



TERMS AND CONDITIONS

Effective June 2017

These terms and conditions represent the agreement between **Brushwood Fencing Australia Pty Ltd (ACN 138 512 357)**, or **Brushwood Fencing**, their servants, assignees, related companies, suppliers, agents or subcontractors ("the Company") and the person or legal entity to whom this quotation is addressed ("the Purchaser"), herein referred to as "the Quotation".

Quotations

1. The Quotation shall remain current for a period of 60 days, or as otherwise stated, from the date specified on the Quotation and are provided on the basis of E & OE. The Quotation is an "invitation to treat" only and does not represent a legal binding agreement between the Company and the Purchaser. The Company warrants that all proposed works (herein referred to as "the scope of works") will be undertaken according to generally accepted industry standards unless specifically stated or requested by the Purchaser and agreed to by the Company.
2. The Quotation is based on a cleared, surveyed and marked alignment of the site for the works (where applicable). Unless noted in the Quotation, any costs incurred by the Company in respect of clearing and surveying the alignment will be payable in addition to the Purchaser's quoted amount. No responsibility shall be accepted by the Company for incorrect location of fence line unless survey pegs are provided. Adequate soil compaction and/or consistency to hold the works is also warranted by the Purchaser.
3. Unless stated in the Quotation, no allowance has been made for any obstructions, above or below the soil such as rock or shale, concrete, tree roots, broken posts or any other item(s) which may be encountered during the performance of the contract. Additional charges based on the Company's current hourly rates for labour plus any other required costs (all inclusive of GST) will be made to cover the costs incurred as a result of such obstructions.
4. Upon acceptance of the Quotation, a 10% Deposit of the total will be required. Deposits are non-refundable.
5. At its discretion, the Company may elect to proceed with a quotation which is accepted after 60 days has elapsed. In such cases, the Company reserves the right to apply any price increases to the original quotation, where applicable.

Jurisdiction

6. The Purchaser acknowledges and agrees that this agreement shall be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia that are applicable to NSW.
7. The parties to this agreement submit to the non-exclusive jurisdiction of the Courts of NSW and the relevant Federal Courts and Courts competent to hear appeals from those Courts.

Notices and permits

8. Any Notices to be given or Permits required as a consequence of the works must be provided to the Company by the Purchaser or their designate, within any specified time frames prior to the Company commencing work. The Company will not advocate on behalf of owners of contiguous properties to the works where this applies.

Undertaking works

9. The Purchaser, or their designate, is responsible for the supervision of the works and shall, where erection is involved, advise the erector of the location of all electrical cables, gas or water pipes, sewage, telephone lines and/or other service facility which is or may be affected by the proposed works.
10. The Purchaser agrees to fully indemnify the Company at all times against any claims or demands made by any person or authority in respect of such incorrect location or resultant damage.
11. Where the Company contractually assumes responsibility for services location, liability is strictly limited to the extent whereby services are reasonably detectable by a specialist services detection contractor. In respect of undetectable services (for example, PVC piping) the Purchaser, or their designate/s, must provide exact locations if the Company is expected to assume responsibility.
12. The Company accepts no responsibility for damage to finished surfaces (including paving, concrete and bitumen) unless specifically nominated as a result of undertaking the works described in the Quotation. Any trees, shrubs and landscaping in the vicinity of the works are the unconditional responsibility of the Purchaser and may be removed or pruned, without liability, by the Company if deemed necessary.
13. It is the responsibility of the Purchaser to restore paved surfaces unless specifically included in the Quotation.
14. Any waste removal (other than fencing materials), including excess soil, is the responsibility of the Purchaser unless specifically included in the Quotation.

Free access

15. The Quotation is provided on the basis of free access by the Company to the job site during normal working hours and also access to undertake the works continuously without breaking the Company's work schedule for the job, unless by prior agreement. Variations to this will incur additional charges.
16. Detention time may be charged at the Company's standard ruling rates in the event delays occur on the job site as a result of the Purchaser limiting access.

Variations

17. Any variation, alteration or modification of the work or materials must be in writing and signed by the Purchaser or their authorised representative and the Company reserves the right to vary the quoted price for any variations as necessary.

Responsibility for payment

18. Upon acceptance of the Quotation, payment will be the responsibility of the person or legal entity to whom the Quotation is directed. Such acceptance will be taken as an authority to proceed with all work including, if applicable, demolition of existing fences and/or structures. The legal entity to whom the Quotation is addressed is assumed to have obtained the agreement of all relevant property owners, occupants and authorities from whom approval is required, where applicable.
19. Any delays incurred as a result of failure to obtain such approval where required may be an additional cost to the Purchaser.

Progress claims

20. The Company, at its discretion, shall be entitled to render to the Purchaser progress claims based on a pro-rata value of work completed. Such claims are to be paid by the Purchaser upon submission of the Company's invoice, subject to the Company's payment terms.

