

# PURCHASE TERMS

## 1. Definitions

In These Purchase Terms and Conditions unless the context otherwise requires:

- a. **Purchase Order, PO, Small Works Agreement or Contractual Documents** means the documents provided to the Vendor in relation to the supply of goods or services.
- b. **Vendor or Subcontractor** means a supplier of products or services, as defined by providing products or services of commercial trade that a supplier has a legal business in Australia for.
- c. **Works** means the product or service supplied to Spike Design Australia Pty Ltd
- d. **Spike** means Spike Design Australia Pty Ltd ABN 68 610 960 391 or it's associated companies or subsidiaries.
- e. **Completion** means when the Works (or if applicable a stage of the Works) are fully complete to the satisfaction of Spike and **Complete** has a corresponding meaning.
- f. **Civil Liability Act** means:
  - i. Where the Site is located in New South Wales Part 4 of the Civil Liability Act 2002 (NSW).
  - ii. Where the Site is in Victoria the Wrongs Act 1958 (Vic).
  - iii. Where the Site is in Queensland the Civil Liability Act 2003 (Qld).
  - iv. Where the Site is in South Australia the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA).
  - v. Where the Site is in Tasmania the Civil Liability Act 2002 amended by the Civil Liability Amendment (Proportionate Liability) Act 2005 (Tas) and, upon commencement, the Building Act 2000 (Tas).
  - vi. Where the Site is in the Australian Capital Territory the Civil Law (Wrongs) Act 2002 (ACT) and the Building Act 2004 (ACT).
  - vii. Where the Site is in the Northern Territory the Proportionate Liability Act 2005 (NT).

## 2. General

These Purchase Terms and Conditions take precedence over any other supplied documentation. In addition, the Vendor / Subcontractor agrees:

- a. In the event of any inconsistency between these terms, any documentation regard supplier / vendor terms and any project specific contract documents, or between any provisions within any of them, the inconsistency will be resolved as directed Spike.

- b. The doctrine of contra proferentum does not apply to these Purchase Terms and Conditions.
- c. These Purchase Terms and Conditions represents the whole agreement between the parties and the Vendor / Subcontractor acknowledges it did not rely on any representation by Spike on entering into these Purchase Terms and Conditions.
- d. In These Purchase Terms and Conditions, the singular denotes the plural and vice versa unless the contrary intention appears.
- i. In These Purchase Terms and Conditions, headings are for information only and have no operative meaning.
- e. By accepting these works, producing or completing any of the workout outlined in a Purchase Order, Small Works Agreement or written or verbal request by Spike the Vendor / Subcontractor acknowledges it has entered into These Purchase Terms and Conditions in pursuit of its own commercial interests having taken account of and accepted the commercial risks associated with any terms of These Purchase Terms and Conditions which might be regarded as disadvantageous to it.
- f. The Vendor / Subcontractor agrees that the rights conferred on Spike under these Purchase Terms and Conditions are in addition to and not in substitution for its rights under the common law, statute or in equity unless the contrary intention appears.
- g. These Purchase Terms and Conditions will be construed in accordance with the law of New South Wales and the parties irrevocably submit to the jurisdiction of the courts of that state.

## 3. Warranties

The Vendor / Subcontractor warrants:

- a. to perform and complete the Works in a proper and workmanlike manner and in accordance with the these Purchase Terms and Conditions, any contractual or provided documents, the Building Code of Australia, relevant Australian Standards, the best trade standards, Spike's **Code of Conduct** and any other directions or requirements Spike provides in writing or verbally.
- b. That all materials supplied by the Vendor / Subcontractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in These Purchase Terms and Conditions, those materials will be new.
- c. that the Works will be done with due diligence and within the time stipulated in the provided PO or

applicable schedule, or, if no time is stipulated, within a reasonable time.

- d. that the Works and all materials used in performing and completing the Works will be reasonably fit for the specified purpose or result, if Spike has expressly made known to the Vendor / Subcontractor the particular purpose for which the Works are required or the result that Spike desires the Works to achieve, so as to show that Spike relied on the Vendor / Subcontractor's skill and judgement.
- e. that the Works shall comply in all respects with Spike & Spike's quality assurance requirements
- b. They shall do everything necessary to ensure performance by Spike of its obligations, and the obtaining by Spike of all benefits, in respect of any works of which the Works form part.
- c. where any rights of Spike in respect of any works of which the Works form part are restricted or defined in a way disadvantageous to Spike, corresponding rights under These Purchase Terms and Conditions shall be correspondingly restricted and defined.
- d. the Works shall be defined to include all work, materials and provision of plant and equipment necessary and convenient for the proper execution of the Works notwithstanding there may be no specific mention of them in These Purchase Terms and Conditions.
- e. notwithstanding anything in These Purchase Terms and Conditions and any Contract Documents, the Vendor / Subcontractor shall perform the Works and These Purchase Terms and Conditions in accordance with Spike's requirements as advised from time to time.

