



1. PARTIES

The Supplier: Sharon Thomson trading as SLT Fencing (ABN: 74 639 232 296)
The Customer: As stated on quote

2. DEFINITIONS

The Supplier is Sharon Thomson trading as SLT Fencing (ABN 74 639 232 296) of 39 Huntington Drive, Hampton in the State of Victoria.
The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.

The Guarantor is the person(s), or entity, who agrees to be liable for the debts of the Customer. The Order shall be defined as any request for the provision of Goods and/or Services by the Customer with the Supplier which has been accepted by the Supplier.
The Goods are the fixtures, fittings and/or parts, components and materials provided by the Supplier and used up by the Supplier in providing the Services.

The Services are all the delivery and/or supply of Goods, building, construction, installation, renovation, repairs and improvements done by the Supplier, including any advice or recommendations given.

The Premises are the land or land and buildings where the Services are to be carried out.

The Price is the amount invoiced for Goods supplied or Services provided or both.
The Act refers to the Building and Construction Industry Security of Payment Act 2002 (Vic) and any operative section thereof from time to time, including any amending legislation.

Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.
Invoices include invoices for Goods supplied or for Services provided, or both.

Major failure refers to Major failure as defined under the *Competition and Consumer Act 2010* and the *Fair Trading Acts* in each of the States and Territories of Australia.

GST refers to Goods and Services Tax under the *Goods and Services Act 1999* ("GST Act") and the terms used herein have meanings contained within the GST Act.

3. GENERAL

These Terms and Conditions together with the Supplier's written or verbal quotation and/or scope of works form this Agreement, and should be read in conjunction with the Supplier's Credit Application Form where completed.

Any Order requested by the Customer is deemed to be an Order incorporating these Terms and Conditions and may not be varied unless expressly agreed to by the parties in writing. In the event that an inconsistency exists and/or arises between these terms and the Order it is acknowledged between the parties that these Terms and Conditions will prevail.

No subsequent correspondence or document or discussion shall modify or otherwise vary these Terms and Conditions unless such variation is in writing and signed by the Supplier.

The Terms and Conditions are binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator.

In these Terms and Conditions, the singular shall include the plural, the masculine shall include feminine and neuter and words importing persons shall apply to corporations.

Where more than one Customer completes this Agreement each shall be liable jointly and severally.

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 and the offending provision shall be deemed as severed from these Terms and Conditions.

The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.

The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's respective rights to subsequently enforce that provision.

The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website. In this event, the Terms and Conditions on the Supplier's website shall apply to any future dealings as between the parties and the Customer is deemed to have notice of any such Terms and Conditions and/or amendments.

The Customer covenants that he is either the owner of the Premises or is acting with the authority of the Owner and the Customer indemnifies and will continue to indemnify the Supplier thereto in respect of any claims for direct or indirect damages and consequential or special losses by the owner of the Premises.

4. PLACEMENT OF ORDERS

Orders placed by the Customer with the Supplier will be considered valid when placing the Order verbally and/or in writing.

Customers must provide the Supplier with a Purchase Order or signed quotation before any Goods and/or Services are provided.

Any written quotation given by the Supplier shall expire thirty (30) days after the date of the written quotation. Quotations may also be provided to the Customer by verbal communication over the telephone.

All prices are based on taxes and statutory charges current at the time of the quotation. Should these vary during the period from the date of the quotation to the date of the invoice, the difference will become the responsibility of the Customer and the Customer will be invoiced for the extra charge by the Supplier.

5. PRICE

GST will be charged on the Goods and Services provided by the Supplier that attract GST at the applicable rate.

At the Supplier's sole discretion the Price shall be either:

As detailed on invoices provided by the Supplier to the Customer in respect of Goods and/or Services supplied; or

The Supplier's quoted Price as for the Order (subject to clause 5.3).

The Supplier reserves the right to change the Price to the Supplier's Order in the event of a variation to the Order, and notice will be provided in writing by the Supplier within a reasonable time.

At the discretion of the Supplier, and without prejudice to any right of the Supplier under the Act, all Orders may be subject to a deposit of up to fifty per centum of the Price (50%) and/or periodic progress or interim payments of a specified amount to be made at specified intervals.

6. PROVISION OF GOODS AND/OR SERVICES

At any time before payment is made by the Customer, the Supplier reserves their right to:

Decline requests for any Goods and/or Services requested by the Customer.

Cancel or postpone appointments at their discretion.

At the sole discretion of the Supplier, the Supplier may charge an attendance fee at the Supplier's prevailing rate for any appointments made between the Parties.

Unless specified by the Supplier to the contrary in the Order, the Supplier does not warrant that it will be capable of providing the Goods and/or Services at specific times requested by the Customer during the term of this Agreement.

Subject to otherwise complying with its obligations under this Agreement, the Supplier shall exercise its independent discretion as to its most appropriate and effective manner of providing the Goods and/or Services and of satisfying the Customer's expectations of those Goods and/or Services.

