

GENERAL CONDITIONS OF SUPPLY

May 2025

1 APPLICATION

Unless otherwise agreed in writing by the Company and the Customer, these general conditions of supply will apply to the provision by the Company of Goods to the Customer and will be incorporated into each contract between the Company and the Customer regarding the provision of Goods.

2 RESPONSIBILITY

Without limiting any other clause as set out within these General Conditions of Supply, the Company will not be liable for any loss, damage, claim or expense whatsoever caused or contributed to by any act or omission of the Customer, any third party engaged by the Customer, or otherwise outside the reasonable control of the Company.

3 DELIVERY

Dates quoted for delivery of Goods are the Company's best estimates as at the date of quotation, however, delivery on these dates is not guaranteed and in no circumstances will the Company be liable, and the Customer indemnifies the Company, for any loss or damage resulting from a delay in delivery of the Goods. Delivery periods quoted are based on the period from either the date of receipt of an official purchase order at the Company's office or clarification of all technical aspects in respect of that order to the reasonable satisfaction of the Company, whichever is the latter. The Company reserves the right to deliver ahead of the promised schedule any or all parts of those Goods which are manufactured or purchased specifically for an order in economical batch quantities and which are not standard stock line items. The Company may make partial deliveries against an order and invoice each partial delivery. The Customer may not reject Goods on the basis of partial or late delivery. Unless specified in the Company's quotation (or any order accepted by the Company), the point of delivery shall be ex works, Rydalmere, New South Wales. Unless stated otherwise, the price excludes the costs of shipping, unloading, insurance, installation, assembly, permits and/or other services.

The Customer must inspect the Goods on delivery and will be deemed to have accepted Goods as free of defects or other non-conformance which could have been identified from a visual inspection unless the Company received a written claim within 10 business days from delivery.

4 ORDERS

Any order placed for Goods and/or Services by the Customer with the Company will be placed on the basis of these General Conditions of Supply to the exclusion of all other terms. The Customer acknowledges and agrees that any terms and conditions on the Customer's order form will not form part of the Contract unless those terms are expressly accepted by the Company in writing. If the Customer does not agree to be bound by these General Conditions of Supply it must not submit an order for Goods and/or Services to the Company. If the Customer submits an order it will be deemed to have accepted these General Conditions of Supply and any delivery of Goods or provision of Services made pursuant to receipt of an order shall, irrespective of any purported terms or conditions set out by the Customer in respect of such order, be subject to these General Conditions of Supply to the exclusion of all others.

The Company is not bound by any order unless and until it accepts the order, either by notifying the Customer of that acceptance or by commencing performance of the order. To the fullest extent permitted by law, the Company is not obliged to accept any order (even if the order was placed in response to a quotation). Once the Company accepts an order, the parties must comply with that order in accordance with these General Conditions of Supply. The Customer is responsible and liable for the lack of clarity or incorrect details in any order. For the avoidance of doubt, the Customer agrees to withdraw any terms and conditions stated on its purchase order in favour of these General Conditions of Supply.

5 DELAYED SHIPMENT

If the Customer (for any reason) is unable or unwilling to accept any Goods by the date for delivery as set out in accordance with the agreed delivery schedule within the applicable order, then the Customer must advise the Company of an alternative address to which delivery can be made (or an alternative time for delivery, if required). The Customer acknowledges and agrees that any and all additional transportation and storage charges incurred by the Company as a result of a delay or any change in the point of delivery as contemplated by this clause (**Additional Costs**) will be the responsibility of the Customer and the Customer must pay the Additional Costs to the Company on demand.

6 UNCOLLECTED GOODS

If any Goods received by the Company for the purpose of conducting an inspection, quotation or repairs are not collected by the Customer within the time period agreed between the parties, the Company must provide notice in writing to the Customer requesting that it collect the Goods within a reasonable time period set out in the notice. If the Customer fails to collect the Goods within the period provided for in the relevant notice, the Customer acknowledges and agrees that the Company may dispose of the Goods in accordance with the *Uncollected Goods Act 1995 (NSW)* (**Act**) and the proceeds from the sale of the Goods shall be retained by the Company in settlement of all charges claimable under the Act including, but not limited to, any costs associated with the carriage or storage of the Goods or for any repairs or other work done in connection with the Goods, maintenance, insurance and costs incurred by the Company for the disposal of the Goods.

7 TITLE AND RISK OF LOSS

Title to all Goods supplied by the Company to the Customer remains with the Company, and does not pass to the Customer until the price for those Goods (**Amount Outstanding**) is paid to and received by the Company in full. The risk of loss or damage to the Goods is transferred from the Company to the Customer at the time of the delivery of the Goods to the contracted shipment point.

