

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C1. DEFINITIONS AND INTERPRETATION

Business Day means any day other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 and 31 December.

Confidential Information means any information and all other knowledge (including trade secrets and confidential know-how) in whatever form relating to the Principal's business or the conduct of its activities that is disclosed to the Contractor by the Principal, or is acquired by the Contractor in providing the Contractor's Activities, which:-

- (a) is by its nature confidential,
- (b) is designated, marked or stipulated as confidential, or
- (c) the Contractor knows or ought to know is confidential,

and includes (but is in no way limited to):-

- (d) the Contract Material,
- (e) the Principal's Material,
- (f) any Material relating to the affairs of a third party,

but does not include information that:-

- (g) is or becomes public knowledge other than by breach of the Contract,
- (h) is in the lawful possession of the Contractor without restriction in relation to disclosure before the date of receipt of the information from the Principal or a third party,
- (i) was developed or acquired by the Contractor independently,
- (j) is ascertainable through independent enquiries, or
- (k) is required to be disclosed pursuant to law or legal process.

Contract means the contract formed when the Principal issues the Contractor a Purchase Order and consists of:

- (a) the Purchase Order;
- (b) this Part C: Contract Terms including Appendix C1 and Appendix C2;
- (c) Part D: Description of the Contractor's Activities and other details;
- (d) Part B: (including the responses to the specific questions asked in Part B but excluding any amendments to the Contract set out in Part B);
- (e) Part A: Form of Proposal (executed by the Contractor); and
- (f) any panel arrangements between the Principal and the Contractor relating to the Contractor's Activities.

The above order of precedence applies so that, if there is any ambiguity, conflict, discrepancy or inconsistency between the documents comprising the Contract, the document which appears higher in the order of

precedence above is to be given priority over those below.

Contract Date means the date on which the Principal accepted the Contractor's proposal to provide the Contractor's Activities.

Contract Material means any Material created, written or otherwise brought into existence by the Contractor in the course of providing the Contractor's Activities.

Contract Particulars means the particulars and information specified in Appendix C1 to these Contract Terms.

Contractor means the legal entity whose proposal to provide the Contractor's Activities was accepted by the Principal by the Principal issuing a Purchase Order.

Contractor's Activities means all the things that the Contractor is, or may be, required to do under the Contract including the activities described in Parts C and D of the Contract and all Contract Material.

Contractor's Representative means the person named in Part B, Schedule B3.

Date for Completion means the date specified in Part B, Schedule B2, unless otherwise agreed by the parties.

day means calendar day.

Environmental Management Specification means the Principal's environmental specification located at <http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

Fee means the monies payable to the Contractor for the Contractor's Activities which, subject to clause C14, is calculated in accordance with lump sum specified in Part B, Schedule B1 or the sum determined by applying the service rates specified in Part B, Schedule B1.

GST Act means the [*A New Tax System \(Goods and Services Tax\) Act 1999 \(Cth\)*](#).

GST, taxable supply, adjustment note and recipient created tax invoice have the meanings given in the GST Act.

Intellectual Property Rights means all intellectual property rights including:-

- (a) copyright, design, patent, trade mark, semi-conductor or circuit layout rights, trade secrets, trade, business or company names and all other rights of intellectual property defined in Article 2 of the [*Convention Establishing the World Intellectual Property Organisation of 1967*](#), whether created before or after the Contract Date in Australia or elsewhere, and
- (b) any licence, consent, application or right to use or grant the use of, or apply for the registration of, any of the rights referred to in (a).

Material includes, but is not limited to, documents, data, information and software, whether or not in material form.

Moral Rights means the right of attribution of authorship, the right to not have authorship falsely attributed and the right of integrity of authorship, more particularly as conferred by the [*Copyright Act 1968*](#), and rights of a similar nature anywhere in the world whether

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

existing at the Contract Date or which may come into existence on or after the Contract Date.

Principal means NSW Trains ABN 50 325 560 455.

Principal's Material means any Material provided by the Principal to the Contractor by whatever means in relation to the Contract.

Principal's Representative means the person named in the Contract Particulars or such other person as the Principal may nominate from time to time.

Purchase Order means any form of order or acknowledgment from the Principal for the undertaking of the Contractor's Activities which incorporates this Contract.

Safety Specification means the Principal's safety specification as identified in Part E which may be obtained from the Principal and are located at:

for service providers:

<http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

for contractors:

<http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

for principal contractors:

<http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

for labour hire firms:

<http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

for goods:

<http://railsafe.sydneytrains.nsw.gov.au/safety-and-environment-specifications>

Specified Personnel means the personnel specified in Part B, Schedule B3.

