

Terms and Conditions of Sale

1 DEFINITIONS

1.1 In these Terms of sale:

"Authorised Officer" means a person authorised by Us;

"Contract" means the contract for the supply of Goods and/or Services made by Us with You incorporating the Terms;

"Goods" means (as appropriate) the goods to be supplied by Us pursuant to a Contract;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"in writing" includes faxes, scans and emails;

"Services" means any work and/or services to be performed by Us in relation to the Supplies pursuant to a Contract;

"Supplies" means any products or goods supplied by or on behalf of You in respect of which Services are to be (or have been) performed by Us;

"Terms" means these terms and any special terms agreed in writing between an Authorised Officer and You;

"We", "Us", "Seller" and "Our" means Hird Rail Development Ltd of Clifford House, Lady Bank Drive, Lakeside, Doncaster DN4 3AB registered in England and Wales with company number 07641747;

"Working Day" means Monday – Friday except for any day that is a statutory bank holiday in England;

"You" or "Buyer" means the party, their employees and agents who provide Us/Seller with a Purchase Order or other procurement document seeking to purchase Goods or Services pursuant to a Contract which is not subject to Consumer Rights legislation protection and "Your" shall be interpreted accordingly.

THESE TERMS DO NOT APPLY IF YOU ARE A CONSUMER i.e. ANY NATURAL PERSON ACTING FOR PURPOSES OUTSIDE HIS/HER TRADE, BUSINESS OR PROFESSION. HEALTH AND SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS AVAILABLE AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.

1.2 These Terms shall be interpreted according to the following provisions:

1.2.1 a person includes a natural person, corporate or unincorporated body;

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and

1.2.4 any phrase introduced by these Terms including any similar expression shall be construed as illustrative and shall not limit the sense of any words which precede where these Terms are used in this document.

2 THE CONTRACT

2.1 These Terms and Conditions of Sale (Hird Rail Development Terms and Conditions of Sale) apply to all quotations and offers made by and purchase orders performed by Seller. To the extent that the Seller Terms and Conditions conflict with or are different from those contained in any Buyer purchase order or other procurement document, the Seller Terms and Conditions will control and any additional or inconsistent terms are rejected by Seller unless Seller's acceptance thereof is in writing and specifically refers to each such additional term. Any contrary or additional terms unless so agreed are excluded to the intent that the Contract shall constitute the entire agreement between the parties, and You shall not be entitled to rely on any statement, promise or representation made or given by or on Our behalf which is not set out in the Contract.

2.2 Your acceptance of delivery or payment for the Goods shall (without prejudice to Condition 2.4 or any other manner in which acceptance of these Terms may be evidenced) conclusively confirm Your assent to the Our Terms and Conditions of Sale.

2.3 Quotations do not constitute an offer and shall lapse on expiry of the stated period or, if none, 20 Working Days from the date of the quotation. We reserve the right to withdraw or revise a quotation at any time before accepting an order.

2.4 Our acceptance of any order shall be effective and become a Contract only where Our standard order acknowledgement is received by You. Where Goods are offered to You FCA Sellers Premises Our ability to supply You is subject to such Goods being unsold upon receipt of a written order from You.

2.5 We shall not be liable for any misrepresentation made by Us to You as to the condition of the Goods, their fitness for purpose, their physical characteristics, properties or tolerances or as to quantity, dimensions, measurements, weights or specification unless the representation is made or confirmed in writing by an Authorised Officer and/or is fraudulent.

2.6 Without prejudice to Condition 2.5 while We take every precaution in the preparation of Our catalogues, technical circulars, price lists and other literature including electronic information, these documents and data are for Your general guidance only and statements made and illustrations contained therein (in the absence of fraud on Our part) shall not form part of the Contract nor constitute representations by Us and We shall not be bound by them. If You require advice in relation to the Goods a specific request for advice should be made and any advice made or confirmed in writing by an Authorised Officer in response to such a request shall amount to a representation.

2.7 Any claim for damages under Conditions 2.5 and/or 2.6 is subject to Condition 9.

2.8 Our sales are not a sale by sample, and no warranty or representation is given that Goods delivered will match any samples including photographs submitted or sample panels constructed in all material respects, as samples are drawn from bulk and are representative of the whole.

