

PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** In the following conditions of purchase:

“**Goods**” means the goods the subject of this Purchase Order.

“**Purchaser**” means Australian Rail Track Corporation Ltd (ARTC Ltd).

“**Rail Corridor**” means the area from fence line to fence line around a rail line or, if there are no fences, the area that is within 15 metres of the outermost rails of the rail line.

“**Seller**” means the entity from which the Goods are being ordered.

“**Purchase Order**” means the Purchaser's official Purchase Order form to which these terms and conditions are annexed and all attachments and documents referenced therein.

2. **CONTRACT:** A Purchase Order, bearing a Purchase Order number, is the only form which will be recognised by the Purchaser as authority for charging the Goods to its account.

3. **OFFER:** A Purchase Order constitutes an offer to purchase by the Purchaser and, for the avoidance of doubt, not an acceptance of any offer by the Seller to sell the Goods.

4. **NO AMENDMENT:** A Purchase Order shall only be accepted by the Purchaser in accordance with its terms and conditions and without modification, addition, deletion or alteration thereof unless agreed to in writing by the Purchaser.

5. **ACCEPTANCE BY THE SELLER:** In the absence of written acceptance, or other written confirmation by the Seller, delivery of the Goods by the Seller, shall be deemed as acceptance of these terms and conditions.

6. **CUSTOM:** No local, general or trade custom shall vary the terms of a Purchase Order without the prior written consent of the Purchaser.

7. **PAYMENT TERMS:** Payment will be made in accordance with the terms stated on the Purchase Order once the Goods are confirmed by the Purchaser as being in good condition and fit for the purpose for which they are intended. Any other payment terms must be agreed in writing and signed off by the ARTC Inventory & Purchasing Manager or delegate. The amount payable by the Purchaser shall be the amount stated in the Purchase Order. Any variation to the price of the Goods shall only be paid by the Purchaser if the Seller sends the Purchaser a written notice of the price variation and the Purchaser accepts the variation in writing prior to delivery of the Goods by the Seller.

8. **INVOICES:** The Seller shall submit an invoice for each Purchase Order. Each invoice shall be addressed to “Australian Rail Track Corporation Ltd” (or “ARTC”) and be sent by mail to Accounts Payable at PO Box 10343, Gouger Street, Adelaide SA 5000 OR by email to accountspayable@artc.com.au. Each invoice shall show the destination to which the Goods were delivered, the order number and the packing slip number. Any GST, sales tax, excise duty or other tax or charge for which the Purchaser has not furnished or agreed to furnish an exemption certificate applicable to the Purchase Order shall be stated separately on the invoice.

9. **INFORMATION AND DRAWINGS:** All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by the Seller in relation to the Goods or otherwise contained in catalogues, price lists or other advertising matter of the Seller shall form part of the contractual description of the Goods.

10. **OWNERSHIP OF DRAWINGS AND TOOLINGS:** All drawings, plans, diagrams and other information (regardless of the form of media upon which it is recorded) and all dies, tooling, moulds, jigs, and fixtures supplied by the Purchaser or included in the Purchase Order, are and shall remain, the property of the Purchaser. Such drawings, plans, diagrams, dies, tooling, moulds, jigs and fixtures shall only be used by the Seller for the purpose of the purchase and shall be returned to the Purchaser after delivery of the Goods, or upon the termination of this Contract, whichever is the earlier.

11. **DELIVERY:** The Seller shall deliver the Goods in accordance with and to the location specified in the Purchase Order during the normal operating hours of the receiving store at the location (unless otherwise agreed by an authorised representative of the Purchaser). All delivery dates stated on the Purchase Order are critical to the Purchaser and the failure by the Seller to meet those dates may result in the Purchaser withholding payment in order to recover any costs it has incurred as a result of the late delivery. The cost of delivery of the Goods shall be payable by the Seller unless otherwise stated on the Purchase Order. Any Goods delivered in error or in excess of the quantity ordered in the Purchase Order may be returned by the Purchaser to the Seller at the Seller's risk and expense.

