

Product and Service Supply Terms

1. WABTEC'S DELIVERY OBLIGATIONS

- 1.1 Wabtec shall deliver the Products to the Product Delivery Point in accordance with the Incoterms.
- 1.2 Wabtec shall use its reasonable efforts to deliver the Products by the Date for Product Delivery.
- 1.3 Wabtec may deliver the Products early, in partial shipments, or both.
- 1.4 Title in the Products will transfer to Customer at the same time as risk transfers under the Incoterms. This clause 1.4 does not apply to title in software.
- 1.5 Customer must make any claim for shortages in the delivery within 30 Business Days of delivery to the Product Delivery Point. Claims in relation to shortage made after that date will not be effective.
- 1.6 Wabtec shall also provide the Services at the Site.

2. PRICING AND PAYMENT

- 2.1 Wabtec may invoice Customer the Contract Price in accordance with the applicable Invoice Milestones.
- 2.2 Payments terms are as per any current credit account agreement between Wabtec and Customer. Where no current credit account agreement is in place Customer shall:
 - (a) in the case of Products, pay any invoice prior to delivery of the Products to the Product Delivery Point or within 30 days of issue whichever is the earlier; and
 - (b) in the case of Services, pay any invoice within 30 days of issue.

Payment will be by electronic funds transfer to a bank account nominated by Wabtec.

- 2.3 Customer may only set-off, against Contract Price payments, debts or arbitral awards that are due from Wabtec under this contract.
- 2.4 If Customer fails to make payment in accordance with this clause 2, Customer will also pay to Wabtec interest on the late payment at the Default Interest Rate from the due date to the date of payment.
- 2.5 Wabtec may require a full or partial advance payment before making delivery of the Products if Wabtec forms a reasonable view

2.6 Wabtec may delay delivery of the Product or the Services until the advance payment required by this clause 2 has been established, and interest will accrue in accordance with clause 2.4 for each day that an Invoice Milestone is delayed for this reason.

2.7 Wabtec will have a security interest in each Product until Customer makes full payment to Wabtec for that Product. If Customer fails to pay Wabtec for any software delivered under this contract, Wabtec may terminate Customer's licence to that software, remove it or both.

2.8 The Contract Price includes the cost of Wabtec's usual inspection and factory tests, and commercial packing, and any testing and commissioning process that form part of the Services. The Contract Price does not include freight, storage or insurance costs beyond the Product Delivery Point.

2.9 If there is a Change in Law that increases the cost to Wabtec of performing its obligations under this contract, notwithstanding Wabtec's reasonable efforts to mitigate the effects of that change:

(a) Wabtec shall give notice of that change to Customer, setting out the relevant details of the change and its impact on Wabtec's performance; and

(b) the Contract Price and Date for Product Delivery will be adjusted accordingly.

2.10 If:

(c) the Relevant Cost Index increases between this contract's signing date and Date for Product Delivery or the end of the Service period, and

(d) the period between the date of the Agreed PO and that Date for Product Delivery or end date of the Services is greater than 12 months,

then the Contract Price will be adjusted by the same percentage as that Relevant Cost Index increase, subject to the proviso that this clause 2.10 will not apply unless that increase is more than 5%.

3. TAXES

3.1 Wabtec shall be responsible for any income Tax imposed on Wabtec or its personnel in connection with this contract.

3.2 Customer shall be responsible for GST, VAT or any other Taxes imposed in connection with this contract, subject to clause 1.1 and 3.1. If Wabtec or its personnel are required to pay