#### 4. Payment

The sum is provided upon purchase order and is not subject to any increase due to fluctuations in the cost of labour (including productivity allowance) and/or materials, nor to any other, including unseen, factors (except variations in accordance with These Purchase Terms and Conditions), including currency fluctuations, sales and value-added taxes. The requirements to be paid for works completed under these Purchase Terms and Conditions are:

- a. Within fourteen days of or Spike notifying the Vendor / Subcontractor that it considers the Works are sufficiently complete to do so, the Vendor / Subcontractor shall submit a final claim to Spike setting out full details of the amounts claimed accompanied by specific information, calculations and documentation to demonstrate to the satisfaction of Spike that it is correct. Any entitlements not so claimed shall not be recoverable and are hereby waived by the Vendor / Subcontractor.
- b. Any payment made by Spike shall be treated as a payment on account only and no such payment or

related claim shall be evidence or admission that the Works or any part of them; have been performed in accordance with These Purchase Terms and Conditions.

- c. It is a precondition to any payment under These Purchase Terms and Conditions that Spike shall receive from the Vendor / Subcontractor a Statutory Declaration to the effect that no wages are due and owing by the Vendor / Subcontractor in respect of the Works at the date of payment.
- d. Spike may withhold any payments under These Purchase Terms and Conditions on account of any amounts which may become payable by the Vendor / Subcontractor under or for breach of These Purchase Terms and Conditions.
- e. Spike will not provide 'deposit' 'upfront payments' or any pre-start payments for any work, Spike may at its discretion offer a deposit payment for the first item of work completed by a new vendor provided they provide a signed directors guarantee and offer an account (upon acceptance) Spike or under exception circumstances approved by Spike.

#### 5. RCTI Acknowledgement

- a. The Vendor / Subcontractor declare that These Purchase Terms and Conditions relates to the agree supplies.
- b. Spike can issue tax invoices in respect of these supplies.
- c. The Vendor / Subcontractor declare that These Purchase Terms and Conditions relates to the agree supplies. The recipient can issue tax invoices in respect of these.
- d. The vendor acknowledges that it is registered for GST and that it will notify the recipient if it ceases to be registered.
- e. The recipient acknowledges that it is registered for GST and that it will notify the vendor if it ceases to be registered. Acceptance of this recipient created tax invoice (RCTI) constitutes acceptance of the terms of this written agreement.
- f. Both parties to this any supply between the Vendor and, Scaffad and/or Spike agree that they are parties to an RCTI agreement. The vendor must notify the recipient within 21 days of receiving this document if the vendor does not wish to accept the proposed agreement.

#### 6. Time

The Vendor / Subcontractor shall Complete the Works (or, if applicable, each stage of the Works) by the Completion date/s stipulated on each purchase order or by any other documents and or contracts provided for project specific work. In default, the Vendor / Subcontractor shall pay or allow to Spike his actual damages, or if the PO contains a

figure for liquidated damages, then liquidated damages in accordance with the Works. Spike may extend the Completion date at their direction. If no liquidated damages rate is provided the default amount accepted by the Vendor / Subcontractor and Spike is %5 of the total Works value per calendar day until the works have been completed. No payment is claimable for works that exceed the completion / required date by Spike.

## 7. Relationship

The Vendor / Subcontractor acknowledge that in providing any products or services the Vendor / Subcontractor acts as an Independent Contractor as governed by the Independent Contractor Act 2016 (Commonwealth) and not as an employee partner or agent of Spike and the Independent Contractor shall have no authority to act for or bind Spike in any manner whatsoever other than as expressly contemplated by These Purchase Terms and Conditions.