2.9 You shall be responsible to Us for ensuring the accuracy and completeness of any order including quantities, any delivery dates and applicable design, drawing dimensions, measurements, weights or specification provided by You and for giving Us any necessary information relating to the Goods or Services within a sufficient time to enable Us to perform the Contract in accordance with its Terms. If You fail to notify Us in respect of any error within forty eight hours of receipt of the order specification, We accept no responsibility for any losses or delays incurred by You. We may make changes to the specification of the Goods or Services necessary to conform to any applicable statutory, regulatory or EU requirements or where Goods or Services are supplied to Our specifications which do not materially affect their quality or performance.

2.10 The Contract or any part of it may be extended, delayed or cancelled only with the written agreement of an Authorised Officer. If an order is extended, delayed or cancelled by You whether or not with Our agreement (and without prejudice to any other rights We may have) You will indemnify Us against all losses, damages, costs and expenses We incur as a result of the extension, delay or cancellation including but not limited to the cost of any material, plant or tools used or allocated to the Contract, the cost of storage, the cost of labour and other overheads including a percentage of anticipated profit on the Contract and We reserve the right to resell the Goods without notice to You.

2.11 We reserve the right at any time to correct any clerical, typographical or other similar errors in any tender, invoice, quotation, order acknowledgement or statement or other document issued by Us from time to time.

2.12 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3 PRICE

Our quotations and prices are based on costs prevailing at the time when they are given or agreed and are exclusive of VAT which will be added at the prevailing rate.

4 PAYMENT

- 4.1 Unless otherwise agreed, payment terms are net thirty (30) days from the date of invoice, all invoices are due for payment without deduction or retention.
- 4.2 Seller may require full or partial payment in advance whenever advance payment is advisable as reasonably determined by Seller, based upon the financial condition of Buyer.
- 4.3 Time for payment shall be of the essence of the Contract and We reserve the right to suspend the provision of the Goods or the Services to You where any amounts are overdue under any Contract until all such amounts have been paid.
- 4.4 Any discounts, deductions or rebates agreed are only available if the price is paid and received by the due date.
- 4.5 Credit is granted and may be reviewed at any time at Our discretion. We reserve the right with immediate effect and without prior notice to You to refuse to execute any order or Contract if the arrangements for payment by You or Your credit rating are not satisfactory to Us or Our insurers.
- 4.6 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim which You may have or allege to have for any reason.
- 4.7 If You fail to pay any amount due to Us under any Contract on the due date You may be subject to a late payment charge of the lesser of 1 1/2% per month or the highest interest rate allowable under applicable law. Invoices not paid within sixty (60) days of the invoice may result in an automatic hold on the shipping and production of goods until Your account is current.
- 4.8 Seller will attempt to protect Buyer from raw material increases by holding product prices for the term of the order. Notwithstanding the foregoing, all prices are subject to adjustment by Seller based upon the costs to Seller of raw materials at the time of raw material purchase by the seller. Any change in price resulting from your directed change will be agreed upon prior to change of production equipment and prior to the manufacturer of modified goods.

