

Terms and Conditions of Sale

This Fence First Fence Purchase Agreement Terms and Conditions of Sale (this “Agreement”) is made by and between First Fence US Inc. (“First Fence”) and Customer (collectively, the “Parties”) and is effective as of the last date executed by both Parties (the “Effective Date”).

WHEREAS, First Fence is engaged in the business of manufacture and supply of security fencing, temporary fencing, traffic management, and access solutions (the “Goods” as defined herein) in the United States and any other countries or territories in First Fence may operate; and

WHEREAS, Customer desires to purchase from First Fence such Goods to be used by Customer within or outside of in the United States and First Fence desires to sell to Customer such Goods;

NOW THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. Definitions and Interpretation

1.1. The following definitions apply in this Agreement.

Business Day: a day other than a Saturday, Sunday or federal holiday.

Business Hours: the period from 9:00 am to 5:00 pm on any Business Day.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.

Contract: the contract between First Fence and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from First Fence.

Delivery Location: has the meaning given in clause 4.1.

Force Majeure Event: an event, circumstance or cause beyond a Party’s reasonable control.

Goods: the products, goods (or any part of them) set out in the Order.

Order: the Customer’s order for the Goods, as set out in the Customer’s purchase order form or in the Customer’s written or oral acceptance of First Fence’s quotation, the Customer’s written acceptance of First Fence’s quotation or the Customer making payment to First Fence.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and First Fence attached to the Order or provided to the Customer via email.

Warranty Period: has the meaning given in clause 5.1.

1.2. The following definitions and rules of interpretation apply in this Agreement:

(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (b) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (c) Clause and paragraph headings shall not affect the interpretation of this Agreement.
- (d) A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (e) A reference to a Party includes its personal representatives, successors and permitted assigns.
- (f) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (g) Any words following the terms including, include, in particular, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (h) A reference to writing or written excludes fax but not email.
- (i) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

2. Terms and Conditions

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification (submitted by the Customer) are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when First Fence issues a written acceptance of the Order or when First Fence and Customer actively begin and proceed with the terms of the Order regardless of written acceptance, at which point the Contract shall come into existence.
- 2.4. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5. Any samples, drawings, descriptive matter or advertising produced by First Fence and any descriptions or illustrations contained in First Fence's catalogs or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6. A quotation for the Goods given by First Fence shall not constitute an offer. A quotation shall only be valid for a period of 5 Business Days from its date of issue.

3. Goods

- 3.1. The Goods are described in First Fence's catalog (either via an online format (Supplier website) or other form of method by which the Goods are described) as modified by any applicable Specification or entirely as detailed within the Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify First Fence against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by First Fence in connection with any claim made against First Fence for actual or alleged infringement of a third Party's intellectual property rights arising out of or in connection with First Fence's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3. First Fence reserves the right to amend any Specification if required by any applicable statutory or regulatory requirement, and First Fence shall notify the Customer of any such amendment.

4. Delivery

- 4.1. At the time of delivery, the Customer warrants:
 - (a) that all necessary labor, equipment and facilities to enable the correct offloading of the "Goods" will be provided by the Customer in a safe environment;
 - (b) all unloading will be completed with reasonable speed and a delivery shall take no more than 30 minutes from arrival of the delivery van; and
 - (c) to dispose of any delivery material received as part of the delivery (to include materials of wood, metal stillages or plastics).
- 4.2. The Customer also warrants that the Customer shall provide First Fence or its representative who is undertaking the delivery with the appropriate delivery environment (as defined in the Order) and furthermore shall not delay in anyway the delivery and where the delivery is delayed shall keep such delay to an absolute minimum. The Parties agree that where the delivery is delayed following arrival for a period exceeding 30 minutes, for each 30-minute window after arriving for delivery where delivery has not occurred, First Fence may charge (at its discretion) the Customer a "late delivery fee" of \$300 per 30-minute window provided that such charge shall only apply for a maximum of 2 hours at any one time. After such 2-hour window and if the delivery is still unable to deliver (or deems it inappropriate to deliver) the delivery driver may leave and the customer shall be charged a fee for non-delivery which shall be a debt following First Fence issuing an invoice.
- 4.3. The Customer further warrants that all acts all actions set out in clause 4.1 (a), (b), (c), 4.2 and this clause 4.3 will be at the sole risk of the Customer and the Customer shall indemnify First Fence for any lost, costs, claims, actions or any other such matter which First Fence incurs as a result of the Customer not fulfilling its duties under clauses 4.1 (a), (b), (c). 4.2 and 4.3.
- 4.4. First Fence shall deliver the Goods to the location set out in the Order or such other location as the Parties may agree (Delivery Location) at any time after First Fence notifies the Customer that the Goods are ready.
- 4.5. If the Customer chooses to collect the Goods it shall collect the Goods from First Fence's premises as specified on the Order or such other location as may be advised by First Fence prior to delivery

(Delivery Location) within three Business Days of First Fence notifying the Customer that the Goods are ready.

