

STANDARD TERMS AND CONDITIONS OF PURCHASE OF RAIL REPLACEMENT SERVICES

1 TERMS OF AGREEMENT

- 1.1 This purchase order, together with these terms and conditions (the “**Terms and Conditions**”), and any attachments and exhibits, statement of work, specifications, drawings, notes, instructions and other information, whether physically attached or incorporated by reference (collectively the “**Purchase Order**”), constitute the entire and exclusive agreement between the Customer and the Supplier identified in the Purchase Order.
- 1.2 The Customer’s submission of the Purchase Order is conditional on the Supplier’s agreement that any terms different from or in addition to the terms of the Purchase Order, whether communicated orally or contained in any purchase order confirmation, invoice, acknowledgement, release, acceptance or other written correspondence, irrespective of the timing, shall **NOT** form a part of the Purchase Order, even if the Supplier purports to condition its acceptance of the Purchase Order on the Customer’s agreement to such different or additional terms.
- 1.3 The Supplier’s electronic acceptance, acknowledgement of this Purchase Order, or commencement of performance of the Services constitutes Supplier’s acceptance of these terms and conditions.

2 DEFINITIONS

“**Bus**” means a passenger carrying vehicle used by the Customer for the transport of Eligible Passengers from and to certain destinations (where such vehicles may be single or double decked).

“**Business Hours**” means 9:00am – 5:00pm inclusive on a Working Day.

“**Contract Manager**” means the person designated by the Supplier to be responsible for the Supplier’s performance under these Terms and Conditions, to manage the day-to-day relationship between the Customer and the Supplier and to be the Customer’s principal point of contract with the Supplier for matters arising out of or in connection with these Terms and Conditions.

“**Customer**” means the person stipulated in the Purchase Order.

“**Customer Authorised Representative**” means the person designated by the Customer to be responsible for the Customer’s performance under these Terms and Conditions, to manage the day-to-day relationship between the Customer and the Supplier and to be the Supplier’s principal point of contract with the Customer for matters arising out of or in connection with these Terms and Conditions.

“**Eligible Passenger**” means a person holding a valid travel ticket issued by a TOC.

“**Rail Replacement Date**” means the date(s) specified in the Purchase Order.

“**Rail Replacement Route**” means the public highway route(s) specified in the Purchase Order.

“**Services**” means the provision of rail replacement services to be performed on the Rail Replacement Date and in accordance with these Terms and Conditions.

“**Subcontractor**” means a third party performing Services under an agreement with the Supplier.

“**Supplier**” means the person stipulated in the Purchase Order.

“**Supplier Personnel**” means all persons employed or engaged by the Supplier to perform its obligations under these Terms and Conditions (including any driver employed by the Supplier to drive the Buses) together with the Supplier’s servants, agents and its Subcontractors (and, in each case, those persons employed or engaged by the same) used in the performance of its obligations under these Terms and Conditions.

“**TOC**” means a relevant train operating company, such company being either London and South Eastern Railway Limited or Southern Railway Limited (or both).

“**Working Day**” means a day (other than a Saturday or Sunday or a statutory or public holiday) on which banks are open for general business in the City of London.

3 PERFORMANCE OF SERVICES

- 3.1 Unless the Customer expressly instructs otherwise, the Supplier shall perform the Services along the Rail Replacement Route in accordance with these Terms and Conditions. Other than the fees set out in the Purchase Order, the Supplier assumes responsibility for all costs and charges including, without limitation, customs, duties, costs, taxes and insurance in the performance of the Services.
- 3.2 Time is of the essence in the Supplier’s performance of its obligations set out in the Purchase Order. The Customer will notify, either by phone or in writing, its request for the Supplier to perform certain Services. If the Supplier is able to provide the Services, it will be provided with a reference number to operate the Services. If the Supplier is unable to provide the Services, it shall immediately notify to the Customer of the fact. Notwithstanding the foregoing, if the Supplier is able to perform the Services but the Supplier’s timely performance under the Purchase Order is delayed or is likely to be delayed, it shall immediately notify to the Customer of the same. The Customer’s acceptance of the Supplier’s notice will not constitute the Customer’s waiver of any of the Supplier’s obligations. In the event that the Customer is notified that the Supplier is not able to commence the provision of the relevant Services, the Customer shall have no further obligation to the Supplier in respect thereof.