5 DELIVERY

- Unless otherwise agreed by Us delivery of the Goods shall be FCA Sellers premises – Incoterms 2020. If Goods or Supplies are collected delivery shall be completed when loading is complete at Our premises or at such other location as may be advised by Us before delivery. If We deliver the Goods or Supplies, delivery will occur on arrival at the delivery address which shall be the location set out in the order or such other location as agreed in writing.
- 5.2 Delivery dates are estimates only. Time for delivery of the Goods or Supplies, or performance of the Services shall not be of the essence of the Contract. When We indicate an anticipated delivery or performance date before an order is placed it is based on the workload and availability of materials, labour and equipment at that particular time. This can change by the time an order is placed. We will endeavour to deliver Goods and Supplies and perform Services at the times and dates given, but We do not accept any liability whether consequential or otherwise for any losses or additional costs incurred by You which results from any delay in delivery of Goods or Supplies, or in performance of Services, neither will We accept a cancellation of an order through late delivery or late performance once work on Your order has commenced. We reserve the right to make delivery of Goods or Supplies or perform Services by instalments and tender a separate invoice payable in accordance with Condition 4 in respect of each instalment. Any claim which You may have in respect of one instalment shall not affect Your liability in respect of any other instalment. Any default or breach by Us in respect of any instalment shall not entitle You to cancel any other instalment or to treat the Contract as a whole to have been repudiated.
- 5.3 We shall deliver the Goods or Supplies as near as possible to the delivery address as a safe hard road permits. We reserve the right to refuse to deliver the Goods or Supplies to sites considered at the discretion of the haulier to be unsuitable, in which case Condition 5.5 will apply.
- 5.4 If as part of the Contract with You, We agree to package Goods in a pack or packs to meet Your specific requirements, and You fail to accept or take delivery of such specifically packaged Goods, then We shall invoice You for a re-packaging charge for all such additional work undertaken by Us including packaging to specific requirements and such invoice shall be payable in accordance with Condition 4.
- 5.5 If You fail to take or make arrangements to accept delivery of the Goods or Supplies or if We are unable to deliver because of inadequate access or instructions, We shall invoice You for the Goods and such invoice shall be payable in accordance with Condition 4. If You do not then collect the Goods or Supplies or make arrangements to accept delivery (at Your additional expense) within 20 Working Days from the date of invoice (for which We require payment in any event), We may resell the Goods or Supplies to another customer or destroy or dispose of the Goods or Supplies in any way whatsoever.
- 5.6 Where the Goods or Supplies are to be collected from Our premises You must collect such Goods or Supplies within 20 Working Days of being notified of their availability for collection. If You fail to collect the Goods or Supplies within this time period We shall invoice You for the Goods and Services and such invoice shall be payable in accordance with Condition 4. If You do not then collect the Goods or Supplies within 20 Working Days from the date of invoice (for which We require payment in any event), We may resell the Goods or Supplies to another customer or destroy or dispose of the Goods or Supplies in any way whatsoever and shall invoice You for a storage rent.
- 5.7 Unless otherwise agreed the unloading of the Goods or Supplies is Your responsibility. If We are required to assist or provide unloading facilities or equipment an extra charge will be made.
- 5.8 If Goods or Supplies are to be deposited other than on Your private premises You shall be responsible for notifying Us of all relevant laws, regulations, site rules and other information necessary for Us to make the delivery and shall ensure that the place of delivery is adequate and appropriate for such delivery. If You fail to notify Us in accordance with this Condition 5.8 You will indemnify Us in respect of all losses, damages, costs and expenses We may incur as a result of such failure.
- 5.9 You will indemnify Us in respect of all claims, losses, damages, costs and expenses incurred as a result of loading, unloading or delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such claims, losses, damages, costs and expenses are due to Our negligence.
- 5.10 We will have fulfilled Our contractual obligations in respect of each delivery of Goods or Supplies provided that the quantity actually delivered is not in excess of 5% more or less than the quantity specified in the Contract. You shall pay for the actual quantity delivered and shall not be entitled to reject the Goods or Supplies or any part of them.
- 5.11 We will not be responsible for any failure, interruption or delay in manufacture or delivery that is related to sabotage, fire, flood, explosion, war, act, or priorities granted by request of or for the benefit of, any governmental authority, shortage of raw materials or supplied, acts of God or other causes beyond Seller's reasonable control. We will not be liable for any damages incurred by You as result of delay in shipment.

6 INSPECTION

- 6.1 You shall inspect the Goods or Supplies at the place and time of loading (if collected by You) or unloading (if delivered by Us) but nothing in these Terms shall require You to break packaging and/or unpack Goods or Supplies which are intended to be stored before use (such inspection hereinafter referred to as "Reasonable Inspection").
- 6.2 Unless You advise Us immediately on collection or by endorsing the haulier's receipt note on delivery and written notice is received by Us within three Working Days of loading or unloading (as appropriate) of any claim apparent on Reasonable Inspection for loss or damage in transit, short delivery or failure to conform to the Contract, the Goods or Supplies will be deemed to have been delivered in accordance with the delivery documents and You shall not be entitled to reject the Goods or Supplies.
- 6.3 Our liability for loss or damage in transit or short delivery apparent on Reasonable Inspection is limited to supplying the Goods or Supplies as ordered and We shall not be liable for any damages whatsoever. You remain liable to pay the full invoice price of other Goods or Supplies delivered in accordance with the Contract. Any other claim for damages is subject to Condition 9.
- 6.4 Where We create Goods or provide Services which are not to a standard design of Ours at Your request whether or not to a drawing, design measurement or calculation provided by You We shall seek Your approval of the final design before production. Once the Order is approved You shall be responsible for and shall promptly reimburse Us for any costs We may incur as a result of the implementation of any variations to such design.

7 TITLE AND RISK

7.1 Risk in the Goods shall pass to You when the Goods are delivered or Goods are collected from Sellers Dock, dependant on the Incoterms 2020. The title to Goods supplied by Us (whether separate and identifiable or incorporated in or mixed with other Goods) shall remain with Us until You have paid the agreed price of the Goods (together with any accrued interest at the rate specified in Condition 4.7) and paid any other sums outstanding between You and Us whether in respect of this Contract or any other agreement. For the avoidance of doubt Condition 7.1 and Condition 7.2 shall not apply in respect of any Supplies.

