

QUEENSLAND RAIL LIMITED

CONTRACT FOR REPAIRS

1. INTERPRETATION

In these Conditions:-

“*Claim(s)*” means any action, proceeding, claim, demand, damage, loss (including personal injury), cost, liability or expense including the cost and expense of defending or settling any action, proceeding, claim or demand.

“*Contract*” means this agreement under which the Services are to be provided to Queensland Rail and includes the Schedule and the Scope of Works.

“*Services*” means the Services described in the Scope of Works.

“*Contractor*” means the entity providing the Services to Queensland Rail and includes the officers, employees, agents and sub-contractors (and their employees and agents) of the Contractor.

“*Scope of Works*” means that document particularising the Services required by Queensland Rail.

“*Contract Sum*” means the Sum stated in the Schedule or products of the rates stated in the schedule of quantities and rates accepted by Queensland Rail.

“*Queensland Rail*” means Queensland Rail Limited (ACN 132 181 090) a Company registered in Australia carrying on business in accordance with the Corporations Act 2001, having its Registered Office at Floor 15, 295 Ann Street, Brisbane, in the State of Queensland and includes its employees, servants and agents.

“*Representative*” means the officer of Queensland Rail nominated in the Schedule appointed as such under this Contract.

“*Tax Saving*” means the amount of any savings obtained by the Contractor during the New Tax System transition period as a result of the New Tax System changes in respect of any supplies under the Contract.

Words importing a gender include any other gender. Words in the singular number include the plural and words in the plural number include the singular.

Any expression used in this Contract which is defined in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* or in the *Competition and Consumer Act 2010 (Cth)* has the same meaning in this Contract as so defined.

2. TERM

- 1) The Contractor shall from the date stated in the Schedule undertake the Services in a conscientious, responsible, expeditious and professional manner for the term stated in the Schedule.
- 2) Queensland Rail may, in its absolute discretion, extend the term of this Contract for an additional twelve (12) months ("Additional Term") by giving thirty days (30) days notice to the Contractor before the expiry of the term. If Queensland Rail extends the term of this Contract for an Additional Term Queensland Rail may extend for a further period of twelve (12) months ("Further Additional Term") by giving thirty days (30) days notice to the Contractor before the completion of the Additional Term.
- 3) If Queensland Rail extends the term of this Contract pursuant to Clause 2.2, the parties may vary the price of the Goods in accordance with Clause 30 hereof.

3. SKILLS CAPABILITY WARRANTY

The Contractor warrants that it, its officers, employees, sub-contractors and agents are competent and possess the necessary skills to carry out the Services.

4. ASSIGNMENT

Unless a party has obtained the prior written consent of the other, it may not (nor may it attempt to do so):

- 1) assign all or any part of its right, title or interest in this Contract; or
- 2) novate this Contract.

5. PAYMENT

- 1) The Contractor's claims in respect of the Contract Sum or any part thereof shall be made at monthly intervals in the month during which the Services were undertaken.
- 2) Provided the Services are undertaken satisfactorily Queensland Rail shall pay to the Contractor the Contract Sum, part thereof or such fees or rates due and owing to the Contractor within thirty (30) days of receiving the Contractors claim.
- 3) Should the Contractor incur expenses (other than those included in the Contract Sum) and provided those expenses are authorised by Queensland Rail and incurred pursuant to the Contract, the Contractor's shall in its claims include those expenses.
- 4) The Contract Sum or any rates which total the Contract Sum shall include any applicable government taxes, levies (including superannuation guarantee payments), fees or charges (and any increase thereto) applicable to undertaking the Services.

5.1. GST

- 1) In this clause "GST" and "Tax Invoice" have the same meaning as in the *A New Tax System (Goods & Services Tax) Act 1999 (Cwth)*.
- 2) If GST is payable on any supply made under this Contract then:
 - a) The consideration to be paid or provided under this Contract will increase to include GST;

CONTRACT FOR REPAIRS

- b) The Contractor will provide a GST Tax Invoice stating the amount of GST payable by the Contractor for that supply and evidence it is a registered supplier for the purposes of GST.
- c) Queensland Rail must pay the GST to the Contractor for the supply together with and at the same time as the consideration payable for the supply is paid;
- d) The Contractor shall ensure any tax savings, at the time of rendering the GST Tax Invoice, are passed on to Queensland Rail;
- e) The Contractor shall do all things necessary to enable Queensland Rail to claim an input tax credit under GST law for any cost or outgoing under the Contract.

