

**GENERAL TERMS AND CONDITIONS**

1. **Term:** This Contract will apply from the Commencement Date and will continue until further notice unless this Contract is terminated in accordance with its terms.
2. **Supply:** The Supplier will deliver each good and/or service ordered by KiwiRail by any dates specified by KiwiRail, in accordance with KiwiRail's requirements or other reasonable directions, and will keep KiwiRail informed of progress. KiwiRail will not be responsible for any goods or services delivered by the Supplier without an official KiwiRail purchase order first being received by the Supplier. Services shall be supplied on Business Days unless otherwise specified. In supplying the goods or services, the Supplier shall provide all labour, processes, materials and resources required for such supply.
3. **Prices:** The Supplier acknowledges that KiwiRail will not be required to pay any sums in respect of the goods or services other than the prices listed in the official KiwiRail purchase order. In particular, the Supplier acknowledges that all the Supplier's costs and expenses incurred in complying with the Supplier's obligations under the purchase order and this Contract are included in the prices listed in this Contract. For the avoidance of doubt, the prices for the goods and services are inclusive of all costs and charges unless expressly specified and agreed otherwise in writing by KiwiRail in each case.
4. **Most favoured customer status:** Prices, delivery times and warranties are always to be the Supplier's best available so that KiwiRail is treated on a most favoured customer basis. If equivalent goods or services are available from another supplier at a lower price, the Supplier will match that price.
5. **Variations:** KiwiRail may vary any of its requirements for any goods or services prior to delivery by notice in writing to the Supplier. Appropriate adjustments may be requested by the Supplier to prices and delivery requirements due to variations by KiwiRail.
6. **Testing:** If requested by KiwiRail the Supplier must (at its own cost) test the goods or services prior to delivery and integration into any system to ensure compatibility and satisfaction of KiwiRail's requirements.
7. **Acceptance:** Goods or services delivered shall not be accepted by KiwiRail until inspected and approved in writing by KiwiRail. KiwiRail may perform any reasonable or agreed acceptance test of any goods or services, components and related systems. If requested by KiwiRail, the Supplier will freely assist with acceptance tests at no additional cost, notwithstanding that such tests may already have been performed by the Supplier. The Supplier will promptly remedy any acceptance test failure at its cost.
8. **Installation:** Where any installation by the Supplier is involved the Supplier must (at its own cost) perform maintenance to keep the goods or services and system serviceable until at least three months after acceptance.
9. **Documentation and records:** The Supplier will promptly supply to KiwiRail appropriate documentation and other information for installation, operation and maintenance to enable KiwiRail to properly operate the goods or services and related systems, and freely provide updates to KiwiRail as and when they are produced.
10. **Subcontractors:** The Supplier will:
  - (a) not subcontract without KiwiRail's prior approval;
  - (b) keep KiwiRail informed about the involvement of subcontractors to the intent that KiwiRail has full transparency of relevant subcontracts; and
  - (c) ensure each relevant subcontract contains pass through provisions allowing KiwiRail to directly benefit from and enforce the subcontract.

By subcontracting any part of the services the Supplier is not relieved from any of its liabilities or obligations pursuant to this Contract and remains primarily responsible for all goods and services supplied by a subcontractor.
11. **Training:** If requested by KiwiRail the Supplier will prior to and for a reasonable period after acceptance train those personnel nominated by KiwiRail so that they can independently operate and maintain the goods or services and related systems.
12. **Intellectual property:** KiwiRail will own any new intellectual property developed during, or as the purpose of, any delivery of the goods or services, and the Supplier will on request, freely waive any moral rights and transfer every proprietary interest or right to it to KiwiRail or its nominee. KiwiRail will retain all intellectual property rights over any item (such as a method, pattern or mould) given by KiwiRail to the Supplier to be copied or used by the Supplier to undertake any services and the Supplier will return it to KiwiRail on the Expiry Date. KiwiRail will have a perpetual, irrevocable and royalty-free licence to use any and all intellectual property related to all goods or services and drawings and other information provided by the Supplier in connection with this Contract for any purposes related to KiwiRail's business.
13. **Compliance with laws, authorisations and standards:** The Supplier will ensure that the goods or services:
  - (a) are designed, manufactured and delivered in compliance with all applicable KiwiRail requirements, specifications and standards (if there is no KiwiRail standard provided then the best standard in the

applicable profession or industry) and comply with their description and the samples (if any) provided to KiwiRail;