- 3.3 In performing the Services, the Supplier shall at all times (i) ensure that it employs drivers who hold a current valid Passenger Carrying Vehicle driving licence for the Bus(es) that they will be driving and carry a current Driver Qualification Card (DQC), (ii) provide all Buses and Supplier Personnel necessary for the provision of the Services (and such Supplier Personnel must have competent knowledge of the specified Rail Replacement Route); (iii) ensure that all Buses used in the provision of the Services are in a safe, serviceable and clean condition; (iv) comply with the requirements of any local laws and regulations relating to the performance of the Services including, without limitation, ensuring that the timetabling for the performance and delivery of the Services will be in the scope of the "Driving Time" laws as provided under EU Regulation 561/2006 (as may be varied from time to time) and complying with DiPTAC standards; (v) have appropriate insurance to cover the Supplier's potential liabilities arising out of or in connection with the performance of the Services, such insurance policies to be underwritten by a reputable insurance company (and copies of such insurance to be provided to the Customer prior to the commencement of any work undertaken pursuant to these Terms and Conditions); (vi) ensure that it employs Supplier Personnel who are physically capable of undertaking their allotted tasks; (vii) ensure that, in the event of a breakdown of, or in the event of an accident caused by, a Bus, (a) the driver of the Bus notifies to the Contract Manager (or such other appropriate person as so determined by the Supplier) of the same; (b) a replacement Bus is provided no later than forty-five minutes after the breakdown has occurred; and (c) the Supplier shall procure the Contract Manager to contact the Customer Authorised Representative by telephone confirming the nature of the breakdown and that a replacement Bus has been sent to the relevant point; (viii) ensure that Eligible Customers are permitted to carry, free of charge, all reasonable items of luggage on to the Bus, provided that such luggage (in the reasonable opinion of the driver of the Bus) does not obstruct the gangway or stairs or occupy seats and are not likely to be a danger or inconvenience to other Eligible Passengers; (ix) ensure that all drivers of the Buses complete, in full, a log card or record in respect of the operation of the Services and the Supplier emails such log card to tony.bull@goaheadlondon.com or faxed to Tony Bull on 0700 349 7081 (or such other person as notified to the Supplier by the Customer from time to time) on the day the Services have been performed; and (x) ensure that all maintenance and drivers' hours records are up-to-date and in accordance with the Laws and made available to the Customer (or to the TOC, as the case may be) for inspection from time to time.

4 PRICE

Unless otherwise specified in the Purchase Order, the price for the Services (other than value added tax) includes all taxes and other charges such as duties, customs, tariffs, imposts and government-imposed surcharges.

5 INVOICES

- 5.1 Within five Working Day following the completion of the Services, the Supplier shall provide to the Customer a valid invoice, including the following information:
- i. details of any value added tax;
 - ii. the reference number notified to the Supplier by the Customer and the number of the Purchase Order in respect of the relevant Services being performed;
 - iii. a description of the actual journeys undertaken on, and the number of duties performed in respect of, the Rail Replacement Route; and
 - iv. such other information as the Customer may reasonably request of the Supplier from time to time.
- 5.2 The invoice should be sent to: Accounts Payable, London General Transport Services Limited, 18 Merton High Street, London SW19 1DN.
- 5.3 The Supplier shall, promptly and upon request, provide to the Customer all relevant records to verify the amount set out in any invoice.
- 5.4 The Customer may withhold approval and / or money due to the Supplier under the Purchase Order if the Services (or any part of them) are deemed, in the reasonable opinion of the Customer, to be incomplete.
- 5.5 Failure to supply log cards, the reference numbers and the Purchase Orders will result in delay of payment to the Supplier.

6 PAYMENT

Subject to clause 5.4, the Customer shall pay to the Supplier the price by the end of the calendar month following the calendar month during which the invoice was issued by the Supplier.

7 CHANGES TO SERVICES

- 7.1 For the purpose of this Condition 7, "**Change**" means a change in the requirement or the nature of the Services set out in the Purchase Order and where such change is notified to the Supplier by the Customer in accordance with this Condition 7.
- 7.2 The Customer reserves the right to propose a Change. In the event of a Change, and such Change relates to planned work, the Customer will, to the extent reasonably practicable so to do, provide 48 hours prior notice to the Supplier of such Change. Where the Change arises due to emergency work being undertaken, less notice may be given.
- 7.3 Upon receipt of such notice, the Supplier shall, acting reasonably, notify immediately (by reference to the nature of the Services to be performed, the date in which such Services are to be performed and the timing consequences as a result of the Change) to the Customer a description of any proper and reasonable variation to the prices set out in the relevant Purchase Order to which the Change relates.

