

TERMS AND CONDITIONS OF CONTRACT

1. Unless otherwise stated in this Purchase Order ("PO"), these Terms and Conditions apply to the contract entered into by the Rail Corporation New South Wales ("RailCorp") with a tenderer ("the Supplier") by acceptance of the Supplier's offer ("the Contract"). The Contract comes into existence when the Supplier receives a completed PO issued by RailCorp for the provision of goods, works or services ("Supply Items"). These Terms and Conditions prevail over any further conditions the Supplier may seek to impose.
2. The Supplier must provide the Supply Items by the due delivery date(s) in accordance with the requirements specified in the PO and in compliance with all applicable Laws. Laws means any statute, rule, regulation, proclamation, ordinance by-law, industry code, Australian Standard, present or future, whether local, state, federal or otherwise.
3. The Supplier must comply and ensure that its employees, subcontractors and agents comply with the provisions of the relevant safety Laws (including but not limited to the *Occupational Health and Safety Act 2000*, *Occupational Health and Safety Regulation 2001*, the *Rail Safety Act 2002* and associated regulations), and RailCorp's safety requirements as specified in the PO.
4. The Supplier warrants that it exercises skill, care and diligence to a high standard in providing the Supply Items.
5. The Supply Items must be free from defects, meet their intended purpose and be complete.
6. The Contract price payable by RailCorp for the Supply Items is the lump sum and/or the amount calculated based on unit rates specified in the PO in Australian currency. The Contract price is fixed and inclusive of all levies, duties, delivery costs, insurance costs and imposts for which the Supplier is liable. Unless otherwise stated in the Contract, the Contract price is exclusive of GST. RailCorp must pay the Supplier an amount equal to any GST payable on any supply by the Supplier to RailCorp under or in connection with the Contract.
7. RailCorp will pay the Supplier by the end of the month following the month of the satisfactory completion or provision of the Supply Items and receipt of a correctly rendered tax invoice. An invoice will be correctly rendered if it is complete and, where explanation is necessary, accompanied by documentation substantiating the amount claimed. The Supplier acknowledges that a payment made to it by RailCorp is payment on account only and does not imply or constitute a waiver or release of the Supplier's obligations under the Contract.
8. If any of the Supply Items do not comply with the PO ("Defective Item"), RailCorp may reject the Defective Item or instruct the Supplier to and the Supplier must rectify the Defective Item within the time (which must be reasonable) specified in the instruction. RailCorp may withhold payment for the Defective Item or recover any amount already paid for the Defective Item by set-off against other Supplier invoices or by invoicing the Supplier. The Supplier must promptly pay RailCorp's invoices.
9. Risk and title in the Supply Items (goods) passes to RailCorp when RailCorp accepts and pays for the goods.
10. The Supplier grants or will promptly procure the granting to RailCorp of a non-exclusive, perpetual, royalty free and irrevocable licence to use, reproduce and adapt for its own internal purposes all Supply Item documents and data the Supplier supplies. The Supplier warrants that the Supply Items, documents and data and their use by RailCorp will not infringe any patent, registered design, trade mark or name, copyright or other protected rights of any person.
11. The Supplier indemnifies RailCorp, its employees, contractors, agents and visitors against all liabilities, losses, damages, expenses and costs suffered or incurred by RailCorp to the extent that they arise directly or indirectly as a result of a breach of the Contract by the Supplier or any negligent, reckless, wilful or unlawful act or omission of the Supplier or any of its employees, subcontractors and agents. The Supplier's liability to indemnify RailCorp, its employees, contractors, agents and visitors under this clause is reduced proportionately to the extent that the liabilities, losses, damages, expenses and costs are caused by any intentional or negligent act or omission of RailCorp, its employees, contractors, agents or visitors.
12. The Supplier agrees to take out adequate and appropriate insurance and agrees that RailCorp at its discretion may require the Supplier to produce to RailCorp evidence of insurance prior to commencing any of the work under the Contract.
13. The Supplier must not assign, mortgage, charge or encumber any right or liability under the Contract without RailCorp's prior written approval.
14. RailCorp may terminate the Contract by cancelling the PO if the Supplier fails to provide the Supply Items in accordance with the requirements specified in the PO. In such circumstances where the PO is cancelled, RailCorp will not be liable for any charges of any kind as may be imposed by the Supplier.
15. If a dispute arises from the Contract, the parties must promptly meet to resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time, then either party may refer the dispute to the Chief Executive Officers or other representatives nominated by the Chief Executive of each party for resolution before having recourse to litigation. Notwithstanding the existence of a dispute, the parties must continue to perform their obligations under the Contract.
16. The laws of New South Wales govern the Contract and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.