- (a) Until title to the Goods supplied by the Company to the Customer passes to the Customer in accordance with this clause 7, the Customer must:
 - (i) store the Goods separately from the Customer's own Goods and those of third parties, to enable them to be readily identified as the Company's property;
 - (ii) hold the Goods as the bailee and fiduciary agent of the Company;
 - (iii) not supply or sell the Goods to any person, other than with the Company's prior written consent or in the ordinary and usual course of the Customer's business, it being acknowledged that any such supply or sale by the Customer will be as the bailee and fiduciary agent of the Company;
 - (iv) when requested by the Company, allow the Company to enter the premises where the Goods are stored to inspect the Goods and provide to the Company the consent of any person whose consent is required for that entry;
 - (v) keep records that relate to the Goods separately identifiable and readily distinguishable from those that relate to any other Goods in its possession;
 - (vi) not allow any person to have or acquire any encumbrance or security interest in the Goods; and
 - (vii) keep the Goods insured against theft, damage and destruction (and if the Customer fails to insure the Goods, the Company may do so and the Customer must reimburse the Company for the cost of insurance).
- (b) If the Customer sells or otherwise disposes of the Goods supplied by the Company before title to them has passed from the Company to the Customer:
 - (i) that part of the proceeds of any sale or dealing as is equal to the Amount Outstanding or if the proceeds of sale or dealing are less than the Amount Outstanding, the whole of the proceeds of sale or dealing (in either case, the **Company's Entitlement**) must be held by the Customer in a separate identifiable account on trust for the Company and must not be mixed with any other moneys of the Customer; and
 - (ii) the Customer must account to the Company for the Company's Entitlement, until all liability of the Customer to the Company has been discharged.

The Customer acknowledges that the Company may register its interest in the Goods pursuant to section 12 of the *Personal Property Securities Act 2009 (Cth)* (**PPSA**) and the Customer will not do anything to prevent the Company registering its interest in the Goods. The Customer agrees, at its cost, to do all things and execute all deeds, instruments or other documents as may be necessary or desirable to give full effect to the provisions of these terms and conditions, the Contract or the rights of the Company under the PPSA. If the Customer fails to comply with this clause, then the Company may:

- (a) terminate the Contract immediately on notice in writing to the Customer; and
- (b) the Company may, as agent of the Customer, enter premises where the Goods are located and do all things necessary to retake possession of the Goods, without liability for trespass or any resulting damage.

Notwithstanding anything to the contrary in these General Conditions of Supply, Software is licensed and not sold. Title to Software does not pass from Company to Customer. If Customer uses the Software outside of the license scope Company may terminate the license in its sole discretion effective as of the date of Customer misuse.

8 MATERIAL AND WORKMANSHIP WARRANTY

If the Customer believes that any part of the Goods or Services delivered to it under the Contract are defective in material or workmanship under normal and proper use (**Alleged Defect**), within the Warranty Period, the Customer must provide notice of that Alleged Defect to the Company in writing within 10 Business Days of becoming aware of the Alleged Defect (**Defect Notice**). For the avoidance of doubt, a vulnerability identified in software shall not be considered a defect for which a warranty claim can be made, unless and only to the extent that the vulnerability also creates a material deviation from the specifications in the Contract.

Within 10 Business Days of receipt of a Defect Notice, the Company will acting reasonably and in good faith, notify the Customer if it agrees (or disagrees) that there is an actual defect in the Goods or part of the Goods the subject of the Alleged Defect.

If the Company agrees that there is an actual defect in the Goods or part of the Goods or Services that is covered by the warranty set out in this clause 8 (Material and Workmanship Warranty), then the Customer must at the Customer's cost, arrange for the Defective Item to be returned to the Company's premises specified by the Company and the Company will (as the Customer's sole and exclusive remedy), at its cost, repair or replace the Defective Item in accordance with clause 17 of these General Conditions of Supply and return to original place of delivery.

The Company will not be responsible for costs of removal, installation or re-installation of any equipment, Goods, or any other items supplied by third parties, where such removal, installation or reinstallation is required to repair or replace any defective Goods. Furthermore, the Company will not be responsible for and assumes no liability for materials or workmanship or any transportation charges, labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective Goods, without the Company's prior written consent.



The Company's obligations under this clause 8 shall not apply to: (a) normal wear and tear; (b) any Good that is normally consumed in operation; (c) any Good that has a normal life inherently shorter than the Warranty Period; (d) any Good, Software or Service that has been subjected to any other kind of misuse or detrimental exposure, has been involved in an accident, or has been subject to a Force Majeure Event, or (e) any third party software. In the event Customer uses non-Company goods or software or non-Company approved repairs, then any damage to, failure of, or performance degradation of the Goods, Software or Services indirectly or directly resulting from the use of such goods, software or repairs, shall not be warranted by Company. Further, if such goods, software or repairs cause personal injury, death or property damage to third parties, Customer shall indemnify and hold Company harmless from all claims and liabilities connected therewith.

This warranty will be voided if (a) the Goods have not been stored, installed, maintained or operated in accordance with accepted industrial practice or any specific instructions provided by the Company; (b) the Goods has been subjected to any accident, misapplication, environmental contaminant, corrosion, improper passivation, abuse or misuse; (c) the Customer has used, repaired, or modified the Goods after discovery of the defect without the Company's prior written consent to continue use, (d) the Customer refuses to permit the Company to examine the Goods and operating data to determine the nature of the defect claimed; or (e) the Customer fails to keep accurate and complete records of the operation and maintenance during the Warranty Period and provide the Company access to those records in relation to an Alleged Defect.

Any replacement or repaired Goods or Services will be warranted against defects in material or workmanship for the unexpired portion of the Warranty Period applicable to the particular Goods and/or Services.

The Customer shall strictly abide by national or international governmental export, import and usage restrictions on the Goods and shall indemnify the Company for any loss or damage incurred by the Company as a result of any violation of these restrictions. Unless expressly agreed otherwise the Company does not warrant that any Goods delivered by the Company is interoperable or compatible with any other product, software or services. The Customer is responsible for the interoperability and/or compatibility and shall indemnify the Company for any costs and damages as a result of (the lack of) compatibility and/or interoperability of the Goods, including but not limited to investigation and reasonable legal costs.

