

CORNERSTONE RENOVATIONS AND PROJECTS PTY LTD (ABN 39 695 278 070)

STANDARD TERMS AND CONDITIONS OF QUOTATION OR TENDER FOR FENCING AND RETAINING WALL SALE AND INSTALLATION CONTRACT (Residential and Commercial Quotation and Tender Terms and Conditions).



In this quotation **Cornerstone Renovations and Projects (Cornerstone)** will be referred to as “The Company” and the person or legal entity to whom this quotation is addressed will be referred to as “The Purchaser”. In this quotation “Quotation” will have the same meaning, and be interchangeable with, the word “Tender”; and “Fencing” will be interchangeable with the words “Retaining Wall”.

Definitions

- A. “The Company” means Cornerstone, its successors and assigns or any person acting on behalf of and with the authority of Cornerstone.
- B. “Purchaser” means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Purchaser is a reference to each Purchaser jointly and severally.
- C. “Works” means all Works or Materials supplied by The Company to the Purchaser at the Purchaser’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- D. “Price” means the Price payable for the Works as agreed between The Company and the Purchaser.

Acceptance

Every quotation is an estimate and is subject to withdrawal, correction or alteration at any time prior to The Company’s acceptance of the Purchaser’s order.

- 1. The Purchaser is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Purchaser places an order for (whether in writing, text or verbal) or accepts delivery of any Works.
- 2. These terms and conditions may only be amended with The Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Purchaser and The Company.
- 3. The Purchaser must notify The Company in writing at the time of ordering, any modifications that might affect the works etc.

1. Price and Payment

- 1.1 At The Company’s sole discretion, the Price shall be either:
 - a. as indicated on invoices provided by The Company’s to the Purchaser in respect of Works performed or Materials supplied; or
 - b. the Company’s Price at the date of delivery of the Works according to The Company’s current pricelist; or
 - c. the Company’s quoted Price (subject to clause 4.2) which shall be binding upon The Company’s provided that the Purchaser shall accept The Company’s quotation in writing within thirty (30) days.
- 1.2 The Company’s reserves the right to change the Price:
 - a. if a variation to the Materials which are to be supplied is requested; or
 - b. if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or

- c. where additional Works 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, hard rock barriers below the surface, iron reinforcing rods in concrete etc) which are only discovered on commencement of the Works; or
- d. in the event of increases to The Company's in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond The Company's control.

1.3 At The Company's sole discretion, a non-refundable deposit may be required.

1.4 Time for payment for the Works being of the essence, the Price will be payable by the Purchaser on the date/s determined by The Company, which may be:

- a. on completion of the Works; or
- b. before completion of the Works; or
- c. by way of progress payments in accordance with The Company's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
- 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 Purchaser by The Company.

1.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Purchaser and The Company.

1.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Purchaser must pay to The Company an amount equal to any GST The Company must pay for any supply by The Company under this or any other agreement for the sale of the Materials. The Purchaser must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Purchaser pays the Price. In addition, the Purchaser must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

2. Orders are accepted on the basis that the Company reserves the right to vary the prices payable by the Purchaser to accord with those ruling at the date of dispatch, except where prior negotiation allows an order on an alternative basis. In the event that any order or other document forwarded by the Purchaser to the Company contains anything inconsistent with these conditions such order or other document, if accepted, is accepted only on the express understanding that these conditions are to prevail in all cases.

3. Unless stated, the Price is based on the Purchaser providing a cleared site with any existing fence demolished and removed. The price is further based on a surveyed alignment and a pegged fence line being provided by the Purchaser. Unless included in this quotation any costs incurred in respect of clearing the site, demolishing and removing any existing fences or other structures, surveying the alignment or pegging the fence line will be extra to the price quoted and shall be charged to the Purchaser. See further sub-clause 12.

4. Unless stated in quotation no allowance has been made for any obstructions such as rock, concrete, tree roots, broken posts or any other matter which may be encountered during the performance of the Contract. An additional charge based on ruling for labour plus the costs of hire of any necessary equipment will be made to cover the costs of drilling or removing such obstructions. An addition charge calculated on the basis set out in this clause will also be payable:

(a) for any excavation extra to those quoted which are required by the Local Council or other authority or required because of site or soil conditions;

and

(b) for any delays caused by the Purchaser's error or delay in providing details and/or instructions or caused by any change in the proposal quoted for or caused by the Purchaser's unavailability or lack of access to the site to enable works to proceed.

and

(c) where existing fencing sheeting/material or fencing structure (footing, posts, rails, etc) is to be modified or upgraded in part or whole as requested by the Purchaser; then the Purchaser accepts such modification and modification specifications / technique.

The Purchaser further accepts and acknowledges:

- that the quotation is based upon an "as seen" basis and quoted in good faith;
- that the Company may need to change the modification specification / technique once the modification commences (see below illustration as example);
- that the cost for such new modification specification / technique is for the Purchasers account.