- 4.6. The price agreed in the Order includes Suppliers normal delivery charges but where First Fence incurs further (which can be (but not limited to) the Customer not meeting its obligations under the provisions of this clause 4, First Fence will charge the Customer additional costs or expenses such as (but not limited to): i) those caused by delivery of less than a full load, ii) complying with your request for delivery outside our normal delivery pattern (being 7am to 5pm Monday to Friday except holidays and bank holidays unless stated otherwise on the Order) or trading by instalments, iii) orders of small value which are not economical for us to deliver free; or iv) providing assistance through representatives at the time of delivery.
- 4.7. Delivery is completed on the completion of loading of the Goods at the Delivery Location. At the discretion of First Fence, Delivery may be made in stages (and invoiced at each stage separately) by way of notification to the Customer.
- 4.8. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. First Fence shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide First Fence with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.9. If First Fence fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. First Fence shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide First Fence with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.10. If the Customer fails to accept delivery of the Goods within three Business Days of First Fence notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or First Fence's failure to comply with its obligations under the Contract in respect of the Goods:
 - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which First Fence notified the Customer that the Goods were ready; and
 - (b) First Fence shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.11. If ten Business Days after the day on which First Fence notified the Customer that the Goods were ready for delivery the Customer has not taken actual delivery of them, First Fence may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 4.12. If First Fence delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, First Fence shall make a pro rata adjustment to the invoice for the Goods.
- 4.13. First Fence may deliver the Goods by instalments, which shall (unless the Customer has already paid) be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any

delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

- 4.14. Notwithstanding the provisions in this clause 4 and in particular the warranty provided in clause 4.1 (a), where the Customer requests (and First Fence accepts in writing) First Fence to provide all necessary labor, equipment and facilities to enable the correct offloading of the “Goods”, the Customer warrants that it shall meet and deliver all requested conditions and settings (the “Environment”) requested by First Fence to enable First Fence to deliver the Goods in accordance with this clause 4.14. In addition, where the Customer makes such requests the Customer shall pay all costs and expenses of First Fence in meeting the Delivery conditions and where the Customer fails to provide the Environment in accordance with First Fence’s request at the time of delivery, the Customer, without delay shall pay all costs and expenses incurred by First Fence as a result of such breach.

5. INDEMNITY AND REPRESENTATIONS

5.1. DISCLAIMER OF ALL EXPRESS OR IMPLIED WARRANTIES AND REPRESENTATIONS

- (a) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPLIER GIVES NO WARRANTY AND MAKES NO REPRESENTATION, WHETHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING (WITHOUT LIMITATION) CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.**

- 5.2. First Fence accepts no liability for any loss or damage suffered by the Customer or any third Party as a result of or in connection with the Goods being used for a purpose which the Goods were not intended.

- 5.3. First Fence warrants that on delivery, and for a period of 28 days from the date of delivery (the “Warranty Period”), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification subject to the provisions of this Agreement; and
- (b) be free from material defects in design, material and workmanship.

- 5.4. Subject to clause 5.5, if:

- (a) the Customer gives notice in writing to First Fence during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not correspond with the description in the Order, or are subject to a charge or encumbrance not disclosed or known to Customer before the date of execution of this Agreement, or do not comply with the warranty set out in clause 5.3;
- (b) First Fence is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by First Fence) returns such Goods to First Fence’s place of business at the Customer’s cost, then