9 DESIGN OF GOODS AND OBSOLESCENCE

The Customer acknowledges that no order (or acceptance of any order) constitutes a proposal by the Company for supply of Goods by description and that the Company reserves the right to modify the design and/or the construction of the Goods, including without limitation to alter the dimensions, capacity and materials comprising the Goods (**Relevant Modification**), at any time prior to delivery (provided that the Relevant Modification does not change the Goods to such an extent that they are no longer fit for the purpose for which the Customer requires the Goods as communicated to the Company in writing prior to the date of the relevant order). The Company may make any Relevant Modification without prior notice to the Customer and without incurring any obligation or liability in respect of the Relevant Modification, or in respect of any consequential modification required as a result of the Relevant Modification. For the avoidance of doubt, any change to the Goods made pursuant to this clause 9, does not constitute a defect in material or workmanship for the purposes of clause 8.

Any drawing(s) or information (including pricing information) submitted or disclosed to the Customer by the Company is the subject of copyright and is confidential and may not be copied, used in any way, reverse engineered or disclosed to any person by the Customer without the prior written consent of, and in the manner permitted by, the Company in its absolute discretion.

Notwithstanding anything herein to the contrary, from time-to-time versions of Software or Goods may become obsolete (and no longer available for purchase or license from Company), as determined by Company in its sole discretion. In such event, Company shall not be obligated to fulfill orders for such obsolete Software or Goods, and Company will offer Customer the next generation software or good or new version of the software or good, if any is available, on terms no less reasonable overall than such terms as Company offers to third parties. If Customer does not procure the next generation software or good or the new version of the software or good if any is available, or if none is available, then Company shall have no further obligation with respect to pending orders for such obsolete Software and Goods, and shall (after expiry of the applicable Warranty Period for such obsolete Software previously licensed to Customer or obsolete Goods previously purchased by Customer) no longer be obligated to perform any support Services being purchased hereunder to the extent related to the obsolete Software or Goods.

Notwithstanding anything herein to the contrary, from time to time third party software, components, features, and/or applications (collectively, **Third Party End of Life Products**) within Software or Goods may cease to be provided by the third party. In such event, and provided the paragraph above does not apply, Company shall not be obligated to continue offering said Third Party End of Life Products after the end of life date provided by the third party. In the event (i) the third party offers a next generation or new version of the Third Party End of Life Products, on terms acceptable to Company and (ii) inclusion of the next generation or new version is, in Company's discretion, commercially reasonable (the analysis of which can include considerations such as technical compatibility) to incorporate into the applicable Software or Goods, the Company will incorporate the next generation or new version into the applicable Software or Goods and will offer same to Customer on terms no less reasonable overall than such terms as Company offers to third parties. If Customer does not procure the Software or Good with the next generation or new feature or application, if any is available, or if none is available, then Company shall have no further obligation with respect to pending orders for the affected Software or Goods, and shall no longer be obligated to perform any support Services being purchased hereunder to the extent related to the Third Party End of Life Products.

10 ADDITIONS TO OR CHANGES IN CONTRACT

If any additions or modifications to the Goods or Services (as applicable) to be supplied are required by the Customer, the price quoted will be adjusted accordingly and will remain subject to these General Conditions of Supply.

11 CANCELLATION OF ORDERS

Orders accepted by the Company cannot be cancelled or items purchased from the Company returned, other than with the prior written consent of the Company, at its sole discretion, and otherwise in accordance with these General Conditions of Supply. If written consent is given for the return of Goods the Goods must be unused and in resaleable condition. In the event that the Company permits the cancellation of an order, the Customer upon notice must pay all reasonable costs incurred by the Company arising from the cancellation, in addition to a cancellation fee equivalent to 20% of the original Order value or \$500, whichever value is greater.

12 TAXES

Company shall be responsible for all corporate and individual taxes measured by net income due to performance of or payment for work under this Contract (**Company Taxes**). Customer shall be responsible for all taxes, duties, tariffs, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or goods and services or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Customer or Company or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Company Taxes (**Customer Taxes**). The Contract price does not include the amount of any Customer Taxes. If Customer deducts or withholds Customer Taxes, Customer shall pay additional amounts so that Company receives the full Contract price without reduction for Customer Taxes. Customer shall provide to Company, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

If GST is imposed on any Supply made under or in accordance with the Contract, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply, at the same time and in the same way as payment of the Taxable Supply is required to be made.

13 DISPUTE RESOLUTION

If any dispute arises between the parties arising out of, or in connection with, the Contract, including its construction, effect, the rights and obligations of the parties, the performance, breach, rescission or termination of the Contract, the entitlement of any party to damages or compensation (whether for breach of contract, tort or any other cause of action) or the amount of that entitlement (**Dispute**), the party claiming that a Dispute has arisen must deliver to the other party a notice containing particulars of the Dispute (**Dispute Notice**) within 10 Business Days of the party becoming aware of the matters giving rise to the Dispute. During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period as agreed, in writing, by the parties (**Initial Period**), each of the parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation. If the parties are unable to resolve the Dispute within the Initial Period, the Dispute must be referred to the respective Senior Management (or their nominees) of the parties. The parties must ensure that the Senior Management (or their nominees) appointed:

- (a) have authority to negotiate and, if appropriate, enter into a binding agreement on behalf of the relevant party;
- (b) meet promptly (and in any event within 3 Business Days) after the matter is referred to them; and
- (c) use their reasonable endeavours and act in good faith to resolve the matter within 5 Business Days after the matter is referred to them or any longer period agreed in writing by the parties to the Dispute.

