

ARTC PURCHASE ORDER TERMS & CONDITIONS

1. Payment and invoices

- (1) ARTC will pay the Supplier the PO Price in accordance with this PO. The PO Price is inclusive of all expenses of the Supplier.
- (2) The Supplier may claim payment on the later of:
 - (a) for the Goods, after Delivery of the Goods (in accordance with clause 3) once on the last day of that month; and
 - (b) for the Services, after Completion of the Services (in accordance with clause 5) once on the last day of that month.
- (3) Payment claims submitted by the Supplier must include:
 - (a) the PO number;
 - (b) the Supplier's Australian Business Number;
 - (c) the PO Price; and
 - (d) the amount of GST included in the PO Price (if any), and must be in the form of a Tax Invoice (in accordance with GST Law).
- (4) Payment claims submitted by the Supplier must be sent to: Accounts Payable, Australian Rail Track Corporation Ltd, PO Box 10343, Gouger Street, Adelaide SA 5000 or apinvoices@artc.com.au.
- (5) Subject to clause 1(6), ARTC will pay each payment claim submitted in accordance with clauses 1(3) and 1(4) within 30 days (or such earlier period as required by law) after receipt of the payment claim by ARTC.
- (6) Any debt due from the Supplier to ARTC under this PO may be deducted by ARTC from any sum which is or may become due and payable to the Supplier under this PO. Nothing in this PO affects the right of ARTC to otherwise recover from the Supplier the whole of the debt or any balance owing in respect thereof.

2. PO requirements

- (1) The terms and conditions of this PO apply to the extent that Goods and/or Services are described in the "Description" in the PO Details and the terms and conditions are to be read accordingly. For example, if only Goods are described, the terms and conditions in this PO expressly relating to the Services are not applicable.
- (2) The Supplier must:
 - (a) deliver the Goods and perform the Services in:
 - (i) accordance with the terms of this PO;
 - (ii) a proper, competent and professional manner and with due care, skill and diligence;
 - (iii) accordance with ARTC's directions from time to time;
 - (iv) compliance with all applicable Laws and all applicable Policies, Procedures and Standards which are accessible through the ARTC website at <http://extranet.artc.com.au/eng.html> or which ARTC otherwise notifies to the Supplier from time to time; and
 - (v) compliance with any specifications and standards notified to the Supplier by ARTC; and
 - (b) provide all things necessary to deliver the Goods and perform the Services, including plant, equipment, labour and materials.
- (3) The Goods must be new (unless otherwise specified in this PO), of acceptable quality, fit for the purpose specified in this PO or made known to the Supplier prior to entering into this PO and free from defects.

3. Delivery of Goods

- (1) The Supplier must:
 - (a) give ARTC reasonable advance notice of each delivery of the Goods;
 - (b) deliver the Goods at the Delivery Address on the Delivery Date to the ARTC Representative; and
 - (c) unless this PO expressly provides otherwise, unload the Goods at the Delivery Address and move the Goods to the location where they will be stored at the Delivery Address,
- (Delivery).**

- (2) The Goods must be delivered to the ARTC Representative and the ARTC Representative will acknowledge Delivery of the Goods to the Supplier in writing.

4. Ownership, risk and title

- (1) The Goods are at the Supplier's risk until the later of:
 - (a) Delivery of the Goods and ARTC having acknowledged Delivery of the Goods to the Supplier in writing; and
 - (b) where Services are also being performed, Completion of the Services and ARTC having acknowledged Completion of the Services to the Supplier in writing.
- (2) Title to the Goods (that comply with this PO) passes immediately to ARTC upon the earlier of:

- (a) payment for the Goods; and
 - (b) Delivery of the Goods.
- (3) At the time of Delivery of the Goods, the Supplier warrants that:
 - (a) the Supplier has good title to the Goods;
 - (b) the Goods are free from encumbrances, liens and reservation of title; and
 - (c) the Supplier has the right to sell the Goods to ARTC.

