

## Irish Fencing and Railings Limited – Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Company" shall mean Irish Fencing and Railings Limited its successors and assigns or any person acting on behalf of and with the authority of Irish Fencing and Railings Limited.
- 1.2 "Client" shall mean the person or entity described as such on the Invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Client.
- 1.5 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Client subject to clause 3 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client, part of the same group of companies, has entered into this agreement, the Clients shall be jointly and severally liable for all liabilities under this Agreement.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 2.4 The Client undertakes to give the Company at least fourteen (14) days' notice of any change in the Client's name, address and/or any other change in the Client's details.

### 3. Price And Payment

- 3.1 At the Company's sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by the Company to the Client in respect of Goods and/or Services supplied; or
  - (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 3.3 Any extra work required will be estimated by the Company and signed off by the Client before commencement.
- 3.4 At the Company's sole discretion a deposit may be required.
- 3.5 Time for payment for the Goods and/or Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.6 At the Company's sole discretion:
  - (a) payment shall be due on delivery of the Goods and/or Services; or
  - (b) payment shall be due before delivery of the Goods and/or Services; or
  - (c) payment for approved Clients shall be made by instalments in accordance with the Company's payment schedule; or
  - (d) payment for approved Client's shall be due thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Company.
- 3.8 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly Included in the Price.

### 4. Delivery of Goods and Services

- 4.1 At the Company's sole discretion delivery of the Goods and/or Services shall take place when the Client takes possession of the Goods and/or Services at the Client's address.
- 4.2 On receipt of a booking deposit the works will be scheduled by agreement between the Company and the Client. Variations to start dates may occur, the Company will keep the Client advised of any likely change to the agreed schedule. The Company accepts no responsibility whatsoever for any loss or damage caused due to a schedule change.
- 4.3 At the Company's sole discretion the costs of delivery are included in the Price.
- 4.4 The Client shall make all arrangements necessary to take delivery of the Goods and/or Services whenever they are tendered for delivery, in the event that the Client is unable to take delivery of the Goods and/or Services as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 4.5 Delivery of the Goods and/or Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.6 The Company may deliver the Goods and/or Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.7 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 5%; and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 4.8 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 4.9 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.
- 4.10 The Goods and/or Services shall be provided in accordance with the specifications of the Company for the Goods in question or such specifications as may be provided by the Client and agreed between the parties. The Company shall be under no obligation to query or independently verify the suitability, accuracy or sufficiency to meet the Clients' specific needs of any specifications provided by the Client, nor shall the Company be liable for defect, deficiency or insufficiency in the Goods and/or Services provided or any loss or damage arising therefrom.

The Company shall be under no obligation to provide the Client with redress in accordance with clause 9 in respect of defects, deficiencies or insufficiencies in the Goods and/or Services identified in accordance with this clause 4.10.

- 4.11 The Company shall have no ongoing maintenance or inspection obligations in respect of Goods and/or Services provided to the Client following acceptance.

### 5. Risk and Insurance

- 5.1 All risk in the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 5.3 The Client shall at its own expense arrange and maintain with a reputable insurer such insurance policies as are appropriate and adequate having regard to (1) any land or premises owned, occupied or used by the Client at which the Goods are to be situated, delivered or installed and/or the Services provided under the terms of this Agreement (2) and its obligations and liabilities under this Agreement including without limitation, Employers Liability for an amount of no less than EUR13 million, and Public and Products Liability insurance for an amount no less than EUR6.5 million.
- 5.4 The Client shall produce to the Company on demand copies of the insurance policies maintained in accordance with the terms of this Agreement.

