

TERMS OF TRADE

The following terms of trade ("**these Conditions**") apply to and form part of any sale between L Chippindall & R Chippindall t/a Yarra Valley Rural Fencing ("the Supplier") ABN 46 443 650 591 and the Customer for the supply of the Goods and Services by the Supplier to the Customer.

These Conditions replace any previous terms and conditions.

1. Definitions and Interpretation

1.1 Where the context permits, the following expressions will have the meanings given to them:

"Act"	means the <i>Fences Act 1968</i> and <i>Fences Amendment Act 2014</i> (VIC);
"Additional Charges"	means fees or charges for additional work performed due to the factors referred to in these Conditions calculated in accordance with the Supplier's then current prices and expenses incurred by the Supplier;
"Business Day"	means any day other than a Saturday, Sunday or a designated Public Holiday in Victoria;
"Customer"	means a party acquiring Goods and Services from the Supplier;
"Dividing Fence"	has the meaning given to it by the Act;
"Goods"	means any goods supplied by the Supplier including those supplied in the course of providing Services;
"Order"	is a purchase order for Goods or Services (which may be placed by any means orally or in a written form and including by electronic mail) placed by a Customer in response to a Quotation and as varied in writing from time to time by the parties;
"PPSA"	means the <i>Personal Property Securities Act 2009</i> (Cth);
"Quotation"	is a quotation as to the price of specified Goods and Services given by the Supplier to the Customer;
"Services"	means services performed or to be performed by the Supplier for the Customer from time to time;
"Site"	means the place at which the supply of Goods and Services is to be carried out as specified in the Quotation.

1.2 In the interpretation of these Conditions, unless specified to the contrary:

- (a) time is of the essence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all other genders;
- (d) a reference to a natural person includes a company or other corporate body and vice versa;
- (e) a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- (f) the obligations on the part of a Customer who is a natural person includes his heirs, executors, administrators and assigns; and
- (g) the obligations on the part of a Customer which is a company or other corporate body includes its successors and assigns.

1.3 Any obligation imposed by these Conditions on a Customer comprised of two or more persons (whether natural, corporate or a combination of the two) binds them jointly and each of them severally.

1.4 The Customer may not, without the consent of the Supplier, raise a set off or counterclaim available to it against the Supplier in reduction of its liability under these Conditions.

1.5 Clause headings are for ease of reference only and are not intended to affect the construction or interpretation of these Conditions.

1.6 If the time for performing any obligation under these Conditions expires on a non-Business Day, then time is extended until the next Business Day.

1.7 A waiver by the Supplier of a default by the Customer under these Conditions will not constitute a waiver of another or continued default of the same nature or any other provision of these Conditions.

1.8 In the event that any or part of these Conditions is held to be unenforceable, the unenforceable part shall be severed and the remainder of these Conditions shall remain in full force and effect.

1.9 These Conditions embody the entire agreement and understanding between the parties concerning its subject matter, and succeeds and cancels all other agreements, understandings and representations concerning the subject matter of these Conditions.

1.10 These Conditions can be varied by the Supplier at any time, provided written notice of the variation is given to the Customer and upon receiving written notice of the variation, the Customer is given the opportunity to negotiate the proposed variation and the parties agree on the variation. Such variation will apply to all Orders and Quotations received after the date the proposed variation is agreed.

1.11 These Conditions are to be governed by and construed in accordance with the laws of the State of Victoria and the parties submit to the exclusive jurisdiction of the state and federal courts located in Victoria.

2. Formation of Contract

- 2.1** Quotations issued by the Supplier will not constitute an offer to supply specified Goods and Services at a specified price, but rather will constitute an invitation to the Customer to make an offer to purchase the specified Goods and Services at the quoted price by placing an Order.
- 2.2** Placement of an Order by the Customer by signing these Conditions signifies acceptance by the Customer of these Conditions and the most recent Quotation provided by the Supplier relating to that Order.
- 2.3** A contract for the supply of Goods and Services by the Supplier to the Customer is formed when the Supplier accepts an Order.
- 2.4** These Conditions apply to and form part of every contract for the supply of the Goods and Services by the Supplier to the Customer. Orders are only accepted upon and subject to these Conditions.
- 2.5** Any qualification, addition, variation or provision which conflicts with these Conditions which appears on the Customer's Order shall not form part of the contract between the Supplier and the Customer unless such change appears on the face of the order duly accepted by an authorised person of the Supplier or is otherwise confirmed by the Supplier in writing.

