

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. DEFINITIONS

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

"**Buyer**" means Progress Rail Australia Pty Ltd;

"**Contract**" means the contract constituted by the Seller's acceptance of the Purchase Order;

"**Contract Price**" means the price or prices specified in the Purchase Order;

"**Defects Liability Period**" means the defects liability period for the Goods specified in the Purchase Order;

"**Force Majeure**" means any event or circumstance or combination of events or circumstance (excluding lack of funds or inability to use any funds or strikes or other industrial disputes only affecting the personnel of the Seller or Buyer)

that is beyond the reasonable control of the Seller or Buyer the effects of which could not reasonably have been ameliorated, avoided or overcome by the exercise of a standard of foresight, planning, care and diligence consistent with that expected of a prudent and competent person in similar circumstances;

"**Goods**" means the goods or services (or any of them) as described in the Purchase Order;

"**Incoterms**" means Incoterms 2010 issued by the International Chamber of Commerce;

"**Legislative Requirements**" includes all

- (a) laws, statutes, acts, ordinances, regulations, by-laws, codes, judgments, orders, awards, directives, determinations, proclamations and common law;
- (b) certificates, licences, consents, permits, approvals and requirements; and
- (c) fees or charges payable

applicable to the manufacture, packaging, storage, supply and sale of the Goods and provision of any services, if applicable.

"**Purchase Order**" means the Purchase Order placed by the Buyer for the supply of the Goods;

"**Results**" means all reports, specifications, software, drawings or other information in any form created by the Seller pursuant to the supply of Goods;

"**Seller**" means the person, firm or company to whom the Purchase Order is addressed;

"**Shipping Details**" means the details relating to the shipping, Contract Price and delivery of the Goods (which shall include any relevant Incoterms) as set out in the Purchase Order;

"**Specification**" means the technical description (if any) of the Goods contained or referred to in the Purchase Order which may also include details of the applicable drawings and drawing revisions and /or recognised standards applicable to the Goods being purchased;

"**Tooling**" means any samples, patterns, gauges, jigs, tools, dies, drawings, templates, materials or other goods supplied to the Seller by the Buyer for use in connection with the Contract.

2. GENERAL

2.1 Unless stated otherwise in the Purchase Order these Conditions shall govern the Contract to the exclusion of any terms and conditions which the Seller may seek to impose.

2.2 Any concession allowed by the Buyer at any time shall not constitute a waiver of its rights under the Contract or otherwise.

2.3 The Buyer will be bound by a Purchase Order only if:

- (a) it is placed on the Buyer's official Purchase Order form; and
- (b) the Seller accepts it by signing and returning the acknowledgement copy of the Purchase Order within fourteen (14) days of the date of the Purchase Order or undertakes an act of part performance specifically referable to the Purchase Order.

3. VARIATION

3.1 These Conditions apply to all the Buyer's purchases and any variation of these Conditions or of the Contract shall only be effective if agreed in writing and signed by an authorised representative of each party.

3.2 The Buyer shall be entitled to vary a Purchase Order and any Specification that may relate to such Purchase Order, at any time prior to delivery.

4. QUALITY AND DESCRIPTION

4.1 The Seller warrants to the Buyer that the Goods shall:

- (a) be of satisfactory quality and free from defects in design, material or workmanship and be fit for their intended purpose;
- (b) conform to the quantity, description and drawings contained or referred to in the Purchase Order;
- (c) be of sound material and workmanship;
- (d) be equal in all respects to the Specification or to the samples or patterns provided or given by either party (if any);
- (e) meet any quality standard and be capable of any performance specified in the Purchase Order;
- (f) be new unless the Buyer has agreed otherwise in writing;
- (g) be free from any lien, charge or other encumbrance;
- (h) comply with all Legislative Requirements; and
- (i) comply with the Buyer's safety policies together with any environmental, health, safety and welfare regulations and requirements that may from time to time be notified to the Seller by the Buyer.