Working Days means the days specified in the Purchase Order and if none specified then any day other than a Saturday, Sunday, a Public Holiday in NSW and 27, 28, 29, 30 and 31 December.

Working Hours means the hours specified in the Purchase Order and if none specified then between the hours of 8:00am and 4:00pm.

C2. THE PRINCIPAL'S REPRESENTATIVE

The Principal's Representative has the authority to represent the Principal for all purposes associated with the Contract and will give directions and instructions and carry out its functions as the Principal's agent and not as an independent certifier, assessor or valuer.

The Contractor must promptly comply with any direction or instruction that the Principal's Representative may give to the Contractor.

C3. PROVISION OF THE CONTRACTOR'S ACTIVITIES

C3.1 Undertaking the Contractor's Activities

The Contractor must:-

- (a) provide the Contractor's Activities diligently, with all necessary care expected in the provision of such Contractor's Activities,

- (b) comply with all applicable laws and standards relevant to the Contract and the provision of the Contractor's Activities including any requirements of the Asset Standards Authority,
- (c) provide all plant (including vehicles, equipment, machinery, tools, appliances, hardware and software) required to provide the services/carry out the works, and all consumable fuels, oils, materials and things necessary to maintain and operate the plant, necessary for the performance of the Contractor's Activities,
- (d) obtain all approvals, authorities, licences and permits which are required from government or other responsible authorities for the lawful provision of the Contractor's Activities including any authorisation required from the Asset Standards Authority (as required by the Contract Particulars),
- (e) ensure that all materials, components, parts, items, consumables and other things used to carry out or incorporated in the Contractor's Activities are of merchantable quality, fit for their intended purpose, free from defects in design, materials and workmanship, are new and unused and not of an age which would impair their operation unless otherwise specified,
- (f) not cause or contribute to any loss of, loss of use of or damage to any property when providing the Contractor's Activities, and
- (g) comply at all times with the Principal's [*Statement of Business Ethics*](#) and [*Code of Conduct*](#).

C3.2 Personnel

The Contractor must:-

- (a) ensure that all personnel engaged by it in connection with the Contractor's Activities are appropriately qualified, competent and experienced, and
- (b) use its best endeavours to ensure that the Specified Personnel (or alternates agreed by the Principal) are engaged by the Contractor to provide the Contractor's Activities.

C3.3 Co-operation

The Contractor must:-

- (a) act in good faith and in the best interests of the Principal,
- (b) liaise, consult and meet with the Principal to inspect, discuss or assess the provision of the Contractor's Activities, and
- (c) consult, co-operate and confer with others, as reasonably necessary or as directed by the Principal.

C3.4 Records

- (a) The Contractor must keep accurate and detailed financial records and other information relevant to the Contract and must give the Principal

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

reasonable access to and copies of such records and information if requested to do so.

- (b) The Contractor must provide progress reports to the Principal at such times and containing such information as may be agreed between the Principal and the Contractor, or as the Principal may reasonably direct.

C3.5 Reports

The Contractor must provide progress reports to the Principal at such times and containing such information as may be agreed between the Principal and the Contractor, or as the Principal may reasonably direct.

C3.6 The Principal's Material

The Contractor must:-

- (a) take all reasonable care of the Principal's Material,
- (b) use the Principal's Material only for the purpose of providing the Contractor's Activities,
- (c) not make any alteration to the Principal's Material (except as necessary to provide the Contractor's Activities) and must notify the Principal as soon as practicable of any inadequacies, errors, omissions and ambiguities in any the Principal Material. The Principal will then issue an instruction or direction to the Contractor explaining, determining or correcting any inadequacies, errors, omissions or ambiguities,
- (d) promptly inform the Principal of any damage to or loss or destruction of the Principal's Material, and
- (e) if no longer required, return the Principal's Material as soon as practicable.

C3.7 Design

- (a) If the Contractor is required to carry out design as part of the Contractor's Activities (**Design**), the Contractor must complete all tasks necessary for the Design, including the preparation of any drawings or other design documents. In carrying out its design obligations under this clause the Contractor warrants that:
 - a. it is suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of the Design,
 - b. it has examined and carefully checked any concept design provided by the Principal and the concept design is suitable, appropriate and adequate as a basis for developing the Design,
 - c. it holds a professional indemnity insurance policy with respect to any design work undertaken by the Contractor pursuant to this Contract, and
 - d. the Contractor's Activities will be completed in accordance with all design documents so that the Contractor's Activities, when completed will be fit for their stated purpose

and comply with all the requirements of this Contract.

