

Terms and Conditions of Celtec Rail Pty Ltd ABN 41 128 376 045 ("the Supplier")

1. Application

These Terms and Conditions ("T&Cs"), and no terms and conditions of the Customer, will apply to any supply of Goods and/or Services by the Supplier to the Customer.

2. Definitions

In these T&Cs:

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means a contract formed as a result of the acceptance of an Order by the Supplier;

"Control" has the meaning set out in the Corporations Act 2001 (Cth);

"Customer" means the customer set out in any quotation, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Debts" means all monies owing by the Customer to the Supplier;

"Delivery Address" means any delivery address in a Contract;

"Delivery Date" means any delivery date in a Contract;

"Goods" means the goods in a Contract;

"Insolvency Event" means any of the following, or any analogous, events:

(a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;

(b) the Customer ceases, or threatens to cease, carrying on business;

(c) the Customer is unable to pay the Customer's debts as the debts fall due;

(d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;

(e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or

(f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, mercantile agent's fees and commission, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"Price" means the price of the Goods and/or Services (including but not limited to any delivery or other charges); and

"Services" means the services in a Contract and any services associated with the Goods.

3. Order for Goods / Services

3.1 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer. Any order placed by the Customer is deemed to be an order incorporating these T&Cs notwithstanding any inconsistencies in the Customer's order or acceptance.

3.2 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which will include these T&Cs). These T&Cs prevail over any terms and conditions of trade of the Customer whether or not any inconsistency applies. For the avoidance of doubt, no terms and conditions of the Customer, including any terms and conditions printed on or referred to in any documentation of the Customer will be binding on the Supplier or have any legal effect.

3.3 The Customer is not entitled to cancel any Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel a Contract.

3.4 The Customer must provide the Supplier with written details of any required specifications or properties of Goods and/or Services at the time the Customer provides an Order to the Supplier.

3.5 The Customer must ensure the specifications or properties of Goods and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.

3.6 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.

3.7 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will be entitled to vary the Price.

3.8 The Supplier may cancel any Contract at any time prior to delivery of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

4. Delivery of Goods & Relationship of the Parties

4.1 The Goods will be delivered ex-works (EXW as defined in Incoterms 2010). Any time quoted for delivery is an estimate only and the Supplier will not be liable for any loss or damage howsoever arising as a result or consequence of any failure to deliver or delay in delivery arising from any circumstances of whatsoever nature including in particular but not limited to fire, flood, explosion, strike, lock-out or other industrial act or dispute or the break-down of or accident to plant, unavailability or shortage of raw materials, labour, power supplies or transport facilities or failure or inability to obtain licences or act of God or any order or direction of any Local, State or federal Government or Government authority or instrumentality. If the Supplier determines that it or may be unable to deliver within a reasonable time or at all the contract may be cancelled by the Supplier. In the event of cancellation the Customer shall have no claim against the Supplier for any damage, loss, costs or expense whatsoever. The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.

4.2 The Customer will comply with Australian, and other laws and regulations prohibiting transfers, exports and re-exports to certain end-users and destinations or for certain end-uses, unless written authorisation is obtained from the appropriate government or authority.

4.3 The Supplier may suspend or cancel the contract if (in its sole opinion reasonably held) that the Customer is in violation of applicable laws or regulations.

4.4 The Customer shall defend and indemnify the Supplier from and against any damages, fines, penalties, assessments, liabilities, costs and expenses (including reasonable legal fees and court costs) arising out of any claim that Goods or other information or materials supplied by the Supplier were exported or otherwise shipped or transported or supplied (as the case may be) in violation of applicable laws and regulations.

4.5 The Customer's relationship with the Supplier will be that of an independent contractor. The Customer will not have, and will not represent that it has, any power, right or authority to bind the Supplier, or to assume or create any obligation or responsibility, express or implied or by appearance, on behalf of the Supplier or in the Supplier's name. Nothing in these T&Cs will be construed as constituting the Customer and the Supplier as partners or as creating the relationships of employer/employee, franchisor/franchisee or principal/agent between the parties. The Customer will make no warranty, guarantee or representation whether written or oral on the Supplier's behalf.