- 7.4 The Customer will evaluate Supplier's notice of Change in good faith and, if Customer agrees to the change, Customer will issue a confirmation of the Change Order to the Supplier.
- 7.5 The parties agree that any Change to the Services will form part of and be subject to these Terms and Conditions and shall form part of the contract between the parties in respect thereof.

8 REPRESENTATIONS AND WARRANTIES

- 8.1 The Supplier represents and warrants that, at all times:
- i. it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order and all Supplier Personnel have good operational knowledge of the Rail Replacement Routes;
 - ii. notwithstanding Condition 8.1(i), it is permitted to operate Buses on public highways and provide the Services contemplated under these Terms and Conditions (and provide a copy of the Supplier's operator licence prior to the commencement of the Services);
 - iii. it shall provide professional and prompt liaison with the Customer and, where requested, with the authorised representative of the TOC;
 - iv. it shall supervise and coordinate the performance of the Supplier's obligations under these Terms and Conditions (including but not limited to ensuring that the Buses are correctly dressed with the publicity material and destination boards and blinds contemplated under these Terms and Conditions);
 - v. it shall be available during Business Hours when reasonably requested, in advance and in writing, by the Customer to meet the Contractor Authorised Representative;
 - vi. it shall comply with all reasonable requirements of the Customer and, where requested, with the authorised representative of the TOC from time to time
 - vii. it shall ensure that an overnight bus supervisor, if reasonably required by the Customer, is appointed to make sure that early morning and late night services run correctly;
 - viii. the only payment for the use of the Buses by Eligible Passengers will be the payment by the Customer of the fees stated in the Purchase Order and at no times will the Supplier or the Supplier Personnel (or any combination thereof) be permitted to take payment from such Eligible Persons in respect thereof;
 - ix. it shall ensure that all Supplier Personnel will not solicit any gratuity, tip or other form of money from Eligible Passengers in the provision of the Services; and
 - x. it shall maintain a record of all Accidents occurring during the provision of the Services and provide copies of the same as and when reasonably required by the Customer.
- 8.2 Customer warrants and represents to Supplier that it has the full power to enter into the Purchase Order and to perform its obligations under the Purchase Order.

9 ASSIGNMENT AND SUBCONTRACTING

- 9.1 The Supplier may not assign any of its rights or delegate any of its obligations under the Purchase Order without Customer's prior written consent.
- 9.2 If the Customer consents to the use of a Subcontractor, the Supplier shall: (i) guarantee and will remain liable for the performance of all subcontracted obligations being undertaken by the Subcontractor; (ii) indemnify the Customer for all damages and costs of any kind, subject to the limitations in Condition 13 (Indemnification), incurred by the Customer or any third party and caused by the acts and omissions of the Subcontractor; and (iii) make all payments to its Subcontractor. If the Supplier fails to pay a Subcontractor for the performance of the Services performed in a timely manner, the Customer has the right, but not the obligation, to pay direct to the Subcontractor and offset any amount due to the Supplier by any amount paid to the said Subcontractor. The Supplier will defend, indemnify and hold the Customer harmless for all losses, damages and costs of any kind, without limitation, incurred by the Customer and caused by the Supplier's failure to pay that Subcontractor.
- 9.3 To the extent allowed by applicable law, no person who is not a party to Purchase Order shall be entitled to enforce or take the benefit of any of its terms whether as a result of applicable legislation, custom or otherwise.

10 TERM

The Purchase Order will remain in effect until the Services have been performed, completed and accepted.

11 TERMINATION

- 11.1 The Customer may terminate this Purchase Order at any time, for no reason or for any reason, upon reasonable written notice to Supplier.
- 11.2 Upon receipt of such notice of termination, the Supplier will inform the Customer of the extent to which it has completed performance as of the date of the notice. Other than for breach, the Customer will pay to the Supplier for all Services properly performed and accepted through to the effective date of the termination, provided that the Customer will not be obligated to pay any more than the payment that would have become due had the Supplier completed and Customer had accepted the Services. The Customer will have no further payment obligation in connection with any termination.

