

Australian Conditions of Engagement

Definitions

“Client” – Entity with the direct contractual relationship with Steel Pencil Holdings Ltd for delivery who will be invoiced for the works

“DT” – Document Transmission

“IFA” – Issue for Approval by client

“IFC” – Refers to drawings issued for fabrication after approval by Client

“MTO” – Material Take Off

“RFI” – Request for Information

“SP” – Steel Pencil Group Ltd (a company registered in New Zealand) and subsidiary companies

“Works” – outputs and deliverables from this project.

“Tender Quote” – The tender proposal or quote on which the fee was prescribed.

General

1. SP shall perform the services as described in the attached documents (the "Services").
2. In providing the Services SP shall exercise the degree of skill, care and diligence normally expected of a competent professional.
3. The Client shall provide to SP, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may pertain to the Services. In providing the information to SP, the Client shall ensure compliance with the Copyright Act 1968 and shall identify any proprietary rights that any other person may have in any information provided.
4. The Client will provide documents to SP that are of a reasonable standard as determined by SP in its sole discretion and will allow SP to proceed with the work without undue delay. If the documentation supplied does not meet the standard required by SP, the Client will be liable for any costs incurred by SP as a result of any delay and any agreed deadlines for supply of completed work shall be extended by the amount of the delay in receiving suitable documentation. If the documentation supplied does not meet the standard required by SP, the Client will indemnify SP against any claims, costs, losses or expenses (including reasonable legal fees) incurred by SP due to the failure of the Client to supply suitable documentation under this clause 4 (including without limitation a claim for liquidated damages) and SP will use reasonable endeavours to provide evidence reasonably required by the Client to demonstrate the inadequacy of the documents.
5. Prior to commencement of services, the Client shall provide a copy of both the Construction Structural and Architectural Drawings. The Client must also supply SP a copy of the Specification and if available a full Schedule of Quantities. Electronic transfer of Documents is to be in PDF or other agreed format. It is the responsibility of the Client to ensure the latest release of construction drawings are provided to SP and that any revisions to drawings are clearly clouded and noted.
6. The Client shall be responsible for providing all set out information, site dimensions, timber fixing and services hole locations to SP unless SP has agreed otherwise in writing before SP performs the Services.
7. Acceptance of this quotation by the Client is acknowledgement and acceptance of the terms and conditions of this agreement.

Terms

8. This agreement commences upon its execution by both parties and expires upon all deliverables being provided to the Client in accordance with the attached documents, unless terminated earlier in accordance with clause 35.

Payments and Fees

9. SP shall submit invoices/claims for the services to the client monthly in arrears or at the completion of the services if sooner. Each invoice will include reasonable supporting information.
10. Unless otherwise arranged, all claims are work in progress for the work done during the period up to the date of invoice.
11. The Client shall pay SP for the Services the amount of fees and expenses at the times and in the manner set out in the invoice without deduction. Where this Agreement has been entered into by an Agent (or a person purporting to act as Agent) on behalf of the Client, the Agent and Client shall be jointly and severally liable for payment of all accounts due to SP under this Agreement.
12. Any dispute in relation to claims must be advised to SP within 10 working days of receipt of the claim. Claim disputes raised after 10 working days will not be considered by SP until full payment has been received.
13. All amounts payable by the Client shall, unless otherwise agreed, be paid on or by the twentieth (20th) day of the following month of the invoice sent to the Client. Late payment shall constitute a default and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate that is 2% higher than the Cash Rate Target, as fixed by the Reserve Bank of Australia, such rate to be compounded daily.
14. Where Services are carried out on a time charge basis, SP may purchase such incidental goods and/or Services as are reasonably required for SP to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. SP shall maintain records, which clearly identify time and expenses incurred.
15. Except where express provision is made to the contrary, the consideration payable for any supply made or to be made under this agreement is determined without regard to and is exclusive of any GST. If GST is payable on any supply made or to be made under this agreement, the parties agree that the consideration payable for any such supply shall be increased by an amount equal to the amount of GST payable by the party making the supply in respect of the supply.

Liability

16. In no event will SP be liable for any damages resulting from indirect or consequential loss, including loss of profits, loss of business or loss of opportunities, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of SP whether such damages were reasonably foreseeable or actually foreseen.
17. Except as provided in clause 18 below, to the extent permitted by law (including by the Trade Practices Act 1974), SP limits its liability under or otherwise in relation to this agreement to either of the following options at SP's sole election:
 - a. in the case of goods, the replacement of the goods or resupply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
 - b. in the case of services, the supply of the services again or the payment of the reasonable cost of having the services supplied again.
18. Each party indemnifies the other party and its personnel from and against any and all claims, expenses, losses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by the other party which arise as a result of or in connection with any injury to or death to any person caused or contributed to by the first party's negligence or wilful misconduct, or the negligence or wilful misconduct of any of its personnel except to the extent that they were caused by the other party's negligence or wilful misconduct, or the negligence or wilful misconduct of any of its

personnel. The Client indemnifies SP and its personnel from and against any and all claims expenses, losses, damages and costs (including reasonable legal fees incurred on a solicitor/client basis) suffered or incurred by SP which arise as a result of or in connection with the Client's breach of this Agreement.