As an illustration: – the Company's quotation allowed for the height adjustment of existing posts by way of attaching post extensions by using bolts and nuts, then such modification specification / technique is the basis on which the quotation is issued. However, upon commencement on site of the quoted modification specification / technique (bolts and nuts) it is found to be not strong enough, or unsightly, or for any other reason not suitable, then the alternative modification specification / technique (say welding) will therefore incur additional costs and will be for the Purchasers account.

5. All quotations are based on erection and manufacture of the Company's products during ordinary working hours. If the Company incurs additional costs by reason of overtime work at the request of the Purchaser or by reason of the Purchaser's failure to supply necessary or to make the site available for execution of the Contract such overtime charge shall be to the Purchaser's account.
6. Where the Purchaser is a Contractor to a Head Contractor and this quotation constitutes a sub-contract agreement between the Company and the Purchaser, the Company shall be entitled to receive a copy of the Head Contract or that part of the Head Contract relating to the supply and erection of fencing. All drawings and specifications forming any part of the Head Contract relating to the supply and erection of fencing are to be supplied to the Company.
7. Where the quotation specifically excludes the cost of erection or where the Purchaser accepts a quotation for the supply of materials only it will be the responsibility of the Purchaser to check all materials received against Consignment Notes immediately upon unloading at destination. No claim for shortages or for improper or defective or damaged materials will be recognized by the Company unless notified in writing within forty-eight hours of delivery. In any event if additional material or insufficient material is for any reason whatsoever ordered then the Company shall not be obliged to give a credit and the Purchaser cannot make any claim whatsoever against the Company.
8. Commencement of work by the Company at the Purchaser's request shall constitute acceptance of a contract incorporating the terms and conditions of this quotation unless otherwise agreed to in writing by the Company.
9. Unless otherwise agreed by the Company, this quotation is for delivery by truck/trailer in a properly constructed street alongside site or as close to the site as conditions allow. In the event that the Purchaser or his agent are not in attendance at site when the material is delivered the Company reserves the right to unload the material and will not be responsible for any subsequent claim of any nature. Where a delivery cannot be effected a delivery, and return fee based on Master Carrier Rates will be charged to the Purchaser.
10. In the event of the Company's or its agent's vehicle entering upon any property in furtherance of the Contract the Company will not be responsible for any damage to the Purchaser's property or that of another party and the Purchaser shall indemnify the Company and hold the Company harmless against any charge or costs of whatsoever nature and kind incurred as a result of or arising out of the Company or its agent's vehicle entering the property.
11. Where erection is involved, the Purchaser shall supervise the location of the fence and shall advise the erector of the location of all electrical cables, gas or water mains, sewerage, telephone lines, pool accessory functions or services and any other service facility or utility is or may be affected by the erection of the proposed fence. The Company shall not be liable for the incorrect location of the fence and/or gates or damage to any of the above functions, services or utilities and the Purchaser will indemnify the Company against any claims of demand made by any person or authority in respect of such incorrect location or damage.
12. This quote is dependent on the area for the demolition of old, and/or installation of new fence, being cleared of all branches, trees, bushes, structures (both natural and unnatural) to at least 0.8m from the existing fence or location of new fence. Clearance is essential. It shall be the Purchaser's responsibility to protect all trees, shrubs and structures and the Company accepts no responsibility for damage to same. Additional charges will be incurred if such clearance is not provided and the Company is required to remove and/or dispose of such old fencing, structures (both natural and unnatural) and the dumping thereof.
13. Illustrations, drawings, categories, advertisements, pamphlets and the like accompanying the quotations or in the Purchaser's hand before or after the Purchaser places an order are supplied in good faith for general information only and shall not be used in connection with or in support of or as the basis of any claim against the Company nor to justify rejection of the goods. Any inaccuracies or incorrect information contained in such documents shall not void or vitiate the contract nor shall they entitle the Purchaser to compensation or other allowances. All drawings are and shall remain the exclusive property of the Company and may be recalled by it and must be considered and treated as confidential, not to be loaned, copied, or otherwise used without the Company's written consent, any clerical or technical error or error of any nature is subject to correction by the Company at any time by written notice to the Purchaser.
14. The Purchaser, in placing the order, acknowledges that it has determined for itself the fitness of the ordered fencing for the required purpose and further that it has relied upon its own inspections and investigations, making such determination. Delivery and/or performance of the contract is subject to the ability of the Company to obtain raw materials from its normal source. The Company reserves the right to cancel or postpone delivery due to war, civil commotion, strikes, lockouts, non-availability of transport or any other cause of whatsoever nature beyond the control of the Company. No responsibility is accepted by the Company for loss, damage or delay from any of the above causes.
15. Any variation, alteration, addition or modification of the work to be done or of the materials to be supplied must be made in writing by the Purchaser and will only be effective to vary this Contract when accepted in writing by the Company.
16. The Company shall be entitled to render the Purchaser progress claims based on a pro rata value of work completed, such claims to be paid for the Purchaser within seven (7) days from the Company's invoice.

