

TBM Rail Group Ltd STANDARD CONDITIONS OF PURCHASE

1. General Conditions and Formation of Contract

1.1 Each and every purchase (each a "**Contract**") made between **TBM Rail Group Limited** (Company No.07017427) whose registered office is at 17 Lichfield Street, Stone, Staffordshire, ST15 8NA] (the "**Company**") and you (the "**Supplier**") pursuant to a purchase order (the "**Order**") shall be subject to and incorporate in their entirety these Conditions and all the terms of the Contract shall be those contained expressly by reference in the Order.

No order is binding on the Company unless issued on the Company's order form duly signed by an authorised signatory.

1.2 No conditions submitted or referred to by the Supplier upon any documentation or orally shall form part of the Contract unless agreed to in writing by an authorised signatory of the Company.

1.3 No amendments to the Company's Order shall form part of the Contract unless agreed to in writing by an authorised signatory of the Company.

1.4 Delivery of goods or materials or the performance of services by the Supplier pursuant to the Order shall of itself constitute confirmation of acceptance of these terms and conditions.

1.5 The terms and conditions referred to herein supersede any and all previous agreements whether expressed or implied.

2. Title and Risk

2.1 Without prejudice to the right of rejection which may pertain under these terms and conditions or at common law, title to and property in all goods and materials shall pass to the Company on the earlier of:

2.1.1 delivery to the premises specified by the Company; and

2.1.2 payment by the Company in respect of off-site goods and/or materials ("**Off-Site Materials**").

2.2 Where the Company pays for goods or Off-Site Materials prior to delivery, the Supplier shall store such goods and/or Off-Site Materials separately and shall clearly mark them as the property of the Company. Where practicable the Supplier shall provide the Company with the serial numbers of any Off-Site Materials.

2.3 The risk in any goods or materials supplied under the Contract or works carried out by the

Supplier shall remain at the risk of the Supplier until the completion of the works to be carried out under the Order.

3. Breach

3.1 Without prejudice to any legal or equitable remedies available for any breach of the Contract, if either party defaults on any of its obligations under the Contract and fails to comply with a written notice from the other party warning against a further default to be remedied within a reasonable period specified by the notice then that other party may terminate the agreement forthwith by giving the other party written notice to that effect.

3.2 The Company may without prejudice to any other rights or remedies available to either party summarily determine the Contract in respect of the whole or any part of the goods, work or materials or services in the event that the Supplier:

3.2.1 commits a breach of the Contract or any of its obligations to the Company there under, or,

3.2.2 is unable to pay its debts in the ordinary course of its business as they fall due; or,

3.2.3 has any distress or execution levied upon any of its property or assets.

4. Time and Delivery

4.1 Where time and/or sequence for delivery and performance by the Company is specified such provision shall be of the essence of the Contract.

4.2 Failure by the Supplier to adhere to any provision as to time contained in the contract shall entitle the Company at its option to treat the Contract as repudiated, the Company shall be entitled to exercise its option at any time after the period of the time specified shall have elapsed and shall not be prejudiced by any delay or by giving time or other indulgence to the Supplier in exercising such option.

4.3 Notwithstanding any such repudiation of the Contract, the Company shall be entitled to damages in respect of all costs, losses and expenses (including damages incurred by the Company from their customers) sustained by reason of the failure of the Supplier to meet the time agreed.

4.4 Unless the Company agrees otherwise in writing all goods and materials supplied are to be delivered by the Supplier carriage paid to the address for delivery specified in the Order.

4.5 The Supplier agrees to despatch all shipments to the delivery address (es) so that goods arrive no earlier than two working days before and no later than the date requested by the Company.

4.6 Without prejudice to the other terms and conditions of this agreement, if the Supplier is subsequently unable to meet the acknowledged schedule of delivery the Company is to be notified immediately at the first indication that the default is foreseen.

4.7 If the Supplier fails to adhere to the agreed timescales the Company (in addition to its other rights) reserves the right to:

4.7.1 cancel, reduce or reschedule the Contract or any part of it;

4.7.2 enter into contracts with third parties to complete the performance;

4.7.3 be paid by the Supplier for all expenses necessarily incurred by the Company in order to fulfil the Order plus any damages incurred by the Company as a result of the Supplier's failure to adhere to the agreed timescales.

