

## General Terms & Conditions of Purchase - Indirect (Feb 2024)

### 1. Agreement

- 1.1 The agreement between the parties consists of:
- 1.1.1 these Terms;
  - 1.1.2 the Purchase Order (**PO**);
  - 1.1.3 any Specification (as described below) or other documents in agreed form; and
  - 1.1.4 the master purchase framework agreement (if any) agreed between the parties (**Master Purchase Framework**), including such schedules (**Schedules**) and annexes (**Annexes**) as applicable.
- (together, referred to as the **Agreement**).
- 1.2 The Agreement is between Knorr-Bremse Rail Systems (UK) Limited, incorporated and registered in England and Wales with company number 03974921, whose registered office is at Westinghouse Way, Hampton Park East, Melksham, Wiltshire, SN12 6TL (**KBRS**) and supplier identified in the PO (**Supplier**).
- 1.3 The Agreement shall apply to and shall govern the relationship between KBRS and Supplier in relation to the supply of any Goods and/or Services supplied by Supplier to KBRS or to any of its Affiliates to the exclusion of all other terms and conditions that Supplier may seek to impose or incorporate, or that may be implied by trade, custom, practice or in the course of dealing. Without prejudice to the foregoing, no terms or conditions delivered with or contained in Supplier's delivery note, quotation, acknowledgement or acceptance of order, specification, invoice or similar document shall apply and Supplier waives any right which it otherwise may have to rely on such terms and conditions. Any amendment to the Agreement is only valid if agreed in writing and signed by Authorised Representatives of both parties.
- 1.4 KBRS and its Affiliates shall be entitled from time to time to request in writing the provision of any Goods and/or Services from Supplier and Supplier shall provide such Goods/Services to KBRS and its Affiliates pursuant to the Terms. References to KBRS in the Agreement shall, in such circumstances, be deemed to be references to the relevant Affiliate. Accordingly, all benefits, warranties, indemnities, rights and licences granted or provided to KBRS shall be deemed to be for the benefit of KBRS and each Affiliate which enters into a PO with Supplier.
- 1.5 Supplier shall deliver Goods and/or perform Services in a prompt manner and at all times in accordance with the Agreement. Each PO, and each Schedule or Annex, shall incorporate these Terms and each PO shall become a part of the Agreement upon execution by KBRS and Supplier and shall not form a separate contract to it.
- 1.6 If there is an inconsistency between any of the provisions of these Terms and the provisions of any PO, the provisions of the PO shall prevail.
- 1.7 Each PO shall be agreed in the following manner (or, at KBRS' discretion, in the manner prescribed by KBRS in which event such process shall only apply to the manner in which that particular PO is agreed):
- 1.7.1 an order for the purchase of Goods and/or Services shall be made by KBRS by issuing a PO to Supplier. Each PO shall be either in writing or in electronic form;
  - 1.7.2 Supplier shall advise KBRS within five (5) Business Days of the date of the PO if it is unable to meet the requirements of the PO. In such circumstances, the parties shall negotiate in good faith any required changes to the PO to enable the PO to become binding on amended terms;
  - 1.7.3 Supplier shall accept a PO by issuing an Order Confirmation (**OC**) either in writing or in electronic form or by carrying out any act consistent with the fulfilment of the PO, at which point and on which date the PO shall become binding.
- 1.8 KBRS may, from time to time, request changes to a PO by issuing an Order Amendment (**OA**) to Supplier. Supplier shall use all reasonable endeavours to comply with the terms of the OA.

