencing North West from any claim the Purchaser may at any time have had against Fencing North West but for this release in respect of damage occasioned to the Purchaser's premises or injury to persons arising out of the delivery by Fencing North West or its transport contractor of Goods to such premises; and
- 6.7.2. indemnifies and holds Fencing North West harmless from and against any loss, damage or liability suffered or incurred by Fencing North West in respect of damage occasioned to the third party's premises or injury to persons arising out of the delivery by Fencing North West or its transport contractor of Goods to the premises of the third party except for and to the extent that such loss, damage or liability suffered or incurred by Fencing North West arises out of the negligence or wilful misconduct of Fencing North West or its transport contractor.
- 6.8. No defect or claim in respect of Goods delivered shall entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the order.
- 6.9. If Fencing North West is prevented either directly or indirectly from performing any of its obligations under these Conditions, including without limitation, making a delivery of the Goods or any part of the Goods by reason of Force Majeure it shall be entitled, at its option, by notice to the Purchaser, either to:
- 6.9.1. extend the time for delivery of the Goods for a reasonable period; or
- 6.9.2. subject to refunding the Purchaser for any payment already made to Fencing North West in respect of those particular Goods (if any), terminate this contract,
- and the Purchaser shall not have any claim against Fencing North West for damages or any other remedy for breach of contract. "Force Majeure" shall mean an act of God, war, fire, strike, lockout, trade or industrial disputes, government interference, lack of production capacity or raw materials, transport delays, accidents, breakdown of plant or machinery, non-delivery or shortage of supplies or any other cause beyond Fencing North West's control.
- 7. Retention of Title**
- 7.1. The Purchaser agrees that legal and equitable title to the Goods is retained by Fencing North West until Fencing North West receives payment in full from the Purchaser for the Goods and all other monies owing by the Purchaser to Fencing North West at any time. Prior to title in the Goods passing to the Purchaser, the Purchaser:
- 7.1.1. must hold the Goods as bailee and fiduciary agent of Fencing North West;
- 7.1.2. where the Purchaser processes the Goods, either by using the Goods to manufacture other goods or by incorporating the Goods in or with any other goods, must hold such part of the new goods ("Processed Goods") on trust for Fencing North West as bailee and fiduciary agent of Fencing North West;
- 7.1.3. must store the Goods and such part of the Processed Goods separate from its own goods and those of any other third party so that they are readily identifiable as the property of Fencing North West;
- 7.1.4. must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage however caused;
- 7.1.5. must not sell the Goods except with the prior written consent of Fencing North West or in the ordinary course of the Purchaser's business, provided that any such sale is at arms' length and on market terms;
- 7.1.6. any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for Fencing North West in a separate account; and
- 7.1.7. must not create any encumbrance over the Goods which is inconsistent with Fencing North West's title and ownership of the Goods.
- 7.2. For purpose of this clause 7, "such part" means an amount equal in dollar terms to the amount owing by the Purchaser to Fencing North West at the time the Goods are used in the manufacture of, or incorporated into, the Processed Goods.
- 7.3. If the Purchaser is in breach of these Conditions including, without limitation, failure by the Purchaser to make payment for the Goods by the date specified by Fencing North West to the Purchaser or in Fencing North West's reasonable opinion the payment of any amount in respect of the Goods supplied by Fencing North West is in jeopardy, the Purchaser must return the Goods to Fencing North West immediately on demand.
- 7.4. If the Purchaser does not return the Goods to Fencing North West on demand under clause 7.3, the Purchaser irrevocably authorises representatives of Fencing North West to enter upon any site where the Goods are located to take possession of the Goods without prior notice, and the Purchaser indemnifies Fencing North West for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Fencing North West in connection with the retaking possession of the Goods or the exercise by Fencing North West of its rights under this clause, and the Purchaser shall repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 8. Application of the PPSA**
- 8.1. In this clause 8, PPSA means the *Personal Property Securities Act 2009*. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 8.2. This clause 8 applies to the extent that Fencing North West's interest in any Goods is a security interest.
- 8.3. The Goods are steel and other metallic products and roll formed steel building products.
- 8.4. The Purchaser acknowledges and agrees that Fencing North West may apply to register a security interest in the Goods at any time before or after delivery of the Goods. The Purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 8.5. Fencing North West can apply amounts it receives from the Purchaser towards amounts owing to it in such order as Fencing North West chooses.
- 8.6. If the Purchaser defaults in the performance of any obligation owed to Fencing North West under these Conditions or any other agreement for Fencing North West to supply Goods to the Purchaser, Fencing North West may enforce its security interest in any Goods by exercising all or any of its rights under these Conditions or the PPSA. To the maximum extent permitted by law, the Purchaser and Fencing North West agree that the following provisions of the PPSA do not apply to the enforcement by Fencing North West of its security interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- 8.7. The Purchaser and Fencing North West agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- 8.8. The Purchaser must promptly do anything required by Fencing North West to ensure that Fencing North West's security interest is a perfected security interest and has priority over all other security interests in the Goods
- 8.9. Nothing in this clause 8 is limited by any other provision of these Conditions or any other agreement between the parties.