7.2 Until title passes:

- 7.2.1 You shall hold the Goods as Our fiduciary agent and bailee;
- 7.2.2 the Goods shall be stored separately from any other Goods and readily identifiable as Ours and You shall not interfere with any identification marks, labels, batch

numbers or serial numbers on the Goods;

7.2.3 You will notify Your customer that We remain the legal owners of the Goods until title passes in accordance with Condition 7.1 and We reserve the right to label the Goods accordingly;

7.2.4 We agree that You may use or agree to sell the Goods as principal and not as Our agents in the ordinary course of Your business subject to the entire proceeds of any sale or insurance proceeds received in respect of the Goods being held in trust for Us and not mixed with any other monies or paid into an overdrawn bank account and shall at all times be identifiable as Our money;

7.2.5 We agree that You may convert or incorporate the Goods into or mix the Goods with other Goods or materials (the product of such conversion, incorporation or mixture being "the New Goods") on condition that title to the New Goods shall remain with Us until title passes in accordance with Condition 7.1;

7.2.6 You will at Our request and at Your expense assign to Us all rights You may have against Your customer.

7.3 At any time before title to the Goods passes to You (whether or not any payment to You is then overdue or You are otherwise in breach of any obligation to Us), We may (without prejudice to any other of Our rights):

7.3.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which You hereby authorise;

7.3.2 require delivery up to Us of all or any part of the Goods.

7.4 Any property of Yours in Our possession or under Our control and all property supplied to Us by or on behalf of You (including Supplies) is held by Us at Your risk.

7.5 From the time of delivery until title in the Goods passes to You in accordance with Condition 7.1, You shall store the Goods in reasonable conditions so as to maintain the quality of the Goods and You shall insure the Goods for their full value with a reputable insurer and, if We so request, ensure that Our name is noted on the insurance policy. Until title in the Goods passes to You, You shall hold the proceeds of any claim on such insurance policy on trust for Us and shall immediately account to Us with the proceeds.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Services shall be owned by Us.

8.2 You acknowledge that, in respect of any third party Intellectual Property Rights in the Goods and Services, Your use of any such Intellectual Property Rights is conditional on Our obtaining a written licence from the relevant licensor on such terms as will entitle Us to license such rights to You.

8.3 We reserve the copyright in all Our drawings, sketches, plans, prints and other documents or data. No reproduction thereof shall be made without Our permission and neither the drawings nor reproductions thereof shall be transferred to a third party without Our permission.

8.4 No trade mark or name carried on the Goods may be erased or replaced without Our consent.

8.5 All of Our materials, equipment, documents and other property are Our exclusive property.

9 LIABILITIES

9.1 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our negligence or Our liability for fraudulent misrepresentation or any other liability what cannot be excluded or restricted by law.

9.2 Subject to Condition 9.1, We are not liable to You in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or We were advised of the possibility of them in advance:

9.2.1 loss or damage incurred by You as a result of third party claims;

9.2.2 loss of actual or anticipated profits;

9.2.3 loss of business opportunity;

9.2.4 loss of anticipated savings;

9.2.5 loss of goodwill; and

9.2.6 any indirect, special or consequential loss or damage howsoever caused.

9.3 Our entire liability under or in connection with the use of, supply of or failure to supply the Goods, or Services whether for tort (including negligence), breach of contract breach of statutory duty, misrepresentation or otherwise, is limited, in respect of each event or series of connected events, in the case of the Goods to the repair of the Goods or supply of the replacement Goods or the net amount invoiced to You of the defective, damaged or undelivered Goods which gave rise to such liability or in the case of the Services to the re-performance of such Services.

9.4 Subject to Conditions 9.7 to 9.10 inclusive, where We supply Goods only (and not, for the avoidance of doubt, where We provide any Services in respect of any Supplies), We warrant that:

9.4.1 We have legal title to sell the Goods;

9.4.2 the Goods will be substantially free from defects in materials and workmanship; and

9.4.3 the Goods will comply with their specification.

9.5 Subject to Conditions 9.7 to 9.10 inclusive, where We provide Services in relation to any Supplies (but do not supply any Goods), We warrant that the Services will be performed with reasonable skill and care.