- (d) First Fence shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.5. First Fence shall not be liable for the Goods' failure to comply or correspond with the description in the Order or with the warranty set out in clause 5.3 if:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.4;
 - (b) the defect arises because the Customer failed to follow First Fence's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of First Fence following any drawing, design or specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of First Fence;
 - (e) the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions;
 - (f) the Customer fails to notify First Fence with written notice within the Warranty Period; or
 - (g) the Goods differ from their description the Specification because of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.6. Except as provided in this clause 5, First Fence shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.3.
- 5.7. These Conditions shall apply to any repaired or replacement Goods supplied by First Fence.
- 5.8. Notwithstanding this clause 5 or any other provision in these Terms and Conditions, all No. 3 and No. 4 grade lumber products ("Lumber Products") sold by Seller are sold "as is" and without any warranty of any kind.
- 5.9. Buyer further acknowledges and agrees with regards to Lumber Products:
- (a) No. 3 and No. 4 grade lumber may contain defects, irregularities, or other characteristics consistent with such grading classifications.
 - (b) Buyer has had the opportunity to inspect the goods or request grading standards prior to purchase.
 - (c) Seller will provide a copy of its applicable grading standards upon request.
 - (d) All sales of No. 3 and No. 4 grade lumber are final, and no returns, refunds, credits, or exchanges will be accepted.
- 5.10. To the fullest extent permitted under applicable law, Buyer assumes all risks associated with the purchase, handling, resale, and use of Lumber Products.
- 5.11. **INDEMNIFICATION**

- (a) INDEMNITY AND DEFENSE. CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS SUPPLIER AND SUPPLIER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS, FROM AND AGAINST ALL LOSSES ARISING FROM, IN CONNECTION WITH OR RELATING TO ALLEGATIONS OF ANY OF THE FOLLOWING:**
- (i) DEATH OF OR INJURY TO ANY AGENT, EMPLOYEE, INVITEE, VISITOR OR OTHER PERSON TO THE EXTENT CAUSED IN WHOLE OR IN PART BY THE CONDUCT OF SUPPLIER, ITS AFFILIATES, OR THEIR RESPECTIVE AGENTS, EMPLOYEES OR (SUB)CONTRACTORS;**
 - (ii) DAMAGE TO, OR LOSS OR DESTRUCTION OF, ANY REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT CAUSED IN WHOLE OR IN PART BY CONDUCT OF SUPPLIER, ITS AFFILIATES, OR THEIR RESPECTIVE AGENTS, EMPLOYEES OR (SUB)CONTRACTORS;**
 - (iii) BREACH OF SUPPLIER'S REPRESENTATIONS AND WARRANTIES PURSUANT TO THIS AGREEMENT;**
 - (iv) ANY LOSSES RESULTING DIRECTLY FROM A BREACH BY SUPPLIER, OR ITS EMPLOYEES, OF THIS AGREEMENT, INCLUDING INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, TO THE EXTENT AVAILABLE BY LAW OR EQUITY, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE;**
 - (v) ANY CLAIM, DEMAND, CHARGE, ACTION, CAUSE OF ACTION OR OTHER PROCEEDING, INCLUDING WITHOUT LIMITATION ANY CLAIMS OF PERSONAL INJURY, HARASSMENT, DISCRIMINATION, RETALIATION OR WRONGFUL DISCHARGE, ASSERTED AGAINST SUPPLIER BY ANY EMPLOYEE OR CONTRACTOR OF CUSTOMER, EXCEPT WHERE SUCH CLAIM, DEMAND, CHARGE, ACTION, CAUSE OF ACTION OR OTHER PROCEEDING IS BASED SOLELY UPON ALLEGED MISCONDUCT BY CUSTOMER;**
 - (vi) ANY AMOUNTS, INCLUDING WITHOUT LIMITATION, TAXES, INTEREST AND PENALTIES ASSESSED AGAINST SUPPLIER WHICH ARE OBLIGATIONS OF CUSTOMER UNDER THIS AGREEMENT;**
 - (vii) ACTS OR OMISSIONS OF SUPPLIER PERSONNEL LOCATED AT ANY FACILITY OF CUSTOMER OR ITS AFFILIATES, INCLUDING WITHOUT LIMITATION ACTS OR OMISSIONS WHICH CAUSE LOSS OF CUSTOMER'S PROPERTY;**
 - (viii) ANY CLAIMS FOR PENALTIES, INTEREST AND OTHER CHARGES (BUT NOT THE UNDERLYING TAXES) IMPOSED BY A TAXING AUTHORITY (EXCEPT THE ACTUAL TAXES PAYABLE BY CUSTOMER UNDER THE TERMS OF THIS AGREEMENT) ARISING FROM OR RELATED TO SUPPLIER ISSUING AN INCORRECT**

INVOICE OR OTHER INFORMATION TO CUSTOMER REGARDING TAXES PAYABLE, OR ARISING FROM OR RELATED TO SUPPLIER'S FAILURE TO TIMELY REMIT TAX PAYMENTS TO THE APPLICABLE TAXING AUTHORITIES; and