4.2 The Buyer shall have no liability in respect of any representation or warranty made prior to the Contract unless it was made fraudulently.

4.3 The Seller shall notify the Buyer in writing on request of the country (or countries) of origin of the Goods and each component of the Goods being delivered.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 The Seller warrants that the Goods or any part of them will not cause an infringement of any patent, registered design, trade or service mark, know-how, copyright or other intellectual property rights ("IPR") of any third party resulting from the use or resale of the Goods that are the subject of the Purchase Order.

5.2 The Seller grants or shall procure the grant of the right to the Buyer to, use and disclose all or any part of any report, blue print, drawing, data or technical information supplied by the Seller to the Buyer, provided that the Buyer shall only use and disclose such information for the purpose specified in the Purchase Order. The Seller warrants that the Buyer is entitled to exercise those rights without any payment to any third party.

6. PRICE

- 6.1 The Contract Price shall be in accordance with the Shipping Details.
- 6.2 No increase in the Contract Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

7. PAYMENT

- 7.1 After making allowance for any sums due to the Buyer under Condition 8.3(a) the Seller may invoice the Contract Price for the delivered Goods after delivery has been completed. Subject to Condition 7.2 and 7.3 and provided that the Goods delivered are in accordance with any applicable Specification and the terms of the Contract, unless otherwise agreed by the parties in writing, the Buyer shall pay the Contract Price for the Goods within sixty (60) days of the issuance of an invoice by the Seller.
- 7.2 The invoice must contain the following information:
- (a) the details of the Goods and/or Services supplied;
 - (b) the address to which the Goods were delivered, as evidenced by a delivery note signed by an authorised representative of the Buyer;
 - (c) the Purchase Order number;
 - (d) any reference number specified by the Buyer;
 - (e) the Seller's details for payment;
 - (f) the allowance made for liquidated damages pursuant to Condition 8.3(a), where applicable;
 - (g) the Contract Price of the Goods delivered; and
 - (g) GST, where applicable.
- 7.3 Without prejudice to any other right or remedy the Buyer reserves the right to set off without notice any sum of money owing at any time by the Seller to the Buyer against any sum payable, or which at any time thereafter may become payable by the Buyer to the Seller under the Contract or under any other contract between the Buyer and the Seller.

8. DELIVERY, DELAY AND CONSEQUENCES

- 8.1 The Seller shall deliver the Goods suitably packed and in accordance with the Shipping Details.
- 8.2 The Seller shall deliver the Goods by the date specified in the Purchase Order or if no such date is specified then delivery shall take place within 28 days of the release of the Purchase Order to the Seller. If owing to Force Majeure the Seller is unable to deliver the Goods by the specified date, then provided that the Seller has given the Buyer immediate notice in writing of its intention to claim an extension of time, the Buyer shall grant the Seller such extension of time as may be reasonable (but in any event no longer than 2 calendar months).
- 8.3 Should the Seller fail to deliver the Goods by the specified date for any reason other than Force Majeure or breach of the Contract by the Buyer, the Buyer (without prejudice to any other right or remedy which it may have) shall be entitled to:
- (a) whether as a deduction from any sums due to the Seller or otherwise, liquidated damages at the rate set out in the Purchase Order for each day in which the Seller fails to deliver the Goods, subject to the maximum amount set out in the Purchase Order; or
 - (b) cancel or vary that part of the Purchase Order which has not been delivered by the specified date;
 - (c) obtain replacement goods from another supplier; and
 - (d) charge to the Seller any additional costs, losses or expenses which the Buyer may reasonably incur due to the Seller's failure to deliver the Goods by the specified date.
- 8.4 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 8.5 The Seller shall furnish such programmes of manufacture and delivery as the Buyer may reasonably require and the Seller shall give written notice to the Buyer as soon as practicable if the manufacture or delivery shown in such programmes is or is likely to be delayed.
- 8.6 If the Goods are delivered in excess of the quantities ordered the Buyer shall not be bound to pay for the excess and any such excess shall remain at the Seller's risk and shall be returnable at the Seller's expense.
- 8.7 The Buyer shall be entitled to rescind any contract for Goods which have not been delivered in whole or in part or to require the Seller to suspend delivery for any period if the activities for which the Goods were purchased are stopped or seriously interfered with by any event of Force Majeure.

