

Part B. Special Terms

B1. Definitions

Completion Date means the date by which the Purchaser must complete the Work.

Sydney Trains Representative means the Sydney Trains representative nominated in the Notice details.

Site means the land, buildings or other places made available for the Work.

Work means the work performed by the Purchaser to collect the Goods.

B2. Performance

B2.1 Perform the Work

The Purchaser must diligently perform the Work and complete the Work by the Completion Date

B2.2 The Sydney Trains Representative and Directions

Sydney Trains nominates a representative to perform, on its behalf, its duties under the agreement.

The Sydney Trains representative will give directions and carry out all its other functions under the agreement as the agent of Sydney Trains (and not as an independent certifier, assessor or valuer).

The Purchaser must comply with any directions or instructions issued by Sydney Trains or the Sydney Trains Representative. Sydney Trains may replace its representative by written notice to the Purchaser.

If requested, the Purchaser will attend meetings with the Sydney Trains Representative at such times as reasonably required by the Sydney Trains Representative.

B2.3 Access to the Site

Provided the Purchaser has complied with clause B4.2 and B8 (Appendix B1 Safety Specification), Sydney Trains agrees to give the Purchaser access to the Site.

The Purchaser must comply with all directions, procedures and policies relating to occupational health, safety and security relating to the Site entered or occupied in connection with the Works.

B2.4 Co-operation with other contractors

The Purchaser must reasonably liaise, co-operate and confer with other contractors or consultants performing any other work in connection with the Site as directed by Sydney Trains.

B2.5 Equipment

The Purchaser must provide at its own cost all equipment, tools and plant necessary for the proper performance of the Work.

B2.6 Damage and Site cleaning

The Purchaser is responsible for:

- (a) any damage to the work, a Site or Sydney Trains property caused by the Purchaser, or by the Purchaser's employees, subcontractors, agents or visitors;
- (b) security of tools, plant and equipment;
- (c) keeping the work area as clean and tidy as practicable by regularly removing debris and rubbish resulting from the Work; and

- (d) upon completion, ensuring that the Site is left clean and tidy and free of rubbish, surplus materials, equipment, tools or plant owned or hired by the Purchaser.

If the Purchaser fails to comply with this clause B2.6, Sydney Trains may after reasonable written notice rectify the breach and the cost incurred by Sydney Trains will be moneys due and payable by the Purchaser to Sydney Trains.

B2.7 Compliance with Laws

The Purchaser must ensure that the performance of the Work is in accordance with all applicable Law.

Unless the agreement expressly provides otherwise, the Purchaser must obtain at its cost, all approvals, authorities, licences and permits required for the performance of the Work. The Purchaser must retain and provide copies of such approvals, authorities, licences and permits to Sydney Trains if requested.

B2.8 Set-Off

Sydney Trains may deduct and set-off from amounts otherwise paid by the Purchaser any amount due or which may become due from the Purchaser to Sydney Trains.

The Purchaser must pay the Purchase Price, notwithstanding a payment has been paid, if Sydney Trains reduces such payment by way of set-off for any other debt due under this agreement.

B3. Time

B3.1 Liquidated Damages

If the Purchaser fails to achieve completion by the Completion Date, the Purchaser will be liable to pay Sydney Trains liquidated damages as a debt due and owing at \$500 for every day after the Completion Date to and including the actual completion date. If, however, the agreement is terminated before the Purchaser reaches completion, liquidated damages will be payable by the Purchaser to and including the date of termination of the agreement.

If the Completion Date is extended after the Purchaser has paid or Sydney Trains has set-off liquidated damages, Sydney Trains must repay to the Purchaser such of the liquidated damages paid or set-off on account of the period in days by which the Completion Date has been extended.

B3.2 Extension of time for the Work

Sydney Trains may grant an extension to the Completion Date where:

- (a) the parties agree in writing; or
- (b) the Purchaser is delayed in the performance of the Work by events or circumstances beyond the reasonable control of the Purchaser and gives written notice to Sydney Trains within 5 days of the event causing the delay,

B3.3 Suspension

Sydney Trains by written notice may instruct the Purchaser to suspend the performance of all or a part of the Work or for the time Sydney Trains thinks fit.

Sydney Trains by written notice will instruct the Purchaser to recommence the performance of all or a

part of the Work when Sydney Trains is satisfied that the reason for the suspension no longer exists.

Sydney Trains, in its absolute discretion, determines whether, the Purchase Price or the Completion Date will be adjusted as a result of the suspension.

B4. Liability, Indemnities and Insurance

B4.1 Purchaser's General Indemnity

The Purchaser indemnifies Sydney Trains, its employees, Purchasers, agents, visitors and any person making a claim through Sydney Trains from and against any action, claim, cost, expense (including legal fees), injury, loss, liability or damage suffered or incurred by Sydney Trains, its employees, contractors, agents or visitors caused by any wilful or reckless act or omission or negligent act or omission of the Purchaser, the Purchaser's employees, subcontractors, agents or visitors.