- (b) are of a high quality and standard and in accordance with best industry practice;
- (c) are new and unused on delivery unless specified otherwise by KiwiRail in each case; and
- (d) are compatible with the systems that they will be used with.

The Supplier will ensure that it, and anything it supplies, complies with all New Zealand laws, codes and standards; and is responsible for ensuring that every necessary and prudent authorisation, consent and/or licence is obtained to ensure that it can perform the purchase order and this Contract and KiwiRail can at all times own (where intended) and freely possess, use, modify and resell unrestricted, each good and the result of each service supplied by the Supplier without infringing any third party rights.

14. **Operational requirements:** KiwiRail will allow the Supplier access at reasonable times to relevant KiwiRail sites as required to perform this Contract. The Supplier will:

- (a) ensure it (and its employees, representatives, agents, subcontractors and invitees), complies with KiwiRail's reasonable security, operational and documentation requirements (particularly in relation to access to property and information, hazardous substances, health and safety and environmental protection);
- (b) have and will comply with its own appropriate health and safety plan, and promptly notify KiwiRail:
  - (i) if any hazard exists at any KiwiRail site caused by the Supplier; and
  - (ii) of any accident or serious harm that occurs to, or is caused by, the Supplier at any KiwiRail site;
- (c) ensure that every necessary resource consent and other authorisation for it to establish, use and maintain its resources at any KiwiRail site are obtained and maintained;
- (d) not allow any unauthorised discharge of any contaminant, or making of excessive noise, by any of its vehicles, equipment or goods, employees, representatives, agents, subcontractors or invitees on any KiwiRail site; and
- (e) not supply any ozone depleting substance to KiwiRail without having the necessary exemption in each case.

Any of the Supplier's equipment or property not removed from any KiwiRail site when reasonably required by KiwiRail may be relocated, stored or disposed of by KiwiRail at the Supplier's sole risk and cost.

When on any KiwiRail site, the Supplier will take all reasonable steps to keep KiwiRail's site in an orderly state and in such a condition as to avoid nuisance and danger to persons and damage to property. The Supplier will provide all services in a proper, safe and efficient manner causing minimum disruption to any person lawfully at a KiwiRail site. Any damage caused by the Supplier to any KiwiRail site or to any equipment or other property of KiwiRail or any other person will be made good by the Supplier at the Supplier's expense.

15. **Payment:** In consideration of full and proper performance of the Suppliers obligations under this Contract, KiwiRail is liable to pay the Supplier the price by the 20th day of the month following the date of a correct, undisputed, invoice.

The Supplier shall not invoice KiwiRail for any goods or services until they have been delivered, installed (if applicable) and accepted by KiwiRail. All invoices must be a valid tax invoice and quote the relevant purchase order number. KiwiRail may set off any amount that is or may become payable by it to the Supplier against any amount that is or may become payable by the Supplier to KiwiRail.

16. **Title and risk:** Title to goods and anything supplied as part of a service and intended to remain with KiwiRail will pass to KiwiRail at the earlier of delivery or any payment by KiwiRail for it. Risk remains with the Supplier until completion of delivery and acceptance.

17. **Audit:** KiwiRail may from time to time audit the Supplier's compliance with this Contract. The terms and manner of any audit shall first be agreed between the parties. The parties agree to act reasonably for this purpose. For this purpose, the parties shall discuss the provision of any relevant documentation, inspection of the Supplier's premises and any other property, and co-operation with any person or persons authorised by KiwiRail to carry out any audit. The Supplier agrees to promptly answer any queries by KiwiRail with respect to any aspect of the Supplier's compliance with this Contract.