9. TIME

Time for performance of the Seller's obligations under the Contract and all other dates specified by the Buyer whether in the Purchase Order, these Conditions or otherwise, shall be of the essence.

10. RISK, DAMAGE/LOSS IN TRANSIT

- 10.1 The Goods shall remain at the Seller's risk until delivery and the Seller shall insure them to their full replacement value until risk passes to the Buyer in accordance with the Contract or in accordance with any Shipping Details, if any.
- 10.2 The Seller will repair or replace free of charge, Goods damaged or lost in transit provided the Buyer shall give the Seller written notification of such damage or loss within such time as will enable the Seller to comply with the carrier's conditions of carriage as affecting loss or damage in transit, or where delivery is made by the Seller's own transport, within a reasonable time.

11. PROPERTY

- 11.1 Property in the Goods shall pass to the Buyer when delivery is complete (without prejudice to the Buyer's right of rejection under these Conditions) or when payment for such Goods is made by the Buyer (whether in part or in full), whichever occurs first.
- 11.2 Where property in the Goods has passed to the Buyer following payment but they have not yet been delivered to the Buyer:
- (a) the Seller shall keep the Goods separate from any similar goods owned by the Seller or any third party. The Seller shall further ensure that the Goods are properly stored and protected and identified as the Buyer's property; and
 - (b) the Buyer may require the Seller to deliver up the Goods to the Buyer on request and if the Seller fails to do so immediately, the Buyer may enter any premises of the Seller or any third party where the Goods are stored and repossess the Goods.

12. REJECTION

- 12.1 If any of the Goods do not comply with the Contract or the Seller does not comply with its obligations under Condition 4, the Buyer shall be entitled to reject those Goods or any part of them by notice in writing to the Seller given within 7 days of delivery or such other period as may be agreed by the parties.