- any such Tax, Customer will reimburse Wabtec upon reasonable substantiation.
- 3.3 Payments made by Customer in connection with this contract shall be free of withholding Tax. If any such withholding is required, Customer will pay an additional amount such that Wabtec receives the same amount as if there had been no withholding.
- 4. COMPLIANCE WITH LAWS**
- 4.1 Wabtec shall:
- (a) obtain the Government Authorizations required to deliver the Products to the Product Delivery Point, and to perform the Services;
 - (b) comply with all applicable US Laws in performing its obligations under this contract, subject to clause 4.3; and
 - (c) will ensure the Product and Services comply with those Laws.
- 4.2 Customer shall, and Wabtec will be permitted to suspend its performance under clause 15.3 if Customer does not:
- (a) obtain any required Government Authorizations other than those that Wabtec will obtain under clause 4.1;
 - (b) comply with all applicable USA and Australian trade and export control Laws in relation to the Products, including any software or technical data, after those Products have been delivered to the Product Delivery Point; and
 - (c) not tranship or send any USA-sourced Products to or for a country other than Australia without Wabtec's written consent.
- 4.3 If there is a conflict between the applicable Australian and USA laws, such that Wabtec cannot comply with both in the performance of this contract, Wabtec's obligations will be lessened to the extent of the conflict and the Contract Price will be adjusted equitably to reflect that reduction.
- 5. EXCUSABLE CAUSE OF DELAYS**
- 5.1 If the performance of Wabtec's obligations in connection with this contract is affected by an Excusable Cause of Delay:
- (a) Wabtec shall not be liable nor in breach of the contract to the extent of that Excusable Cause of Delay, and the Date for Product Delivery will be extended by a period equal to the Excusable Cause of Delay;
 - (b) Wabtec will use its reasonable efforts to mitigate the effect of the Excusable Cause of Delay; and
- (c) Wabtec shall promptly notify Customer of the Excusable Cause of Delay and of the revised Date for Product Delivery.
- 5.2 If an Excusable Cause of Delay is caused by Customer's acts or omissions, the Contract Price will also be adjusted equitably to compensate Wabtec for the costs of the delay.
- 5.3 If an Excusable Cause of Delay lasts for a period longer than 120 continuous Business Days, and so long as that Excusable Cause of Delay is ongoing:
- (a) either party may terminate the contract by written notice to the other, so long as the Excusable Cause of Delay is still occurring when the notice is given; and
 - (b) if the contract is terminated under clause 5.3(a), Customer will pay Wabtec the amount set out in clause 15.4 as if this contract had been terminated for Customer breach, excluding the estimated foregone profit referred to in clause 15.4(e).
- 6. WARRANTIES**
- 6.1 Wabtec warrants to Customer that:
- (a) the Products shall be delivered to the Product Delivery Point free from defects in material, title and workmanship;
 - (b) if the Products include software, that the software conforms in all material respects with Wabtec's documentation for that software;
 - (c) the Services will be delivered in a competent, diligent manner and in accordance with the Service description in the Agreed PO.
- 6.2 If Customer believes during the Warranty Period that a Product or Service does not comply with these warranties, other than as to title:
- (a) Customer shall notify Wabtec in writing within 30 Business Days from when Customer became or ought to have become aware of the warranty breach, and within the Warranty Period;
 - (b) if Wabtec requests, and in the case of a defective Product, Customer will make the relevant Product available for inspection at the Wabtec facility reasonably specified by Wabtec;
 - (c) Wabtec will, at Wabtec's option:
 - (i) repair or replace the defective Product or re-

- perform the defective Services; or
- (ii) refund or credit the money paid by Customer for that Product or Service if, despite Wabtec's reasonable efforts, a defective Product or Service cannot be repaired, replaced or re-performed;
 - (d) the Warranty Period for any repaired, replaced or re-performed Product or Service will end at the same time as it would have for the original Product; and
 - (e) Customer will be responsible for the cost of extracting the Product from use, and transporting the Product to and from Wabtec's facility for repair. However, if the Product proves to be in breach of the warranties, Wabtec will reimburse Customer's reasonable and substantiated transportation costs.
- 6.3 Wabtec's warranty obligations do not apply to:
- (a) normal wear and tear;
 - (b) any part of the Product that is normally consumed in operation;
 - (c) Product that is not properly stored, installed, used or maintained in the manner recommended by Wabtec, including the provision of influent or feedstock that is outside the specified parameters;
 - (d) Product for which Customer's operational and maintenance records are not sufficient to substantiate the matters referred to in clause 6.3(c);
 - (e) Product that has been involved in accident or has been subject to an event of force majeure of the type described in the definition of Excusable Cause of Delays;
 - (f) Products not manufactured by Wabtec, which will only carry any manufacturer's warranty that may apply;
 - (g) has been subject to any other defect not in the control of Wabtec; or
 - (h) Product that is modified or repaired by any party other than Wabtec or a contractor approved by Wabtec's safety accreditation process, or the defect is caused by the installation of parts not approved by Wabtec under that safety accreditation process, to the extent such a qualifier is permitted by Law.
- 6.4 If Customer permits a modification, repair or installation of the type contemplated by clause 6.3(h), Customer shall indemnify Wabtec for any Liability arising from any injury, death or physical damage to third party property caused by that modification, repair or installation.
- 6.5 If a Product fails to comply with the warranty as to title, Wabtec will promptly remedy that defect.
- 6.6 This clause 6 sets out Customer's exclusive warranties and remedies and Wabtec's only Liability for all claims based on failure or defect in relation to the Product and Services, whether arising during or after the Warranty Period. To the maximum extent permitted by Law, no implied or statutory warranties apply, including as to merchantability or fitness for purpose.
- 7. IP LICENCE**
- 7.1 Wabtec grants Customer a non-exclusive, non-transferable, personal licence to exercise the Intellectual Property that is comprised in the Product, or in the deliverables that are the subject of the Services:
- (a) for the purpose of operating that Product or that deliverable; but
 - (b) subject to the remainder of this clause 7 and any further licence restrictions set out in Appendix A.
- 7.2 Customer acknowledges that ownership of any such Intellectual Property remains vested in Wabtec.
- 7.3 If the subject matter in which such Intellectual Property comprises is software, Customer may:
- (a) use the software only on the Products on which it is installed upon delivery or, if the software is supplied separately, in connection with the Products;
 - (b) if the software is supplied separately, make a copy of the software in machine-readable form, and with any copyright notice that was on the original copy, for backup purposes; and
 - (c) use the software only for Customer's own internal business purposes.
- 7.4 Customer may not distribute to 3rd parties the subject matter in which the Intellectual Property is comprised, nor modify, adapt, translate, resell for profit, reverse-engineer, create derivative works, spare parts or

consumables based on that subject matter, except:

