

**TERMS AND CONDITIONS OF
DECORATOR FENCING PTY LTD A.C.N. 010 538 771**

1. Definitions and Interpretations

1.1 In these terms and conditions unless inconsistent with the context or subject matter:-

- (1) "DF" means Decorator Fencing Pty Ltd ABN 25 010 538 771;
- (2) "Equipment" means the goods hired by DF to the Hirer subject to these terms and conditions;
- (3) "Hirer" means the person, company or other legal entity hiring the Equipment from DF and includes its employees, contractors, and successors;
- (4) "Purchaser" shall mean the company, firm or person who places a purchase order with DF.

1.2 In these terms and conditions unless the contrary intention appears:-

- (1) the singular includes the plural and vice versa;
- (2) person includes a firm, Body Corporate, an incorporated association;
- (3) an Agreement, Representation or Warranty:-
 - (i) in favour of two (2) or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (4) a reference to a person includes that person's personal representatives, administrators, successors, substitutes and assigns.

2. Prices and Payment

2.1 Unless otherwise indicated in writing, prices are ex-works and exclude freight, insurance, delivery charges and other taxes or duties.

2.2 The terms of trading accounts are that all invoices are payable within seven (7) days after delivery and in no circumstances shall the purchaser be entitled to make any deduction or withhold payment for any reason, unless otherwise indicated in writing.

2.3 Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of DF, if the purchaser or the Hirer fails to pay the invoice price by the due date, the purchaser or the Hirer (as the case may be) shall not be allowed any discount given in that invoice and shall pay interest on any overdue amount from the date payment was due to the date of payment (whether before or after judgement) at the rate of 1.5% per month and shall reimburse DF all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

2.4 If this Agreement relates to the hire of the Equipment from DF to the Hirer the hire period ("Term") will commence upon delivery of the Equipment to the Hirer and will terminate once all the Equipment has been returned in a condition acceptable to DF in its sole discretion. The Term will be for a minimum period of two (2) months.

- 2.5
- (1) The Hirer must pay to DF the hire fee calculated in accordance with the Rates of DF from time to time during the continuance of the hire period monthly in advance on the same day each month.
 - (2) The Hirer will pay DF the hire fee in such manner and at such location as specified on an invoice issued by DF or as otherwise notified to the Hirer from time to time.

- 2.6 (1) The Hirer will not be relieved of its obligations to make any payments due under this Agreement as a result of DF failing to provide an invoice and failure to pay any amounts due within seven (7) days from the due date will be deemed to be a material breach of this Agreement.
- (2) The Hirer will fully indemnify and keep indemnified DF for all costs incurred in recovering any amount owed to DF by the Hirer.
- 2.7 The Hirer as beneficial owner charges in favour of DF all of its interest in the present and future real property of the Hirer as security for the due and punctual payment of all debts and monetary liabilities owed by the Hirer to DF pursuant to any Contract including but not limited to these terms and conditions. The Hirer consents to DF lodging a Caveat to note its interest.

3. Ownership of Equipment, Risk and Delivery

- 3.1 If this Agreement relates to the hire of the Equipment by DF to the Hirer, title to the Equipment will remain with DF at all times. The Hirer must not grant or allow to subsist any security interest over the Equipment or allow DF's title to be adversely affected in any way. If any third party takes possession of the Equipment for any reason the Hirer hereby authorises DF to take such action as it deems necessary at the sole discretion of DF to protect its rights in the Equipment, at the cost of the Hirer.
- 3.2 Risk in the Equipment will pass to the Hirer:-
- (1) if the Equipment is delivered by DF to the Hirer's premises, risk in the Equipment will pass to the Hirer when DF's or its transport contractor's delivery vehicle arrives at the Hirer's premises;
- (2) if the Hirer attends at DF's premises to collect the Equipment, DF may in its discretion:-
- (i) deliver the Equipment into or onto the Hirer's vehicle in which case risk in the Equipment passes to the Hirer and delivery is effected when the Equipment is set down in or on the Hirer's vehicle; or
- (ii) deliver the Equipment by setting it down alongside the Hirer's vehicle in which case risk in the Equipment passes to the Hirer and delivery is effected when the Equipment is set down alongside the Hirer's vehicle notwithstanding that DF's staff may, on request, assist the Hirer to lower the Equipment into or onto the Hirer's vehicle.
- 3.3 The Hirer must satisfy itself (and hereby acknowledges that it is so satisfied):-
- (1) the Equipment has been received in good condition and in the quantity ordered;
- (2) it and any employee, agent, subcontractor, or anyone else using the Equipment with the authority of the Hirer has been fully instructed in the use of the Equipment and understands how the Equipment is to be used properly and the means installation and removal; and
- (3) the Equipment is suitable and fit for the purpose for which the Hirer intends to and will use it and acknowledges that it is not relying on any actual or implied representation or warranty by DF as to the suitability or fitness for purpose of the Equipment.