5. Completion of Services

- (1) The Supplier must:
 - (a) give ARTC reasonable advance notice of its performance of the Services;
 - (b) provide the Services at the Site with due expedition and without delay, at the times specified in this PO, any program provided by ARTC to the Supplier and by the Completion Date;
 - (c) must notify the ARTC Representative when the Services are complete in accordance with the requirements of this PO.
- (2) When the Services are complete in accordance with the requirements of this PO, the ARTC Representative will acknowledge completion of the Services to the Supplier in writing (**Complete / Completion**).

6. Documentation

- (1) The Supplier agrees that the information and documents and intellectual property rights in any information or documents made available to the Supplier by or on ARTC's behalf:
 - (a) remain ARTC's property; and
 - (b) do not constitute a warranty or representation of any kind by ARTC.
- (2) Intellectual property rights in everything produced by the Supplier in supplying the Goods and performing the Services vest in ARTC upon their creation (except to the extent of the Supplier's pre-existing or third party owned intellectual property rights).
 - (a) The Supplier warrants that design, materials, documents and methods of working provided to ARTC in supplying the Goods and performing the Services do not infringe any intellectual property right. The Supplier indemnifies ARTC in respect of any Claims from third parties in respect of infringement by ARTC of such intellectual property rights.
- (3) Except where disclosure is required by law, the Supplier must keep this PO confidential and not disclose the terms of this PO or any information relating to the Goods or the Services to any person.

7. Care

- (1) The Supplier must:
 - (a) properly pack the Goods to avoid damage during loading, transit, delivery, unloading and storage;
 - (b) clearly mark all packages of the Goods for delivery and ensure that delivery documents, with the PO Number, accompany the Goods to the Delivery Address; and
 - (c) ensure that the size and weight of the packaged Goods is clearly marked on the outside of the packaging.
- (2) The Supplier must not:
 - (a) interfere with or disrupt the work of ARTC's staff or other contractors except to the minimum extent necessary for the performance of this PO; and
 - (b) damage any property on or near the Delivery Address and the Site and make good loss or damage to ARTC's or third party property by the Supplier.

8. Compliance with Laws

- (1) Without limiting any other part of this PO, the Supplier must at all times ensure that it complies with all applicable Laws, the WHS Laws and the Environmental Laws in respect of the Goods and the Services.
- (2) If the Supplier fails to comply with an obligation under this clause 8, and does not rectify such failure to ARTC's reasonable satisfaction within the reasonable period of time set out in a notice by ARTC, ARTC may perform or have the obligation performed on the Supplier's behalf and recover from the Supplier the costs and expenses incurred as a debt due and payable from the Supplier to ARTC. Notwithstanding this clause 8(2), ARTC is not required to provide notice to the Supplier where a failure to comply with an obligation under this clause 8 poses an urgent or immediate threat to safety, the environment or poses a risk of prosecution to ARTC.
- (3) ARTC may conduct, at any time, an inspection and audit of all aspects of the Supplier's compliance with this clause 8.

9. Insurance

- (1) Before commencing under this PO, the Supplier must effect and maintain the following policies of insurance:
 - (a) public and product liability insurance, \$20 million each occurrence and, in respect of product liability insurance only, \$20 million in the annual aggregate; and
 - (b) workers' compensation insurance, as required by Law.
- (2) The policies must remain in force from the date this PO is issued by ARTC until the end of the Defects Period and the Supplier must

provide copies of certificates of currency to ARTC on request.

- (3) If the Supplier fails to comply with this clause, ARTC may effect and maintain the necessary insurance policy and/or pay the premium in respect of the policy and the cost of doing so is a debt due and payable by the Supplier to ARTC on demand.