- (a) to the extent that any such prohibition is not permitted by Law; and
- (b) that Customer may sub-licence its rights under this clause 7 to sub-licensees expressly permitted elsewhere by this contract, and on written terms consistent with Customer's licence grant of which Wabtec is given prior notice and which does not permit further sub-licensing.

7.5 Customer agrees that:

- (a) the Intellectual Property is protected by USA copyright, trade secret and patent Laws and by applicable international treaties, and that a licence is not given to any software source code; and
- (b) the licence given under this clause 7 is revocable if this agreement is terminated for breach of this clause 7 or for failure to pay the Contract Price.

8. IP INDEMNITY

8.1 Wabtec warrants that the Products and Services will not infringe any Australian patents, or any non-patent Intellectual Property of a third party.

8.2 Wabtec will indemnify Customer from a third party claim that the Product or the Services infringe the Intellectual Property Rights set out in clause 8.1 if:

- (a) Customer notifies Wabtec within 15 Business Days of receipt of the claim, and gives Wabtec all reasonable assistance and information in connection with the claim and its defence;
- (b) Customer makes no admission in relation to the claim; and
- (a) Customer gives Wabtec exclusive authority to settle and defend the claim, and any suits arising from the claim.

8.3 This clause 8 will not apply, and Wabtec will have no Liability in relation to infringement claims, to the extent that:

- (a) Customer does not promptly permit Wabtec, at Wabtec's election, to modify or replace the infringing part of the Product or Service or to remove the infringing part and refund the Contract Price allocable to that part;

(b) the infringing part of the Product or Service was designed or specified by Customer, or modified without Wabtec's approval;

(c) the Product or Service is used, or combined with other products, in a fashion not provided for in this contract; or

(d) Customer did not implement an update provided by Wabtec that would have prevented the claim.

8.4 This clause 8 sets out Wabtec's sole Liability in relation to Intellectual Property infringement.

9. CONFIDENTIALITY AND PRIVACY

9.1 Each party may provide the other party with Confidential Information (the provider being the 'Discloser' and the receiver being the 'Recipient' in relation to that Confidential Information).

9.2 The Recipient must and must ensure that its Affiliates and their respective employees, agents and advisers:

(a) use the Confidential Information only for the purposes of this contract, or for product development;

(b) keep the Confidential Information in such a way as to ensure that it remains confidential; and

(c) disclose the Confidential Information only:

(i) to its employees who need the information for the purpose of this contract, and who are instructed to maintain confidentiality of the Confidential Information and to only use the Confidential Information for the purposes of this contract;

(ii) to its Affiliates, agents and advisers who need the information for the purpose of this contract, and who commit in writing to comply with the terms of this clause 9; or

(iii) as required by Law, a court order or an applicable stock exchange rule.

9.3 If the Recipient is required to make a disclosure under clause 9.2(c)(iii), the Recipient must, prior to making that disclosure and to the extent permitted by Law:

