

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

In this Purchase Order, unless the context otherwise requires:

"**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**" has the meaning given to that term in the Corporations Act 2001 (Cth).

"**Cost**" or "**Costs**" means any actual costs or expenses.

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

"**Loss**" or "**Losses**" means any loss, damage, liability, cost or expense including legal expenses on a solicitor and own client basis.

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

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

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

"**Tasmanian Railway Confidential Information**" means information that:

- is described as confidential information in the Purchase Order;
- is designated by Tasmanian Railway 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 (Cth), 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.

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

"**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.

"**Workplace Health & Safety Law**" means the *Work Health and Safety Act 2012*, *Work Health and Safety Regulations 2012* and the *Rail Safety National Law (Tasmania) Act 2012*, as amended from time to time.

2. GENERAL

These are the terms and conditions referred to in the Purchase Order ("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

The Purchase Order conditions include any Special Conditions referred to in the Purchase Order and, if any such Special Conditions are inconsistent with these Standard Terms and Conditions, the Special Conditions will prevail to the extent of the inconsistency.

4. PROVISION OF SERVICES

In providing the Services, the Contractor must:

- perform the Services 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 Tasmanian Railway'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.

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 the Contractor must use their best endeavours to ensure Contractor Personnel and Agents 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 its 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 endeavors to ensure that the Contractor Personnel or 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 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 current all documentation required for compliance with the Purchaser's Contractor Management System.

6. PURCHASE ORDER AMENDMENTS AND VARIATION

Changes to the Purchase Order 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.

7. REPORTS

The Contractor must ensure that all reports, required in the Purchase Order, provide the information required and conform to the quality and format requirements specified. The Contractor must ensure that all contributing authors are acknowledged in their reports. Tasmanian Railway 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 Tasmanian Railway or the Contractor's logo.

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

The Contractor must at all times 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 Tasmanian Railway 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 seven (7) years from the date of its expiration or termination.

9. PAYMENT

Tasmanian Railway must make payment of the Fees within 30 days of receipt of a correctly rendered invoice. It is Tasmanian Railway 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:

- the invoice details all Services provided against the Fees and records the amount payable in respect of each category of Services described in the Purchase Order;
- a person authorised to sign on behalf of the Contractor, or their delegate has certified that the invoice:
 - has been correctly calculated in accordance with the Fees referred to in the Purchase Order;
 - that the Services included in it have been performed in accordance with this Purchase Order; and
 - in the case of Reimbursable Costs that these costs have been paid; and
 - 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, as the case may be and, without limiting recourse to other available remedies may be offset against any amount subsequently due from Tasmanian Railway to the Contractor.

10. SECURITY OF PAYMENT LEGISLATION:

This clause 10 applies where the Services under the Purchase Order are carried out in Tasmania and the SOP Act applies.

The Contractor agrees that:

- 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;
- in determining the amounts paid previously under the Purchase Order as required by clause 9 Tasmanian Railway may include, in that amount, the following:
 - any amount which has been paid to the Contractor pursuant to the SOP Act;
 - any amount which has been paid to the Contractor in satisfaction of an adjudication under the SOP Act; and
 - any amount that has been the subject of a judgment or adjudication certificate within the meaning of the SOP Act; and
- the Contractor must, promptly and without delay, give Tasmanian Railway 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

If the Contractor fails to supply the Services in accordance with the Purchase Order, the Fees may be reduced to cover the reduced level of Services rendered to Tasmanian Railway or loss or damage suffered by Tasmanian Railway (as appropriate) because of that failure as is reasonably assessed by Tasmanian Railway.

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 Tasmanian Railway to the Contractor of the GST shall be subject to the Contractor providing Tasmanian Railway 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 Tasmanian Railway, 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, Tasmanian Railway 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 Tasmanian Railway with a completed "Statement by a Supplier" if they consider that they are covered by one of the exceptions under the legislation and therefore Tasmanian Railway 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. SUPERANNUATION GUARANTEE

Tasmanian Railway will, as the case requires and in accordance with the legislative requirements, contribute to a complying Superannuation Fund, a pre-existing fund nominated by the Contractor or where none is nominated to the Australian Government Employees Superannuation Trust (AGEST) a sum equivalent to the level stipulated from time to time in the Superannuation (Productivity Benefit) Act Cth 1988. The Contractor must include in their invoice for the Services, the following information with regards to the superannuation guarantee contributions; superannuation guarantee contribution amount, full name and address of their nominated fund; and their membership number.

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14. HEALTH, SAFETY, QUALITY AND ENVIRONMENT REQUIREMENTS

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

- a. comply with the Workplace Health and Safety Law;
- b. do all things necessary to assist Tasmanian Railway in discharging its obligations under the Workplace Health and Safety Law, and must not do or omit to do anything which would cause Tasmanian Railway to breach its obligations under the Workplace Health and Safety Law;
- c. immediately comply with the directions on safety issued by Workcover Tasmania, the Director of Industry Safety or Tasmanian Railway;
- d. ensure that its subcontractors comply with the requirements of this clause and that subcontracts include provisions which recognise this clause; and
- e. promptly notify the Purchaser of any potentially or actually hazardous incident or accident that occurs during the carrying out of the Installation Services whether or not the incident or accident resulted in injury or damage
- f. on and from the date of this document, to the extent permitted by law, indemnify Tasmanian Railway and keep Tasmanian Railway 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 Workplace Health and Safety Law or this clause.