6. VARIATION OF CONTRACT

- 1) This Contract constitutes the entire agreement between the parties, supersedes all prior representations or understandings between the parties as to the subject matter of the Contract and the terms of same shall not be varied unless the consent of both parties shall first be obtained in writing.
- 2) Should Queensland Rail direct the Contractor to increase, decrease, omit, discontinue or change the scope of the Services (Variations) the Contractor shall immediately perform such Variations.
- 3) The value of a Variation shall be agreed in writing between the parties and if no agreement can be reached a reasonable rate shall be determined by the Representative.

7. TOOLS

The Contractor shall at its own cost where necessary provide to its employees, agents or servants all tools, equipment, consumables, personal protective equipment, safety helmets and boots necessary to undertake the Services.

8. INSURANCE

- 1) Before commencing the Services the Contractor shall take out a policy or policies of insurance to cover against personal injury, loss or damage, including loss or damage to equipment in transit arising from any cause whatsoever until the Contractor ceases to be responsible for undertaking the Services. The policy or policies of insurance shall be for an amount not less than the amount stated in the Schedule for each event.
- 2) Where required by the Representative all policies of insurance shall note the interests of Queensland Rail as an insured and include a cross waiver of liability clause insofar as any such personal injury, loss or damage arises out of the indemnity provisions in this Contract. Where required by the Representative the Contractor shall allow the Representative to inspect the said policies of insurance and provide to the Representative copies of the said insurances and any renewal certificates in respect of those insurances.

9. INDEMNITY

- 1) The Contractor shall at its own risk undertake the Services pursuant to the terms of this contract and in compliance with all relevant statutes, regulations, ordinances and by-laws relevant to the provision of the Services.
- 2) The Contractor releases and indemnifies Queensland Rail, its servants and agents from all Claims whatsoever which may be made or brought against them or any of them by any person in respect of or arising out of any negligence or other wrongful act or omission of the Contractor, its servants, employees, sub-contractors or agents or any other persons and Claims of or to the Contractor, its sub-contractor or their respective servants, employees, agents or visitors.
- 3) The Contractor agrees that if it makes any claim against Queensland Rail for loss as a result of breach of this Contract and that loss is contributed to by the Contractor's own actions, then liability for the Contractor's loss will be apportioned as is appropriate having regard to the respective responsibility for the loss and the amount the Contractor may recover from Queensland Rail will be reduced to the extent of Contractor's contribution to that loss.

10. INDUSTRIAL RELATIONS

The Contractor shall be responsible as part of the Contract Sum to ensure all persons employed or engaged by it in undertaking the Services are paid all amounts, receive such benefits and allowances and are employed subject to such conditions to which they may be entitled to as a result of any appropriate statute, ordinance, subordinate legislation, award, industry agreement, contract of employment, determination, judgment, order of any competent court, board, commission or other industrial tribunal in force in relation to the Services.

11. CONFIDENTIALITY

- 1) The Contractor shall keep confidential and not without Queensland Rail's consent disclose to any person any information acquired or produced in connection with the Services.
- 2) In order to comply with Queensland government legislation and policy requirements, Queensland Rail may disclose details of this Contract:
 - a) on the Queensland Government QGCPO e-Tender website; or
 - b) if required by the Right to Information Act 2009; or
 - c) to its shareholding ministers; or
 - d) as otherwise required by law or Queensland Government policy.

12. AGENCY

Neither the Contractor nor its employees, servants, agents or sub-contractors shall without the consent of Queensland Rail represent themselves as being an employee or agent of Queensland Rail.