18. **Insurance:** The Supplier, at its cost, must have and maintain public liability insurance and professional indemnity insurance for as long as they are liable under this Contract to a minimum of \$5,000,000 for any single occurrence, to cover KiwiRail and/or its associated companies, where requested in writing by KiwiRail, the Supplier and their respective employees and respective agents for their respective rights, interests and liabilities for loss of, or damage to any property arising from or in connection with the good and services by the Supplier. If requested by KiwiRail, the Supplier must provide to KiwiRail written evidence of these insurance policies.

19. **Spares and support:** The Supplier will ensure that KiwiRail has access to the prompt supply of appropriate spares and support services on a reasonable basis during the expected life of the goods or services supplied. KiwiRail will only pay for spares and support services ordered in a KiwiRail purchase order.

20. **Warranties:** The Supplier warrants to KiwiRail that:

(a) goods supplied by the Supplier will be appropriately packaged, packed and securely stored until completion of delivery and installation (if applicable) to minimise damage, deterioration and theft;

(b) where applicable, goods will be properly installed and integrated into, will be compatible with and will not damage, KiwiRail's relevant systems and other property;

(c) despite anything said or done by KiwiRail, goods supplied by the Supplier will for at least 12 months from the later date of the date of acceptance and the date of commencement of being in service with KiwiRail) be:

(i) fit for the use and purpose contemplated, together with any specific purpose detailed in a purchase order; and

(ii) of merchantable quality and free from any defect (including any latent defect) in design, materials and workmanship;

(d) all labels on the goods supplied are clearly and indelibly inscribed in English;

(e) if any of the goods contain any ozone depleting or hazardous substance or is dangerous, all packaging and that good will be marked with a prominent warning; and

(f) in providing the goods or services, the Supplier shall exercise the degree of skill, care and diligence that would reasonably and ordinarily be expected of a skilled and competent professional experienced in supplying goods or services similar to the goods or services provided by the Supplier.

These warranties are additional to any other warranties and guarantees given by the Supplier or implied by custom or law. The Supplier will, to the extent possible, pass on to KiwiRail the benefit of any third party warranty or guarantee in respect of goods or services supplied.

**21. Performance claims:** If any goods provided or services performed by the Supplier are defective or not in accordance with the provisions of this Contract, the Supplier will promptly remedy the defect or failure to KiwiRail's satisfaction, at the Supplier's cost. If the Supplier fails to promptly remedy the defect or failure, or if KiwiRail determines that an urgent or other situation so justifies, KiwiRail may carry out, or procure the carrying out of, anything required to remedy the defect or failure and may recover the cost from the Supplier. Any good replaced under warranty shall be subject to a further full warranty period commencing on the date of completion or such remedy.

**22. Failure by Supplier:** If the Supplier:

(a) breaches, or fails to properly or promptly perform, any of its obligations pursuant to this Contract and (where in KiwiRail's reasonable opinion such breach or failure is capable of remedy) fails to remedy the situation to KiwiRail's satisfaction within 5 Business Days after notice from KiwiRail of the breach or failure; or

(b) is or becomes insolvent or unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors, is being wound up, or having a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property; or

(c) indicates to KiwiRail, by words or conduct, that it does not intend to perform some or all of its future obligations under this Contract;

(d) is subject to a force majeure event which continues for more than 30 consecutive days or an aggregate of 30 days in any 12 month period; or

(e) has a conflict of interest with KiwiRail's interests which KiwiRail, acting reasonably, considers sufficiently inappropriate;

then KiwiRail may:

(i) withhold any payment due to the Supplier until the matter is resolved to KiwiRail's satisfaction;

(ii) suspend or terminate (in whole or in part) the purchase order and this Contract by written notice to the Supplier; and/or

(iii) have the requirement met by its own personnel or anyone else, with any reasonable additional costs being payable by the Supplier.