10. Time

- (1) The Supplier must promptly notify ARTC of anything that may delay Delivery of the Goods or performance of the Services.
- (2) ARTC may extend the Delivery Date and the Completion Date at any time and from time to time for any reason and without any obligation to act for the Supplier's benefit.
- (3) Where ARTC extends the Delivery Date in accordance with clause 10(2) after Goods are already in transit to the Delivery Address, the PO Price will be adjusted by the actual and evidenced amount incurred by the Supplier on account of additional transit or storage costs resulting from the extension to the Delivery Date, subject to an obligation on the Supplier to mitigate any such costs.

11. Variations

- (1) ARTC may omit, reduce or vary the Goods and the Services by issuing a notice in writing to the Supplier specifying the required changes to the Goods and the Services.
- (2) If ARTC provides a notice in accordance with clause 11(1), the PO Price will be adjusted by:
- prior agreement between the parties;
 - where any rates or prices have been included in this PO, to the extent such rates and prices are applicable; and
 - where clauses 11(a) and (b) do not apply, a reasonable amount determined by ARTC to reflect the changes to the Goods and the Services.
- (3) If ARTC omits or reduces the Goods and the Services under this PO, it may itself, or engage another supplier to, supply the omitted Goods and Services.
- (4) Any other agreement to vary this PO must be in writing signed by or on behalf of each party to this PO.

12. Quality

- (1) If at any time prior to the date that is 12 months after the later of Delivery of the Goods and Completion of the Services or such longer period that may be stated in the PO Details (**Defects Period**), ARTC considers that the Goods or the Services are defective (including where the Goods and Services are incomplete or do not comply with this PO), ARTC will notify the Supplier and the Supplier must rectify (which may include replacement and reinstallation) the defective Goods and re-perform the defective Services within the period advised by ARTC acting reasonably, having regard to the nature and extent of the relevant defective Goods or defective Services.
- (2) Upon rectification of the Goods and re-performance of the Services, a further period equal to the original Defects Period applies to the rectified Goods and re-performed Services.
- (3) If the Supplier does not rectify the defective Goods and re-perform the defective Services within the time required, ARTC may (in its discretion):
- have the Goods rectified and the Services re-performed by others and the reasonable costs incurred by ARTC in doing so will be a debt due from the Supplier to ARTC; or
 - reduce the PO Price by the value of the defective Goods and Services (as determined by ARTC).
- (4) Without limiting clause 12(3), the Supplier is not entitled to any payment in respect of that part of the Goods and the Services which are defective until the defective part is rectified or re-performed by the Supplier (as applicable).
- (5) The Supplier must use its best endeavours to ensure that ARTC receives the benefit of any third party warranty in relation to the Goods and the Services and the Supplier must not do any act or omit from doing any act that voids any third party warranty (in whole or in part).

13. Indemnity and release

- (1) To the extent permitted by law, the Supplier irrevocably releases ARTC from any Claims in respect of any fact, matter or thing arising out of, or in any way in connection with, the supply of Goods or Services or this PO except:
- for any Claim given to ARTC within the time required by, and in accordance with the terms of, a clause of this PO applying to that Claim;
 - to the extent caused or contributed to by:
 - a negligent act or omission of ARTC; or
 - a breach of or default under this PO by ARTC.
- (2) The Supplier indemnifies ARTC against all Claims suffered or incurred by, or brought, made or recovered by any person against ARTC by reason of:
- any act, default or omission (whether negligent or malicious) on the part of the Supplier (or its employees, agents or sub-contractors) causing injury to or the death of any person or damage to or the destruction of property; or

(b) any breach of this PO by the Supplier.

- (3) The Supplier's liability to indemnify ARTC under clause 13(2) is reduced proportionally to the extent that an act, default or omission of ARTC has caused or contributed to the Claim.

14. Liability

- (1) The Supplier remains fully responsible and liable for the Goods and the Services despite:
- subcontracting supply of the Goods and performance of the Services;
 - ARTC's review, approval or comments on the Goods, the Services or any documents; and
 - any insurances effected by the Supplier.