13. TERMINATION/REDUCTION OF CONTRACT SERVICES

- 1) If the Contractor receives a notice from Queensland Rail that the scope of the Services has been reduced or this Contract has been terminated or discontinued, the Contractor shall reduce or discontinue the Services in accordance with the notice, immediately take all steps necessary to minimise any loss suffered by it and be entitled to claim reasonable compensation from Queensland Rail. Should Queensland Rail terminate this Contract pursuant to this subclause each party shall within thirty (30) days of such termination pay the other party any and all amounts owed by it to the other pursuant to this Contract.
- 2) The Contractor's compensation shall not exceed the sum of all moneys payable to the Contractor up to the date of termination of this Contract which includes a pro-rata amount payable to the Contractor for Services satisfactorily performed up to such date of termination in full and final satisfaction of all its claims pursuant to this Contract or other losses incurred as a result of such termination or reduction pursuant to this clause.
- 3) Queensland Rail may, by giving 14 days notice in writing to the Contractor, terminate this Contract without compensating the Contractor where the Contractor fails to undertake the Services in a satisfactory manner or the Contractor, commits an act of bankruptcy, is declared bankrupt, enters into any scheme of arrangement, composition or proceedings for the purpose of administration, or is placed under official management, is placed in receivership, liquidation or administration.
- 4) Should the Contractor or any sub-contractor, employee, servant or agent of the Contractor who is undertaking the Services be unable to undertake the Services for any reason including, but not limited to sickness the Contractor shall ensure that any replacement sub-contractor, employee, servant or agent is able to immediately replace the sub-contractor, employee, servant or agent and undertake identical service at no extra cost to Queensland Rail.
- 5) Queensland Rail may at any time during the term of this Contract terminate this Contract without any reason being given, by giving 30 days notice in writing to the Contractor. Upon this Contract being terminated pursuant to this subclause, the limit of compensation payable by Queensland Rail to the Contractor shall be the sum of any amounts payable to the Contractor pursuant to Clause 13.2 hereof for services undertaken prior to the said notice of termination.

14. DISPUTE RESOLUTION

Where the parties hereto are in dispute regarding any matter concerning the provision of the Services, either party may by notice in writing to the other require such dispute be referred for resolution to an independent expert acceptable to both parties. If the parties cannot agree upon an independent expert within seven (7) days of receipt of a notice from the other, the expert shall be nominated by the President of the time being of the Institution of Engineers. The independent expert shall act as an expert and not as an arbitrator. Any costs incurred by either party shall be borne by either party as the independent expert may direct.

15. APPLICABLE LAW

This Contract shall be governed by and construed in accordance of the laws of the State of Queensland.

16. SEVERABILITY

In the event any one or more of the provisions herein contained is invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

17. WAIVER

Failure by Queensland Rail to enforce a provision of this Contract shall not be construed as a Waiver by Queensland Rail of any right in respect to that provision or any other provision of the Contract.

18. ACCESS FOR REPRESENTATIVE

The Contractor shall permit the Representative such access as the Representative shall reasonably require to any workshops, premises, offices or places where the Services are being carried out.

19. PRACTICAL COMPLETION

- 1) The Contractor shall undertake the Services by the date for practical completion stated in the Schedule.
- 2) If the Contractor fails to undertake the Services by the date for practical completion, the Contractor shall pay to Queensland Rail the amount of liquidated damages stated in the Schedule for every day practical completion is not achieved.

20. QUALITY ASSURANCE

The Contractor shall maintain a quality management system in respect to the services which complies with the Quality Assurance Standard stated in the Schedule.

21. ACCEPTANCE OR REJECTION OF EQUIPMENT OR ACCEPTANCE OR REJECTION OF SERVICES

- 1) Services undertaken may be deemed by the Representative to be substantially in accordance with the requirements of this Contract even though there are minor omissions or defects in same which do not affect normal use of the equipment. The Representative shall advise the Contractor of any omissions or defects in the Services.
- 2) If the Services undertaken by the Contractor are not substantially in accordance with the requirements of this Contract the Representative shall issue to the Contractor an advice of non acceptance stating the reasons why the Representative considers the Services have not been undertaken in accordance with the requirements of this Contract.
- 3) On receipt of a notice in accordance with Clause 27 1) hereof the Contractor shall at its cost promptly correct the Services at the site where the equipment is located no later than fourteen (14) days after receipt of advice of such non acceptance.

22. STAMP DUTY

The Contractor shall be responsible for and shall pay any stamp duty payable in respect of this Contract.

