

**ENFORCEABLE UNDERTAKING UNDER
THE AUSTRALIAN CONSUMER LAW (WA)**

BETWEEN

UNITED FENCING WA PTY LTD (ACN 155 401 835)

AND

JAMES LEE BATTAH

AND

COMMISSIONER FOR CONSUMER PROTECTION

RECITALS

WHEREAS:

- A. **UNITED FENCING WA PTY LTD** ("**Company**") carries on business under the business name "United Fencing WA" providing fencing services to consumers in Western Australia;
- B. **JAMES LEE BATTAH** ("**Battah**") is the sole director of the Company;
- C. This Enforceable Undertaking is accepted by the Commissioner for Consumer Protection ("**Commissioner**") under section 218 of the *Australian Consumer Law (WA)* and is enforceable under that section by a court upon the Commissioner application;

- D. For the purposes of this Enforceable Undertaking:
- a) 'consumer' has the same meaning as it does under the *Australian Consumer Law (WA)* and the *Fair Trading Act 2010 (WA)*;
 - b) 'supply' means the supply of fencing services by the Company, whether by an employee, agent, subcontractor or otherwise and may include the supply of services by the Company as a contractor; and
 - c) 'fencing services' includes the provision of labour, advice, skill, goods and materials and includes all preparatory and other works necessary for the provision of fencing services.
- E. This Enforceable Undertaking does not prevent the Commissioner from taking any action in respect of the matters the subject of this Enforceable Undertaking;
- F. The rights of consumers are not affected by this Enforceable Undertaking;
- G. This Enforceable Undertaking is not confidential and may be published by the Commissioner.

UNDERTAKINGS

UNITED FENCING WA PTY LTD and **JAMES LEE BATTAH**, upon this Enforceable Undertaking being accepted by the Commissioner, **UNDERTAKE**, pursuant to section 218 of the *Australian Consumer Law (WA)*, that:

Supply under existing consumer contracts

1. In respect of all contracts or agreements entered into by the Company for the supply of fencing services under which the Company has yet to supply the fencing services, the Company will within 14 days of the date of acceptance of this undertaking:
 - 1.1. give to each consumer under such a contract or agreement written notice of the date upon which or the time within which the fencing services are to be commenced;

- 1.2. give to each consumer a copy of this Enforceable Undertaking; and
- 1.3. provide a copy of each written notice to the Commissioner.
2. For the purposes of clause 1.1, the date given to the consumer must be:
 - 2.1. in relation to contracts or agreements entered into on or before 31 January 2013, no later than **30 April 2013**;
 - 2.2. in relation to contracts or agreements entered into after 31 January 2013, not later than **3 months after the date of the contract or agreement**.
3. For the purposes of clause 2, the date of the contract or agreement is the date on which the consumer accepted, whether in writing or verbally, a quote from the Company or the date on which the consumer paid a deposit, whichever is the earlier date.
4. The Company will refund to the Western Australian consumers listed in Column A of Annexure 1 the sums listed in Column B of Annexure 1 on or before **15 April 2013** and the Company acknowledges that, in making that refund, it releases those consumers from any obligations under or in relation to any contract or agreement.
5. In the event that the Company fails to comply with clauses 1 and 2 in respect of any consumer, the Company will, within 48 hours of that failure, refund to that consumer any amount already paid by the consumer.

Future supplies to consumers

6. The Company will not supply, or agree to supply, any fencing services to a consumer without first providing to the consumer a written quotation setting out:
 - 6.1. the total cost of the fencing services, including:
 - a) the cost of materials;
 - b) the cost of labour; and
 - c) any other costs, including fees, charges and taxes, which will form part of the price paid by the consumer for the fencing services;
 - 6.2. the amount of any deposit does not exceed 10% of the total cost of the fencing services.

7. The Company will not supply any fencing services to a consumer, or accept any payment from a consumer in respect of the supply or agreement to supply fencing services, unless the Company has first entered into a written agreement with the consumer setting out:
 - 7.1. the cost of the fencing services in accordance with clause 6;
 - 7.2. the amount of any deposit, in accordance with clause 8, the consumer must pay prior to the supply of the fencing services;
 - 7.3. the date upon which or the time within which the fencing services are to be commenced;
 - 7.4. the date upon which or the time within which the fencing services are to be completed;
 - 7.5. the contact details of the Company and Battah including the business address of the Company and a telephone number that will be answered during normal business hours.
8. The Company will not accept any payment in respect of the supply of, or agreement to supply, fencing services prior to the completion of the fencing services unless:
 - 8.1. the amount does not exceed 10% of the total cost of the fencing services; and
 - 8.2. the Company has complied with clause 6.
9. Where the Company receives any payment from a consumer in respect of the supply, or agreement to supply, fencing services, the Company will provide to the consumer, and retain a copy of, a receipt for that payment.
10. The Company will, in the event of any dispute arising in connection with the supply of, or agreement to supply, fencing services, whether raised orally or in writing within fourteen (14) days:
 - 10.1. notify the Commissioner of the dispute;
 - 10.2. inform the consumer that the Commissioner has been notified of the dispute; and
 - 10.3. provide to the consumer a copy of this Enforceable Undertaking.