If the Senior Management (or their nominees) have been unable to resolve the Dispute within the period stated above, then the parties must submit the Dispute to mediation administered by the Australian Commercial Disputes Centre (**ACDC**) in accordance with the ACDC Guidelines for Commercial Mediation (**Rules**), which Rules are taken to be incorporated into the Contract. A party may not commence court proceedings in respect of a Dispute unless it has complied with this clause and until the procedures in this clause have been followed in full, except where the party seeks injunctive relief in relation to a Dispute from an appropriate court or following those procedures would mean that a limitation period for a cause of action relevant to the issues in dispute will expire.

14 PAYMENT

Payment for Goods and Services will become due in full thirty (30) calendar days from the date on which the Company provides the Customer with a tax invoice in respect of the relevant Goods and Services. Punctual payment is of the essence in each contract between the Company and the Customer. The Customer relinquishes any right to set off any amounts mutually due.

If the Customer defaults in the payment of any money payable under these terms and conditions, the Contract or any other agreement between the Company and the Customer, then the Company may do one or both of the following:

- (a) suspend performance of its obligations under these terms and conditions, the Contract or any other agreement between the Company and the Customer until all amounts owing by the Customer to the Company (whether under these terms and conditions or otherwise and whether or not actually payable at that time) are paid in full;
- (b) charge interest on the amount outstanding at the 6% p.a. accruing daily from and including the due date for payment until the date of payment in full;
- (c) enter the Customer's premises and remove and take into its possession the Goods to which the overdue payment relates (and the Customer hereby consents to such entry and to the Company taking any action necessary to take possession of such Goods and indemnifies the Company for any loss or damage incurred in taking such action);
- (d) take a general lien on all of the Customer's property in the Company's possession to cover the amount unpaid; and/or
- (e) recover from the Customer, in addition to the outstanding amount, all costs incurred by Company in collection of the outstanding amount including, without limitation, all legal costs (on a solicitor and own client basis) and all debt collection agency costs.

15 LIMITATIONS OF LIABILITY

- (a) Subject to clauses 16 to 18 (inclusive) and to the maximum extent permitted by law, the Company is not liable to the Customer or to any other person for:

- (i) any loss (whether direct or indirect) or damage of any kind caused by or resulting from any act or omission of the Company or any of its employees, agents or contractors; or
- (ii) any loss of profits or anticipated profits, loss of revenue, economic loss, loss of use, loss of business opportunity, loss or damage or wasted management time or any special, incidental, indirect or other consequential loss or damage, even if notified of the possibility of that potential loss or damage and irrespective of whether it is due to negligence, breach of contract, tort or any other cause.

(b) Without limiting clause 15(a) and clauses 16 to 18 (inclusive), to the extent the Company is liable to the Customer or to any other person in connection with this Contract:

- (i) subject to clause 15(b)(ii), the liability of Company on any single claim of any kind arising from or related to the formation, performance or breach of this Contract, or any Goods, Software, or Services, shall not exceed One Million Australian Dollars (AUD\$1,000,000.00) or the amount of price actually paid to the Company, whichever is less;
- (ii) the total liability of Company for all claims of any kind in connection with, arising from or related to the formation, performance or breach of the Contract, or any Goods, Software or Services shall not exceed in the aggregate: (i) the total amount of the price actually paid to Company under this Contract, or (ii) if Customer places multiple order(s), then with respect to all claims arising from or related to a particular order, the amount of the price applicable to such order that has actually been paid to the Company.

16 EXCLUSION OF IMPLIED WARRANTIES

Any guarantee, representation, warranty, condition or undertaking that would be implied in these terms and conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

Nothing in these terms and conditions excludes, restricts or modifies any guarantee, condition, warranty, right or remedy conferred on the Customer by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified.

Company specifically disclaims any representation or warranty that: (a) Software will operate uninterrupted or error-free or will meet Customer's specific needs; (b) Software will detect any particular failure, fault, or condition, or provide any particular degree of advance warning of an impending failure, fault or condition of the monitored equipment; or (c) Software will provide complete or comprehensive protection against all possible security vulnerabilities, unauthorized intrusions, or any other form of security threat, compromise or vulnerability, whether known or unknown, foreseeable or unforeseeable. Any products, services or software not expressly included in Company's scope of responsibilities in the Contract are excluded.

17 LIABILITY FOR BREACH OF NON EXCLUDABLE RIGHTS

To the maximum extent permitted by law, the liability of the Company for a breach of a non-excludable guarantee, condition or warranty referred to in clause 16 is limited, at the Company's option, to any one or more of the following:

- (a) in the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
 - (i) the re-supply of Services; or
 - (ii) the payment of the cost of having replacement services or equivalent.

18 INDEMNITY

The Customer must indemnify the Company against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Company or which the Company may pay, sustain or incur as a direct or indirect result of any one or more of the following which include, but are not limited to:

- (a) any breach or non-performance of these terms and conditions by the Customer;
- (b) any wrongful, wilful or negligent act or omission of the Customer or any of its employees, agents or contractors;
- (c) the storage, handling or use of any Goods, Software and/or Services sold under or in connection with these terms and conditions, except to the extent that the relevant action, claim, proceeding, demand, liability, loss, damage, expense or cost was caused by the wrongful, wilful or negligent act or omission of the Company or any of its employees, agents or contractors; and
- (d) any injury or loss sustained by any person who is employed or engaged by the Customer as an employee, agent or contractor for the purpose of (possibly among other things) the performance by the Customer of its obligations under these terms and conditions and who suffers any injury or loss arising out of or in the course of such employment or engagement.

