

AUSTRALIAN PROFESSIONAL SHOPFITTERS PTY LTD

Supplier Terms and Conditions

Part A – Definitions and Scope

1. In these terms and conditions: **Agreement** means the contract formed between the parties comprising the Purchase Order and these terms and conditions; **Contractor** means Australian Professional Shopfitters Pty Ltd (ABN 93 082 820 237) or any of its related bodies corporate as defined under section 50 of the Corporations Act 2001; **Goods** means any products, materials or equipment to be provided under this Agreement; **Price** means the amount specified in the Purchase Order; **Services** means any labour, work or services to be performed under this Agreement; **Site** means the location specified in the Purchase Order or otherwise communicated by the Contractor; **Supplier** means the party identified to provide Goods and/or Services under the Purchase Order; **Works** means all activities undertaken in connection with supplying Goods and performing Services.
2. Upon commencing any Works or accepting the Purchase Order, the Supplier agrees to be bound by these terms and conditions. The Agreement represents the complete understanding between the parties and supersedes all prior discussions, negotiations or representations.
3. The Supplier is required to provide Goods and/or perform Services as detailed in the Purchase Order. Delivery and performance must occur at the Site or such other location as the Contractor may direct.

Part B – Supplier Responsibilities

4. The Supplier must execute all Works:
 - (a) in accordance with the Purchase Order and to the reasonable satisfaction of the Contractor;
 - (b) in compliance with all applicable laws, regulations, codes and standards including the National Construction Code and work health and safety legislation; and
 - (c) in accordance with any directions from relevant authorities.
5. Time is of the essence. The Supplier must complete delivery of Goods and performance of Services within the timeframes stated in the Purchase Order or as otherwise directed by the Contractor.
6. The Supplier acknowledges it has made itself familiar with Site conditions and all relevant information. The Supplier accepts responsibility for all physical conditions at the Site and is not entitled to additional time or money due to Site conditions.
7. No variation to the Works shall be made unless authorised in writing by the Contractor. The Contractor may grant reasonable time extensions where delays result from the Contractor's own acts or omissions.
8. The Supplier must coordinate its activities with other contractors and trades engaged by the Contractor. The Contractor may issue directions regarding the timing and sequencing of Works.
9. The Supplier shall maintain the Site in a clean and orderly condition throughout the Works. Rubbish and debris must be removed daily in accordance with environmental and waste management requirements. Failure to comply entitles the Contractor to undertake cleaning at the Supplier's cost.
10. Written approval from the Contractor or property owner is required before the Supplier uses or installs any items that are not identical replacements for existing fixtures, fittings or chattels.

Part C – Quality Standards and Warranties

11. The Supplier provides the following warranties:
 - (a) all Goods are new, fit for purpose, of merchantable quality and free from defects;
 - (b) all Services will be performed with proper skill, care and diligence by appropriately qualified personnel;
 - (c) the completed Works will comply with the Agreement and be suitable for their intended use;
 - (d) all required permits, licences and approvals have been or will be obtained;

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(e) upon request, the Supplier will provide all documentation including as-built drawings, operation manuals, test certificates, warranties and compliance certificates; and

(f) the Contractor and its representatives will be granted reasonable access to inspect the Works.

12. Incidental items and minor works necessary to achieve a complete and professional finish are deemed included in the Price, even if not expressly specified.

13. Ownership of Goods passes to the Contractor upon delivery to the Site. The Supplier must maintain appropriate insurance coverage until all obligations under the Agreement are fulfilled.

Part D – Health, Safety and Insurance

14. Prior to commencing Works, the Supplier must hold current workers compensation, public liability and any other insurance required by law or notified by the Contractor.

15. The Supplier must prepare and submit Safe Work Method Statements before commencing any high-risk construction work. Non-compliance with safety legislation entitles the Contractor to terminate the Agreement immediately.

16. At all times during the Works, the Supplier must:

(a) ensure its personnel take all necessary safety precautions to protect workers, site occupants and the public;

(b) comply with all site induction requirements and safety directions issued by the Contractor;

(c) report all incidents immediately to the Contractor;

(d) maintain safety documentation including daily pre-start assessments;

(e) provide safety data sheets for hazardous substances; and

(f) ensure all plant, scaffolding and electrical equipment is operated by licensed personnel and tested in accordance with regulations.

17. Where previous work on Site appears unsatisfactory, the Supplier must not proceed unless the Contractor provides written authorisation accepting responsibility. Commencement of Works constitutes acceptance of prior work.

Part E – Payment Terms

18. Goods are deemed delivered and Services complete only upon written confirmation from the Contractor that they meet the required standard.

19. Payment will be made in accordance with the Purchase Order terms, provided invoices include:

(a) the Purchase Order reference number;

(b) the Contractor's project supervisor name;

(c) the Site address;

(d) the Supplier's ABN; and

(e) a breakdown of Goods and Services supplied with corresponding values.