- (b) The Principal may, but is not bound to, comment upon or review the drawings or design documents for errors, omissions or compliance with this Contract. In the event that the Principal wishes to review any drawings and design documents, the Contractor must promptly give such drawings and design documents to the Principal upon its request.
- (c) The Contractor's obligations under this clause remain unaffected notwithstanding:
 - a. that design work in the concept design has been carried out by or on behalf of the Principal,
 - b. any receipt or review of, or comment or direction on, any drawings or other design documents by the Principal,
 - c. any variation under clause C4.

C3.8 Supply of goods

Where the Contractor's Activities includes the supply of goods, the Contractor must:

- (a) ensure that title in the goods passes to the Principal on delivery;
- (b) provide with each consignment or delivery of goods a delivery note setting out:
 - a. a description and quantity of goods delivered,
 - b. the name and contact details of the Principal's officer who ordered goods, and
 - c. the Principal's Purchase Order number.
- (c) package all goods to ensure maximum protection against theft or damage during transit, delivery, loading and unloading;
- (d) clearly label all packages of goods with the address and/or place for delivery, the name of the Principal's officer who ordered the goods and the number of the Purchase Order number,
- (e) include in each consignment, the information (including material safety data sheets) specified in the Principal's Safety Specification, the information specified in the Principal's Environmental Management Specification and all other information (including test results, manuals, guides, instructions, procedures and drawings) necessary for the proper and safe handling, transport, storage, use, operation, maintenance, repair and disposal of the goods,
- (f) if the Goods are recalled for any reason:
 - a. immediately advise the Principal of the recall,
 - b. comply with all laws relating to the recall,
 - c. promptly comply with any direction by the Principal to remove the goods from the Principal's premises and provide to the Principal a complete refund for those recalled Goods, and
 - d. pay all costs associated with the recall.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C3.9 Delivery of goods

- (a) In accordance with clause C6, the Contractor must not deliver any goods to a the Principal premises without prior arrangement with the Principal and must follow the requirements of the Principal's Safety Specification and Environmental Management Specification.
- (b) The Contractor must:
 - a. deliver the goods to the delivery address at the time for delivery specified in this Contract or if no exact time was specified within Working Hours on Working Days; and
 - b. obtain the name and signature of the Principal employee or agent who accepts and takes receipt of the delivery of the goods.

C3.10 Acceptance of rejection of goods

- (a) If the goods do not conform with this Contract, the Principal will promptly advise the Contractor. the Principal may reject the goods within 30 days by written notice giving reasons. If the Principal does not accept or reject the goods within 30 days of delivery, delivery will be deemed to have then occurred.
- (b) The Contactor must at its cost collect and remove any goods that have been rejected as soon as practicable or the Principal may return the goods to the Contractor at the Contractor's expense.

C3.11 Defects

- (a) Contractor's Activities will be defective if they contain any errors, faults, defects or omissions or do not comply with any term or warranty contained in this Agreement. ("Defect").
- (b) Without limiting any other available remedy, if any of the Contractor's Activities contain Defects, the Principal will not be required to pay for those Contractor's Activities (until they are provided correctly) and may require, during the Defects Liability Period set out in the Contract Particulars, the Contractor to remedy any default or re-perform the Contractor's Activities within the time specified in a notice (which must be reasonable having regard to the nature of the Contractor's Activities).
- (c) If the Contractor fails to promptly comply with a direction given under this clause to rectify Defects, the Principal may engage a third party to rectify the Defects and the costs and expenses of doing so will be a debt due from the Contractor to the Principal.

C4. VARIATIONS

C4.1 Variation proposals and directions

- (a) The Contractor may propose, or the Principal may direct, a variation to the Contractor's Activities, including a variation to the extent, quantity, time for provision or other requirement of the Contractor's Activities.

- (b) The Contractor must immediately comply with a direction by the Principal to vary the Contractor's Activities.

C4.2 Valuation of variations

The Principal will value proposed and directed variations using the following order of precedence:-

- (a) by applying the service rates specified in Part B, Schedule B1. (to the extent these rates are applicable),
- (b) by agreement with the Contractor (to the extent the service rates are inapplicable), or
- (c) by using reasonable rates or prices, having regard to market rates or prices for the provision of identical or similar Contractor's Activities.

C4.3 No variation without a direction

The Contractor must not vary the Contractor's Activities unless directed to do so by the Principal. the Principal will not be liable for any work carried out or any expenditure incurred by the Contractor, which has not been agreed to or authorised by the Principal.

C4.4 Disputes over valuation

A dispute over the valuation of a variation shall not affect the Contractor's obligation to comply with a direction by the Principal to vary the Contractor's Activities.