19 DEFAULT AND TERMINATION

- (a) If an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Relevant Party**), the other party may give a notice (**Default Notice**) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 5 Business Days (or such longer period as agreed by the parties acting reasonably and having regard to the nature of the default) after the Default Notice is given to the Relevant Party.
- (b) If a party (**Defaulting Party**) receives a Default Notice and does not comply with the notice within the relevant period referred to in clause 19(a) or is the subject of an Insolvency Event, then the other party, without limiting its other rights and remedies, may terminate the Contract by giving to the Defaulting Party notice with immediate effect (**Termination Notice**).
- (c) The Company may at any time by giving not less than one month's notice to the Customer terminate the Contract for any reason.

- (d) On termination of the Contract, the Contract is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the date of termination.
- (e) Despite any other provision of the Contract, on termination of the Contract:
 - (i) all orders (whether or not accepted by the Company at the time of termination) will be automatically cancelled, except to the extent otherwise directed in writing by the Company; and
 - (ii) the Customer must within 5 Business Days, pay the Company all amounts owing by the Customer to the Company, whether due at that time or not.

20 INTELLECTUAL PROPERTY RIGHTS

- (a) The Customer acknowledges and agrees that all Intellectual Property Rights in the Goods and Services are owned or entitled to be owned by the Company or a Related Body Corporate of the Company. All new Intellectual Property Rights conceived or created by Company in performing the Contract, whether alone or with contribution from Customer, shall be owned exclusively by Company. Customer agrees to deliver assignment documentation necessary to achieve that result.
- (b) The Customer must:
 - (i) only use the Intellectual Property Rights in accordance with the reasonable written directions of the Company and to the extent required in order to comply with its obligations under the Contract;
 - (ii) not license any of the Intellectual Property Rights to or allow the use of any of the Intellectual Property Rights by any other person in any circumstances;
 - (iii) not use the Wabtec Trade Identification in conjunction with or as part of any other trade marks, names or words, without the prior written consent of the Company;
 - (iv) at all times maintain the distinctiveness of and reputation associated with the Wabtec Trade Identification as reasonably required by the Company;
 - (v) immediately notify the Company of, and comply with the Company's directions in relation to, any issue, claim, demand, threat, notice of proceedings or cause of action (whether contingent, accrued or otherwise) against or involving the Customer relating to any Intellectual Property Rights; and
 - (vi) do all other acts and things that may be reasonably required by the Company to ensure the protection of the Intellectual Property Rights.

21. DATA & SOFTWARE

- (a) All Data and Software is proprietary to and shall remain the sole property of Company. Customer is granted a limited license for any Data and Software delivered by Company to Customer, whether as part of any Good or separately. This limited, non-exclusive, non-transferable, revocable, personal license allows Customer to use Data and Software for Customer's Internal Business Purposes solely related to the purpose and intended use of the Goods for which the Data and Software are provided, or according to applicable Software specifications. With respect to any Software, the limited license permits Customer: (i) to use the Software only on the Goods on which it is installed at the time of delivery or on which it is permitted to be installed as stated in the Contract; or (ii) if the Software is supplied separately for use in relation to specific assets or operations of Customer, to use the Software only in relation to such specific assets or operations of Customer, and only for the ordinary purpose for which Wabtec designed the Software. Further, if the Software is supplied separately, Customer may make one copy of the Software in machine-readable form solely for backup purposes. In no event is any license or right granted in the source code for any Software.
- (b) Customer may not distribute copies of the Data or Software to others. Company and Customer acknowledge that the Data and Software are provided and protected pursuant to contractual obligations, and may be further protected by copyright, trade secret, and patent laws of the United States of America (and by applicable international treaties). Customer may not decompile, reverse engineer, disassemble, or reduce any Software to a human-perceivable form. Customer may not modify, adapt, translate, lease, loan, resell, distribute or create derivative works based upon the Software, the Data or any part thereof, including the look and feel of any Software, and must not otherwise commercially exploit the Software or Data or make the Software or Data available to any third party.
- (c) Except to the extent Company has given prior written consent to Customer to permit the sharing of Data with a specified third party for the limited purposes of maintaining and/or optimizing Customer use of Software and/or related systems and/or to achieve compliance of Customer with applicable law and/or regulation, Customer shall not: (i) allow any third party to access Data, such as, but not limited to, intercepting equipment data streams, particularly during operation of equipment; and/or (ii) use Data or Software, or provide Data or Software to any other person, for the design, manufacture, repair, or maintenance of any products or processes. Customer shall not use Data or Software in the creation, manufacture, development, or derivation of repair and maintenance processes, modifications, spare parts, designs or configuration changes, or to obtain any regulatory approval of any of the foregoing. Nothing herein shall prohibit Customer from forward selling a Good acquired hereunder in which applicable Software is installed. Nothing herein shall obligate the Company to provide any support, upgrade or revision to any Software, except as otherwise agreed in writing between Customer and Company or otherwise required by applicable law and/or regulation.
- (d) Company does not represent that the Goods or Software are compatible with any specific third-party hardware or software, other than as expressly specified in a writing signed by Company. Customer is responsible for providing and maintaining an operating environment that meets the minimum standards specified by Company.
- (e) With respect to any data or information that Company receives from Customer (**Customer Data**), Company is granted a non-exclusive, perpetual, irrevocable, worldwide limited license to use any such Customer Data for Company's internal business purposes, which includes, without limitation, maintenance, development, research, upgrade or improvement of products, software and services.