- The Buyer shall also have the right to reject the Goods as though they had not been accepted for 7 days after any latent defect in the Good has become apparent.
- 12.2 The Buyer shall, when giving notice of rejection, specify the reasons for it and shall return the rejected Goods to the Seller or at the Buyer's option request that the Goods be collected by the Seller at the Seller's risk and expense. In such case the Seller shall within a reasonable time replace those rejected Goods with goods which are in all respects in accordance with the Contract.
- 12.3 Any sums paid by the Buyer to the Seller in respect of any rejected Goods not replaced by the Seller within a reasonable time, together with any additional expenditure over and above the Contract Price reasonably incurred by the Buyer in obtaining other goods in replacement, shall be paid by the Seller to the Buyer.
- 13. INDEMNITY**
- 13.1 The Seller shall indemnify the Buyer in full and on demand against
- (a) loss of or damage to the Buyer's property;
 - (b) claims in respect of personal injury or death or loss of, or damage to, any other property; and
 - (c) any loss or damage, cost, or expense (including legal costs on a full indemnity basis) which the Buyer may suffer or incur as a result of any act or omission of the Seller
- arising out of or as a consequence of the Seller's performance of the Contract, but the indemnity shall be reduced proportionately to the extent that the act or omission of the Buyer contributed to the injury, death, loss or damage.
- 13.2 Condition 13.1 shall not apply:
- (a) to the extent that the Seller's liability is limited by another provision of the Contract; and
 - (b) to exclude any other right of the Buyer to be indemnified by the Seller.
- 13.3 In no event will either party be liable to the other party for loss of profits, loss of revenue, loss of goodwill, loss of business opportunity, indirect, special or consequential loss except to the extent any such consequential liability
- (a) is included in liquidated damages payable under the Contract; or
 - (b) would be capable of being recovered under any policy of insurance required to be effected under the Contract.
- 14. INSURANCE**
- The Seller shall take out and maintain full insurance with a reputable insurance company against all risks associated with its obligations and potential liabilities under the Contract (including without limitation insurance of the Goods and the Tooling while it is at the Seller's risk, public and products liability insurance, insurance against statutory and common law liability for death of or injury to the Seller's employees and where required by the Buyer, professional indemnity insurance). Such insurance shall include waiver of subrogation rights against the Buyer and where applicable extended to provide indemnity for the Buyer's statutory liability to the Seller's employees. The Seller shall produce evidence of such insurance to the Buyer on request.
- 15. DEFECTS LIABILITY**
- 15.1 If within the Defects Liability Period the Buyer gives notice in writing to the Seller of any defect in the design, materials or workmanship of the Goods (other than a design made, furnished or specified by the Buyer for which the Seller has in writing disclaimed responsibility), the Seller shall, as soon as possible, replace or repair (at the Buyer's sole option, acting reasonably) the relevant Goods so as to remedy the defects without cost to the Buyer.
- 15.2 The Buyer shall, as soon as practicable after discovery of any such defect, return the defective Goods or parts of them to the Seller at the Seller's risk and expense unless it has been agreed between the parties that the necessary replacement or repair shall be carried out by the Seller on the Buyer's or the Buyer's customer premises.
- 15.3 If the Seller is not the manufacturer, and if required by the Buyer, the Seller shall assign to the Buyer the benefit of any warranty or guarantee given by the manufacturer or the Seller's supplier relating to the Goods.
- 15.4 The liabilities of the Seller under this Condition 15 shall be in addition and without prejudice to any other rights or remedies of the Buyer (whether arising in contract, tort, at common law, under statute or otherwise).
- 16. GUARANTEES AND OTHER FORMS OF SECURITY**
- 16.1 The Seller shall, where required by the Buyer in the Purchase Order, provide one or more of the following documents in a form acceptable to the Buyer, to guarantee its performance of the Contract or as security for any payment made by the Buyer in advance of delivery of the Goods:
- (a) a parent company guarantee; or
 - (b) an unconditional bank guarantee.
- 16.2 The guarantee referred to in Condition 16.1 (b), shall be to the value stated in the Purchase Order. Any parent company guarantee shall be to the full value of the Seller's liabilities under the Contract.
- 17. ASSIGNMENT AND SUB-CONTRACTING**
- 17.1 The Seller shall not assign the Contract or any part of it without the prior written consent of the Buyer.
- 17.2 The Seller shall not sub-contract the Contract or any part of it without the prior written consent of the Buyer. Any such consent shall not relieve the Seller of any of its obligations under the Contract.
- 18. SERVICES**
- 18.1 Where the Seller is providing any services, the "Goods" as used in these Conditions shall be interpreted to include the provision of such services. In providing those services the Seller warrants that it shall use only qualified and experienced personnel acting with all care and diligence and it accepts full responsibility for such personnel, their property, their acts and omissions.
- 18.2 Where consultancy or design work is involved in the services provided by the Seller, the Seller accepts full professional responsibility for the services and will carry them out with such skill and expertise necessary to ensure they are of the standards required under the Contract. The Seller shall take out and maintain for a period of 6 years from completion of the consultancy or design work professional indemnity insurance to a level of at least \$10 million.
- 18.3 All rights in any IPR arising in the Results shall be the property of the Buyer who shall have the right to use the Results for any purpose without further payment.
- 18.4 The Seller shall, at the Buyer's request, without delay do all things necessary or desirable to substantiate the rights of the Buyer under Condition 18.3.