As a consequence of the relationship, the Vendor / Subcontractor (Independent Contractor) agrees that the Independent Contractor is:

- a. Not entitled to payment of salary, holiday pay, sick pay, severance pay, long service leave or any other entitlement which an employee has in respect of his or her employer.
- b. Solely responsible for all payments in relation to any taxes, such as but not limited to income tax, PAYG, payroll tax, sales tax or any other payments imposed on an employer in respect of employees under the law of Australia and New South Wales.
- c. Solely responsible for providing superannuation, sickness benefits and WorkCover in respect of its employees.
- d. Solely responsible for ensuring compliance with all relevant laws of Australia and New South Wales with respect to its provision of the care services.

## 8. Completion

Time shall be of the essence of the Vendor / Subcontractor's obligations under These Purchase Terms and Conditions, In doing so the Vendor / Subcontractor agrees that:

- a. The Vendor / Subcontractor will give Spike written notice of any delay or possible delay as soon as becoming aware of such, whether or not it intends to claim an extension of time.
- b. Not later than five days after any cause of delay arises, the Vendor / Subcontractor shall give written notice of any reasonable claim for an extension of time for completion of the Works accompanied by a complete statement of the factual basis of the claim.
- c. Spike may, at its sole and absolute discretion, grant an extension of time it considers reasonable if:

- i. the delay and its cause justify it.
- ii. the Vendor / Subcontractor has otherwise complied with These Purchase Terms and Conditions.
- iii. The Vendor / Subcontractor has not contributed to the delay.
- iv. The Vendor / Subcontractor has done everything possible to minimise or avoid the delay.
- v. There is no other concurrent cause of the delay and shall notify the Vendor / Subcontractor.

## 9. Variation

The Vendor / Subcontractor shall vary These Purchase Terms and Conditions and the Works as required by Spike. There shall be no adjustment to the Contract Sum in respect of any Variation to the Works unless Spike gives written approval (which may be given at any time) in which case the price of any variation shall be added to or subtracted from the Contract Sum or Value.

If the Vendor / Subcontractor considers any instruction to be a variation for which Spike has not approved an adjustment to the Contract Sum, it shall within three days of the instruction and without at any time ceasing to perform the work required by the instruction or the Works, notify Spike in writing and provide a fully detailed description of and quotation for the work. If the Vendor / Subcontractor fails to comply with the time limit in this clause, he will be deemed to have waived his right to claim the cost of any variation arising out of the instruction.

Any dispute as to the existence or value of a variation shall be dealt with in accordance Clause 32.

## 10. Termination

Termination of the works can be made at the discretion of Spike If the Vendor / Subcontractor:

- a. Substantially suspends the Works.
- b. Fails to proceed with the Works consistently, diligently, expeditiously, safely and in a proper and workmanlike manner to the satisfaction of Spike.
- c. Refuses or neglects to comply with any instruction of Spike.
- d. Fails to commence the Works in accordance with These Purchase Terms and Conditions or otherwise breaches These Purchase Terms and Conditions.

Then, the Vendor / Subcontractor shall be deemed to have repudiated These Purchase Terms and Conditions and, without restricting its right to terminate These Purchase Terms and Conditions forthwith due to the Vendor / Subcontractor's repudiation, Spike may give written notice specifying the default, and if such default continues for two days afterwards, Spike may terminate These Purchase Terms and Conditions.

If the Vendor / Subcontractor has execution levied against it or enters or attempts to enter into any composition or arrangement with its creditors, becomes insolvent or has an official manager, receiver or administrator appointed, Spike may terminate These Purchase Terms and Conditions forthwith without prior notice.

Notwithstanding any other clause of These Purchase Terms and Conditions, Spike may suspend or determine These Purchase Terms and Conditions without cause or notice and the Vendor / Subcontractor shall be entitled to such amount determined by Spike as due to it to the date of termination but shall not be entitled to recover loss of profit arising out of such termination.

The Vendor / Subcontractor shall, upon termination, without payment, assign supply and other agreements required for the Works as required by Spike and Spike shall be entitled to take possession of and employ all plant and equipment, materials and other goods for the execution of the Works whether or not they are on site and shall keep possession of them until completion of the Works.

#### 11. Indemnity

The Vendor / Subcontractor shall keep indemnified Spike, its directors, officers and employees against all loss, damages, claims, liens, actions, liabilities or proceedings whatsoever arising under any statute or at common law or in equity including claims in respect of personal injury to or death of any person or any injury or damage to any property, real or personal, arising out of or in the course of or caused by breach or performance of These Purchase Terms and Conditions or by execution of the Works, including any costs, legal fees and incidental damage resulting therefrom.