9.6 We do not warrant that the Goods will be fit for any particular purpose even if You advise Us of any purpose for which they may be used in advance.

9.7 We will not be liable under the Contract:

9.7.1 if a defect in the Goods or failure in the provision of the Services would have been apparent on a Reasonable Inspection under Condition 6.1 at the time of loading or unloading (as appropriate) unless You give Us notice in accordance with Condition 6.2;

9.7.2 unless a defect in the Goods or failure in the provision of the Services other than is covered by Condition 9.7.1 is discovered within 60 months of the date of delivery of the Goods or failure in the provision of the Services and We are given written notice of such defect or failure in the provision of the Services within 15 Working Days of it being discovered;

9.7.3 unless after discovery of the defect We are given a reasonable opportunity to inspect the Goods before they are used fixed or in any way interfered with. You may not continue to use the Goods once You have discovered any defect in the Goods or failure in the provision of the Services;

9.7.4 if the defect arises from variations in colour and/or texture or to the appearance of the Goods including but not limited to efflorescence;

9.7.5 if the defect arises as a result of the Goods being used for a purpose or in a manner other than that specified to and agreed by Us or specified by Us;

9.7.6 if the defect arises from fair wear and tear;

9.7.7 if the defect arises as a result of a defect in any Supplies; and/or

9.7.8 if the defect arises from Your or a third party's negligence, mis-use, alteration or repair of the Goods or the Supplies or the Services, failure to follow British Standard or industry code or generally accepted practice or Our instruction relevant to the Goods or the Supplies or the Services, storage of the Goods or the Supplies in unsuitable conditions or use of the Goods or the Supplies or the Services in abnormal working conditions.

9.8 If the Goods are not manufactured by Us or have been processed by a third party whether or not at Our or Your request Our liability in respect of any defect in or arising from the Goods will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.

9.9 If the Goods are supplied manufactured or processed or the Services are performed to a drawing, design, measurement, calculation or specification of Yours or as approved by You or any third person nominating or specifying the Goods whether as provided in Condition 6.4 or otherwise then:

9.9.1 subject to Condition 9.1, We shall not be liable for any defect in such Goods or the performance of Services except in the event of:

a) misrepresentation where the representation was made or confirmed in writing by Us;

b) non-compliance with such drawing, design, measurement, calculation or specification; or

c) breach of a separate written warranty signed by Us that the Goods or the Supplies are fit for a particular purpose.

9.9.2 You will unconditionally fully and effectively indemnify Us against all losses, damages, costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim for infringement of any intellectual property rights of any other person.

9.10 If the Goods are supplied or the Services are performed to a drawing, design, measurement, calculation or specification provided in writing by Us then subject to Condition 9.1 We shall not be liable except in the proportion and to the extent that such damages have resulted primarily from Our breach of Contract or negligence provided that We will not be liable under this Condition 9.10 if:

9.10.1 material information is withheld concealed or misrepresented by You; and/or

9.10.2 the drawing, design, measurement, calculation or specification provided by Us is not in writing signed by one of Our Authorised Officers.

9.11 You will unconditionally fully and effectively indemnify Us against all losses, damages, penalties, costs on an indemnity basis and expenses awarded against or incurred by Us in connection with or paid or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods or the Supplies. This indemnity will be reduced in proportion to the extent that such losses, damages, penalties, costs and expenses are due to Our negligence.

9.12 Except as expressly provided in these Terms all warranties, conditions of other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.13 Where You resell the Goods or the Supplies to a third party and the third party brings any claim against Us, You will provide all reasonable assistance to Us at Your cost to enable Us to defend the claim and You will not make any admission, negotiate or settle any claim without Our prior written consent thereto.

10 CONFIDENTIALITY

10.1 When You or We (Receiving Party) receive technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party, or its employees, agents or subcontractors (Disclosing Party), then such information shall be kept in strict confidence together with any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition 10 shall survive termination of the Contract.

11 ANTI-CORRUPTION

11.1 You will not, and will procure that your employees will not in connection with any contract engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010.

11.2 Breach of this Condition shall be deemed to be a material breach of the Contract which is not capable of remedy for the purposes of Condition 12.

12 DEFAULT AND TERMINATION

12.1 "Insolvent" means You becoming unable to pay Your debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 or You ceasing to pay Your debts in the ordinary course of business or being unable to pay Your debts as they become due or You ceasing or threatening to cease to carry on Your business.