C5. PRINCIPAL ASSISTANCE

C5.1 Scope of assistance

- (c) The Contractor must rely on its own professional and personal expertise when providing the Contractor's Activities.
- (d) The Principal will, as soon as practicable or as required by the Contract:-
 - a. make or arrange to make available to the Contractor all relevant instructions, information, documents, data or any other material necessary for the provision of the Contractor's Activities, and
 - b. provide assistance to the Contractor, as reasonably required, so that the Contractor may perform its obligations under the Contract.
- (e) The Contractor acknowledges and agrees that the Principal's provision of any information and assistance in accordance with clause C5.1(b) is by way of assistance only and will not in any way be deemed to give rise to a duty of care on the part of the Principal.

C5.2 No duty of care

The Contractor acknowledges and agrees that the Principal's provision of information and assistance in accordance with clause C5.1 is by way of assistance only and will not in any way be deemed to give rise to a duty of care on the part of the Principal. The Contractor

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

must rely on its own professional and personal expertise when providing the Contractor's Activities.

C6. WORKING AT THE PRINCIPAL'S PREMISES

C6.1 Access

Where required, the Principal will grant the Contractor access to the Principal premises at which the Contractor's Activities are to be performed, only after the Contractor has provided to the Principal:-

- (a) satisfactory evidence of the Contractor's licences, permits, approvals, plans, work and competency statements and insurance policies required under this Contract;
- (b) any environmental management plan required by the Principal;
- (c) any safety management plan and/or safe work method statements required by the Principal; and
- (d) if required by the Principal satisfactory evidence that the Contractor's employees have been provided with all required health assessments and training and possess all required qualifications and certificates of competency and training.

C6.2 The Principal's premises

When providing the Contractor's Activities at the Principal's premises the Contractor must:

- (a) comply with the Principal's Safety Specification and, if required by the Contract Particulars or requested by the Principal, provide a site specific safety management plan prepared in accordance with *Workplace Health and Safety Regulation 2011 (NSW)* and the [New South Wales Government Occupational Health and Safety Management Guidelines](#) before commencing the Contractor's Activities.
- (b) comply with the Principal's Environmental Management Specification and, if required by the Contract Particulars or requested by the Principal, provide a site specific environmental management plan prepared in accordance with the [New South Wales Government Environmental Management Systems Guidelines](#) before commencing the Contractor's Activities.
- (c) comply with all directions, procedures and policies relating to conduct, safety and security at those premises given by the Principal,
- (d) take all reasonable precautions to safeguard, protect and avoid injury or damage to people, property and the environment,
- (e) prevent unreasonable noise, disturbance and nuisance,

- (f) ensure that its plant and equipment is safely and properly stored and secured when not in use,
- (g) ensure that its employees and subcontractors comply with all codes, policies, procedures and directions that are given by the Principal in respect to occupational health, safety and security at the premises,
- (h) liaise, co-operate and confer with the Principal employees, other contractors and consultants who may be working at the premises as necessary or as directed by the Principal;
- (i) keep the premises as clean and tidy as and on completion of work promptly remove from the premises all plant, surplus materials, rubbish and debris, and leave the premises in a clean and tidy state, and
- (j) immediately rectify and make good any loss or damage to any property or the environment caused by the Contractor.

C7. TIMETABLE AND COMPLETION

C7.1 Time for provision of the Contractor's Activities

- (a) The Contractor must carry out the Contractor's Activities in accordance with the program stipulated by the Principal and complete the Contractor's Activities by the Date for Completion.
- (b) The Contractor must carry out the Contractor's Activities only on Working Days during Working Hours, unless otherwise authorised by the Principal in writing.
- (c) The Contractor must promptly notify the Principal when it has completed the Contractor's Activities. the Principal will inspect the Contractor's Activities and notify the Contractor whether it considers the Contractor's Activities to be complete. If the Principal considers that the Contractor's Activities are not complete, it will notify the Contractor of the reasons why it considers the Contractor's Activities are not complete and the action the Contractor must take to complete the Contractor's Activities.
- (d) On completion or on termination of this Agreement, the Contractor must promptly return to the Principal all the Principal's Materials and things given to the Contractor by the Principal to assist the Contractor to carry out the Contractor's Activities.

C7.2 Extension of time

- (a) No later than 5 Business Days after the Contractor first became aware of the event or circumstance which will or is likely to delay the provision of the Contractor's Activities, the Contractor must give to the Principal a notice detailing the circumstances and extent or likely extent of the delay and requesting an extension to the Date for Completion.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

- (b) Provided the Principal is satisfied that:-
- the delay arose from a cause beyond the reasonable control of the Contractor and did not arise from any act or omission on the part of the Contractor, and
 - the Contractor took all reasonable steps to mitigate the delay and its consequences,

the Principal will grant a reasonable extension to the Date for Completion.