- (ix) **CUSTOMER'S DEFENSE AND INDEMNITY OBLIGATIONS HEREIN APPLY EVEN IF THE SOURCE OF LIABILITY IS THE ALLEGED OR ACTUAL JOINT OR CONTRIBUTORY NEGLIGENCE OF SUPPLIER, EVEN THOUGH CAUSED IN WHOLE OR IN PART BY A PRE-EXISTING DEFECT, THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT), GROSS NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL FAULT OF SUPPLIER. IT IS THE INTENTION OF THE PARTIES THAT THIS INDEMNIFICATION SECTION COMPLY WITH THE EXPRESS NEGLIGENCE DOCTRINE OF TEXAS.**

6. Installation

- 6.1. Where the Customer has requested (and First Fence has accepted) an installation or installations under terms set out in the Order, we shall undertake such installations either by a representative of First Fence Limited or a sub-contractor who we appoint at our discretion.
- 6.2. Where a installation is undertaken, you warrant that the conditions set out in the "Installation Conditions" as set out in the Order are correct and true and you indemnify us, without limitation for any loss, expense, costs or claims that may result from either the Installation Conditions being incorrect or the circumstances once First Fence or its sub-contractor begins the installation revealing an alternative circumstance or circumstances.
- 6.3. Where the Installation Conditions differ on arrival or by discovery from those set out within the Order including delays, First Fence (its representative, employee or its sub-contractor) reserves the right to abandon the installation and shall continue to abandon the installation until such time that the Installation Conditions are approved by First Fence, in writing. Where First Fence is required to abandon such installation in accordance with this clause 6.3, the Customer shall pay immediately and on demand, all costs and expenses incurred by First Fence as a result of such abandonment and such costs and expenses shall be in addition to the installation fee. If a revised Installation Condition cannot be agreed 7 days from the date of the original installation, First Fence reserves the right to cancel the services relating to the installation and retain the installation fee. The Customer acknowledges this right of First Fence and shall not bring any recourse against First Fence.

7. Cancellation and Customer Postponement

- 7.1. Cancellation or postponement of orders cannot be accepted without prior written consent of First Fence provided no cancellation requests (whether in writing or oral) can be made 24 hours after the date of order and in the event of cancellation, the Customer shall pay to First Fence all costs and expenses incurred by First Fence up to the date of the time of cancellation which shall include all loss of profits and other loss or damage resulting to First Fence as a result of the cancellation. The Customer shall reimburse First Fence within 7 working days of First Fence making the Customer aware of the costs due to them because of this clause 7.1.
- 7.2. Subject to the provisions of clause 7.1, where the Customer requests postponement of an order and First Fence accepts such request, in writing, First Fence reserves the right to charge additional costs and expenses incurred by First Fence as a result of the postponement request. In the event of such

postponement, the Customer agrees to reimburse First Fence for any reasonable and verifiable costs incurred by First Fence as a direct result of the postponement. These may include, but are not limited to, additional storage, handling, administrative, transportation, and logistical costs. Any costs charged to the Customer under this clause will be calculated based on First Fence's actual costs, and First Fence shall provide an itemized statement of such costs upon the Customer's request. The Parties acknowledge that the costs described in this clause are intended to compensate First Fence for the actual costs incurred because of the postponement and do not constitute a penalty but are a genuine pre-estimate of loss.

- 7.3. Where this Agreement is terminated in accordance with clause 7.1 (subject to Supplier's written consent) the Customer will be liable for the Cancellation Fee as defined in clause 7.4. The Cancellation Fee will incorporate the costs incurred by First Fence when accepting the order in the following manner:
- (a) To a level up to 20% of the Order Fee (to be defined in the Order From) regarding costs incurred by First Fence in connection (but by no means limited to):
 - (i) investigating the affairs of Customers prior to entry into this Agreement;
 - (ii) negotiating, preparing, and executing this Agreement and any documents referred to in it; and
 - (iii) rescinding or terminating this Agreement.

And for the purposes of this Agreement, such costs shall be defined as the "Cancellation Fee".