The Purchaser's liability to indemnify Sydney Trains, its employees, Purchasers, agents and visitors under this clause is reduced proportionately to the extent that the liability, damage, injury, loss or expense referred to is caused by any intentional or negligent act or omission of Sydney Trains its employees, Purchasers, agents or visitors.

B4.2 Purchaser's Insurance

The Purchaser shall effect and ensure its contractors and agents effect, prior to access to Site:

- (a) Public liability insurance for personal injury or death and damage to any real or personal property for \$20M per occurrence and in aggregate;
- (b) Workers' compensation insurance as required by law; and
- (c) where the Purchaser personally performs the Work, personal accident and disability insurance for the Purchaser affording cover at least equivalent to that afforded an employee by a policy of the type referred to in subclause (b) above.

If the Purchaser fails to effect insurance as required by this clause, Sydney Trains may, without prejudice to any other rights it may have, take out the insurance and the cost will be a debt due from the Purchaser to Sydney Trains.

The Purchaser must provide whenever requested by Sydney Trains, satisfactory evidence of the currency and coverage of the insurances required under the agreement.

B5. Assignment and Subcontracting

The Purchaser must not assign, mortgage, charge, pledge or encumber any right, title or interest under the agreement without Sydney Trains prior written consent.

B6. Termination

B6.1 Termination for Default

Sydney Trains may terminate the agreement by notice effective immediately, if the Purchaser:

- (a) becomes insolvent or bankrupt or has a liquidator, administrator, official manager, receiver, receiver and manager or similar person

appointed (by any method) against its income or property;

- (b) purports to assign or otherwise transfer the agreement without the prior written consent of Sydney Trains;
- (c) abandons the Site or ceases to perform the Work;
- (d) fails to effect and maintain the insurance policies under the agreement; or
- (e) fails to rectify a breach or repudiatory breach of the agreement within the time stated in a written notice requiring the Purchaser to do so.

B6.2 No Claim for Compensation

If the agreement is terminated by Sydney Trains under clauses B6.1 the Purchaser will not be entitled to claim any amounts by way of damages or other payments as a consequence of termination.

B6.3 Effect of Termination

Upon the termination of the agreement for any reason, the Purchaser must immediately comply with any directions given in the notice and must do everything possible to mitigate its losses arising in consequence of termination.

B7 Notices

A notice or other document required to be given must be in writing addressed to the nominated recipient at the address stipulated in the agreement Particulars and will be deemed to have been received:

- (a) if the notice is delivered by hand to the receiver, at the time of delivery;
- (b) if the notice is posted in a postage paid envelope addressed to the receiver, three days from the date of posting; or
- (c) if sent by facsimile to a recipient's address and a correct and complete transmission report is received, on the day of transmission.

B8 Safety

The Purchaser must comply with the requirements of Appendix B1 "Safety Specification for Contractors".

"Contractor" in the Safety Specification has the same meaning as Purchaser in this Agreement.

In this agreement and for the purposes of interpretation of Appendix B1 the Work is deemed "construction work".

In this agreement and for the purposes of interpretation of Appendix B1 the Work is deemed "railway safety work".

B9 Environmental Management and Protection

B9.1 Performance

The Purchaser must carry out the Work in such a manner as to avoid nuisance and damage to the environment. The Purchaser must obtain approvals under and comply with all relevant Law in force from time to time.

B9.2 Environmental Management Plan

The Purchaser must prepare and implement a Site specific Environmental Management Plan (EMP) for the Work, which must be submitted to the Sydney Trains Representative prior to commencing any work on the Site.

The Purchaser must comply with the latest edition of the NSW Government Environmental Management System Guidelines – ("EMS Guidelines"). A copy of the EMS Guidelines can be accessed at the NSW Government Procurement website available at: <https://www.procurepoint.nsw.gov.au/before-you-supply/environmental-management-system-accreditation>.

B9.3 Competency

The Purchaser must ensure that all its employees and subcontractors working on the Site are provided with environmental training to achieve a level of awareness and competence appropriate to their assigned activities. Persons, including subcontractors personnel, without appropriate environmental training must not be permitted to work on the Site.

The Purchaser must train relevant employees to use plant and materials on the Site efficiently and so as to

minimise all potential environmental impacts including noise, air quality, water quality, waste and contamination.

The Purchaser must establish and maintain a register of environmental training carried out including names of persons trained, dates of training and trainer details.

B9.4 Compliance

The Sydney Trains Representative may conduct audits on all aspects of the Purchaser's EMP and work activities.

Should any non-conforming work practices be detected or environmental controls fail to operate, the Purchaser must immediately notify the Sydney Trains Representative, and apply corrective and preventive action.

Failure to comply with the provisions of this clause B9, Sydney Trains may suspend Work:

The Purchaser must bear all costs and losses incurred or sustained due to the suspension.