

STANDARD TERMS AND CONDITIONS

1. Definitions

In these Terms and Conditions:

“Access Hours” means 7am to 3.30pm (Monday to Friday) at the Islington Site and 7am to 8pm (Monday to Friday) at the Goulburn Site;

“Anti-Bribery and Anti-Corruption Requirements” means all laws applicable to the Customer or Associates of the Customer from time to time relating to anti-bribery, anti-corruption and improper payments (including the *Criminal Code Act 1995* (Cth) and any Policies and Procedures in relation to the same;

“Associate” means any officer, employee, agent, contractor, subcontractor, licensee, consultant, subconsultant, nominee, invitee, client or adviser of a party, but does not include the Customer or Rail First;

“Australian Standard” means any standard published by Standards Australia;

“CoR Laws” means all laws relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as “Chain of Responsibility” laws or “Heavy Vehicle” laws, including the *Heavy Vehicle National Law* (Victoria) and all regulations made under such legislation;

“CoR Systems” means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with CoR Laws;

“Collection Date” means the date specified in the Quotation or otherwise communicated by Rail First to the Customer for collection of Rolling Stock from the Site;

“Commencement Date” means the Date nominated by Rail First for commencement of the Services;

“Customer” means the customer specified in the Quotation;

“Date of Acceptance” means the date the Customer accepts a Quotation in accordance with clause 3.2 of these Terms and Conditions;

“GST” has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes penalties and interest;

“Jurisdiction” means the place where the Site is located;

“Modern Slavery Laws” means the *Modern Slavery Act 2018* (Cth) and any similar legislation in force from time to time in the Jurisdiction;

“Policies and Procedures” means any Rail First policy or procedure set out in the quotation or otherwise communicated by Rail First to the Customer from time to time or made available to Customer or its personnel at the Site;

“Price” means the price payable to Rail First for the supply of Services and any Related Goods to the

Customer as set out in the Quotation or in Rail First's Standard Rates;

“Quotation” means the quotation attached to these Terms and Conditions;

“Rail First” means Rail First Asset Management Pty Ltd (ABN 64 127 851 263);

“Related Goods” means any goods to be supplied by Rail First in connection with the Services as specified in the Quotation;

“Rolling Stock” means the railway carriages, railway vehicles and other rolling stock (and related parts and equipment) in respect of which Rail First will provide the Services;

“Self-Performed Services” means any services performed by the Customer or the Customer's personnel or contractors (including, but not limited to Rolling Stock repairs, maintenance, refuelling and provisioning) at the Site;

“Services” means the services specified in the Quotation or any other written agreement between the parties from time to time, including invoices issued for Services which specify these Terms and Conditions are to apply;

“Site” means the location to which Rolling Stock is to be delivered by the Customer as set out in the Quotation or otherwise communicated in writing by Rail First to the Customer;

“Standard Rates” means Rail First's standard rates and charges for goods, services and access as notified to the Customer from time to time or available on request.

“Supply” has the same meaning it does in *A New Tax System (Goods and Services) Tax Act 1999* (Cth); and

“Terms and Conditions” means these Standard Terms and Conditions.

2. Services

2.1 Rail First shall supply the Services and any Related Goods to the Customer from the Commencement Date.

2.2 The Customer acknowledges that Rail First may refuse to perform any Services or supply any Related Goods that risk placing Rail First in breach of any legislation or Australian Standard.

2.3 Self-Performed Services are the sole responsibility of the Customer.

2.4 Rail First is not liable on any claim by the Customer, and the Customer releases and indemnifies Rail First from and against any liability or claim arising out of or in connection with the Self-Performed Services.

3. Price

- 3.1 The Price is set out in the Quotation or Rail First's Standard Rates (as applicable). If issued in a Quotation, the Price is valid for 30 days after Rail First issues the Quotation to the Customer ("**Price Validity Period**"), after which the Price expires and the Customer must request a new Quotation. Any purported acceptance of the Quotation after the Price Validity Period will be void and have no effect.
- 3.2 Upon acceptance by the Customer of the Quotation, a binding contract is formed between Rail First and the Customer by which Rail First agrees to supply the Services and any Related Goods specified in the Quotation in exchange for the Customer paying the Price.
- 3.3 If these Terms and Conditions apply to the ongoing provision of Services from time to time, then a binding contract is formed between Rail First and the Customer each time Customer requests Services, and Rail First agrees to provide those Services, or when Rail First issues an invoice to which these Terms and Conditions are specified to apply.
- 3.4 Rail First may increase the Price by notice to the Customer to reflect any increase in the cost to Rail First which is due to any factor beyond Rail First's control (including, without limitation, changes in taxation laws and increases in the cost of labour and materials).
- 3.5 The Customer acknowledges that the Price is based on the Customer's description of the Rolling Stock. If the nature or condition of the Rolling Stock is found to be different from the Customer's description, Rail First may vary the Price.

