

STANDARD TERMS AND CONDITIONS

1. Agreement

This "Agreement" means an agreement between Hastie Services Pty Limited trading as Spectrum Fire & Security – ABN 44 096 628 125 ("Spectrum") and the Customer relating to the sale and/or supply and/or installation and/or maintenance of products and services (as described in the quotation attached to this Agreement) and includes all relevant schedules, forms, specifications and other referenced materials. These terms and conditions supersede any other agreements, or understandings (whether written or oral) and, in particular, any conditions contained in the Customer's order unless Spectrum has expressly agreed in writing by initialling each such requested Customer's term(s). No variation, waiver, or cancellation of the Agreement will be effective unless signed in writing by both parties and any failure by Spectrum to enforce any clause of this Agreement will not be construed as a waiver of Spectrum's rights under this Agreement. This Agreement applies whether or not it is signed below as long as the Customer has had an opportunity to view it.

2. Quotation Validity

Unless otherwise agreed in writing, a quotation provided by Spectrum may be accepted up to 30 days from the quotation date, after which Spectrum reserves the right to amend or withdraw it.

3. Credit Information

a) The Customer acknowledges and agrees that if Spectrum requires financial information about the Customer for any credit application which attracts the operation of the *Privacy Act 1988* (Cth), Spectrum may collect and disclose commercial credit information about the Customer, and if the Customer is a company, about its directors and officers provided to Spectrum in an order or a credit application for determining credit worthiness, obtaining and maintaining a credit information file, and/or for the purpose of collecting outstanding amounts owed by the Customer to Spectrum.

b) The Customer acknowledges that the granting of credit is at the absolute discretion of Spectrum. Spectrum may, at its sole discretion, require you to pay the full fee or a percentage of the fee upfront or in advance.

4. Site Charges and Assumptions

a) Unless otherwise agreed in writing, charges for work performed:

- are based on work being carried out during "Normal Working Hours" being (0800 to 1630 Monday to Friday except for Public Holidays and subject to alteration by Spectrum);
- are based on having continuous, uninterrupted, and unhindered access to the required people, equipment, facilities, and areas where the work is to be carried out;
- do not cover extraneous work, patching/painting, carpet lifting or refitting, building work or decoration, working with hazardous materials (including asbestos, synthetic mineral fibres etc), or excavation works and, should Spectrum agree to carry out such work at the request of the Customer then Spectrum shall not be liable for any damage arising.

b) All additional costs arising from 4a) and any alteration to the specifications required by the Customer including any interruption or delays by the Customer, its employees, agents, or other trades during the course of work performed, or the extra costs of compliance with EHS policies may result in additional charges including the reasonable costs of delay.

c) If it becomes necessary to pay any additional site allowances, other than a State or Federal award or amounts in excess of any current workplace agreement applicable to the type of work being performed, these costs will be added to the Spectrum fee.

d) Any variations to the services required by the Customer must be in writing and will be priced in accordance with Spectrum's standard price lists and shall include an amount for any design, management, overheads and profit.

e) Emergency service call-outs will be charged in accordance with Spectrum's standard fees for such service.

5. Customer's Responsibilities

The Customer shall:

- advise Spectrum of the existence of any concealed pipes, wires and cables for water, gas, electricity, telephone or other services affecting the premises and shall confirm the location of such services to Spectrum's technician before work commences. In the absence of such notice Spectrum accepts no liability for any loss or damage to such services or any consequence thereof and the Customer agrees to indemnify Spectrum against any claim whatsoever for any loss or liability under this clause;
- provide adequate facilities at the premises at no cost to Spectrum, including parking, power, lifting equipment, scaffolding, scissor lifts, and rubbish removal skips;
- ensure that the premises must at all times be a safe working environment and (without limitation) will not contain asbestos or similar hazards;
- indemnify Spectrum against any claims for the failure of fire alarm monitoring equipment, telecommunication carrier lines, power supply, costs relating to fire brigade charges, or relocation of equipment.

