



Information Bulletin

Standard Conditions of Sale

7th February 2006

1. DEFINITION

Unless the context otherwise requires, the following words and expressions used herein shall have the meaning hereby assigned to them:

- "Company"** means Invensys Rail Systems Australia Limited, ABN 78 000 102 483.
(Trading as Westinghouse Rail Systems Australia)
- "Conditions"** means these Standard Conditions of Sale.
- "Contract"** means the contract between the Purchaser and the Company for the sale of Goods and Services and comprising the Company's quotation, the Purchaser's order, the Company's order acknowledgement and these Conditions.
- "Contract Price"** means the total price, exclusive of GST, to be paid by the Purchaser to the Company in accordance with the provisions of the Contract.
- "Delivery Point"** means the place where delivery of the Goods is to take place as specified in the Contract.
- "Goods"** means the goods, materials, equipment and other items to be supplied by the Company to the Purchaser (including any part or parts of them) as specified in the Contract.



- “Purchaser”** means the entity with which the Company enters into Contract or its successors or permitted assigns.
- “Services”** means the services to be provided by the Company to the Purchaser as specified in the Contract.
- “Variations”** means any modification, alteration or amendment to the Goods or Services.

2. INTERPRETATION

- a) These Conditions, together with the documents to which they are attached, form the Contract. These Conditions supersede and replace any conditions of contract issued by the Purchaser, which are hereby excluded unless a specific written acceptance of such other conditions is issued by the Company in its tender, quotation or subsequent correspondence. No prior correspondence, discussion or other terms and conditions form part of this Contract unless explicitly stated in the Contract.
- b) Any quotation or tender by the Company is given on the basis that no contract will come into existence until the Company issues a written acknowledgement of order or (if earlier) the Company delivers the Goods and Services to the Purchaser. Any quotation or tender is valid for the period stated therein or if no period is stated 30 days only from its date provided that the Company has not previously withdrawn it.
- c) Reference herein to Clauses means clauses of these Conditions. Clauses’ heading are used for ease of reference only and shall not affect the interpretation of the Clauses to which they refer.
- d) The Contract shall be governed by and construed in accordance with the laws of the state of Victoria, Australia. Any claims or proceedings shall be validly served if sent to the last-known address of the Party against whom the claim is being made or the proceedings taken.

3. LIMITS OF CONTRACT

The Contract governs only such Goods and Services as specified therein. Unless otherwise specified in the offer, all descriptive literature, specifications, drawings and particulars of weights and dimensions submitted with the Company’s quotation or tender are approximate only, and the descriptions and illustrations contained in the Company’s catalogues, price lists and other advertising matter are intended merely to present a general idea of the Goods described therein. None of these documents shall form part of the Contract unless explicitly stated in the Contract. The Purchaser shall satisfy itself as to the suitability of the Goods for the Purchaser’s particular purpose, use or application.

4. DELIVERY

Unless otherwise stated in the Company's quotation or tender, the Contract Price is based on FOB/FCA delivery (Incoterms 2000) to the Delivery Point. It shall be the Purchaser's responsibility to advise the Company within five working days of the receipt of any Goods which appear incomplete, defective or in a damaged condition. The Company shall not accept liability for incomplete, defective or damaged Goods not notified to the Company in accordance with this clause, or for damage sustained beyond the Delivery Point. The Company shall not be liable for delay in delivery arising from any cause whatsoever nor will any delay entitle the Purchaser to terminate or rescind the Contract unless such delay exceeds 180 days.

5. DESPATCH

The anticipated date of despatch of the Goods to the Purchaser, as set out in the Company's quotation or tender, is an estimate based on circumstances known at the date of the Contract. If despatch is delayed at the request of the Purchaser or for reasons not attributable to the Company for more than two weeks after the Purchaser has been notified that the Goods are complete and ready for despatch, the Company will arrange for suitable storage and protection, including insurance. The Purchaser shall make payment in accordance with the terms of the Contract and risk in the Goods shall pass as if effective delivery had been made, but payment shall be exclusive of delivery and subsequent charges. The Purchaser shall pay to the Company all costs incurred for storage, protection, insurance, transport and other charges arising from such delay in despatch.

6. TESTING

Where the Purchaser requires the Goods to be subject to special tests or inspection, the Purchaser shall pay all costs of such testing, inspection, or attendance at the Company's premises to witness the tests. In the event of any delay on the Purchaser's part in attending such tests after seven days notice that the Goods are ready for such tests, the Company will proceed with such tests in the Purchaser's absence and they are deemed to have been made in the Purchaser's presence.

