

1. DEFINED TERMS

Unless the context otherwise requires, the following terms have the meanings given when used in the Purchase Order.

"Business Day" means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in the Relevant Jurisdiction.

"Contractor" means an individual or company hired to provide goods or services under a contract, operating independently and not considered an employee.

"Contractor Personnel and Agents" means all personnel, consultants, employees and agents engaged, by any means, by the Contractor to provide the Services.

"Contract Material" means all material created or required to be developed or created as part of, or for the purpose of performing, the Services, including documents, equipment, information and data stored by any means.

"Control" means the power to direct, manage, oversee or restrict an asset.

"Controlled Sites" means the legal authority or permission to occupy, develop, or use a specific parcel of land or property that may not be directly owned by TasRail.

"Dispute" means a disagreement or conflict over the terms, performance, or interpretation of a Purchase Order, that can't be easily rectified by those already managing the Purchase Order.

"Fees" means the prices charged for the Services set out in the Purchase Order, including reimbursable costs.

"Goods" means the tangible items referred to in the Purchase Order.

"Intellectual Property" means all intangible property that is a result of intellectual activity, such as; inventions, literary and artistic works, registered designs, images and confidential information.

"Losses" means any financial or measurable damages and, expenses including legal fees.

"Notice" means a notification or communication of a fact, claim, demand or proceeding.

"Partner Country" means the country (other than Australia) in which the Services are to be delivered in whole or in part.

"Purchase Order" means the legal document titled 'Purchase Order' provided by TasRail to enable the Contractor to supply the Goods and/or perform the Services and demonstrates a commitment to payment

"Safety and Environmental Law" means all safety and environmental related relevant law, including; 'Work Health and Safety Act 2012', 'Work Health and Safety Regulations 2012', 'Rail Safety National Law (Tasmania) Act 2012', and the 'Environment Protection and Biodiversity Conservation Act 1999'.

"Services" means the services described in this Purchase Order together with any supplies or materials incidental to the services.

"Subcontractor" means any person engaged by the Contractor to perform any part of the works required.

"SOP Act" means the Building and Construction Industry Security of Payment Act 2009 (Tasmania).

"Special Conditions" means the specific terms or clauses added to a standard Purchase Order to address unique aspects or circumstances not covered by the standard clauses, ensuring the Purchase Order accurately reflects the intentions of TasRail and the Contractor.

"TasRail" or "Tasmanian Railway" means Tasmanian Railway Pty Ltd (ABN 83 139 383 761)

"Tasmanian Railway Confidential Information" means information that:

- is described as confidential information in the Purchase Order;
- is designated by TasRail as confidential; or
- the Contractor knows or ought to know is confidential;
- is comprised in or relating to the Purchase Order Material, any intellectual property of Tasmanian Railway or third parties where the third party intellectual property is made available by or on behalf of Tasmanian Railway, or the internal management and structure of Tasmanian Railway or the State Government of Tasmania;
- is personal information under the Privacy Act 1988 (Ch), that is: information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

but does not include this Purchase Order or information which:

- is or becomes public knowledge other than by breach of this Purchase Order or any other confidentiality obligation; or
- has been independently developed or acquired by the Contractor, as established by written evidence.

"Tax" means any taxes, duties, municipal rates, and other fees, levies and impositions, assessed or charged by, or payable to, any governmental taxation or excise authority. It also includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.

2. GENERAL

These are the terms and conditions referred to in the Purchase Order on Page 1. Side-headings are not part of these Conditions. Subject to Clause 3 below, these conditions will prevail in any conflict between them and the terms of any offer or acceptance by the Contractor.

3. SPECIAL CONDITIONS

If the Purchase Order includes any Special Conditions, those Special Conditions apply in addition to these Standard Terms. If there is any inconsistency between the Special Conditions and these Standard Terms, the Special Conditions prevail to the extent of the inconsistency.