19. It is a condition of SP engagement that SP shall not be liable to its client for any liability or loss to the extent that it is the fault of SP's client. Where negligence is found to have been contributory, each party shall bear responsibility in accordance with that party's proportionate fault.
20. Neither the Client nor SP shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made within 90 days of transmission of the final Works deliverable.
21. SP shall only be liable to the Client, either in contract or in tort, for direct loss or damage suffered by the Client as the result of a breach by SP of its obligations under this Agreement.
22. The Client shall indemnify SP from any costs, damages, expenses or loss SP may suffer of whatever kind and however caused resulting directly or indirectly from the Services performed by SP except as stated in clause 18 above.
23. SP liability will be limited to the lesser amount of \$100,000 or one tenth the value of the fees (exclusive of GST and disbursements).

Warranty

24. To the extent permitted by law (including by the Trade Practices Act 1974) the Client acknowledges that SP is not providing, and the Client is not relying on, any implied warranties, including the implied warranties of merchantability and fitness for purpose.

Change Management

25. The Client may order variations to the Services in writing or may request SP to submit proposals for variation to the Services. The client agrees that these variations shall be administered as set out in the relevant State Construction Contracts legislation, and that this Act shall be binding on this contract irrespective of whether the service is held under law to be covered by that Act. The cost of such variations will be provided to the client at that time.
26. SP may submit for approval a matter which SP considers to be a variation and may choose not to commence work affected by that variation until after approval is received. SP shall not be liable for costs or penalties consequent upon delays so caused.
27. Rework as a consequence of late reissued drawings will be charged at the cost of the effected rework including assessment of impact, as a variation.
28. Unless specified in the tender quote, variation rates shall not be derived or assumed by the Client from tender rates.
29. Unless specified in the tender quote, review of revised architectural design and/or structural drawings will be undertaken on a time and materials cost basis in addition to any variations arising from revised design drawings.
30. Unless otherwise stated, SP shall assume all design revision changes are clouded and is not responsible for oversights associated with unclouded changes unless instructed to undertake a full review of revised drawings by way of variation works.
31. Any changes to structural and architectural design drawings submitted to SP after IFA issue will NOT be reviewed by SP in relation to IFA issue drawings unless specifically referred to in return comments. If SP is instructed to review revised drawings after IFA issue, drawings will be reissued under IFA for approval.
32. SP is not responsible for any fabrication based on IFC shop drawings not meeting new design requirements when design changes affecting those drawings are issued post shop drawing IFC.
33. Any variation submitted by SP to the Client not objected to within 5 working days after receipt by the client will be deemed to have been accepted and approved by the Client. For the avoidance of doubt, this means if the work has been undertaken it will be invoiced.

Intellectual Property

34. Ownership of all intellectual property subsisting in any materials prepared by SP pursuant to this agreement will vest in SP. SP grants to the Client a non-exclusive licence for the term of this agreement to use drawings, specifications and other documents which SP prepares pursuant to this agreement and in which SP owns copyright, to the extent reasonably required in connection with this agreement. The Client shall have no right to use any of these documents under this clause 32 where any or all of the fees and expenses payable to SP have not been paid in accordance with this Agreement.
35. SP may, unless otherwise instructed by the client, use information about projects to promote itself.
36. SP has not and will not during the term of this Agreement or at any time after it, assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time arising out of the engagement.

Termination

37. Either party may suspend all or part of the Services or terminate the Agreement by 10 day's written notice to the other party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
38. Upon termination, SP will issue the client an invoice for all work in progress up until the time of the termination notice. This invoice shall become payable immediately and without deduction by the client.
39. In the event of the breach of this Agreement by the Client (including any failure by the Client to pay amounts under any invoices issued by SP pursuant to clause 11), SP may by notice to the Client, immediately suspend all or part of the Services or otherwise terminate this Agreement.

Force Majeure

40. Neither party shall be liable to the other for any failure or delay in performance caused by circumstances beyond its reasonable control, including but not limited to, acts of God, fire, labour difficulties or government action, but excluding lack of funds and provided that the party in default uses its reasonable efforts to remedy such default as quickly as possible.

Jurisdiction

41. This Agreement is governed by the laws of the State of Australia in which the office of the Client named in the offer resides.

Dispute Resolution

42. In the event of any disputes both parties shall, in the first instance, attempt to resolve that dispute through respective project managers. In the event of any matter not being resolved within five working days the matter shall be escalated to more senior employees by both parties until settlement is agreed.
43. Unresolved disputes shall be resolved in accordance with the relevant State Construction Contract Legislation.