6. Delivery

a) Spectrum shall use reasonable endeavours to complete delivery of the works, however, delivery dates or periods quoted are estimates only and are subject to workflow demands and prompt receipt of all information, material, and permits necessary to allow Spectrum to proceed with the delivery of the works.

b) Spectrum accepts no liability whatsoever for any loss or damage suffered by the Customer as a consequence of any delay or failure to deliver the works.

7. Drawings

Spectrum require, free of charge, architectural design drawings in AutoCAD or DXF format to be made available with sufficient information to enable layout drawings to be prepared. Where documentation is supplied by way of electronic media, it is the Customer's responsibility to ensure that they will be supplied uncontaminated/virus free.

8. Warranty and Product Returns

a) The Products supplied by Spectrum Fire to the Customer under this Agreement are covered by a 12 month warranty which shall commence from the date of completion of installation of products, or for products sold on a supply only or supply and commission basis upon delivery of the products to the Customer ("Warranty Period").

b) During the Warranty Period, any products that prove to be defective will be repaired or replaced by Spectrum at its option.

c) The warranty provided under this Agreement is dependent upon regular maintenance work being carried out to an Australian Standard or Manufacturer's Recommendations.

d) The parties agree that when evaluating a claim for defect, due allowance shall be made for fair wear and tear of the product. Should the Customer or any other party attempt to carry out repairs, mal-operate or modify the products in any way during the Warranty Period, Spectrum shall be relieved of its obligations under the warranty provisions. In addition, the warranty does not cover work required to be done to repair a defect or damage caused by the Customer's negligence, fault, neglect, abuse, incorrect use or as a result of vandalism, fire, water damage, power surge or other circumstance outside of Spectrum's control or that of the manufacturer.

e) The Customer shall inspect all products upon delivery and within 5 business days of delivery, give written notice to Spectrum if any of the products are not in accordance with the Customer's order.

f) Spectrum will accept products returned for credit where Spectrum has incorrectly supplied a product or the product has been damaged in transit by Spectrum's carrier.

g) Products may not be returned for credit without obtaining prior written authorisation from Spectrum.

h) Products returned for credit, except under f) above, shall be subject to a 15% or \$20.00 (whichever is greater) restocking fee and except where products are returned under f) above, all freight charges for goods returned for credit shall be prepaid by the Customer unless otherwise approved by Spectrum in writing.

9. Intellectual Property

Spectrum retains all rights, title and interest in any intellectual property including any design(s), documentation, diagrams or plans existing or arising during the course of the work under this Agreement. All intellectual property supplied by the Customer at the commencement of this Agreement remains the property of the Customer but the Customer grants Spectrum a perpetual, irrevocable, royalty free, non-exclusive licence to use, reproduce and modify the Customer's intellectual property. The Customer indemnifies Spectrum for any threatened or actual claim of intellectual property infringement arising out of Spectrum's use of the Customer's intellectual property.

10. Spectrum's Liability

a) Nothing in this Agreement excludes, restricts or modifies the application of the provisions of any statute (including the *Trade Practices Act 1974*) where to do so would contravene that statute or cause any part of this Agreement to be void.

b) To the extent permitted by law, Spectrum's aggregate liability under this Agreement, whether in contract, tort (including negligence) or otherwise, will be limited to the value of payments received by Spectrum from the Customer.

c) Notwithstanding anything else in this Agreement, Spectrum will not be liable for:

- any indirect, consequential or special or economic loss, cost, liability, damage or expense howsoever arising; or
- loss of profit, loss of use, loss of income, loss of rental or other benefit, loss of production, loss of actual or potential business opportunity or loss of reputation.

d) The Customer acknowledges and agrees that it is reasonable for Spectrum to limit its liability under this Agreement.