4. PROVISION OF GOODS AND/OR SERVICES

In providing the Goods and/or Services, the Contractor must:

- ensure that they are appropriately qualified, licensed, and certified to provide goods and/or perform the services required under the Purchase Order, and shall maintain all necessary qualifications, licenses, and certifications throughout duration of all works requested from TasRail.
- perform the Services or provision of Goods at minimum to a standard which would be expected of a competent, experienced and professional contractor in like position to that of the Contractor under this Purchase Order;
- accept and implement TasRail's reasonable directions in relation to the management of the Services; and
- not share information known as a result of their work on, or relationship to, the Services in a way that a reasonable person could foresee may be detrimental to the relationship between the Tasmanian, Australian and Partner Country governments.
- warrant that any Goods provided are new (unless agreed otherwise in writing), free from defects, of merchantable quality, fit for the purpose made known to the Contractor, compliant with all applicable standards and laws, and conforming to any specifications in the Purchase Order.

The Contractor shall not by virtue of this Purchase Order be, or for any purpose be deemed to be, and must not represent itself as being, an employee, partner or agent of TasRail.

5. CONTRACTOR PERSONNEL AND AGENTS

The Contractor must:

- ensure that Contractor Personnel and Agents are aware of, and comply with the requirements of the Purchase Order;
- provide all Contractor Personnel and Agents specified in the Purchase Order for the Services and for the periods specified in the Purchase Order;
- use their best endeavours to ensure that Contractor Personnel and Agents are of good fame and character; are properly qualified and briefed for the tasks they are to perform; and act in a fit and proper manner while they are carrying out work or performing duties under the Purchase Order.

The Contractor must not, and must use its best endeavours to ensure that the Contractor Personnel and Agents or their accompanying family members do not, become involved in the political affairs or interfere in the religious affairs of the Partner Country (unless citizens of the Partner Country); or share information known as a result of their work on, or relationship to, the Services in a way that a reasonable person could foresee may be detrimental to the relationship between the Tasmanian, Australian and Partner Governments.

The Contractor is responsible for the security of all Contractor Personnel and Agents and for keeping and maintaining all appropriate insurances. Where the Contractor is an individual, the Contractor is responsible for ensuring their own security and for keeping and maintaining all appropriate insurances. The Contractor must supply and maintain all current documentation required for compliance with the Purchaser's Contractor Management System which requires as a minimum the provision of Certificates of Currency for Product/Public Liability Insurance and, where the Contractor's staff will enter upon TasRail controlled land, Workers Compensation insurance for the state of Tasmania unless otherwise agreed in writing.

6. PURCHASE ORDER AMENDMENTS AND VARIATION

Amendments to Purchase Orders that are not attached to a Contract must be documented in writing. This can be done via email to the appropriate TasRail representative. Amendment requests must include any changes to works, prices, delivery dates or terms and conditions and agreed to by both parties.

Changes to the Purchase Order that is attached to a contract shall not be legally binding upon either party unless agreed in writing and signed by both parties in the form of a Deed of Amendment or Variation.

7. REPORTS

The Contractor must ensure that all reports, required of the Purchase Order and/or applicable contract, provide the information required and conform to the quality and format requirements specified. The reports requested must be provided via email to the email address outlined in the Purchase Order or Contract.

The Contractor must ensure that all contributing authors are acknowledged in their reports. TasRail may reject and withhold payment of Fees for any report which does not conform to the requirements of the Purchase Order until the Contractor rectifies the report. All reports must be accurate and not misleading in any respect and not incorporate either the TasRail or the Contractor's logo.

8. ACCESS TO THE CONTRACTOR'S PREMISES, DATA AND RECORDS

The Contractor must always maintain full, true, separate and up to-date accounts and records in relation to the Fees and the Services, including those involving foreign exchange transactions. The Contractor must grant TasRail and/or its nominees reasonable access to the Contractor's premises, information provided to, collected or created by the Contractor, records, accounts and other financial material or material relevant to the Services, however and wherever stored, in the Contractor's or its sub-contractors' custody, possession or control, for inspection and copying. This clause applies for the term of this Purchase Order and for a period of 7 years from the date of its expiration or termination.