19. INSPECTION, SURVEILLANCE AND EXPEDITING

- 19.1 The Buyer's representatives and those of its customer(s) shall at all reasonable times have access to the Seller's premises and those of the Seller's sub-contractors for the purposes of inspection, testing, surveillance and expediting. Any such inspection or failure to inspect shall not relieve the Seller of any obligation with respect to the Contract and shall not affect the Buyer's right to reject the Goods after delivery.
- 19.2 Where it is a requirement in the Purchase Order that the Seller carries out specific tests on the Goods or any part of them the Seller shall give the Buyer not less than 14 days prior written notice of when such tests will take place to enable the Buyer to attend.
- 19.3 The Seller shall be obliged to comply with the Buyer's reasonable instructions arising from any inspection, testing, surveillance and expediting pursuant to Condition 19.1 and 19.2 and shall upon request and at its own expense provide the Buyer with copies of all test reports, certificates of analysis and all data discovered as a result of testing whether carried out by the Buyer or the Seller.

20. DELIVERABLES

The deliverables shall, in addition to the Goods, include all documentation specified or referred to in the Purchase Order as being required. Such documentation is to be supplied to the Buyer's satisfaction in the timescales specified in the Purchase Order. Receipt of deliverables is a condition precedent to payment.

21. TOOLING

- 21.1 If applicable, Tooling shall be sent to the Seller at the Buyer's expense and returned to the Buyer on request at the Seller's expense to any address within Australia notified by the Buyer to the Seller.
- 21.2 Any Tooling shall at all times remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition (fair wear and tear excepted) until returned to the Buyer.

22. CONFIDENTIALITY

- 22.1 Subject to Condition 22.2, the Results and any plans, drawings, designs, specifications, samples or other information issued by the Buyer to the Seller are confidential and the property of the Buyer and shall be kept confidential and not copied nor used for any other purpose (apart from in connection with the Contract) and shall be returned to the Buyer at the Buyer's request.
- 22.2 Any party may disclose information which would otherwise be confidential if and to the extent:
- (a) it is required to do so by law or any securities exchange or regulatory or governmental body to which it is subject wherever situated;
 - (b) it considers it necessary to disclose the information to its professional advisers, auditors and bankers provided that it does so on a confidential basis;
 - (c) the information has come into the public domain through no fault of that party;
 - (d) the information was previously disclosed to it without any obligation of confidence; or
 - (e) the Buyer has given its prior consent in writing.

23. TERMINATION

- 23.1 Without prejudice to its other rights or remedies, the Buyer shall be entitled to terminate or cancel a Contract in whole or in part at any time giving not less than 7 days' notice in writing to the Seller. The Seller shall be entitled to reasonable payment for the work satisfactorily completed up to the time of termination. Upon receipt of a termination notice the Seller shall immediately cease all work in performance of the Contract and shall make every reasonable effort to obtain cancellation of all sub-contracts made by it relating to the Contract.
- 23.2 The Buyer may cancel a Contract at any time without any cost to the Buyer by serving a notice in writing on the Seller if the Seller fails to comply with any provisions of the Contract and does not rectify within the time specified by the Buyer.
- 23.3 The Seller shall not cancel the Contract without the consent of the Buyer, such consent to be conditional on the Seller indemnifying the Buyer against all direct loss (including without limitation, consequential loss) damage, claims or actions arising out of such cancellation.
- 23.4 The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding the expiry or termination of the Contract.

24. INSOLVENCY

If either before or after acceptance of the Purchase Order the Seller becomes bankrupt or insolvent or compounds with its creditors or, being a limited company, commences to be wound-up or enters into a deed of company arrangement or if a receiver, manager, or administrator is appointed over any part of the Seller's assets, or documents are filed with the court for the appointment of an administrator of the Seller or notice of intention to appoint an administrator is given by the Seller, its directors or by a qualifying floating charge holder, the Buyer shall be at liberty by notice in writing to cancel the Purchase Order or the Contract as the case may be, without being liable for loss or damage of any kind arising from such cancellation, and without prejudice to any right or remedy which shall have accrued or shall accrue thereafter to the Buyer.