17. The Company reserves the right to stop supply of material and cease work on the contract until any outstanding until any outstanding progress claims are paid in full.

18. Upon accepting the Purchaser's order, the Company is authorized to proceed with all work including, if applicable, demolition of existing fences and other obstructions. The Purchaser undertakes that prior to the placing of order it has obtained the approval and consent of all relevant government authorities and all property owners and occupants affected in any way by the contract and hereby indemnifies the Company against all claims costs and expenses which it may incur as a result of the Purchaser's failure to obtain such approval or consent. The Company reserves the right to re-quote the job to completion if such a delay occurs.

19. Terms of payment are 50% deposit with order, the balance of material value being payable on or prior to delivery, together with any delivery charges payable to the Company. Installation value is payable on completion of job except where Condition 18 takes effect or unless otherwise agreed. The risk of payment by cheque through the post or by electronic funds transfer rests with the Purchaser.

20. Full and final payment is required within 7 days from the date of the tax invoice. Transfer of ownership of goods will not occur until the invoice is paid in full. Interest on overdue invoices will be charged at "Bankers Retail Index Rates currently at 10% p.a.".

20.1 The risk of payment by cheque through the post or by electronic funds transfer rests with the PURCHASER.

21. Should debt collector costs be incurred these will be the responsibility of the Purchaser.

22. Except as required by the Trades Practices Act all implied conditions and warranties are hereby excluded, subject to the extent that the conditions and warranties cannot be excluded under the Trades Practices Act, the Purchaser's sole and exclusive remedy for any damaged whether direct, indirect, special or consequential shall be limited to any one of the following:

(i) In the case of goods:

- (a) the replacement of goods or supply of equivalent goods;
- (b) the repair of goods;
- (c) after agreement with the Company the payment of the cost of replacing or repairing the fencing or having it replaced or repaired.

(ii) In the case of service:

- (a) the supply of the services again; or
- (b) after agreement with the Company payment of the cost of having the service supplied again.

23. Any taxes or government charges (including but not limited to sales tax) imposed upon the Company relating to the supply of goods or services pursuant to an accepted order shall be an additional charge to the Purchaser.

24. Any unfixed or unused goods or materials which may be remaining when the job is completed will remain the property of the Company and shall be removed from the site by the Company and there will be no credit given for any such unfixed or unused goods.

25. The Purchaser acknowledges that monies may be payable to the Local Council and/or the Building Services Corporation in respect of the work and undertakes to pay any such monies, failing which the Company may pay such monies and recover same on demand from the Purchaser.

26. EXCLUSION/LIMITATION OF LIABILITY

Cornerstone, its staff and subcontractors shall not under any circumstances be liable for any damages of any kind arising out of, in connection with or relating to the services or works offered, being completed or completed at the Purchaser's premises, including without limitation any liability: -

- as a seller or reseller of any products or services,
- for any defective products,
- for any incorrect or inaccurate information,
- for statements or conduct of any third party on the Purchaser's premises,
- or for any other matter relating to the Purchaser's premises.

This is a comprehensive limitation of liability that applies to all damages of any kind, including without limitation any direct, indirect, special, incidental or consequential damages (including without limitation damages for loss of business, loss of profits, loss of good will, loss of use, loss of data, cost of procuring substitute goods, services or information, litigation or the like), whether based on breach of contract, breach of warranty, tort (including without limitation negligence), product liability or otherwise, even if the Purchaser advises of the possibility of such damages. Notwithstanding the foregoing, the sole and entire maximum liability of Cornerstone, its staff and subcontractors for any reason, and the Purchaser's sole and exclusive remedy for any cause or claim whatsoever, shall be limited to the amount paid by you for any product or service purchased by you from Cornerstone, its staff and subcontractors.

27. INDEMNITY

You agree to indemnify, defend and hold harmless Cornerstone, its staff and subcontractors against all claims, demands, causes of action, losses, expenses, damages and costs, including without limitation any reasonable solicitor's fees, resulting or arising from or relating to any services or works conducted by Cornerstone, its staff and subcontractors.

28. These terms and conditions must be read in conjunction with Cornerstone STANDARD TERMS AND CONDITIONS OF QUOTATION AND TENDER FOR LANDSCAPING MATERIAL, SERVICES AND INSTALLATION CONTRACT (Residential and Commercial Quotation and Tender Terms and Conditions); a copy of which is to be requested from Cornerstone.

29. Should any term(s) or condition(s) in any way be contradictory to any other term(s) or condition(s) in these Terms and Conditions; then the term(s) and condition(s) that favour(s) CORNERSTONE will be agreed to by the Purchaser and enforceable by Cornerstone.

Thank you very much for your business.