

ADVANCED TEMPORARY FENCING  
STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

“Commencement Date” means the date of delivery of the Fencing System by ADVANCED or their agent to the Site.

“Site” means the particular Site or Sites where the Customer has advised ADVANCED the Fencing System is to be delivered and installed.

“Fencing System” means any components supplied to the Customer by ADVANCED including but not limited to fence panels, bases, clamps, access gates, hinge tubes, hoarding, trip guards, screens, shade cloth, crowd control barriers, any equipment that is on-hired or cross-hired from a third party and any other equipment that ADVANCED may hire to Customers from time to time.

“Customer” means any person, company, partnership or body corporate that hires a Fencing System from ADVANCED and includes, where appropriate, any person who is actually or apparently authorised by the Customer to act on its behalf.

“Hire Contract” means an agreement between ADVANCED and a Customer for the hire of a Fencing System for the Site as a result of acceptance of an Order.

“Factory” means ADVANCED National Office premises at 30 Telford Circuit Yatala Queensland 4207 or any other premises nominated by ADVANCED.

“Manual” means the Manual prepared by ADVANCED setting out instructions in relation to the installation, limitations and use of the Fencing System.

“Order” means an Order placed by the Customer with ADVANCED for the hire of a Fencing System and includes a Purchase Order and/or Supply Agreement entered into by ADVANCED with the Customer.

“ADVANCED” means Advanced Temporary Fencing Pty. Ltd. ABN 92 112 105 307, and includes, where appropriate, its contractors, franchisees, agents, employees and representatives.

2. FENCING SYSTEM

- a. Subject to clause 10, unless otherwise agreed by the parties, ADVANCED does not warrant that the Fencing System is new or unused or will be unaffected by the conditions (including weather and ground conditions) of the Site.
- b. The Customer must use the Fencing System at all times in a safe and prudent workmanlike manner, in accordance with:
  1. The Manual
  2. All directions and instructions issued by ADVANCED
  3. All applicable laws, by-laws, regulations and statutes.
- c. No alterations or modifications are to be carried out to the Fencing System without ADVANCED’S prior written consent.
- d. The Customer may not transfer, sell, mortgage, charge or otherwise deal with the Fencing System or allow the Fencing System to be removed from the Site.
- e. The Customer must not alter, move, install or uninstall the Fencing System.
- f. Advanced does not provide any guarantee or assurance that the Fencing System will be compliant or appropriate for the intended use by the Customer.

3. DELIVERY, INSTALLATION AND COLLECTION

- a. Upon receipt of an Order ADVANCED will deliver and install the Fencing System on Site in accordance with the terms of the Hire Contract.
- b. ADVANCED will not be liable for a delay or failure to deliver and or install a Fencing System at the Site, if the delay arises as a result of a circumstance beyond the control of ADVANCED. Notwithstanding late delivery, the Customer must accept and pay for the Fencing System in accordance with the terms of the Hire Contract.
- c. Immediately after the delivery and installation of the Fencing System, the Customer must sign and provide ADVANCED with an acknowledgment that
  1. All fencing items have been delivered.
  2. The Customer has inspected the Fencing System and that the Fencing System is in good condition, of good quality and complies with the Order and the Customers specifications.
- d. Where the customer is unable to sign acknowledgment on the day of installation, the Customer will have 2 business days to report any discrepancies with the Fencing System. If the Customer does not report any discrepancies, the Customer accepts that the Fencing System is in a good condition, of good quality and complies with the Order and the Customers specifications.
- e. The Customer must endeavour to have an authorised representative on site on the day/s of collection at the end of the hire term. Where the Customer is unable to provide an authorised representative on the day/s of collection, the Customer accepts the record of items collected and accepts and charges for lost or damaged stock.

4. TERM

The term of the Hire Contract will commence on the Commencement Date and terminate at the expiration of the Hire Contract unless an extension has been entered into and shall be in accordance with the terms and conditions in Clause 9 below. A removal date earlier than the expiration date will not affect the term of the Hire Contract.

5. PRICING AND PAYMENT CONDITIONS

- a. Hire charges will be charged and invoiced by ADVANCED from the Commencement Date. ADVANCED will not refund hire charges for early return of the Fencing System.