### 2. General obligations of Supplier

- 2.1 Supplier shall perform its obligations under the Agreement (including the design, processing, development, manufacture, packaging and supply of Goods, and the provision of Services):
- 2.1.1 in compliance with all Applicable Laws rules, guidelines and codes of practice applicable to the provision of Goods and the performance of Services;
  - 2.1.2 in accordance with the terms of any PO, including any service levels and all descriptions and Specifications provided to, and agreed, with KBRS;
  - 2.1.3 in accordance with Good Industry Practice;
  - 2.1.4 promptly and with all due skill, care and diligence;

- 2.1.5 using only appropriately skilled, experienced, qualified and trained personnel;
- 2.1.6 at such locations specified by KBRS in writing as may be necessary for the due performance of Services.
- 2.2 Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement.
- 2.3 Supplier shall:
  - 2.3.1 at all times comply with the lawful and reasonable directions and requests of KBRS from time to time in relation to Goods and Services provided that those directions and requests are not inconsistent with the Agreement;
  - 2.3.2 give written notice to KBRS as soon as it becomes aware that it has breached, or is alleged to have breached, the provisions of Clause 2; and
  - 2.3.3 not knowingly, recklessly or carelessly cause KBRS or any Affiliate to be in breach of any Applicable Laws.
- 3. **Supply of Goods and Services**
- 3.1 Supplier shall ensure that Goods and Services:
  - 3.1.1 correspond with their description, any applicable Specification, samples, drawings, designs, descriptions or otherwise in accordance with all KBRS' instructions;
  - 3.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as applicable) and fit for their intended purpose, including any purpose held out by Supplier or made known to Supplier by KBRS, expressly or by implication;
  - 3.1.3 are free from any defects in design, materials or workmanship, as applicable, and remain so for thirty-six (36) months after Delivery or as set out in the Specification;
  - 3.1.4 are free from any rights of any third party;
  - 3.1.5 comply with all Applicable Laws and regulations and in accordance with the requirements of the Agreement.
- 3.2 Failing an agreement to the contrary, Supplier shall be obliged to Deliver replacement Goods in the appropriate condition for the period of ordinary technical use for no less than fifteen (15) years, or such other period as specified in the PO, after Delivery of the last Goods covered by a PO and/or OA. Supplier shall provide KBRS with not less than twelve (12) calendar months prior written notice of its intention to make any Goods obsolete and shall ensure that replacement goods, compatible with Goods in every way, shall continue to be available.
- 3.3 Supplier shall use all reasonable endeavours to pass to KBRS the benefit of any manufacturer and other warranties and/or guarantees relating to Goods.
- 3.4 Supplier shall:
  - 3.4.1 perform Services with the reasonable care, skill and diligence to be expected of a leading provider of services substantially similar to Services and KBRS' instructions;
  - 3.4.2 ensure that Services and Deliverables will conform with all descriptions and specifications set out in the PO and/or in any Specification, and that Deliverables will be fit for their intended purpose, including any purpose that KBRS expressly or impliedly makes known to Supplier; and
  - 3.4.3 allocate sufficient resources (including personnel) to Services to ensure it is able to comply with its obligations under the Agreement.
- 3.5 Supplier warrants throughout the Warranty Period that all Services will be performed in accordance with the standards of care and diligence normally practiced by persons performing similar services and in the best workmanlike manner.
- 4. **Delivery, Transport and Packaging, Export Control**
- 4.1 Supplier shall ensure that:
  - 4.1.1 Goods are properly packed, in accordance with the requirements of the relevant PO and the packaging requirements of KBRS and secured in such manner as to enable them to reach their destination in good condition; and
  - 4.1.2 each Delivery of Goods is accompanied by a Delivery Note which shows:
    - (i) the date and number of the PO, or OA;
    - (ii) the type and quantity of Goods;
    - (iii) special storage instructions, if any; and
    - (iv) such additional data as KBRS may reasonably request, to the extent the same can reasonably be included in the Delivery Note.
- 4.2 Supplier shall Deliver Goods on the Delivery Date and if no such date is specified, then as soon as possible and, in any event, by any date made known to Supplier by KBRS or otherwise within fourteen (14) days of the date of the PO. Each Delivery shall be to the Delivery Location.

Goods shall be delivered according to the Incoterms 2020 specified in the PO. Supplier shall meet any performance dates for Services specified in the PO or any other dates that KBRS has notified to Supplier.