In the discharge of its duties, the Supplier shall comply with all reasonable directions of the Customer as to the nature and scope of the Goods and/or Services to be provided.

Nothing in the above clause shall affect the Supplier's right to exercise its own judgment and to utilise its skills as it considers most appropriate in order to achieve compliance with the said resolutions, regulations and directions or otherwise with its obligations under this Agreement.

The Supplier may agree to provide, on request from the Customer, additional Goods and/or Services not included or specifically excluded in the quotation and/or scope of works. In this event, the Supplier shall be entitled to make an additional charge for the variation.

Additional Goods and/or Services includes, but is not limited to, alterations, amendments, and any additional visits by the Supplier after provision of the Goods and/or Services at the request of the Customer.

The Customer grants full access to the Supplier, its servants and agents to the Premises to enable it to carry out the Services.

The Customer is responsible for obtaining all necessary permits and to mark out the site at the Premises for the provision of the Services.

The Customer is responsible for ensuring that the Goods are secured at the Premises and warrants to be responsible for any loss, damage or theft of the Goods delivered by the Supplier to the Premises.

7. PAYMENT

Any reference to Customer shall include all Customers, unless it refers to a specific group of Customers.

For credit purposes, the two main groups of Customers are Non-Account Customers and Account Customers.

Non-Account Customers must make full payment of the Price to the Supplier on completion of the Services.

Account Customers must make full payment to the Supplier within thirty (30) days from the date of the invoice(s) for the Goods and Services.

Credit

Credit will only be granted at the sole discretion of the Supplier and upon submission of a completed Credit Application Form.

Any credit granted may be revised by the Supplier at any time and at its discretion.

The Supplier reserves the right to withdraw any credit facility upon any breach by the Customer of these Terms of Conditions or upon the Customer ceasing to trade and/or being subject to any legal proceedings and/or the Customer committing an act of insolvency.

The Customer agrees that upon such withdrawal, any and all monies owing on the account shall become immediately due and payable.

8. DISHONOUR OF CHEQUE

If any cheque issued by the Customer or by any third party in payment of the Price is dishonoured:

The Supplier may refuse to supply any further Goods until satisfactory payment is received in full, including bank fees and charges.

The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.

The Customer may be liable for a dishonoured cheque fee of \$40.00.

9. DEFAULT

Invoices issued by the Supplier shall be due and payable on completion of the Services for Non-Account Customers and within thirty (30) days from the date of the invoice for Account Customers ("Default Date").

If the Supplier does not receive the Outstanding Balance for the Price on or before the Default Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:

After the Default Date, the Outstanding Balance shall include, but not limited to, all applicable fees and charges under this Agreement;

The Supplier may, in its discretion, calculate interest at the rate of two per centum (2%) over the prevailing rate as set from time to time pursuant to the *Penalty Interest Rates Act 1983* calculated and applied monthly for all monies due by Customer to the Supplier.

In the event of the Customer being in default of his obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\text{Commission} = \frac{\text{Original Debt} \times 100}{100 - \text{Commission \%}} \text{ charged by the agency (including GST)}$$

In the event the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au.

In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

10. RISK AND LIABILITY

The Customer will ensure when placing Orders that there is sufficient information to enable the Supplier to execute the Order.

The Supplier takes no responsibility if the specifications provided by the Customer are wrong or inaccurate and the Customer will be liable in that event for the expenses incurred by the Supplier for any work required to rectify the Order.

The Customer is responsible for ensuring that the Supplier is made aware of any special requirements pertaining to the Order and the Supplier relies upon the integrity of the information supplied to it.

The Supplier takes no responsibility and will not be liable for any damages or costs resulting in the Goods and/or Services being faulty or not fit for purpose as a consequence of insufficient information provided by the Customer.

The Supplier takes no responsibility for representations made in relation to the Goods or any delay in the delivery of the Goods made by a third party or third party manufacturer.

The Customer indemnifies and agrees to keep the Supplier indemnified against any and all claims for personal injury, direct, indirect and/or consequential damages or loss arising from or in connection with the Services including but not limited to any feature or condition of the Premises whatsoever caused, whether or not any such feature or condition is reasonably obvious and/or whether the feature or condition is known or unknown to the Customer or any of the Customer's agents or servants.

The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any direct, indirect special or consequential loss incurred as a result of delay or failure to provide the Goods and/or Services or to observe any of these conditions due to an event of force majeure, being any cause or circumstance beyond the Supplier's reasonable control.

The Supplier does not represent that it will provide and/or deliver any Goods and/or Services unless it is included in the quotation and/or scope of works.

11. WARRANTY

The Supplier warrants that the rights and remedies to the Customer in this Agreement for warranty against defects are in addition to other rights and remedies of the Customer under any applicable law in relation to the Goods and Services to which the warranty relates.

The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.

Warranty for Services.
The Supplier warrants that if any defect in any Service provided by the Supplier becomes apparent and is reported to the Supplier preferably within fourteen (14) days of the provision of the Services then the Supplier will remedy the defective Service.