25. TERMINATION FOR CONVENIENCE

- 25.1 Without prejudice to any of the Buyer's other rights or entitlements or powers under this Contract, the Buyer may at any time for its sole convenience, and for any reason, by written notice to the Seller terminate this Contract effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Seller.
- 25.2 If the Contract is terminated by the Buyer under clause 25.1
- (a) subject to Condition 7.3, the Buyer shall assess the value of the work performed under the Contract to the date of termination, evidencing the amount which would have been payable had the Contract not been terminated and had the Seller been entitled to and made a progress claim on the date of termination;
 - (b) the Buyer shall pay the Seller:
 - (i) the Contract price of any Goods delivered by the Seller up to the final date of termination and not included in any other payment;
 - (ii) the cost of materials and Goods reasonably ordered by the Seller prior to the date of service of the notice of termination and which the Seller is liable to accept and pay for, but only if they will become the Buyer's property upon payment; and
 - (iii) the costs, up to the final date of termination, reasonably incurred by the Seller in expectation of completing the Contract and not included in any other payment;
 - (c) each party shall promptly release and return all security provided by the other party.

26. SPECIAL TERMS AND CONDITIONS

Any special terms, conditions or instructions set out in the Purchase Order will prevail in the event of conflict with these Conditions.

27. PUBLICITY

The Seller may not describe, illustrate or refer to the Goods and/or the Contract in any form of advertising or through any communications media without the Buyer's written consent (which shall not be unreasonably withheld). The Seller shall refer to the Buyer any enquiries from any media concerning the Contract.

28. NOTICES

28.1 Any notice to a party under this Contract shall be in writing signed by or on behalf of the party giving it and shall, unless delivered to a party personally, be left at, or sent by prepaid post or facsimile, to the receiving party's address as set out in the Purchase Order or as otherwise notified in writing from time to time.

28.2 A notice shall be deemed to have been served:

- (a) at the time of delivery if delivered personally;
- (b) 48 hours after posting where both parties address for service is in Australia and 96 hours after posting where one party's address for service is outside Australia;
- (c) 2 hours after transmission if served by facsimile or telex on a business day prior to 3pm or in any other case at 10 am on the business day after the date of dispatch.

29. DISPUTE RESOLUTION

29.1 If a dispute between the parties arises in connection with the subject matter of the Contract, either party shall by hand or by registered post give the other written notice of dispute adequately identifying and providing details of the dispute. Notwithstanding the existence of a dispute the parties shall continue to perform the Contract.

29.2 The Chief Executive Officer or other designated officer of each of the parties shall meet within 14 days after the date when the written notice of the dispute under Condition 29.1 is received by the other party and attempt to resolve the dispute.

29.3 If the dispute has not been resolved within 28 days of service of the notice of dispute or such longer period as the parties may agree in writing, the dispute may be litigated by either party in any New South Wales court of competent jurisdiction.

29.4 Nothing herein shall prejudice the right of a party to institute proceedings to seek urgent injunctive relief.

30. GST

30.1 Words and expressions used in this clause which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

30.2 Any consideration expressed to be payable under any other clause of this Contract for any supply made under or in connection with this Contract does not include GST, unless specifically described as 'GST inclusive'.

30.3 To the extent that any supply made under or in connection with this Contract is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the supply, and is payable at the same time on supply of a valid tax invoice.

30.4 If a payment to a party under this Contract is a reimbursement or indemnification calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that party, then the payment is to be reduced by the amount of any input tax credit to which that party is entitled in respect of that loss, cost or expense..

30.5 If GST is payable on a Taxable Supply made by the Seller, then the Buyer will not be required to pay to the Seller any amount in respect of that Taxable Supply unless it has first received a Tax Invoice from the Seller.

31. LAW

These Conditions and the Contract shall in all respects be governed by and construed in accordance with the laws of New South Wales and the parties submit to the exclusive jurisdiction of the New South Wales courts.