

## General Conditions of Contract for the Supply of Goods and/or Services by RailCorp

**1. Goods and Services:** RailCorp agrees to provide the Goods and Services to the Customer and the Customer agrees to pay for the Goods and Services in accordance with the terms of the Contract.

**2. Contract Documents:** The Contract between the Customer and RailCorp comprises:

- a. the Signed Quotation; and
- b. these General Conditions of Contract.

Any terms or conditions attached to any purchase order issued by the Customer in respect of the Goods and Services (other than these General Conditions of Contract) will not form part of the Contract unless such conditions are expressly accepted by RailCorp in writing.

**3. Existing Contracts and Standing Offers:** Subject to the terms of the Signed Quotation, if the Signed Quotation is issued under the terms of an existing contract or a standing offer, the terms of that existing contract or standing offer will apply and these General Conditions of Contract (other than this clause 3) will have no effect.

**4. Goods:** RailCorp will use reasonable endeavours to supply the Goods to the Customer at the Delivery Location on or before the relevant Delivery Date. Unless otherwise agreed in writing, RailCorp may make delivery by instalments and determine the order and manner of delivery of the Goods. RailCorp may deliver the Goods to the Delivery Location whether or not the Customer is present at Delivery Location at the time of delivery.

RailCorp will notify the Customer if it becomes aware that it will be unable to supply all or any part of the Goods by the relevant Delivery Date and advise the Customer as to when it will be able to do so. RailCorp assumes no liability for any claims, costs, demands, expenses, losses or damages arising out of or in connection with delays in delivery.

**5. Services:** RailCorp will provide the Services to the Customer in accordance with this Contract.

RailCorp shall promptly notify the Customer if it becomes aware that it will be unable to provide all or any part of the Services in accordance with the requirements of this clause 5.

**6. Customer's obligations:** The Customer must:

- a. make available all information, documents and other particulars necessary to enable RailCorp to supply the Goods and Services;
- b. procure or arrange sufficient access to any place necessary to enable RailCorp to supply the Goods and Services;
- c. unless otherwise agreed, obtain all approvals, authorities, licences and permits which are required for the lawful supply of the Goods and Services; and
- d. unless otherwise agreed, make available any equipment and facilities necessary to supply the Goods and Services.

**7. No warranties:** Except as expressly stated in the Contract, RailCorp does not give any warranty or accept any liability in relation to the Goods and Services or the performance or non-performance of its obligations under this Contract except to the extent, if any, required by law. If any warranty would be implied whether by law, custom or otherwise, that warranty is excluded to the full extent permitted

by law. Without limiting the foregoing, unless otherwise specified in the Signed Quotation, the Customer acknowledges that the Goods are not new. RailCorp will use reasonable endeavours to procure that the Customer has the benefit of any manufacturer's warranty for the Goods. **Title and Risk:** Title to the Goods transfers to the Customer upon payment in full for the whole of the Goods. Risk in the Goods passes to the Customer on delivery.

Until payment in full is made the Customer holds the Goods as bailee for RailCorp and will store the Goods separately from other goods or ensure that they are capable of separate identification.

If RailCorp has delivered the Goods and payment for the Goods is not made on or before the due date for payment, RailCorp is authorised to enter the place where the Goods are stored and remove them, and the Customer will indemnify RailCorp against any claims, costs, demands, expenses, losses or damages arising out of the exercise by RailCorp of its rights under this clause 7.

**8. Payment:** RailCorp may send an invoice to the Customer at any time after the date of the Signed Quotation.

The Customer must pay an invoiced amount in full:

- a. where the Customer has a credit account with RailCorp, as per the arrangements applicable to that credit account; or
- b. otherwise within 30 days of the date of the invoice.

The Customer is not entitled to withhold payment or make any deduction from the Contract Price in respect of any set off or counterclaim.

Without limiting any other right or remedy of RailCorp under this Contract, at law or otherwise, if the Customer fails to pay the invoiced amounts within the time required by this clause 8, then RailCorp:

- c. may, until such time as the relevant payment is made:
  - i. suspend performance of its obligations under this Contract; and
  - ii. withhold any documentation, materials or information which has been prepared for the purposes of the Contract; and
- d. will be entitled to payment of interest on such overdue amounts to be calculated on daily balances at the 90 day bank bill rate plus 2%, which amount will be calculated and payable every 7 days or part thereof.

**9. Price Basis:** Unless otherwise stated in the Signed Quotation, a reference to "\$" or "dollar" is to Australian currency, and the Contract Price does not include delivery costs, fuel surcharge, stamp duty, import duty, fees or other tax payable on the supply of the Goods and Services and the Customer will, upon demand by RailCorp, pay to RailCorp such amounts incurred by RailCorp.