22 FORCE MAJEURE

The obligations of the Company will be suspended during the time and to the extent that the Company is prevented from or delayed in complying with those obligations as a result of a Force Majeure Event. If the Company is affected by a Force Majeure Event, it must:

- (a) as soon as reasonably possible after being affected give the Customer particulars of the Force Majeure Event and the manner in which the Company's performance of its obligations will be prevented or delayed; and
- (b) take reasonable steps to remove, overcome or minimise the effects of the Force Majeure Event, except that the Company is not obliged to settle a strike, lockout or other labour difficulty.

23 GOVERNING LAW

The Contract is governed by and must be construed in accordance with the laws in force in New South Wales, Australia. The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Contract, its performance or subject matter.

24 CONFIDENTIALITY

- (a) Company and Customer (as to information disclosed, the **Disclosing Party**) may each provide the other party (as to information received, the **Receiving Party**) with Confidential Information in connection with this Contract. Company and Customer agree that all Software and Data delivered by Company to Customer, as well as the price or associated fees for Goods, Software and Services shall be considered Company's Confidential Information. Except as set forth below, Company and Customer shall keep confidential, and not disclose or use for any purpose other than performance of the Contract and use of Goods, Software and Services, any Confidential Information of the other Party.
- (b) Clause 24(a) shall not restrict the Receiving Party from disclosing Confidential Information as follows: (i) Company may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract; (ii) a Receiving Party may disclose Confidential Information to its auditors and tax advisors; (iii) Customer may disclose Confidential Information to lenders as necessary for Customer to secure or retain financing needed to perform its obligations under the Contract; (iv) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party; (v) the Receiving Party may disclose Confidential Information in response to a subpoena from a court, arbitration panel, or government or administrative body if it both promptly provides the Disclosing Party with written notice of the discovery request such that the Disclosing Party is able to seek a protective order or other appropriate remedy and cooperates with the Disclosing Party to obtain the protective order or other remedy; in the event that the protective order or other remedy is not obtained, the Receiving Party shall use commercially reasonable efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information; and (vi) to the extent necessary to enforce the Receiving Party's rights under the Contract. For each of these exceptions (i)-(iv) to the general non-disclosure rule set forth in clause 24(b) to apply, the Receiving Party must obtain a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Company may also retain one archive copy of Customer's Confidential Information.
- (c) The obligations under this clause 24 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; or (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information.
- (d) Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Customer nor Company shall make any public announcement about the Contract without prior written approval of the other party.
- (e) Nothing in this clause 24 grants the Receiving Party any license under any invention, patent, trademark or copyright now or later owned or controlled by the Disclosing Party. As to any individual item of Confidential Information, the restrictions of this clause 24 shall expire the earlier of ten (10) years after the date of disclosure or five (5) years after termination or expiration of the Contract. This clause 24 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

25. PERSONAL DATA PROTECTION, CUSTOMER SECURITY OBLIGATIONS, WABTEC SECURITY

- (a) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organizational measures have the meaning attributed to them under the relevant Data Protection Legislation applicable to Company with regard to the Goods, Software and Services provided by Company to the specific Customer. **Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in all relevant jurisdictions, including but not limited to the Privacy Act 1988 (Commonwealth of Australia), EU GDPR, the UK GDPR, the Data Protection Act 2018, California Consumer Privacy Act, Connecticut Data Privacy Act, Colorado Privacy Act, Oregon Consumer Privacy Act, Texas Data Privacy and Security Act, Utah Consumer Privacy Act, and Virginia Consumer Data Protection Act (and regulations made thereunder), each as amended or superseded from time to time.
- (b) The Customer will comply with all applicable requirements of the Data Protection Legislation.
- (c) The parties acknowledge that for the purposes of the Data Protection Legislation, Customer is the Controller and Company is the Processor. Customer will ensure that, where required, it has all necessary appropriate consents and notices in place to enable lawful transfer of applicable Personal Data to Company and processing by Company for the duration and purposes of the Contract.
- (d) Acting as a Processor, Company shall, in relation to any Personal Data processed in connection with the performance by Company of its obligations under the Contract:
 - (i) process that Personal Data only on the documented written instructions of the Customer unless Company is required by local applicable law to otherwise process that Personal Data. Where Company is relying on local applicable law as the basis for