C7.2 Liquidated damages

The Contractor agrees that if the Contractor's Activities are not completed by the Date for Completion it will pay to the Principal Liquidated Damages in the amount specified in the Contract Particulars for every day after the Date for Completion up to and including the actual date of completion. The Contractor acknowledges and agrees that the liquidated damages are a genuine pre-estimate of the costs that the Principal is likely to incur if the Contractor's Activities are not completed by the Date for Completion.

C8. CONFIDENTIALITY

C8.1 Contractor's obligations

The Contractor must:-

- keep safe, secure and protected against unauthorized use and access all Confidential Information,
- use Confidential Information solely for the purpose of performing its obligations under the Contract and for no other purpose,
- ensure Confidential Information is not copied or reproduced without the Principal's express written consent,
- disclose Confidential Information to only those persons who have a need to know, and where disclosure is essential to the provision of the Contractor's Activities,
- ensure that each person to whom the Contractor discloses Confidential Information:-
 - is aware of the confidentiality requirements of the Contract,
 - is advised that he or she is strictly forbidden to disclose the Confidential Information to any other person or use the Confidential Information for any purpose other than providing the Contractor's Activities, and
 - if required by the Principal, executes a deed as the Principal may require relating to the use and non-disclosure of the Confidential Information, and
- not issue any information, publication, document or article or make any statement to or advertise in any media about any matters relating to the Contract, unless otherwise approved in writing by the Principal.

C8.2 Survival of obligations

The Contractor's obligations under clause C8.1 shall survive discharge or termination of the Contract.

C9. INTELLECTUAL PROPERTY AND MORAL RIGHTS

C9.1 Existing intellectual property

The Contractor:-

- warrants that it owns, or is licensed by the owner to use and sub-license the use of, all intellectual property existing at the Contract Date and incorporated in the Contract Material, and
- grants to the Principal a perpetual and irrevocable licence to use, reproduce, adapt and sub-license the use of such intellectual property for any purpose.

C9.2 New intellectual property

The Contractor:-

- acknowledges and agrees that ownership of all intellectual property created by the Contractor or arising out of or in connection with anything done by the Contractor pursuant to the Contract, including intellectual property incorporated in the Contract Material, shall immediately be assigned to and vest in the Principal upon creation, and
- warrants that it will execute all documents and do all acts and things reasonably required by the Principal to assure the assignment to and vesting in the Principal of ownership of intellectual property created pursuant to the Contract.

C9.3 Moral Rights

The Contractor:-

- consents to the Principal doing any act or omitting to do any act that constitutes an infringement of the Contractor's Moral Rights (including not naming the Contractor as the author of any work),
- warrants that it will obtain from each of its employees his or her signed consent to the Principal doing any act or omitting to do any act that constitutes an infringement of the employee's Moral Rights (including not naming the employee as the author of any work), and
- warrants that it will use its best endeavours to ensure that none of its employees institute, maintain or support any claim or action for infringement by the Principal of any of the employee's Moral Rights arising out of or in connection with anything done by the employee pursuant to the Contract.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C9.4 Survival of clause

This clause C9 shall survive discharge or termination of the Contract.

C10. WARRANTIES

C10.1 Warranties

The Contractor acknowledges and agrees that the Principal relies on the Contractor's skill, knowledge and experience in providing the Contractor's Activities and warrants that:-

- (a) it has fully informed itself of the Principal's requirements,
- (b) it possesses the requisite skill, knowledge and experience necessary to provide the Contractor's Activities,
- (c) where the Principal has, either expressly or by implication, made known to the Contractor any particular purpose for which the Contractor's Activities are required, the Contractor's Activities will be performed in such a way as to achieve that result,
- (d) at the Contract Date no conflict of interest exists or is likely to arise in the provision of the Contractor's Activities and it will immediately notify the Principal upon becoming aware of the existence or possibility of any conflict of interest,
- (e) it will provide the Contractor's Activities in a diligent, proper and professional manner, with due care and skill,
- (f) it will not, in providing the Contractor's Activities, infringe, or permit the infringement of, any third party's Intellectual Property Rights or Moral Rights,
- (g) the Contractor's Activities, and all work done in connection with the Contractor's Activities, will comply with the requirements of all applicable laws, legislation, regulations and standards,
- (h) it has the right to sell and transfer title to and property in the Goods to the Principal,
- (i) all Contract Materials, works, goods, materials or other items supplied as part of the Contractor's Activities:
 - a. are new and fit for the purpose stated in this Agreement or for which the Goods would ordinarily be used (**Specification**),
 - b. conform in all respects with the Specification,
 - c. are free from defects, errors and omissions (including defects, errors and omissions in installation),
 - d. are of merchantable quality and comply with all laws, and

- e. otherwise comply with all the requirements of the Contract.

