

## GENERAL TERMS AND CONDITIONS

### 1. INTERPRETATION

- 1.1. In these terms and conditions, the following definitions apply:  
"CFRS" means CF Rail Services Pty Ltd (ABN 34 128 945 460).  
"Conditions" means these terms and conditions as amended from time to time in accordance with clause 13.1.  
"Contract" means a contract between the Supplier and CFRS for the supply of Goods and/or Services in accordance with these Conditions.  
"Goods" means any materials, or equipment supplied to CFRS.  
"Order" means CFRS's order for the supply of Goods and/or Services.  
"Services" means any services supplied to CFRS.  
"Supplier" means the entity from which Goods and/or services are supplied to CFRS.  
"Tax Invoice" means the Tax Invoice issued by the Supplier in relation to each contract.

### 2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by CFRS to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:  
2.2.1 the Supplier issuing written acceptance of the Order; or  
2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 Unless CFRS otherwise agrees in writing, the Supplier acknowledges and understands that every Contract is governed by these Conditions, the terms of the relevant Tax Invoice and any other written agreement between CFRS and the Supplier, which together constitute the entire agreement between the parties.
- 2.4 These Conditions of Sale prevail over all inconsistent conditions in any specification, order, quotation or any other document from any party.
- 2.5 CFRS may at any time after the giving of notice to the Supplier, reasonably vary these Conditions.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services to CFRS, except where application to one or the other is specified.
- 2.7 Nothing in, or implied from, the Contract constitutes, or is to be treated as constituting, any relationship of partnership, association, trustee, agent or exclusivity.

### 3. SUPPLY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:  
3.1.1 correspond with their description and any applicable specification;  
3.1.2 be of satisfactory quality (within the meaning of the relevant legislation and fit for any purpose held out by the Supplier or made known to the Supplier by CFRS, expressly or by implication, and in this respect, CFRS relies on the Supplier's skill, competence and judgment;  
3.1.3 be free from defects in design, materials and workmanship and remain so after delivery; and  
3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 Nothing in these conditions in any way waives or limits CFRS's rights or reduces the Supplier's obligations under the Australian Consumer Law or other relevant legislation.
- 3.3 CFRS shall have the right to inspect and test the Goods at any time before delivery.
- 3.4 If following such inspection or testing, CFRS considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings or obligations at clause 3.1, CFRS shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and CFRS shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 4. DELIVERY OF GOODS

- 4.1 The Supplier shall ensure that:  
4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;  
4.1.2 delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and  
4.1.3 if the Supplier requires CFRS to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 4.2 Title and risk in the Goods shall pass to CFRS on completion of delivery.

### 5. SUPPLY OF SERVICES

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to CFRS in accordance with the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by CFRS.
- 5.3 In providing the Services, the Supplier shall:  
5.3.1 co-operate with CFRS in all matters relating to the Services, and comply with all instructions of CFRS;  
5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;  
5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;  
5.3.4 ensure that the Services conform with all descriptions and specifications set out in the Order;  
5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;  
5.3.6 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;  
5.3.7 not do or omit to do anything which may cause CFRS to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that CFRS may rely or act on the Services; and  
5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of CFRS's premises.  
5.3.9 obtain permission from CFRS in writing for any variation to the scope of the Services or other additional Services, other than provided for in the quotation, or as otherwise agreed with the Supplier.
- 5.4 Nothing in these Conditions in any way waives or limits CFRS's rights or reduces the Supplier's obligations under the Australian Consumer Law.

### 6. CUSTOMER REMEDIES

- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, CFRS shall, without limiting its other rights or remedies including those under the Australian Consumer Law, have one or more of the following rights at the discretion of CFRS:  
6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;  
6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;  
6.1.3 to recover from the Supplier any reasonable costs incurred by CFRS in obtaining substitute goods and/or services from a third party;  
6.1.4 where CFRS has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and  
6.1.5 to claim damages for any additional costs, loss or expenses incurred by CFRS which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies including those under the Australian Consumer Law, CFRS shall have one or more of the following rights at CFRS's discretion, whether or not it has accepted the Goods:  
6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;  
6.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;  
6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;  
6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;  
6.2.5 to recover from the Supplier any reasonable expenditure incurred by CFRS in obtaining substitute goods from a third party; and  
6.2.6 to claim damages for any additional costs, loss or expenses incurred by CFRS arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.4 CFRS's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

### 7. PRICES

- 7.1 The price for the Goods shall be:  
7.1.1 the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the date of the Order; and  
7.1.2 shall be inclusive of the costs of packaging, insurance and transportation of the Goods to site including unloading the Goods at the Delivery Point, unless otherwise agreed in writing by CFRS. No extra charges shall be effective unless agreed in writing and signed by CFRS.
- 7.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by CFRS, the charges shall include every cost and expense of the Supplier

directly or indirectly incurred in connection with the performance of the Services.