#### 12. Civil Liability Act

The Vendor / Subcontractor and Spike agree that, to the extent permitted by law, the operation of the Civil Liability Act is excluded in relation to all and any rights, obligations and liabilities under these Purchase Terms and Conditions whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a Claim in tort or otherwise at law or in equity.

The Vendor / Subcontractor indemnifies Spike against the difference (if any) between the amount of any loss, damage, cost and expense suffered or incurred by Spike for which for the Civil Liability Act, the Vendor / Subcontractor would otherwise have been entitled to recover from the Works and the liability of Spike to the Vendor / Subcontractor as determined by any court under the Civil Liability Act.

#### 13. Defects

The Vendor / Subcontractor will maintain the Works until Completion and the Works will remain at the Vendor / Subcontractor's risk until that time and the Vendor / Subcontractor must make good all defects that may appear in the Works over the subsequent period specified in the PO, Small Works Agreement or any other written direction by Spike.

In default by the Vendor / Subcontractor of its obligations under clause 22(a), Spike may rectify the defects and shall be entitled to apply any retention or any monies withheld from or owing to the Vendor / Subcontractor to the cost of rectification and may recover any shortfall from the Vendor / Subcontractor as and by way of a liquidated debt.

The Vendor / Subcontractor must make good all defects arising out of the works of rectification required by this clause for a further period of twelve months from the date of that further making good.

#### 14. Insurance

The Vendor / Subcontractor shall insure to the satisfaction of Spike against liability at common law and under the Workers' Compensation Act in respect of any person employed by him in or about the execution of the Works or in respect of which he may be or become liable whether employed by him or not.

The Vendor / Subcontractor also shall insure to the satisfaction of Spike against liability to third persons or in respect of the property of third persons in an amount satisfactory to Spike and shall lodge with Spike, prior to commencement of the Works, evidence that all insurances herein specified have been affected and, from time to time, that they are current.

The Vendor / Subcontractor will ensure all insurances have a cross liability clause indemnifying Spike, its directors, employees and agents against all claims.

The Vendor / Subcontractor agrees to waive its right to recover any monies from Spike under any circumstances and confirms it has included these terms in their insurance coverage to the extent permitted by Law.

The Vendor / Subcontractor confirms and agrees it has sought legal advice in relation to the terms of the insurances required under these Purchase Terms and Conditions and their level of insurance coverage.

The Vendor / Subcontractor will maintain the below insurances for a period of at least seven (7) years of the

completed date of a Purchase Order or Small Works Agreement:

- a. Public Liability Insurance (\$20,000,00 minimum coverage)
- b. Workers Compensation Insurance (or similar) (to the minimum statutory requirement)
- c. Professional Indemnity Insurance (minimum \$5,000,000 coverage)
- d. Contract Works Insurance (minimum \$1,000,000 coverage)
- e. Any other insurances required by Law

#### 15. Notices

Any notice to be given under these Purchase Terms and Conditions shall be deemed to be sufficiently given if served personally on the Vendor / Subcontractor or on his representative on the site or on Spike or Vendor / Subcontractor by being sent by prepaid post to the respective addresses of each stated in These Purchase Terms and Conditions. No notice or claim of the Vendor / Subcontractor will be valid or accepted by Spike if sent by facsimile or e-mail to Spike.

#### 16. Assignment

The Vendor / Subcontractor will not assign, subcontract, mortgage, charge or encumber or otherwise dispose of These Purchase Terms and Conditions or any portion of the same or any interest in it without the written consent of Spike. Spike may assign its rights and interest in These Purchase Terms and Conditions and such assignment shall be binding on the Vendor / Subcontractor upon service of written notice of the assignment signed by Spike.

#### 17. Removal of Workman

Spike may instruct the removal from the Works of any employee of the Vendor / Subcontractor who in the opinion of Spike is incompetent or misconducts himself.

#### 18. Wages and Conditions

The Vendor / Subcontractor shall pay the rates of wages and observe and perform the conditions that are provided for in any relevant award or industrial agreement and the Vendor / Subcontractor shall not negotiate any wages on conditions in excess of those pertaining at the signing of These Purchase Terms and Conditions or provided for in the relevant awards with any employee or employee organisation without the consent of Spike.