C10.2 RailCorp's interest

- (b) RailCorp owns the rail network and rail assets in NSW and:
 - a. RailCorp will become the owner of any works, goods, material or other items supplied under this Contract once those works, goods, material or other items becomes a fixture to RailCorp's land or are incorporated into RailCorp's personal property; and
 - b. RailCorp's property may be affected by the Contractor's Activities under this Contract.
- (c) The Contractor provides the Contractor's Activities for RailCorp's benefit.
- (d) RailCorp takes the benefit of all the warranties provided by, and obligations of, the Contractor under this Contract.
- (e) The Principal may enforce the terms of this Contract, including this clause C10.2, against the Contractor on behalf of RailCorp.
- (f) The aggregate of the Contractor's liability to RailCorp under this Contract and the Contractor's liability to the Principal under the Contract:
 - a. will not exceed the liability which the Contractor would have had under the Contract if the Contract had named, in place of the Principal, RailCorp and the Principal jointly and severally; and
 - b. is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Contract.

C11. INDEMNITIES

The Contractor indemnifies the Principal against any expense, loss or liability (including legal fees on a solicitor-client basis) incurred by the Principal as a result of:-

- (a) any act or omission by the Contractor or any of its employees, contractors and visitors that resulted in personal injury to or the death of any person, or the loss of, loss of use of, or damage to any property including any of RailCorp's property, and
- (b) any claim by a third party alleging that the provision, supply or use of the Contractor's Activities or any Contract Material infringes that third party's Intellectual Property Rights or Moral Rights.

C12. INSURANCE POLICIES

C12.1 Public liability insurance

The Contractor must obtain or maintain for the term of the Contract a public liability insurance policy for at least the amount for any one claim specified in the Contract Particulars.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C12.2 Professional indemnity insurance

If specified as required in the Contract Particulars, the Contractor must obtain or maintain for the term of the Contract and for a period of seven years thereafter a professional indemnity insurance policy for at least the amount for any one claim specified in the Contract Particulars.

C12.3 Insurance of employees

The Contractor must obtain or maintain workers' compensation insurance as required by the [Workers Compensation Act 1987 \(NSW\)](#).

C12.3 Other insurance

The Contractor must obtain or maintain for the term of the Contract any other insurances specified as required in the Contract Particulars for at least the amount for any one claim specified in the Contract Particulars.

C12.4 Terms of insurance

The insurance policies to be obtained and maintained by the Contractor must:-

- (a) be obtained from and maintained with either a general insurer authorized by the [Australian Prudential Regulatory Authority \(APRA\)](#) to conduct general insurance business in Australia or a [Lloyds underwriter](#) or, in the case of New South Wales workers' compensation insurance, with an insurer that has been granted a licence by the [WorkCover Authority of New South Wales](#) to provide workers' compensation insurance,
- (b) cover the Contractor, its employees and contractor for all their respective obligations and liabilities under the Contract,
- (c) not contain any unusual exemption or exclusions,
- (d) not be amended without the Principal's approval.

C12.5 Evidence of insurance

The Contractor must:-

- (a) provide to the Principal satisfactory documentary evidence of the insurance policies obtained and maintained by the Contractor, (including, if requested, certified copies of the terms of the policies and certificates of currency) before providing any Contractor's Activities and thereafter when requested to do so by the Principal or as and when renewals fall due,
- (b) promptly notify the Principal of any insurer's notice to cancel an insurance policy,
- (c) promptly notify the Principal of any circumstance that may give rise to a claim under any of the insurance policies, and

- (d) keep the Principal fully informed of subsequent action and developments in relation to any claim.

C12.6 Failure to obtain insurance

If the Contractor fails to obtain or maintain any insurance policy specified in this clause C12, the Principal may obtain and maintain an equivalent insurance policy and recover the cost of doing so from the Contractor.

C13. SUBCONTRACTING

The Contractor must not subcontract any part of the Contractor's Activities without the Principal's consent, which may be given or refused at the Principal's absolute discretion.

The Contractor acknowledges and agrees that:-

- (a) the Principal may, in giving its consent, impose such conditions as it sees fit,
- (b) any consent that the Principal may give to subcontract any part of the Contractor's Activities shall not relieve the Contractor of its obligations and liabilities under the Contract, and
- (c) it shall, before any subcontractor commences work in respect of the Contractor's Activities, obtain from the subcontractor:-
 - (i) a written assignment to the Contractor of ownership of the intellectual property created as a result of the subcontractor performing that work, and
 - (ii) the subcontractor's and its employees' consent to the Contractor or the Principal doing any act or omitting to do any act that constitutes an infringement of the subcontractor's or its employees' Moral Rights (including not naming the subcontractor or any of its employees as the author of any work).
- (d) it must ensure that each of its subcontractors obtains or maintains like insurance policies to those required under clause C12.