9. PAYMENT

TasRail must make payment of the Fees within 30 days of receipt of a correctly rendered invoice. It is TasRail's corporate practice to inform Contractors as soon as reasonably possible, and in any case within 30 days of receipt of notice of the completion of an identified output or provision of a report whether or not that output or report is accepted. The Fees are fixed for the term of the Purchase Order unless varied in accordance with the Purchase Order and unless otherwise specified, Fees are inclusive of all costs, expenses, disbursements, levies and taxes and the actual costs and expenses incurred by the Contractor in providing the Services.

An invoice is correctly rendered if,

- a. the invoice contains the correct Purchase Order number;
- b. the invoice details all Goods and/or Services provided against the Fees and records the amount payable in respect of each category of Goods and/or Services described in the Purchase Order;
- c. a person authorised to sign on behalf of the Contractor, or their delegate has certified that:
 - i. the invoice has been correctly calculated in accordance with the Fees referred to in the Purchase Order;
 - ii. the Goods and/or Services included in it have been performed in accordance with the Purchase Order;
 - iii. Reimbursable Costs that these costs have been paid if required; and
 - iv. the invoice is in accordance with any relevant Australian or Partner Country taxation laws.

If an invoice is found to have been rendered incorrectly, any underpayment or overpayment shall be recoverable by or from the Contractor, and without limiting recourse to other available remedies may be offset against any amount subsequently due from TasRail to the Contractor.

10. SECURITY OF PAYMENT LEGISLATION:

This clause applies where the Services under the Purchase Order are carried out in Tasmania and the SOP Act applies.

The Contractor agrees that:

- a. the time prescribed in clause 9 for the Contractor to submit an invoice is the 'reference date' within the meaning and for the purposes of the SOP Act;
- b. in determining the amounts paid previously under the Purchase Order as required by clause 9 TasRail may include, in that amount, the following:
 - i. any amount which has been paid to the Contractor pursuant to the SOP Act;
 - ii. any amount which has been paid to the Contractor in satisfaction of an adjudication under the SOP Act; and
 - iii. any amount that has been the subject of a judgement or adjudication certificate within the meaning of the SOP Act.
- c. they must promptly and without delay, give TasRail a copy of any written communication of whatever nature in relation to the SOP Act that the Contractor receives from a subcontractor or supplier.

11. REDUCTION IN FEES FOR NON-PERFORMANCE

11.1 If the Contractor fails to supply the Goods or Services in accordance with the Purchase Order, TasRail may, at its discretion, reduce the Fees to reflect:

- a. the reduced value of Goods or Services delivered; and
 - b. any losses, costs or damage suffered by TasRail arising from the non-performance, defective Goods, or non-compliant supply,
- as reasonably assessed by TasRail.

11.2 Without limiting clause 11.1, where Goods are defective, non-conforming, unsafe or otherwise not supplied in accordance with the Purchase Order, TasRail may, at its discretion, require the Contractor to:

- a. repair, replace or re-supply the Goods at the Contractor's cost;
- b. refund any Fees paid for the affected Goods; or
- c. reimburse TasRail for all reasonable costs incurred in testing, investigation, rectification, removal, disposal or replacement of the Goods.

11.3 Any reduction in Fees or recovery of costs under this clause is in addition to, and does not limit, any other rights TasRail may have under the Purchase Order, at law or in equity.

12. AUSTRALIAN TAXATION REQUIREMENTS

Except as provided by this clause, all taxes, duties and charges imposed or levied in Australia in connection with the performance of this Purchase Order shall be borne by the Contractor or its sub-contractor(s), as the case requires.

Payment by TasRail to the Contractor of the GST shall be subject to the Contractor providing TasRail with a valid Tax Invoice issued in accordance with the relevant provisions of the GST legislation and regulations. The total amount of GST payable by the Contractor, and for which the Contractor seeks payment from TasRail, in respect of any supply shall be shown as a separate item on the Tax Invoice.