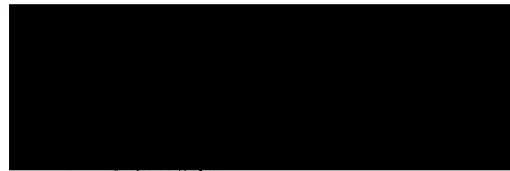
11. The Company will supply all fencing services within the time agreed in writing in accordance with clause 7, but if those services cannot be completed within the time notified or agreed in writing the Company will:
 - 11.1. within 24 hours of becoming aware of the any circumstances that will prevent the Company from being able to supply the fencing services within the time agreed in writing, inform the consumer:
 - a) that the Company will not be able to supply the fencing services within the time agreed in writing; and
 - b) of the date on which or the time within which, not being more than 14 days after the time agreed in writing, the fencing services are to be completed.
 - 11.2. if the fencing services are not supplied within 14 days of the time agreed in writing, the Company will, within 48 hours of the expiry of that time, refund in full to the consumer all payments already received from the consumer; and
 - 11.3. treat the fact of non-supply as a 'dispute' and the Company will take the steps referred to at clause 10 of this Enforceable Undertaking.

12. Battah will do all things necessary to cause the Company to comply with these undertakings.

Signed for and on behalf of:

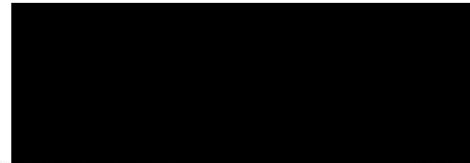
A. **UNITED FENCING WA PTY LTD**)
ACN 155 401 835
in accordance with section 127 of the
Corporations Act 2001 (Cth)

JAMES LEE BATTAH)
in his capacity as Director



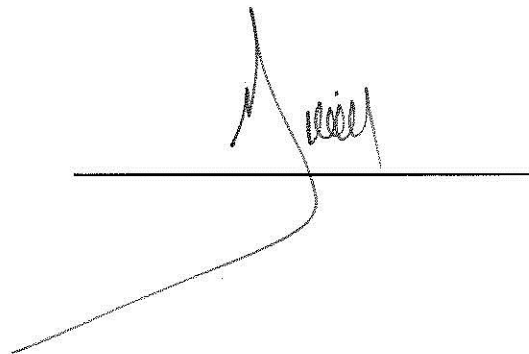
Signature of JAMES LEE BATTAH

B. **JAMES LEE BATTAH**)
in his own right



Signature of JAMES LEE BATTAH

C. ANNE MARIE DRISCOLL)
COMMISSIONER FOR
CONSUMER PROTECTION



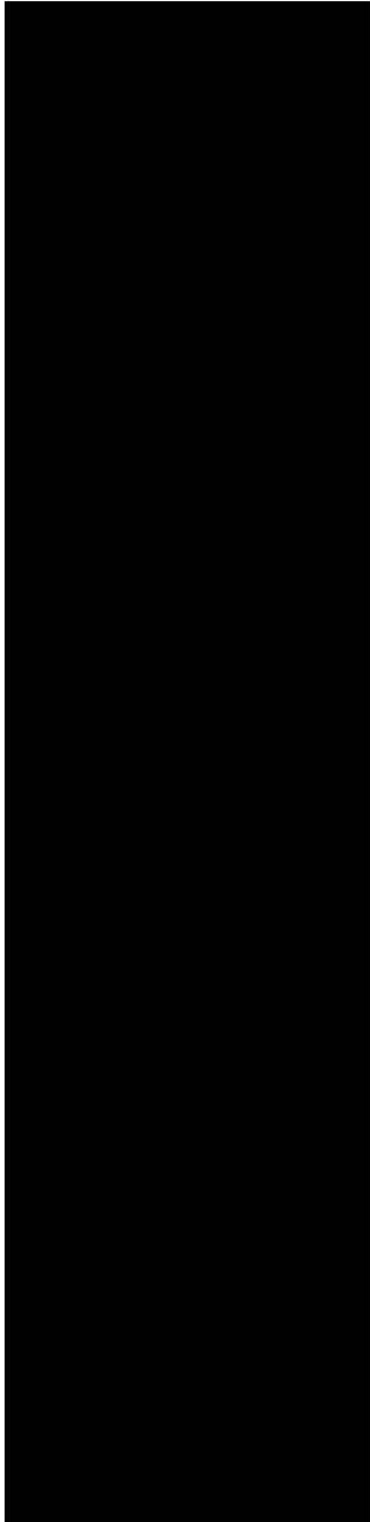
DATE UNDERTAKING ACCEPTED)

25th March 2013

ANNEXURE 1

Column A (Consumer)

Column B (Amount)



\$567.00

\$1870.00

\$316.00

\$440.00

\$1100.00

\$2350.00

\$2065.00

\$1140.00

\$1265.00

\$1624.00

\$2183.00

\$1000.00

\$3355.50

\$2153.00

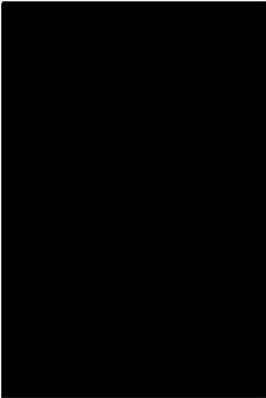
\$2800.00

\$1600.00

\$1677.00

\$1700.00

\$873.00



\$1336.50

\$3242.00

\$1307.00

\$5360.64

\$1400.00