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9. Damage, Inaccuracies and Defects

- 9.1. The Purchaser shall check all Goods received immediately upon unloading and shall notify Fencing North West in writing of any inaccuracies or short supply of Goods or any fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of the date of delivery of the Goods.
- 9.2. Subject to the rights of Consumers set out in clause 11.2, if the Purchaser does not notify Fencing North West in writing within 2 Business Days of the date of delivery, Fencing North West will not be responsible for any loss or damage whatsoever and howsoever caused arising out of or resulting from such inaccuracies or short supply of Goods, or fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract, except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Fencing North West, or any of its officers, employees or agents.
- 9.3. Subject to the rights of Consumers set out in clause 11.2, if the Purchaser notifies Fencing North West in writing of a fault, damage or defect in Goods or failure of Goods to comply with the terms of a contract made pursuant to these Conditions within 2 Business Days of delivery then Fencing North West will, if in its opinion, the Purchaser's notice is reasonable and the Purchaser has not used the Goods, at Fencing North West's option, repair or replace the Goods that appear to be faulty, damaged or defective or not in compliance with the terms of a contract made pursuant to these Conditions and Fencing North West shall have no additional liability to the Purchaser.
- 9.4. Any queries regarding items shown on invoices issued by Fencing North West shall be lodged by the Purchaser with Fencing North West within 7 days of the issue date of the relevant invoice.
- 9.5. Goods are not damaged or defective by reason only of the presence of rust, mill scale or rolling seams except as provided for in AS3600.

10. Equipment

- 10.1. All roll toolage, shears, lifting and associated equipment which Fencing North West makes or obtains to produce the Goods, shall, unless otherwise expressly agreed by Fencing North West, be and remain the property of Fencing North West and any payment made with respect to them shall be deemed to be a charge in respect of their use. These and any other special tools, jigs, fixtures and patterns acquired or supplied by Fencing North West for the fulfilment of the order are the property of Fencing North West and are not to be used without its authority.

11. Warranties, Liabilities and Indemnities

- 11.1. Where applicable, Goods shall be installed in accordance with Fencing North West's recommended fixing procedures as published from time to time and available on request from your customer service representative.
- 11.2. Fencing North West acknowledges that consumer legislation contains certain guarantees for the supply of goods or services that cannot be excluded, restricted or modified by these Conditions. For example, for Consumers:
 - 11.2.1. goods come with non-excludable guarantees that they are of acceptable quality and fit for the purpose for which they are commonly acquired or for a purpose made known to Fencing North West and based on which the goods are supplied, and
 - 11.2.2. services come with non-excludable warranties that they will be provided with due care and skill and are fit for the purpose for which they are commonly acquired or for a purpose made known to Fencing North West and based on which the services are supplied.Nothing in these Conditions is intended to exclude or restrict the application of such laws.
- 11.3. Subject to the rights of Consumers set out in clause 11.2:
 - 11.3.1. Fencing North West shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods, and the Purchaser agrees that all

such advice is accepted by the Purchaser entirely at the Purchaser's risk;