**23. Failure by KiwiRail:** If KiwiRail:

(a) breaches, or fails to properly or promptly perform, any of its material obligations and fails to remedy the situation to the Supplier's reasonable satisfaction within 20 Business Days after notice from Supplier of the breach or failure; or

(b) is or becomes insolvent or unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors, is being wound up, or having a liquidator, provisional liquidator, receiver or official manager appointed over all or any of its property;

then the Supplier may terminate the purchase order by written notice to KiwiRail.

<p>24. <b>Termination:</b> Any expiry or termination of the purchase order:</p> <ul style="list-style-type: none"> <li>(a) unless otherwise specified by KiwiRail, shall not affect and shall continue to apply to any goods or services ordered under any purchase order but undelivered at the date of expiry or termination;</li> <li>(b) shall be without prejudice to the right and remedies of either party arising out of or in connection with any breach of this Contract prior to expiry or termination, or any rights of either party which have accrued prior to, or arise out of expiry or termination;</li> <li>(c) shall not terminate clauses of this Contract that are intended to survive termination (including clauses 12, 20, 24, 25, 26, 27, 28 and 40).</li> </ul> <p>On termination or expiry of the purchase order for any reason the Supplier shall immediately return to KiwiRail, at KiwiRail's cost, all property of KiwiRail in its possession or control.</p>
<p>25. <b>Indemnity:</b> The Supplier will indemnify KiwiRail for any damage, loss or cost (including legal and lawyer/client costs) suffered by KiwiRail or any other person arising from or in respect to any breach, negligence and/or default by the Supplier (or its employees, agents or contractors) of this Contract and will protect KiwiRail from any claim or proceedings against KiwiRail, to the extent caused or contributed to by the Supplier. If a claim is made by a third party that the goods or services infringe its intellectual property the Supplier shall:</p> <ul style="list-style-type: none"> <li>(a) replace the infringing goods or services with non-infringing goods or services that function and performs at least as well as the infringing goods or services; or</li> <li>(b) obtain the right for KiwiRail to lawfully to possess and use the relevant goods or services in accordance with the purchase order and this Contract and to exercise the rights granted under it.</li> </ul>
<p>26. <b>Liability:</b> To the extent allowed by law, neither party nor its employees and representatives and Related Companies will be liable (in contract or tort, including negligence, or otherwise) to the Supplier for any indirect or consequential damage, cost or loss caused or contributed to by the other party, any of its employees, representatives or visitors arising from or in respect to this Contract. Each of KiwiRail's employees, representatives and any KiwiRail Related Companies are also to enjoy the benefit of this provision. KiwiRail's liability to the Supplier pursuant to this Contract shall be limited to the price for any goods or services accepted by KiwiRail under the purchase order.</p>
<p>27. <b>Force majeure:</b> A party is not liable for any failure or delay in performing an obligation if it is due to a cause reasonably beyond the control of that party ("force majeure event") and that party has:</p> <ul style="list-style-type: none"> <li>(a) promptly notified the other party of the cause; and</li> <li>(b) taken reasonable steps to minimise any loss, damage or delay resulting from that force majeure event and perform its obligations to the best level reasonably achievable in the circumstances. The expression "force majeure event" does not include financial management difficulties or other like difficulties or delay caused by or in connection with contractual relations between the Supplier and its employees, agents, sub-contractors or suppliers or any risk or event, which the Supplier could have prevented or ameliorated by taking reasonable care (including having in place a reasonable risk management process).</li> </ul>
<p>28. <b>Confidentiality:</b> Each party will keep confidential and secure and will not misuse, any information which is proprietary, commercially sensitive or confidential to the other party. However this will not apply to any information which is generally available to the public (other than as a result of wrongful disclosure by the recipient); or that is required to be disclosed by any law, regulatory body or applicable stock exchange rules; or to the extent necessary to perform the purchase order and this Contract.</p>
<p>29. <b>No assignment:</b> The Supplier may not assign any of its benefits or burdens in respect of this Contract without KiwiRail's written consent.</p>
<p>30. <b>Disputes:</b> If a party believes that there is a dispute in respect of the purchase order and this Contract, it will promptly notify the other party in writing giving details of the dispute. If the dispute is not resolved within 5 Business Days by the parties' contact persons, it will be referred to the parties' senior management for resolution at the request of either contact person, and if they do not resolve the dispute within 10 Business Days, the parties shall give consideration to adopting an alternative dispute resolution process, such as mediation. Both parties will continue to comply with their obligations under the purchase order and this Contract until the dispute is resolved, but payments may be withheld to the extent they are disputed.</p>
<p>31. <b>Entire agreement:</b> This document records the entire agreement between the parties and supercedes and nullifies any negotiations, agreements or promises in respect to the subject matter which had been made prior to the acceptance of the purchase order and these General Terms and Conditions. Each party acknowledges that it has made its own independent enquiry and investigations in relation to the subject matter of this Contract and has entered into this Contract solely in reliance on its own judgement and is not relying on any statement, representation or misrepresentation (written or oral) made by or on behalf of any party, or any director, employee, representative or advisor of any party.</p>
<p>32. <b>Agreement paramount:</b> Notwithstanding any terms of supply of the Supplier or recorded on the Supplier's invoices or in credit arrangements entered into, the purchase order and this Contract will be paramount and will apply to the exclusion of any of the Supplier's documentation, even if at some later</p>