4. Use of Equipment

- 4.1 The Hirer agrees it will only use the Equipment strictly in accordance with DF's instructions and any procedures recommended by DF from time to time and all operational manuals relating to the Equipment.
- 4.2 The Hirer covenants and agrees with DF that the Hirer:-
- (1) must at all times keep and maintain the Equipment properly serviced, in good working order and condition and repair;

- (2) will be fully responsible to DF for any loss or damage to the Equipment or any part thereof, the Hirer giving written notice of any such loss or damage to DF immediately upon its occurrence;
- (3) must allow only properly qualified and trained personnel in the operation of the Equipment;
- (4) must maintain the Equipment and keep it regularly serviced in accordance with DF's directions;
- (5) must replace all parts from time to time which become broken, worn out, lost or damaged beyond repair or rendered unfit;
- (6) must not replace any parts without the prior written consent of DF. Such consent may be conditional upon any requirements deemed reasonably necessary in the sole opinion of DF;
- (7) must comply with all rules and regulations relating to the safe and lawful operation of the Equipment and any relevant industry usage custom and standard of goods similar to the Equipment;
- (8) must allow DF at all reasonable times to enter the place where the Equipment is stored for the purpose of inspecting state of repair of the Equipment;
- (9) must comply with DF's reasonable requirements in respect of the repair or replacement of the Equipment;
- (10) must not do (or allow to be done) anything which might jeopardise any policy of insurance which is held by DF in respect of the Equipment;
- (11) must obtain and maintain at its own expense any permit or licence which may be required under any law or by any authority for the use of the Equipment;
- (12) will not make any representations or take any action that may cause any person to believe the Equipment is not owned by DF.
- (13) must expressly advise DF of the location of the Equipment at all times during the rental period;
- (14) must not part with possession of the Equipment or allow it, or any part of it, to be removed from the location at which the Hirer advised DF the Equipment would be without the prior written consent of DF;
- (15) must do all things necessary to ensure the continued safety and preservation of the Equipment and store the same in a safe place.

5. Risk and Delivery of Products and Performance

- 5.1 Products are delivered to the purchaser when DF makes them available to the purchaser or any agent of the purchaser or any carrier (who shall be purchaser's agent whoever pays his charge(s) at DF's premises or other delivery point agreed upon by DF.
- 5.2 Risk in the products passes when they are delivered to the purchaser.
- 5.3 Notwithstanding the earlier passing of risk, title to the products shall remain with DF and shall not pass to the purchaser until the amount due under the invoice for the products has been paid in full.
- 5.4 Until title passes, the purchaser shall hold the goods as bailee for DF. Notwithstanding the foregoing, DF shall be entitled at any time before title passes to repossess and dismantle and use or sell all or any of the products and so terminate without any liability to the purchaser the purchaser's right to use, sell or otherwise deal in them and for that purpose to enter any premises of the purchaser and further DF shall be entitled to maintain an action for the price of the products notwithstanding that title in them has not passed to the purchaser.
- 5.5 DF may, at its discretion, deliver the products by instalments in any sequence. Where the products are delivered by instalments each instalment shall be deemed to be the subject of a separate contract and no default or failure by DF in respect of any one or

more instalments shall vitiate the contract in respect of the products previously delivered or undelivered products.

- 5.6 Products will be delivered to unattended sites upon the purchaser's request only on the basis that, upon the products being unloaded from the delivery vehicle at the location, the products shall be deemed to have been delivered and accepted by the purchaser and DF shall be absolved from further responsibility. Where delivery cannot be effected, a delivery and return fee will be charged to the purchaser or the purchaser's account.
- 5.7 Except where products are delivered to unattended sites, the purchaser agrees to check all products received against delivery dockets immediately upon unloading at the destination. DF's invoicing charge will be based on the quantity of products delivered as per the delivery docket. Any claim for alleged short delivery must be made in writing within forty-eight (48) hours of delivery otherwise it will not be recognised by DF and in the absence of any such claim, the purchaser shall be liable to pay for the full quantity of products stated in DF's delivery docket.
- 5.8 DF shall not be liable for any claim resulting from the use by the purchaser of any improper, defective or damaged products and no claim will be allowed on account of any purchases or returned products unless authorised by DF.
- 5.9 DF will use every effort to execute orders within any time specified or quoted but no liability or responsibility will be accepted for delays arising from causes beyond DF's control.
- 5.10 Delivery and/or performance of the contract is subject to the ability of DF to obtain materials from its normal source of supply. DF reserves the right to cancel or postpone delivery due to war, civil commotions, strikes, lockouts, unavailability of transport and/or any other causes beyond its reasonable and practical control.
- 5.11 DF reserves the right to rectify errors and/or omissions at its own expense within a reasonable time after notification to the purchaser.
- 5.12 Products will be supplied in accordance with the following Australian Standards:-
AS1170 – Live and dead loads.
AS1288 – Glass standard.
AS1926 – Fences and gates for private swimming pools.
- 5.13 Any increase in the cost of raw materials and/or labour and/or freight charges to DF occurring after the date of quotation and/or prior to delivery, shall be to the purchaser's account and shall be added to the price quoted.
- 5.14 DF may, at its discretion, suspend or terminate the supply of any products if the purchaser fails to make any payment when and as due or otherwise defaults in any of its obligations under the contract or any other agreement with DF or becomes insolvent, has a receiver appointed of its business or is compulsory or voluntarily wound up or DF bona fides believes that any of those events may occur, and in case of termination shall be entitled to forfeit any deposit paid.

