

**TERMS AND CONDITIONS OF SALE****1.0 GENERAL**

To the extent permitted by law all warranties, terms, and conditions in relation to the state, quality or fitness of the Goods whether implied by use, statute or otherwise are hereby excluded. The only terms, conditions and warranties which are binding upon the Company in relation to the Goods and their sale and purchase are the Standard Terms and the Other Terms; as otherwise agreed to, in writing by the Company and those, if any, which are imposed by and which cannot be excluded by law (such other terms so agreed to or imposed are hereafter referred to as 'Other Terms').

If there is any inconsistency between the Standard Terms and the Other Terms, the Other Terms shall prevail to the extent of the inconsistency only. If any provision of the Contract or the application of that provision to any person or circumstance is or becomes invalid or unenforceable it shall be served from the Contract and the operation of the remaining provisions of the Contract shall be affected and are valid and enforceable to the fullest extent permitted by law. This clause has no effect if the severance alters the fundamental purpose of the Contract.

**2.0 SAFETY & HEALTH REQUIREMENTS**

Third Parties who are engaged to perform services for the Company are required to comply with relevant Company Safety & Health Policies and Procedures, and legislative requirements, including Insurances and Workers Compensation arrangements.

**3.0 QUOTATIONS**

Any quotation made by the company is not an offer and all orders are subject to written confirmation on acceptance. The terms, conditions and warranties of the Contract shall prevail over all conditions of the purchase order to the extent of any inconsistency.

**4.0 OTHER DOCUMENTS ETC.**

All descriptive matter and specific drawings and particulars of weights and dimensions, submitted with or to any quotation of the Company or contained in the Company's catalogue, price lists or advertising matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the Contract.

**5.0 PRICES**

Prices are subject to change without notice, do not include any sales tax, excise duties, goods and services tax, or any other governmental charges, and shall be to the amount of the Purchaser. All prices are quoted and payable in Australian currency. All prices quoted are plus Goods and Services Tax, Sales Tax, Exercise duties or other governmental charges and are payable in Australian currency.

**6.0 PRICE VARIATIONS**

Shall be detailed in individual quotations.

**7.0 CANCELLATION**

If the merchandise covered by this order is merchandise manufactured, fabricated or merchandise that is imported from overseas, the following cancellation charges may be applied at the discretion of the Company.

**(a) Manufactured or Fabricated Merchandise**

Upon the Purchaser advising the Company in writing of its intention to cancel the order, the Purchaser shall pay to the Company the following amounts. All out of pocket costs and

expenses including expenses in connection with the cancellation of any sub-contracts associated with the order to the date of the cancellation, plus 20% of such costs and expenses, but in no event shall the total amount to be paid exceed the purchase price specified on the original order or its amendments. Upon such payment, any materials and the incomplete portion of the work shall be the property of the Purchaser and subject to its disposition.

**(b) Merchandise Imported from Overseas**

Orders of special Manufactured Merchandise Imported from overseas cannot be cancelled and the Purchaser shall pay to the Company the contracted price for that merchandise. Upon payment of this amount, the merchandise shall become property of the Purchaser and subject to its disposition.

**8.0 TITLE AND RISK**

Legal and equitable title to the Goods shall not pass to the Purchaser until all monies owing by the Purchaser have been paid in full and, until such time, the Purchaser shall the Goods as bailee for the company only subject to its rights to deal with the goods in the ordinary course of business, on the basis that any moneys received as a result of such dealings shall be held by the Purchaser on trust in separate identifiable account as the beneficial property of the Company and which amounts shall be paid to the Company on request. Notwithstanding the foregoing, risk of loss of or damage in the Goods shall pass to the Purchaser upon their delivery to the Purchaser. If the Purchaser does not pay for the Goods on the due date specified in the Contract, the Company is authorised by the Purchaser to enter the Purchaser's premises (or any premises under the control of the Purchaser or as agent of the Purchaser if the Goods are stored at such a premises) and use reasonable force to take possession of the Goods without liability for the tort of trespass, negligence or payment of any compensation to the Purchaser whatsoever.

**9.0 DELIVERY**

Unless otherwise stated in Other Terms the Company shall deliver the Goods to the Purchaser at the Company's address stated in Other Terms. If delivery terms stated in Other Terms are defined by 'Incoterms' published by the International Chamber of Commerce, they shall have the meaning in such definition.