If the Contractor does not have an Australian Business Number (ABN) and is required to in accordance with Australian law, TasRail in accordance with the relevant provisions of the Pay as You Go (PAYG) legislation, shall be required to withhold a prescribed proportion of the amount payable to the Contractor under the Purchase Order, unless the exceptions under Division 12 of the PAYG legislation apply. Contractors can provide TasRail with a completed "Statement by a Supplier" if they consider that they are covered by one of the exceptions under the legislation and therefore TasRail would not have to withhold any money.

The Statement is available on the Australian Tax Office (ATO) website as a form in relation to ABNs: <http://www.ato.gov.au/businesses/content.asp?doc=/content/38509.htm>

13. HEALTH, SAFETY, QUALITY AND ENVIRONMENTAL REQUIREMENTS

All equipment, materials and services supplied to TasRail must comply with all regulatory requirements and applicable codes and standards and meet manufacturer/supplier performance specifications.

13.1 Without limiting this clause 13, the Contractor must comply with all laws relating to hazardous materials, including the Customs (Prohibited Imports) Regulations 1956 and the national ban on asbestos in Australia. The Contractor warrants that all Goods, materials, components and packaging supplied under this Purchase Order are free from asbestos, asbestos-containing materials and from any other prohibited or restricted hazardous substances. This warranty is strict, applies without a limitation, including without any cap on liability, exclusion or reduction that would otherwise apply under the Purchase Order. This warranty exists regardless of the Contractor's lack of awareness and covers all suppliers, subcontractors and manufacturers in its supply chain.

If any Goods are found or suspected to contain asbestos or any such hazardous substance, the discovering party must immediately notify the other. The Contractor must then cease supply and, at its own cost, promptly remove, remediate and replace the affected Goods in accordance with all applicable laws and TasRail's directions.

The Contractor is fully liable for, and must reimburse TasRail for, all costs, losses and expenses arising from any breach of this warranty or the supply of non-compliant Goods, including investigation, remediation, replacement, disposal and any operational or regulatory impacts, regardless of when the non-compliance is detected.

13.2 The Contractor or their representative or agent must:

- a. comply with the Safety and Environmental Law;
- b. must comply with any direction from TasRail in relation to any declared pandemic or prevailing transmittable condition while on TasRail controlled sites;
- c. do all things necessary to assist TasRail in discharging its obligations under the Safety and Environmental Law, and must not do or omit to do anything which would cause Tasmanian Railway to breach its obligations under the Safety and Environmental Law;
- d. immediately comply with the directions on safety issued by Workcover Tasmania, the Director of Industry Safety or TasRail;
- e. ensure that their subcontractors comply with the requirements of this clause and that subcontracts include provisions which recognise this clause;
- f. promptly notify the Purchaser of any potentially or genuinely hazardous incident or accident that occurs during the carrying out of any services on a TasRail controlled site, whether or not the incident or accident resulted in injury or damage
- g. on and from the date of this document to the extent permitted by law, indemnify TasRail and keep TasRail always indemnified against all costs, expenses, fines, losses, damages or other liabilities which may arise as a result of a breach by the Contractor of the Safety and Environmental Law or this clause.

If, as a result of purchase of the abovementioned goods and/or services, any TasRail personnel sustain injury or ill health, or such goods or services do not meet performance specifications; quality claims; OHS and environmental requirements; or TasRail suffers any consequential loss, the Contractor will be held responsible. In this case, TasRail reserves the right to withhold payment or undertake remedial/corrective action at the expense of the Contractor.

The Health of the Contractor's Personnel and Agents is the responsibility of the Contractor. Before attendance at any TasRail controlled land, the Contractor should fully inform themselves of any probable exposures that may be encountered and put in place the appropriate measures to ensure the ongoing safety and protection of their workers, particularly in relation to moving rollingstock and hazardous goods.

The Contractor's Personnel and Agents may be subjected to drug and alcohol testing at any time when on a TasRail controlled site. A failure to obtain a reading of zero on any drug or alcohol test or unacceptable behaviour may result in that person being excluded from further access to TasRail controlled site.