5. Price

5.1 The Price is exclusive of GST unless otherwise stated by the Supplier in writing.

5.2 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

5.3 The Supplier may charge, in addition to the Price, any other fees and charges that the Supplier notifies to the Customer from time to time.

6. Credit Terms

6.1 The Customer must make full payment of the Price and any other amounts payable to the Supplier before the Supplier supplies Goods and/or Services to the Customer unless the Supplier has

granted credit terms to the Customer in which case the Customer must make full payment of the Price and any other amounts payable to the Supplier within 30 days of the date of the invoice.

6.2 If the Supplier grants credit terms to the Customer, the Customer agrees to grant the Supplier a charge over the whole of the Customer's present and future undertaking, property and assets (including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land) as security for any amount owed by the Customer to the Supplier and the Customer acknowledges the Supplier may lodge caveats or take any other action to enforce the Supplier's security over the charged property.

6.3 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to recover money from the Customer.

6.4 The Supplier reserves the right to charge interest on any amount overdue from the date it became due to the date payment is received at a rate of 10% per annum above the Reserve Bank of Australia's cash rate target. All payments made by the Customer will first be applied to accrued interest.

7. Risk and Title

7.1 Risk in the Goods will pass to the Customer upon delivery of the Goods by the Customer or delivery of the Goods to the Delivery Address.

7.2 Ownership of the Goods supplied by the Supplier will not pass to the Customer until all Debts have been paid in full.

7.3 Until ownership passes to the Customer, the Goods are held by the Customer for the Supplier as bailee and, if required, the Customer shall store the Goods so that it is clear that they belong to the Supplier.

7.4 If the Customer wishes to resell any of the Goods before ownership passes, the Customer may do so only by way of bona fide sale in the ordinary course of business and as the agent for the Supplier, by the Customer must not represent to any other person that the Customer is acting for, or has any authority to bind, the Supplier.

7.5 The Customer will hold the proceeds of sale on trust for the Supplier and the Customer must account to the Supplier for the proceeds of any sale of the Goods.

7.6 Until all debts have been paid for in full:

7.6.1 The Customer shall take custody of the Goods as trustee, fiduciary agent and bailee for the Supplier.

7.6.2 The Customer shall keep the Supplier's Goods separate from any other goods and properly marked, stored, protected and insured;

7.6.3 The Customer must hold all the money it receives ("**Proceeds**"):

7.6.3.1 From sale of any property into which the Goods supplied by the Supplier have been incorporated; or

7.6.3.2 From the sale of goods or provision of services including the sale of the Goods supplied by the Supplier

7.6.3.3 as bailee, fiduciary agent and trustee for the Supplier, but the Customer need not hold on trust any money exceeding the amount of the Debts at the time the money was received. Receipt by the Customer of payment shall be treated as conclusive evidence that it has received the Proceeds.

7.7 The Customer expressly acknowledges that it is bound by fiduciary obligation created in the preceding paragraph and acknowledges that:

7.7.1 It must hold the Proceeds on trust for the Supplier.

7.7.2 It must place the whole of the Proceeds in an account separate from its own moneys ("**the Proceeds Account**").

7.7.3 It must maintain proper records for the Proceeds Account.

7.7.4 It must not assign or encumber any book debts arising from sales made in circumstances set out in clause 7.4 or do any other act in derogation of the Supplier's legal or beneficial interests.

7.7.5 It must account to the Supplier on demand for all moneys standing to the credit of the Proceeds Account.

7.7.6 The Supplier may appropriate from the Proceeds Account as it thinks fit.

7.7.7 For the purposes of identification of different consignments of the Goods and receipt of the Proceeds, the Customer agrees that the principal of "last in, first out" shall be applied to any items that cannot be distinguished.

7.7.8 The Supplier may trace the Proceeds in equity.

7.8 On demand by the Supplier the Customer must assign to the Supplier all book debts not exceeding the amount of the Debts at the time of the demand.

