

NK FENCING LIMITED - TERMS OF QUOTATION AND CONTRACT

1. DEFINITIONS
- 1.1 The term "the Company" shall mean N.K. Fencing Limited.
- 1.2 The term "the Customer" shall mean the person, firm or company placing an order with the Company for the work.
- 1.3 The term "quotation" shall mean the tender, offer or quotation given by the Company to the Customer, subject only to any Special Conditions set out overleaf, in respect of the work.
- 1.4 The term "Customer's Order" shall mean any order raised or issued by the Customer to the Company on foot of the quotation, and shall be deemed to include the Customer's express acceptance of these Terms of Quotation and Contract ("Terms").
- 1.5 The term "the Contract" shall mean the contract between the Company and the Customer consisting of the Company's quotation, these Terms and the Customer's Order accepting the quotation, but not any terms and conditions of business, trade or purchase, other than these Terms, incorporated in or referred to in the Customer's Order.
- 1.6 The term "the work" shall mean, where the context so requires, the manufacture, sale and supply of materials ("goods") together with any installation work to be performed by the Company for the customer pursuant to the quotation and the Contract.
- 1.7 The term "contract price" shall mean the sum or rate stated in the quotation to be paid by the Customer to the Company for the work, together with such other sum or rate as may become payable to the Company under these Terms.
- 1.8 The term "date for completion" shall mean the date for completion of the work, if any, stated as such in the quotation.
2. APPLICATION OF CONDITIONS
- 2.1 These Terms supersede any other terms and conditions including any terms or conditions, or descriptions, or statements as to the quality of the work or its suitability for any purpose appearing in any advertisements, catalogues, other literature or any electronic form relating to same and override and exclude other terms and conditions, descriptions and statements as to quality or for completion of the work stipulated or referred to by the Customer whether in the Customer's Order or otherwise.
- 2.2 No representative or agent of the Company other than
 - (a) in Supply Only contracts - the Estimator, or
 - (b) in Supply and Erect contracts - the Project Engineer, or in their absence
 - (c) a Relevant Director("the relevant authorised officer") has authority to agree or make any amendment to or any variation of (i) the work (ii) these Terms (iii) the risks and liabilities to be undertaken by the Company and/or (iv) otherwise make any representations that are inconsistent with these Terms or the quotation.
- 2.3 The Company will not be bound by any statements, representations, amendments or variations unless same are confirmed in writing by the relevant authorized officer, the price agreed in advance, where applicable, and annexed to the contract.
3. QUOTATION
- 3.1 The Company shall, where practicable, prepare a written quotation for the work for the Customer. Where this is not possible a verbal quotation will be given. The quotation, in whatever form, shall at all times be issued subject to these Terms which shall be deemed to be incorporated therein.
- 3.2 Where practicable, the quotation shall have the relevant specification attached or supplied.
- 3.3 Unless expressly provided for in the quotation, the contract does not include for testing.
4. TIME FOR DELIVERY
- 4.1 Any times quoted for delivery are approximate only and are to be computed from the date on which the following conditions are satisfied:
 - (a) The Company has received the Customer's Order
 - (b) The Company processes all the information required by the Company to complete the Contract
 - (c) When the Customer's credit clearance has been approved by the Company.
- 4.2 The Company will use its best endeavours to comply with quoted delivery dates but will not be liable to the Customer or any third party for any loss, damage, injury or expense either direct or indirect and including but not limited to loss of profit and any consequential loss which they may sustain by reason of late delivery of the goods for whatever cause.
5. DELIVERY AND RISK - SUPPLY ONLY GOODS AND MATERIALS
- 5.1 Goods sold and delivered EX WORKS will be dispatched as agreed with the Customer in the contract and risk of damage to or loss of the goods shall pass to the Customer from completion of loading at the Company's premises where that is the Company's responsibility otherwise at commencement of loading.