To the extent permitted by law, the Supplier's liability in respect of defective services will be limited to:

The re-supply of the defective Service; or
The payment of the cost of having the defective Service supplied again; or
The refund of the Price paid by the Customer in respect of the defective Service.

In respect of all claims the Supplier shall not be liable to compensate the Customer for any reasonable delay in remedying the defective Services or in assessing the Customer's claim. The Customer warrants that it will use its best endeavours to assist the Supplier with identifying the nature of the defective Service claim.

The Customer continues to be responsible for all amounts owing to the Supplier in the event that:

Goods and/or Services are supplied on the basis that the Customer is entitled to an indemnity from a third party the Price of the Goods and/or Services or any part thereof; or

Goods and/or Services are supplied on the basis that a warranty is in place and it subsequently becomes known to the Parties that the warranty is void or inapplicable.

Claims made under Warranty

Subject to clause 11.1 and 11.2 of this Agreement claims for warranty should be made in one of the following ways:

The Customer must send the claim in writing together with proof of purchase to the Supplier's business address stated in clause 2.1 of this agreement;

The Customer must contact the Supplier on Supplier's business number (03) 9769 0869.

The Customer must email the claim together with the proof of purchase to the Supplier's email address sharon@ojmpropertymaintenance.com.au.

Services where a claim is made are to be left in the state and condition in which they were completed until such time as the Supplier or its Agent has inspected the Services subject to the claim. Such inspection is to be carried out within a reasonable time after notification.

Goods where a claim is made are to be returned to the Supplier or are to be left in the state and condition in which they were delivered until such time as the Supplier or its Agent has inspected the Goods. Such inspection is to be carried out within a reasonable time after notification.

12. RETENTION OF TITLE

Subject to clause 11.1 and 11.2, while the risk in Goods shall pass on delivery and/or supply (including all risks associated with unloading); legal and equitable title in the Goods shall remain with the Supplier until full payment of all Goods supplied by the Supplier to the Customer is made. Pending such payment the Customer: Shall hold the Goods as Bailee for the Supplier and shall return the Goods to the Supplier if so requested;

Agrees to hold the Goods at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Goods whilst they are in the Customer's possession; and

The Customer must not allow any person to have or acquire security interest in the Goods whilst the Goods are in the Customer's possession.

The Customer may sell and/or use the Goods in the ordinary course of business.

If the Goods are resold before all monies are paid to the Supplier, the Customer shall hold the proceeds of sale in a separate identifiable account on trust for the Supplier and promptly account the Supplier for those proceeds in payment of the Price for the Goods.

The Supplier is authorised to enter the Premises or the premises where the Customer stores the Goods without liability for trespass or any resulting damage in retaking possession of the Goods until the accounts owed to the Supplier by the Customer are fully paid.

Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover the Price of the Goods.

13. TERMINATION AND CANCELLATION

Cancellation by Supplier

The Supplier may cancel any Order to which these Terms and Conditions apply or cancel provision of Goods and/or Services at any time before payment in full is made by the Customer by giving written notice to the Customer. On giving such notice the Supplier shall repay any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage or indirect or consequential loss or damage whatsoever arising from such cancellation.

In the event the Order is subject to progress payments, the Supplier shall be entitled to suspend and/or cease the completion of the Order if the Customer's progress payments are in arrears. The Supplier is entitled to recommence the provision of Goods and/or Services once the arrears are cleared and the progress payments are up to date.

Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:

Any money payable to the Supplier becomes overdue; or

The Customer 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 Customer or any asset of the Customer.

Cancellation by Customer

Any Order cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.

In the event that the Customer cancels provision of Goods and/or Services, the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation and expectation loss thereafter.

If the Customer places an Order with the Supplier and the Supplier places an order with a third party supplier to meet the Customer's request, the Customer shall be liable for the price of the goods so ordered or any applicable cancellation fee if the Customer cancels the Order and the goods have already been dispatched or cannot otherwise be cancelled in turn by the Supplier.

The Supplier acknowledges that in the event the Supplier contravenes any of the terms in this Agreement then clauses 13.4, 13.5 and 13.6 will not apply.

14. SET-OFF

The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.

The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

15. INSURANCE

The Supplier is not liable to provide any insurance cover in relation to the provision of the Goods and/or Services. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

16. ACCESS

The Customer shall, where relevant, ensure the Supplier has full and safe access to the Premises and any necessary essential services, resources, equipment, materials and information.

The Customer will be charged an additional fee if the Supplier's work is interfered with or no proper or safe access is provided to the Supplier.

The Customer shall supply water and/or electricity to the Supplier to carry out the Order at no costs to the Supplier.

17. JURISDICTION

This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

18. PRIVACY ACT 1988

The Customer and/or the Guarantor agrees:

For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.

That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.

The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).

19. ENTIRE AGREEMENT

These Terms and Conditions as defined in Clause 3.1 constitute the whole Agreement made between the Customer and the Supplier.

This Agreement can only be amended in writing signed by each of the parties.

All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the *Competition and Consumer Act 2010* or the *Fair Trading Acts* in each of the States and Territories of Australia.