

# Information Bulletin

## Terms and Conditions for Repair of Goods

14th November 2009

These *Terms and Conditions for Repair of Goods* ("**Conditions**") shall apply to and form part of every contract for the repair or refurbishment of goods entered into with Invensys Rail Pty Ltd ("**Company**") and shall supersede, cancel and terminate any terms and conditions presented by Customer, either orally or in writing, for the repair or refurbishment of the goods to which this Contract applies, including any conditions included in Customer's order or acceptance, unless expressly agreed to in writing by the Company.

### 1 DEFINITIONS

In these Terms and Conditions:

- "Completion"** means: The Company's obligations under the Contract shall be deemed Complete when the Services have been carried out in accordance with the Contract to a standard and outcome as good as one could reasonably expect having regard to the age and service history of the goods, the Customer has been advised by the Company that the Services have been completed and the goods have been made available for shipment or collection.
- "Contract"** means the contract for the repair of goods constituted by acceptance of the Customer's order by the Company and subject to the Conditions;
- "Customer"** means the person, corporation or government entity for whom the repairs are undertaken.
- "Price"** means the GST exclusive price to be paid by the Customer for the Services which shall include:
- a) the costs incurred by the Company in providing the Services, including but not limited to the cost of labour, travel time, materials, packing, applicable taxes and duties, freight, port fees, travel and accommodation costs, as well as an amount for profit and overhead;

- b) if the Contract specifies a lump sum, that lump sum; or
- c) any other amount agreed to by the Company in writing.

**“Services”** means the repair or refurbishment of goods undertaken by the Company for the Customer for the Price in accordance with the Contract.

## **2 INTERPRETATION**

- a) References herein to clauses means clauses of these Conditions.
- b) Clause headings are used for ease of reference only and shall not affect the interpretation of the Clauses to which they refer.

## **3 FORMATION OF CONTRACT**

- a) A quotation for Services is not an offer. A quotation for Services submitted by or on behalf of the Company shall constitute an invitation to Customer to make an offer to contract. A contract shall only be formed when an order is received from Customer offering to purchase the Services subject to the Conditions, and the Company has accepted such order.
- b) The acceptance by the Company of an order offering to purchase the Services shall be deemed to be conditional upon the inclusion of these Conditions.

## **4 PRICE AND PAYMENT**

- a) Any quotations for Services provided by the Company are estimates for guidance only and subject to variation.
- b) The Customer shall pay to the Company the Price together with any applicable GST at the times set out in clause 4 c).
- c) Payment of the Price becomes due and payable on Completion of the Services or termination of the Services under Clause 11 and upon issue of a valid tax invoice, except if the duration of the Services extend over a period greater than two months, in which case the Company shall be entitled to make monthly progress claims which shall become due and payable in accordance with clause 4 e).
- d) Unless otherwise stated in writing, all prices quoted for the Services to be performed by the Company do not include packing, freight, insurance or the cost of removal or reinstallation.
- e) Customer shall pay the Company's invoices for the Services within 30 days of invoice.

## **5 TIME FOR COMPLETION OF THE SERVICES**

- a) Any dates quoted by Company for completion of the Services are estimates and for guidance only. The Company shall complete the Services within a reasonable time.
- b) Company shall not be liable for any loss or damage howsoever arising as a result or consequence of any delay in providing or completing the Services arising from any circumstances of whatsoever nature.

## **6 SHIPMENT**

The cost of shipment of the goods, including transit insurance, port fees, customs duties and taxes etc. shall be borne by the Customer. Unless otherwise requested in writing by the Customer, on Completion of the Services the Company shall suitably pack and dispatch any goods from its premises to the Customer and the costs so incurred shall be a debt due and payable by the Customer to the Company.

## **7 RISK**

- a) The risk of loss or damage to the goods shall remain with the Customer while they are in the custody of the Company or in transit to or from the Company's premises. The Company shall not be liable for any loss or damage to the goods, whether caused by the negligence of the Company, its employees or contractors, or by any other cause whatsoever.
- b) The Company will not be required to insure any goods unless it agrees to do so in writing. Any insurance charges shall be borne by Customer, however if the Customer requires the Company to take out marine insurance on its behalf, the costs of any such insurance will be a debt due and payable by the Customer to the Company.