Where any delivery costs forming part of the Contract Price are expressed to be an estimate of costs, the Customer agrees that it is required to pay RailCorp its actual delivery costs incurred, as notified to the Customer by RailCorp.

**10. GST:** Unless otherwise expressly stated, all amounts of monetary consideration are exclusive of GST.

If any party (**Supplier**) makes a taxable supply under or in connection with this Contract the consideration for which is exclusive of GST, the party providing consideration for that taxable supply will pay to the Supplier an additional amount equal to the GST payable by the Supplier in respect of the GST exclusive consideration received by the Supplier for that taxable supply.

**11. Intellectual Property:** All Intellectual Property Rights in any design, specification, process, method of working or other information created by RailCorp relating to the Goods and Services vests in RailCorp.

**12. Variations:** If the parties want to vary the Goods and Services (including, without limitation, to change the Delivery Location or Delivery Date or any changes to quantities):

- a. they must do so by written agreement; and
- b. RailCorp will not be required to carry out any such variation until the parties have agreed in writing the scope of the variation and the adjustment to the Contract Price for the variation.

**13. Termination:** RailCorp may terminate this Contract on written notice to the Customer if:

- a. the Customer breaches any term of the Contract and fails to remedy the breach within 14 days after receiving written notice from RailCorp requiring it to remedy the breach;
- b. any of the following occur:
  - i. any step is taken for the winding up, dissolution, or administration of the Customer or a receiver or other controller, administrator or similar officer is appointed with respect to or takes control of the Customer;
  - ii. the Customer enters into any arrangement, compromise or composition with its creditors; or
  - iii. the Customer becomes insolvent or suffers any similar event to that referred to in sub-paragraphs (i) and (ii);
- c. RailCorp' Credit Department reasonably believes the Customer will be unable to pay the Contract Price; or
- d. RailCorp is prevented from supplying the Goods and Services by any cause outside its control.

**14. Indemnity:** The Customer releases and indemnifies RailCorp from and against all claims, costs, demands, expenses, losses or damages suffered or incurred by RailCorp in respect of: any claims by third parties arising out of or in connection with the supply of the Goods and Services.

**15. Liability:** To the extent permitted by law, the liability of RailCorp to the Customer in contract, tort or otherwise arising out of RailCorp' performance of the Contract will be limited to:

- a. at RailCorp' option, the replacement or repair of the Goods; or
- b. the resupply of the Services.

Neither party will be liable to the other for Consequential Loss.

**16. Notices:** Any notice or communication under the Contract will be effective if it is in writing, signed and delivered to the Customer or RailCorp as the case may be, at the address, facsimile number or email set out in the Signed Quotation.

**17. Confidentiality:** Each party shall keep confidential all Confidential Information of the other party, except where disclosure of the Confidential Information is made with the prior written consent of the other party, or is required by law. This clause survives the termination of the Contract.

**18. Governing Law:** The laws of New South Wales apply to the Contract.

**19. Entire Agreement:** The Contract represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

**20. Definitions:** In the Contract:

**Confidential Information** means any information provided by the one party to the other or which comes into the possession of a party in connection with the Goods and Services which that the disclosing party has identified as confidential or is by its nature confidential.

**Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect).

**Contract** has the meaning given in clause 2.

**Contract Price** means the contract price specified in the Signed Quotation (as varied under clause 12).

**Customer** means the customer specified in the Signed Quotation.

**Delivery Date** means:

- a. the date or dates for provision of the Goods as specified in the Signed Quotation; or
- b. where lead times are specified in the Signed Quotation, the date of the Signed Quotation plus the number of days' lead time specified for the relevant Goods.

**Delivery Location** means the location or locations for the provision of the Goods, as specified in the Signed Quotation (or if no location is specified, as notified to RailCorp by the Customer).

**Goods** means the goods specified in the Signed Quotation (if any).

**Goods and Services** means the Goods, the Services or the Goods and the Services, as the context requires.

**GST** has the meaning given in the GST Act.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Intellectual Property Rights** means any patent, registered design, trademark or name, copyright or other protected intellectual property right.

**Services** means the services specified in the Signed Quotation (if any).

**Signed Quotation** means:

- a. the RailCorp quotation form signed by the Customer and returned to RailCorp, which is attached to these General Conditions of Contract; or
- b. the RailCorp "sales order" issued in respect of the Goods and Services,

and if both a quotation form and a sales order exist then it means the sales order only (including, subject to clause 2, any attachments to the Signed Quotation).

**RailCorp** means Rail Corporation New South Wales ABN 59 325 778 353, of Level 20, 477 Pitt Street, Sydney NSW 2000.