- (b) To a level up to a further 20% of the Order Fee (to be defined in the Order From) regarding costs incurred by First Fence in connection with (but by no means limited to) all the costs, including any applicable sales taxes, and incurred by Supplier in connection (but not limited to) with arranging storage of the Product and costs related to that storage.
- 7.4. The Cancellation Fee will be determined at the point of Cancellation. However, the total charge of the Cancellation shall not at any time exceed 40% of the Order Fee regarding the Goods only and any additional cost for Delivery.
- 7.5. The Parties acknowledge that the Cancellation Fee is intended to compensate First Fence for the actual costs incurred because of the cancellation and do not constitute a penalty but are a genuine pre-estimate of loss.
- 7.6. Notwithstanding the provisions in this clause 7 First Fence may at its sole discretion (and only by way of Sales Managers (from time to time) written approval) waive the cost of a Cancellation Fee by way of written notice to the Customer provided that such circumstance will only be considered in exceptional circumstances.
- 7.7. For avoidance of doubt, any non-standard, bespoke, Goods which are not normally stocked by First Fence or Goods which have been modified (including painted) for the Customer shall be exempt from this clause 7 and cannot be returned and/or refunded.

8. Title and risk

- 8.1. The risk in the Goods shall pass to the Customer on completion of delivery.

- 8.2. Title to the Goods shall not pass to the Customer until the earlier of:
- (a) First Fence receives payment in full (in cash or cleared funds) for the Goods and any other goods that First Fence has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 8.4.
- 8.3. Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as First Fence's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (d) notify First Fence immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
 - (e) give First Fence such information as First Fence may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.
- 8.4. Subject to clause 8.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before First Fence receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as First Fence's agent; and
 - (b) title to the Goods shall pass from First Fence to the Customer immediately before the time at which resale by the Customer occurs.
- 8.5. At any time before title to the Goods passes to the Customer, First Fence may:
- (a) by notice in writing, terminate the Customer's right under clause 8.4 to resell the Goods or use them in the ordinary course of its business; and
 - (b) require the Customer to deliver up all Goods in its possession that have not been resold or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third Party where the Goods are stored in order to recover them.

9. Price and payment

- 9.1. The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in First Fence's published price list in force as at the date of delivery.
- 9.2. Credit facilities are offered at First Fences discretion and may be withdrawn, reduced or at any time at the sole discretion of First Fence.
- 9.3. First Fence may, by giving notice to the Customer at any time up to 7 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - (a) any factor beyond First Fence's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labor, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give First Fence adequate or accurate information or instructions.
- 9.4. The price of the Goods:
 - (a) First Fence excludes any applicable state or local taxes, which is the sole responsibility of the Customer; and
 - (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer
- 9.5. First Fence may invoice the Customer for the Goods up to any time after the completion of delivery (unless the invoice has already been settled).
- 9.6. The Customer shall pay each unpaid invoice submitted by First Fence
 - (a) within 30 days from the last month or in accordance with any credit terms or other payment terms agreed by First Fence and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by First Fence, and time for payment shall be of the essence of the Contract.
- 9.7. If the Customer fails to make a payment due to First Fence under the Contract by the due date, then, without limiting First Fence's remedies under clause 13, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment in accordance with the lower of 1.5% per month or the maximum rate allowed under applicable law. As used in this Section, the term "applicable law" shall mean the laws of the State of Texas.
- 9.8. Notwithstanding the provisions as set out in this clause 9, if First Fence believes that the Customers financial position has deteriorated or has reason believe the Customer financial may deteriorate in the near future, First Fence (at its discretion) can either demand advance payment of the Goods or demand immediate payment of the Goods and invoice from the Customer by serving written notice on the Customer.

- 9.9. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.10. A surcharge of three percent (3%) will be added to all payments made by credit card to offset processing costs; however, the surcharge will not exceed Seller's actual cost of acceptance. For customers located in Oklahoma, the surcharge shall be limited to two percent (2%). The surcharge applies only to credit card payments and will not be imposed where prohibited by applicable law. Seller may modify or discontinue the surcharge to comply with applicable legal or card network requirements.

10. Limitation of liability

- 10.1. TO THE FULLEST EXTENT PERMITTED BY LAW, FIRST FENCE SHALL NOT BE LIABLE TO CUSTOMER OR ANY OTHER PERSON FOR ANY INJURY TO OR LOSS OF GOODWILL, REPUTATION, BUSINESS, PRODUCTION, REVENUES, PROFITS, ANTICIPATED PROFITS, CONTRACTS, OR OPPORTUNITIES (REGARDLESS OF HOW THESE ARE CLASSIFIED AS DAMAGES), OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR ENHANCED DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, OR OTHERWISE (INCLUDING THE ENTRY INTO, PERFORMANCE, OR BREACH OF THIS AGREEMENT), REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE, PROVIDED, HOWEVER, THESE LIMITATIONS SHALL NOT APPLY TO FIRST FENCE'S LIABILITY, IF ANY, FOR CONTRIBUTION OR INDEMNITY WITH RESPECT TO LIABILITY TO THIRD PARTIES FOR PERSONAL INJURY, DEATH, OR DAMAGE TO TANGIBLE PROPERTY AS A RESULT OF THE FIRST FENCE'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.
- 10.2. First Fence's total liability on an aggregate basis to the Customer shall not exceed the total sum payable under the particular Order to which the claim relates.
- 10.3. This clause 10 shall survive termination of the Contract.