15. Goods and Services Tax (GST)

- (1) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Law**) (as amended from time to time).
- (2) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (3) Unless stated otherwise, all consideration to be provided under or in connection with this PO other than under this clause is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause.
- (4) If a party is required under this PO to reimburse or pay another party an amount calculated by reference to a cost, expense, or amount paid or incurred by that other party, the reimbursement or payment will be limited to the total cost, expense or amount less the amount of any input tax credit entitlement arising in respect of any acquisition to which that cost, expense or amount relates.
- (5) If GST is payable in relation to a supply made under or in connection with this PO, then the party (**Recipient**) providing consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the GST payable in relation to that supply at the same time as any other consideration is to be first provided for that supply subject to the issue of a tax invoice by the Supplier to the Recipient.

16. Settlement of disputes

- (1) A party with a dispute or difference in connection with this PO (**Dispute**) may, within seven days after becoming aware of the Dispute, notify the other party in writing of the Dispute setting out details of the Dispute.
- (2) Within seven days after notification of the Dispute or such longer period of time as agreed between the parties, the ARTC Representative and the senior manager of the Supplier must meet to attempt to resolve the Dispute.
- (3) No party may commence any court proceedings, except proceedings of an urgent interlocutory nature, unless and until the procedures required under clauses 16(1) and (2) have been complied with.

17. Termination

- (1) ARTC may terminate this PO by notice to the Supplier:
- if the Supplier commits a material breach of this PO and the Supplier does not remedy the breach (to ARTC's satisfaction) within 5 days (or such longer period of time notified by ARTC which is reasonable having regard to the breach) after receiving a notice from ARTC requiring the Supplier to remedy the breach;
 - to the extent permitted by law, if the Supplier is insolvent or has an administrator appointed or a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)) appointed over any of the Supplier's property or in any way the Supplier indicates that they are or will become unable to pay their debts as and when they become due or payable including if they suspend payment of their debts or as an individual, they commit an act of bankruptcy; or
 - at any time in ARTC's absolute discretion for any reason (whether or not the Supplier has breached this PO) on 2 days' notice (except in circumstances of emergency, ethical or safety incident, where termination will be immediate on notice),

and in the case of termination under:

- clause 17(1)(a) or (b), ARTC may recover from the Supplier any loss or damage suffered by ARTC as a result of the termination including in having another party carry out the Services; or
- clause 17(1)(c), ARTC must pay the Supplier, up to the maximum amount of the PO Price, for:
 - the unpaid value of Goods delivered and the Services completed at the date of the notice; and
 - actual and evidenced costs of Goods or materials properly ordered for the Goods or Services for which the Supplier is legally bound to pay provided that:
 - unencumbered ownership in any such Goods or

- materials will immediately pass to ARTC on payment;
- B. the Goods and materials will be delivered to the Delivery Place as directed; and
- C. the Supplier has taken all reasonable steps to mitigate such costs,

and the Supplier otherwise has no Claim as a result of termination.

- (2) In the case of termination under clause 17(1)(c), ARTC may complete the uncompleted part of the Goods or the Services by itself or by engaging other contractors.
- (3) The Supplier may terminate this PO by notice to ARTC if ARTC has failed to make payment in accordance with clause 1(5) and does not remedy the breach within 5 days after receiving a notice from the Supplier requiring ARTC to remedy the breach.
- (4) Termination of this PO does not affect the accrued rights and remedies of the parties. This clause 17 does not affect the parties' rights at law, in equity or under statute.

