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## OUR TERMS

### 1. DEFINITIONS

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

- (a) **Event Outside Our Control:** is defined in clause 12.2;
- (b) **Goods:** the goods that We are selling to you as set out in the Order;
- (c) **Order:** your order for the Goods and/or Services;
- (d) **Product:** the product We create for you as a result of the Services, as set out in the Order;
- (e) **Services:** the services that We are providing to you as set out in the Order;
- (f) **Terms:** the terms and conditions set out in this document; and
- (g) **We/Our/Us:** Ilkeston Fencing Ltd (Company Number 4306847) of Unit B2, Hallam Fields Road, Ilkeston, Derbyshire, DE7 4AZ.

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

### 2. OUR CONTRACT WITH YOU

2.1 These are the terms and conditions on which We supply Goods, or Services, or both Goods and Services, to you.

2.2 Please ensure that you read these Terms carefully, and check that the details on the Order and in these Terms are complete and accurate, before you sign and submit the Order. If you think that there is a mistake or require any changes, please contact Us to discuss. We will confirm any changes in writing to avoid any confusion between you and Us.

2.3 When you sign and submit the Order to Us, this does not mean We have accepted your order for Goods and/or Services. Our acceptance of the Order will take place as described in clause 2.4. If We are unable to supply you with the Goods and/or Services, We will inform you of this in writing and We will not process the Order.

2.4 These Terms will become binding on you and Us when We issue you with a written acceptance of an Order **OR** We contact you that We are able to provide you with the Services or the Goods at which point a contract will come into existence between you and Us.

- 2.5 If any of these Terms conflict with any term of the Order, the Order will take priority.
- 2.6 Our website, catalogue and brochure are solely for the promotion of Our Goods in the UK. Unfortunately, We do not accept orders from **OR** deliver to addresses outside the UK.
- 2.7 The images of the Goods on Our website **OR** in Our catalogue or brochure are for illustrative purposes only. Although We have made every effort to display the colours accurately, We cannot guarantee that your computer's display of the colours **OR** the printed pictures accurately reflect the colour of the Goods. Your Goods may vary slightly from those images. Although We have made every effort to be as accurate as possible, because our Goods are handmade, all sizes, weights, capacities, dimensions and measurements indicated on Our website **OR** in Our catalogue or brochure have a 5% tolerance.

### **3. CHANGES TO ORDER OR TERMS**

- 3.1 You may make a change to the Order for Goods and/or Services at any time before We despatch the Goods or start date for the Services by contacting Us, except in the case of made-to-measure Goods. Where this means a change in the total price of the Goods and/or Services, We will notify you of the amended price in writing. You can choose to cancel the Order in accordance with clause 13 in these circumstances.
- 3.2 If you wish to cancel an Order before it has been fulfilled, please see your right to do so in clause 13. In the case of made-to-measure Goods, unfortunately, because We make these Goods to your specific requirements, you will not be able to cancel an Order once it is made.

### **4. MADE-TO-MEASURE GOODS**

- 4.1 We make the Goods according to the measurements you provide Us. You can find information and tips on how to measure by contacting Us.
- 4.2 Please make sure your measurements are correct and accurate. Unfortunately, We cannot accept the return of made-to-measure Goods if the reason for the return is because you provided Us with incorrect measurements. However, this will not affect your legal rights as a consumer in relation to made-to-measure Goods that are faulty or not as described. Advice about your legal rights is available at your local Citizen's Advice Bureau or Trading Standards office.
- 4.3 We will supply colour treated timber at no extra charge, but, will not be responsible for any abnormalities or variances in colour which occur during the colouring process.

## **5. DELIVERY OF GOODS**

- 5.1 Please note that timescales for delivery and delivery charges will vary depending on the availability of the Goods and your address. Unfortunately We do not accept orders from **OR** deliver to addresses outside the UK.
- 5.2 We will contact you with an estimated delivery date. Occasionally Our delivery to you may be affected by an Event Outside Our Control. See clause 12 for Our responsibilities when this happens.
- 5.3 If you have asked to collect the Goods from Our premises, you can collect the Goods from Us at any time during Our working hours of 8.00am to 4.00pm on weekdays.
- 5.4 Delivery of an Order shall be completed when We deliver the Goods to the address you gave Us or you collect them from Us.
- 5.5 If no one is available at your address to take delivery, We will leave you a note that the Goods have been returned to Our premises, in which case, please contact us to rearrange delivery. Alternatively, the Goods will be left at your address if you so instruct us in which event they will be at your risk from the completion of delivery.
- 5.6 If We are not able to deliver the whole of the Order at one time due to operational reasons or shortage of stock, We will deliver the Order in instalments. We will not charge you extra delivery costs for this. However, if you ask Us to deliver the Order in instalments, We may charge you extra delivery costs. Each instalment shall constitute a separate contract governed by these Terms. If We are late delivering an instalment or one instalment is faulty, that will not entitle you to cancel any other instalment.
- 5.7 The Goods will be your responsibility from the completion of delivery **OR** from when you collect the Goods from Us.
- 5.8 You own the Goods once We have received payment in full.