7.9 The Supplier may at any time, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate the contract connected with the Goods and the bailment referred to in clause 7.6 and enter upon any premises owned or occupied by the Customer where the Supplier reasonably believes that the Goods may be stored, repossess the Goods without liability for any damage caused thereby and subsequently dispose of the Goods at the Supplier's discretion if:

7.9.1 The Debts are not paid in accordance with these T&Cs and any other contract or arrangement between the Supplier and the Customer; or

7.9.2 The Supplier receives notice of or reasonably believes that:

7.9.2.1 A third person may attempt to levy execution against the Supplier's Goods;

7.9.2.2 The Customer is insolvent (within the meaning of the *Corporations Act 2001*) or bankrupt; or

7.9.2.3 The Customer has entered into any arrangement or composition with its creditors, gone into liquidation, or a receiver, receiver and manager, or administrator has been appointed to it.

7.10 If any of the Goods are disposed of by the Customer, or an insurance claim is made in respect of them, the Supplier shall be entitled to trace the sale or insurance proceeds, which proceeds shall be held by the Customer in a separate bank account on trust for the Supplier.

8. Personal Property Securities Act 2009

8.1 The Customer acknowledges that these T&Cs constitute a security agreement for purposes of section 20 of the *Personal Property Securities Act 2009* ("**PPSA**") and that a security interest exists in all the Goods (and in the Proceeds) previously supplied by the Supplier and in all future Goods (and the Proceeds relating to those future Goods).

8.2 The Customer will execute documents and do such further acts as may be required by the Supplier to register the security interest granted to the Customer under these T&Cs under the PPSA.

8.3 Until ownership of the Goods passes, the Customer waives its rights under the following provisions of Chapter 4 of the PPSA:

8.3.1 to receive a notice of intention of removal of an accession (section 95);

8.3.2 to receive a notice that the Supplier decides to enforce its security interest in accordance with land law (section 118);

8.3.3 to receive a notice of enforcement of security against liquid assets (section 120);

8.3.4 to receive a notice of enforcement action against liquid assets (section 121(4));

8.3.5 to receive a notice to seize collateral (section 123);

8.3.6 to receive notice of enforcement of security interests in liquid assets (section 125);

8.3.7 to receive a notice of disposal of goods (section 130);

8.3.8 to receive a statement of account following disposal of goods (section 132(1));

8.3.9 to receive a statement of account if no disposal of goods for each six month period (section 132(4));

8.3.10 to receive notice of any proposal of the Supplier to either retain or dispose of goods (section 135(1));

8.3.11 to redeem goods (section 142);

8.3.12 to reinstate the security agreement (section 143).

8.4 The Customer further agrees that where the Supplier has rights in addition to those under Chapter 4 of the PPSA, those rights will continue to apply.

8.5 Until ownership of the Goods passes, the Customer must not give to the Supplier a written demand or allow any other person to give to the Supplier a written demand requiring the Supplier to register a financing charge statement under the PPSA or enter into or allow any other person to enter onto the register of personal property securities a financing charge statement under the PPSA.

8.6 The Customer acknowledges that it has received value as at the date of first delivery of the Goods and that it has not agreed to postpone the time for attachment of the security interest (as that term is defined by the PPSA) granted to the Supplier under these T&Cs.

