

FMC FENCING TERMS AND CONDITIONS

1. Definitions

- 1.1 **Building development approval** means development approval from a private building certifier;
- 1.2 **Completion date** means the date inserted at Item 6 of the Schedule;
- 1.3 **Contract** refers to these Terms and Conditions and includes the Schedule attached to these Terms and Conditions;
- 1.4 **Contractor** refers to FMC Fencing ABN 64 456 725 767 and its subcontractors;
- 1.5 **Contract price** means the figure of figures inserted at Item 4 of the Schedule;
- 1.6 **Client** refers to the person or business listed at Item 2 of the Schedule;
- 1.7 **Starting date** means the date inserted at Item 5 of the Schedule;
- 1.8 **Extra Works** means any works that are not described in the Schedule at Item 3;
- 1.9 **Works** means the construction work described at Item 3 of the Schedule.

2. Contractor's Main Obligations

The Contractor will carry out and complete the works in accordance with this contract.

3. Payment

The Client must pay to the Contractor:

- 3.1 the contract price when the job is finalised within the time frame specified on the invoice, or if payment is to be made by successive progress payments, the progress payments on the dates listed in the Schedule for those payments;
- 3.2 the cost of any extra works completed after the Contractor has carried out the work or incurred the cost. Any extra works valued at over \$1000 will have a separate work order agreed to and signed by both parties.

4. Access and Use of Facilities

The Client must:

- 4.1 give the Contractor uninterrupted access to the site to carry out the works; and
- 4.2 provide the Contractor with adequate access to available water and electricity.

5. Commencement

The Contractor must ensure the works commence as soon as it is reasonably possible. The building period commences on the date the Contractor commences the works.

Before the Contractor is obliged to commence the works, the Contractor may request the Client to provide written evidence:

- 5.1 that the Client owns or is otherwise entitled to have the works carried out on the site;
- 5.2 of any easements, covenants and encumbrances affecting the works on the site;
- 5.3 of the Client's ability to pay the contract price;
- 5.4 of the results of the Client's recent **Dial Before You Dig** search which shows the location of all underground cables, water pipes and other utilities; and
- 5.5 that all necessary building and planning approvals having been received.

If the Client does not provide the information and details required by the Contractor, the Contractor may:

- 5.5 delay the commencement of the constructions; or
- 5.6 end this contract.

6. Hours of Work

- 6.1 All work will be completed between the hours of 7am and 5pm on Monday to Saturday.
- 6.2 If the client requests work to be performed outside of these times, then additional charges may apply.

7. Delays

- 7.1 The Contractor is not responsible for any delay caused by something beyond the Contractor's control including any failure by the Client to:
 - 7.1.1 make a selection;
 - 7.1.2 give the Contractor adequate access to carry out the works; or
 - 7.1.3 inclement weather;
 - 7.1.4 a failure to supply or other default by a supplier or manufacturer of building materials required for the Works;
- 7.2 The building period will be extended by whatever time is reasonable if the Contractor claims an extension of time by giving the Client written notice.

8. Variations

- 8.1 If the Client requests a variation to the Works, a **\$50 .00** surcharge will be applied.
- 8.2 The Contractor will give the Client a written quote detailing the additional work and its cost.
- 8.3 If the Client agrees to the variation by signing the quote and returning the signed quote to the Contractor, the Contractor will then do the agreed work in the time agreed.

9. Unforeseen Circumstances

- 9.1 The Contractor is not responsible for any problems with the site which are only revealed when carrying out the Works.
- 9.2 The Contractor will carry out any work needed to fix any such problem if the Contractor considers it necessary for satisfactory completion of the works.
- 9.3 Any additional work necessary due to an unforeseen circumstance is a variation and Clause 8 of these Terms and Conditions applies.
- 9.4 If a price to remedy the problem is not agreed, the Client will pay the Contractor the actual cost to carry out the remedial work plus another 20% upon the production of the Contractor's invoice.

10. Work by the Client

- 10.1 The Client must have the site ready when required by the Contractor.
- 10.2 If the Client does not have the site ready at the Starting date, any additional work necessary to carry out the Works is a variation to the Works and Clause 8 applies.
- 10.3 If a price to ready the site for the commencement of the Works is not agreed, the Client will be charged the actual cost to carry out the work plus another 20% upon the production of the Contractor's invoice.