(a) provide the Discloser prompt written notice to permit the Discloser to

- seek an appropriate protective order; and
- (b) make such lawful revisions to the Confidential Information to minimise the loss of its proprietary value.
- 9.4 The Recipient must, upon the Discloser's request and in relation to Confidential Information that the Recipient no longer has any need for that information in connection with this contract:
- (a) return all originals, copies and summaries of the Discloser's Confidential Information then in the Recipient's possession or control; or
- (b) certify destruction of those documents.
- 9.5 Nothing in this clause 9 grants the Recipient any license to any Intellectual Property owned or controlled by the Discloser. Confidential Information of each party remains, as between the parties, the property of the Provider and this contract does not give the Recipient any right, title or interest in the Confidential Information.
- 9.6 Wabtec and Customer shall comply with all applicable Laws in relation to any Personal Data provided to the other, including by providing notices to or obtaining consents from the subject of that Personal Data as required. Customer consents to Wabtec and its Affiliates processing Personal Data provided to it by Customer to establish its debtor database, and for factoring purposes.
- 9.7 Neither party may make any press or other announcements relating to this contract without the prior written approval of the other party, except as required by Law or a stock exchange.
- 9.8 This contract is taken to be both party's Confidential Information.
- 10. CHANGES**
- 10.1 From time to time, Wabtec may make engineering changes to the Products or the Services without Customer's consent provided the change does not materially change the form, fit or function of the Product or the Service.
- 10.2 Customer may propose changes to the Product or Services. If Wabtec agrees to the change, the Contract Price and the Date for Product Delivery will be adjusted equitably. No such change will take effect unless agreed in writing.
- 11. INSPECTION AND FACTORY TESTS**
- 11.1 The quality control exercised by Wabtec in its manufacture of the Products and the performance of the Services shall be in accordance with Wabtec's normal quality control policies and procedures.
- 11.2 Wabtec will attempt to accommodate Customer's requests to witness Wabtec's factory tests of the Products to the extent that can be done safely and without delaying work. Any such access will be at Customer's cost and risk, limited to areas directly related to the Product, and will not include areas where development work is being conducted.
- 12. SITE ACCESS AND OHS**
- 12.1 Customer will provide Wabtec access to the Site and the Site facilities to the extent reasonably necessary for Wabtec to perform its obligations, and at the time that Wabtec reasonably requests it.
- 12.2 Customer shall, and Wabtec will be permitted to suspend its performance under clause 15.3 if Customer does not:
- (a) provide Customer's Site safety practices to Wabtec for review prior to Wabtec's arrival on the Site, and provide instruction to Wabtec's personnel in those practices before those personnel work on the Site;
- (a) comply with occupational, health and safety Laws in relation to the Site and otherwise ensure the Site is a safe working environment for Wabtec's personnel, subject to Wabtec's compliance with clause 12.3; and
- (b) permit Wabtec to conduct a Site safety audit from time to time.
- 12.3 Wabtec shall:
- (a) ensure Wabtec's personnel attend the instruction in the Site safety practices provided by Customer under clause 12.1;
- (b) ensure Wabtec's personnel comply with those practices; and
- (c) ensure that any equipment introduced to the Site by or on behalf of Wabtec is in a safe working condition, and is operated by suitably qualified personnel.
- 13. HAZARDOUS MATERIALS AND LATENT SITE CONDITIONS**
- 13.1 Customer shall:
- (a) provide Wabtec with documentation identifying any existing Hazardous Materials on or about the Site;
- (b) ensure the safe handling of, and protection of Wabtec's personnel from exposure to, those pre-existing Hazardous Materials; and

- (c) eliminate any Hazardous Materials that Wabtec encounters in performing its obligations, and which are not caused or introduced by Wabtec, and be responsible to Wabtec for any increased costs and time in that performance that is caused by those Hazardous Materials.
- 13.2 Wabtec shall:
- (a) not bring, handle, store or use any Hazardous Materials on the Site in a manner not expressly contemplated in Appendix A without Customer's consent;
- (b) perform any necessary clean-up or remediation work in relation to Hazardous Materials it brings onto the Site; and
- (c) otherwise comply with Australian Law in relation to those Hazardous Materials, subject to clause 13.1.
- 13.3 Customer warrants that any data it provided Wabtec relating to Site conditions is accurate and complete. Wabtec will be entitled to an extension to the Date for Delivery and an equitable adjustment to the Contract Price to the extent Wabtec is delayed or Wabtec's costs are increased by any of the following:
- (a) Site conditions materially differ from those indicated in the data provided by or on behalf of Customer;
- (b) any previously unknown physical conditions at the Site of an unusual nature, not revealed by previous investigations and differing from those ordinarily encountered in the type of work provided for in this contract; and
- (c) the presence of any pre-existing Hazardous Materials referred to in clause 13.2, unexploded ordinance, native title claims or archaeological remains.
- 14. LIMITATION OF LIABILITY**
- 14.1 The maximum aggregate Liability of Wabtec to Customer in connection with this contract is 100% of the Contract Price.
- 14.2 Wabtec will have no Liability for Consequential Loss.
- 14.3 Clauses 14.1 and 14.2 apply only to the extent permitted by Law.
- 14.4 Wabtec will have no Liability for any claims in connection with this contract that are made after the Warranty Period, except for claims:
- (a) of which Customer ought not reasonably have then been aware; and
- (b) that are under the IP indemnity in clause 8 or for breach of confidentiality under clause 9.
- 14.5 A reference to a party in this clause 14 means that party, its Affiliates, subcontractors and employees thereof, collectively and individually.
- 14.6 If Customer supplies the Product to a third party, Customer shall require the third party to agree to be bound by this clause 14.
- 14.7 This clause 14 applies notwithstanding any other provision in the contract.
- 14.8 Customer acknowledges that Wabtec's CAS GPS product is a driver's aid only and should not be relied upon as the primary means of reducing the risks of high potential interactions between heavy vehicles, light vehicles, infrastructure and personnel. The CAS GPS product is intended as part of a broad risk management protocol, and will not on its own achieve zero collision risk. It is not intended to replace proper training and safe operating procedures.
- 15. TERMINATION AND SUSPENSION**
- 15.1 Customer may terminate the contract if Wabtec:
- (a) materially breaches the contract or becomes Insolvent; and
- (b) in the case of a breach:
- (i) that breach does not have a specified contractual remedy; and
- (ii) Wabtec fails to commence and diligently remedy the breach within 60 Business Days of written notice of the breach.
- 15.2 If Customer terminates the contract under clause 15.1:
- (a) Wabtec shall be entitled to retain any amounts then paid under the contract;
- (b) Customer shall pay to Wabtec the applicable purchase price for any delivered Products or Services that remain unpaid upon termination; and
- (c) Wabtec shall pay to Customer, as Customer's sole remedy for the breach for which the contract was terminated, the difference between the applicable amount of the Contract Price for the terminated

