GENESEE & WYOMING AUSTRALIA - PURCHASE ORDER TERMS AND CONDITIONS

SUPPLY OF GOODS AND/OR SERVICES

1. TERMS

1.1 The Company has engaged the Supplier to provide the Goods and/or Services.

1.2 The Supplier has agreed to provide the Goods and/or Services specified in the Purchase Order in accordance with these terms and conditions.

1.3 Where the Purchase Order is:

(a) issued pursuant to a contract between the parties, to the extent of any inconsistency with the Purchase Order and the terms of that contract, the terms of that contract take precedence; and

(b) not issued pursuant to a contract between the parties, this Purchase Order comprises the entire agreement between the parties, and all prior agreements between the parties in relation to the subject matter of the Purchase Order (including any terms and conditions printed on consignment notes or other documents) will be superseded and have no legal effect (including where a Company representative signs any such previous document/s and/or annexes such document/s to the Purchase Order).

2. SUPPLY OF GOODS AND/OR SERVICES

2.1 The Supplier must in supplying the Goods or performing the Services:

(a) use the reasonable skill, care and diligence expected of a professional supplier in the relevant field in which the Supplier has been engaged;

(b) not interfere with the Company's activities or the activities of any other person at the Delivery Address;

(c) comply with (and ensure that the Supplier's employees, agents, consultants and sub-suppliers comply with):

(i) all applicable Laws;

(ii) all Company Standards and Procedures and any relevant standard of Standards Australia (to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Supplier); and

(iii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Supplier;

(d) ensure that the Supplier's employees, agents, consultants and sub-suppliers entering the Company's premises perform their work activities and are properly qualified for, and skilled in, the performance of their tasks so as not to prejudice:

(i) safe working practices;

(ii) safety and care of property; and

(iii) continuity of the Company's business activities; and

(e) provide all such information and assistance as the Company reasonably requires in connection with any statutory investigation or other matter required by Law in connection with the supply of the Goods or the performance of the Services.

3. QUALITY

3.1 The Goods and/or Services must match the description referred to in the Purchase Order.

3.2 If the Supplier gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

3.3 The Goods and/or Services must be fit for the purpose for which they are intended.

3.4 The Goods must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.

4. DELIVERY

4.1 The Supplier must deliver the Goods to, and/or perform the Services at, the Delivery Address by the Delivery Date.

4.2 The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage.

4.3 Packages must be marked with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.

5. TITLE AND RISK

5.1 Title in the Goods passes to the Company upon payment of the Price.

5.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address.

6. PRICE

6.1 The Company must pay the Supplier the Price for the Goods and/or Services.

6.2 The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the goods and the cost of any items used or supplied in the performance of the Services.

6.3 The Price is inclusive of all taxes and duties, except GST.

7. GST

7.1 If GST is imposed on any supply made by the Supplier under or in connection with this Purchase Order, the Supplier may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.

7.2 The Supplier must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Supplier.

8. INVOICING

8.1 Upon delivery of the Goods and/or completion of the Services, the Supplier must provide to the Company a valid tax invoice which must include the information set out in clause 8.2.

8.2 Supplier invoices must include the following details:

(a) a reference to this Purchase Order and the contract (if any);

(b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;

(c) an individual reference number for the Company to quote with remittance of payment;

(d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order; and

(e) the amount of any applicable GST.

8.3 If the Company requests, the Supplier must provide the Company with all relevant records to calculate and verify the amount set out in any invoice.

8.4 The Company is not obliged to approve any invoice submitted in accordance with clause 8.1 and may withhold approval and/or money due to the Supplier under this Purchase Order if the Goods or Services (or any part of them) are Defective.

8.5 Subject to clause 8.6, the Company will pay all invoices that comply with clause 8.2 within 30 days of the end of the month of their receipt, except where the Company disputes the invoice, in which case:

(a) the Company may withhold payment pending resolution of the dispute; and

(b) if the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company must pay that amount upon resolution of that dispute.

8.6 The Company may reduce any payment due to the Supplier pursuant to this Purchase Order by any amount which the Supplier must pay the Company, including costs, charges, damages and expenses and any debts owed by the Supplier to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

9. INDEMNITY AND INSURANCE

9.1 Subject to clause 9.2, the Supplier will indemnify and keep indemnified the Company (and its employees, agents, consultants and sub-suppliers) from and against Loss in connection with:

(a) loss of or damage to property;

(b) personal injury or death;

(c) any actual or alleged infringement of any intellectual property rights; or

(d) any breach of this Purchase Order or Law,

arising out of or as a consequence of the Supplier supplying the Goods and/or performing the Services.

9.2 The indemnity provided by the Supplier in clause 9.1 shall be reduced proportionally to the extent that a negligent act or omission of, or breach of this Purchase Order by, the Company (or others for whom it is responsible) contributes to the Loss referred to in clause 9.1.

9.3 The indemnities provided by the Supplier in this clause 9 continue to apply regardless after the supply of the Goods and/or performance of the Services.