Payment on completion

21. Company's payment terms apply upon completion of the works. Any dispute or concern regarding the works are to be delivered to the Company in writing, no later than 7 days following completion of the works, prior to any further action being undertaken.
22. Should the Company incur legal and/or other expenses including any reasonable internal costs as well as any payments to an Agency licensed under the *Commercial & Private Agents Act 2004* (NSW) (as amended) or a legal practitioner in obtaining or attempting to obtain payment of all or part of any amount(s) due, the Purchaser is liable for the payment of those expenses on a Solicitor-Client basis. These are due and payable immediately when advised to the Purchaser.
23. An overdue charge, calculated on a weekly basis at 15% of the total will be charged on any overdue amount on the account, and the Purchaser expressly undertakes to pay all such overdue charges.
24. The Purchaser agrees to pay the Company's costs and expenses incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including any debt recovery fees and legal costs on an indemnity basis. Such costs and expenses will be due and payable by the Purchaser to the Company irrespective of whether pursuit of the recovery action, claim or remedy is successful.
25. The Purchaser acknowledges and agrees that payments by the Purchaser will be applied by the Company as follows:
 - a. Firstly, in payment of any and all collection costs and legal costs, where applicable.
 - b. Secondly, in payment of any overdue charges incurred in accordance with clause 23.
 - c. Thirdly, in payment of the outstanding invoice(s).

Ownership of goods

26. Property in the goods supplied shall remain vested in the Company and shall not pass to the Purchaser until all monies owing by the Purchaser to the Company, together with all collection and repossession and legal costs incurred, have been paid in full, plus any Government charges or taxes where applicable.
27. Notwithstanding the above, the goods are at the entire risk of the Purchaser from the time of delivery. In the event the Purchaser defaults in the payment of any monies owing hereunder, the Company and its employees or agents reserve the right to enter, without notice, upon the premises occupied by the Purchaser (or any Receiver, Receiver and Manager, Administrator, Liquidator or Trustee in Bankruptcy of the Purchaser) or any other premises where the goods are known to be located to repossess the goods and for this purpose the Purchaser shall grant all reasonable access rights and the Company and its employees or agents shall be entitled to do all things required to protect its position. This includes any installed materials and any visual evidence of the installed item(s) having been installed will not be rectified after removal.
28. The Purchaser will be responsible for the Company's costs and expenses incurred in exercising its rights under clause 27. Where the Company exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Company, its employees, servants, or agents.

Continuing trade

29. If the Purchaser trades with the Company on an ongoing or repeat basis then these terms and conditions, together with any variations thereto, will apply. Applicable Law is that of the State of NSW.

Variation of terms and conditions

30. These Terms and Conditions may only be varied if approved in writing by a Director of the Company, or their authorised representative.
31. If the Company enters into a contract with the Purchaser, then any clauses contained in these terms and conditions which are not overridden specifically by any of the Purchaser's conditions shall remain operative.
32. If any provision or part of this contract is void or unenforceable for any reason, then that provision or part will be severed from this contract and the rest of this contract will be read as far as possible as if the severed part or provision had never existed.

Temporary fencing

33. All temporary fencing is excluded of quotations. Separate quotes can be obtained and are provided on the following basis:
 - a. Clear access for a delivery vehicle to within 10 meters of the location where each temporary fencing panel is required.
 - b. Delivery and erection, dismantling and / or pickup is to be completed within normal business hours.
 - c. Appropriate notice for delivery, erection, dismantling and / or pickup is given by the Purchaser, in writing, of not less than seven days.
34. Any additional charges incurred as a result of the above, or any other delay as a result of the Purchaser's acts or omissions will be payable by the Purchaser, charged at the Company's standard ruling rates.
35. Any shortage or damage will be payable by the Purchaser at the Company's standard ruling rates.

Delivery of Goods

36. Delivery (“**Delivery**”) of the goods is taken to occur at the time that:
- (a) the Purchaser or the Purchase’s nominated carrier takes possession of the Goods at The Company’s address; or
 - (b) the Company (or the Company’s nominated carrier) delivers the Goods to the Purchaser’s nominated address even if the Purchaser is not present at the address.
37. At the Company’s sole discretion the cost of delivery is in addition to the price.
38. The Purchaser must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Purchaser is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
39. Delivery of the Goods to a third party nominated by the Purchaser is deemed to be delivery to the Purchaser for the purposes of this agreement.
40. Any time or date given by the Company will not be liable for any loss or damage incurred by the Purchaser as a result of the delivery being late.

Returns, Defects, Warranties and Competition

41. The Purchaser must inspect the Goods on delivery and must within seven (7) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Purchaser must notify and other alleged defect in Goods as reasonably possible after any such defect becomes evident. Upon such notification the Purchaser must allow the Company to inspect the Goods.
42. 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).
43. The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
44. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the goods. The Company’s liability in respect of these warranties is limited to the fullest extent permitted by law.
45. If the Purchaser is a consumer within the meaning of the CCA, the Company’s liability is limited to the extent permitted by section 64A of Schedule 2.
46. If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Purchaser has paid for the Goods.
47. If the Purchaser is not a consumer within the meaning of the CCA, the Company’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 Purchaser by the Company at the Company’s sole discretion;
 - (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
 - (c) otherwise negated absolutely.
48. Subject to these clauses 41 to 50, returns will only be accepted provided that:
- (a) the Purchaser has complied with provisions of clause 41; and
 - (b) the Company has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Purchaser’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.
49. Notwithstanding clauses 41 to 49 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result from:
- (a) the Purchaser failing to properly maintain or store any Goods;
 - (b) the Purchaser using the Goods for any purpose other than that for which they were designed;
 - (c) the Purchaser continuing the use of Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Purchaser failing to follow any instructions or guidelines provided by the Company;
 - (e) fair wear and tear, any accident, or act of God.
50. Notwithstanding anything contained in this clause if the Company is required be a law to accept a return the Company will only accept a return on the conditions imposed by that law.

Currency

51. All financial transactions made and accepted by the Company are in Australian Dollars only \$AUD.