



Australian Security Fencing Pty Ltd

ABN: 39 003 934 094

Complete Perimeter Solutions

*EDS (Electric Detection Systems) * ForceField® Security Fence Controllers

AUSTRALIAN SECURITY FENCING PTY LTD GENERAL TERMS & CONDITIONS

FAX 02 4577 3944



1. DEFINITIONS:

“**Company**” means Australian Security Fencing Pty. Ltd. (ASF) A.B.N. 39 003 934 094.

“**Conditions**” means these terms and conditions of sale, as amended by the Company from time to time.

“**Customer**” means any person who requests a quotation or places an order with the Company.

“**Goods**” means any good/s and/or product/s supplied by the Company.

“**Guarantor**” means the party/ies so described in the Personal/director’s Guarantee and Indemnity.

“**PPS Act**” means the *Personal Property Securities Act 2009* (Cth).

“**Proceeds**” is the meaning given in the PPS Act.

“**Register**” means the Personal Property Securities Register established under Part 5.2 of the PPS Act.

“**Security Interest**” means:

- (i) A security interest under the PPS Act;
- (ii) Any other mortgage, pledge, lien or charge; and
- (iii) Any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditor in relation to any property.

“**Work**” wherever herein appearing means all items stated herein by the Company as being required to complete the specifications or the job required by the Customer.

2. ACCEPTANCE OF TERMS & CONDITIONS:

Supply of our quotation that leads to an official order being supplied by the purchaser and or including but not solely reliant on a confirmation of order is acceptance of our Terms & Conditions. Australian Security Fencing P/L supplies all materials and or installation under its own Terms and Conditions and will not accept any order that states otherwise.

3. PRICE:

The Company will carry out the Work as stated in the Quotation for the price stated herein provided that the Customer confirms in writing the acceptance of this quote and places a firm order with the Company for the carrying out of the said Work within the time stated herein for acceptance of the quote and provided further that the Customer is able to prepare the site (where such preparation is necessary) so that Work may commence by the Company within thirty (30) days from the date of written acceptance by the Customer of this quote. The Company reserves the right to alter and amend the Quotation herein contained where the Customer fails to observe the terms of this condition. All pricing, unless otherwise stated in the quotation, excludes the clearing of foliage or removal of trees from site. Any excavation works required in rock or concrete will incur additional costs to the Customer at the appropriate trade rates and charged accordingly.

All pricing excludes design and engineering. These services may be provided at an additional cost. Orders cannot proceed until full detailed (engineered drawings) are supplied by client.

4. RATES:

The Company shall quote a specific rate for work where: –

- (a) There is a specific request by the Customer for Quotation of a rate, or
- (b) Definite quantities cannot be ascertained at the time for furnishing the Quotation.

5. INVOICING

Goods supplied to Customer account holders are invoiced immediately after the goods are ready for collection/delivery.

6. PAYMENT:

The rate or rates quoted by the Company shall be used in determining the total cost of the work. The Company shall be entitled to alter the rate or rates if the Customer alters the specifications or requirements of the work.

The Customer shall pay the Company in accordance with the terms of payment as specifically stated on the Quotation or in accordance with such terms as may be otherwise agreed upon in writing between the Customer and the Company. The Customer shall not be entitled to withhold any payment and where any payment is not made in accordance with the terms as stated on the Quotation, the Company shall be entitled to charge interest at the rate of ten per centum (10%) per annum calculated from the last date upon which the payment should have been made by the Customer and accruing up to and including the final date of such payment. The Company is entitled to recover all costs, charges, expenses, fees, disbursements (including all reasonable legal and collection costs on a full indemnity basis) resulting from any breach. Our standard terms are COD unless an account customer.

AUSTRALIAN SECURITY FENCING PTY LTD accepts the following payments:

- a) Direct Bank Deposit
- b) Company Cheque
- c) VISA/MasterCard (fees apply – 1.2% of total invoice incl. GST)

7. GUARANTEE

The guarantor jointly and severally unconditionally guarantees to the Company the due and punctual payment by the Customer and other monies payable by the Customer and the due and punctual performance by the Customer of all liabilities, obligations and agreements to the Company pursuant to or in connection with the quotation.