<p>date KiwiRail signs or otherwise purports to accept, the terms of that documentation other than in the manner outlined in this Contract. To the extent that any of the terms set out in a KiwiRail purchase order are inconsistent with any of the terms set out in this Contract, the terms set out in the purchase order shall prevail.</p>
<p>33. <b>Varying this Contract:</b> Any variations to this Contract must be in writing and signed by an authorised signatory of each party.</p>
<p>34. <b>Relationships:</b> Nothing in this document creates or evidences any legal partnership, joint venture, agency or employer/employee relationship between the parties. A party shall not have authority to act for or to incur any obligation on behalf of the other party except as expressly provided for in this Contract.</p> <p>This Contract is entered into by KiwiRail on its own behalf and for the benefit of its Related Companies. The covenants of the Supplier in this Contract are given for the benefit of, and are enforceable in terms of the Contracts (Privity) Act 1982 by, any Related Company of KiwiRail. This Contract may be varied by the Supplier and KiwiRail without the approval of any Related Company of KiwiRail.</p>
<p>35. <b>Withholding tax:</b> In respect of all payments KiwiRail is liable to make to the Supplier under this Contract, KiwiRail will be entitled to deduct the withholding tax required to be deducted from those payments (if any) and forward that withholding tax to the New Zealand Inland Revenue Department in the manner required by New Zealand law. The net amounts paid by KiwiRail to the Supplier shall be a complete and final discharge by KiwiRail of its obligation to make the relevant payments.</p>
<p>36. <b>Notices:</b> Any notice or other communication required pursuant to the purchase order and this Contract shall be delivered in writing. A notice may be given by:</p> <ul style="list-style-type: none"> <li>(a) delivery to the physical address of the relevant party;</li> <li>(b) posting it by pre-paid post to the postal address of the relevant party; or</li> <li>(c) sending it by facsimile transmission or email to the facsimile number or email address of the relevant party.</li> </ul> <p>A notice given in the manner: (i) specified in 34(a) is deemed received at the time of delivery; (ii) specified in 34(b) is deemed received 3 local Business Days after (but exclusive of) the date of posting; (iii) specified in 34(c) is deemed received on the local Business Day most immediately after the time of sending.</p> <p>A notice given by email, is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice, or by facsimile, is not deemed received unless (if receipt is disputed) the party giving notice produces a facsimile transmission report of the device from which the transmission was made which evidences full transmission, free of errors, to the facsimile number of the party given notice.</p>
<p>37. <b>Lowest price:</b> The parties confirm that the prices listed in the purchase order are the lowest prices that the parties would have agreed on for the good and services, at the date the purchase order was accepted under the rules relating to the accrual treatment of income and expenditure in the Income Tax Act 2007 and on that basis no income or expenditure arises in respect of the sale and the purchase of the goods and services under those rules.</p>
<p>38. <b>Waiver:</b> No delay or failure to act is a waiver. No waiver is effective unless it is in writing. A waiver of a breach is not a waiver of any other breach.</p>
<p>39. <b>Invalidity:</b> If any provision of this Contract is, or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from this Contract without affecting the validity of the remainder of this Contract and shall not affect the enforceability, legality, validity or application of any other provision of this Contract.</p>
<p>40. <b>Guarantee:</b> In consideration for KiwiRail entering into this Contract at the Guarantor's request, the Guarantor:</p> <ul style="list-style-type: none"> <li>(a) guarantees as principal obligor the performance by the Supplier of its obligations in relation to this Contract and agrees the Guarantor may for all purposes be treated as the Supplier and KiwiRail shall be under no obligation to take proceedings against the Supplier before taking proceedings against the Guarantor;</li> <li>(b) undertakes to perform any or all such obligations in the event that the Supplier fails to perform them and indemnifies KiwiRail against any loss KiwiRail might suffer should this Contract be lawfully disclaimed or abandoned by any liquidator, receiver or other person; and</li> <li>(c) covenants with KiwiRail that no variation to this Contract and / or the goods or services (with or without the consent of the Guarantor), termination of this Contract, release or delay or other indulgence given by KiwiRail to the Supplier, or any assignment of this Contract or review of the prices shall release, prejudice or affect the liability of the Guarantor as a guarantor or as indemnifier as between the Guarantor and KiwiRail.</li> </ul>
<p>41. <b>Governing law:</b> The law of New Zealand governs this Contract and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.</p>
<p>42. <b>Interpretation and Definitions:</b> Unless the context otherwise requires or it is specifically otherwise stated:</p> <ul style="list-style-type: none"> <li>(a) every right, power and remedy of a party remains unrestricted and may be exercised without</li> </ul>