- scope and the actual, substantiated and reasonable amounts paid by Customer to another supplier for that scope.
- 15.3 Wabtec may terminate or suspend the contract if:
- (a) Customer materially breaches the contract, including failure to pay any amount by 3 Business Days after its due date, or Customer becomes Insolvent; and
 - (b) in the case of a breach, Customer fails to commence and diligently remedy the breach within 30 days of written notice of the breach.
- 15.4 If Wabtec terminates the contract under clause 15.3:
- (a) Wabtec may retain any payments already made by Customer;
 - (b) Customer shall pay to Wabtec the applicable Contract Price for any delivered Products or Services that remain unpaid upon termination;
 - (c) the licence granted to Customer under clause 7 terminates if the cause of the termination was a material breach of those licence terms, or a material breach of those licence terms is otherwise outstanding as at termination;
 - (d) Customer shall pay to Wabtec the reasonable and substantiated expense incurred by Wabtec in connection with the termination of the contract, including demobilisation costs, interest costs on unused capital equipment, the cost of undelivered Product or Services, break costs to Wabtec's subcontractors, and any Liability that Wabtec incurs to Wabtec customers caused by the termination; and
 - (e) Customer shall pay to Wabtec 25% of the unpaid Contract Price by way of foregone profit.
- 15.5 If Wabtec suspends the contract under clause 15.3:
- (a) Customer shall pay the expense reasonably incurred by Wabtec in connection with that suspension, including demobilisation and remobilisation costs;
 - (b) the Date for Product Delivery of the Product, and the date for Wabtec's delivery of any Services, will be extended for the period of the suspension; and
- (c) Wabtec's right to terminate the contract under clause 15.3 remain available to Wabtec so long as the breach or Insolvency remains unremedied.
- 15.6 If Wabtec terminates for extended Excusable Cause of Delay under clause 5.2, the consequences will be the same as if Wabtec had terminated for Customer breach, except that Customer will not be obliged to pay the foregone profit referred to in clause 15.4(d).
- 15.7 The termination rights set out in this clause 15, and in clause 5.2, are the parties' sole rights to terminate this contract.
- 16. GOVERNING LAW AND DISPUTE RESOLUTION**
- 16.1 This contract will be construed and interpreted in accordance with the governing laws of New South Wales.
- 16.2 If there is a Dispute:
- (a) first, the party initiating the Dispute will send the other party a written notice referencing this clause, requesting that a senior executive from each side meet to negotiate the matter in Dispute in good faith; and
 - (b) if the Dispute remains unresolved 60 Business Days after that notice is issued, whether or not the meeting occurred, the Dispute will be settled by arbitration.
- 16.3 Arbitration contemplated by clause 16.2(b) will be administered by the arbitral ACICA, in accordance with the ACICA Expedited Arbitration Rules, and in the seat of Sydney, Australia. The language of the arbitration shall be English. There shall be one arbitrator.
- 16.4 Notwithstanding this clause 16:
- (a) either party may seek interlocutory or interim relief from a court, though only to avoid irreparable harm; and
 - (b) Wabtec may initiate proceedings before the courts to protect or enforce its Intellectual Property rights or Confidential Information.
- 17. GENERAL**
- 17.1 **(Precedence)** If there is any inconsistency between a provision of:
- (a) these terms;
 - (b) the terms set out in the Agreed PO; and
 - (c) the Incoterms referenced in these terms; and
- the provision in the document higher in this list will prevail to the extent of the inconsistency.