11. Practical Completion

- 11.1 The Contractor must:
 - 11.1.1 complete the Works on or before the Completion date, as extended; and
 - 11.1.2 give the Client a written notice of practical completion. The notice of practical completion will state the date of practical completion and set out the Contractor's claim for payment.
- 11.2 On practical completion, the Client must:
 - 11.1.3 inspect the works with the Contractor; and
 - 11.1.4 give the Contractor a written, signed list of any defective or unfinished work; and
 - 11.1.5 immediately pay the amount of the Contractor's claim for payment on practical completion.

12. Contractor's Right to Remedy Defects

- 12.1 If at any time the Client claims the Works are defective, the Client must as soon as possible, or within 7 days of the date of the Contractor's invoice (whichever is sooner) notify the Contractor by written notice.

12.2 If the Contractor accepts responsibility, the Contractor has the right to fix the defect and must do so within 28 days.

13. Subcontractors

13.1 The Contractor may sub-contract any of the Contractor's obligations.

13.2 The Client must not give instructions to or make inquiry of the Contractor's sub-contractors, workers or suppliers.

14. Risk

14.1 All materials are at the Client's risk once delivered to the site.

14.2 The Client assumes all risk relating to any damage of the underground services at the site and the Client and the Contractor agree that the cost to repair any damage to these underground services will be paid by the Client, no matter how that damage is caused.

15. Insurance

15.1 The Contractor will have public liability insurance of at least \$10 million.

15.2 The Client must ensure that the Client also has public liability insurance of at least \$10 million if requested to do so by the Contractor.

16. Whole Agreement

Subject to law, these general terms and conditions, the Schedule, and the plans and specifications comprise the contract, which contains the whole agreement between the Client and the Contractor.

17. Late Payment Fee

If the Client fails to make any payment under this contract on time, the Client must pay the Contractor an administration fee equal to 2 percent of the outstanding balance each month until the final payment is made.

18. Debt Collection Costs

The Client must reimburse the Contractor for all debt collection costs (and commissions), including any legal fees on a solicitor and own client basis, the Contractor pays to recover, or in an attempt to recover, any overdue payment from the Client.

19. Ownership of materials

- 19.1 Title in materials does not pass to the Client until the invoiced amount for the Works has been paid in full.
- 19.2 If the Client fails to make a due payment, the Contractor may enter the site and take reasonable action to remove uninstalled materials without being liable for damage to the site caused by such removal.

20. Copyright

- 20.1 The Contractor owns all copyright created by the Contractor in the plans, the specifications and the workshop drawings.
- 20.2 If the Client gives the Contractor any sketch, plan or other document that infringes someone else's copyright or moral right, the Client indemnifies the Contractor against all claims and costs.

21. Client's Joint and Several Liability

If there is more than one person comprising the Client then:

- 21.1 all the Client's obligations are joint and several;
- 21.2 the Contractor only has to give notices to one of the Client; and
- 21.3 only one of the Client needs accept a quote or sign a notice, and then all are bound.

22. Suspension

- 22.1 If the Client is in breach of this contract, the Contractor may suspend the carrying out of the Works.
- 22.2 The Contractor must recommence the carrying out of the works within a reasonable time after the Client has given written notice to the Contractor that the Client has remedied that breach.

23. Termination

- 23.1 If either party is in serious breach of this contract, the party not in breach may give the other party a written request to remedy that breach.
- 23.2 If the breach is not remedied within 5 days, the party not in breach may end this contract by giving written notice to that effect to the party not in default.

24. GST

Where a price is not agreed for an additional charge or omission from the works, the amount of Goods and Services Tax attributable to the value for that supply will be added to the price calculated under the terms of this contract.

Warrantee (12 months on Labour work only)

FMC Fencing give a 12 month warrantee on all **Labour work only** not on **Materials**.

FMC Fencing source the best high quality materials for all our jobs however conditions on each job location can vary such as, damage or wear and tear caused by weather conditions or other conditions such as pests, failure to maintain fence surface or fixtures, or damage from other factors which are beyond our control.

FMC Fencing recommend regular painting or staining of timber fences to prolong the life of the timber, also regular lubrication of latches and hinges of gates and fixtures.