- 5.2 In the case of goods to be delivered otherwise than at the Company's premises, risk will pass at time of delivery to the destination and prior to unloading or, if the Customer wrongfully fails to take delivery of the goods, at the time when the Company has tendered delivery of the goods. Such goods will be dispatched by whatever means of transport the Company chooses, unless a specific method of transport has been previously been agreed in writing.
- 5.3 It shall be the Customer's responsibility to ensure that the required conditions (as appearing in Clause 9.1 hereof) are met and sufficient personnel are present to receive the goods and to ensure their timely off-loading. Where, in the opinion of the Company, there is delay in off-loading, or the requisite conditions for off-loading are not fulfilled, the goods shall be returned to the Company's premises and any loss sustained by the Company and all additional costs so incurred, including re-delivery, shall be charged to the Customer's account. For the avoidance of doubt, the risk shall pass to the Customer at time of original tender of the goods by the Company.
6. PROPERTY IN GOODS AND MATERIALS
- 6.1 Notwithstanding delivery and the passing of risk in the goods, or any other provision of these Terms, the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the goods and all other goods sold or agreed to be sold by the Company to the Customer for which payment is then due.
- 6.2 Until such time as the property in the goods passes to the Customer, the Customer shall hold the goods as the 6.3 Company's fiduciary agent and bailee, and shall keep the goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer may use the goods in the ordinary course of its business.
- 6.3 Until such time as the property in the goods passes to the Customer (and provided the goods are still in existence and have not been incorporated into a fixture in or part of any real property which is not the Company's property), the Company may at any time require the Customer to deliver up the goods to the Company and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the goods are stored and repossess the goods.
- 6.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without limiting any other right or remedy of the Company) forthwith become due and payable.
7. CONTRACT PRICE
- 7.1 The price stated in the quotation is exclusive of Value Added Tax (VAT), and is applicable for a period of 2 calendar months from the date of quotation.
- 7.2 VAT shall be added to the contract price as a strictly nett extra charge at the rate applicable at date of invoice.
- 7.3 Packaging materials shall, unless otherwise stated, be charged extra.
- 7.4 The contract price does not include responsibility or liability on the part of the Company for:
 - (a) Alterations to site conditions due to obstructions such as Bitmac, Asphalt, Concrete or Rock since date of survey.
 - (b) Damage to underground services or the temporary or permanent diversion of such services or any resultant delay to the work unless the Company has been accurately informed of the presence and location of same prior to the date of quotation.
- (c) Reinstatement of disturbed surfaces except where expressly stated in the quotation.
- 7.5 In Supply Only contracts, the contract price does not include delivery.
8. NEW ACCOUNTS AND TERMS OF PAYMENT
- 8.1 Credit will only be granted at the Company's discretion and any Customer's Order on a Credit Account shall not be processed until a satisfactory credit status has been confirmed.
- 8.2 The Company reserves the right to cancel a Customer's Credit Account if, in the sole opinion of the Company, the Customer is not complying with the Terms of Payment hereinafter set out.
- 8.3 Payment of the contract price shall be due within 30 days of the date of the Company's invoice ("the due date"). Time for payment shall be of the essence. Late payment shall result in loss of any discount.
- 8.4 Where an invoice is not paid in full by the due date, interest on any amount overdue shall accrue from the date of invoice until the date of payment, both after as well as before judgment, at the rate of 2% per calendar month, in which part of a month shall be construed as a whole month, and shall be compounded at monthly rests.
- 8.5 All extra-judicial costs incurred by the Company in the collection of overdue accounts including all debt recovery charges and the costs and disbursements payable to any solicitor acting on behalf of the Company, together with any applicable V.A.T. thereon, shall be recoverable from the Customer on a full indemnity basis as a debt, at a rate not exceeding 15% in total of the sum claimed inclusive of interest (whether or not party and party costs of any proceedings may also be recoverable) and may form part of the Company's claim for each overdue account.