4.8 The Company may at any time, without invalidating the Contract alter, amend, omit, add to or otherwise make any changes to the Order by issuing an instruction and the Supplier shall be bound by such changes, as though they formed part of the original Order.

(a) Where ever possible, prior to the issue of any instruction any affect on the programming of work, Contract programme or Contract Price shall be mutually agreed.

(b) If as a result of default, breach or action on the part of the Supplier, the Company, or the

Company's client cancels the Contract in its entirety the Company shall, on payment to the

Supplier of any monies due in respect of the Contract prior to its cancellation be absolved from any further liabilities under the Contract. Where an adjustment to the Contract Price shall be adjusted pro rata to the original Order or, where this is not practical, as the Company shall estimate, acting in good faith.

(c) No instructions shall be of effect unless given or confirmed in writing by the Company.

5. Price

5.1 The price(s) stated on the Order (the "**Contract Price**") is firm and not subject to alteration, save in accordance with the terms of this Contract.

5.2 No payment of or on account of the Contract Price shall constitute any admission by the Company as to the performance by the Supplier of his obligations under the terms and conditions hereof.

5.3 Unless otherwise agreed in writing the prices quoted shall include packing, carriage, duty, insurance, and any other surcharge added, but shall exclude VAT.

5.4 Invoices will not be passed for payment unless they clearly state the Purchase Order Number and address (es) to which goods were delivered or at which services were performed.

5.5 Payment of the Contract Price shall be made by the Company

5.5.1 no later than 60 days after receipt of a compliant invoice or receipt of goods, whichever is the later; and

5.5.2 after the deduction of any discount and/or retention.

5.6 The price shall be fixed until completion of delivery of the goods specified.

5.7 Without prejudice to anything contained in these conditions the Company shall be entitled to set-off against any money (including any retention money) otherwise due under Contract the amount of any claim, loss and/or expense which has been incurred by reason of any breach of, or failure to observe the provisions of any order by the Supplier.

6. Description and Quality

6.1 All goods provided by the Supplier shall conform in all respects to any specification, design, drawing, sample, etc, given by the Company and/or shall be in accordance with any current standards specified on the Order and be fit for the purpose indicated either expressly or impliedly.

6.2 The Supplier shall, at his own expense, prepare and submit for the approval of the Company such drawings as may be called for on the Order. Approval thereof by the Company shall not, however, relieve the Supplier from any of his liabilities and obligations under the Contract. No drawing so approved shall be varied or departed from without the prior written consent of the Company

6.3 All goods shall comply with Industry Standards and should therefore comply with all rules, regulations, legislation, guidance notes, codes of practice, instructions and procedures which are produced as operational engineering standards relevant to the performance of this Agreement by any Government Authority, Network Rail or any successor body, the Health and Safety Executive and/or Her Majesty's Railways Inspectorate and/or ORR which are in force from time to time

6.4 The Supplier shall make good by replacement or otherwise at the sole discretion of the Company any defects in the materials or goods supplied which appear up to and including twelve months following the later of delivery or the goods being put into operation and shall bear any expenses reasonably incurred by the Company as a direct consequence of such defect.

7. Inspection

7.1 The Company shall be at liberty at all reasonable times to inspect the goods or the entire work or any part thereof at any time during its manufacture and to require the making good, amendment or alteration of anything which is defective or does not comply with the terms of the Contract and to reject any goods or work of which the Company may reasonably disapprove. The Supplier shall forthwith make good, amend or alter as so required and any goods or work so rejected shall be immediately executed again by the Supplier to the reasonable satisfaction of the Company.

7.2 Notwithstanding clause 7.1 the Supplier hereby accepts responsibility to complete the works and supply of materials or goods to the standard, specification and suitable for its purpose as set out in the Order, without the requirement for the Company to carry out an inspection, unless specifically requested in writing to do so by the Supplier.

8. Waiver

8.1 The rights and remedies of the Company under the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company not by failure of or delay by the Company in asserting or exercising any such rights or remedies.

9. Indemnity

9.1 The Supplier shall be liable for, and shall indemnify the Company against any expense, liability, loss, claim or proceeding whatsoever arising out of the supply of goods or services under the Contract including but not limited to:

- 9.1.1 all actions, claims and demands in respect of patents or any other intellectual property rights arising from or in connection with any of the goods supplied;
- 9.1.2 all damages or injury to any person or property and against all claims whatsoever caused by the negligence of the Supplier or those for whom the Supplier is responsible;
- 9.1.3 all claims which may arise in respect of injury to the employees of the Company.