## **6. IF THE GOODS ARE FAULTY**

As a consumer, you have legal rights in relation to Goods that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

**7. SELLER'S GUARANTEE OF GOODS**

7.1 We guarantee that on delivery and for a period of 6 months from delivery, the Goods shall be free from material defects. However, this guarantee does not apply in the circumstances described in clause 7.2. Further, please note that timber is a natural building material and is subject to weathering as it seasons. It is not uncommon for splits and some warping to occur whilst timber is drying. Such splits and warping are not accepted by Us as faults.

7.2 This guarantee does not apply to any defect in the Goods arising from:

- (a) fair wear and tear;
- (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party; timber must not be misused or placed or stored in abnormal conditions nor used for extraordinary purposes;
- (c) if you fail to operate or use the Goods in accordance with the user instructions; in particular, if timber is cross cut or drilled it must be properly treated. Please contact Us for details as to how this can be done;
- (d) any alteration or repair by you or by a third party who is not one of Our authorised repairers; and
- (e) any specification provided by you.

7.3 This guarantee is in addition to your legal rights in relation to the Goods that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

**8. PROVIDING SERVICES**

8.1 We will supply the Services to you on the date/s set out in the Order **OR** the date/s agreed between Us.

8.2 We will make every effort to complete the Services on time. However, there may be delays due to an Event Outside Our Control. See clause 12 for Our responsibilities when an Event Outside Our Control happens.

8.3 We will need certain information from you that is necessary for Us to provide the Services, including, in particular, the following:

- (a) Details of any relevant boundary lines and confirmation that you either own the land where the fencing is to be erected or have the land owner's consent; and
- (b) Details of any underground services/utilities on your property in the vicinity of the proposed fencing to be erected by Us.

- 8.4 If you do not provide Us with the information referred to in clause 8.3 above, or you provide Us with incomplete or incorrect information, We may make an additional charge of a reasonable sum to cover any extra work that is required, or We may suspend the Services by giving you written notice. We will not be liable for any delay or non-performance where you have not provided this information to Us. If we suspend the Services under this clause 8.4, you do not have to pay for the Services while they are suspended, but this does not affect your obligation to pay for any invoices We have already sent you.
- 8.5 We may have to suspend the Services if We have to deal with technical problems, or to make improvements agreed between you and Us in writing to the Services. We will contact you to let you know in advance where this occurs, unless the problem is urgent or an emergency. You do not have to pay for the Services while they are suspended under this clause 8.5 but this does not affect your obligation to pay for any invoices We have already sent you.
- 8.6 If you do not pay Us for the Services when you are supposed to as set out in clause 10.6, We may suspend the Services with immediate effect until you have paid Us the outstanding amounts (except where you dispute an invoice under clause 10.8). We will contact you to tell you this. This does not affect Our right to charge you interest under clause 10.7.
- 8.7 If We design the Product for you, We will own the copyright, design right and all other intellectual property rights in the Product and any drafts, drawings or illustrations We make in connection with the Product for you.
- 8.8 We will only erect fencing to the legal maximum heights being 1 metre at the front of a property and 2 metres on any other boundaries, unless, you have obtained and produced to Us planning permission/s authorising these heights to be exceeded or you instruct us to exceed the legal maximum heights without planning permission being obtained and confirm that there shall be no liability on Us for so doing.
- 8.9 Where We agree to remove hedge or tree roots or other obstacle/s the price given is for removal by manual means only. We reserve the right to raise reasonable additional charges should additional work or labour be required to remove the obstacle/s in question.

## **9. IF THERE IS A PROBLEM WITH THE SERVICES**

- 9.1 In the unlikely event that there is any defect with the Services or Product within 6 months from delivery:
- (a) please contact Us produce to Us evidence of proof of purchase and tell Us as soon as reasonably possible;

- (b) please give Us a reasonable opportunity to repair or fix any defect; and
- (c) We will use every effort to repair or fix the defect as soon as reasonably practicable.