If the Purchaser fails to pay any amount to the Company when due whether in respect to this or any other contract the Company, in addition to any other rights it may have, may suspend further deliveries in respect of this or any other contract and where the payment which is due is in respect of this contract, may terminate the contract in relation to Goods which have not been delivered.

The Company agrees to proceed with the work under the Contract with due expedition and without delay, but in any event, the Company shall have no liability to the Purchaser whatsoever where the Company's failure to deliver or delay in delivery arises out of any event beyond the control of the Company, including without limit any Act of God, was fire, machinery breakdown, strike, lockout or shortage of material or supplies. In such instance, the Company shall be entitled to a reasonable extension of time for delivery.

Any obligation of the Company to deliver Goods to the Purchaser by a particular time or over a particular period of time is not an essential condition of the Contract and breach of such obligation by the Company shall not entitle the Purchaser to rescind the Contract, nor shall it relieve the Purchaser from any obligation

to accept delivery of or pay for the Goods. The Company does not accept any responsibility for liquidated damages for late delivery or for consequential damage or loss of any kind caused by, or arising from late delivery or non-delivery.

Where the Goods are to be delivered by instalments, each instalment shall be deemed to be sold under a separate contract.

A breach by the Company under one instalment contract shall not entitle the Purchaser to repudiate the contracts in respect of the remaining instalments.

## 10.0 DELAYS

In the event that the commencement or progress of this Contract is, at the request of the Purchaser, delayed or suspended or the date of delivery of Goods is postponed, then the Purchaser shall be liable for all claims, demands, losses, costs or expenses suffered or incurred by the Company as a result of the Contract being so delayed or suspended or delivery of the Goods postponed at the request of the Purchaser.

## 11.0 PACKING

The cost of crating or packing shall be an additional charge to the Purchaser.

## 12.0 DRAWINGS, TOOLING ETC

All tooling, dies, mould or patterns (collectively referred to hereinafter as 'Tooling') drawings and gauges made by the Company shall be and shall remain the exclusive property and in the exclusive custody of the Company and shall be retained for a period of three years following the latest order in respect to them.

Where the Goods or part thereof are manufactured with the use of Tooling supplied by the Purchaser, the Company shall not be liable for the shape, measure, content, capacity or fitness of the Tooling or the unsuitability of the Tooling for the manufacture of the Goods or part thereof and any damage, loss or expense resulting therefrom shall be the sole responsibility of the Purchaser. Whilst such Tooling is in the possession of the Company or its agents or employees, the risk of loss of or damage to the Tooling shall be at the risk of the Purchaser and the Purchaser shall insure the full value of the Tooling against all risks and shall produce evidence of such insurance upon being requested to do so by the company. The Purchaser agrees to indemnify the Company against all claims whatsoever for loss of, or damage to, or arising from such Tooling.

Patterns supplied by the Purchaser must bear distinctive colours of identification of core prints, machined surfaces, rough casting respectively, and must be numbered.

Irrespective of whether Tooling is supplied by the Company or supplied by the Purchaser or a third party, alteration to such Tooling is to meet the requirements of the Purchaser and the replacement or renewal of such Tooling shall be paid for by the Purchaser and the Company shall not be liable for any loss of or damage to the Tooling whether arising from the negligence or default of the Company or otherwise.

## 13.0 TESTS/INSPECTIONS

Where this Contract provides that the Goods are subject to tests and/or inspection, such tests and/or inspection must be completed before their delivery to the Purchaser and shall be final.

## 14.0 WARRANTY

The Goods, with the exception of products and/or parts included therein warranted by other manufacturers, are subject to warranty for the relevant time period described below commencing from the date of delivery and such liability is limited to making good by replacement or repair defects arising

provided such defects arise under the normal usage of the product or equipment.

The Company shall not be liable in any circumstances for:

- (a) defects or damage caused in whole or part by misuse, abuse, neglect, improper use or installation, use of unsuitable lubricants, repair, alteration or accident;
- (b) cost of repair or replacements paid or incurred without the written authority of the Company.

This warranty is limited to the repair or replacement as the Company may elect, only for products or parts incorporated in the goods regarding which, upon discovery of the defects, the Purchaser has given immediate written notice to the Company. Installation and transportation are not included. The Company shall have the option of requiring the return to it of the defective material, transportation prepaid, for inspection.