- processing Personal Data, Company shall promptly notify the Customer of this before performing the processing required by the local applicable law unless the local applicable law prohibits Company from so notifying Customer;
- (ii) ensure that it has in place appropriate technical and organizational measures, reviewed and approved by Customer, to protect against unauthorized or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorized or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymizing and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organizational measures adopted by it);
 - (iii) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (iv) assist Customer, at Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - (v) notify Customer without undue delay on becoming aware of a Personal Data Breach;
 - (vi) at the written direction of Customer, delete or return Personal Data and copies thereof to Customer on termination of the Contract unless required by local applicable law to store the Personal Data; and
 - (vii) maintain complete and accurate records and information to demonstrate its compliance with this clause 25.
- (e) Customer agrees to share with its personnel all applicable data protection policies and notices of Company as relevant for Company to perform the Services under the Contract.
 - (f) In order to facilitate Company's investigation of any cybersecurity event involving the Goods or Software, Customer agrees to cooperate with Company in any investigation, litigation, or other action, as deemed necessary by Company to protect Company's or Customer's rights relating to a cybersecurity event.
 - (g) Customer understands and warrants that Customer has an obligation to implement and maintain reasonable and appropriate security measures relating to the Goods or Software, the information used therein, and the network environment. This obligation includes complying with cybersecurity standards and recommended industry practices, including those recommended by any national cybersecurity institution or agency in the Customer's territory, in each case as applicable to Customer in general and/or to the use of the Goods or Software specifically. Without limiting the generality of the foregoing, Customer agrees to comply with all data security laws and standards that apply to Customer generally and/or Customer's use of the Goods or Software specifically, and shall make no attempt to circumvent or interfere with any of Company's security controls integrated within the Goods or Software.
 - (h) If a cybersecurity event occurs, Customer shall, as soon as reasonably practical but in no case more than 24 hours after the event occurs, notify Company of the cybersecurity event. Customer shall promptly use its best efforts to detect, respond and recover from such a cybersecurity event and to mitigate the effect of the event on any Good or Software. Customer shall, at Customer's expense, take reasonable steps to immediately remedy any cybersecurity event and prevent any further cybersecurity event. Customer further agrees that Customer will use its best efforts to preserve forensic data and evidence in its response to a cybersecurity event. Customer will provide and make available this forensic evidence and data to Company. Company shall not be liable for, and Customer shall indemnify, defend, and hold Company harmless against, any and all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees and court costs) suffered by Company as a result of Customer's failure to comply with these terms or Customer's failure to maintain reasonable and appropriate security measures.
 - (i) Company will use commercially reasonable efforts to implement appropriate security measures in compliance with all applicable industry regulations and Company's Third-Party Risk Management Policy and Procedures. If Customer Content includes any data subject to specific legal or regulatory requirements, Customer is responsible for determining whether any Good meets such requirements, except to the extent the Contract expressly identifies specific requirements with which the Good complies.

26 CHANGE IN LAWS

Customer and Company acknowledge that the obligations undertaken by each party hereunder are based on the assumption that as of the date of each Contract and through the term of each Contract there will be no change to or adoption of any governmental (whether federal, state, or local) laws, rules, regulations, or requirements applicable to the Goods, Services, or Software that would adversely affect Company with respect to provision of the Goods or Software or the performance of the Services (for example, implementation of tariffs, duties, or other similar taxes, more stringent emissions requirements, or cyber security regulations) (each a **Change in Law**). Upon the occurrence of a Change in Law, the parties agree to meet and negotiate in good faith to determine any appropriate and reasonable adjustments to the terms of the Contract (including, without limitation, price and delivery/performance timing) to compensate Company for the effects of the Change in Law. In addition, Company will use commercially reasonable efforts to minimize the adverse effect experienced by Company as a result of such Change in Law. If the parties cannot reach agreement on such adjustments within a reasonable period of time, Company may suspend the provision of Goods, the license of Software, and/or the provision of Services until the matter is resolved pursuant to the dispute resolution provision of the Contract. Notwithstanding the foregoing, upon the imposition of tariffs, duties, or other similar taxes on, or in connection with, Goods, Software and/or Services that would directly increase Company's cost in the performance of its responsibilities hereunder, then the applicable Good, Software and/or Service prices shall be automatically increased accordingly to compensate Company for such increased costs.

27 ENTIRE UNDERSTANDING

These terms and conditions (together with any order submitted under them) contain the entire understanding between the parties concerning the subject matter of the Contract and supersedes all prior communications between the parties. Each party acknowledges that, except as expressly stated in these terms and conditions, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of the Contract. 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.

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.

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 Contract. If the Customer is supplying Goods to a third party, or using Goods or Software at a facility owned by a third party, Customer shall either: (i) indemnify and defend Company from and against any and all claims by, and liability to, any such third party in excess of the limitations on liability set forth in this Contract, or (ii) require that the third party agree, for the benefit of and enforceable by the Company, to be bound by the limitations on liability included in this Contract.

28 SEVERABILITY

Any provision of the Contract which is invalid in any jurisdiction must, in relation to that jurisdiction must be read down to the minimum extent necessary to achieve its validity, if applicable, and be severed from the Contract in any other case, without invalidating or affecting the remaining provisions of the Contract or the validity of that provision in any other jurisdiction.

29 SUCCESSORS AND ASSIGNS

This Contract binds and benefits the parties and their respective successors and permitted assigns under clause 30.

30 NO ASSIGNMENT/CHANGE OF OWNERSHIP

A party cannot assign or otherwise transfer the benefit of the Contract without the prior written consent of the other party.

Customer shall notify Company immediately upon any change in ownership of more than fifty percent (50%) of Customer's voting rights or of any controlling interest in Customer. If Customer fails to do so or Company reasonably objects to the change, Company may: (i) terminate the Contract; (ii) require Customer to provide adequate assurance of performance (including but not limited to payment), and/or (iii) put in place special controls regarding Company's Confidential Information.

31 NUCLEAR USE

Goods, Software and Services provided by Company are not intended for use in connection with any nuclear facility or activity, and Customer warrants that it shall not use or permit others to use Goods, Software or Services for such purposes, without the advance written consent of Company. If, in breach of this, any such use occurs, Company (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damage, injury or contamination, and, in addition to any other rights of Company, Customer shall indemnify and hold Company (and its parent, affiliates, suppliers and subcontractors) harmless against all such liability. Consent of Company to any such use, if any, will be conditioned upon additional terms and conditions that Company determines to be acceptable for protection against nuclear liability.

