

# TERMS & CONDITIONS OF TRADE

## The R & S Pronyszyn Family Trust T/A Margaret River Fencing

### 1. Definitions

- 1.1 "MARGARET RIVER FENCING" means The R & S Pronyszyn Family Trust T/A Margaret River Fencing, its successors and assigns or any person acting on behalf of and with the authority of The R & S Pronyszyn Family Trust T/A Margaret River Fencing.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by MARGARET RIVER FENCING to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by MARGARET RIVER FENCING to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by MARGARET RIVER FENCING to the Client.
- 1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between MARGARET RIVER FENCING and the Client in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with MARGARET RIVER FENCING's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and MARGARET RIVER FENCING.

### 3. Change in Control

- 3.1 The Client shall give MARGARET RIVER FENCING not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by MARGARET RIVER FENCING as a result of the Client's failure to comply with this clause.

### 4. Price and Payment

- 4.1 At MARGARET RIVER FENCING's sole discretion the Price shall be either: (a) as indicated on any invoice provided by MARGARET RIVER FENCING to the Client; or
- (b) MARGARET RIVER FENCING's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of one hundred and twenty (120) days.
- 4.2 MARGARET RIVER FENCING reserves the right to change the Price: (a) if a variation to the Goods which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design etc) which are only discovered on commencement of the Services; or
- (d) in the event of increases to MARGARET RIVER FENCING in the cost of labour or which are beyond MARGARET RIVER FENCING's control.
- 4.3 At MARGARET RIVER FENCING's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by MARGARET RIVER FENCING, which may be: (a) on delivery of the Goods/Equipment;
- (b) before delivery of the Goods/Equipment;
- (c) by way of instalments/progress payments in accordance with MARGARET RIVER FENCING's payment schedule;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MARGARET RIVER FENCING.
- 4.5 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Client and MARGARET RIVER FENCING.

### 5. Delivery of Goods/Equipment

- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at MARGARET RIVER FENCING's address; or
- (b) MARGARET RIVER FENCING (or MARGARET RIVER FENCING's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 5.2 At MARGARET RIVER FENCING's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then MARGARET RIVER FENCING shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 5.4 MARGARET RIVER FENCING may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by MARGARET RIVER FENCING to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and MARGARET RIVER FENCING will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 5.6 Subject to clause 5.7 it is MARGARET RIVER FENCING's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.7 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that MARGARET RIVER FENCING claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond MARGARET RIVER FENCING's control, including but not limited to any failure by the Client to: (a) make a selection; or
- (b) have the site ready for the Services; or
- (c) notify MARGARET RIVER FENCING that the site is ready.

### 6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, MARGARET RIVER FENCING is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MARGARET RIVER FENCING is sufficient evidence of MARGARET RIVER FENCING's rights to receive the insurance proceeds without the need for any person dealing with MARGARET RIVER FENCING to make further enquiries.
- 6.3 If the Client requests MARGARET RIVER FENCING to leave Goods outside MARGARET RIVER FENCING's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 Whilst MARGARET RIVER FENCING will take all due care during installation MARGARET RIVER FENCING will not accept any responsibility for tiles or pavers damaged during installation.
- 6.5 Where fencing is installed on a retaining wall MARGARET RIVER FENCING shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 6.6 MARGARET RIVER FENCING reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 6.7 Where the Client has supplied materials for MARGARET RIVER FENCING to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. MARGARET RIVER FENCING shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 6.8 The Client acknowledges that Goods supplied may (a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and

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- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.

6.9 MARGARET RIVER FENCING will inform the Client of all or any relevant characteristics of the product/s chosen by the Client including limitations on use of same as defined in the manufacturer's warranty conditions.

### 7. Access

7.1 The Client shall ensure that MARGARET RIVER FENCING has clear and free access to the work site at all times to enable them to undertake the Services. MARGARET RIVER FENCING shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of MARGARET RIVER FENCING.

### 8. Underground Locations

8.1 Prior to MARGARET RIVER FENCING commencing any work the Client must advise MARGARET RIVER FENCING of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst MARGARET RIVER FENCING will take all care to avoid damage to any underground services the Client agrees to indemnify MARGARET RIVER FENCING in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

### 9. Accuracy of Customers Plans and Measurements

9.1 MARGARET RIVER FENCING shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, MARGARET RIVER FENCING accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or MARGARET RIVER FENCING places an order based on these measurements and quantities. MARGARET RIVER FENCING accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

### 10. Client's Responsibilities

10.1 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause then MARGARET RIVER FENCING accepts no responsibility for installation decisions that need to be made by MARGARET RIVER FENCING in the Client's absence.

10.2 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow MARGARET RIVER FENCING clear access along the proposed fence line prior to commencement of work by MARGARET RIVER FENCING unless otherwise agreed in writing between MARGARET RIVER FENCING and the Client. Under no circumstances will MARGARET RIVER FENCING handle removal of asbestos product.

10.3 The Client shall provide MARGARET RIVER FENCING with a suitable free power source.

10.4 MARGARET RIVER FENCING shall not be responsible for digging land out under fence lines nor removal of soil from the work site.