### 6. Title

- 6.1 It is the intention of the Company and agreed by the Client that ownership of the Goods shall not pass until:
  - (a) the Client has paid all amounts owing for the particular Goods; and
  - (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.
- 6.2 Receipt by the Company 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 and until then the Company's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
  - (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Client are met; and
  - (b) until such time as ownership of the Goods shall pass from the Company to the Client the Company may give notice in writing to the Client to return the Goods or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
  - (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
  - (d) if the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
  - (e) the Client is only a bailee of the Goods and shall hold the Goods in a fiduciary capacity for the Company until such time as the Company has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
  - (f) the Client shall not deal with the money of the Company in any way which may be adverse to the Company; and
  - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any Interest in the Goods while they remain the property of the Company; and
  - (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
  - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

### 7. Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Company and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

### 8. Client Responsibilities

- 8.1 It is the Client responsibility to:
  - (a) study the final specification/list of works in detail as the Company will not be responsible for any omissions, alteration and/or changes requires by the Client prior to commencement unless received in writing by the Company seven (7) days before the commencement date; and
  - (b) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (c) provide adequate and safe access to the work area for all workmen and equipment necessary for the work to be undertaken; and
  - (d) fully disclose any information that may effect the Company's work; and
  - (e) ensure that adequate lighting for efficient working is provided in the working area; and
  - (f) provide a suitable power supply to within three (3) metres of the project; and
  - (g) provide suitable and adequate waste disposal facilities unless otherwise agreed with the Company.

### 9. Defects

- 9.1 The Client shall inspect the Goods and/or Services of completion and shall within seven (7) days of delivery and notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description, specifications or quote by way of a "snag list". The Client shall

- afford the Company an opportunity to inspect the Goods and/or Services within a reasonable time following delivery if the Client believes the Goods and/or Services are defective in any way. If the Client shall fail to comply with these provisions the Goods and/or Services shall be presumed to be free from any defect or damage. For defective Goods and/or Services, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods and/or Services or repairing the Goods and/or Services.
- 9.2 No Goods shall be accepted for return except in accordance with clause 9.1 above.
10. **Conduct following transfer of Title**
- 10.1 Once Title to the Goods and/or Services has passed in accordance with clause 6 above, the Company shall have no further liability in respect of the Goods and/or Services and the Client shall indemnify the Company against all liabilities, costs, expenses (including reasonable legal expenses), damages or losses suffered or incurred by the Company arising out of or in connection with any claim made against the Company arising out of or in connection with the Goods and/or Services.
11. **Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
- 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 11.3 In particular where the Client buys Goods as a consumer the provisions of Clauses 8, 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
12. **Intellectual Property**
- 12.1 Where the Company has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.
- 12.2 The Client warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order.
13. **Default & Consequences Of Default**
- 13.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 13.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (Including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.
- 13.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed. In addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
  - 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.
14. **Cancellation**
- 14.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods and/or Services are delivered by giving written notice. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable (or any loss or damage whatever arising from such cancellation.
- 14.2 The Client may cancel delivery of the Goods and/or Services up to seven (7) days from the date of acceptance of the Company's quotation.
- 14.3 In the event that the Client cancels delivery of Goods and/or Services the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
15. **Data Protection**
- 15.1 The Parties shall comply with all applicable data protection legislation in respect of any personal data (as defined by the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive in the relevant jurisdiction) (the "Data Protection Legislation") relating to either Party's personnel or customers which is disclosed or otherwise obtained in connection with this Agreement ("Personal Data"). In addition, the Parties shall:
- process and use (as defined by the Data Protection Legislation) Personal Data solely for the purpose of complying with their obligations under this Agreement;
  - take all reasonable steps to ensure that Personal Data is protected from unauthorised or unlawful processing or accidental destruction; and
  - ensure that Personal Data is not transferred outside the European Economic Area without the other Party's prior written consent or without complying with the applicable data protection legislation with respect to any such transfer.
16. **Limitation of Liability**
- 16.1 The total liability of the Company, its employees, agents, consultants, subcontractors or affiliates arising under or in connection with this Agreement shall be limited to the amount paid by the Client to the Company under the terms of this Agreement.
17. **General**
- 17.1 If any provision of those 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.
- 17.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 17.3 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of those terms and conditions.
- 17.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.
- 17.5 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 the Company.
- 17.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. Except where the Company supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 17.9 This agreement shall be governed by the laws of Ireland and any dispute arising or in connection with these Conditions or the sale of goods and/or supply of services shall be referred to arbitration by a single arbitrator nominated and appointed by agreement or in default on application to the Law Society and the Arbitration Act shall apply.