

Terms and Conditions for All Work

General

These terms and conditions together with the Customer's order constitute the entire agreement between Spartan First Pty Ltd t/as Spartan First (ACN 629 785 682) and its successors, transferees or related companies and the customer for the supply of Work. This Agreement cannot be varied unless Spartan First and the Customer agree to vary it in writing.

1. In these terms and conditions:

Agreement means these terms and conditions together with the Customer's Order.

Australian Consumer Law means the law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth) and any corresponding provisions of state or territory fair trading legislation or the Australian Securities and Investments Commission Act 2001 (Cth).

Business Hours means Monday to Friday 8.00am to 4.30pm Monday to Friday.

Customer means any person who purchases Products and/or Services from Spartan First.

Force Majeure means:

- a) war, hostilities, blockade, insurrection, invasion, act of foreign enemies.
- b) rebellion, terrorism, sabotage, strikes, revolution, insurrection, military or usurped power, or civil disturbance; and
- c) breakdown of machinery, flood, bushfire, washout, earthquake, landslide, cyclone, hurricane, epidemic or pandemic (including pandemic of a disease), typhoon, tidal wave or volcanic activity or any other cause whether similar or dissimilar to any of the clauses or categories described above and which is beyond the reasonable control of the party experiencing the event.

Insolvency Event means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes without limitation, liquidation, official management, administration, compromise arrangements, mergers, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, schemes, compositions or arrangements with creditors, insolvency, bankruptcy, or a similar procedure, or changes to the constitution of any partnership or person, or death.

Invoice means a tax invoice under section 29-70 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) issued by Spartan First to the Customer.

Non-Excludable Rights means rights under the Australian Consumer Law or other rights the Customer may have in relation to the supply of the Products that cannot lawfully be excluded by Spartan First.

Order means an order placed by the Customer by accepting a quote for Work it was provided by Spartan First, or otherwise an order placed in accordance with these terms and conditions.

Product means any product (including any equipment) sold and supplied by Spartan First to the Customer.

Services means the Services provided or to be provided by Spartan First under this Agreement including the Services outlined in clause 4.1, and any additional Services outlined in any Order.

Work(s) means the supply of Products and/or Services under this Agreement.

Orders and Pricing

1. By placing an Order, the Customer makes an offer to Spartan First to purchase the Products and/or Services selected by the Customer on and subject to these terms and conditions.
2. All sales of Products and Services are made at the price for that Product or Services shown on Spartan First price list(s) at the time of Order unless otherwise stipulated by Spartan First in writing.
3. Unless specified otherwise, all prices are in Australian dollars and may be subject to change. Prices are reviewed annually on 1 July; however, Spartan First reserves the right to alter pricing on 14 days' notice at other times of the year.
4. Any prices or charges referred to in this Agreement and/or in any quotation are exclusive of Goods and Services Tax (**GST**) unless stated otherwise. The total price payable by the Customer for Work is subject to GST.
5. All Orders, once accepted by Spartan First, are final. No Order may be cancelled except with Spartan First's written consent and on terms which will indemnify Spartan First against all losses. The Customer acknowledges that the extent to which an Order can be modified or cancelled, if at all, will depend on the type of Work and the stage that the Order has reached in Spartan First's system. A cancellation fee may be applicable to any cancelled order.
6. Cost of shipping product to the Customer are additional to the product price and are calculated at the time of shipping.
7. For pre-employment medical services:
 - a) Spartan First paperwork will be used for all pre-employment medical assessments. The use of Company specific paperwork will incur a fee per set of paperwork per assessment.
 - b) For Spartan First clinics, cancellations will attract a fee of 50% of the total appointment amount with less than 24 hours' notice, not including weekends and public holidays.
 - c) For Spartan First clinics, no shows or 'did not attend' will attract a fee of 100% of the appointment booked.
 - d) For Affiliate clinics, cancellations/reschedule and 'did not attend' will attract a fee of 100% of the total appointment amount with less than 48 hours' notice, not including weekends and public holidays, in the time zone the appointment is to have occurred.
 - e) Surcharges and conditions may apply to services provided in Spartan First clinics on weekends and public holidays.
8. The Customer represents and warrants that, by submitting an Order to Spartan First, it has the right and is duly authorised to submit an Order and to enter into this Agreement.

