

1. **DEFINITIONS**

In this document:

**Agreement** means the agreement for the supply of Goods or Services, consisting of these Conditions, the Specification, the Purchase Order and any other document incorporated into the agreement with the Company's express written agreement.

**Company** means Gemco Rail Pty Ltd ABN 61 079 764 444.

**Conditions** means these General Conditions of Purchase.

**Supplier** means the person supplying the Goods or Services to the Company under this Agreement.

**Goods** means the goods specified in the Purchase Order.

**Purchase Order** means an order for Goods or Services issued by the Company.

**Services** means the services specified in the Purchase Order.

**Specification** means the specifications to which the Goods or Services must comply, as set out in the Purchase Order or as otherwise incorporated into this Agreement.

2. **SUPPLY OF GOODS**

2.1. The Supplier must supply the Goods to the Company in accordance with this Agreement.

2.2. The Supplier must deliver the Goods to the delivery point by the delivery date, as specified in the Purchase Order or otherwise agreed in writing.

3. **ACCEPTANCE OR REJECTION OF GOODS**

3.1. If the Goods conform and comply with this Agreement, the Company will accept the Goods. If the Goods do not conform and comply, the Company may reject the Goods giving reasons.

3.2. The Supplier must at its cost collect and remove any Goods that have been rejected promptly or the Company may return the Goods to the Supplier at the Supplier's expense.

4. **PROVISION OF SERVICES**

4.1. The Supplier must provide the Services to the Company in accordance with this Agreement, and must: (a) complete the Services by the date for delivery specified in the Purchase Order; (b) provide the Services with a standard of due care, skill, and diligence that would reasonably be expected from an experienced provider of services that are similar to the Services; (c) provide the Services such that they comply with all relevant Australian Standards and to the extent relevant, any international standards accepted in the relevant industry or trade; and (e) provide any and all equipment necessary for or incidental to the performance of the Services.

4.2. The Supplier warrants to the Company that where the Company has either expressly or by implication made known to the Supplier any particular purpose for which the Services are required, the Services must be fit for that purpose, and the purpose ordinarily expected in the relevant industry or trade.

5. **FAILURE TO PERFORM SERVICES**

5.1. Without limiting any other available remedy, if the Supplier fails to provide the Services in accordance with this Agreement, the Company will not be required to pay for those Services until they are provided correctly and may require the Supplier to remedy any default or re-perform the Services within the time specified by the Company.

5.2. If a default referred to in clause 5.1 is not capable of being remedied or the Services are not capable of being re-performed, or the Supplier fails within the time specified to remedy the defect or default or re-perform the Services, the Company may either have the Services remedied or re-performed by a third party or do so itself. In either case, the Supplier must pay the reasonable costs incurred by the Company in doing so.

6. **GOODS WARRANTY**

6.1. The Supplier warrants to the Company that the Goods: (a) are new (unless expressly agreed otherwise) and fit for the purpose stated in the Specification (or, if no purpose is stated, the purpose for which the Goods would ordinarily be used); (b) conform in all respects with the Specification; (c) are free from any security interests or encumbrances; (d) are free from defects; and (e) are of merchantable quality and comply with all laws and applicable Australian Standards.

6.2. If any of the Goods do not comply with clause 6.1 (**Defective Goods**) then without prejudice to any other rights or remedies to which the Company is entitled the Company may, at the Supplier's cost, require the Supplier (at the Company's option) to repair, replace or refund the Defective Goods within a reasonable timeframe.

6.3. If the Supplier fails to comply with clause 6.2 then the Company may: (a) promptly rectify the Defective Goods itself or engage a third party to do so; (b) sell any Defective Goods or return them to the Supplier; and/or (c) elect to accept any Defective Goods as a variation and adjust the rates or fees accordingly, and recover its reasonable costs and expenses incurred in doing so as a debt due and payable to the Company.

6.4. The Supplier must also provide the Company with details and the full benefit of any applicable manufacturers' warranties in respect of the Goods.

7. **INVOICING AND PAYMENT**

7.1. The Supplier must submit to the Company a valid tax invoice in respect of the Goods or Services once they are completed or supplied, or at such other time specified in a Purchase Order. The tax invoice must identify the Goods or Services, reference the relevant Purchase Order, contain any other information as the Company may reasonably require and be sent to the person and the address specified in the Purchase Order.

7.2. The Company will pay the invoiced amount within 30 days from the end of month of receipt of an accurate invoice, however the Company will not be obliged to pay any invoice that has not been submitted in accordance with the terms of this Agreement or which relates to Goods or Services that have not been accepted by the Company or are the subject of a dispute.

7.3. Payment of an invoice does not constitute acceptance or completion nor waive or prejudice any rights the Company may have under the Agreement.

7.4. The Company may reduce any payment due to the Supplier under this Agreement by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

8. **TERMINATION FOR CAUSE**

8.1. Either party may terminate the Agreement effective immediately, by notice in writing to the other party, if: (a) the other party breaches a material obligation and fails to rectify that breach within 7 days of a written request by the terminating party to do so; or (b) the other party becomes bankrupt, insolvent, has an external administrator appointed or fails to set aside or have revoked (within the time required) a statutory demand.