7. SERVICES

Where the Purchaser requires the Company to perform Services, the Purchaser warrants that it will provide proper access, information, and all things necessary to enable the Company to carry out the Services in a timely and efficient manner. The Company shall not be liable for any loss, damage, or injury howsoever arising in connection with the carrying out of the Services, as a result of any acts, omissions or delays of, or information provided by or on behalf of, the Purchaser, its agents or contractors. The Purchaser further agrees that it will ensure that any connecting or

interfacing works or locations are suitable and ready to accept the Goods or Services without additional work by the Company. Where the performance of the Services is delayed, disrupted or suspended for any reason outside the control of the Company, all additional costs and expenses so incurred by the Company shall be borne and paid for by the Purchaser. Unless otherwise agreed, the Purchaser shall not use or operate any Goods or Services until the work under the Contract is complete and handed over by the Company.

8. WARRANTY

- a) The Company warrants that:
 - a) Goods shall be free from defects in materials, workmanship or design other than a design made, furnished or specified by the Purchaser; and
 - b) The Services shall be provided using all reasonable skill and care.
- b) The Company shall at its own cost correct any deficiencies, defects, errors or omissions (all referred to hereinafter as "Defects") in or from the Goods and/or Services which breach such warranty and which are notified to the Company within twelve (12) months from the date upon which the whole Goods and Services are first delivered (unless otherwise agreed) provided that the Defects do not arise by reason of:
 - a) error or omission of the Purchaser;
 - b) failure to use the Goods or Services in a manner that is normally expected to be done with or in relation to the Goods or Services; or
 - c) failure to store or transport the Goods in a manner that is normally expected to be done with or in relation to the Goods; or
 - d) failure to comply with any instructions or warnings in relation to the Goods or Services.
 - e) repairs or alterations to the Goods by the Purchaser or its contractors.
 - f) failure to provide routine maintenance of the Goods.
- c) In correcting the Defects, the Company may elect, at its sole discretion, to resupply, replace or repair any defective Goods or Services. The Company shall not be responsible or liable for the cost of removal or installation of the defective Goods. Any defective Goods shall be promptly returned to the Company's works at no cost to the Company. In the case of Goods and Services not originally manufactured by the Company, the Purchaser will only be entitled to such warranty and like benefits as are received by the Company in respect of such Goods and Services. Resupply, replacement or repairs under warranty will not be provided by the Company where the seals are broken, serial number or identification mark of an item has been removed or altered or where Goods supplied by the Company have been interfered with in any way whatsoever.
- d) Any Goods repaired shall have their warranty extended by three months or until the expiry of the original warranty period, whichever is the later. The warranty extension on repaired

Goods extends only to the part of the Goods which was repaired. The warranty is not extended to subsequent faults which are unrelated to the original fault(s). Under no circumstances will the warranty on any Goods be extended beyond twelve months after the expiry of the original warranty period. Should any Defects be attributable to causes outside the scope of the warranty, then the full costs of any handling, assessment and repair shall be chargeable to the Purchaser's account at the Company's normal rates.

- e) This warranty is in place of and excludes all other warranties and legal liability in relation to the quality, fitness for purpose or performance of the Goods and Services whether statutory, express, implied, oral or written.

9. LIABILITY

Notwithstanding any other provision of the Contract whether express or implied:

- a) The Company shall in no event have any liability to the Purchaser under or in connection with the Contract for any loss of profit, loss of revenue, loss of use (including without limitation loss of use of railway infrastructure and/or any disruption or delay to train services), loss of business nor for any economic, financial, consequential or indirect loss or damages, howsoever caused, whether suffered by the Purchaser or any third party claiming against the Purchaser;
- b) The Company's total aggregate liability to the Purchaser howsoever arising under or in connection with the Contract shall not exceed an aggregate amount equivalent to the Contract Price Provided that such limitation shall not apply to the liability if and to the extent that the sum is covered by insurance maintained by the Company (or which it should have maintained) in accordance with the minimum requirement of the Contract;
- c) The exclusion and limitation of the Company's liability herein expressed shall apply regardless of whether such liability arises in contract, tort (including negligence), breach of statutory duty or otherwise at law;
- d) For the avoidance of doubt, nothing herein expressed is intended to exclude or limit the Company's liability in any manner or to any extent prohibited by law applicable to the Contract.

10. INTELLECTUAL PROPERTY

- a) Any and all intellectual property rights (including without limitation copyright, patents and design rights) generated by the Company in the performance of the Contract, or subsisting in or relating to the Goods and Services shall, subject to the rights of the third parties, vest in the Company.
- b) The Company will indemnify the Purchaser against any claim of infringement of any patent, registered design, trademark or copyright (published at the date of the Contract) by the use or sale of any article or material supplied by the Company and against all costs

and damages which the Purchaser may incur in any action for such infringement or for which it may become liable in such action, provided always that this indemnity shall not apply to any infringement which is due to the Company having followed a design or instruction furnished or given by the Purchaser or to the use of such design or materials or in a manner for a purpose or in a foreign country not specified or disclosed to the Company by the Purchaser. This indemnity is conditional on the Purchaser giving to the Company the earliest possible notice in writing of any such claim being made or action threatened or brought against it and on the Purchaser permitting the Company to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Purchaser on its part warrants that any design or instruction furnished or given by it shall not be such as will cause the Company to infringe any patent, registered design, trademark or copyright.