10. Insurance

Prior to commencement of work under the Order the Supplier shall take out the insurances specified in the Order with an insurer or insurers of good repute and you shall maintain such insurances for so long as any liability may arise under this Agreement as follows:

- (a) public and products liability insurance cover in an amount of not less than £10,000,000 for any single occurrence, or series of linked occurrences, for the duration of the Supplier's obligations under this Agreement; and
- (b) employer's liability insurance cover in an amount of not less than £5,000,000
- (c) Professional Indemnity insurance cover in an amount of not less than £1,000,000;
- (d) Marine Cargo / Carriage insurance cover in an amount of not less than £10,000,000

As and when reasonably requested to do so by the Company the Supplier shall produce for inspection a broker's certificate evidencing that such insurance is properly maintained.

11. Intellectual Property Rights

11.1 The Supplier hereby agrees that all Intellectual Property Rights created by or on behalf of the Company in the performance of fulfilling the Order, where the Company has provided the design and or drawings to the Supplier, shall become the sole, absolute, unencumbered property of the Company.

11.2 Subject to clause 11.1 the Supplier hereby grants the Company a royalty-free, irrevocable, perpetual and non-exclusive licence to use and to reproduce for any purpose whatsoever connected with the works carried out under the Order (including, without limitation, the construction, completion, maintenance, extension, letting, advertisement, reinstatement and repair of the Works), any and all drawings, plans, designs, diagrams, specifications, technical data, models, bills of quantities, reports, calculations or programmes, photographs (including negatives), magnetic or electronic records (including computer aided design) and other documents or recorded information of whatever description or nature prepared or to be prepared by the Supplier or on its behalf in connection with the Order (the "**Works Documents**"). Such licence shall include the right to grant sub-licences and shall be freely assignable by the Company. It shall survive the termination (for whatever reason) of this letter.

11.3 The Supplier shall, on the Company's request, supply copies of the Works Documents and warrants that in respect of all such Works Documents the copyright in which is or will be vested in others, it is authorised by such parties to grant the licence under clause 11.1.

12. Sub Contract Order

12.1 Where the Order is by way of a sub contract to a main contract to which the Company is a party, the terms and conditions of the main contract shall be made available for scrutiny at the Company's offices and by acceptance of the Order the supplier agrees:

(a) to observe and perform the terms of the main contract so far as the same relate to the Order and such terms (other than the price and payment terms there under) shall be deemed to be incorporated herein and be binding on the Supplier, and

(b) to indemnify the Company against all and any liability the Company may incur under the main contract by reason of failure on the Supplier's part to observe and perform the terms of the main contract, the Order, or these conditions, provided that the Supplier's liability for liquidated damages for delay under the main contract shall not exceed 10% of the Contract Price.

12.2 The Supplier shall not, without obtaining the Company's prior consent in writing, assign or transfer the Contract or any subject matter part of it to any other person, firm or company, and shall not without consent sublet the Contract or any part of it other than for materials, minor details or for any part of the goods of which the makers are nominated in the Order or in the specifications. Any consent to assignment, transfer or subletting of the Contract shall not relieve the Supplier of any of the obligations imposed by these conditions.

12.3 Payment shall be made by the Company by the date specified in clause 5.5 or 14 days after receipt of monies by the Company under the main contract, whichever is the later.

12.4 Any guarantee shall commence from the date of final commissioning and acceptance or practical completion whichever is the later.

12.5 The Supplier shall take all necessary measures to conform with the latest requirements of all

Health & Safety legislation and any requirements specified by the Company.

12.6 The Supplier shall ensure that the progress of their works is in keeping with the site progress.

Failure to comply with the Company's reasonable requests will result in either verbal or written notice within 7 days of the Company's intention to determine the contract unless within this period the Supplier's performance is improved to the Company's reasonable satisfaction. The Supplier will be held responsible for any costs arising out of any such event.

13. Third Party Rights

13.1 Nothing in this Contract confers or purports to confer on any third party any benefit or any right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.

14. Law

14.1 The Contract shall be governed by English law and the Supplier hereby expressly submits to the non-exclusive jurisdiction of the English Courts.

14.2 Each and every purchase made between the Supplier and the Company pursuant to a Contract order shall be subject to and incorporate in their entirety the terms and conditions of the Contract.