- b. Hire charges for a Fencing System will include one delivery, one installation and one removal of the Fencing System at the Site.
- c. The hire charges for the Fencing System for the full hire period made by the Customer in the Hire Contract or on the Order are due and payable immediately upon receipt of invoice and must be paid in accordance with the Terms of Trade specified thereon.
- d. The hire period nominated by the Customer on the Hire Contract may be extended by agreement between the parties.
- e. The additional hire charges will be invoiced by ADVANCED, they are due and payable upon receipt and must be paid in accordance with the Terms and Conditions of Trade specified thereon.
- g. If the Customer defaults in making payment to ADVANCED in accordance with these terms and conditions ADVANCED may, in its absolute discretion, charge the Customer interest calculated on the portion of the Customer's account overdue from time to time at the rate of 2% per month from the date on which such default arose.
- h. Invoices must be paid by the Customer notwithstanding any claims made by the Customer against ADVANCED.
- i. ADVANCED reserves the right to vary the hire charges quoted upon an inspection of the Site.
- j. Subsequent invoices for the extension of hire periods, known as rehire invoices, will be raised in arrears each month and will be subject to the same terms of trade.
- k. Rehire invoices are raised on the 25<sup>th</sup> of each month and include charges to the end of that month. Any collections of the fence system, whether full or partial, after the 25<sup>th</sup> will not affect this charge and as such, will remain due and payable by the Customer.
- l. Payments made by credit card will attract an additional fee of 1.5% of the value paid. Visa and MasterCard are the only credit cards accepted. ADVANCED reserves the right to change this rate without prior notice to the customer.

#### 6. INSURANCE

During the term of the Hire Contract, the Customer will effect and maintain the following insurances with a reputable Insurance company in the name of ADVANCED National Services Temporary Fencing and the Customer will produce certified copies of the same to ADVANCED upon demand.

- a. Insurance of the Fencing System against loss, theft or damage, to its full replacement value; and
- b. Public risk insurance for \$20,000,000 for any one claim to cover all property damage, personal injury and/or deaths caused or contributed to by the Fencing System or by the parties pursuing their rights under this Hire Contract.

#### 7. CLAIMS

- a. The Customer will not be entitled to make a claim against ADVANCED in relation to defective or damaged Fencing System if it has not complied with clauses 2 (b) 2 (c) 2 (d) and 2 (e).
- b. ADVANCED will not be liable for any claims arising from use by the Customer of the Fencing System.

#### 8. RISK, OWNERSHIP AND LOSS OR DAMAGE TO TEMPORARY FENCING

- a. All hired Fencing System will remain the property of ADVANCED.
- b. On and from the Commencement Date and until full compliance with clause 9, the Fencing System will be at the Customer's risk and the Customer will indemnify and keep ADVANCED indemnified against all liabilities which arise out of the possession and use of the Fencing System.
- c. The Customer must notify ADVANCED immediately of claims made by a third party against ADVANCED, its agents, franchisees, employees or contractors and in relation to the Fencing System.
- d. The Customer will use its best endeavours to avoid damage theft or loss of the Fencing System and will keep the Fencing System securely stored when not in use. Loss theft or damage of the Fencing System will be charged to the Customer at the current rates specified on the Hire Contract.
- e. Payment of the damage waiver, charged at 11% of total hire charges, will indemnify the Customer against any liabilities arising only from the accidental damage of the Fencing System.
- f. ADVANCED does not warrant that the Fencing System will not be affected by extreme weather conditions or other events/factors beyond ADVANCED's control. Where such events cause the Fencing System to move, the Customer will be liable for any fees to relocate, repair or recover the stock.

#### 9. RETURN OF TEMPORARY FENCING

At the expiration or termination of this Agreement or any agreed extension thereto, the Customer will give ADVANCED 1 week's notice that the Fencing System is ready for collection from the Site.

#### 10. WARRANTIES

- a. Subject to the law, all other warranties or representations, whether statutory or otherwise, and whether expressed or implied or oral or written as to the state, quality or fitness of the Fencing System are hereby expressly excluded save and except conditions and warranties implied by the Trade Practices Act 1974 (Cth) and other conditions or warranties which by relevant statute are expressed to be incapable of exclusion.
- b. Subject to the law, ADVANCED'S obligations to the Customer in respect of breach of any term, warranty or conditions of this Hire Contract (whether implied by statute or otherwise) will, at ADVANCED'S option be limited to:
  - 1. The replacement of the Fencing System supplied or the supply of equivalent Temporary Fencing; OR
  - 2. The payment of the cost of replacing the Fencing System or of acquiring equivalent Temporary Fencing.
- c. Except as provided by statute, ADVANCED will not be liable to the Customer or any other person for any liability arising out of any advice, recommendation, information or services provided by ADVANCED regarding the Fencing System or the

methods or conditions of application and use of the Fencing System, including any liability which arises as a result of any act, omission or negligence on the part of the Customer or the Customer's employees or agents.