Terms of Payment

1. Spartan First shall render an Invoice after completion of Work or any stage of Work from time to time as agreed.

2. Payment is due in full on terms of (30) thirty days from date of issue of the Invoice unless any other arrangements have been made in writing.
3. If the Customer defaults in payment by the due date of any amount payable to Spartan First then all money which would become payable by the Customer to Spartan First at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and Spartan First may, without prejudice to any of its other accrued or contingent rights:
 - a) charge the Customer interest on any sum due at the prevailing rate of 15% per annum for the period from the due date until the date of payment in full;
 - b) charge the Customer for, and the Customer must indemnify Spartan First from, all costs and expenses (including without limitation indemnity legal costs and debt collection costs and commissions) incurred by Spartan First resulting from the default or in taking action to enforce compliance with the Deed or to recover any goods;
 - c) cease or suspend supply of any further goods or services to the Customer;
 - d) terminate any uncompleted contract with the Customer.

Services & Customer Acknowledgements

1. Spartan First provides (but is not limited to) the following Services:
 - a) Pre-employment Medicals.
 - b) Drug and Alcohol Testing.
 - c) Fitness for Work Assessments.
 - d) Specialist Medical Assessments.
 - e) Health Surveillance.
 - f) Periodic Medicals.
 - g) Injury Management.
 - h) Ergonomic Assessments.
 - i) Job Role Profiling.
 - j) Physiotherapy.
 - k) Exercise Physiology.
 - l) NDIS Services.
 - m) Employee Assistance Programs.
 - n) Skin Checks.
 - o) Vaccinations.
 - p) Education and Training.
 - q) Medical Supplies; and any other Services ancillary to the above.
2. The Customer agrees to provide adequate facilities, safe access, and passage for Spartan First (including its employees, officers, agents and contractors) in relation to any onsite Services conducted on the Customer's premises, or any other location nominated by the Customer for the provision of the Services.

3. The Customer shall be responsible for, and liable for any costs whatsoever associated with, there being insufficient safe access or adequate facilities for the conduct of the Services.

Exclusions & Limitations of Liability

1. With the exception of Non Excludable Rights and any express written warranty provided by Spartan First, and notwithstanding any other provision of these terms and conditions, the liability of Spartan First to the Customer, whether arising under or in connection with these terms and conditions or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
 - a) Spartan First shall not have any liability whatsoever to the Customer for any loss, claim, injury or damage (including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit) of any kind howsoever arising in connection (indirectly or directly) with these terms and conditions, a Customer's Order, the Products, the Services (including any errors in relation to any testing), and/or the Work; and
 - b) The total aggregate liability of Spartan First is at all times limited to the amount equal to the purchase price of the Works.
2. If any Non-Excludable Terms apply, then to the extent to which Spartan First is entitled to do so, its liability under those Non-Excludable Terms will be limited at its option to:
 - a) The replacement of the Products or the supply of equivalent products and Services; or
 - b) The repair of the Products or Services; or
 - c) The payment of the cost of replacing the Products, or of acquiring equivalent products or the Services; or
 - d) The payment of the cost of having the Products repaired.
3. Subject to clause 11.1 and any express written warranty provided by Spartan First, Spartan First does not make any guarantee, condition or warranty as to materials, workmanship or performance of the Work.
4. Any advice, recommendation, information or representation provided by Spartan First as to the quality or performance of the Products, the Services or their suitability for a particular use, purpose or otherwise in relation to the Products or Services is given in good faith but without any liability or responsibility on the part of Spartan First. The Customer acknowledges that it has not relied upon or been induced by any representation by Spartan First.

Indemnity and Release

1. The Customer indemnifies and releases Spartan First and its agents and assigns, regardless of any negligence on the part Spartan First, on a full indemnity basis, from and against any costs, liability, damage, loss, expense or demand arising directly or indirectly from:
 - a) A breach of this Agreement by the Customer;
 - b) Any false, misleading or deceptive representation or statement made by the Customer in respect of the Products or Services to any person; and

- c) Any claims, or losses incurred, by third parties (including employees, associates, agents or contractors of the Customer) in relation to the Work.
2. The indemnity and releases in this clause 12 shall survive and continue beyond expiration of this Agreement.

Intellectual Property

1. All trademark, copyright, design right, registered or unregistered patent and other intellectual property or intellectual property rights in any design, specification, process, method of working, technology, guides, manuals, or other materials or information relating to the Products and Services shall vest for all time in Spartan First.