12. **ACCESS TO RAILWAY CORRIDOR:** If the Seller is required to access ARTC's Rail Corridor, in order to deliver the Goods, the Seller must first contact the ARTC representative listed on the Purchase

Order. The Seller may only enter the Rail Corridor in accordance with RLS-PR-003 (Competency/Communication Protocol for Entering Rail Corridor) or with the express permission of the ARTC Safety Officer.

13. **PACKING:** The Goods must be suitably packed or otherwise prepared for shipment by the Seller so as to secure the lowest transportation and insurance rates and be in accordance with the carrier's requirements. Packing slips correctly numbered with full details of the Goods must be enclosed in each package or case despatched. Failure to properly identify the Goods with ARTC identification numbers may delay acceptance and subsequent payment by the Purchaser. The cost of all packing, boxing and/or crating, protection, transportation and associated matters is included in the price specified for the Goods on the Purchase Order unless otherwise stated. The packaging is deemed to be non returnable unless otherwise agreed to in writing by the Purchaser.
14. **ACCEPTANCE:** The Purchaser reserves the right to return to the Seller (at the Seller's cost) any Goods subsequently found by the Purchaser not to be in accordance with the Purchase Order after the Purchaser has had reasonable time to inspect the Goods. Any costs incurred by the Purchaser for such reason shall be payable by the Seller or credited to the Purchaser. Any payment by the Purchaser for the Goods prior to the Purchaser's inspection of the Goods shall not be construed as an acceptance by the Purchaser of unsatisfactory or defective goods or goods not in accordance with the Purchase Order.
15. **WAIVER:** Any waiver of any rights of the Purchaser under these terms and conditions will only be effective if it is given or confirmed in writing by the Purchaser.
16. **RISK AND TITLE:** Any risk associated with the Goods shall remain with the Seller until delivery of the Goods to the Purchaser in accordance with the Purchase Order and these terms and conditions. The Seller shall at its expense insure and keep the Goods insured to their full insurable value until risk passes to the Purchaser as set out in these terms and conditions
17. **TERMINATION:** Without prejudice to any other rights in these terms and conditions, the Purchaser may terminate that part of the Purchase Order relating to Goods which have not been delivered, at any time prior to the delivery of the Goods. In such circumstances, the Purchaser shall have no liability to the Seller whatsoever in relation to such Goods except to make payment for Goods already delivered or in transit prior to the termination, and to make payment for any of the Goods in respect of which the Purchase Order has not been terminated.
18. **WARRANTY:** The Seller warrants that the goods are of merchantable quality, free from any defects, and conform to the specifications provided by the Purchaser or to the sample or descriptions provided by the Seller and are fit for their intended use by the Purchaser. Any defective or unsuitable Goods shall be replaced or corrected by the Seller at its own cost.
19. **INDEMNITY:** The Seller shall indemnify and keep the Purchaser, its officers, employees and agents, indemnified against any and all actions, claims, demands, proceedings, judgements, orders, damages, costs, liabilities or obligations of whatsoever kind, including but not limited to personal injury or death of any person, damage or destruction of property resulting from or connected with the Goods whether or not caused wholly or in part by any act, omission, default, negligence, wilful act of the Seller or breach of its obligations hereunder. The Seller warrants that the Goods do not infringe any patent, registered design, trademark or name, copyright and other intellectual property rights or other protected rights of a third party.

The Seller's indemnity in clause 19 is reduced proportionately to the extent that an act or omission of ARTC caused or contributed to the action, claim, demand, proceeding, judgment, order, damage, cost or liability.
20. **PUBLICITY:** The Seller shall not without the prior written consent of the Purchaser, advertise or publish the fact that the Seller has contracted to supply the Goods to the Purchaser.
21. **AMENDMENTS:** The Purchaser may at any time prior to the delivery of the Goods, issue written instructions to the Seller requiring additions, deletions or alterations to the Purchase Order. The Seller shall comply with any instructions issued by the Purchaser pursuant to this clause.
22. **ENTIRE AGREEMENT:** These terms and conditions constitute the entire agreement and understanding between the parties in relation to the Goods.
23. **LEGAL CONSTRUCTION:** These terms and conditions shall be governed by the laws of the state of South Australia and the parties hereby submit to the non-exclusive jurisdiction of the courts of South Australia for all disputes arising in connection with the Goods.