4. GST

- 4.1 The amounts payable by the Customer to Rail First for or in connection with any Supply do not include any GST.
- 4.2 The Customer must pay Rail First an additional amount for the Supply equal to the amounts payable by Rail First multiplied by the prevailing GST rate.
- 4.3 The additional amount is payable at the same time as the amounts payable by the Customer are required to be paid to Rail First.
- 4.4 Upon receipt of payment of the amount and the GST, Rail First must provide the Customer with an invoice which is in an approved form for GST purposes.
- 4.5 To the extent that the amounts for the Supply consist of the reimbursement of costs and expenses incurred by Rail First, those costs and expenses are deemed to exclude the amount of any refund or input tax credit of

GST to which Rail First is entitled as a result of incurring the cost or expense.

5. Site access

- 5.1 When entering, exiting or accessing the Site the Customer must, and must ensure that its Associates:
 - 5.1.1 comply with any Policies and Procedures and any directions given by Rail First with respect to safety and access to the Site;
 - 5.1.2 have the requisite accreditations and licenses under all applicable laws;
 - 5.1.3 promptly and proactively communicate proposed vehicle movements or requests for access to the Site to Rail First; and
 - 5.1.4 have secured the necessary approvals or permissions from any authorities having jurisdiction with respect to rail infrastructure adjacent or connected to the Site.
- 5.2 The Customer acknowledges and agrees that compliance with clause 5.1 is a condition precedent to the Customer's right to access the Site.
- 5.3 The Customer agrees that it accesses the Site at its own risk and that Rail First makes no representation with respect to the:
 - 5.3.1 suitability of the Site for performance of any Services or Self-Performed Services; or
 - 5.3.2 availability of access to the Site.
- 5.4 Rail First is not liable on any claim by the Customer, and the Customer releases and indemnifies Rail First from and against any liability, loss, damage or claim incurred by Rail First arising out of or in connection with the Customer's use of the Site (including in respect of the suitability of, or availability of access to the Site).

6. Chain of Responsibility Laws

- 6.1 To the extent that the Customer or any of its Associates use heavy vehicles to access the Site, the Customer:
 - 6.1.1 acknowledges that it is a primary duty holder under the CoR Laws with responsibility for developing CoR Systems, and that it must comply, and ensure its Associates comply, with the CoR Laws and its CoR Systems;
 - 6.1.2 that it is the Customer's sole responsibility to ensure that:
 - (a) any heavy vehicles are appropriately maintained with loads that do not exceed vehicle mass or dimension

limits and are appropriately secured;

- (b) operators carrying freight containers have a valid "Container Weight Declaration" (as defined in the *Heavy Vehicle National Law* (Vic)); and
- (c) drivers do not exceed speed limits or regulated driving hours, do not drive while impaired by fatigue and observe minimum rest requirements.

- 6.2 Rail First has no responsibility or liability with respect to the Customer and its Associates' compliance with CoR Laws.

7. Payment

- 7.1 The Customer must pay for the Services and any Related Goods in accordance with the payment terms set out in the Quotation.
- 7.2 Rail First may charge interest on any overdue amount, calculated daily at the rate set out in the Quotation or if no rate is set, at the then prevailing overdraft rate of Rail First' bank plus 1.5%.
- 7.3 Rolling Stock delivered to Rail First are subject to a general lien for all charges now due or which may hereafter become due to Rail First by the Customer on any account including in respect of the Services or any Related Goods. If the lien is not satisfied and/or the Rolling Stock are not collected by the Collection Date, Rail First may at its option and after giving one month's notice to the Customer either:
 - 7.3.1 remove such Rolling Stock or part thereof and store them in such place and manner as Rail First shall think proper and at the risk and expense of the Customer or as the case may be; or
 - 7.3.2 dispose of the Rolling Stock and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for any loss or damage thereby caused.
- 7.4 Any such sale shall not prejudice the right of Rail First to recover from the person or persons liable to pay the same any charges due or payable in respect of any Services or Related Goods provided.

8. Storage and Out Of Hours Fees

- 8.1 The Customer may be charged a storage fee if:
 - 8.1.1 the Customer delivers the Rolling Stock to the Site before the Commencement Date;

- 8.1.2 the Customer fails to collect the Rolling Stock on the Collection Date; or

- 8.1.3 storage of the Rolling Stock or any other property of the Customer at the Site forms part of the Services to be provided by Rail First in the Quotation.