8.2. Upon receipt of a notice of termination from the Company, the Supplier must cease the supply of the Goods and Services and as soon as practicable and in any event, not later than 7 days after receipt of the notice of termination: (a) if relevant, remove and demobilise all of the Supplier's equipment, debris and other property and leave the site in a tidy and safe condition; (b) take all reasonable action to mitigate any claims and costs that may be incurred by the Supplier as a result of the termination; and (c) provide the Company with a report in relation to the Goods and Services performed up to and including the date of termination.

9. **TERMINATION WITHOUT CAUSE**

9.1. The Company may without cause terminate the Agreement or any Purchase Order on 14 days' written notice.

9.2. If the Company terminates the Agreement or any Purchase Order under clause 9.1, the Supplier will be entitled to be paid: (a) the price for any Goods supplied and Services performed in accordance with the Agreement up to and including the date of termination; and (b) any verifiable non-recoverable costs that the Supplier properly and directly incurred prior to the date of termination for the purpose of fulfilling the Purchase Order.

9.3. The entitlement set out in clause 9.2 is the Supplier's sole and exclusive remedy in relation to a termination without cause under clause 9.1 by the Company and is not entitled to any lost profits, revenues, opportunity or anticipated savings.

10. **TITLE AND RISK**

10.1. Title to the Goods will pass to the Company on payment for the Goods.

10.2. Risk in the Goods will pass to the Company on delivery.

11. **INDEMNITY**

The Supplier must indemnify the Company and each of the Company's employees and agents against any and all loss, damage, liability, claim, cost and expense of any kind, whether incurred by or awarded against the Company, arising from a defect in the Goods or Services, the Supplier's breach of this Agreement or the Supplier's negligence, except to the extent that the Company's breach of this Agreement or negligence causes the relevant loss, damage, liability, claim, cost or expense.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1. The Supplier warrants that the Goods and Services, and the Company's reasonably foreseeable use of them, will not infringe the intellectual property rights of any person. The Supplier indemnifies the Company against breach of this warranty.

12.2. The Company will own all intellectual property rights arising from performance of the Services. The Supplier assigns such rights to the Company and agrees to execute any document reasonably required by the Company to evidence or perfect that ownership.

12.3. The Supplier grants the Company a licence of all intellectual property rights owned by the Supplier and not assigned under clause 12.2 to enable it to use, modify, maintain and repair the Goods and enjoy the benefit of the Services.

13. **INSURANCE**

The Supplier must effect and maintain the following policies of insurance: (a) product and public liability insurance with a limit of not less than \$20,000,000 per claim and in the aggregate; (b) comprehensive motor vehicle insurance for vehicles used in connection with the supply of the Goods and/or Services; (c) workers compensation insurance as required by law; and (d) any other insurance required by the Company. The Supplier will provide a certificate of currency for these policies on request.

14. **CONFIDENTIALITY AND PRIVACY**

14.1. The Supplier and its employees, agents, directors, partners and consultants must not disclose or otherwise make available any information supplied by the Company or relating to this Agreement to any other person and may only use that information for the purpose of providing the Goods or Services. This clause does not apply to information which is lawfully obtained from a third party, is public knowledge, is already known or is otherwise independently developed by representatives of the Supplier who have not been exposed to the information.

14.2. The Supplier agrees to protect personal information as required by: (i) any law; and (ii) the Company's privacy policy. The term "personal information" has the meaning specified in the Privacy Act 1988 (Cth).

15. **ACCESS**

The Company grants the Supplier access to the Company's premises as is reasonably necessary to supply the Goods or provide the Services. The Supplier must ensure that its employees, agents and sub-contractors do not unduly interfere with the operations of the Company, must prevent nuisance, act in a safe and lawful manner and comply with any of the Company's safety standards, inductions, policies, rules and reasonable directions.

16. **SUB-CONTRACTING**

16.1. The Supplier must not sub-contract to any third person any of its obligations in relation to the Goods or Services without the prior written consent of the Company (which may be given or withheld in its discretion).

16.2. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier.

17. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and supersedes any other agreement or understanding between the parties. No other terms or conditions (including those supplied with any quote or invoice) apply to the sale of Goods or the supply of Services and those terms will be of no legal effect (even if a representative of the Company signs those terms and conditions or annexes them to any order).

18. **COMPLIANCE WITH LAW**

The Supplier must in the supply of the Goods or Services, comply with all laws and with any lawful requirements or policies of the Company as advised by the Company.

19. **GENERAL**

19.1. This Agreement is governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

19.2. Nothing in this Agreement has the effect of or is taken to have the effect of excluding, restricting or modifying the provisions of any relevant or applicable statute. If it is determined that a word, phrase, sentence, paragraph or clause is unenforceable, illegal or void, then it is severed and the other provisions of this Agreement remain operative.

19.3. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19.4. Any indemnity under this Agreement is independent and survives termination of this Agreement.

19.5. Time is of the essence in respect of the Supplier's obligations under this Agreement.