

TERMS AND CONDITIONS OF PURCHASE

Doc No.: GEN-P-14

Acknowledgement of receipt or fulfilment of a Purchase Order by the Seller will be deemed to be the Seller's acceptance of the below Terms & Conditions

1.0 Definitions and Interpretations

- 1.1 Those terms identified in the Purchase Order have the meaning expressed in the Purchase Order.
- 1.2 "Taylor Rail Australia" ("TRA") means Taylor Rail Australia Pty Ltd ABN 85 136 182 628.
- 1.3 "Confidential Information" means any information relating to the business of TRA that is not in the public domain.
- 1.4 "Contract" means these conditions, the Purchase Order and any other document attached to or incorporated by reference in the Purchase Order of these conditions.
- 1.5 "Delivery Point" means the place for delivery specified on the Purchase Order.
- 1.6 "Goods" means the goods identified in the Purchase Order.
- 1.7 "Price" means the price set out in the Purchase Order which is exclusive of GST but is inclusive of all other costs & charges.
- 1.8 "Purchase Order" means the order issued by TRA to the Seller for the supply of the Goods and/or Services.
- 1.9 "Services" means the services identified in the Purchase Order.
- 1.10 Headings are for reference only and must not be used in the interpretation of the Contract.

2.0 Supply and Payment

- 2.1 The Seller must supply and deliver the Goods and/or perform the Services in accordance with the terms of the Contract.
- 2.2 TRA will pay the Seller the Price for accepted Goods and/or Services on 45 days end of the month in which TRA receives the Seller's tax invoice, and when full documentation is received as identified in the purchase order and that goods are received in full as evidenced by an authorised TRA representative.
- 2.3 The Seller must in supplying the Goods or performing the Services comply with and ensure all the Seller's employees, agents and sub-contractors are aware of and comply with;
 - a) all applicable laws and regulations
 - b) all applicable TRA site standards and procedures; and
 - c) any lawful directions and orders given by a TRA representative.
- 2.4 The Seller must in supplying the Goods or performing the Services ensure that any of the Seller's employees, agents and sub-contractors entering TRA's premises are appropriately skilled and qualified for the safe performance of the Services.
- 2.5 To ensure prompt payment of your invoice please ensure that the Purchase Order number is stated on all correspondence. Invoices can be emailed to accounts@taylorrail.com.au

3.0 Contract

- 3.1 The Contract supersedes all other communications and negotiations (Whether oral or written) between the Seller and TRA in relation to the Goods and/or Services and constitutes the entire terms of the Contract unless otherwise agreed in writing by TRA.
- 3.2 A valid Purchase Order number must be quoted by the Seller on all documentation relating to a supply of Goods and/or performance of Services.
- 3.3 If there is any conflict or inconsistency between the Contract and any terms and conditions of the Seller, the terms of the Contract prevail unless otherwise agreed in writing by TRA.
- 3.4 The Seller must not, without the prior written approval of TRA, assign, subcontract, encumber or transfer any of its rights or obligations under the Contract. Any such approval will not relieve the Seller of its obligations under the Contract.
- 3.5 The benefit of any obligation, warranty or indemnity given by the Seller in the Contract will extend to the relevant company or companies for which TRA is acting as buying agent.

4.0 GST

- 4.1 If the Seller becomes liable for GST for any supply made under the Contract, the Seller may add this GST to the amount otherwise payable under the Contract & will issue a tax invoice to TRA as a

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precondition for being paid this GST. The Seller will pass onto TRA the benefits of any abolition or reduction in prices brought about by any amendment to the GST.

- 4.2 The Seller acknowledges that if supplies are to be made under a recipient created tax invoice then a recipient created tax invoice agreement between the Seller and TRA is required.
- 4.3 In this clause the terms GST, supply, tax invoice and recipient created tax invoice have the same meaning as in A New Tax System (Goods and Services Tax) Act 1999.