- 7.3 The price is in Australian dollars and is quoted or invoiced based on costs, taxes, duties, awards, statutes, rates of exchange and conditions as at the date hereof.
- 7.4 If the price stated for the supply of the Goods and/or Services in a Tax Invoice is expressed to include GST, then no amount is payable in addition to the price under this clause.
- 7.5 In this clause 3, "GST" and other terms used have the same meaning used in A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended, substituted or replaced and any other relevant legislation, including regulations, unless there is a contrary intention.

#### **8. PAYMENT**

- 8.1 The Supplier must render an Invoice to CFRS with the delivery of the Goods or by the end of the month in which the Goods are delivered.
- 8.2 In consideration of the supply of Goods and/or Services by the Supplier, CFRS shall pay the invoiced amount within 30 days from the end of the month in which the Invoice was received by CFRS to a bank account nominated in writing by the Supplier.
- 8.3 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow CFRS to inspect such records at all reasonable times on request.

#### **9. WARRANTIES**

- 9.1 Where CFRS is defined as a consumer by any relevant law such as the Australian Consumer Law (Schedule 2 of Competition and Consumer Act 2010 (Commonwealth)) and similar State Laws, those certain conditions and warranties (the Consumer Warranties) shall not be excluded, restricted or modified. CFRS then has the benefit of both the Consumer Warranties and any other warranty expressly agreed to in writing by the Supplier.

#### **10. LIABILITY**

- 10.1 The liability of the Supplier which may arise pursuant to the Australian Consumer Law, or in negligence or otherwise, will not be limited to, in the case of Goods, the replacement of the Goods, the supply of equivalent Goods or the payment of the cost of replacing the Goods or of acquiring equivalent Goods, or in the case of Services, the supply of the Service again or the payment of the cost of having the Services supplied again.
- 10.2 For the avoidance of doubt, the relevant provisions of any apportioning or proportionate liability legislation shall apply to any apportionable claim arising out of the Contract.

#### **11. INDEMNITY**

- 11.1 The Supplier shall keep CFRS indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any interest, penalties and legal costs (calculated on a full indemnity basis) and any professional costs and expenses) suffered or incurred by CFRS as a result of or in connection with:
- 11.1.1 any claim made against CFRS by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods or Services, to the extent that the defects in the Goods or Services are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 11.1.2 any claim made against CFRS by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 11.2 This clause 11 shall survive termination of the Contract.

#### **12. CONFIDENTIALITY**

- 12.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.
- 12.2 This clause 12 shall survive termination of the Contract.

#### **13. WAIVER AND ASSIGNMENT**

- 13.1 Except as provided by law or in equity or elsewhere in the Contract, none of the terms of the Contract will be varied, waived, discharged or released, except with the prior written consent of CFRS.
- 13.2 The Supplier may not assign any of its rights or obligations under the Contract without the prior written consent of CFRS.

#### **14. DISPUTES**

- 14.1 Neither party may commence any legal proceedings (except to seek urgent injunctive relief) in respect of a difference or dispute (Dispute) between the parties arising in connection with the subject matter of the Contract unless the parties have:
- 14.1.1 given written notice of the dispute;
- 14.1.2 used reasonable endeavours to attempt to negotiate a resolution; and
- 14.1.3 at least 42 days has passed since the Dispute was first notified.

#### **15. APPLICABLE LAW**

- 15.1 Each Contract is governed and construed in accordance with the laws of the State of New South Wales, Australia. The Supplier and CFRS shall submit to the jurisdiction of the courts of the State of New South Wales.

#### **16. FORCE MAJEURE**

- 16.1 If the Supplier's performance of any obligation is prevented or restricted by Force Majeure then the Supplier is excused from such performance but only to the extent of the relevant prevention or restriction.
- 16.2 If the performance is delayed by more than four (4) weeks by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period of 4 weeks and while the cause of the non-performance continues to still exist, terminate the contract in writing to the other party.
- 16.3 For the purpose of this clause 16 "Force Majeure" means act of God, act or omission of government, war, blockade, embargo, hostilities, fire, earthquake, flood, explosion, accident at sea, except where restricted to employees of the Supplier, industrial condition, sabotage or commotion.