

Information Bulletin

Terms of Warranty and Repair for Equipment Supplied as part of a Project Contract

14th November 2009

For the purposes of this document:

- “Company”** means Invensys Rail Pty Ltd, 78 000 102 483. Trading as Westinghouse Rail Systems Australia.
- “Contract”** means the contract between the Company and the Purchaser, which includes the supply of any Equipment.
- “Defects Liability Period”** means the length of time for which the terms described in this document are applicable. If the Contract does not specify a Defects Liability Period, then it shall be for a period of 12 months, commencing on the date of take over of the Works by the Purchaser.
- “Equipment”** means the physical materials (excluding software) supplied by the Company under the Contract and forming part of the Works.
- “Purchaser”** means the party to whom the Company is supplying Equipment.
- “Works”** has the meaning given to it in the Contract.
- a) Except as set out below, the Company’s liabilities (if any) in relation to the Contract following the take over of the Works by the Purchaser shall be limited to those matters expressly referred to in the Contract.
- b) The Company hereby warrants that any Equipment supplied by it pursuant to the Contract as part of the Works shall be free from defects in materials, design or workmanship for the Defects Liability Period commencing from the date of take over of the Works by the Purchaser.
- c) Should any such defects arise, the Company’s only performance obligation is to make good the defective Equipment by repair or replacement (at the option of the Company) and with all reasonable speed.
- d) The Company’s obligation to repair or replace defective Equipment is subject to the Purchaser returning the defective Equipment to the Company’s premises (at the Purchaser’s cost) with the serial numbers and any seals intact.

- e) Where it is impractical for the defective Equipment to be removed from site, then on receipt of written notice of such defect, the Company will make appropriate arrangements with the Purchaser to attend on site to repair or replace the defective Equipment.
- f) The Company shall have no liability for the costs of any loss of use (including train delays and disruption), maintenance call out, dismantling or extraction, re-installation or re-commissioning or other similar costs arising as a result of the Equipment failure.
- g) The Company shall have no liability whatsoever where the defect is attributable to fair wear and tear, tampering, any alteration or repair carried out without the Company's prior written consent or any misuse or neglect of the Equipment which is inconsistent with the Company's documented recommendations.
- h) Should any defect be attributable to causes outside the responsibility of the Company, then the full costs of handling, assessment and repair shall be chargeable to the Purchaser at the Company's normal rates.
- i) Repaired or replaced items shall have their warranty pursuant to paragraph b) above extended by three months or until the date when the original Defects Liability Period would have expired, whichever is the latter, provided that the warranty shall not in any event extend beyond 12 months from the end of the original Defects Liability Period. The warranty extension on repaired items extends only to the part of the Equipment which was the subject of repair. The warranty is not extended to subsequent faults which are unrelated to the original fault(s).
- j) The need to re-adjust any Equipment that normally requires initial adjustment upon installation, or which is otherwise identified as being subject to adjustment, shall not be considered a defect and shall not extend the Defects Liability Period for such Equipment.
- k) The warranty set out in paragraph b) above shall apply to the exclusion of any other warranty or condition, whether express or implied, and to the maximum extent permissible by law.