All payment claims are made under the Building and Construction Industry Security of Payment Act 1999 NSW

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8. STORAGE CHARGE

Goods will be held at the Company's premises for a maximum of 2 weeks from notification to the Customer of their availability. After this period a storage charge will be incurred.

9. SECURITY AND CHARGE

Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:

1. Where the Customer and/or the Guarantor (if any) is the owner of the land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
2. Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
3. The Customer and/or the Guarantor (if any) do hereby irrevocably nominate, constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land/realty or asset in favour of the Company and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantors obligations and indebtedness to the Provider and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Provider's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

10. UNPAID COMPANY'S RIGHTS TO DISPOSE OF GOODS

In the event that:

1. The Company retains possession or control of the Goods; and
2. Payment of the price is due to the Company; and
3. The company has made demand in writing of the Customer for payment of the Price in terms of this contract; and
4. The Company has not received the Price of the Goods;

Then, whether the property in the Goods has passed to the Customer or has remained with the Company, the Company may dispose of the Goods and may claim from the Customer the loss to the Company on such disposal.

11. LOCATION:

It is the responsibility of the Customer to clearly locate the position of the work by way of survey or other appropriate manner and where applicable, the Customer shall furnish precise drawings setting out the position required for the work. The Customer is to locate all underground services within 1.5 metres of the given location, and the Company will accept no responsibility for damage done to underground services due to failure by the Customer to notify the Company of this requirement. The Company will only accept responsibility for locating the work in accordance with information supplied by the Customer pursuant to the Terms and Conditions. The Customer is to supply the Company employees or sub-contractors (required to perform the work) appropriate access to water and electricity that may be required from time to time. Also the Customer is to provide access to amenities such as toilet facilities, rest/lunch rooms and adequate shade at all times for the duration of the Work. Appropriate vehicle access to the Work site is to be provided at all times.

12. PASSING OF RISK:

On completion of the Work or any part thereof by the Company where such part of the Work has been completed to the stage where it is fully installed and requires no further Work by the Company, such completed Work shall be regarded as a fixture to the property of the Customer and the Company shall not be responsible for any damage that may be caused to the Work and is under no obligation to replace or compensate for such damages.

13. LIMITATION OF CONTRACT:

The Quotation and the Terms and Conditions herein stated shall constitute the contract between the Company and the Customer and where there is any conflict between any statement or stipulation on the Customers written acceptance of this quote or order form for the work with any of the Terms and Conditions of the Quotation, then the Terms and Conditions hereof shall prevail and any variation or alteration to the Terms or Conditions hereof shall only be acceptable to the Company if agreed to in writing and signed by the Company and the Customer prior to commencement of the Work.

14. FORCE MAJEURE:

The Company shall not be liable as a result of delay in performance or of non-performance caused by circumstances beyond its control, including but not limited to acts of God, fire, explosion, flood, machinery or equipment breakdown, accident, war, Government action, riots, strikes, lockouts, excessive rain, shipping delays or delays by suppliers or contractors due to causes beyond the control of those suppliers or contractors.

15. DANGEROUS/HARMFUL GOODS:

Some of the goods and products supplied by Australian Security Fencing can be deemed as being dangerous and/or harmful if installed inappropriately or used in ways that are not intended for the product to be used. It is the responsibility of the purchaser to ensure that the products are installed in such a way that injury will not be caused to innocent parties (including trespassers) and that adequate warning signs (as supplied with the products) are installed and can be seen from any approaching direction.

The purchaser/installer hereby indemnifies, keeps indemnified and holds harmless Australian Security Fencing P/L against all demands, actions, suits and claims arising from the installation and use of the products by the purchases or by the ultimate user thereof.