5.0 Delivery Risk and Title

- 5.1 The Seller must deliver the Goods to the Delivery Point by the delivery date provided in the Purchase Order or the Contract.
- 5.2 Packages must be marked with the Purchase Order number, destination, contents and date on each package.
- 5.3 The Seller must perform the Services by the date specified in the Purchase Order or the Contract.
- 5.4 Property, risk and title in the Goods will pass to TRA upon delivery to, and acceptance of, the Goods by TRA at the delivery point.
- 5.5 The Seller must insure the Goods against all risk of loss and damage for the full replacement value until delivery to and acceptance of the Goods by TRA at the delivery point.
- 5.6 The Seller must effect and maintain for the life of the Contract, public & products liability insurance with a limit of indemnity of not less than \$10,000,000.
- 5.7 Where the Services include professional services (including design activities), the Seller must effect and maintain for 7 years following completion of the Services, professional indemnity insurance with a limited of indemnity of not less than \$5,000,000.
- 5.8 The Seller must take out Workers Compensation insurance as required by law.

6.0 Warranties

- 6.1 The Seller warrants that it is able to pass to TRA full and unencumbered title of the Goods and that:
- The Goods will be new and of merchantable quality;
 - The Goods and/or Services will match any description in the Contract, any relevant specifications and any samples provided by the Seller;
 - The Goods and/or Services will be fit for the purpose made known to the Seller by TRA or, if no one was made known to the Seller, fit for the purposes for which Goods and/or Services of that kind are ordinarily supplied;
 - The Goods and/or Services will comply with any other warranties or guarantees contained in the Contract or ordinarily supplied by the Seller and/or the manufacturer of the Goods and/or Services;
 - The Goods and/or Services will comply with the provisions of any relevant legislation, industry standards and Australian standards; and
 - The Goods and/or Services will be free from any right or claim of a third party.
- 6.2 The Seller warrants that it has all intellectual property rights (including, without limitation, any patents, trademarks and copyrights) necessary to supply the Goods and/or Services in accordance with the Contract & indemnifies TRA against any losses, costs; damages or expenses incurred by TRA as a consequence of any claim by a third party that it has a right to any intellectual property in the Goods.
- 6.3 The warranties in clause 6.1 are in addition to any warranties which are or may be implied under the Sale of Goods Act, the Trade Practices Act and any other legislation applicable to the Goods and/or Services and their supply or performance.

7.0 Indemnities

- 7.1 The Seller shall indemnify TRA or any of its related body corporates for any and all losses, actions, liabilities and claims whatsoever, arising directly or indirectly out of or in connection with the Contract.

8.0 Defective Goods

- 8.1 If TRA discovers that the Goods and/or Services do not comply with any warranty given under clause 6, or are otherwise defective or unacceptable to TRA, TRA may:

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- a) have the defect(s) rectified and the cost to TRA of so doing will be a debt due from the Seller to TRA;
 - b) request the Seller to rectify any defect(s) at the Seller's expense;
 - c) request the Seller to replace the Goods or re-perform the Services at the Seller's expense; or
 - d) reject the Goods, in which case the Seller must arrange to collect the Goods immediately at the Seller's expense;
 - e) request Seller to indemnify TRA pursuant to Clause 7 of this Contract
- 8.2 Nothing in this clause limits TRA's rights at law in relation to defects which are discovered or become apparent after the expiry of any warranty period.

9.0 No Fault Termination

- 9.1 TRA may terminate the Contract or part of the Contract by giving the Seller a minimum of 14 days' notice.

10.0 Confidentiality

- 10.1 The Seller must not, and must ensure that its subcontractors, employees and agents do not without prior written approval, disclose any information about the Contract or any Confidential Information.

11.0 Miscellaneous

- 11.1 No waiver by TRA of a breach of the Contract by the Seller will constitute a waiver for any subsequent or continuing breach by the Seller.
- 11.2 TRA may deduct from any amount owing to the Seller under the Contract an amount owing by the Seller to TRA under the Contract or otherwise.
- 11.3 The law of the Contract will be the law of the State of the Delivery Point of the Goods or performance of the Services, and the parties submit to the jurisdiction of the courts of that State.

12.0 Document History

Version	Issued	Details	Approved
0	3/11/15		M Wroblewski
1.0	4/02/16	Update	M Wroblewski
2.0	21/03/18	Update	M Wroblewski

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