Unless otherwise specified, the period of warranty is:

- Refurbished equipment 3 Months
- Track Maintenance equipment 6 Months (subject to the return by the purchaser of the suppliers warranty card).
- New equipment 12 Months (Other than Track Maintenance Equipment)

## 15.0 LIMITATION OF LIABILITY

The Company shall not be liable (except to the extent that such liability is legally incapable of being excluded or limited) for any consequential or indirect loss or damage of whatever nature suffered by the Purchaser for or arising from any breach by the Company of the Contract howsoever caused or from any negligence of the Company or its employees, agents, representatives or sub-contractors.

The terms, conditions and warranties in this contract proceed and exclude all prior discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods or any part thereof including, not without limiting the generality of the foregoing, those relating to the performance of the Goods or any part thereof or the results that ought to be expected from using the Goods.

The Company shall not be liable (except to the extent that such liability is legally incapable of being excluded or limited) in respect of any loss or damage arising out of any representation, statement, recommendation or advice given by the Company or its employees or agents made before, at the time of, or after the commencement of this Contract.

The Company shall not be liable (except to the extent that such liability is legally incapable of being excluded or limited) for any consequential or indirect loss or damage of whatever nature suffered by the purchaser for or arising out of any product which is incorporated into the structure, machinery or control of any aircraft, aerial device, watercraft or hovercraft.

The aggregate liability of the Company to the Purchaser in respect of this Contract for any reason whatsoever, including but not limited to under breach of contract, tort, equity, will be limited to the amount paid by the Purchaser to the Company under this Contract.

## 16.0 INSURANCE

Except where in accordance with Clause 7 or otherwise the delivery terms for the Goods should expressly provide to the contrary, all insurance cover in respect to the Goods following their delivery to the Purchaser shall be arranged by the Purchaser.

## 17.0 SUB-CONTRACTING

The Company reserves the right to sub-contract with any other person for the performance on its behalf of any part of the Contract.

## 18.0 INTELLECTUAL PROPERTY

If the Purchaser provides to the Company specification, designs, plans, descriptions, prototypes, samples, Tooling or components for or in relation to the Goods or their manufacture or delivery, the Purchaser shall indemnify the Company against any claims, actions, demands, costs, damages or expenses arising from or incurred by reason of any infringement or alleged infringement of any registered or unregistered patent, design or trademark or name, or any copyright, rights in respect of any confidential information or other protected or propriety rights arising from the supply or use of any such specifications, designs, plans, descriptions, prototype, samples, Tooling or components.

The Company shall not be required to defend any action, claim or demand or to contest any costs or expenses covered by this indemnity before it shall be entitled to the benefit of this indemnity.

The copyright, patent rights, design rights and all other intellectual property rights in respect to or contained within the Goods or in any, drawing, plan, prototype or specification in relation to the Goods or their manufacture which have been developed by or on behalf of the Company shall remain the property of the Company and no transfer to the Purchaser of any such rights is included in the price paid or agreed to be paid whether or not such a price includes an amount for designing or producing the Goods. All such items and all documents, information, systems and know-how provided to or disclosed to the Purchaser by the Company and marked or described as 'Confidential' or 'Commercial in Confidence' shall be treated as confidential by the Purchaser and the Purchaser shall not loan, copy, use, dispose of or sell such items, documents, information, systems or know-how without the prior written consent of the Company.

## 19.0 DISPUTE RESOLUTION

If at any time any question, dispute or difference whatsoever shall arise between the Company and the Purchaser in respect to or in connection with the Contract, the parties shall endeavour to resolve such in the spirit of mutual cooperation and understanding. If those efforts do not resolve the question, dispute or difference, either party, may by written notice to the other, refer the question dispute or difference to arbitration, to be held in Australia.

The arbitrator shall be chosen by agreement between the Company and the Purchaser or failing such agreement within 30 days of the receipt of the said notice, shall be appointed by the President for the time being of the Institution of Engineers, Australia. Any such arbitration shall be held in accordance with and subject to the Commercial Arbitration Act 1985 of the State of Western Australia, or any statutory modification thereto.

## 20.0 NOTICES

Any notice under or in connection with the Contract shall be deemed to be sufficiently given by one party if either delivered to the other party ("the recipient") personally or by forwarding it to the recipient by mail or by facsimile addressed to the recipient's usual or last known address or by leaving it at such address. All notices sent by mail or facsimile shall be deemed to have been delivered to the recipient on the second business day following the date of posting or faxing of that notice.

## 21.0 WAIVER

No provision of this Contract and no breach of such provisions shall be deemed waived by reason of any previous waiver of such provision or any breach thereof.