You will not have to pay for Us to repair or fix a defect with the Services or Product under this clause 9.1.

9.2 As a consumer, you have legal rights in relation to Services not carried out with reasonable skill and care, or if the materials We use are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office. Nothing in these Terms will affect these legal rights.

## **10. PRICE AND PAYMENT**

10.1 The price of the Goods and/or the Services will be set out in Our price list in force at the time We confirm your Order or in Our quotation. Our prices may change at any time, but price changes will not affect Orders that We have confirmed with you.

10.2 These prices include VAT. However, if the rate of VAT changes between the date of the Order and the date of delivery or performance, We will adjust the rate of VAT that you pay, unless you have already paid for the Goods and/or Services in full before the change in the rate of VAT takes effect.

10.3 The prices for the Goods exclude delivery costs, which will be added to the total amount due.

10.4 It is always possible that, despite Our best efforts, some of the Goods We sell may be incorrectly priced. We will normally check prices as part of Our despatch procedures so that, where the Goods' correct price is less than Our stated price, We will charge the lower amount when dispatching the Goods to you. If the Goods' correct price is higher than the price stated. We will contact you to tell you and for your instructions. If the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mispricing, We do not have to provide the Goods to you at the incorrect (lower) price.

10.5 Where We are providing Goods to you, you must make payment for Goods in advance by credit or debit card.

10.6 Where We are providing Services to you, We will invoice you on completion. You must pay each invoice in full on presentation either in cash, by credit or debit card, telegraphic bank transfer or cheque.

- 10.7 If you do not make any payment due to Us on presentation of the invoice/s, We may charge interest to you on the overdue amount at the rate of 8% a year. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay Us interest together with any overdue amount.
- 10.8 However, if you dispute an invoice in good faith and contact Us to let Us know promptly after you have received an invoice that you dispute it, clause 10.7 will not apply for the period of the dispute.

## **11. OUR LIABILITY TO YOU**

- 11.1 If We fail to comply with these Terms, We are responsible for loss or damage you suffer that is a foreseeable result of Our breach of the Terms or Our negligence, but We are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if they were an obvious consequence of our breach or if they were contemplated by you and Us at the time we entered into this contract.
- 11.2 If We are installing the Goods or Product and/or providing Services in your property, We will make good any damage to your property caused by Us in the course of installation or performance. However, We are not responsible for the cost of repairing any pre-existing faults or damage to your property that We discover in the course of installation and/or performance by Us.
- 11.3 We only supply the Goods and/or Services or Product for domestic and private use. You agree not to use the Goods and/or Services or Product for any commercial, business or re-sale purpose, and We have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 11.4 We do not exclude or limit in any way Our liability for:
- (a) death or personal injury caused by Our negligence or the negligence of Our employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 (description, satisfactory quality, fitness for purpose and samples); and
  - (e) defective products under the Consumer Protection Act 1987.



## **12. EVENTS OUTSIDE OUR CONTROL**

- 12.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of Our obligations under these Terms that is caused by an Event Outside Our Control.
- 12.2 An Event Outside Our Control means any act or event beyond Our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks.
- 12.3 If an Event Outside Our Control takes place that affects the performance of Our obligations under these Terms:
- (a) We will contact you as soon as reasonably possible to notify you; and
  - (b) Our obligations under these Terms will be suspended and the time for performance of Our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects Our delivery of Goods to you, We will arrange a new delivery date with you after the Event Outside Our Control is over. Where the Event Outside Our Control affects Our performance of Services to you, We will restart the Services as soon as reasonably possible after the Event Outside Our Control is over.
- 12.4 You may cancel the contract if an Event Outside Our Control takes place and you no longer wish Us to provide the Goods and/or Services. Please see your cancellation rights under clause 13. We will only cancel the contract if the Event Outside Our Control continues for longer than 8 weeks in accordance with Our cancellation rights in clause 13.

## **13. YOUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

- 13.1 Before We begin to provide the Services or the Goods are delivered, you have the following rights to cancel an Order for Goods (other than made-to-measure Goods) and/or Services, including where you choose to cancel because We are affected by an Event Outside Our Control:
- (a) You may cancel any Order for Goods and/or Services at any time before We despatch the Goods or the start date for the Services by contacting Us. We will confirm your cancellation in writing to you.
  - (b) If you cancel an Order under clause 13.1(a) and you have made any payment in advance for Services that have not been provided to you, or

Goods that have not been delivered to you, We will refund these amounts to you.