3. Pricing and invoicing

- 3.1** Goods and Services are invoiced at the prices current on the date of delivery.
- 3.2** All prices quoted are in Australian dollars.
- 3.3** All Goods and Services must be paid for by the Customer within the time period specified in the invoice for the Goods and Services except where the Supplier and the Customer have agreed otherwise.
- 3.4** The Supplier is entitled to request the Customer to pay the deposit prior to the Supplier commencing supplying the Goods and Services.
- 3.5** The Supplier may, in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways: prior to commencing the provision of the Goods or Services, at the end of each week before the Order is completed, upon completion of the provision of the Goods or Services or in any other way the Supplier deems appropriate in circumstances.
- 3.6** If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- 3.7** Any tax (including GST) or other duty on the production, sale or supply of any Goods and Services sold by the Supplier now imposed or hereafter becoming effective shall be added to the price quoted and shall be paid by the Customer to the Supplier.
- 3.8** If after acceptance of an Order and up until and including the date of delivery there are increases in the costs incurred by the Supplier due to any other factors beyond the control of the Supplier, the Supplier reserves the right to increase the prices to include allowance for such increased costs by notice in writing to the Customer.
- 3.9** The Supplier may require the Customer to pay Additional Charges in respect of costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).
- 3.10** The imposition of Additional Charges may also occur as a result of cancellation by the Customer of an Order where cancellation results in loss to the Supplier, the Customer requiring variation of the Goods and Services after placing an Order, Government or council taxes or charges not included in the Quotation, additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

4. Site

- 4.1** Prior to the commencement of the provision of the Goods and Services, the Customer must clear any obstructions to the Site including, without limitation, service facilities, electrical cables, telephone cables, gas pipes, water pipes, stormwater pipes and sewerage pipes at the Site and must provide the Supplier with full unobstructed access to the Site.
- 4.2** The Customer shall provide clear space for delivery of materials and shall indemnify the Supplier or its agents against any claims in respect of any damage during this process.
- 4.3** If the Site is obstructed, the Supplier reserves the right to refuse to carry out the supply of the Goods and Services.
- 4.4** If the Customer fails to remove obstructions at the Site, the Customer hereby indemnifies the Supplier against any claims made by any person or authority in respect of any damage sustained to the uncleared obstruction.
- 4.5** The Customer shall be responsible for locating and notifying the Supplier at the time of construction of the position of all underground obstructions including electrical and telephone cables, gas, water, stormwater and sewerage pipes, and any other service facility which is or may be affected by the construction and shall indemnify the Supplier and its agents against any claims or demands made by any person or authority in respect of any damage to those underground obstructions.
- 4.6** The Supplier is not responsible for the presence of any concealed, or subterranean, obstructions such as, without limitation, rock, wire, pipes, tree roots, broken posts, foundations, thick or reinforced concrete and the Customer agrees to pay to the Supplier the Supplier's costs of removal of concealed, or subterranean, obstructions, which costs will be in addition to the price noted in the Quotation.
- 4.7** The Customer is liable to remove, or otherwise protect, all plants, ornaments, clotheslines, gates, pipes, paving and other materials at the Site which may be damaged during the provision of Goods and Services.
- 4.8** The Supplier is not responsible for damage occurring as a result of the Customer's failure to remove, or adequately protect the Customer's property.

4.9 The Customer must supply electricity and water access to the Supplier at all times while the Supplier is supplying the Goods and Services at the Site.

5. Boundaries and the fence line

5.1 The Customer warrants that the pegs and boundaries of the Site are in the correct position for the supply of Goods and Services.

5.2 The Customer must clearly mark the fence line and the gate location in order to enable the Supplier to carry out the supply of the Goods and Services along the existing fence line.

5.3 The Customer acknowledges that the Supplier has not made any representations as to the accuracy of the position of the boundaries or pegs.

5.4 The Customer hereby indemnifies and will keep the Supplier harmless against all claims, loss or damage that may be suffered by the Supplier arising from the supply of Goods and Services being provided outside the existing fence line or outside of the boundaries.

6. Dividing Fences

6.1 If the supply of Goods and Services relate to a Dividing Fence, the Customer acknowledges that the Customer may seek contribution from the owner or the occupier of adjoining land for the costs associated with the repair or replacement of the Dividing Fence subject to the provisions of the Act.