- 17.2 **(Interpretation)** The headings of the sections of this contract are for convenience, and do not affect the meaning of the contract. The use of specific lists or the word ‘including’ in this contract are not meant to be exclusive, and are taken to mean ‘including but not limited to’. A reference to a party includes that party’s executors, administrators or permitted assigns.
- 17.3 **(Change of control)** Customer shall notify Wabtec immediately upon any change in ownership or control of more than 50% Customer’s voting rights or in Customer’s controlling interest. If Customer fails to do so, or Wabtec objects to the change, Wabtec may:
- (a) terminate the contract;
 - (b) require Customer to put in place special controls regarding Wabtec’s Confidential Information and Intellectual Property; or
 - (c) require Customer to provide adequate assurance of performance, including in relation to payment.
- 17.4 **(Assignment and novation by Customer)** Customer may not assign or novate this contract without Wabtec’s consent.
- 17.5 **(Assignment and novation by Wabtec)** Wabtec may:
- (a) assign amounts owed to Wabtec under this contract as a means of factoring its receivables, or otherwise give security in this contract to its financiers;
 - (b) assign or novate all or part of this contract to an Affiliate. Customer agrees to execute any documents that may be necessary to complete Wabtec’s assignment or novation; and
 - (c) assign or novate all or part of this contract to any purchaser or other successor in interest of General Electric Company’s Wabtec Transportation business component (or portion thereof to which this contract relates). Customer agrees to execute any documents that may be necessary to complete Wabtec’s assignment or novation.
- 17.6 **(Subcontracting)** Wabtec may subcontract the performance of its obligations under this contract, but acknowledges that Wabtec remains responsible to Customer in relation to that performance.
- 17.7 **(Equitable price adjustments)** Where this contract provides for an equitable price adjustment, the following price rates will be used to determine the amount of the adjustment for a particular item (in order of precedence, from highest to lowest):
- (a) price rates set out in this contract for the relevant item;
 - (b) Wabtec’s standard price rates for the relevant item; and
 - (c) the price rate that Wabtec reasonably determines, having regard to the relevant market for that item.
- 17.8 **(No JV or agency relationship)** Nothing in this contract constitutes or gives rise to a joint venture, agency, partnership or relationship of employer and employee between the parties.
- 17.9 **(Entire agreement)** This contract is the entire agreement between the parties in respect of its subject matter. Any additional terms (eg proposed in Customer’s order form or in Wabtec’s tender document) will not be binding.
- 17.10 **(No interpretation disadvantage against Wabtec)** No rule of contract interpretation will apply to the disadvantage of a party on the basis that it put forward this contract or any part of it, or that these are its standard terms.
- 17.11 **(No nuclear use)** Customer must not use or permit others to use the Products in connection with any nuclear facility or activity, including the transport of nuclear waste. If Customer breaches this obligation, Wabtec and its Affiliates disclaim, and Customer will indemnify Wabtec and its Affiliates for, any Liability for any damages, injury or contamination or other loss arising from that breach.
- 17.12 **(Severance)** If any provision of this contract is found to be void or unenforceable, the remainder of this contract shall not be affected.
- 17.13 **(Survival)** The following clauses shall survive the termination of this contract, together with any other clause that by its nature survives: 14 to 17.
- 17.14 **(Modifications or waivers to be in writing)** No modification, change or waiver shall bind the parties unless it is agreed in writing by the parties’ authorised representatives.
- 17.15 **(Counterparts)** This contract may be signed in more than one counterpart, each of which will be taken to be an original document with the same effect as if the signatures to the contract were on the same document, but all such counterparts will constitute a single agreement.
- 17.16 **(Wabtec quotations open for 90 days)** Unless otherwise specified by Wabtec, any quotation of Wabtec shall expire 90 days after it is

issued, and may be modified or withdrawn at any time prior to Customer's binding order.

- 17.17 (**Further assurances**) Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this agreement and all transactions incidental to it, including in relation to the registering of the security interest contemplated in clause 2.7.
- 17.18 (**No CISG**) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this contract.
- 17.19 (**Sovereign immunity waiver**) If Customer is a government, or is owned or controlled by a government, Customer agrees that:
- (a) this contract is a commercial transaction;
 - (b) neither it nor its assets are entitled to any sovereign, state or government immunity from legal process or execution of any judgement; and
 - (c) it will not claim any such immunity in any Dispute.
- 17.20 (**No 3rd party beneficiary**) Except as expressly set out in this contract, this contract is not intended to give to any person who is not a party to this contract any rights to enforce any provisions contained in this Agreement.
- 17.21 (**Notices**) Notices in connection with this contract must be given in writing, including email. Notices, communications and other documents in connection with this contract will be in English.
- 17.22 (**Currency**) Unless otherwise specified, any monetary amounts set out in this contract or in the Agreed PO are expressed in AUD.

18. DEFINITIONS

The following terms have the meaning set out below:

Affiliate of an entity (the first entity), means any other entity which, directly or indirectly, controls, is controlled by, or is under common control with, the first entity. For the purpose of this definition, an entity (first entity) controls another entity (second entity) if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

Agreed PO means the relevant purchase order that incorporates these terms, as acknowledged and agreed to by Wabtec, whether in writing or electronically, and each such purchase order forming a contract.