- 8.6 The Company shall decline to complete any work under this contract or supply or deliver any goods or materials or undertake any further work on any other Order placed by the Customer with the Company until payment has been received in full of any amounts outstanding, and payment has been made by the Customer in advance for any completed work not yet released or goods or materials not yet collected, without thereby incurring any liability whatsoever to the Customer.
9. CUSTOMER'S OBLIGATIONS
- 9.1 For the purposes of the work, the Customer is to provide the following services, attendances and facilities without cost or expense to the Company.
 - (a) Suitable lorry access to the site and a hard level surface maintained there for the delivery of materials.
 - (b) Suitable access for site transport to line of fence.
 - (c) Removal of all surface obstructions from the site.
 - (d) Preparation of the line, unless otherwise provided for in the quotation.
 - (e) The setting out of lines and levelling for fences and gates.
 - (f) Hoardings, staging, shading and watching where, when and as required for the safety and security of the goods and materials, the work and others.
 - (g) All appropriate and necessary facilities required to comply with the provisions of Health and Safety legislation from time to time in force.
 - (h) Availability of the site for the Company's operatives to complete the work in one visit from the date notified for commencement of the work, unless the contrary is specifically stated in the quotation.
- 9.2 In any case where the materials required by the Customer are unspecified or non-standard, whether or not requiring the preparation and production of and/or detail, the Customer shall accept the price therefore as costed by the Company at the Company's usual rates, but without prior quotation.
- 9.3 In all cases where the materials required by the Customer are unspecified the Customer shall be solely responsible for ensuring that the said materials are suitable for the conditions prevailing at the relevant site and that they will be acceptable to the end user if that person is not the Customer.
10. DELAY LOSS AND EXPENSE
- 10.1 All loss and expense resulting from the failure of the Customer to provide any of the facilities, services or attendances referred to in Clause 9 above or from any delay caused thereby or by reason of any other delay outside the Company's control shall be chargeable by the Company to the Customer as an extra, additional to the quoted price, but payable as part of the contract price. Work performed by the Company under this clause shall be paid for in accordance with the Federation of Civil Engineering Contractor's Dayworks Schedule in force at the date of the quotation. The Daywork percentages to apply are 150% to be added to the net cost of labour, 25% to be added to the net cost of materials and 100% to the Schedule of Plant Hire Rates.
11. QUANTITIES
- 11.1 Where goods are ordered by reference to numerical quantities, the Company reserves the right to over-deliver the goods to the next largest quantity coinciding with standard pre-packed components and to invoice the Customer for the larger quantity.
12. MEASUREMENT OF WORK
- 12.1 For payment purposes, all work shall be re-measured unless specifically stated to the contrary in the quotation.
13. GUARANTEE
- 13.1 The Company guarantees all aspects of the work against latent defects and the Customer hereby agrees to accept said guarantee in lieu of making a deduction from any retention and engaging a third party to effect repairs.
14. WARRANTIES
- 14.1 The work is warranted to comply with the agreed specification or, if there is no such specification, to have been subject to the Company's Quality Control. All other warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 14.2 All information and detail contained in the Company's specifications have been carefully prepared to avoid errors but their accuracy cannot be guaranteed and the Company shall not be liable for any inaccuracies or omissions.
- 14.3 Any recommendations or suggestions made by the Company relating to the use of the goods is given in good faith but it is for the Customer to satisfy himself of the suitability of the goods and materials for his own particular purpose. Accordingly, unless otherwise expressly agreed in writing, the Company gives no warranty as to the suitability of the goods for any particular purpose even though that purpose may be specified in the Customer's Order and any implied warranty or condition (statutory or otherwise) is hereby excluded.
- 14.4 The Customer shall indemnify the Company from and against all actions, claims proceedings and costs on a full indemnity basis which may arise as a result of the manufacture of goods to the drawings or specification of the Customer where such drawings or specifications are found to be at fault or where they involve an infringement of copyright, a patent, registered design or design copyright or other exclusive right.