6.2 The Supplier may, if so requested by the Customer, send a notice to the owner or the occupier of adjoining land to the Site seeking contribution towards the costs of construction or repair of the Dividing Fence.

6.3 Notwithstanding the Supplier sending a notice in accordance with the preceding clause, the failure by the adjoining land's owner or the occupier to make payment in accordance with the notice does not affect the Customer's liability to the Supplier and the Customer will continue to be liable for payment of the supply of Goods and Services to the Supplier.

6.4 The Customer hereby indemnifies and will keep the Supplier harmless against any and all claims, losses or damages which may be made by the owner or the occupier of the adjoining land, or any third party, against the Supplier in respect of the supply of Goods and Services which relate to a Dividing Fence.

7. Delivery

7.1 The Supplier shall use best endeavours to arrange delivery of the Goods and Services to the Customer at the time and the place specified in the Quotation.

7.2 The Supplier will not be liable for any loss or damage which may be suffered by the Customer (including consequential loss or damage) arising out of a delay in the delivery of the Goods and Services.

7.3 The Customer must notify the Supplier of any defect in the Goods and Services within 14 Business Days of delivery failing which the Customer will be deemed to have accepted the Goods and Services from the Supplier without any defects.

7.4 If the Supplier determines (acting reasonably) that the delivery contained defective Goods and Services then the Supplier will arrange for any defect to be rectified.

8. Default

8.1 The Customer is in default if:

- (a) it breaches any of these Conditions and either the breach cannot be remedied or, if it can be remedied, fails to remedy it within 7 days after receiving written notice of the breach;
- (b) it fails to make a payment to the Supplier by its due date;
- (c) being a natural person it commits an act of bankruptcy;
- (d) being a corporation it has an administrator, receiver, receiver and manager, provisional liquidator, liquidator or controller appointed over its assets; or
- (e) it has any execution levied against its property.

8.2 In the event of a default, the Supplier will be entitled, without the obligation to give any notice to the Customer, and in addition to any other rights, to:

- (a) payment of interest on all overdue accounts at the rate of 2% per calendar month, calculated daily and capitalized monthly, for each day that the amount is overdue;
- (b) the commission it may have to pay to any recovery agent arising from such default or in recovering overdue amounts;
- (c) its actual legal costs on an indemnity basis incurred in relation to such default or in recovering overdue amounts or in otherwise seeking compliance with these Conditions;
- (d) immediate payment for Goods and Services, the payment which would otherwise not have been then due and payable;
- (e) disallow any discounts otherwise claimable by the Customer;
- (f) terminate or suspend delivery of any order which is the subject of any other sale between the Supplier and the Customer; and
- (g) treat the Customer's default as repudiation or any existing contract for the purchase of Goods and Services and recover any unpaid sum plus the interest, recovery agent's, and legal costs referred to in (a), (b) and (c) above from the Customer by way of liquidated damages.

9. Title and Property in Goods

9.1 Title to and ownership of and property in the Goods shall pass to the Customer only upon the Supplier receiving payment in clear funds of the full purchase price and any freight charges, taxes and interest or other monies due and while the Goods remain the property of the Supplier the Customer holds them on trust for the Supplier and the Customer shall store or keep them in a manner which clearly identifies them as the property of the Supplier.