14. INTELLECTUAL PROPERTY RIGHTS

The title to all intellectual property rights in or in relation to Contract Material shall vest upon its creation in TasRail. The Contractor must ensure that the Contract Material is held in a secure manner and not distributed or published without the express consent of TasRail.

15. USE OF PURCHASE ORDER INFORMATION

Except for purposes directly relevant to the Purchase Order, the Contractor must not, without TasRail's written approval, make public or disclose any Tasmanian Railway Confidential Information. TasRail may impose such terms and conditions as it believes appropriate on any approval. TasRail may disclose matters relating to the Purchase Order, including the Purchase Order, except where such information may breach the Privacy Act 1988 (Cth), to Commonwealth governmental departments and agencies, Commonwealth Ministers and Parliamentary Secretaries, and to Commonwealth Parliament, including responding to requests for information from Parliamentary committees or inquiries. This clause shall survive expiration or termination of the Purchase Order.

16. COMPLIANCE WITH LAWS AND POLICIES

16.1 The Contractor must when providing any Goods, Services or procuring any supplies comply with, and use their best endeavours to ensure that all Contractor Personnel and Agents comply with, all relevant and applicable laws, regulations, standards and policies, both in Australia and in the Partner Country including but not limited to:

- a. the *Work Health and Safety Act 2012* (Tas) and *Work Health and Safety Regulations 2012* (Tas);

- b. the *Rail Safety National Law (Tasmania) Act 2012* and all requirements of the Office of the National Rail Safety Regulator (ONRSR);
- c. all applicable Safety and Environmental Laws
- d. the *Privacy Act 1988* (Cth);
- e. Part IIIA of the *Crimes Act 1914* (Cth);
- f. all Laws relating to corrupt practices, including the *Criminal Code Act 1995* (Cth):
 - i. Division 70 relating to the bribery of foreign public officials;
 - ii. section 141.1 relating to the bribery of Commonwealth public officials; and
- g. all laws in relation to organisations and individuals associated with terrorism, including Division 102 of the *Criminal Code Act 1995* (Cth) and regulations under the *Charter of the United Nations Act 1945* (Cth)

16.2 The Contractor must ensure that funds, resources, materials or labour provided under this Purchase Order do not provide direct or indirect support to any prohibited or terrorist organisation or individual. If any such link is detected or suspected, the Contractor must notify TasRail immediately.

16.3 TasRail confirms that it is committed to, and will comply with, the *Public Interest Disclosure Act 2002* (Tas) and all related policies and procedures.

17. INDEMNITY

The Contractor must always indemnify TasRail, its employees, contractors (except the Contractor), and agents from and against any losses, damage or liabilities caused by, or arising out of any claim, suit, demand or legal action brought by any third party against any of the indemnified parties. This indemnity applies where the losses or liability is caused or contributed to, in whole or in part, by any wilfully wrongful, unlawful, or negligent act or omission of the Contractor, or any Contractor's Personnel and Agents in connection with the Purchase Order.

The Contractor agrees that TasRail may enforce this indemnity on behalf of the persons specified in this clause, either in the name of TasRail or the indemnified parties. The indemnity provided shall be reduced to the extent that the loss or liability is directly caused by the actions or omissions of TasRail, its employees, contractors (excluding the Contractor), or agents, as demonstrated by the Contractor.

The Contractor assumes all risks associated with data, supplies and any TasRail property while such items are in the possession or control of the Contractor. This indemnity shall survive termination or expiration of the Purchase Order.

18. NOTICES

Any notice, approval or consent required to be given under the Purchase Order must be in writing (in English) and must be delivered by hand, prepaid post, or electronic mail to the address of the set out in the Purchase Order or an alternate address as may be advised by the other party from time to time. A notice will be considered to have been received if:

- a. delivered by hand; when successfully delivered to the address of the recipient.
- b. sent by prepaid post; 3 Business Days (if posted to an address within the same country) after the date of posting or 10 Business Days (if posted between countries) after the date of posting.
- c. sent by electronic mail; on the day of transmission as evidenced by an electronic communication transmission record.