6. Return of Equipment

- 6.1 At the earlier of the following:-
- (1) expiration of the hire period;
 - (2) termination of the hire period prior to its expiry;
 - (3) on demand by DF

the Hirer must return during business hours the Equipment to such location as nominated by DF.

- 6.2 If the Hirer fails to return the Equipment or returns the Equipment in a condition which renders it unusable for hire in the sole opinion of DF, the Hirer must pay DF on demand the cost of replacement or repair of the Equipment as calculated by DF.
- 6.3 In addition to any other obligation the Hirer may have to DF the Hirer will be liable for all losses incurred by DF (including consequential losses) arising out of the Equipment not being returned within business hours. This clause does not limit in any way any liability the Hirer has to DF.

7. Rights of DF

- 7.1 DF may at any time without notice to the Hirer terminate all or any Hire Agreements and recover the Equipment.
- 7.2 DF may enter any premises where the Equipment or any part of it is or is believed to be located for the purpose of:-
- (1) exercising its right to take possession or control of the Equipment (or any part thereof);
 - (2) inspecting or testing the Equipment;
 - (3) insuring compliance by the Hirer with any law, including any law relating to health and safety;
 - (4) protecting any rights or interest of DF in the Equipment (or any part thereof).
- 7.3 Notwithstanding any provisions in this clause 7, any rights DF may have in relation to:-
- (1) the Equipment; or
 - (2) against the Hirer; or
 - (3) against any other person;

are not limited in any way at any time.

8. Warranties and Liability

To the extent that this Agreement relates to the sale of products by DF to the Purchaser, the following apply:-

- 8.1 Except to the extent that implied conditions and warranties contained in the Trade Practices Act or any other Act cannot be excluded, or implied, conditions and warranties are hereby excluded;
- 8.2 Subject to the extent that conditions and warranties cannot be excluded under the Trade Practices Act, DF's liabilities shall be limited and the Purchaser's sole and exclusive remedy for any damages whether direct, indirect, special or consequential shall be limited to any one of the following:-
- (1) in the case of goods;
 - (a) the replacement of the products or supply of equivalent products;
 - (b) the repair of products;
 - (c) after agreement with the Supplier, the payment of the cost of replacing, repairing or having products replaced or repaired;
 - (2) in the case of services:-
 - (a) the supply of the services again;
 - (b) payment of the cost of having services supplied again.

- 8.3 All products are sold on the express understanding that DF the Distributor, accepts no responsibility should an accident occur in an area where this product has been erected. Final responsibility for safety is with the owner or occupier of the property where the product is situated.
- 8.4 To maintain the appearance and service life of the product, regular washing down with clean soapy water and a soft cloth is recommended. Refer to our website for complete maintenance instructions.
- 8.5 Where this Agreement relates to the hire of the Equipment by DF to the Hirer the following apply:-
- DF makes no warranty, expressed or implied, as to the fitness of the Equipment (or any part thereof) for any particular purpose. DF will not be responsible to the Hirer or to any third party for any loss (including consequential loss), damage or injury caused by, resulting from or in any way connected with the Equipment, the use of it, or any defect in it.
- 8.5 DF will not be responsible for any failure or delay in delivery, pickup, installation or removal of the Equipment to or from the Hirer due to any cause beyond the reasonable control of DF and DF will have no liability to the Hirer or any third party for any loss (including consequential loss) arising from any such failure or delay.
- 8.6 Any person signing any document on behalf of the Purchaser or the Hirer as the case may be, with regard to the product or the Equipment respectively:-
- (a) warrants that they have the authority of the Purchaser or the Hirer as the case may be, to enter into the contract with DF on behalf of the Purchaser or the Hirer;
 - (b) warrants that they have been duly authorised by the Purchaser or the Hirer to bind the Purchaser or the Hirer as appropriate, to purchase the products or hire the Equipment in accordance with these terms and conditions; and
 - (c) will indemnify DF against all losses, costs, claims, expenses, fees, charges incurred by DF in the event such person or persons do not have such authority.
- 8.7 The Purchaser or Hirer as the case may be, must notify DF in writing and providing such details as recently required by DF in relation to the following:-
- (1) changes to any of the information supplied by the Purchaser or the Hirer to DF;
or
 - (2) any change in the legal structure or management of the Purchaser or the Hirer including but not limited to changes in Directors, senior management, partnerships, or conversion to or from a company to or from any trust or a partnership. If DF does not provide written notice to the Purchaser or the Hirer that such changes are agreed by DF the original Purchaser or Hirer and any guarantors will remain liable to DF as though any goods or services supplied or hired by DF were supplied or hired to the original Purchaser or Hirer.