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

15. INTELLECTUAL PROPERTY RIGHTS

The title to all intellectual property rights in or in relation to Contract Material shall vest upon its creation in Tasmanian Railway. The Contractor must ensure that the Contract Material is used, copied, supplied or reproduced only for the purposes of this Purchase Order.

16. USE OF PURCHASE ORDER INFORMATION

Except for purposes directly relevant to this Purchase Order, the Contractor must not, without Tasmanian Railway's written approval, make public or disclose any Tasmanian Railway Confidential Information. Tasmanian Railway may impose such terms and conditions as it believes appropriate on any approval. Tasmanian Railway 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 this Purchase Order

17. COMPLIANCE WITH LAWS AND POLICIES

The Contractor must when providing any Services and procuring the Supplies have regard to and comply with, and use their best endeavors to ensure that all Contractor Personnel and Agents comply with, relevant and applicable laws, regulations and policies, both in Australia and in the Partner Country including:

- a. the Privacy Act 1988 (Cth);
- b. Part IIIA of the Crimes Act 1914 (Cth); and
- c. those in relation to corrupt practices, including the Criminal Code Act 1995 (Cth) provisions:
 - i. Division 70 relating to the bribery of foreign public officials; and
 - ii. section 141.1 relating to the bribery of Commonwealth public officials; and
- d. those laws in relation to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Criminal Code Act 1995 (Cth) and listed in regulations made under that Act and regulations made under the Charter of the UN Act 1945 (Cth). The Contractor must ensure that funds provided under this Purchase Order do not provide direct or indirect support or resources to organisations and individuals associated with terrorism. If, during the course of this Purchase Order, the Contractor discovers any link whatsoever with any organisation or individual associated with terrorism it must inform Tasmanian Railway immediately.

Tasmanian Railway confirms that it:

- e. is committed to the aims and objectives of the Public Interest Disclosure Act 2002 (Tas); and
- f. shall comply with the provisions of the Public Interest Disclosure Act 2002 (Tas) and the policies and procedures produced by Tasmanian Railway from time to time in relation to compliance with the Public Interest Disclosure Act 2002 (Tas) which are available at www.tasrail.com.au.

18. INDEMNITY

The Contractor must at all times indemnify Tasmanian Railway, its employees, agents and contractors (except the Contractor) ("those indemnified") from and against any Loss or liability whatsoever suffered by those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified where such Loss or liability was caused or contributed to in any way by any wilfully wrongful, unlawful or negligent act or omission of the Contractor, or any Contractor Personnel in connection with this Purchase Order. The Contractor agrees that Tasmanian Railway may enforce the indemnity in favour of the persons specified in this clause for the benefit of each of such persons in the name of Tasmanian Railway or of such persons. The indemnity in this clause is reduced to the extent that the Loss or liability is directly caused by Tasmanian Railway, its employees or contractors (except the Contractor), as substantiated by the Contractor.

The Contractor is responsible for all risks associated with the Data, the Supplies and any Tasmanian Railway property while in the possession or control of the Contractor. This indemnity shall survive termination or expiration of this Purchase Order.

19. RESOLUTION OF DISPUTES

Both the Contractor and Tasmanian Railway undertake to use all reasonable efforts and to act in good faith to resolve any disputes which may arise between them in connection with this Purchase Order. In the event of an irrevocable breakdown in relations between Tasmanian Railway and the Contractor, the Purchase Order is governed by, and is to be construed in accordance with, the law of the State of Tasmania. The parties submit to the exclusive jurisdiction of the courts of the State of Tasmania and any court hearing appeals from those courts.

20. FRAUD

For the purpose of this clause, 'fraudulent activity' or 'fraud' means: Dishonestly obtaining a benefit by deception or other means. 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 Tasmanian Railway any detected, suspected, or attempted fraudulent activity involving the Services.

21. NOTICES

A notice is treated as having been duly given and received when delivered to the other parties address; on the third business day after posting; or on the business day of confirmed transmission if sent by electronic mail or facsimile. The address of a party is the address set out in the Purchase Order or another address of which that party may from time to time give notice in writing to each other party.

22. TERMINATION FOR CONTRACTOR DEFAULT

In addition to any other rights or remedies it has at law or in equity or under this Purchase Order, Tasmanian Railway may, by notice in writing 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 Tasmanian Railway'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 Tasmanian Railway's reasonable opinion may adversely affect the Contractor's ability to perform the Services under this Purchase Order.
- g. If this Purchase Order is terminated under this clause:
- h. subject to this Purchase Order, the parties are relieved from future performance of this Purchase Order, without prejudice to any right of action that has accrued at the date of termination;
- i. subject to this Purchase Order, all licenses and authorisations granted to the Contractor by Tasmanian Railway under this Purchase Order terminate immediately despite anything to the contrary contained in the relevant license or authorisation;
- j. the Tasmanian Railway Confidential Information, Supplies and any other property supplied or given to the Contractor by Tasmanian Railway pursuant to this Purchase Order must be immediately returned to Tasmanian Railway;
- k. Tasmanian Railway is not obliged to make any further payments (including the payment of Fees) to the Contractor; and
- l. the Contractor will indemnify and hold Tasmanian Railway harmless against any Losses, costs and expenses arising out of or in connection with the termination or any breach of this Purchase Order by the Contractor.

23. ENTIRE AGREEMENT

This Agreement constitutes the sole and entire agreement between Tasmanian Railway 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.