- 8.2 The Customer acknowledges and agrees that Rail First may charge the Customer an out of hours fee at the rate set out in the Quotation or in Rail First's Standard Rates, should the Customer seek to access the Site outside of the Access Hours.

9. Delivery

The Customer is responsible for the delivery of the Rolling Stock to the Site and the collection of the Rolling Stock from the Site.

10. Risk and title

- 10.1 The Customer acknowledges and agrees that:
 - 10.1.1 title to and risk of loss or damage to the Rolling Stock remains with the Customer at all times; and
 - 10.1.2 Rail First is in no way liable for any loss or damage to the Rolling Stock howsoever caused, including while the Rolling Stock is at the Site.

11. Insurance

- 11.1 The Customer is responsible for effecting and maintaining adequate insurance cover for the Rolling Stock when in the possession or control of Rail First and during transportation to and from the Site.
- 11.2 Rail First shall not be liable for any loss of or damage to property or economic loss (whether caused by Rail First's negligence or otherwise) resulting from Rail First's possession or control of the Rolling Stock.

12. Indemnity

The Customer indemnifies Rail First against all expenses, losses, damages and costs incurred by or awarded against Rail First that Rail First may sustain or incur as a result of any claim by any person for loss of or damage to any property, injury to or death of any person or economic loss caused by any act or omission of the Customer or any breach of the contract comprising the Quotation and these Terms and Conditions formed pursuant to clause 3.2.

13. Exclusion and Limitation of Liability

- 13.1 Rail First excludes:
 - 13.1.1 from these Terms and Conditions, all conditions, warranties and terms implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("Non-Excludable Condition"); and

13.1.2 all liability to the Customer in negligence for acts or omissions of Rail First or its Associates arising out of or in connection with the Services or supply of any Related Goods.

13.2 Rail First's liability to the Customer for a breach of:

13.2.1 any express provision of these Terms and Conditions is limited to the Price; and

13.2.2 any Non-Excludable Condition is limited at Rail First's option, to any one of supplying, replacing or repairing goods or supplying again the services in respect of which the breach occurred.

14. Termination

14.1 Rail First may immediately cease providing the Services without liability to the Customer if:

14.1.1 the Customer is in breach of these Terms and Conditions and fails to remedy the breach within 7 days' notice from Rail First to do so; or

14.1.2 the Customer ceases to carry on business, an administrator is appointed to the Customer, a receiver or manager is appointed whether by a court or otherwise or the Customer is or states that it is unable to pay its debts when they fall due.

15. Force Majeure

Rail First is not liable for any failure to perform or delay in the performance of its obligations if the failure or delay is due to circumstances beyond Rail First's control including, but not limited, to fire, storm, flood, acts of God, labour shortage, labour dispute or transportation failure.

16. Additional Services and Related Goods

If the Customer requires any additional Services or Related Goods beyond those contemplated by the Quotation, Rail First will determine the cost of providing those additional Services or Related Goods and notify the Customer. That cost will become payable by the Customer upon completion of the additional Services or supply of the Related Goods requested by the Customer.

17. Modern Slavery and Anti-Corruption

17.1 The Customer acknowledges and agrees that the Customer must:

17.1.1 comply, and ensure that its Associates comply with Modern Slavery Laws and Anti-Bribery and Anti-Corruption Requirements to the extent they are applicable to the Customer;

17.1.2 provide such information as Rail First may require to comply with its

obligations under Modern Slavery Laws and Anti-Corruption and Anti-Bribery Requirements; and

17.1.3 immediately inform Rail First of any actual or suspected breach of Modern Slavery Laws or Anti-Corruption and Anti-Bribery Requirements by the Customer or any of its Associates.

17.2 The Customer represents and warrants to Rail First that, as at the Date of Acceptance, it is not aware of any breach of Modern Slavery Laws or Anti-Corruption and Anti-Bribery Requirements committed by the Customer or its Associates.

18. Subcontracting

Rail First may subcontract any part of the Services or supply of any Related Goods.

19. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with the laws applicable in the Jurisdiction.

20. Entire Agreement

The Quotation and these Terms and Conditions comprise the entire agreement between the parties in respect of the Services and any Related Goods.

21. Variation

The contract formed by acceptance of the Quotation and these Terms and Conditions may only be varied in writing signed by Rail First and the Customer.

22. Inconsistencies

If there are any inconsistencies between any provision of these Terms and Conditions and any provision of the Quotation the provision of these Terms and Conditions will prevail to the extent of the inconsistency.