### 11. Title To Goods

11.1 MARGARET RIVER FENCING and the Client agree that ownership of the Goods shall not pass until: (a) the Client has paid MARGARET RIVER FENCING all amounts owing to MARGARET RIVER FENCING; and

(b) the Client has met all of its other obligations to MARGARET RIVER FENCING.

11.2 Receipt by MARGARET RIVER FENCING 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.

11.3 It is further agreed that: (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to MARGARET RIVER FENCING on request.

(b) the Client holds the benefit of the Client's insurance of the Goods on trust for MARGARET RIVER FENCING and must pay to MARGARET RIVER FENCING the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for MARGARET RIVER FENCING and must pay or deliver the proceeds to MARGARET RIVER FENCING on demand.

(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MARGARET RIVER FENCING and must sell, dispose of or return the resulting product to MARGARET RIVER FENCING as it so directs.

(e) the Client irrevocably authorises MARGARET RIVER FENCING to enter any premises where MARGARET RIVER FENCING believes the Goods are kept and recover possession of the Goods.

(f) MARGARET RIVER FENCING may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MARGARET RIVER FENCING.

(h) MARGARET RIVER FENCING may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 12. Personal Property Securities Act 2009 ("PPSA")

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by MARGARET RIVER FENCING to the Client.

12.3 The Client undertakes to: (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MARGARET RIVER FENCING may reasonably require to; (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);

(b) indemnify, and upon demand reimburse, MARGARET RIVER FENCING for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of MARGARET RIVER FENCING;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of MARGARET RIVER FENCING;

(e) immediately advise MARGARET RIVER FENCING of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

12.4 MARGARET RIVER FENCING and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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12.7 Unless otherwise agreed to in writing by MARGARET RIVER FENCING, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client must unconditionally ratify any actions taken by MARGARET RIVER FENCING under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13. Security and Charge

13.1 In consideration of MARGARET RIVER FENCING agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

13.2 The Client indemnifies MARGARET RIVER FENCING from and against all MARGARET RIVER FENCING's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MARGARET RIVER FENCING's rights under this clause.

13.3 The Client irrevocably appoints MARGARET RIVER FENCING and each director of MARGARET RIVER FENCING as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

### 14. Client's Disclaimer

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

### 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

15.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify MARGARET RIVER FENCING in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow MARGARET RIVER FENCING to inspect the Goods/Equipment.

15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

15.3 MARGARET RIVER FENCING acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MARGARET RIVER FENCING makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. MARGARET RIVER FENCING's liability in respect of these warranties is limited to the fullest extent permitted by law.

15.5 If the Client is a consumer within the meaning of the CCA, MARGARET RIVER FENCING's liability is limited to the extent permitted by section 64A of Schedule 2.

15.6 If MARGARET RIVER FENCING is required to replace the Goods under this clause or the CCA, but is unable to do so, MARGARET RIVER FENCING may refund any money the Client has paid for the Goods.

15.7 If the Client is not a consumer within the meaning of the CCA, MARGARET RIVER FENCING's liability for any defect or damage in the Goods is: (a) limited to the value of any express warranty or warranty card provided to the Client by MARGARET RIVER FENCING at MARGARET RIVER FENCING's sole discretion; (b) limited to any warranty to which MARGARET RIVER FENCING is entitled, if MARGARET RIVER FENCING did not manufacture the Goods;

(c) otherwise negated absolutely.

15.8 MARGARET RIVER FENCING does not offer any additional warranty other than any warranty to which the Client is entitled from the manufacturer.

15.9 Subject to this clause 15, returns will only be accepted provided that: (a) the Client has complied with the provisions of clause 15.1; and

(b) MARGARET RIVER FENCING has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

15.10 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, MARGARET RIVER FENCING shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of: (a) the Client failing to properly maintain or store any Goods/Equipment;

(b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;

(c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Client failing to follow any instructions or guidelines provided by MARGARET RIVER FENCING;

(e) fair wear and tear, any accident, or act of God.

15.11 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by MARGARET RIVER FENCING as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that MARGARET RIVER FENCING has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15.11.

15.12 MARGARET RIVER FENCING may in its absolute discretion accept non-defective Goods for return in which case MARGARET RIVER FENCING may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

15.13 Notwithstanding anything contained in this clause if MARGARET RIVER FENCING is required by a law to accept a return then MARGARET RIVER FENCING will only accept a return on the conditions imposed by that law.

### 16. Intellectual Property

16.1 Where MARGARET RIVER FENCING has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of MARGARET RIVER FENCING.

16.2 The Client warrants that all designs, specifications or instructions given to MARGARET RIVER FENCING will not cause MARGARET RIVER FENCING to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MARGARET RIVER FENCING against any action taken by a third party against MARGARET RIVER FENCING in respect of any such infringement.

16.3 The Client agrees that MARGARET RIVER FENCING may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MARGARET RIVER FENCING has created for the Client.

### 17. Default and Consequences of Default

17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at MARGARET RIVER FENCING's sole discretion such interest shall compound monthly at such a rate) after, as well as before any judgment.