16. TITLE TO GOODS

All goods supplied by the Company shall be at the Customer/s risk from the time of on-loading at the Company's premises. The legal and equitable title to and property of the Goods will not pass to the Customer until the Customer has paid all moneys owed to the Company on any account whatsoever. Payment shall not be deemed to occur until all cheques in payment of monies owed to the Company have been presented and cleared in full. The Company reserves the right to enter upon any premises for the purpose of repossessing Goods. The right to repossess is without prejudice to any other rights of recovery otherwise available. Until all Goods are paid for in full, the relationship of the Customer to the Company shall be as a fiduciary in respect to the Goods and accordingly, the Customer shall store the Goods in such a way that they can be recognised as the property of the Company and, if the Goods are sold by the Customer, The Company shall have the right to trace to proceeds thereof.

17. PROPERTY/OWNERSHIP:

All products installed remain the property of the Company until such time as all monies owed are paid in full and the Company retains the right to remove any and all products from the Customer's site if any discrepancies or dishonoured payments arise upon settlement of ownership. Once the system has been fully commissioned and left operational, it is deemed that the system is being used and therefore full payment for goods and services are due with immediate effect. Immediate notification is to be made to ASF P/L of faulty goods. Any goods installed that are known to be faulty will omit ASF responsibility to rectification and this uninstall and damage will be at the contractor's expense.

18. DEFECTS/RETURNS

1. The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions, the Goods shall conclusively be presumed to be in accordance with the terms and conditions and free from any defect or damage.
2. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:
3. The Customer has complied with the provisions of point 1 above;
4. The Goods are returned at the Customer's cost within fourteen (14) days of the delivery date;
5. The Company will not be liable for Goods which have not been stored or used in a proper manner;
6. The Goods are returned in the condition in which they were delivered.

19. SECURITY INTERESTS IN GOODS

19.1 The Customer acknowledges that:

- (a) the supply of the Goods under this agreement gives rise to a Security Interest in the Goods in favour of the Company being a Purchase Money Security Interest; and
- (b) the Company's rights and interest in Proceeds derived from the Goods constitute a Purchase Money Security Interest in such Proceeds.

19.2 The Customer acknowledges that:

- (a) title in the Goods does not pass to the Customer until the purchase price for the Goods is taken to be fully and finally paid in accordance with clause 5; and
- (b) if, notwithstanding paragraph (a), the Customer sells or otherwise disposes of the Goods before the purchase price for the Goods has been fully and finally paid, it does so as the Company's fiduciary agent and the proceeds of such sale or other disposal are also property of the Company and are held by the Customer on trust for the Company.

19.3 The Company may, at the Customer's expense, register any Security Interest granted under this agreement on the Register in any manner it chooses. The Customer must provide the Company with any information it requires for the purposes of effecting such registration.

19.4 Upon notice by the Company, the Customer agrees to take such steps as the Company reasonably requires to perfect and otherwise ensure the enforceability and first ranking priority of any Security Interest granted to it under this agreement, including by:

- (a) obtaining consents;
- (b) signing and producing documents;
- (c) getting documents completed and signed;
- (d) supplying information;
- (e) ensuring that the Security Interests are enforceable, perfected and otherwise effective;
- (f) enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under this agreement so that the Security Interest has the priority required by the Company (including, if that Security Interest is a Purchase Money Security Interest, registering that Security Interest on the Register as a Purchase Money Security Interest within the relevant time set out in section 62 of the PPS Act);
- (g) enabling the Company to exercise the Company's rights in connection with the Security Interest; and
- (h) providing more effective security over the Secured Property.

19.5 The Customer must:

- (a) Comply with the requirements of any notice under clause 13.4 within the time stated in any notification;
- (b) Promptly notify the Company of any change to information provided by the Customer under clause 13;
- (c) Procure the removal from the Register of any registration which affects the priority of the Company's Security Interest in the Goods; and
- (d) Not create or allow to exist a registration on the Register in relation to any Security Interest (other than a Security Interest in the Company's favour) in the Goods.

19.6 The Customer must on demand pay, and if paid by the Company reimburse to the Company, the Company's costs and expenses relating to anything the Customer must do or the Company may do pursuant to clause 13.