- d. The Customer warrants that it will ensure a level, clear, defined and accessible site for ADVANCED to access and install the Fencing System.
- e. The Customer warrants that it has obtained all necessary approvals and clearances from any relevant Federal, State and/or Council bodies or any other Statutory Authority prior to installation.
- f. The Customer warrants that it will comply with all relevant Building Laws, Standards and Practices during the installation of the Fencing System and throughout the hire term.
- g. Where ground penetration is required for the installation of any product, the Customer provides assurance to Advanced that it has undertaken all the necessary checks and investigations into below-ground services which may be in the vicinity of the installation area prior to Advanced undertaking the work. These checks and investigations must be communicated to Advanced. The Customer further indemnifies Advanced for any loss, damage or injury to Advanced, the Customer or any third party as a result of Advanced undertaking ground penetration installations in accordance with the Customer's instructions and/or direction, regardless of whether the appropriate checks and investigations have been carried-out.

#### 11. DEFAULT AND TERMINATION

If:

a. The Customer:

- i. Is in default of the payment of an invoice;
- ii. Is in default of any other term or condition of the Hire Contract,
- iii. Allows the Fencing System to be used or maintained in a manner which is not in accordance with clause 2 (b) 2 (c) 2 (d) or 2 (e);
- iv. Resolves to go into liquidation or has a summons or application for its winding up presented and not withdrawn within 21 days of presentation or enters into any arrangement with its creditors or should any liquidator, receiver, receiver and manager or administrator be appointed over the whole or any part of the assets of the Customer or

b. A third party makes a claim against ADVANCED.

THEN ADVANCED may;

- A. Terminate the Agreement;
- B. Re-take possession of the Fencing System;
- C. Demand immediate payment of all outstanding invoice amounts irrespective of the time allowed for payment by ADVANCED or its Terms of Trade; and/or
- D. Pursue any other right available to it.

#### 12. RETAKING OF MATERIALS

If for any reason, ADVANCED becomes entitled to retake possession of the Fencing System, ADVANCED may enter upon the Site, the Customer's property or any other property and retake the Fencing System without notice and legal process. ADVANCED may take all action necessary to retake the Fencing System and the Customer indemnifies ADVANCED, its contractors, Franchisees, agents, and employees against all liabilities which arise from the retaking of the Fencing System. The Customer agrees to pay all costs and expenses incurred by ADVANCED in retaking the Fencing System.

#### 13. CUSTOMER ORDERS

- a. The Customer must take all reasonable steps and necessary actions prior to confirming an Order that the order quantity is as close to the actual quantity required to be installed at the site to meet the Customer's needs and expectations;
- b. Where the actual quantity installed is less than 80% of the ordered quantity placed by the Customer, ADVANCED reserves the right to charge the Customer for the variance. This variance charge will be calculated by:

$$(O - I) \times R \times 50\%$$

Where:

O is the ordered quantity;

I is the actual installed quantity; and

R is the unit price for the product installed.

#### 14. GENERAL

- a. The Hire Contract will be governed according to the laws of the State of QUEENSLAND.
- b. Any Provision of the Hire Contract which is illegal, void or unenforceable in whole or in part will be ineffective only to the extent of such illegality voidness or unenforceability without invalidating the remaining parts or provisions of the Hire Contract.
- c. The Customer will be responsible for paying all stamp duty (if any) payable on the Hire Contract.
- d. No waiver by or on behalf of any breach of the terms and conditions of the Hire Contract will take effect or be binding upon that the party unless expressed in writing, and any waiver so given will extend only to the particular breach so waived and will not limit or affect any rights with respect to any other or future breach.
- e. Words importing the singular include the plural and vice versa.
- f. The Customer authorises ADVANCED, if it requires to so do, to obtain a credit report or a credit worthiness report containing personal and/or commercial information concerning the Customer and/or the Customer's business from a credit reporting agency or another business.

- g. Nothing in this agreement gives the Customer any legal right of ownership to the Fencing System and that ownership of the stock remains with ADVANCED at all times during and after the hire term. The Customer is expressly prohibited from allowing any other party to register a security interest over the Fencing System.
- h. The Customer provides authority for ADVANCED to take photographs and/or video of the Customer's site where the products are being installed as a record and evidence of the installation.
- i. The Customer is not permitted to transfer or assign the Hire Agreement for the Fencing System to any other party unless prior written consent has been obtained from Advanced. The Customer remains responsible for the Fencing System, including all outstanding hire charges until it is transferred or assigned to another party. Advanced reserves the right to charge the transferee a fee to assign or transfer the contract, which the transferee fully accepts as part of the terms and conditions of the original hire agreement as well as the new hire agreement if one exists.