- 11.3.2. or as otherwise expressly specified in the terms of any applicable written warranty provided by Fencing North West, Fencing North West's liability to the Purchaser (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at Fencing North West's option, to:
 - 11.3.2.1. in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
 - 11.3.2.2. in the case of services, the resupply of services or paying for the cost of resupplying the services;
- 11.3.3. and also subject to clause 11.3(b), Fencing North West is not liable to the Purchaser or anyone else in connection with the Goods or the supply of the Goods or with these Conditions (including any changes to the Conditions), including without limitation for:
 - 11.3.3.1. any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods or injury to any person) arising from:
 - 11.3.3.1.1. the loading, unloading or delivery of the Goods;
 - 11.3.3.1.2. a failure to deliver, or delay in delivering, the Goods;
 - 11.3.3.1.3. a failure to install the Goods in accordance with Fencing North West's recommended fixing procedures as published from time to time;
 - 11.3.3.1.4. the removal of defective Goods or the installation of replacement Goods; or
 - 11.3.3.1.5. the use of any tool or equipment loaned or hired out by Fencing North West;
 - 11.3.3.2. any direct, indirect or consequential loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
 - 11.3.3.3. any claim, action or proceeding by a third party against the Purchaser (or any loss, damages or liability incurred or suffered by the Purchaser as a result of any such claim, action or proceeding); and
- 11.3.4. the Purchaser indemnifies Fencing North West from and against all losses, damages, costs and expenses suffered or incurred by Fencing North West, and all claims, demands, suits, actions or proceedings made or brought against Fencing North West, arising out of:
 - 11.3.4.1. Fencing North West's use of or reliance on any materials, design, drawing or specification provided to Fencing North West by the Purchaser (including any allegation or claim that any such use or reliance by Fencing North West infringes the intellectual property rights of any person);
 - 11.3.4.2. any loss or damage caused by or during the processing of materials supplied to Fencing North West by the Purchaser; or
 - 11.3.4.3. any loss or damage caused by any tool or equipment, or the use of any tool or equipment, hired out by Fencing North West to the Purchaser,except if you are a Purchaser under a Consumer Contract and such loss or damage arises from the negligence or wilful misconduct of Fencing North West, or any of its officers, employees or agents.
12. Miscellaneous
 - 12.1. These Conditions set out the entire agreement between the parties in relation to their subject matter. The terms of the United Nations Convention on Contracts for the International Sale of Goods 1980 are expressly excluded.
 - 12.2. The law applicable to the agreement between Fencing North West and the Purchaser is the law of the State or Territory in which the Goods are delivered. Fencing North West and the Purchaser submit to the jurisdiction of the relevant State or Territory courts.

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- 12.3. Non stock items are not returnable by the Purchaser to Fencing North West. Fencing North West may in its discretion accept the return of stock items and in so doing may charge the Purchaser a restocking charge.
- 12.4. Nothing in these Conditions shall constitute Fencing North West as a subcontractor of the Purchaser. Fencing North West's obligations are limited to those of a material supplier.
- 12.5. For the purpose of these Conditions and any transaction effected pursuant to these Conditions, mass of steel reinforcing bars will be calculated on the basis of per metre as defined in AS4671-2001 plus an allowance for rolling margin as determined by Fencing North West from time to time. The length used in the calculation of mass will be as defined in AS1100 part 501.
- 12.6. A party waives a right under these Conditions only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of a term of these Conditions does not operate as a waiver of another breach of the same term or any other term.
- 12.7. If a provision in these Conditions is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must, to that extent, and in that jurisdiction, be treated as deleted from these Conditions. This does not affect the validity or enforceability of the remaining provisions in that jurisdiction, or of the deleted provision in any other jurisdiction.
- 12.8. Fencing North West may assign or otherwise deal with the benefit of any contract made pursuant to these Conditions without the consent of the Purchaser.
- 12.9. Fencing North West and the Purchaser may conduct business by Electronic Data Interchange (EDI). The Purchaser agrees that if it has EDI capability with Fencing North West's EDI is the preferred method of conducting business. Fencing North West and the Purchaser agree that EDI will be conducted in accordance with the terms of any Electronic Trading Partner Agreement to which they are parties and into which these Conditions of sale are incorporated.

13. Interpretation

In these Conditions:

- **Business Day** means Monday to Friday (inclusive) excluding public holidays at the place of delivery.
- **Consumer** means a person who acquires Goods from Fencing North West where:
 - the amount paid or payable for the Goods did not exceed \$40,000; or
 - the Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption, unless the Goods were acquired for the purpose of re-supply or the purpose of using them up or transforming them in trade or commerce.
- **GST** means the tax payable on Taxable Supplies within the meaning of the GST Act;
- **GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax;
- **Purchaser** means a person, being an incorporated or unincorporated business or an individual, who acquires Goods from Fencing North West, and includes a Consumer;
- **Related Corporation** has the meaning given to the term "related body corporate" in section 50 of the Corporations Act 2001;
- **Working Hours** means between 7.00am and 5.00pm, Monday to Friday (inclusive) excluding public holidays at the place of delivery.