- 9.2** If the Customer defaults under these Conditions, all of the Customer's rights, including the right to be paid any money, under any contract pursuant to which the Customer has hired, sold or otherwise provided the Goods or any part of them, whether separately or together with other things, to third parties are automatically assigned to the Supplier with effect from the date of the default, but only to the extent necessary to enable the Supplier to recover the amount owed to it by the Customer.
- 9.3** Until the Customer pays all amounts it owes to the Supplier:
- (a) the Customer must keep all Goods insured against theft, damage and destruction on behalf of the Supplier (and if the Customer fails to insure the Goods, the Supplier may do so and invoice the Customer for the cost of insurance);
 - (b) the Supplier may enter premises where the Goods are stored to inspect them on reasonable notice; and
 - (c) the Customer acknowledges that it holds the Goods as a bailee on behalf of the Supplier.
- 9.4** If the Customer on-sells the Goods prior to payment in full of the purchase price, the Customer does so as agent for the Supplier provided that the proceeds received from the on-sale are held on trust for the Supplier until payment in full of the purchase price and are not mixed with other funds of the Customer until the purchase price is paid to the Supplier. The Customer agrees to indemnify the Supplier on a full indemnity basis and hold the Supplier harmless from liability for any loss damage or cost arising from any inaccurate or incomplete representations to third parties.
- 9.5** If the Customer does not pay for any Goods on the due date, the Supplier is irrevocably authorised by the Customer to enter the Site or the Customer's premises (or any premises under the control of the Customer or as agent of the Customer if the Goods are stored at other premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer or anyone claiming through the Customer whatsoever.
- 9.6** If any of the Goods are not paid for in full by the due date, the Customer must not allow any person to create, have or acquire any security interest in the Goods.
- 9.7** The Customer acknowledges that the Supplier holds a security interest capable of registration pursuant to the PPSA in all Goods (including all present and after-acquired Goods which have not been paid for) and in all present and after acquired personal property of the Customer to secure payment of the amount the Customer owes to the Supplier from time to time. The Customer further acknowledges that the security interest will continue until the Supplier gives a final release in respect of it.
- 9.8** The Customer acknowledges and agrees that the Supplier may take all necessary steps to register its security interest under the PPSA, and hereby irrevocably consents to the Supplier doing so. The Customer further undertakes to promptly provide any information or supply any documentation and do all such things as required by the Supplier to enable it to perfect its security interest in the Goods in accordance with the PPSA.
- 9.9** The Customer acknowledges that the Goods constitute commercial property and hereby waives its right to receive notification from the Supplier of the registration of the security interest pursuant to section 157(3) of the PPSA.

10. Fitness for Purpose

- 10.1** The Customer acknowledges that it has made due inquiry and relies on its own skill and judgment when deciding whether the Goods or Services are fit for purpose.
- 10.2** It is the Customer's responsibility to satisfy itself that Goods or Services are of a description, quality and character suitable for the purpose for which they are purchased and, to the extent permitted by law, the Supplier shall not be liable in any way for any loss or damage (including direct, indirect or consequential) arising from the failure of the Customer to so satisfy itself.

11. Information and Warranties

- 11.1** All samples, drawings, descriptive matter and specifications issued by the Supplier are issued or published for illustration only and do not form part of the Quotation or the Order unless specifically referred to therein.
- 11.2** The Supplier is not be liable for any losses or damage, either directly or indirectly incurred by the use of or in reliance upon the information provided therein or for any errors, omissions or inaccuracies in the information provided.
- 11.3** The Supplier, if applicable, assigns to the Customer any warranty received from the original manufacturer of the Goods so far as the Supplier is permitted to do so.

12. Limitation of Liability and Indemnity

- 12.1** To the extent permitted by law, the Supplier excludes all statutory or implied conditions and warranties and any other liability the Supplier may have to the Customer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action.
- 12.2** To the extent permitted by law, the Supplier limits its liability which cannot be legally excluded under all statutory or implied conditions and warranties and any other liability the Supplier may have to the Customer (including liability for indirect or consequential loss) that may arise under statute or at law including without limitation for breach of contract, in tort (including negligence) or under any other cause of action, to whichever of the following the Supplier determines at its discretion:
- supplying equivalent Goods and Services again; or
 - paying of the cost of acquiring equivalent Goods and Services again.
- 12.3** The Customer must give the Supplier written notice of any claim it may have against the Supplier in connection with the Goods and Services the Supplier supplies to the Customer within 12 months of when the Supplier supplies them to the Customer failing which the Supplier will not be liable for that claim.
- 12.4** The Customer indemnifies the Supplier against all reasonable costs (including legal costs), expenses, damages, accounts or other losses or liability, including those arising from any actions, suits, proceedings, claims or demands, made against or suffered by the Supplier, arising out of the Supplier supplying the Goods

and Services in accordance with these Conditions or arising out of the Customer breaching any of the Customer's obligations (which includes any negligent act or omission by the Customer or its agents) under these Conditions.

13. Force Majeure

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

[Alternative 1: Agreed by *[name of Customer]*]

[Alternative 2: Signed for *[name of Customer]* by its authorised representative]

Witness name

Signature of Customer

Signature of witness

[Alternative 1: Agreed by *[name of Supplier]*]

Witness name

Signature of Supplier

Signature of witness