23. NOTICES

A notice required to be given under this Contract shall be in writing, addressed to the party to be notified and delivered to that party's address, sent by pre-paid mail to that party's address or transmitted by facsimile to that party's address.

24. TIME

- 1) If undertaking of the Services are delayed by inclement weather, industrial disputation not caused by the Contractor, a breach of this Contract or an act or omission by Queensland Rail, or a variation instructed by the Representative, the Contractor may claim an extension of time for completion of the Services. The Contractor shall not be entitled to claim an extension of time for any other reason.
- 2) No claim for extra costs or compensation incurred by the Contractor as a result of being granted an extension of time shall be allowed by Queensland Rail unless the need for the extension of time is due to either a breach of this Contract, an act or omission on the part of Queensland Rail, or a variation to the Contract instructed or requested by the Representative.

25. WORKPLACE HEALTH & SAFETY

- 1) On and from the commencement of this Contract the Contractor shall be responsible for and assume liability for its obligations pursuant to the *Workplace Health & Safety Act 1995* as amended (WHS Act).
- 2) The Contractor shall indemnify and keep indemnified Queensland Rail against all liabilities which may be imposed under or which may arise out of enforcement of any section of the WHS Act or its regulations.
- 3) The Contractor acknowledges that its employees, agents or subcontractors must not be affected by alcohol or drugs when they:
 - a) sign on for work, or
 - b) are on duty, or
 - c) are on call or are required to provide professional safety related advice and give safety related instructions when not on duty, or
 - d) are acting on behalf of Queensland Rail but executing functions or duties at the request of a principal contractor or Third Party Operator.
- 4) The Contractor agrees and acknowledges that Queensland Rail may:
 - a) by either breath or saliva sample, at any time, conduct random tests for alcohol and/or drugs on its personnel, agents or subcontractors who enter Queensland Rail land or sites; and
 - b) exclude from any Queensland Rail land or sites any Contractor's personnel, agents or subcontractors who test positive to drugs or whose alcohol reading exceeds 0.00%.
- 5) The Contractor shall have appropriate risk management systems and safety management systems in place and shall comply with the provisions of the Transport (Rail Safety) Act 2010.

26. EXAMINATION & TESTING

- 1) At any time prior to practical completion, the Representative may direct that any materials or works which are part of the Services be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the Services as may be required. On completion of the tests, the Contractor shall ensure the Services comply with the Contract.
- 2) The Representative may direct that any part of the Services not be covered up or made inaccessible without the Representatives prior approval.
- 3) Tests shall be conducted as provided in the Scope of Works, or by the Representative, or a person nominated by the Representative.
- 4) Before conducting a test under the Contract, the Representative or the Contractor shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not attend, the test may nevertheless proceed.
- 5) If the Contractor or the Representative delays in conducting a test, the other after giving reasonable notice in writing of his intention to do so may conduct the test.
- 6) Results of tests shall be promptly made available by each party to the other and to the Representative.
- 7) The costs of and incidental of testing shall be borne by the Contractor as part of the Contract Sum.

27. REPAIR WARRANTY & DEFECTS LIABILITY

- 1) The Contractor agrees the items repaired as part of the Services shall be restored to full functionality and performance in accordance with the Scope of works. Replaced parts shall be identical to the failed part or item. The Contractor shall test replaced parts or items in accordance with the scope of works. The Contractor shall if required in writing by the Queensland Rail representative rectify any defect, fault or imperfection in the Services at its own cost.
- 2) The defects liability period stated in the Schedule shall commence on the date of practical completion of each respective requirement for items to be repaired. At any time prior to the expiry of the defects liability period, the Representative may direct the Contractor to rectify any omission or defect in the Services, which becomes apparent prior to the expiration of the defects liability period. A separate defects liability period for the same period as the initial defects liability period shall apply in respect of any defect rectified by the Contractor and shall commence on the date the Contractor completes defects rectification work. The completion date of this Contract shall be that date when the defects liability period (or any extension thereof) expires provided the Contractor has rectified all defects and notified to it by the Representative.
- 3) If it is necessary for the Contractor to carry out defects rectification, the Contractor shall do so at times and in a manner which causes as little inconvenience as possible to Queensland Rail.