18. General

- (2) In this PO:
 - (a) **ARTC** means Australian Rail Track Corporation Ltd ABN 75 081 455 754;
 - (b) **ARTC Representative** means the person stated as the "Contact" in the PO Details or such other person notified to the Supplier by ARTC in writing;
 - (c) **Claim** means any cost, expense, loss, damage, claim, liability, action or proceeding whether or not presently ascertained, immediate, future or contingent and includes legal costs on a full indemnity basis;
 - (d) **Completion Date** means the date stated in the PO Details or the date notified to the Supplier by ARTC in writing;
 - (e) **Delivery Address** means the address stated in "Deliver to" in the PO Details;
 - (f) **Delivery Date** means the date stated in the PO Details or the date notified to the Supplier by ARTC in writing;
 - (g) **Environmental Laws** means:
 - (i) any Laws relating to the environment or to environmental planning; and
 - (ii) any relevant approval, consent or licence (including any condition or requirement under any such approval, consent or licence) granted under any Laws relating to the environment or to environmental planning by any authority having any jurisdiction in connection with the Goods or the Services;
 - (h) **Goods** means the goods described in the "Description" in the PO Details, if any;
 - (i) **Laws** includes:
 - (i) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Works are located;
 - (ii) certificates, licences, consents, permits, approvals, industry codes of practice, and requirements of organisations having jurisdiction applicable to the Works; and
 - (iii) fees and charges payable in connection with the above;
 - (j) **PO** means the PO Details and these terms and conditions;
 - (k) **PO Details** means the document titled "PURCHASE ORDER" and is attached as the first page to these terms and conditions;
 - (l) **PO Price** means the amount stated as the "Order Total Including GST" less the amount stated as the "GST Total" both set out in the PO Details;
 - (m) **Services** means the services described in the "Description" in the PO Details, if any;
 - (n) **Site** means the address stated in "Deliver to" in the PO Details or the site notified to the Supplier by ARTC in writing;
 - (o) **Supplier** means the person described in the address box at the top of the PO Details; and
 - (p) **WHS Laws** includes all relevant occupational or work health and safety Laws and the requirements contained in:
 - (i) the relevant occupational or work health and safety Laws;
 - (ii) any part of any Code of Practice, Guideline, National Standard and Australian Standard which contain work health and safety requirements; and
 - (iii) this PO which are in the nature of work health and safety requirements.
- (3) In this PO, unless it is stated to the contrary:
 - (a) words in the singular include the plural and vice versa;
 - (b) where a word or phrase is given a defined meaning in this PO, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

- (c) a reference to any legislation and any legislative or other statutory instrument (such as an approval) includes any amendment, re-enactment, consolidation or replacement legislation or instrument (as the case may be) and all subordinate legislation;
- (d) the words "includes" and "including" and any variants of those words, will be read as if followed by the words "without limitation"; and
- (e) a reference to \$ is to Australian currency.
- (4) The parties enter into the PO when the Supplier commences any work or services in connection with the supply of any Goods or performance of the Services.
- (5) This PO is not to be interpreted against ARTC merely because it prepared this PO.
- (6) Headings in this PO are for convenience only and do not affect the interpretation of any provision of this PO.
- (7) Every communication between the parties that is intended to manage the administrative processes in this PO must be in writing and delivered, sent or transmitted to the postal address or e-mail address of the receiving party as specified in the PO Details and as notified from time to time.
- (8) This PO is governed by the laws of that State or Territory where the Goods and Services are being delivered or performed (as applicable) and the parties irrevocably herby submit to non-exclusive jurisdiction of the courts of that State or Territory for all Disputes arising in connection with this PO.
- (9) Each indemnity in this PO is a continuing obligation separate and independent from the other obligations of the parties and survives the termination or expiration of this PO.
- (10) This PO:
 - (a) constitutes the entire PO and understanding between the parties as to its subject matter;
 - (b) supersedes all prior agreements, arrangements and understandings between the parties in relation to the subject matter of this PO; and
 - (c) applies to the exclusion of any terms and conditions contained in the Supplier's documentation in connection with the Goods and the Services, including any tender, quote, payment claim or invoice, whether issued before or after this parties enter into this PO.
- (11) Any waiver of a party's rights or consent under this PO will only be effective and binding if it is given or confirmed in writing.
- (12) Where any term of this PO is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other terms of this PO.