17.2 If the Client owes MARGARET RIVER FENCING any money the Client shall indemnify MARGARET RIVER FENCING from and against all costs and disbursements incurred by MARGARET RIVER FENCING in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MARGARET RIVER FENCING's collection agency costs, and bank dishonour fees).

17.3 Without prejudice to any other remedies MARGARET RIVER FENCING may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MARGARET RIVER FENCING may suspend or terminate the supply of Goods/Equipment to the Client. MARGARET RIVER FENCING will not be liable to the Client for any loss or damage the Client suffers because MARGARET RIVER FENCING has exercised its rights under this clause.

17.4 Without prejudice to MARGARET RIVER FENCING's other remedies at law MARGARET RIVER FENCING shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MARGARET RIVER FENCING shall, whether or not due for payment, become immediately

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payable if: (a) any money payable to MARGARET RIVER FENCING becomes overdue, or in MARGARET RIVER FENCING's opinion the Client will be unable to make a payment when it falls due;  
(b) 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  
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 18. Compliance with Laws

18.1 The Client and MARGARET RIVER FENCING shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

18.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

### 19. Cancellation

19.1 MARGARET RIVER FENCING may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice MARGARET RIVER FENCING shall repay to the Client any money paid by the Client for the Goods/Equipment. MARGARET RIVER FENCING shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by MARGARET RIVER FENCING as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.3 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

### 20. Dispute Resolution

20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be: (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and  
(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 21. Privacy Act 1988

21.1 The Client agrees for MARGARET RIVER FENCING to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by MARGARET RIVER FENCING.

21.2 The Client agrees that MARGARET RIVER FENCING may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes: (a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

21.3 The Client consents to MARGARET RIVER FENCING being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

21.4 The Client agrees that personal credit information provided may be used and retained by MARGARET RIVER FENCING for the following purposes (and for other purposes as shall be agreed between the Client and MARGARET RIVER FENCING or required by law from time to time): (a) the provision of Goods/Equipment; and/or

(b) the marketing of Goods/Equipment by MARGARET RIVER FENCING, its agents or distributors; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods/Equipment.

21.5 MARGARET RIVER FENCING may give information about the Client to a credit reporting agency for the following purposes: (a) to obtain a consumer credit report about the Client;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

21.6 The information given to the credit reporting agency may include: (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Client's application for credit or commercial credit and the amount requested;

(c) advice that MARGARET RIVER FENCING is a current credit provider to the Client;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of MARGARET RIVER FENCING, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided to the Client by MARGARET RIVER FENCING has been paid or otherwise discharged.

### 22. Unpaid Seller's Rights

22.1 Where the Client has left any item with MARGARET RIVER FENCING for repair, modification, exchange or for MARGARET RIVER FENCING to perform any other service in relation to the item and MARGARET RIVER FENCING has not received or been tendered the whole of any moneys owing to it by the Client, MARGARET RIVER FENCING shall have, until all moneys owing to MARGARET RIVER FENCING are paid: (a) a lien on the item; and

(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

22.2 The lien of MARGARET RIVER FENCING shall continue despite the commencement of proceedings, or judgment for any moneys owing to MARGARET RIVER FENCING having been obtained against the Client.

### 23. Equipment Hire

23.1 Equipment shall at all times remain the property of MARGARET RIVER FENCING and is returnable on demand by MARGARET RIVER FENCING. In the event that Equipment is not returned to MARGARET RIVER FENCING in the condition in which it was delivered MARGARET RIVER FENCING retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all MARGARET RIVER FENCING shall have right to charge the Client the full cost of replacing the Equipment.

23.2 The Client shall: (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

# TERMS & CONDITIONS OF TRADE

## The R & S Pronyszyn Family Trust T/A Margaret River Fencing

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by MARGARET RIVER FENCING to the Client.

23.3 The Client accepts full responsibility for the safe keeping of the Equipment and the Client agrees to insure, or self insure, MARGARET RIVER FENCING's interest in the Equipment and agrees to indemnify MARGARET RIVER FENCING against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### **24. Building and Construction Industry Security of Payments Act 1999**

24.1 At MARGARET RIVER FENCING's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

### **25. General**

25.1 The failure by MARGARET RIVER FENCING to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect MARGARET RIVER FENCING's right to subsequently enforce that provision. If any provision of these 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.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which MARGARET RIVER FENCING has its principal place of business, and are subject to the jurisdiction of the Forster Courts in that state.

25.3 Subject to clause 15 MARGARET RIVER FENCING shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MARGARET RIVER FENCING of these terms and conditions (alternatively MARGARET RIVER FENCING's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

25.4 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 MARGARET RIVER FENCING nor to withhold payment of any invoice because part of that invoice is in dispute.

25.5 MARGARET RIVER FENCING may license or sub-contract all or any part of its rights and obligations without the Client's consent.

25.6 The Client agrees that MARGARET RIVER FENCING may amend these terms and conditions at any time. If MARGARET RIVER FENCING makes a change to these terms and conditions, then that change will take effect from the date on which MARGARET RIVER FENCING notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for MARGARET RIVER FENCING to provide Goods/Equipment to the Client.

25.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

25.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.