Force Majeure

1. Spartan First will not be in default in the performance of its obligations or be liable to the Customer for any failure or delay in the performance of its obligations, to the extent that such failure or delay is caused by an event Force Majeure, provided that Spartan First advises the Customer of the circumstances constituting the Force Majeure.
2. In the event of a delay arising from an event of Force Majeure, the time of the performance of the obligation shall be extended by a period of time reasonably necessary to overcome the effect of the delay.
3. If a Force Majeure event continues for 60 consecutive days, the Customer or Spartan First may terminate the Works by giving written notice to the other party, without incurring any liability to the other party by reason of such termination.

Privacy

1. The privacy and security of the Customer is important to Spartan First. Spartan First's Privacy Policy (as found on its website) (the Privacy Policy) is incorporated into these terms and conditions. To the extent there is a conflict between the terms of the Privacy Policy and these terms and conditions, these terms and conditions govern.
2. The Privacy Policy describes the data that Spartan First gathers about or from the Customer and how it processes, uses and shares that data. By making an Order, the Customer consents to all actions that Spartan First may take with respect to the Customer's data consistent with the Privacy Policy.

Change of Ownership

1. The Customer agrees to notify Spartan First in writing of any changes of ownership of the Customer within 7 days from the date of such change and indemnifies Spartan First against any loss or damage incurred by it as a result of the Customer's failure to notify Spartan First of any change.

Termination

1. Spartan First may terminate the Work at any time before the Work is provided by giving written notice to the Customer.
2. Without prejudice to any other remedies Spartan First may, if at any time:
 - a) The Customer is in breach of any obligation to Spartan First (including those obligations relating to payment); or
 - b) In Spartan First's opinion, the Customer will be unable to meet its payments as they fall due; or
 - c) An Insolvency Event occurs; Spartan First may suspend or terminate the performance of Works to the Customer and of any other obligation of Spartan First under these terms.

General

1. These terms and conditions are governed by and construed in accordance with the laws of the state of Western Australia, Australia.
2. Any disputes arising from these terms will be resolved through mediation and/or arbitration in the State of Western Australia.
3. Should any part of these terms and conditions be held to be void or unlawful, such part is to be read and enforced as if the void or unlawful part had been deleted.
4. Spartan First may update these terms and conditions from time to time and by notification to the Customer.
5. No Order between Spartan First and the Customer may be assigned by the Customer without Spartan First's written consent, which may be given or withheld in Spartan First's absolute discretion.
6. The terms and conditions of this Agreement and all communications between Spartan First and the Customer relating to the subject matter of this Agreement are and shall remain confidential.

Terms and Conditions Specific for Products

Delivery and Risk

1. Spartan First will utilise best endeavours to deliver the Work by the estimated delivery date but does not accept any liability for failure to deliver for reasons beyond its control nor does it accept any liability for delays in delivery.
2. Risk in the Products shall pass to the Customer upon delivery to the Customer.
3. Spartan First must deliver the Product to the delivery address specified in the relevant Order.
4. All quoted delivery dates for Products are estimates only and Spartan First has no obligation to meet such dates. If any delay in delivery is caused by circumstances beyond Spartan First's reasonable control, Spartan First may suspend or delay delivery without consequence and without relieving the Customer of its obligations.

5. If delivery cannot be made to the location specified due to the nature of the premises, insufficient access or for any reason not attributable to Spartan First, including the Customer's absence, the Customer will be liable for any additional delivery charges and costs including redelivery.
6. If the Customer is unable to accept delivery of Products within four (4) weeks of the delivery date, the Customer shall be liable to Spartan First for storage and insurance costs.

Acceptance of Products and Returns

1. The Customer will be deemed to have accepted the Products free of defect or any non-conformity and as being in accordance with its Order unless it notifies Spartan First at the time of delivery.
2. Subject to these terms and conditions and any express written warranty provided by Spartan First, Spartan First is not under any obligation to accept Products returned by the Customer unless such Products are returned in original packaging and with all components and will do so only on terms to be agreed in writing in each individual case.
3. For Products which Spartan First deems defective, any express written warranty provided by Spartan First will apply unless otherwise agreed in writing.
4. Spartan First will not accept the return of any Products (whether they are deemed defective or otherwise) if the Customer has offered to sell the Products to consumers or the Products are returned in a damaged state.
5. If Spartan First does not accept the reason for the return of the Products, Spartan First will return the Products to the Customer with an explanation for the non-acceptance and the Invoice for the Products will remain payable plus freight charges.

