

# Northern Rail Limited

## Terms and Conditions of Purchase

### **1. Parties and Defined Terms**

1.1 In this Contract the following words should have the following meanings:

Buyer	<b>shall mean</b> Northern Rail Limited
Conditions	<b>shall mean</b> these Terms and Conditions of Purchase
Contract	<b>shall mean</b> the contract between the Buyer and Seller consisting of the Purchase Order, the Conditions and any documents specified in the Purchase Order
Goods	<b>shall mean</b> all goods specified in the Purchase Order
Purchase Order	<b>shall mean</b> the Buyer's Purchase Order, which specifies that the Conditions apply to it
Seller	<b>shall mean</b> the person, firm or company to whom the Purchase Order is issued
Services	<b>shall mean</b> the services specified in the Purchase Order.

1.2 If there is any inconsistency between the documents comprising the Contract, they shall have precedence in the following order:

- (a) the Purchase Order;
- (b) the Conditions;
- (c) any other documents specified in the Purchase Order.

1.3 This Contract comprises the entire agreement between the parties and replaces any previous agreement relating to the same subject matter. The Conditions shall apply to the Contract to the exclusion of any other terms and conditions proposed by the Seller, and the acceptance of Goods and/or Services by the Buyer shall not constitute acceptance of any terms or conditions of the Seller.

1.4 A Contract shall only come into existence when the Buyer accepts the Seller's offer to provide Goods or Services by placing a Purchase Order. The Buyer does not guarantee to place a Purchase Order or to purchase minimum quantities of Goods or Services from the Seller. Any order acknowledgement sent by the Seller shall be confirmation of receipt of the Purchase Order.

### **2. Quality and fitness for purpose of Goods and Services**

2.1 The seller warrants that all Goods delivered shall:

- (a) be of satisfactory quality and free from defects in material, design or workmanship;
- (b) be fit for the purpose for which the Goods are required. If the Seller has any doubts as to the purpose for which the Buyer requires the Goods, it must seek clarification from the Buyer;
- (c) conform with any specifications, drawings, descriptions and samples referred to in the Contract;
- (d) be free of any third party lien, claim, title or interest; and
- (e) conform with all laws and regulations applicable to the Goods.

2.2 The Seller warrants that the Goods shall be new, and that each item and any component parts comprising the Goods shall be new.

2.3 The Seller warrants that it shall carry out the Services promptly and with all due skill, care and diligence, and that the Services shall be performed by appropriately experienced, qualified and trained personnel.

2.4 The Seller warrants that neither the performance nor the functionality of the Goods nor the provision of the Services shall be affected by dates prior to, during and after the Year 2000.

### **3. Delivery**

3.1 The date for delivery of the Goods or performance of the Services shall be that specified in the Purchase Order. Delivery may only be made in instalments if specified in the Purchase Order. Time shall be of the essence and the Seller shall be responsible for any loss the Buyer suffers because of late delivery or performance of Goods or Services.

3.2 The Seller shall be responsible for packaging the Goods safely so as to protect any item or part during transportation, unloading or storage. The Seller must separately number all cases, packages or items. The Seller shall submit an itemised packing list or delivery note with the Goods showing the packing numbers and the Buyer's Purchase Order Number. The Purchase Order Number and packing numbers must also be shown on the corresponding invoice and monthly statements.

3.3 Any charges for delivery and insurance must be agreed by the parties prior to placement of the Purchase Order and specified separately on the Purchase Order and the Seller's invoice. If the charges for delivery and insurance are not shown separately in the Purchase Order, the price for the Goods shall be inclusive of delivery and insurance.

3.4 The property and risk in the Goods shall remain with the Seller until they are delivered in accordance with the terms of the Contract and shall transfer to the Buyer upon delivery in accordance with its terms. The Seller shall be responsible for insuring the Goods during delivery and unloading.

### **4. Price and Payment**

4.1 The price for the Goods and/or Services shall be as specified in the Purchase Order, unless the Seller's standard charges for the Goods and/or Services are lower on the scheduled delivery date than the prices quoted in the Purchase Order. In this event, the Buyer shall be entitled to purchase the Goods or Services at the lower price.