19.7 Subject to section 275(7) of the PPS Act, the Customer and the Company each agree not to disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this agreement, including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Agreement and the terms of such payment or performance at any time; and
- (c) information about any Goods subject to such Security Interest at any time, except if the other party is given prior notice of the disclosure, and one of the following criteria is met:
 - I. the other party consents to the disclosure; or
 - II. the disclosure is necessary to comply with any applicable law (other than section 275(1) of the PPS Act), the rules of any securities or stock exchange or an order of a court or tribunal.

19.8 The Customer agrees not to authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPS Act except in accordance with clause 13.7 or with the consent of the Company.

19.9 The Company is not required to give any notice under the PPS Act to the Customer or any other person and the Company waives the right to receive any such notice (including a notice of verification statement) unless the notice is required by the PPS Act and that obligation cannot be excluded.

20. EXCHANGING OF GOODS / CREDITS/ WARRANTIES:

Galvanised goods purchased and held in a store will be exchanged only with a re-stocking fee of 20%. Any returned goods are to be in the same condition as when supplied and will be subject to an assessment by an Australian Security Fencing P/L staff member.

ASF will not accept the return of powder coated items under any circumstances.

Any goods purchased and delivered to the intended site or those that have been on site will not be accepted for exchange or credit as these goods will have been exposed to the elements and can therefore not be resold by ASF.

Powder coat finish of Hot Dipped Galvanised components is not warranted, under any circumstances, by Australian Security Fencing Pty Ltd.

Australian Security Fencing P/L will not refund monies under any circumstances.

The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice.

The Company shall not be liable for any loss or damage whatever arising from such cancellation.

At the Company’s sole discretion, the Purchaser may cancel delivery of Goods. In the event that the Purchaser cancels delivery of Goods, the purchaser shall be liable for any costs incurred by the Provider up the time of cancellation.

21. STANDARD WARRANTY

1. Subject to the conditions of standard warranty set out below, the Company warrants that if any defect in any workmanship manufactured by the Company becomes apparent and is reported to the Company within one (1) year of the date of delivery (time being of the essence) then the Company will either (at the Company’s sole discretion) repair the defect or replace the workmanship.

2. The conditions applicable to the standard warranty given above are:

a) The standard warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:

(i) Failure on the part of the Customer to properly maintain any Goods; or

(ii) Any use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or

(iii) Fair wear and tear, any accident or act of God.

b) The standard warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the standard warranty if the workmanship is repaired, altered or overhauled without the Company’s consent.

3. In respect of all claims the Customer shall not be liable to compensate the Customer for any delay in either replacing the workmanship/Goods or in properly assessing the Customer’s claim.

4. For Goods not manufactured by the Company, the standard warranty shall be the current standard warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer’s warranty.

All quoted powder coating colours are within the standard colour range (unless the customer specifies differently). Any colours selected outside of this standard range do not come with a standard warranty certificate.

22. SPECIAL WARRANTIES

Product warranties are site specific, and relevant to the particular job.

Australian Security Fencing P/L must be informed of any special warranty requirements at the time a quote is requested.

All agreed special warranties are recorded against a purchase order number, for a specific job, should any future issues arise.

If no details of any special warranties required are given at the time a quote is requested, the above Standard Warranty will apply.

23. RESPONSIBILITY:

In no event shall Australian Security Fencing P/L be responsible for any loss of profit, penalties, expenditure, damages or losses incurred by the customer arising out of any delay in delivery or caused by or arising out of any use of or dealing with the goods, whether arising from any defect in the goods, unsuitability for the customers purpose, negligence by ASF or its employees or agents or in any other way.

24. CONTRACTOR / SUBCONTRACTOR INVOICES:

Any invoices made out to ASF either by a contractor or subcontractor must be supplied in their original form along with Statutory Declaration and Subcontractors Statement. These documents are available by contacting ASF.

25. AMENDMENT:

Any amendment, alteration or modification of this document shall not be valid unless and until produced in writing and signed by the parties hereto.

Job No:

Date:

Client:

Signed: