

## TRADING TERMS & CONDITIONS – NAK DIRTWORX & FENCING PTY LTD

All goods and services provided by NAK DIRTWORX & FENCING PTY LTD ("The Company") are provided subject to the following terms and conditions, and upon acceptance of this quote, the Customer agrees to accept and be bound by the Company's trading terms and conditions.

### 1. General

- a) The Company's trading terms and conditions shall prevail notwithstanding any other document and/or anything else except a written agreement signed by the Customer and the Company, except only for such terms as are implied by or under a law and which cannot be excluded.

### 2. Quotes

- a) The Company may provide the Customer with a Quote. Any Quote issued by the Company is valid for 30 days from the date of issue unless otherwise specified.
- b) Following provision of a Quote to the Customer, the Company is not obliged to commence work until the Quote has been accepted by the Customer in writing.
- c) The Company reserves the right to amend any Quote before the work has been completed to take into account any unforeseen rise or fall in the cost of completing the work. The Company will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.

### 3. Acceptance of a Quote ("Order")

- a) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Company relating to that Order.
- b) The Company may in its absolute discretion refuse to provide Goods or Services where:
- Goods are unavailable for any reason whatsoever;
  - credit limits cannot be agreed upon or have been exceeded; or
  - payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Company, associated with the Customer under the same or another supply contract, has not been received by the Company.

### 4. Variations

- a) The Customer may request that its Order be varied by providing a request in writing to the Company. A request for a variation must be agreed to in writing by the Company in order to have effect.
- b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Company or after the placement of an Order, the Company reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Company in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

### 5. Invoicing and payment

- a) Once the Customer has accepted the quote, prior to commencing the provision of the Goods or Services, fifty percent (50%) of the total cost of the quote will be immediately due and payable by the Customer to the Company.
- b) Should the total cost of the Goods or services exceed \$20,000.00, the Company may require the Customer to pay the remaining outstanding amounts in weekly increments by direct deposit (the proportion to be calculated at the Company's discretion either for work done to that point, work in the future or both). Should this be the case, the Company will notify the Customer as soon as practicable as well as dates for payment.
- c) After completion of the goods and services, the Customer must pay an invoice issued by the Company to the Company within seven (7) days.
- d) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Company, are to be paid by the Customer as a debt due and payable under these terms of trade.
- e) The Customer and the Company agree to comply with their obligations in relation to Goods and Services Tax ("GST") under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

### 6. Default by Customer

- a) Each of the following occurrences constitutes an event of default:
- the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 7 days of being given notice by the Company to do so;
  - the Customer, being a natural person, commits an act of bankruptcy;
  - the Customer ceases or threatens to cease conduct of its business in the normal manner.
- b) Where an event of default occurs, except where payment in full has been received by the Company, the Company may:
- terminate these terms of trade;

- terminate any or all Orders with the Customer;
  - refuse to deliver Goods or provide further Goods or Services;
- c) On the occurrence of an event of default all invoices will become immediately due and payable.

### 7. Acceptance of Goods

If the Customer fails to advise the Company in writing of any fault or failure in goods or services provided by the Company, seven (7) days after the completion of goods or services, the Customer is deemed to have accepted the goods or services and to have accepted that the goods or services are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

### 8. Intellectual Property Rights

- a) Unless specifically agreed in writing between the Company and the Customer, all Intellectual Property Rights in any works created by the Company on behalf of the Customer vest in and remain the property of the Company.

### 9. Third party assignment

- a) The Customer agrees that the Company may at any time appoint or engage a third party to provide goods or services, provided that the third party agrees to assume any duties and obligations of the Company owed to the Customer under these terms of trade.

### 10. Exclusions and limitation of liability

- a) The Company gives no warranty in relation to the goods or services provided or supplied. Under no circumstances is the Company or any of its suppliers or third parties liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues) as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
- any Goods or Services supplied to the Customer;
  - any delay in supply of the Goods or Services; or
  - any failure to supply the Goods or Services.
- b) Any advice, recommendation, information, assistance or service given by the Company in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Company does not accept any liability or responsibility for any loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- c) The Company shall not be liable for any negligent, defective or unsatisfactory work performed by third parties whether or not those third parties have been contracted by the Company
- d) The Company shall not be liable for any damage that may occur whilst conducting any earthworks or fencing.

### 11. Indemnity

- a) The Customer indemnifies and keeps indemnified the Company, its servants and third parties in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Company or, for which the Company is liable, in connection with any default or damage, or loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade including:
- b) This includes, but is not limited to, any legal costs incurred by the Company in relation to meeting any claim or demand of any party legal costs for which the Company is liable in connection with any such claim or demand.
- c) This provision remains in force after the termination of these terms of trade.

### 12. Force majeure

- a) If circumstances beyond the Company's control prevent or hinder its provision of the Goods or Services, the Company is free from any obligation to provide the Goods or Services while those circumstances continue. The Company may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- b) Circumstances beyond the Company's control include, but are not limited to, unavailability of materials or components, weather, strikes, lockouts, riots, natural disasters, pandemics, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

### 13. Miscellaneous

- a) These terms of trade are governed by the laws of the state where the Company's registered office is situated and each party irrevocably submits to the nonexclusive jurisdiction of the courts of that state.
- b) These terms of trade and any Quotes and written variations agreed to in writing by the Company represent the whole agreement between the parties relating to the subject matter of these terms.