Business Day means a day that is not a Saturday, Sunday or a public holiday in Brisbane, Australia.

Change in Law means the adoption, modification of a new Law, or the repeal of an existing Law, that:

- (a) occurs after this contract is signed; and
- (b) is not a change in income Tax Law, nor is a change that is triggered because of a breach by Wabtec of the Law.

Confidential Information means the information of the Discloser or its Affiliates that:

- (a) is made available to the Recipient at any time in connection with this contract, or is derived from such information;
- (b) concerns the business, operations, finances, plans or customers of the Provider or its Affiliates, including where Wabtec is the Discloser, any manuals, price lists or software; and
- (c) is marked 'confidential', 'proprietary' or 'private', or if disclosure is made orally, has been summarised within 30 Business Days of disclosure and marked as such in the written summary,

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of this contract;
- (e) is already in the possession of the Recipient without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Recipient;
- (f) has been independently developed by the Recipient by people without access to the Confidential Information, and the Recipient can document that independent development; or
- (g) acquired from a source which was not subject to a duty of confidentiality to the Discloser.

Consequential Loss in relation to a breach means:

- (a) any loss of a type that does not naturally flow from the breach; or
- (b) any loss of profits or revenues, loss of product, loss of use of the Product or the Service, business interruption, cost of capital, cost of capital, loss of

future contracts, loss of or damage to goodwill or reputation, provide-or-pay charges, claims of Customer's customers for such amounts, or any special, consequential, incidental, indirect, punitive or exemplary damages.

contract means this agreement, including any attached appendices.

Contract Price means the price of the Products or Services, as set out in the Agreed PO.

Customer means the customer entity set out in the Agreed PO.

Date for Product Delivery means the estimated date for delivery of the Products set out in the Agreed PO, or, if no such date is set out, a reasonable lead time after the date of the Agreed PO.

Default Interest Rate means the 3 month BBSW, as published by AMFA from time to time, plus 2%.

Dispute means any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination.

Excluded PPSA Provisions means:

- (a) for the purpose of sections 115(1) and 115(7) of the PPSA, sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143; and
- (b) for the purpose of section 115(7) of the PPSA, sections 132 and 137(3).

Excusable Cause of Delay means any delay to the performance of Wabtec's obligations under this contract caused, directly or indirectly, by an event that:

- (a) is beyond Wabtec's reasonable control; and
- (b) could not be overcome by Wabtec using its reasonable efforts,

including acts of God, fire, terrorism, war, epidemics, insurrection, acts or omissions of Customer, acts or omissions by a government authority, strikes or vendor performance that is affected by such events.

Wabtec means the Wabtec entity set out in the Agreed PO or, if no such entity is set out, then Industree Limited.

Government Authorization means any licence, authority, permit or similar issued by a government authority.

GST means the Tax payable on taxable supplies under the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any related act imposing such Tax, and includes subordinate legislation in relation to those acts.

Hazardous Materials means any chemical, substance, material or emission that is regulated or listed by any applicable government authority as toxic, hazardous, dangerous or radioactive, or as to which liability is imposed on the basis of potential health, safety, pollutant or environment risks by the Laws of USA or the country of the Site.

Incoterms means, in relation to Products sold under the Agreed PO, the Incoterms set out in the Agreed PO or, if no such Incoterms are specified, FCA (Wabtec's facilities) Incoterms 2020.

Intellectual Property means any copyright, moral rights, patents and inventions, trademarks, trade names, domain names, trade secrets, Confidential Information, know-how or designs, and all rights to register or extend or in applications for the registration of any of these.

Insolvent means a party is Insolvent if:

- (a) it is insolvent;
- (b) it is in receivership, liquidation, provisional liquidation, under administration or wound up, or has had a receiver or controller all or any part of its property;
- (c) it is subject to an arrangement, assignment, moratorium or composition with its creditor, or protected from creditors under statute, other than to carry out a restructure or amalgamation while solvent;
- (d) an application or order has been made, resolution passed, proposal put forward, meeting of shareholders or creditors called or any other action is taken, in each case that is preparatory or could result in to the circumstances set out in (a) to (c), and in the case of an application that application has not been stayed, withdrawn or dismissed within 30 Business Days; or
- (e) it suspends making payments on any of its debts, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness, or ceases or threatens to cease to carry on all or a

substantial part of its business, or is otherwise unable to pay its debts when they fall due;

- (f) something having a substantially similar effect to (a) to (e) happens in connection with that party under the Law of any jurisdiction.

Invoice Milestone means the milestones for invoicing set out in the Agreed PO, or if no such milestones are set out:

- (a) for Product, 100% of the Contract Price when such Products are ready for delivery to the Product Delivery Point; and
- (b) for Services, that part of the Contract Price attributable to any Service performed, immediately following its performance.