11. Laws and Regulation

- 11.1. The Customer hereby warrants and agrees that that it shall follow and adhere to any applicable laws and regulations associated with the Goods. These laws shall include any health and safety and environmental and waste management legislation and regulations. The Customer warrants that they Customer shall undertake to ensure that the Customer, its employees, agents and customers shall adhere any such legislation or regulations and/or directions in using the Goods as provided by First Fence.

12. Indemnification.

- 12.1. Customer's Indemnification Obligations. Customer shall indemnify, defend, and hold harmless First Fence and its officers, directors, employees, agents, successors, and assigns against all claims and/or losses (including all reasonable attorneys' fees) arising out of or resulting from any third party claim, suit, action, or proceeding related to or arising out of or resulting from Customer's

breach of any representation, warranty, covenant, or obligation under this Agreement (each an "Action").

- 12.2. Indemnification Procedure. First Fence shall promptly notify Customer in writing of any Action and cooperate with First Fence at Customer's sole cost and expense. Customer shall immediately take control of the defense and investigation of the Action or IP Action and shall employ counsel reasonably acceptable to First Fence to handle and defend the Action or IP Action, at Customer's sole cost and expense. Customer shall not settle any Action or IP Action in a manner that adversely affects First Fence's rights without First Fence's prior written consent, which shall not be unreasonably withheld or delayed. First Fence's failure to perform any obligations under this Section 12.2 shall not relieve Customer of its obligation under this Section 12, except to the extent that Customer can demonstrate that it has been materially prejudiced as a result of the failure. First Fence may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13. Termination

- 13.1. Without limiting its other rights or remedies, First Fence may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 13.2. Without limiting its other rights or remedies, First Fence may suspend provision of the Goods under the Contract or any other contract between the Customer and First Fence if the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or First Fence reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.3. Without limiting its other rights or remedies, First Fence may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 13.4. On termination of the Contract for any reason the Customer shall immediately pay to First Fence all of First Fence's outstanding unpaid invoices and interest and, in respect of Goods supplied but

for which no invoice has been submitted, First Fence shall submit an invoice, which shall be payable by the Customer immediately on receipt.

- 13.5. Termination or expiry of the Contract, however arising, shall not affect any of the Parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. Force majeure

Neither Party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for (1) one month, the Party not affected may terminate the Contract by giving seven (7) days written notice to the affected Party.

15. General

15.1. Assignment and other dealings.

- (a) First Fence may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of First Fence.

15.2. Confidentiality.

- (a) Each Party undertakes that it shall not at any time during the Contract and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other Party, except as permitted by clause 15.2(b).
- (b) Each Party may disclose the other Party's confidential information:
 - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under the Contract. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with this clause 15.2; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- (c) Neither Party shall use the other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 15.3. Entire Agreement.
- (a) The Contract constitutes the entire Agreement between the Parties.
 - (b) Each Party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 15.4. Amendments. No amendment of this Contract shall be effective unless it is in writing and signed by the Parties (or their authorized representatives).
- 15.5. Waiver.
- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
 - (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 15.6. Set Off. The Customer hereby waives any and all existing, future claims for compensation or set off against any payments due by the Customer to First Fence under any Order or contract between the Parties and shall pay all sums due to First Fence in accordance with the agreed payment terms, regardless of any ongoing dispute.
- 15.7. Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 15.8. Notices.
- (a) Any notice given to a Party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the following addresses (or an address substituted in writing by the Party to be served):

Supplier: stacey.grice@firstfenceusa.com

Customer: the email address as stated on the Order Form.

- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid certified mail, return receipt requested or by a nationally recognized next working day delivery service, at 9:00 am on the Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.9. Third Party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights to any third Party to enforce any term of the Contract.
- (b) The rights of the Parties to rescind or amend the Contract are not subject to the consent of any other person.

15.10. Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with Texas law.

15.11. Jurisdiction. Each Party irrevocably agrees that the courts of Dallas, Texas shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.