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## Clipex – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Clipex” means Clipex Fencing Limited T/A Clipex, its successors and assigns or any person acting on behalf of and with the authority of Clipex Fencing Limited T/A Clipex.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Clipex to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Clipex and the Customer in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Clipex’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Clipex.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Clipex’s website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Clipex reserves the right to vary the Price with alternative Goods as per clause 4.2. Clipex also reserves the right to halt all Services until such time as Clipex and the Customer agree to such changes.

### 3. Change in Control

- 3.1 The Customer shall give Clipex not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by Clipex as a result of the Customer’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At Clipex’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Clipex to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to Clipex’s current price list; or
  - (c) Clipex’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 4.2 Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Clipex in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes etc) which are only discovered on commencement of the Services) will be charged for on the basis of Clipex’s quotation and will be shown as variations on the invoice.
- 4.3 At Clipex’s sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Clipex, which may be:
  - (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with Clipex’s payment schedule;
  - (d) thirty (30) days following the end of the month in which an invoice is posted to the Customer’s address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Clipex.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Customer and Clipex.
- 4.6 Unless otherwise stated the Price does not include VAT. In addition to the Price the Customer must pay to Clipex an amount equal to any VAT Clipex must pay for any supply by Clipex under this or any other agreement for the sale of the Goods. The Customer must pay VAT, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of Goods

- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at Clipex’s address; or

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- (b) Clipex (or Clipex's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At Clipex's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Clipex shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Clipex may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Clipex to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Clipex will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Clipex is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Clipex is sufficient evidence of Clipex's rights to receive the insurance proceeds without the need for any person dealing with Clipex to make further enquiries.
- 6.3 If the Customer requests Clipex to leave Goods outside Clipex's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Customer fails to comply with this clause then Clipex accepts no responsibility for installation decisions that need to be made by Clipex in the Customer's absence.
- 6.5 The Customer acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow Clipex clear access along the proposed fence line prior to commencement of work by Clipex unless otherwise agreed in writing between Clipex and the Customer.
- 6.6 Where Clipex is required to install the Goods the Customer warrants that the structure or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Clipex shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 6.7 Where the Customer has supplied goods for Clipex to complete the Services, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the goods. Clipex shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of goods supplied by the Customer.
- 6.8 The Customer acknowledges that Clipex is only responsible for parts that are replaced by Clipex and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify Clipex against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 6.9 Any advice, recommendation, information, assistance or service provided by Clipex in relation to Goods or Services supplied is given in good faith, is based on Clipex's own knowledge and experience and shall be accepted without liability on the part of Clipex and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services.
- 7. Accuracy of Customer's Plans and Measurements**
- 7.1 Clipex shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, Clipex accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Clipex places an order based on these measurements and quantities. Clipex accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.
- 8. Access**
- 8.1 The Customer shall ensure that Clipex has clear and free access to the work site at all times to enable it to deliver the Services. Clipex shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Clipex.
- 8.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify Clipex against all costs incurred by Clipex in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9. Underground Locations**
- 9.1 Prior to Clipex commencing any work the Customer must advise Clipex of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer

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connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

- 9.2 Whilst Clipex will take all care to avoid damage to any underground services the Customer agrees to indemnify Clipex in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.

### **10. Compliance with Laws**

- 10.1 The Customer and Clipex shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 10.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

### **11. Title**

- 11.1 Clipex and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Clipex all amounts owing to Clipex; and
  - (b) the Customer has met all of its other obligations to Clipex.
- 11.2 Receipt by Clipex of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to Clipex on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Clipex and must pay to Clipex the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Clipex and must pay or deliver the proceeds to Clipex on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Clipex and must sell, dispose of or return the resulting product to Clipex as it so directs.
  - (e) the Customer irrevocably authorises Clipex to enter any premises where Clipex believes the Goods are kept and recover possession of the Goods.
  - (f) Clipex may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Clipex.
  - (h) Clipex may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### **12. Defects and Returns**

- 12.1 The Customer must inspect the Goods on delivery and must within forty eight (48) hours of delivery notify Clipex in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Clipex to inspect the Goods.
- 12.2 Clipex may in its absolute discretion accept non-defective Goods for return in which case Clipex may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.3 Notwithstanding anything contained in this clause if Clipex is required by a law to accept a return then Clipex will only accept a return on the conditions imposed by that law.