Law means any law, legislation, statute, ordinance, regulation or other binding, mandatory rule or condition imposed by a government authority or in a Government Authorization that applies to this contract, or to a party in connection with this contract.

Liability means any damages, losses or liabilities, whether in contract, tort (including negligence), under an indemnity, statute or otherwise.

Personal Data means any information relating to an identified or identifiable natural person, or to any legal entity if that legal entity is subject to data protection legislation in their country of incorporation.

PPSA means the *Personal Property Securities Act 2009 (Cth)*, any regulations thereto, and any amendments made from time to time to the *Corporations Act 2001 (Cth)* or any other legislation as a consequence of the *Personal Property Securities Act 2009 (Cth)*.

Product means the products set out in the Agreed PO as being the subject of purchase from Wabtec.

Product Delivery Point means where risk in the Product transfers to Customer in accordance with the Incoterms.

Relevant Cost Index means the cost index set out in the Agreed PO, or if no such index is specified, the Australian All Groups Consumer Price Index, weighted average of 8 capital cities.

Service means the services set out in the Agreed PO as being the subject of purchase from Wabtec.

Site means the premises or property at which the Services will be delivered, as specified in the Agreed PO or, if not specified in the

Agreed PO, at the premises reasonably specified by Wabtec.

Tax means any tax imposed by a government authority or agency, including excise duty, value-added, indirect, sales, stamp, or property tax, and any withholding, penalty or interest thereon.

Warranty Period means the period set out in the Agreed PO or, if no such period is specified:

- (a) for Product, the earlier of 15 months from delivery to the Product Delivery Point and 12 months from first installation, commissioning or use; and
- (b) for Services, 30 days from performance.

19. GST AND PPSA

19.1 (GST)

- (a) Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this contract are exclusive of any GST.
- (b) If a GST is levied or imposed on any supply made or deemed to have been made under or in accordance with this contract, the amounts payable or the value of the consideration provided for that supply or deemed supply (**payment**) will be increased by such amount as is necessary to ensure that the amount of that payment net of GST is the same as it would have been prior to the imposition of GST.
- (c) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a tax invoice will be provided by the party being reimbursed or indemnified.
- (d) All GST payable will be payable at the time the payment to which it relates is payable. Where any GST payable is not referable to an actual payment then it will be payable within 10 Business Days of a tax invoice being issued by the party making the supply.

- (e) Where in relation to this contract a party makes a taxable supply, that party must provide a tax invoice in respect of that supply before the GST payable in respect of that supply becomes due.
- (f) The GST on the total Contract Price will be charged with the first milestone payment invoice.
- (g) Terms defined in the GST Law have the same meaning when used in this clause 19.1.
- 19.2 **(PPSA)**
- (a) If a party to this contract determines that this contract, or a transaction in connection with it, is or contains a security interest for the purposes of the PPSA, the other party will do anything that first-mentioned party reasonably requests as being necessary for the purposes of:
- (i) making the security interest enforceable, perfected and otherwise effective;
- (ii) enabling the first-mentioned party to apply for any registration or renewal in connection with that security interest so that the security interest has the priority required by the first-mentioned party; or
- (iii) enabling the first-mentioned party to exercise rights in connection with the security interest,
- including by obtaining consents or signing and producing documents.
- (b) In relation to any personal property the subject of a security interest (being the “**Relevant Personal Property**”) granted under or in connection with this contract in favour of a party to this contract, the other party must:
- (i) not sell, sublease or dispose of that Relevant Personal Property or the other party’s interest in that Relevant Personal Property;
- (ii) not give possession of that Relevant Personal Property to another person for an indefinite or unspecified period, for more than 89 days in the case of a motor vehicle or more than 365 days in the case of other personal property;
- (iii) not create any security interest over any Relevant Personal Property (other than security interests granted under this contract); and
- (iv) not permit any Relevant Personal Property to become comingled with or an accession to or to be affixed to any asset that is not part of the Works,
- except as contemplated by this contract.
- (c) A party must not disclose (and must not authorise any party to disclose) information of the kind mentioned in section 275(1) of the PPSA unless that disclosure is required under section 275(7) of the PPSA, notwithstanding clause 9.
- (d) If this contract, or a transaction in connection with it, is or contains a security interest for the purpose of the PPSA, then to the extent permitted by Law, the Excluded PPSA Provisions do not apply in relation to this contract or transactions contemplated by it.
- 19.3 **(Limits on performance security – Qld only)**
- Where section 67J of the QBSA Act applies, Customer must, before using security or a retention amount, give Wabtec written notice advising of the proposed use of the security or retention amount, and the amount owed. This notice must be given within 28 days of Customer becoming aware, or ought reasonably to have become aware, of Customer’s rights to obtain the amount owed.