prejudice to each other at any time;

- (b) references to a party or a person include any form of entity and their respective successors, assigns and representatives; if the Supplier comprises more than one person, each of those person's liability to KiwiRail is joint and several;
- (c) references to Business Days are to any day other than a Saturday, Sunday or statutory public holiday in New Zealand;
- (d) time is of the essence in regard to the Supplier's performance of its obligations under this Contract;
- (e) in the event of any conflict, the Purchase Order will prevail over these General Terms and Conditions;
- (f) references to "including" shall be construed without limitation;
- (g) the term "Commencement Date" means the date of the Purchase Order;
- (h) the term "Contract" means these General Terms and Conditions and the Purchase Order;
- (i) the term "Purchase Order" means the KiwiRail Purchase Order issued pursuant to these General Terms and Conditions;
- (j) the term "KiwiRail" means KiwiRail Holdings Limited;
- (k) the term "Supplier" means the supplier specified on the Purchase Order;
- (l) the term "Guarantor" means the Guarantor specified on the Purchase Order (if applicable);
- (m) the term "intellectual property" means, all intellectual and industrial property rights and interests (including common law rights and interests) owned or held by a person, or lawfully used by that person, including (i) patents, trade marks, service marks, copyright, registered designs, trade names, symbols, and logos; (ii) patent applications and applications to register trade marks, service marks and designs; and (iii) formulae, methods, plans, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, know-how, experience, software products, trade secrets, price lists, costings, brochures and other information used by that person; and
- (n) the term "Related Company" has the meaning in section 2 of the Companies Act 1993 (New Zealand).