### **13. Limitation of Liability**

- 13.1 Subject to clause 13.3 and 13.4, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these terms and conditions;
  - (b) any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the sale and purchase of the Goods.
- 13.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these terms and conditions and any contract between the Company and the Customer for the sale and purchase of the Goods.

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- 13.3 Nothing in these terms and conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
  - (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
  - (c) for fraud or fraudulent misrepresentation.
- 13.4 Subject to clause 13.3 and 13.4:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the sale and purchase of the Goods shall be limited to the price provided for therein; and
  - (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the sale and purchase of the Goods.

### **14. Force majeure**

The Company reserves the right to defer the date of delivery or to cancel the sale and purchase of the Goods or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 30 days, the Customer shall be entitled to give notice in writing to the Company to terminate any contract between the Company and the Customer for the sale and purchase of the Goods.

### **15. Intellectual Property**

- 15.1 Where Clipex has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Clipex.
- 15.2 The Customer warrants that all designs, specifications or instructions given to Clipex will not cause Clipex to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Clipex against any action taken by a third party against Clipex in respect of any such infringement.
- 15.3 The Customer agrees that Clipex may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Clipex has created for the Customer.

### **16. Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, specified under or pursuant to the European Communities (Late Payments in Commercial Transactions Regulations) 2002 after as well as before any judgment.
- 16.2 If the Customer owes Clipex any money the Customer shall indemnify Clipex from and against all costs and disbursements incurred by Clipex in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Clipex's contract default fee, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies Clipex may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Clipex may suspend or terminate the supply of Goods to the Customer. Clipex will not be liable to the Customer for any loss or damage the Customer suffers because Clipex has exercised its rights under this clause.
- 16.4 Without prejudice to Clipex's other remedies at law Clipex shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Clipex shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Clipex becomes overdue, or in Clipex's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

### **17. Cancellation**

- 17.1 Clipex may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Clipex shall repay to the Customer any money paid by the Customer for the Goods. Clipex shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Clipex as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**18. Data Protection Acts 1998 and 2003 (the “Data Protection Acts”)**

- 18.1 The Customer agrees for Clipex to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Clipex.
- 18.2 The Customer agrees that Clipex may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Data Protection Acts.
- 18.3 The Customer consents to Clipex being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by Clipex for the following purposes (and for other purposes as shall be agreed between the Customer and Clipex or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by Clipex, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 18.5 Clipex may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 18.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that Clipex is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of Clipex, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred euro (€100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by Clipex has been paid or otherwise discharged.

**19. Assignment**

The Company may assign any contract between the Company and the Customer for the sale and purchase of the Goods or any part thereof to any person, firm or company.

The Customer shall not be entitled to assign any contract between the Company and the Customer for the sale and purchase of the Goods or any part thereof without the prior written consent of the Company.

**20. General**

- 20.1 The failure by Clipex to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Clipex's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland in which Clipex has its principal place of business, and are subject to the non-exclusive jurisdiction of the Courts of Ireland.
- 20.3 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Clipex nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.4 The Customer agrees that Clipex may amend these terms and conditions at any time. If Clipex makes a change to these terms and conditions, then that change will take effect from the date on which Clipex notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Clipex to provide Goods to the Customer.

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- 20.5 The Customer warrants that it has the power to enter into these terms and conditions and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these terms and conditions creates binding and valid legal obligations on it.
- 20.6 Each right or remedy of the Company under these terms and conditions is without prejudice to any other right or remedy of the Company whether under such contract or not.
- 20.7 If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these terms and conditions and the remainder of such provision shall continue in full force and effect.
- 20.8 Headings to any of these terms and conditions are included to facilitate reference only and shall not affect the construction thereof.