- (c) However, if you cancel an Order for Services under clause 13.1(a) and We have already started work on your Order by that time, you will pay Us any costs We reasonably incurred in starting to fulfil the Order, and this charge will be deducted from any refund that is due to you or, if no refund is due to you, invoiced to you. We will tell you what these costs are when you contact Us. However, where you have cancelled an Order because of Our failure to comply with these Terms (except where We have been affected by an Event Outside Our Control), you do not have to make any payment to Us.
- (d) Unfortunately, if you cancel an Order for Goods under clause 13.1(a) and We have already despatched your Goods to you, We will not be able to cancel your Order until it is delivered or collected. In this case, if you return the Goods to Us, We will have to charge you the cost of collection or you will have to pay the cost of returning the Goods back to Us. This will not affect your refund for the Goods, but any charge for collection will be deducted from the refund that is due to you.

13.2 Unfortunately, as the made-to-measure Goods are made to your requirements, you will not be able to cancel your Order once made (but this will not affect your legal rights as a consumer in relation to made-to-measure Goods that are faulty or not as described).

#### **14. OUR RIGHTS TO CANCEL AND APPLICABLE REFUND**

14.1 If We have to cancel an Order for Goods (including made-to-measure Goods) and/or Services before the Services start or the Goods are delivered:

- (a) We may have to cancel an Order before the start date for the Services or before the Goods are delivered, due to an Event Outside Our Control or the unavailability of stock or (in the case of Services) key personnel or key materials without which We cannot provide the Services. We will promptly contact you if this happens.
- (b) If We have to cancel an Order under clause 14.1(a) and you have made any payment in advance for Services that have not been provided to you, or Goods that have not been delivered to you, We will refund these amounts to you.
- (c) Where We have already started work on your Order for Services or made-to-measure Goods by the time We have to cancel under clause 14.1(a), We will not charge you anything and you will not have to make any payment to Us.

14.2 We may cancel the contract for Services at any time with immediate effect by giving you written notice if:

- (a) you do not pay Us when you are supposed to as set out in clause 10.6. This does not affect Our right to charge you interest under clause 10.7; or
- (b) you break the contract in any other material way and you do not correct or fix the situation within 7 days of Us asking you to in writing.

## **15. INFORMATION ABOUT US AND HOW TO CONTACT US**

15.1 We are a company registered in England and Wales. Our company registration number is 4306847 and Our address is Unit B2 Hallam Fields Road, Ilkeston, Derbyshire, DE7 4AZ. Our registered VAT number is 684376494.

15.2 If you have any questions or if you have any complaints, please contact Us. You can contact Us by telephoning Our customer service team at 01159 308483 or by e-mailing Us at [sales@ilkeston-fencing.co.uk](mailto:sales@ilkeston-fencing.co.uk).

15.3 If you wish to contact Us in writing, or if any clause in these Terms requires you to give Us notice in writing (for example, to cancel the contract), you can send this to Us by e-mail, by hand, or by pre-paid post to Ilkeston Fencing Ltd at Unit B2, Hallam Fields Road, Ilkeston, Derbyshire, DE7 4AZ. We will confirm receipt of this by contacting you in writing. If We have to contact you or give you notice in writing, We will do so by e-mail, by hand, or by pre-paid post to the address you provide to Us in the Order.

## **16. HOW WE MAY USE YOUR PERSONAL INFORMATION**

16.1 We will use the personal information you provide to Us to:

- (a) provide the Goods and/or Services;
- (b) process your payment for such Goods and/or Services; and
- (c) inform you about similar products or services that We provide, but you may stop receiving these at any time by contacting Us.

16.2 You agree that We may use, for advertising or marketing purposes, photographs of the fencing or other Goods or Product supplied and installed or erected by Us, subject always to the identity of both you and your property remaining confidential.

16.3 We will not give your personal data to any other third party.

**17. OTHER IMPORTANT TERMS**

- 17.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- 17.2 You may transfer the benefit of the guarantee in clause 7.1 to any purchaser of your property. You may only transfer your other rights or your obligations under these Terms to another person if We agree in writing.
- 17.3 This contract is between you and Us. No other person shall have any rights to enforce any of its terms. However, the purchaser of your property will have the benefit of the guarantee at clause 7.1 if you transfer it to them, but We and you will not need their consent to cancel or make any changes to these Terms.
- 17.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- 17.5 If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- 17.6 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts. However, if you are a resident of Northern Ireland you may also bring proceedings in Northern Ireland, and if you are a resident of Scotland, you may also bring proceedings in Scotland.

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