11. Hydrostatic testing

a) Before any hydrant mains are turned off we recommend an authorised person from the company or premises assist with an inspection of the fire service, so a timetable can be implemented for the purpose of minimising the risk in areas which cannot be shut down due to operational and safety to employees on site while working.

b) Pressure testing of the fire hydrant service pipe work can cause some systems to fail or burst under the require pressure of 1700 kPa, we encourage all our customers to take the appropriate action in notifying their insurance company, employees, contractors, on the day of the test. Spectrum accepts no liability whatsoever for system failure caused by the test and any damage caused as a result of the performance of the test, regardless of anything else stated in this agreement and regardless of any act or omission by Spectrum. This quotation does not allow for the repairing of any pipe work or valves which leak while conducting the pressure testing procedure.

c) Before conducting the hydrostatic test all steps will be taken to ensure the fire hose reels are fully shut down at isolating valve at reel and the fire hydrants are not leaking from washers before test. Further a visual inspection will be carried out.

d) Servicing of any underground check valves or isolating valves which may be installed in a pit are excluded from this quotation and will be quoted separately, unless otherwise stated in the quotation.

12. Insurances

Spectrum will maintain \$5 million Public Liability insurance and Workers Compensation insurance.

13. Fees and Charges

a) The Customer agrees to pay Spectrum the fees specified in this Agreement within 30 days of the date of invoice without set-off, deduction or discount of any kind. Should the Customer delay in making payment, Spectrum shall have the right to charge interest on the outstanding amount at the rate prescribed by the *Uniform Civil Procedure Rules 2005*, as well as require payment in advance prior to delivery of further goods or provision of further services, or cease supply of further goods or services and terminate the Agreement. The Customer shall also be liable for any legal costs or agent's costs and disbursements associated with collecting outstanding payments on an indemnity basis.

b) Payment of the fees is a fundamental term of this Agreement and to the maximum extent permitted by law, Spectrum will have no liability to the Customer for acts or omissions or work required to be undertaken by Spectrum if the circumstance or event which would otherwise give rise to liability occurs at a time when the Customer is in breach of payment obligations to Spectrum.

c) Title to and ownership of the products shall pass to the Customer upon final payment of the fees specified in this Agreement, despite delivery of the goods. Therefore, for the avoidance of doubt, the goods remain the sole and absolute property of Spectrum as full legal and equitable owner until such time as the Customer has paid Spectrum the full purchase price together with the full price of any other goods the subject of any other contract with Spectrum. Risk in the goods shall pass to the Customer upon delivery.

d) The Customer acknowledges that he receives possession of and holds goods delivered by Spectrum solely as bailee for Spectrum until such time as the full price thereof is paid to Spectrum together with the full price of any other goods then the subject of any other contract with Spectrum.

e) Until such time as the Customer becomes the owner of the goods, he will;

- store them on the premises separately;
- ensure that the goods are kept in good and serviceable condition;
- secure the goods from risk, damage and theft; and
- keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Customer.

f) Until the goods are paid for in full, Spectrum authorises the Customer to sell the goods as its agent, however, the Customer shall not represent to any third parties that it is acting in any way for Spectrum. Spectrum will not be bound by any contracts with third parties to which the Customer is a party. Records shall be kept by the customer of any goods owned by Spectrum. The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Spectrum. The Customer shall account to Spectrum from this fund for the full price of the goods. If the Customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the Customer shall account forthwith to Spectrum for the price of the goods.

g) Should the Customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws or being a company calls a meeting for the purpose of or to go into liquidation or has a winding-up petition presented against it or has a receiver or administrator appointed, Spectrum may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of goods or documents notwithstanding terms of payment previously specified or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

h) In the event that the Customer uses the goods/product in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to the goods/product in trust for Spectrum. Such part shall be deemed to equal in dollar terms to the amount owing by the Customer to Spectrum at the time of the receipt of such proceeds.

i) If the Customer does not pay for any goods on the due date then Spectrum is hereby irrevocably authorised by the Customer to enter the Customer's premises or any premises under the control of the Customer as agent of the Customer and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Customer whatsoever. On retaking possession of the goods Spectrum may elect to refund to the Customer any part payment that may have been made and to credit the Customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

j) Spectrum shall have the right to adjust the fees periodically in respect of an increase/fall in the cost of its services.

k) Spectrum reserves the right to issue progress invoices of materials and/or labour expended on work in progress and to place into bond materials which cannot be accepted for delivery on site and invoice the full value thereof.

l) Where any supply of products or services is or becomes subject to GST, an amount equal to GST paid or payable for that supply will be added.