20. No payment obligation arises unless a written Purchase Order exists and the Supplier has performed to the Contractor's satisfaction.

21. The Contractor may offset amounts owed to the Supplier against any genuine claim the Contractor or its related entities may have against the Supplier, whether arising under this Agreement or otherwise.

22. Where Goods or Services are subsequently found to be defective or incomplete, the Contractor may recover the cost of rectification from future payments. Any shortfall becomes a debt payable by the Supplier.

Part F – Defects and Rectification

23. A defects liability period of twenty-four (24) months applies from the date of completion or delivery. During this period, the Supplier must promptly rectify any defects or omissions at its own expense.

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- 24.** Where rectification work is incomplete or inadequate, the Contractor will specify the additional work required and request proposed completion dates from the Supplier.
- 25.** The Contractor or its client may, at their absolute discretion, engage alternative contractors to perform rectification work if the Supplier is unable or unwilling to do so.
- 26.** The Supplier is liable for all reasonable rectification costs including third party contractor fees and any temporary accommodation expenses incurred by the Contractor's client.

Part G – Liability and Indemnity

- 27.** The Supplier indemnifies the Contractor against all claims, losses, damages, costs (including legal costs), fines and liabilities arising from the Supplier's breach of this Agreement or failure to properly perform the Works.
- 28.** The Supplier is responsible for the acts and omissions of its employees, subcontractors and agents as if they were its own.
- 29.** All warranties, indemnities and limitations of liability survive termination or expiry of this Agreement.

Part H – Suspension and Termination

- 30.** The Supplier is in default if it:
- (a)** breaches any term of this Agreement;
 - (b)** becomes insolvent, bankrupt, enters administration or has a receiver appointed; or
 - (c)** is subject to a winding up order or resolution.
- 31.** Where the Supplier fails to remedy a default within three (3) business days of receiving written notice, the Contractor may:
- (a)** remedy the default itself or engage others to do so, with all costs becoming a debt payable by the Supplier; and/or
 - (b)** by further written notice, suspend or terminate this Agreement.
- 32.** Following any suspension, the Supplier must recommence Works promptly upon direction. No claim for loss or damage arising from suspension may be made against the Contractor.
- 33.** The Contractor defaults by failing to make payment in accordance with this Agreement. If the default continues for three (3) business days after written notice, the Supplier may suspend performance. Termination requires a further ten (10) business days' notice following suspension.

Part I – Resolving Disputes

- 34.** Disputes must be addressed through the following process before court proceedings may be commenced, except where urgent injunctive relief is sought:
- (a)** the aggrieved party must issue a written dispute notice identifying the matters in dispute;
 - (b)** within three (3) days, senior representatives of each party must meet to attempt resolution;
 - (c)** if unresolved, either party may request mediation. Failing agreement on a mediator within seven (7) days, the Institute of Arbitrators and Mediators Australia may appoint one;
 - (d)** mediation concludes if the dispute remains unresolved after thirty (30) days from the mediator's appointment.
- 35.** Mediation costs are shared equally. All mediation proceedings are confidential and without prejudice. Any settlement must be documented and signed by both parties to be binding.
- 36.** For disputes involving claimable variations under section 10A of the Building and Construction Industry Security of Payment Act 2002 (Vic), unresolved matters must be referred to expert determination within twenty-one (21) days. The expert will be agreed between the parties or appointed by the Institute of Arbitrators and Mediators Australia.
- 37.** Adjudication applications under security of payment legislation must be lodged with Resolution Institute, Rialto Adjudications or Building Adjudication Victoria.

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Part J – Flooring and Substrate Works

- 38.** For timber flooring installations, the Supplier must conduct moisture testing of both substrates and flooring products before installation to confirm suitability.
- 39.** Floor type, quality, dimensions and specifications require approval from the Contractor or client before installation commences.
- 40.** By commencing Works, the Supplier confirms it has inspected all substrates and is satisfied with their condition. No claims against Australian Professional Shopfitters for substrate-related product failures will be entertained.

Part K – General Provisions

- 41.** The Supplier must not assign, sublet or subcontract any part of this Agreement without prior written consent from the Contractor. Any approved assignment does not release the Supplier from its obligations.
- 42.** The Supplier and its personnel must comply with the Australian Professional Shopfitters Supplier Code of Conduct published at www.austproshop.com.au. Acceptance of the Purchase Order constitutes acknowledgment of this requirement.
- 43.** Amendments to this Agreement are only effective if made in writing with the Contractor's consent.
- 44.** If any provision is found to be invalid or unenforceable, it shall be read down or severed to the minimum extent necessary. The remaining provisions continue in full force.
- 45.** Oral statements or explanations do not form part of this Agreement and cannot be relied upon.
- 46.** This Agreement shall not be construed against either party merely because that party prepared it.
- 47.** This Agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of Victorian courts and the Federal Court of Australia, waiving any objection to those forums.