Notification of Claims and Time Bar

1. Any claim for damage to Products must be notified in writing to Spartan First within two (2) business days of delivery of the Products.
2. Any claim for loss or non-delivery of Products must be notified in writing to Spartan First within 7 business days of the date upon which the Products should have been delivered.
3. Spartan First shall be discharged from all liability whatsoever in connection with the Services and/or the Products unless legal proceedings are served upon Spartan First within 6 months from delivery of the Services (delivery in respect of Services means when the Services have been performed in accordance with the requirements of this Agreement) and Products.

Safety and Use

The Customer agrees that:

1. The Customer has received adequate information regarding the Products to ensure their safe use, handling, assembly, installation, and storage, which may include Spartan First user guides or instructions applicable to the Products.
2. All Products must be properly used in accordance with all applicable laws and instructions provided in any applicable user guides or manuals.

3. The purchase and/or use of all Products sold by Spartan First places the responsibility of use on the user of the Products and Spartan First accepts no responsibility for inappropriate use; and
4. All Products are used entirely at the user's own risk and to the maximum extent permitted by law, Spartan First accepts no liability for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from any party's use (or misuse) of any of the Products.

Title and Personal Properties Securities Act 2009 (Cth) (PPSA)

1. Ownership of the Products will remain with Spartan First until all Invoices, interest and fees owing by the Customer to Spartan First on any account whatsoever (Amounts Owing) have been paid in full.
2. Until the Amounts Owing have been paid in full, the Customer holds the Products as trustee for Spartan First.
3. Until the Amounts Owing have been paid in full, the Customer has the right to sell the Products, but only as trustee for Spartan First (and the Customer must not represent to any third parties that it is acting as Spartan First agent) and the Customer must hold the proceeds it receives from any such sale as trustee for Spartan First.
4. If the Customer fails to comply with any of terms and conditions of this Agreement then:
 - a) upon request, the Customer must return all Products in its possession.
 - b) Spartan First may enter the Customer's premises and seize possession of the Products: and
 - c) Spartan First may retain, sell or otherwise dispose of those Products.
5. The Customer hereby acknowledges that this Agreement constitutes a security agreement for the purposes of the PPSA which creates a security interest in favour of Spartan First and in all Products including Services previously supplied by Spartan First to the Customer and all after acquired Products including Services supplied to the Customer by Spartan First to secure the payment by the Customer to Spartan First of all amounts owing by the Customer to Spartan First from time to time, including any future advances.
6. To better secure the payment by the Customer to Spartan First of all amounts owing by the Customer to Spartan First from time to time, the Customer hereby grants to Spartan First:
 - a) A security interest (by virtue of this clause 9) in all Products and Services previously supplied by Spartan First to the Customer; and
 - b) A Purchase Money Security Interest (PMSI).
7. The Customer agrees to do anything that Spartan First reasonably requires to ensure that Spartan First has at all times a continuously perfected security interest over all of the Customer's present and after-acquired property.

8. The Customer consents to Spartan First effecting a registration on the PPSA register in relation to any security interest contemplated by these terms and conditions. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.
9. The Customer undertakes to:
 - a) Promptly sign any further documents and/or provide any further information which Spartan First may reasonably require to register a financing statement in relation to a security interest or to register any other document required on the PPSA register.
 - b) Indemnify, and upon demand reimburse, Spartan First for all expenses incurred in registering a financing statement on the PPSA register or releasing any Products charged thereby.
 - c) Not register a financing change statement in respect of a security interest without the prior written consent of Spartan First.
 - d) Not permit to be registered, a financing statement in relation to the Products in favour of a third party; and
 - e) Immediately advise Spartan First of any material change in its business practices which would result in a change in proceeds derived from such sales.
10. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms and conditions, the Customer agrees the following provisions of the PPSA will not apply:
 - a) Section 95 (notice of removal of accession), to the extent that it requires Spartan First to give notice to the Customer.
 - b) Section 96 (when a person with an interest in the whole may retain an accession);
 - c) Section 117 (obligations secured by interests in personal property and land);
 - d) Section 118 (enforcing security interests in accordance with land law decisions);
 - e) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - f) Section 125 (obligation to dispose of or retain collateral);
 - g) Section 130 (notice of disposal), to the extent that it requires Spartan First to give notice to the Customer;
 - h) Paragraph 132(3)(d) (contents of statement of account after disposal);
 - i) Subsection 132(4) (statement of account if no disposal);
 - j) Section 135 (notice of retention);
 - k) Section 142 (redemption of collateral); and
 - l) Section 143 (reinstatement of security agreement)
 - m) The following terms have the respective meanings given to them in the PPSA: account, proceeds, PMSI, register, registration, security interest, security agreement and verification statement.