C14. THE FEE

The Fee:-

- (a) cannot exceed the amount set out in the Purchase Order,
- (b) expenses may only be recovered if provided for in the Purchaser Order,
- (c) includes all costs necessary and incidental to provision of the Contractor's Activities and compliance with the terms of the Contract,
- (d) excludes GST,
- (e) is expressed in Australian currency, and
- (f) is firm and not subject to adjustment.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C15. GOODS AND SERVICES TAX (GST)

C15.1 Taxable supply

The Principal will pay to the Contractor an amount equal to any GST payable on any taxable supply made under or in connection with the Contract.

C15.2 Contractor's registration for GST

The Contractor warrants that it is registered for GST under the GST Act and will immediately notify the Principal if it ceases to be registered or ceases to satisfy any of the requirements of any determination or ruling made by the Australian Taxation Office under the GST Act.

C16. INVOICES AND PAYMENT

C16.1 Submission of invoices

The Contractor may submit invoices to the Principal at the frequency specified in the Contract Particulars.

C16.2 Format and content of invoices

The Contractor's invoices must:-

- (a) be tax invoices complying with the requirements of the GST Act,
- (b) set out details of the Contractor's Activities provided, the Fee for those Contractor's Activities, any reimbursable expenses, applicable GST and the total amount payable,
- (c) contain details of the Contractor's nominated bank account (including the BSB and account numbers),
- (d) contain any other details reasonably required by the Principal, and
- (e) be accompanied by a statutory declaration in the form set out at Appendix C2.

C16.3 Payment schedule

Within 10 Business Days of receipt of an invoice the Principal will provide to the Contractor a payment schedule:-

- (a) identifying the invoice to which the payment schedule relates,
- (b) indicating the amount of the payment (if any) of the Contract Price that the Principal proposes to make (the **scheduled amount**),
- (c) if the scheduled amount is less than the claimed amount, why the scheduled amount is less, and
- (d) if it is less because the Principal is withholding payment for any reason, the Principal's reasons for withholding payment.

C16.4 Adjustment Notes

Where the scheduled amount is different to the invoiced amount, the Contractor:-

- (a) must issue an adjustment note to the Principal within 5 Business Days of receiving the Principal's payment schedule, and
- (b) agrees that if it does not issue an adjustment note to the Principal then the Principal may issue to the Contractor a recipient created tax invoice for the scheduled amount.

C16.5 Time for payment

The Principal will pay the scheduled amount and other amounts the Principal considers payable 30 days after the end of the month in which the Contractor's Activities are satisfactory completed and the Principal receives the Contractor's invoice or issues a recipient created tax invoice.

C16.6 Method of payment

All payments to be made by the Principal under the Contract will be made by electronic funds transfer to the Contractor's nominated bank account.

C16.7 Australian payments

All payments to be made by the Principal under the Contract will be made in Australia and in Australian currency.

C16.8 Conditions precedent to payment

The Principal may withhold payment of any invoice (including a recipient created tax invoice) until the Contractor has provided to the Principal:-

- (a) satisfactory evidence that the Contractor is registered for GST,
- (b) satisfactory evidence of the Contractor's insurance policies, and
- (c) a statutory declaration in the form set out at Appendix C2.

C16.9 Right of set-off

The Principal may deduct from any amount payable to the Contractor any amount due or any amount that, in the Principal's opinion, is likely to become due from the Contractor to the Principal.

C16.10 Effect of payment

The Contractor acknowledges that any payment made to it by the Principal is payment on account only and:-

- (a) is not an acknowledgment that the Contractor's Activities have been provided in accordance with the terms of the Contract, and
- (b) does not imply or constitute a waiver or release of the Contractor's obligations under the Contract.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C17. RESOLUTION OF DISPUTES

C17.1 Notice of dispute

If a dispute arises between the Contractor and the Principal in connection with the Contract the dispute must be determined in accordance with the procedure in this clause C17.

Either party may give to the other party a notice specifying the nature of the dispute and all relevant facts.

C17.2 Executive negotiation

A dispute the subject of a notice given under clause C17.1 shall be referred to a senior executive of each of the disputing parties who is authorised to meet and undertake genuine and good faith negotiations with a view to resolving the dispute.

C17.3 Reference to mediation

If the senior executives do not resolve the dispute within 10 Business Days after the giving of the notice under clause C17.1 (or such longer period as the parties may agree), either party may refer the dispute to [Australian Commercial Disputes Centre Limited \(ACDC\)](#) for mediation.