## 22.0 AMENDMENTS

This Contract may not be amended or varied except by written agreement between the parties and signed by the Company.

## 23.0 INTERPRETATION

The laws of Western Australia govern this contract, Australia and the parties submit to the jurisdiction of the Courts of that State. The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods.

For the avoidance of doubt the parties agree that any question of intent or question of interpretation of the Contract must be construed as if drafted jointly, and there may not be any presumption, interference or conclusion drawn by the other party by virtue of its representative authoring this Contract or any of the terms in it.

## 24.0 DEFINITIONS

"The Company"	- means Gemco Rail Pty Ltd ABN 61 079 764 444, or any of its subsidiaries whichever is the applicable supplier of the Goods,
"The Contract"	- means the agreement made between the parties with respect to the terms and conditions of sale of the Goods as provided for in the Standard Terms and Other Terms,
"Goods"	- means goods that are the subject of the Contract and include any components of goods sold and purchase hereunder,
"Other Terms"	- means the terms, conditions and warranties agreed to in writing (other than the Standard Terms), and those terms, conditions and warranties which cannot be excluded by law,
"PPSA"	- means the Personal Property Securities Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and any amendment made at any time to any other legislation as a consequence of the PPSA.
"The Purchaser"	- means the entity purchasing the Goods,
"Standard Terms"	- the terms, conditions and warranties set out in clauses 1 to 23, inclusive.

## 25.0 PAYMENT TERMS

### 25.1 Domestic payments

For goods and services that are purchased in Australia and invoiced to an Australian based purchaser, the purchaser shall ensure full payment of said goods and services prescribed within 30 days after the end of the month in which the goods or services were purchased.

### 25.2 International Payments

For Goods that are to be exported from Australia, the purchaser shall, within seven (7) days after the effectiveness of the contract, open an irrevocable Letter of Credit by a bank

acceptable to the company and in favour of the company which shall be payable on presentation of the Bill of Lading/Airway Bill.

## 26.0 PPSA

The Purchaser acknowledges that these terms and conditions (and, where applicable, any contract) constitute a security agreement for the purposes of the PPSA. A security interest is taken in all Goods previously delivered to the Purchaser and all the Goods that may be supplied in the future to the Purchaser securing the performance by the Purchaser of its obligations under these terms and conditions and any contract between the Company and the Purchaser.

The Purchaser acknowledges and agrees that all Goods supplied under these terms and conditions from time to time constitute its inventory, within the meaning of that term in the PPSA.

The Purchaser must ensure that no security interest (within the meaning of the PPSA) is created, exists or subsists over the Goods in its possession or control other than a security interest arising under these terms and conditions.

The Purchaser agrees to do anything (such as obtaining consents, completing, signing and producing documents and supplying information) which the Company considers necessary for the purposes of:

- a) ensuring that any security interest under these terms and conditions is enforceable, perfected and otherwise effective;
- b) enabling the Company to apply for any registration, or give any notification, in connection with any security interest under these terms and conditions so that it has the priority required by the Company; and
- c) enabling the Company to exercise [Powers] in connection with any security interest under these terms and conditions.

The Company may apply all payments or other amounts it receives from the Purchaser or in exercise of its rights and remedies under these terms and conditions, first, in payment of any interest owing by the Purchaser to the Company; secondly, in payment of any costs, charges and expenses incurred by the Company as a consequence of any breach by the Purchaser of these terms and conditions; thirdly, in payment of all fees and charges due to the Company under or in connection with these terms and conditions; and, fourthly, in payment and satisfaction of all other moneys owing by the Purchaser to the Company in accordance with the order of priority set out in section 14(6)(c) of the PPSA and the Company's application of such payments and amounts shall prevail notwithstanding any purported application or appropriation to the contrary by the Purchaser.

The Company need not give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

To the extent permitted by law, the following provisions of the PPSA shall not apply as between the Company and the Purchaser: section 121(4); section 125; section 130 (to the extent that it requires the Company to give a notice to the Purchaser); section 132(3)(d); section 132(4); section 135; section 142; section 143; and all provisions of Part 4.3 of the PPSA in relation to any of the Goods while a person is a controller of that property in a capacity other than those mentioned in section 116(1) of the PPSA.

Neither party will not disclose any of the information set out in section 275(1) of the PPSA in relation to this document or any security interest created under this document to any person (except that the Company may do so where required due to the operation of section 275(7) of the PPSA or in accordance with another provision of this document).