- 8.7 The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer, or to any third party, if the Supplier has cause to exercise any of the Supplier's rights under section 123 and/or section 128 of the PPSA, and the Customer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
- 9. Force Majeure**
The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control and if any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.
- 10. Confidential Information and Intellectual Property**
10.1 The Customer will not use, or disclose to any third party, any Confidential Information disclosed to the Customer.
10.2 No supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services.
10.3 The Supplier and the Customer acknowledge and agree that this clause 10 constitutes a confidentiality agreement pursuant to section 275(6) of the PPSA.
10.4 Neither the Supplier nor the Customer will disclose, send or make available any of the information referred to in section 275(1) of the PPSA to any person except as required by law, these T&Cs and subject to the PPSA.
- 11. Warranty and Quality**
11.1 Certain legislation may imply warranties, guarantees, terms or conditions that cannot be excluded, restricted or modified. If those statutory provisions apply, to the extent that the Supplier is entitled to do so, its liability is limited at its option to:
11.1.1 the replacement or resupply of the Goods; or
11.1.2 the repair of the Goods; or
11.1.3 the payment of the cost of the replacement of the Goods;
11.1.4 the payment of the cost of the repair of the Goods.
11.2 Subject to clause 11.1, all Goods supplied by the Supplier are covered by a written "Express Warranty" supplied with the Goods when supplied to the Customer. To the extent permitted by law, the Express Warranty is in substitution for all other terms, guarantees, conditions, warranties and representations, express or implied by statute or otherwise.
11.3 The Customer shall immediately notify the Supplier in writing upon the discovery of any defect in the Goods. The Customer shall not carry out any remedial work or installation to alleged defective Goods without first obtaining the written consent of the Supplier to do so.
11.4 The Customer expressly acknowledges and agrees that it has not relied upon, and the Supplier is not liable for, any advice given by the Supplier, its agents and employees in relation to the suitability for any purpose of the Goods.
11.5 The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in these T&Cs, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 12. Liability**
12.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, any Contract, and any supply of Goods and/or Services will be limited to the amount of the Price paid by the Customer to the Supplier.
12.2 The Supplier will not be liable to the Customer or any other person for any Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.
- 13. Indemnity**
The Customer indemnifies the Supplier and each member of the Supplier's Personnel on a full and continuing indemnity basis from and against any Liability or Claim arising directly or indirectly in relation to:
(a) the Customer's breach of these T&Cs or any Contract;
(b) the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
(c) damage to the property of the Customer or any third party during any delivery of Goods;
(d) any spillage, breakage or contamination of Goods during any transport or delivery;
(e) the Goods and/or Services not being fit for any particular purpose;
(f) any tests conducted by a third party in relation to Goods and/or Services;
(g) the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;
(h) the Customer or any member of the Customer's Personnel refusing to accept any delivery; or
(i) the Customer or any member of the Customer's Personnel purporting to cancel a Contract.
- 14. Termination**
The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:
(a) the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days of receiving a notice from the Supplier requiring the Customer to do so;
(b) the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
(c) there is any direct or indirect change in the Control of the Customer; or
(d) an Insolvency Event arises in relation to the Customer.
- 15. Miscellaneous**
15.1 These T&Cs or any Contract may only be amended with the Supplier's express written agreement.
15.2 Any waiver by the Supplier must be express and in writing.
15.3 The Supplier's rights under these T&Cs or any Contract do not exclude any other rights of the Supplier.
15.4 If any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
15.5 The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the Control of the Customer.
15.6 The Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party.
15.7 The Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent.
15.8 These T&Cs and any Contract into which these T&Cs are incorporated shall be construed, interpreted and enforced under and in accordance with the laws of the State of Victoria, Australia, excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. The Customer agrees to exercise any right or remedy in connection with these T&Cs exclusively in and hereby irrevocably submits to the jurisdiction of the courts of the State of Victoria, Australia.
15.9 If a dispute arises out of or relates to these T&Cs (and any contract into which they are incorporated), or the breach, termination, validity or subject matter thereof, or as to any related claim in restitution or at law, in equity or pursuant to any statute, the parties to the agreement and the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation shall be conducted in accordance with the ACDC Guidelines for Commercial Mediation which are operating at the time the matter is referred to ACDC. The terms of the said Guidelines are hereby deemed incorporated into these T&Cs and any contract so mentioned above. This clause shall survive termination of the said contract or the relationship between the Supplier and the Customer.
- 15.10 In these T&Cs:
(a) the headings will not affect interpretation of these T&Cs;
(b) the singular includes the plural and vice versa, and a gender includes other genders;
(c) any other grammatical form of a word or expression defined in these T&Cs has a corresponding meaning;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
(e) a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
(f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity;
(g) a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
(h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
(i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
(j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
(k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
(l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these T&Cs or any part of these T&Cs; and
(m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.