9. Liability and Indemnity

- 9.1 The Hirer will be liable for all damages and loss (including consequential loss) whether caused by the Hirer or any third party and whether arising directly or indirectly out of the use or possession of the Equipment by or on behalf of the Hirer.
- 9.2 DF is hereby released by the Hirer from all liability for any loss or damage the Hirer may suffer arising directly or indirectly from the use, possession, construction, storage, maintenance or transportation of the Equipment howsoever caused.

- 9.3 The Hirer will indemnify and keep indemnified DF and its employees, agents, contractors from all damages, actions, claims and demands which they may suffer or incur arising directly or indirectly out of the use, possession, maintenance, transport, installation or operation of the Equipment (or any part thereof) by the Hirer or any other person so authorised by it.
- 9.4 The Hirer must not do or allow to be done any act, matter or thing which may invalidate or prejudice any:-
- (2) claim made by or against DF; or
 - (3) right DF may have against any third party.
 - (4) arising directly or indirectly out of the use, possession, maintenance, transport, installation or operation of the Equipment by the Hirer.

10. Non-standard Product and Cancellation

- 10.1 Where an order has been placed for a non-standard product or colour range, full payment may be required prior to manufacture. Any balance of the contract price will be payable on completion and prior to delivery.
- 10.2 Where notice of cancellation of an order for a non-standard product or colour range is received, the Supplier will be entitled to charge in full and for this purpose will be entitled to forfeit the deposit and sue for the balance contract price. Orders for standard products or colour range may be cancelled by written notice at any time prior to the products being manufactured and/or allocated to the contract but if the cancellation notice is received after the products have been manufactured and/or allocated to the contract, that a packing and handling charge will be payable by the Purchaser.

11. General

- 11.1 These terms and conditions may be amended at any time by DF subject to DF providing written notice to the Purchaser or the Hirer of such amendments at any time prior to the amendments being effected.
- 11.2 All terms amended in accordance with clause 11.1 above will apply to any purchase of products or hire of Equipment from the time such notice is given to the Purchaser or the Hirer. Such amendment will not affect the validity or enforceability of the agreement between DF and the Purchaser or Hirer in any way.
- 11.3 Any taxes or Government charges imposed upon DF relating to the supply of products pursuant to the quotation or contract shall be an additional charge of the Purchaser.
- 11.4 It is the Purchaser's responsibility to ensure that all floors and all sub-structures are adequate for the purpose of installation of balustrading and its compliance with AS1170.
- 11.5 No work will commence until the stated deposit and acceptance slip is received or in the case of account customers a written company order or quoted sheet has been signed.
- 11.6 Any Council approval for any fencing or balustrading is the sole responsibility of the Purchaser.
- 11.7 If DF does not insist upon strict performance by the Purchaser or the Hirer of the terms and conditions of this Agreement, such action or inaction will not be construed as a waiver by DF of its rights to demand such strict compliance.

11.8 If the Hirer fails in any way to comply with its obligations in accordance with the terms and condition of this Agreement, DF may at its discretion:-

- (1) immediately terminate the Hire Agreement; or
- (2) declare the entire hire fee immediately due and payable and to commence legal action for the same; or
- (3) retake possession of the Equipment, the Hirer remaining fully liable to DF for the hire fee in full; or
- (4) pursue any other remedies that may be available to DF.

DF's rights under this clause are in addition to the rights DF may have at law or in equity.

11.9 DF is hereby authorised by the Purchaser or the Hirer as the case may be, to collect, store and use such information about the Purchaser or the Hirer for all purposes related to the provision of services (including but not limited to whether to allow credit on the Purchaser's or Hirer's account), reporting information to any Credit Agency, marketing DF's goods and services, and enforcing any rights of DF under these terms and conditions or any other terms and conditions relating to the provision of goods and/or services from DF to the Purchaser or the Hirer.

12. Personal Information

Personal information collected, stored or used by DF will be dealt with in accordance with the Privacy Act 1988. Any individual may access personal information held about them (subject to the permissible limitations contained within the Privacy Act 1988) and may request correction of that personal information.