9.4 The Supplier must effect and maintain policies of insurance for amounts generally held by a professional and competent supplier of the goods and/or services for which the Supplier has been engaged.

9.5 Upon request, the Supplier must provide the Company with a true and correct copy of any certificates of insurance.

10. LIMITATION OF LIABILITY

10.1 Except to the extent required by Law, neither party has any liability (including, without limitation, in equity, contract or tort, including negligence) to the other party or any other person for any loss of profits, income or savings, or for indirect, special or consequential damage, loss, cost or expense or analogous loss suffered by the other party (including its employees, agents, consultants and sub-suppliers).

10.2 Subject to clauses 10.1 and 10.3, the Supplier's maximum aggregate liability to the Company under or in connection with this document shall not exceed the greater of:

(a) the Price payable in relation to the Purchase Order relating to that claim; and

(b) the amount of $100,000,

for each supply of Goods and/or Services (as the case may be).

10.3 Clause 10.2 does not apply to or limit any liabilities arising from:

(a) personal injury or death;

(b) infringement of any intellectual property rights;

(c) any loss of or damage to property (including the resultant loss of use of such lost or damaged property);

(d) wilful misconduct or fraudulent, malicious or criminal conduct;

(e) any breach of this Purchase Order or Law; and

(f) liability to the extent that the Supplier is or would have been entitled to be paid or indemnified for the liability by an insurer under any policy of insurance effected under clause 9 if the Supplier had:

(i) effected and maintained the insurance policy (where it was the Supplier’s obligation under this Purchase Order to do so);

(ii) promptly claimed, and diligently pursued such claim, under the insurance policy; and

(iii) complied with the terms and conditions of the insurance policy and the Supplier’s obligations under this Purchase Order in respect of that insurance policy.

11. WARRANTY PERIOD

11.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:

(a) return the Defective Goods to the Supplier;

(b) reject the Defective Services;

(c) repair or make good the Defective Goods; or

(d) re-perform or make good the Defective Services.

11.2 The Supplier must (at its cost):

(a) repair or replace the Defective Goods;

(b) re-perform or make good the Defective Services; or

(c) reimburse the Company for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services,

if requested to do so by the Company.

12. INTELLECTUAL PROPERTY RIGHTS

12.1 Title to all intellectual property rights held by the Company and Supplier prior to the date of issue of the Purchase Order will remain the property of that party.

12.2 Each party grants to the other party a non-exclusive, transferable, sub-licensable, royalty-free licence to use, modify, enhance, alter or decompose such intellectual property rights as are required for the purpose of performing the Purchase Order.

12.3 All intellectual property rights in anything created by the Supplier in the course of performing the Purchase Order vest immediately in the Company upon their creation.

12.4 Upon the creation of any intellectual property rights created in accordance with clause 12.3, the Company grants to the Supplier a non-exclusive, revocable, transferable, sub-licensable, royalty-free licence to use those intellectual property rights to perform its obligations under this Purchase Order.

12.5 The Supplier must not use the Company's name or any materials associated with this document for advertising or promotional purposes without the Company's prior written consent.

13. CONFIDENTIALITY

13.1 The Purchase Order and any information in relation to the Purchase Order is confidential to the Company.

13.2 The Supplier must not disclose the Purchase Order or any information in relation to the Purchase Order without the Company's prior written consent unless the Supplier is required to do so:

(a) to its employees, agents, consultants and sub-suppliers in order to fulfil its obligations under the Purchase Order; or

(b) by Law.

14. VARIATIONS

Any variations to the Purchase Order must be issued in writing by an authorised representative of the Company.

15. TERMINATION

The Company may terminate the Purchase Order at any time with immediate effect by notice to the Supplier. Upon such termination, the Company must pay the Supplier the amount not yet paid for Goods and/or Services provided up to the termination date.

16. GOVERNING LAW

The laws applicable in and courts of South Australia apply to and have jurisdiction in relation to the Purchase Order.

17. DEFINITIONS

Company means the Genesee & Wyoming Australia entity named in the Purchaser Order.

Company Standards and Procedures means any standards, procedures, guidelines, rules, requirements or site specific conditions which the Company makes available to the Supplier from time to time.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery Address means the place for delivery specified on the Purchase Order.

Delivery Date means the date specified in the Purchase Order for the delivery of the Goods and/or completion of the Services.

Goods means the goods, if any, described in the Purchase Order.

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Law means:

(a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations (including the Rail Safety Legislation);

(b) common law and equity;

(c) guideline of Authorities with which the supplier is legally required to comply; and

(d) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals).

Loss means any losses, damages, costs, liability, charges and expenses.

Purchase Order means the purchase order for Goods and/or Services (including these terms and conditions) issued by the Company to the Supplier from time to time containing, amongst other things, a description of the Goods and/or Services.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Rail Safety Legislation means the *Rail Safety National Law (South Australia) Act 2012* (SA) and any associated regulations.

Services means the services, if any, described on the Purchase Order.

Supplier means the party identified as such in the Purchase Order.

terms and conditions means these terms and conditions.

Warranty Period means the period of 12 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Service is performed.