- 4.2 The Seller warrants that the price for the Goods and/or Services is at least as low as the price at which the Seller is currently selling the Goods and/or Services or similar Goods and/or services in the same or similar quantity and value to its most favoured customers.
- 4.3 VAT shall be payable by the Buyer in addition to the price for the Goods and/or Services where applicable and shall be clearly identified in the Seller's Invoice.
- 4.4 Any advance payments made by the Buyer shall be held by the Seller as a part payment and not as a deposit.
- 4.5 The Seller shall invoice the Buyer upon delivery of the goods or performance of the Services. Payment shall be due at the end of the month following the month in which the Goods are delivered or the Services are performed, subject to receipt by the Buyer of a correctly presented invoice. The Seller shall issue the Buyer with a regular monthly statement showing amounts due or payable in respect of outstanding invoices.
5. **Acceptance**
- 5.1 The Seller acknowledges that a complete inspection of the Goods cannot be made on delivery and agrees that, by taking delivery of the Goods, the Buyer is not agreeing that their delivery constitutes satisfactory performance of the Contract and does not waive or relinquish any rights that it may have against the Seller for failure to discharge its obligations under the Contract.
- 5.2 Where Goods delivered or Services performed by the Seller are defective for any reason, the Buyer shall give notice to the Seller of its rejection of the goods or Services or part of them within a reasonable time of delivery or performance.
- 5.3 Without prejudice to any other remedies available to the Buyer, the Buyer shall have the option to require the Seller to replace defective Goods or re-perform defective Services promptly and at no expense to the Buyer, or to refund to the Buyer and price for the defective Goods or Services. Repaired and replaced Goods, and re-performed Services, shall be subject to the terms of the Contract.
- 5.4 During any warranty period specified in the Contract, software updates and corrections shall be provided by the Seller free of charge.
- 5.5 Without prejudice to any other remedies available to the Buyer in the event that the Goods or Services or any part of them fail at any time to meet the Year 2000 compliance warranty in clause 2.4, the Seller shall use its best endeavours to resolve such problems immediately, including providing replacement Goods or Services that are Year 2000 compliant if required by the Buyer.
6. **Variations**
- 6.1 Any variation to the Contract must be agreed in writing by both parties using the Buyer's order amendment form and must refer to the original Purchase Order Number.
7. **Order Cancellation**
- 7.1 The Buyer shall have the right at any time to cancel any Purchase Order for standard stocked Goods or standard Services at any time prior to delivery without incurring any charge. If the Buyer cancels a Purchase Order for non-standard stocked Goods or Services, the Buyer shall reimburse the Seller's reasonable costs incurred as a result of cancellation.
- 7.2 In addition, the Buyer may terminate the Contract immediately by giving notice in writing to the Seller if the Seller fails to supply the Goods or Services within the delivery times specified in the Purchase Order, or the Buyer reasonably believes at any time that the Seller will not supply the Goods or Services within the delivery time, and the Buyer shall have no further liability to the Seller following cancellation of the Contract for these reasons.
- 8 **Intellectual Property Rights**
- 8.1 The Seller warrants that it is the sole owner of the Goods and has full and unrestricted right and authority to supply the Goods and/or Services to the Buyer on the terms of this contract.
- 8.2 The Seller will indemnify and keep indemnified the Buyer against any claim of infringement of third party intellectual property rights by the Seller's supply of or the Buyer's use of the Goods or Services.
- 9 **Assignment and Sub-Contracting**
- 9.1 The seller shall not without the Buyer's prior written consent assign, transfer or sub-contract the Contract or any of its rights or obligations under the Contract to any third party.
- 10 **Hazardous Goods and Regulatory Requirements**
- 10.1 Any Goods having a toxic hazard or other hazard to the safety of persons or property must be marked by the Seller with appropriate internationally recognised danger symbols clearly identifying the name of the material in English, and the Seller should give the Buyer as much prior written notice as possible of such Goods. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings giving full details of precautions to be taken on the delivery of such Goods and their handling or storage. The Seller shall observe the requirements of the UK and International law relating to the packaging, labelling and carriage of all Goods.
11. **General**
- 11.1 This Contract shall be governed by and construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.
- 11.2 Failure or delay by the Buyer to exercise any of its rights shall not be a waiver or forfeiture of such rights. Any waiver by the Buyer of any term or condition of this Contract or of any breach by the Seller may be terminated by the Buyer at any time and shall not prevent the Buyer from enforcing any term of this Contract or from acting on that or any subsequent breach.