12.2 "Associated Company" means a subsidiary or holding company as defined in Section 1159 of the Companies Act 2006 or a subsidiary of such holding company, or any company over which Our or Your directors or shareholders have control as defined in Section 416 of the Income and Corporation Taxes Act 1988.

12.3 If:

12.3.1 You fail to pay any invoice or sum due to Us or to any of Our Associated Companies under any Contract on the due date; or

12.3.2 Your credit limit is withdrawn or reduced to a level below the amount then outstanding to Us; or

12.3.3 You or Your Associated Company become Insolvent; or

12.3.4 there is a material change in Your or Your Associated Company's constitution or ownership or shareholding; or

12.3.5 You pledge by way of security for any of Your indebtedness any Goods for which title still remains with Us in accordance with condition 7; or

12.3.6 You commit a material breach of the Contract which is not capable of remedy or commit a material breach of the Contract that is capable of remedy but fail to remedy that breach within 7 Working Days after being requested to do so, then all sums outstanding between You and Us under this and any other Contract between You and any of Our Associated Companies shall become immediately due and payable and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):

a) require immediate payment in cleared funds of any outstanding invoice;

b) require payment in cleared funds in advance of further deliveries of Goods or performance of Services;

c) suspend or cancel any further deliveries of Goods or performance of Services to You under any Contract without liability on Our part;

d) resell any Goods ordered by You to any other person;

e) without prejudice to the generality of Condition 7 exercise any of Our rights pursuant to that Condition; and/or

f) terminate this or any other Contract with You without liability on Our part;

g) charge You interest on any sum due or overdue under these Terms at the interest rate set out in Condition 4.7;

h) require the return of the Goods in accordance with Condition 7.3.

12.4 You shall reimburse Our costs including legal costs on an indemnity basis which We incur in enforcing Our rights under the Contract including but not limited to recovery of any sums due.

13 INTERNATIONAL TRADING TERMS

13.1 In these Terms 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

13.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 13 shall (subject to any special terms agreed in writing between You and Us) apply notwithstanding any other provision of these Terms.

13.3 You shall be responsible for complying with any legislation or regulations, including import licences, governing the importation of the Goods into the country of destination and for the payment of any duties on them, and if required shall make licences and consents available to Us prior to the relevant shipment.

13.4 Unless otherwise agreed in writing between You and Us, the Goods shall be delivered DAP Buyers Premises for Goods delivered by sea, and DAP Buyers Premises for Goods delivered by air and We shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

13.5 Where agreed and confirmed in writing by Us, payment of all amounts due to Us under any Contract shall be made by irrevocable letter of credit opened by You in Our favour and confirmed by a bank in the United Kingdom acceptable to Us.

14 GENERAL

14.1 Each Contract shall be governed and interpreted according to the laws of England and Wales and You agree to submit to the exclusive jurisdiction of the English Courts.

14.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

14.3 Except as provided otherwise in these Terms We shall not be deemed to be in breach of contract nor liable for any delays or failures to perform any of Our obligations under any Contract due to any cause beyond Our reasonable control including but not limited to industrial action, import or export regulations or embargoes, restraints or delays affecting carriers, difficulties in obtaining materials, parts, components, labour or fuel, power failure or breakdown in machinery. Should any such event occur We reserve the right to cancel or suspend by notice in writing all or any part of the Contract without incurring any liability and You will be liable to pay for any Goods delivered or Services performed prior to any such cancellation.

14.4 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

14.5 Any written notice to be given under these Terms shall be sent by You to Our Accounts Department, Hird Rail Development Ltd of Clifford House, Lady Bank Drive, Lakeside, Doncaster DN4 5NF, and by Us to You at Your trading address.

14.6 Nothing in these Terms or a Contract is intended to or will create any benefit for or right to enforce any of these Terms to any third party pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.7 If You are an individual or group of individuals You agree that We may process Your personal data in accordance with the Data Protection Act 1998.

14.8 Termination of a Contract shall not affect rights and obligations which have already accrued at the time of termination.

14.9 You may not assign or deal in any way with all or any part of the benefit of Your rights or benefits under a Contract.

14.10 We are entitled at any time to assign or deal with the benefit of any Contract or sub-contract any work relating to any Contract.

14.11 If any Condition or part of these Terms or a Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from these Terms or a Contract and will be ineffective without, as far as is possible, modifying any other Condition or part of these Terms or a Contract and this will not affect any other provisions of these Terms or a Contract which will remain in full force and effect.

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Company Registration No.07641747 VAT Registration No. GB 272 7022 17