32 NO VARIATION OR WAIVER

This Contract cannot be amended or varied except in writing signed by the parties. A waiver of any right, power or remedy is not valid or binding on the party granting that waiver unless it is in writing signed by the party granting the waiver, and will be effective only to the extent specifically set out in that waiver. Any failure or delay to exercise any right, power or remedy by a party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

33 NOTICES

A notice or other communication required or permitted to be given to a party must be in writing and delivered personally or sent by pre-paid post, email or facsimile to that party's address or facsimile number stated in the relevant part of the Contract or as otherwise notified in writing by that party to each other party from time to time.

A notice or other communication is deemed given:

- (a) if personally delivered, on delivery;
 - (b) if mailed, on the expiration of 2 Business Days after posting;
 - (c) if sent by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause); or
 - (d) if sent by facsimile, on confirmation of successful dispatch by the sender's machine,
- but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next Business Day.

34 SURVIVAL

Clauses 6, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 27, 31, 33 and 34 survive termination and/or expiry of this Contract.

35 DEFINITIONS

For the purposes of these terms and conditions:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales.

Company or Wabtec Australia means Wabtec Australia Pty Ltd ACN 087 058 099.

Confidential Information means information (a) that is made available to the Receiving Party at any time in connection with this Contract, or is derived from such information, and (b) that concerns the business, operations, finances, plans or customers of the Disclosing Party or its affiliates, including where Company is the Disclosing Party, any manuals, price lists or Software.

Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act and **Supplier** means any party treated by the GST Act as making a Supply under these terms and conditions.

Contract means these General Conditions of Supply together with each order submitted by the Customer to the Company in accordance with these General Conditions of Supply.

Corporations Act means *Corporations Act 2001 (Cth)*.

Customer means any person who submits an order for Goods and/or Services to the Company.

Customer Content means any and all data, information, documentation, and software provided by Customer to Company for use in connection with the Goods, excluding: (i) Data, and (ii) any data, information, documentation or Software that Company or an affiliate of Company provides to Customer or an affiliate of Customer pursuant to any other contract. Customer Content shall not include data that has been processed, modified or generated by Company.

Data means all information and data of any type, form or nature (including, but not limited to, data received or processed by the Software, compilations of data, and output such as reports and images created by any Software and/or Good) that may be furnished or made available to Customer, directly or indirectly.

Event of Default means, in relation to a party to the Contract, the occurrence of any one or more of the following events or circumstances:

- (a) the party fails to comply with any of its obligations under the Contract;
- (b) an Insolvency Event occurs in relation to the party (or any person comprising the party);
- (c) a change of control occurs in relation to the party (or any person comprising the party), other than with the consent of each other party;
- (d) a notice of deregistration of the party (or any person comprising the party) is given under the Corporations Act;
- (e) the party fails to pay by the due date any amount due and payable by it under the Contract;
- (f) the party becomes unable to perform all of its obligations and take all actions contemplated under the Contract; and
- (g) the party ceases or threatens to cease to carry on business or a substantial part of it.

Force Majeure Event means any act, event or cause, other than a lack of funds:

- (a) as a direct or indirect result of which, the party relying on it is prevented from or delayed in performing any of its obligations under the Contract; and
- (b) that is beyond the reasonable control of that party.

Goods means the goods supplied by the Company as set out in a relevant order.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvency Event means, in relation to a party to the Contract, any one or more of the following events or circumstances occurring in relation to the party (or any person comprising the party):

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- (g) any analogous event or circumstance under the laws of any jurisdiction.

Intellectual Property Rights means all present and future intellectual and industrial property rights in the Goods, Software and/or Services conferred by law and wherever existing, including:

- (a) the Wabtec Trade Identification;
- (b) patents, designs, copyright, rights in circuit layouts, know how, domain names, inventions, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (c) any application or right to apply for registration of any of these rights;
- (d) any registration of any of these rights or any registration of any application referred to in paragraph (c); and
- (e) all renewals and extensions of these rights.

Internal Business Purposes means the internal ordinary course business operations of Customer; provided however "Internal Business Purposes" exclude any 1) expansion in or to operations occurring due to a business merger or acquisition, 2) fleet addition or rail network expansion, 3) management or servicing of a third party's fleet, equipment or assets, or 4) infrastructure acquisition or development after the date of the Contract.

Related Body Corporate has the meaning given in the Corporations Act.

Services means any services provided by the Company to the Customer in respect of the Goods as set out in an order (including any repair and maintenance services).

Software means a computer program, and the Data handled by such computer program, that is fixed in any tangible medium of expression or any storage medium and shall include Company's proprietary software, such as that software provided for operation of the Goods.

Wabtec Trade Identification means the trade marks, service marks, symbols, branding, logos and other trade indicia (whether registered or not) owned or controlled by the Company or any of its Related Bodies Corporate and used in connection with the business conducted by the Company and its Related Bodies Corporate under the "Wabtec" name (or any name which replaces the that name).

Warranty Period means:

- (a) the period that is 12 months from the date on which the Goods were shipped by the Company to the point of delivery;
- (b) in the case of any spare parts forming part of the Goods (or provided to the Customer in order to repair or replace the Goods), 6 months (whether those parts are related to electronics, pneumatics or otherwise) from the date on which the relevant parts were shipped by the Company to the point of delivery;
- (c) in respect of Services, three (3) months from performance of the applicable Service;
- (c) for Software provided separately, three (3) months from the date on which the relevant version of the Software was initially made available to Customer.
- (d) notwithstanding the foregoing, the warranty period for ongoing Services such as support Services or Software-as-a-Service (including, without limitation, any Goods, Software and other deliverables provided as part of such Services) shall be concurrent and co-terminus with the term of the Contract for such services.