15. RETURN OF GOODS AND MATERIALS
- 15.1 In no circumstances may goods or materials supplied against the Customer's Order be returned without the prior written consent of the relevant authorized officer following receipt of the Customer's Advice Note within 7 days from the date of delivery stating the reason for the proposed return quoting the Company's Invoice Number - time to be of the essence in this respect. All goods, which are accepted for return, must be securely packed and, unless the Company arranges for their collection, consigned carriage paid. If the Company agrees to arrange for collection it reserves the right to make a handling charge and the issue of the Company's Collection Note will not oblige it to issue any credit in respect of the goods.
16. SET-OFF
- 16.1 The Customer shall not be entitled to withhold payment of any amount payable to the Company under the contract because of any dispute or claim by the Customer in respect of any fault of the Company or defect in the goods or by reason of any alleged breach of contract nor shall the Customer be entitled to set-off against any amount payable to the Company under the contract monies which are not then presently payable by the Company to the Customer or in respect of which the Company disputes liability.
17. CANCELLATION
- 17.1 Cancellation of a Customer's Order will only be agreed by the Company on the condition that all costs and expenses incurred by the Company up to the time notice of cancellation is given together with all loss of profits and consequential loss and damage caused to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.
18. CONFIDENTIAL INFORMATION
- 18.1 All drawings, designs, documents and other information supplied by the Company are supplied on the express understanding that copyright in same is reserved to the Company and that the Customer shall not without the prior written consent of the Company either give away, lend, exhibit or sell any such documentation or extracts therefrom or copies thereof or use them or procure their use in any way except in connection with the goods in respect of which they are issued.
19. LIABILITY
- 19.1 A claim by the Customer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Company within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 19.2 If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the goods had been delivered in accordance with the Contract.
- 19.3 Where a valid claim in respect of any of the goods which is based on a defect in the quality or condition of the goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company may replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.
- 19.4 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 19.5 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
 - (a) Act of God, explosion, flood, tempest, fire or accident.
 - (b) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - (c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - (d) Import or export regulations or embargoes;
 - (e) Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Company or of a third party).
 - (f) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - (g) Power failure or breakdown in machinery.
- 19.6 The Company accepts no responsibility for short delivery of goods:
 - (a) In any case where a clear signature has been given on the delivery docket or dispatch docket as appropriate.
 - (b) In any case where the Carrier's Terms and Conditions have been complied with by the Company or Consignee.
 - (c) Unless same is noted on the delivery or dispatch docket as appropriate or (where the defect or failure was not apparent on reasonable inspection and the said docket marked "Not inspected") and written notice given both to the Company and the Carrier within 3 working days after day of delivery. Time to be of the essence.
- 19.7 The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any failure by the Customer to comply with or observe the restrictions set out in the Care, Cleaning and Maintenance requirements, as provided on our web site and available on request, which are incorporated herein and form part of these terms and conditions.
20. INSOLVENCY OF THE CUSTOMER
- 20.1 This clause 20 applies if:
 - (a) the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
 - (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer, or
 - (c) the Customer ceases, or threatens to cease, to carry on business, or
 - (d) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.(e) if this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
21. THIRD PARTIES
- 21.1 A person who is not a party to the Contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
22. GENERAL
- 22.1 The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of these Terms.
- 22.2 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or at such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 22.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.4 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 22.5 Any dispute arising under or in connection with the Contract or the sale of the goods which cannot be amicably resolved between the parties (other than action taken by the Company to recover the contract price or any portion thereof) shall be referred initially to mediation and in the absence of resolution by that method, by legal action to be taken the appropriate Courts in Northern Ireland.
- 22.6 The Contract shall be governed by the law of Northern Ireland, and the Customer agrees that for the purpose of the contract the place for performance of the obligation in question is at the Company's registered office in Carrickfergus, Co Antrim and accordingly submits to the jurisdiction of the Belfast Courts.