## **8 WARRANTIES AND LIABILITIES**

- a) With the exception of the conditions, warranties, rights and remedies referred to in sub-clause b) below, all conditions and warranties (and rights and remedies relating to the breach thereof) whatsoever which would, but for this sub-clause, have been implied by statute, the common law, equity, tort (including negligence), trade custom or usage or otherwise howsoever into any contract for the provision of Services between the Company and the Customer are expressly excluded from any such contract to the maximum extent permitted by law.
- b) Certain legislation (*including the Trade Practices Act 1974* and various legislation of the States and Territories of Australia) has the effect of implying certain conditions

and warranties into, and of granting certain rights and remedies in respect of, contracts with consumers which may not be excluded, restricted or modified. Nothing contained in these Conditions shall exclude, restrict or modify any such conditions, warranties, rights or remedies but the liability of the Company for breach of any such conditions or warranties shall, where legally permissible, at the option of the Company, be limited to:

- i) the re-supply of the Services; or
  - ii) the repair or replacement of defective goods or components thereof.
- c) The Company shall have no liability to Customer for any loss of profit, loss of revenue, loss of business or loss of use (including without limitation loss of use of the railway and/or any disruption or delay to train services or down time), nor for any indirect, special, economic or consequential loss or damage, howsoever arising under or in connection with this Contract and whether incurred by Customer, Customer's employees or agents or any third party claiming against Customer or Customer's employees;
- d) The Customer acknowledges and agrees that neither the Company nor any person acting or purporting to act on its behalf has made any representation or warranty or given any promise or undertaking with respect to the Services or their supply which is not set out in writing.
- e) This Clause shall not limit liability in any manner or to any extent prohibited by the law applicable to this Contract.

## **9 GUARANTEE**

- a) Subject to the following provisions of this clause 9, the Company undertakes to:
- i) In respect of defective Services: to re-supply the Services if within three months of Completion of the Services, or
  - ii) In respect of defective goods, or components thereof, supplied in the course of providing the Services: to repair or replace ( at the Company's option) all such goods or components manufactured by it if within twelve (12) months of Completion of the Services,

the Company at its discretion, and after the notice given in sub-clause 9b) , deems those goods or Services defective in materials or workmanship under proper and normal conditions of use and maintenance.

- b) To obtain the benefit of this guarantee the Customer must give notice in writing to the Company immediately upon it becoming aware of the alleged defect and in any

event no later than the expiration of the respective durations set out in 9 a)i) and 9 a)ii) above.

- c) The liability of the Company under this guarantee is limited to, at the Company's option, the repair or replacement of the defective goods or components, or the re-supply of the defective Services. All other costs including freight to and from the Company's premises, insurance, removal and installation, shall be borne by the Customer.
- d) Goods and components not manufactured by the Company are not covered by this guarantee, however the Company will use reasonable endeavours to obtain for the Customer the benefit of any applicable manufacturer's warranty.
- e) The Company shall have no obligations to the Customer where the defective goods or components have been rendered defective due to the acts or omissions of the Customer or their agents or due to a failure to maintain either properly or at all. Furthermore the Company will bear no responsibility for such goods or components that are or have become defective due to wear and tear.

## **10 INDEMNITY**

The Customer shall indemnify and hold the Company harmless from all claims for loss, damage, death or injury occasioned to or suffered by the Customer, its employees or contractors arising from the performance of the Services by the Company, its employees, agents or contractors whether the Services were performed at the Customer's premises, the Company's premise or any other premises or property;

## **11 TERMINATION**

- a) If, at any time during provision of the Services, the Company at its discretion determines that the Services cannot be effected in a timely manner or that the goods are beyond economic repair, or that the Customer has not made payments as required under the Contract, the Company may, after giving notice to the Customer, terminate the Contract forthwith and with immediate effect.
- b) The Customer may, at any time, terminate the Contract for convenience by giving the Company seven days written notice.
- c) If the Contract is terminated in accordance with this clause 11, the Customer shall pay the Company :
  - i) for all work performed prior to the date of termination, whether claimed or otherwise; and

- ii) the cost of materials reasonably ordered by the Company under the Contract for which the Company is liable (but only if the materials become the property of the Customer); and
- iii) restocking charges or fees incurred by the Company for the return of materials or cancellation of services reasonably ordered under the Contract for which the Company is, or may become, liable; and
- iv) costs incurred by the Company returning the goods to the Customer or disposing of the goods as directed by the Customer

and such amounts shall become due and payable in accordance with clause 4.

## **12 APPLICABLE LAW**

This contract shall be governed by and construed in accordance with the laws in force in the state of Victoria and the Company and Customer submit to the jurisdiction of the courts of Victoria.