11. SAMPLES AND MINOR CHANGES

Any sample or prototype is provided by the Company to indicate only the general nature of the Goods or Services. The Company provides no warranty that the Goods or Services supplied will correspond precisely with any sample or prototype. Any samples or prototypes submitted to the Purchaser must, if required by the Company, either be paid for by the Purchaser or be returned to the Company within one calendar month of date of receipt (or as otherwise agreed). The Company reserves the right to incorporate minor modifications affecting performance, dimensions and materials.

12. CONTRACT PRICE

- a) The Contract Price is based upon the provision of Goods and Service (if any) set out in the Contract. Unless otherwise stated, any variations to the requirement for such Goods and/or Services shall be a variation to the Contract entitling the Company to vary the Contract Price and delivery arrangements (to the extent the Company accepts such variation). If by reason of any change to, or introduction of or change in interpretation or effect of any statute, regulation, by-law or similar instrument or code of practice, the cost to the Company of performing the obligations under the Contract shall be increased, then the Company's fair and reasonable estimate of the amount of such increase shall be added to the Contract Price.
- b) Where the Purchaser provides plans, drawings or other specifications and such plans, drawings and other specifications are incorrect, inadequate or lead in any way whatsoever to delays in the supply of Goods and/or performance of Services under this Contract, the Company shall be entitled to vary the Contract Price and delivery arrangements. Unless otherwise stated, where applicable, fluctuations in overseas exchange and customs duty rates between the date of quotation and date of importation shall be to the account of the Purchaser. For the purpose of calculating overseas currency variation charges, the date of importation is defined as being the date of clearance of the Goods through customs.

13. TAXES AND DUTIES

Unless otherwise stated, the Contract Price is exclusive of taxes and duties.

14. PAYMENT

Payment shall be made by the Purchaser of any amount due to the Company in \$Aus, within 30 days after the date of invoice. The Contract Price may be payable in progressive amounts, as claimed by the Company. The amount due and claimed on any invoice may include that portion of the Contract Price attributable to work done prior to the date of the invoice, any variation to the Contract Price, and any additional charges which the Company is entitled to make. The Company shall be entitled to suspend work or deliveries under the Contract and charge interest on outstanding payments if the Purchaser does not make payment in accordance with this clause.

15. TITLE, RISK AND POSSESSION

Title in the Goods shall not pass to the Purchaser until payment of all amounts due is received in full by the Company. Risk in the Goods and Services shall pass to the Purchaser upon delivery to the Delivery Point. If payment is overdue in whole or in part, the Company may (without prejudice to any of its other rights) recover or recall the Goods. For that purpose, the Company may enter upon any premises where the Goods are located or where they are reasonably thought to be located and may repossess the Goods.

16. SUSPENSION

- a) The Company shall be entitled to suspend its performance of the Contract if:
 - a) the Company bona fide believes that the Purchaser has failed to make payment when due or to perform on time any of its other obligation under the Contract;
 - b) the delivery of the Goods and/or performance of the Services are affected by event(s) beyond its control, including but not limited to events such as industrial disputes, unavailability of materials or components, machinery breakdown, fire, flood, explosion, civil unrest, acts of God, government action or inaction, terrorism or war.
- b) The time for delivery of the Goods and/or performance of the Services shall be extended to such extent as is reasonable to take account of such suspension.
- c) If the suspension is due to the reason as set out in subclause a) a) above, any cost incurred by the Company as a result shall be reimbursed by the Purchaser.
- d) The Company shall be entitled to terminate the Contract if the performance thereof is suspended for an aggregate period in excess of 60 days. In such event, all costs incurred by the Company up to the point of termination shall be reimbursed by the Purchaser

(including any costs committed at the date of suspension in anticipation of completing the Contract).

17. TERMINATION

Without prejudice to any other rights or remedies it may have at law, either Party shall be entitled to terminate the Contract forthwith by serving written notice to the other to such effect if:

- a) the other Party commits a serious breach of its obligations under the Contract and fails to remedy the breach within a reasonable period of time from receipt of written notice to do so; or
- b) a receiving order is made against the other Party or such other Party is unable to pay its debts as they fall due, or seeks the protection of the Courts against or enter into an arrangement or composition with its creditor or go into liquidation whether voluntary or otherwise (except for the purpose of solvent amalgamation or reconstruction) or a receiver or manager is appointed on behalf of a creditor in respect of such other Party.

18. AMENDMENTS, WAIVER AND ASSIGNMENT

The Company shall not be taken to have agreed to any amendment or waiver of any provisions of the Contract unless the amendment or waiver is in writing and signed by the Company. The Contract is assignable by the Purchaser in whole or in part only with the Company's prior consent in writing.