If a dispute is referred to ACDC for mediation:-

- (a) the mediation will be conducted in accordance with [ACDC's Guidelines for Commercial Mediation](#) current at the time, and
- (b) each party will bear its own costs of the mediation and share equally in the costs of the mediator and ACDC.

C17.4 Litigation

If the parties fail to resolve the dispute by mediation, either party may commence litigation.

C17.5 Continuation of obligations

Despite the existence of a dispute, the Contractor must continue to comply with its obligations under the Contract.

C17.6 Survival of clause

This clause C17 shall survive expiry or termination of the Contract.

C18. SUSPENSION AND TERMINATION

C18.1 Suspension

The Principal may at any time, and for any reason, direct the Contractor to suspend providing all or part of the Contractor's Activities. The Contractor must promptly comply with any direction that the Principal may give, including a direction to remove its personnel and plant from the Principal's premises and must not

resume providing the Contractor's Activities until directed to do so by the Principal. The Contractor shall not be entitled to any reimbursement of its costs.

C18.2 Termination for convenience

The Principal may by notice terminate the Contract, with effect from the date stated in the notice, for convenience and without the need to give reasons.

If the Principal terminates the Contract for convenience:-

- (a) the Contractor must immediately comply with any directions given in the notice and do everything possible to mitigate the cost of ceasing provision of the Contractor's Activities including re-deploying personnel, and
- (b) the Principal will pay the Contractor a fair and reasonable price for all Contractor's Activities provided up to the time of termination but otherwise shall not be liable to pay the Contractor any other amount whatsoever including amounts in respect of unrealised overheads and profits.

C18.3 Termination for default

The Principal may by notice terminate the Contract with immediate effect if the Contractor:-

- (a) breaches the the Principal's Code of Conduct or the Principal's Drug and Alcohol Policy,
- (b) breaches any term of the Contract which, in the Principal's opinion, is not capable of remedy,
- (c) breaches any term of the Contract which is capable of remedy, but fails to remedy the breach within a reasonable time after receiving notice to do so, or
- (d) becomes insolvent, bankrupt or subject to any form of external administration.

If the Contract is terminated by the Principal under this clause C18.3, the Contractor will not be entitled to claim any amounts by way of damages or other payments.

C19. GENERAL PROVISIONS

C19.1 Safety management

The Contractor must comply and must ensure its employees and contractors comply with the relevant safety law and the Principal's "Safety Specification for Contractors" at Part E.

C19.2 No partnership

the Principal and the Contractor are independent contractors and nothing in the Contract creates or constitutes a partnership, joint venture, agency or other legal relationship between the Principal and the Contractor.

NSW TRAINS STANDARD TERMS & CONDITIONS FOR MINOR PROCUREMENT

C19.3 Assignment

The Contractor must not assign any right or interest (including money payable) under the Contract without the Principal's prior written consent, which may be given or withheld at the Principal's absolute discretion.

The Principal may assign (without the Contractor's prior written consent) or novate or otherwise transfer its rights and obligations under the Contract to any third party and the Contractor must execute any document reasonably required to give effect to the assignment, novation or transfer.

C19.4 Notices

Notices must be left at or sent by pre-paid post or facsimile to:-

- (a) in the case of the Contractor, the Contractor's representative at the address specified in Part B, Schedule B3, or
- (b) in the case of the Principal, the Principal's Representative at the address specified in the Contract Particulars.

The parties agree that a notice shall be deemed received:-

- (c) if delivered by hand to the recipient's address, on the date of delivery,
- (d) if sent by pre-paid post, 3 Business Days after posting, or
- (e) if sent by facsimile, upon confirmation of correct transmission of the facsimile.

C19.5 Communications between the parties

Approvals, agreements, consents, directions, notices, proposals and other communications referred to in the Contract must be in writing.

C19.6 Measurements

All measurements of physical quantities are in Australian legal units of measurement within the meaning of the [National Measurement Act 1960 \(Cth\)](#).

C19.7 Severance

Any part of the Contract that is or becomes invalid, unenforceable or illegal will be severed from the Contract and will not affect the validity or enforceability of the remaining parts of the Contract.

C19.8 No waiver

The Principal's failure to insist that the Contractor perform an obligation under the Contract is not a waiver of the Principal's right to insist that the Contractor perform, or to claim damages for breach of, that obligation, or to insist that the Contractor perform any other obligation.

C19.9 Governing law

The Contract shall be subject to and construed in accordance with the laws in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

C19.10 Survival of rights

Discharge or termination of the Contract shall not prevent either party from relying on rights accrued under the Contract prior to discharge or termination or any other rights that survive discharge or termination.

C19.11 Entire Agreement

The Contract is the entire agreement between the parties in relation to its subject matter and supersedes all prior representations, negotiations and communications between the parties.