28. ENVIRONMENTAL REQUIREMENTS

- 1) The Contractor shall as part of the Contract Sum take all measures to comply with any statutory regulations of any local, state and federal governments relating to preservation and rehabilitation of the environment, noise and vibration, air pollution, marine pollution and soil conservation, preservation of flora and fauna and waste disposal whilst undertaking the Services.
- 2) All Services carried out by the Contractor shall be carried out in accordance with the requirements of the Scope of Works and in accordance with relevant Australian Standards.

29. COMPLIANCE WITH QUEENSLAND RAIL POLICIES

The Contractor its employees and agents shall whilst undertaking Services for Queensland Rail comply with the requirements of all Queensland Rail policies standards and specifications including but not limited to the Queensland Rail Code of Conduct and B2B Agreement Design Specification in force, introduced or amended during the term or any extended term of the Contract.

30. PRICE STRUCTURE

The parties agree:

- 1) The basis of Price for all Services is Free into Store (FIS) to the delivery point specified on the Order.
- 2) Subject to the terms of this Contract, all rates for standard repair items shall remain fixed for a period of 12 months from the Commencement Date (Fixed Price Period). The parties prior to the Services being performed shall agree rates for adhoc repair items.
- 3) After expiry of the Fixed Price Period, rates may be reviewed once each year at the request of either party. Further reviews may then take place each year on the anniversary of the Date of Commencement.
- 4) Any request for a rates review shall be substantiated by documentary proof of movements in the price of base components.
- 5) Queensland Rail shall review requests for a rates increase and shall limit such increases in line with and subject to the rise and fall calculations from the relevant tables of the Australian Bureau of Statistics, or relevant equivalent.
- 6) An approved rates adjustment shall apply from the date the Contractor receives Queensland Rail's written approval to that request.

31. PERFORMANCE

- 1) If the Contractor fails to perform the Services to an Acceptable Standard Queensland Rail may call upon the Contractor by notice in writing to show cause (Show Cause Notice) why Queensland Rail should not exercise the rights stated in this clause.
- 2) If the Contractor fails within the period stated in the Show Cause Notice to satisfy Queensland Rail that the rights contained in this clause should not be exercised, Queensland Rail may without prejudice to any other rights it may have:

CONTRACT FOR REPAIRS

- a) in respect of the first Show Cause Notice deduct from amounts due to the Contractor the amount/s stated in the Schedule; or
- b) in respect of the second or subsequent Show Cause Notices terminate this contract.
- 3) For the purposes of this clause, failure to perform to an Acceptable Standard means the Contractor is:
 - a) incorrectly or excessively invoicing Queensland Rail; or
 - b) failing to meet agreed KPIs; or
 - c) failing to obtain written approvals or Variations to the Contract from the Queensland Rail Representative or Representative's authorised delegate; or
 - d) charging rates different to those agreed; or
 - e) failing to submit invoices within the time stated in Clause 5 1) hereof.
- 4) The Contractor agrees any sum deducted pursuant to Clause 31 2) a) hereof is by way of Liquidated Damages and does not constitute a penalty.

32. PRICE ADJUSTMENT

- 1) On completion of the Term and before any extension of the Term, Queensland Rail and the Contractor shall review and negotiate the Contract Sum and any rates for the extended term on the basis of but not limited to the following factors:
 - a) Consumer Price Index;
 - b) increase/decrease of volume of services;
 - c) market prices.
- 2) Until the Contract Sum or rates for the extended term have been agreed by Queensland Rail and the Contractor, the contract shall continue to be undertaken on the basis of the existing rates.
- 3) Should the parties not agree on a Contract Sum or rates for the extended period, then the contract may be terminated by Queensland Rail pursuant to Clause 13 5) hereof.

oooOooo

SCHEDULE

Clause 1	Contract Sum/Rates	
Clause 1	Representative	
Clause 2	Commencement Date	As stated in the letter of Acceptance
Clause 2	Term	
Clause 8 1)	Amount of Insurance -	
Clause 19 1)	Date of Practical Completion	
Clause 19 2)	Amount of Liquidated Damages	
Clause 20	Quality Assurance Standard	
Clause 27 2	Defects Liability Period	
Clause 31	Performance	\$