- 11.3 Either party may terminate the Purchase Order immediately by delivering written notice to the other party upon the occurrence of any of the following events: (i) a receiver is appointed for either party or its property; (ii) either makes a general assignment for the benefit of its creditors; (iii) either party commences, or has commenced against it, proceedings under any insolvency or debtor's relief law, if such proceedings are not dismissed within sixty (60) days; or (iv) either party is liquidating, dissolving, or ceasing to do business in the ordinary course.
- 11.4 Either party may terminate this Purchase Order immediately by delivering written notice to the other party for any material breach not remedied within a reasonable time of receipt of notice of the breach (by taking into account the time required to perform the Services stipulated in the Purchase Order). The Customer shall have no further payment obligation to the Supplier under any Purchase Order if the Customer terminates the Purchase Order under this Condition 11.4.
- 11.5 Any obligations or duties which, by their nature, extend beyond the expiration or termination of the Purchase Order shall survive the expiration or termination of the Purchase Order.

12 CONFIDENTIAL INFORMATION AND PUBLICITY

The Supplier shall obtain the Customer's written consent prior to any publication, notification, presentation, public announcement, or press release concerning its relationship as a supplier to Customer.

13 INDEMNIFICATION

- 13.1 For the purpose of this Condition 13, a "Claim" is any claim, demand, loss, damage, liability, cost or expense (including professional fees and costs as incurred) for which one party may be obligated to defend, indemnify and hold the affected party harmless.
- 13.2 The Supplier shall defend, indemnify and hold the Customer harmless from and against any and all Claims as incurred, arising out of or in connection with any act or omission of the Supplier (including its Subcontractors) in the performance of the Services (including but not limited to any Claims arising out of any negligent or wilful acts or omissions of the Supplier (or its Subcontractor) which results in personal injury (including death) or damage to tangible property).
- 13.3 The Supplier will provide to the Customer prompt written notice of a Claim and permit the Customer to control the defence, settlement, adjustment, or compromise of any Claim. The Supplier may employ counsel at its own expense to assist it with respect to any Claim. The Supplier will have no authority to settle any Claim on the Customer's behalf.
- 13.4 Nothing in this Condition 13 shall limit any other remedy available to the Customer.

14 LIABILITY

- 14.1 The Customer will not be liable to the Supplier with respect to the subject matter of the Purchase Order under any contract, negligence, strict liability or other legal or equitable theory for any amounts in excess of the amount the Customer paid or has agreed to pay to the Supplier under the Purchase Order.
- 14.2 In no event will the Customer be liable to the Supplier for any incidental, indirect, special, consequential damages or loss of profits arising out of, or in connection with, the Purchase Order, whether or not Customer was advised of the possibility of such damage.
- 14.3 The limitations will apply notwithstanding any failure of essential purpose of any limited remedy provided herein. Nothing in the Purchase Order limits either party's liability for bodily injury of a person, death, or physical damage to property or any liability which cannot be excluded under applicable law.

15 GENERAL

- 15.1 Any notice to be given under the Purchase Order will be in writing and addressed to the party at the address stated in the Purchase Order. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal; or (iv) if sent by certified or registered mail, within five days of deposit in the mail.
- 15.2 If there is a conflict between the terms of the Purchase Order and those set forth in an exhibit or hyperlink will be resolved in favour of the Purchase Order
- 15.3 If any court of competent jurisdiction holds that any provision of the Purchase Order is illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining provisions of the Purchase Order will not be affected or impaired, and all remaining terms of this Purchase Order remain in full force and effect, provided that this provision shall not be applied to defeat the intent of the parties.
- 15.4 A party's election not to insist on strict performance of any requirement of the Purchase Order will not operate or be construed to waive any future omission or breach, or any other provision of the Purchase Order.

16 GOVERNING LAW

- 16.1 The validity, interpretation, and performance of this Purchase Order will be controlled by and construed under the laws of England and Wales. The English Courts shall have exclusive jurisdiction over any claim arising under this Purchase Order.
- 16.2 Notwithstanding the foregoing, either party may seek interim or temporary injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such party's intellectual property or proprietary rights.