The Vendor / Subcontractor acknowledge that These Purchase Terms and Conditions requires the Vendor / Subcontractor to achieve a result namely the Completion of the Works as set out in These Purchase Terms and Conditions. It is not an Agreement whereby or under which physical work is performed.

#### 19. Cleaning Up

The Vendor / Subcontractor shall keep the Works clean and tidy and removal all rubbish on a daily basis, or more frequently if the circumstance requires, or Spike requires, and on completion will remove all his plant and equipment and leave the Works clean and tidy ready for immediate use or occupation. If he shall fail to do so then Spike may carry out whatever may be required and the cost thereof may be deducted from any moneys due or becoming due to the Vendor / Subcontractor.

#### 20. Deliveries and Vendor / Subcontractor items

All deliveries shall be signed for by the Vendor / Subcontractor. Spike takes no responsibility for any loss by the Vendor / Subcontractor of any deliveries or materials stored on site, or tools or other items of the Vendor / Subcontractor.

#### 21. Setting Out

The Vendor / Subcontractor shall be responsible for the correct setting out, fabrication and erection of the Works and any losses incurred by Spike due to error or unsuitable workmanship by the Vendor / Subcontractor shall be deducted from payments due to the Vendor / Subcontractor or from the retention under clause 6 or a combination of both.

#### 22. Arbitration

Any dispute that may arise hereunder or in any way in connection with the Works and whether before or after the completion or determination hereof may be submitted at the instance of Spike to the arbitration of an Arbitrator appointed on the application of Spike by the Chairperson for the time being of the New South Wales Chapter of the Institute of Arbitrators, Australia or in the event of his unwillingness to act, of his nominee. The Vendor / Subcontractor shall not have the right to require arbitration. If court proceedings are commenced they shall be discontinued if Spike submits the dispute to arbitration.

#### 23. Warranties and Guarantees

The Vendor / Subcontractor shall obtain all warranties and guarantees relevant to the Works and deliver them to Spike on Completion.

#### 24. Safety Conditions and Site Safety

(The Vendor / Subcontractor must provide Spike, within 5 days of the date of These Purchase Terms and Conditions, a detailed written Work Method Statement for each part of the Works, with particular emphasis on the safe performance of the Works. Such Work Method Statement must include details of full and proper protection of its

employees and other personnel including the personnel of other contractors on the Site.

The Vendor / Subcontractor will ensure all employees and agents have completed on the job safety training and are qualified to complete the works.

The Vendor / Subcontractor will ensure all services / products that will be wall mounted, hanging or weighing above 1 kg have been engineered and safety audited by a 3<sup>rd</sup> party.

The Vendor / Subcontractor must not proceed with the Works on the Site until Spike has received the Vendor / Subcontractor's Work Method Statement and indicated in writing it has no objection to it or any amendments to it required by Spike.

The Vendor / Subcontractor shall not by reason of the Work Method Statement be relieved of its obligations under These Purchase Terms and Conditions.

The Vendor / Subcontractor must work safely at all times and is fully responsible for the safety of its employees and other personnel.

The Vendor / Subcontractor shall provide adequate supervision for all of his staff on site.

Spike shall provide general lighting, task specific lighting to be provided by the Vendor / Subcontractor.

The Vendor / Subcontractor shall be responsible for coordinating the execution of the Works and working with all other Vendor / Subcontractors.

Nothing in These Purchase Terms and Conditions entitles the Vendor / Subcontractor to any right in respect of the site. The Vendor / Subcontractor shall, during the term of These Purchase Terms and Conditions have a non-exclusive license to enter the site subject to Spike's direction to perform its obligations in accordance with the terms of These Purchase Terms and Conditions.

The Vendor / Subcontractor acknowledges that others will be carrying out work on all of the site at all times during the performance of the Works.

No parking will be allowed on site unless advised by Spike.

The Vendor / Subcontractor must at all times comply with:

- (i) The principal contractors Standard Site Conditions existing from time to time;
- (ii) Scaffad or Spike Design's WHS Policy
- (iii) The principal contractors Site Safety Rules
- (iv) Workcover's Code of Practice current from time to time; and
- (v) Safety and other conditions and requirements relating to the Site that may be prescribed by Spike, the Principal or any authority having jurisdiction over the Works.

## 25. Copyright

Copyright in the Contract Documents and any other documents created for the purposes of or incidental to These Purchase Terms and Conditions vests, as between Spike and Vendor / Subcontractor.