14. Dispute Resolution

The parties agree that they will initially use all reasonable endeavours to try and resolve any dispute arising under this Agreement within 10 business days of a party being advised by written notice of such a dispute. In the event that the parties are unable to resolve the dispute within that time frame they must refer the dispute to an executive officer from each party to resolve within a further 10 days. If the dispute is not resolved in accordance with the above, either party may refer the matter to mediation or commence legal proceedings.

15. Force Majeure

Spectrum will not be in breach of this Agreement or liable to a party if it fails to perform or delays in performance of an obligation as a result of an event beyond its reasonable control, including but not limited to strikes, industrial disputes, fire, flood, acts of God, war, vandalism, sabotage, riot, national emergency, embargoes or restraints, extreme weather or traffic conditions, temporary closure of roads, legislation, regulation, order or other act of government.

16. Prolongation and Extension of Time Costs

If due to circumstances beyond the control of Spectrum the Agreement is extended beyond the original completion dates, then Spectrum is entitled to an adjustment of the contract sum in accordance with the formula -- Amount payable per week of delay = contract sum (including prime cost items) / original contract period in weeks x 15%.

17. Liquidated Damages

Liquidated damages will not apply to the works unless specifically agreed to in writing, and then they are to be capped at 5% of the contract sum.

18. Termination

a) Either party may terminate this Agreement if the other party commits any material or persistent breach of its obligations under this Agreement (which in the case of a breach capable of remedy shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy) or if a party becomes insolvent, bankrupt or enters into a scheme or arrangement with creditors. Termination under this clause must be effected by written notice to the other party.

b) In the event that this Agreement covers the provision of maintenance services and the Customer wishes to terminate prior to the expiry of the Contract Term, the Customer will be required to pay the remaining payments up to the end of the Contract Term. The Contract Term is defined as the initial term specified on the face of this Agreement then any successive 12 month period).

c) Spectrum may terminate this Agreement in whole or in part at its convenience upon the provision of 14 days notice in writing to the Customer.

d) If the Customer purports to cancel any order, contract or agreement prior to its commencement or prior to the completion of the Term, then the Customer shall pay to Spectrum on demand a sum equivalent to all Spectrum's costs, fees and expenses incurred up to the date of such purported cancellation including any damages payable to Spectrum's sub-contractors or suppliers together with a reasonable proportion of Spectrum's loss of anticipated profits, as well as a reasonable administration fee.

19. General

a) Spectrum may perform any of its obligations through sub-contractors.

b) The Customer hereby charges with payment of any indebtedness to Spectrum all beneficial interest (freehold and leasehold) in land and personal property held now or in the future by the Customer. The Customer agrees that if demand is made by Spectrum, the Customer receiving such a demand will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required, and against the event that the Customer fails to do so within a reasonable time of being so requested, the Customer hereby irrevocably and by way of security, appoints any credit manager or solicitor engaged by Spectrum to be its true and lawful attorney to execute and register such instruments. Notwithstanding any other provision in this clause and in addition thereto Spectrum may lodge a caveat noting the interest given by this charge on the title of any property of the Customer whenever it so wishes.

c) This agreement shall be subject to the laws of the State in which the works or services are performed.

EXECUTED AS AN AGREEMENT:

Dated:

Name and Signature of AuthRep of Spectrum

Name and Signature of Auth Rep of Customer