If a notice is delivered not on a Business Day or after 5pm on a Business Day, the notice will be considered to have been received by the recipient at 9am (recipient's local time) on the next Business Day

19. RESOLUTION OF DISPUTES

Unless otherwise expressly stipulated in the Purchase Order, a party must not commence court proceeding in respect of any dispute under the Contract unless it has complied with this clause. If a dispute arises between the Contractor and TasRail in connection to the Purchase Order, the parties must:

- a. at all times, act with complete propriety, fairness and in the highest professional standards, whilst agreeing to deal with disputes promptly without causing necessary delay;
- b. promptly provide the other party with a Notice detailing the nature of the dispute;
- c. within 10 Business Days after the Notice has been served, each party will nominate a representative to confer at least once to attempt to resolve the dispute and, failing resolution of the dispute, agree on an alternative method of resolution;
- d. if the dispute has not been resolved within 20 Business Days after the Notice has been served, either party may refer the dispute to the exclusive jurisdiction of the courts of the State of Tasmania and submit to any court hearing appeals from those courts.

20. FRAUD

For this clause, '*fraudulent activity*' or '*fraud*' means a dishonest act or omission by any person intended to obtain a benefit, cause loss, or mislead TasRail or any party indemnified under the Purchase Order. The Contractor and its Contractor Personnel and Agents must not engage in any fraudulent activity. The Contractor is responsible for preventing and detecting fraud. The Contractor must report in writing within 5 working days to TasRail any detected, suspected, or attempted fraudulent activity involving the Goods and/or Services.

21. TERMINATION FOR CONTRACTOR DEFAULT

In addition to any other rights or remedies TasRail has at law or in equity or under this Purchase Order, TasRail may, by Notice to the Contractor terminate this Purchase Order with effect from the date in the Notice, if the Contractor:

- a. commits a breach of this Purchase Order;

- b. becomes, or in TasRail's reasonable opinion is likely to become, bankrupt, insolvent or otherwise financially unable to fulfil its obligations under this Purchase Order, including becoming subject to external administration;
- c. ceases to carry on business;
- d. ceases to hold any license, qualification, approval, authority or consent required for the Contractor to comply with its obligations under this Purchase Order (except to the extent that this is outside the Contractor's reasonable control);
- e. assigns any rights under this Purchase Order; or
- f. suffers a change in Control which in TasRail's reasonable opinion may adversely affect the Contractor's ability to provide the Goods or perform the Services under this Purchase Order.

If the Purchase Order is terminated under this clause:

- a. subject to this Purchase Order, the parties are relieved from future performance of the Purchase Order, without prejudice to any right of action that has accrued at the date of termination;
- b. subject to the Purchase Order, all licenses and authorisations granted to the Contractor by TasRail under the Purchase Order terminate immediately despite anything to the contrary contained in the relevant license or authorisation;
- c. the Tasmanian Railway Confidential Information, supplies and any other property supplied or given to the Contractor by TasRail pursuant to the Purchase Order must be immediately returned to TasRail;
- d. TasRail is not obliged to make any further payments (including the payment of Fees) to the Contractor; and
- e. the Contractor will indemnify and hold TasRail harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of the Purchase Order by the Contractor.

22. BUY LOCAL AND INDIGENOUS PARTICIPATION

TasRail are committed to the Government Buy Local and Indigenous Participation policies and will monitor compliance of the Contractor with any undertakings provided at time of submission of offers for goods and services in relation to support of Small to Medium or Indigenous Business Enterprises. Should the Contractor's status change in relation to Indigenous Participation they must advise TasRail for reporting purposes.

23. ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement between Tasmanian Railway Pty Ltd and the Contractor in relation to its subject matter and supersedes all prior agreements, representations, warranties or arrangements.

24. GOVERNING LAW AND JURISDICTION

This Agreement is governed by, and is to be construed in accordance with, the law of the State of Tasmania and the parties submit to the exclusive jurisdiction of the courts of the State of Tasmania and any court hearing appeals from those courts.