- 4.3 Where required under a PO, the parties may agree on an acceptance procedure, in which case acceptance shall be subject to KBRS' written acceptance statement.
  - 4.4 Notwithstanding any inspection or tests by KBRS, Supplier shall remain responsible for compliance of Goods and/or Services with the Agreement. Any inspection or testing of Goods by KBRS shall in no event exempt Supplier from or limit Supplier's obligations under the Agreement.
  - 4.5 KBRS shall not be deemed to have accepted Goods until it has had a reasonable time and no less than ninety (90) days to inspect them following Delivery, or, in the case of a latent defect in Goods, until a reasonable time after any latent defect in Goods has become apparent and if such inspection reveals any Defect, KBRS may provide notice of such Defect after it has become apparent and/or reject any or all Goods.
  - 4.6 Acceptance of any part of Goods Delivered and/or Services performed shall not bind KBRS to accept future shipments of non-conforming Goods and/or future performance of Services, nor deprive KBRS of the right to return nonconforming Goods and/or require reperformance of Services already accepted.
  - 4.7 Without prejudice to any other right or remedy KBRS may have on each occasion when Supplier fails to perform its obligations under the Agreement by the Delivery Date, Supplier shall pay to KBRS liquidated damages as set out in a PO. Such liquidated damages shall be deemed to be a genuine estimate of the foreseeable loss suffered by KBRS due to such delay, and not a penalty.
  - 4.8 If all or any part of any combination of Goods and/or Services are not Delivered on the Delivery Date, KBRS may at its option:
    - 4.8.1 terminate the Agreement in whole or in part;
    - 4.8.2 refuse any subsequent delivery of Goods and/or Services;
    - 4.8.3 recover from Supplier any expenses reasonably incurred by KBRS in obtaining Goods and/or Services in substitution from another supplier;
    - 4.8.4 claim damages for any cost, loss, expenses incurred by KBRS and liquidated damages which are attributable to Supplier's delay; and/or
    - 4.8.5 claim liquidated damages at a rate of 1% of the total Price for each week (or part) of delay up to the total Price of Goods and/or Services.
  - 4.9 Liquidated damages under this Clause 4.9 shall become due at the time of demand in writing by KBRS, and shall be deducted immediately from any amount owed to Supplier. Supplier's payment of liquidated damages under this Clause 4.9 does not prejudice the rights of KBRS to make any other claim against Supplier in connection with the late Delivery.
  - 4.10 Supplier must obtain any relevant certificate of origin on behalf of KBRS at Supplier's expense and render to KBRS such certificate at the time of Delivery, such certificate to be appended to the Delivery Note.
  - 4.11 Supplier acknowledges that Goods and/or Services, or part of them, may be subject to export controls and regulations and Supplier shall comply with all such applicable export laws and regulations (including U.S. regulations). Supplier shall identify such part of Goods and/or Services that is subject to export laws and regulations at the time of acceptance of the PO and provide all relevant export control information, including the relevant export control classifications. Supplier shall include on all Delivery Notes the correct export control classification number (including any U.S., EAR or ITAR classification), the number or reference of any applicable export license and distribution restrictions in this regard. Supplier shall be responsible for obtaining in time, at its own cost, all necessary governmental export licenses, authorisations, approvals and clearances.
  - 4.12 Supplier shall at all times comply with its obligations under the Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation No 1907/2006 (as amended) (**REACH**), UK REACH or any equivalent regime operating in any relevant jurisdiction at its own cost to the extent permitted by law; and maintain a valid REACH registration /pre-registration for all relevant substances within Goods for KBRS' use.
5. **Defects**
- 5.1 KBRS shall, upon becoming aware of any Defect, give written notice of any Defect to Supplier, including a description of the Defect. In case of any Defect being found in any Goods or Services, KBRS shall, at its option, be entitled to:

- 5.1.1 require Supplier to inspect, remove, reinstall, ship and repair or replace/re-perform defective Goods and/or Services with goods and/or services that conform to all requirements of the PO;
  - 5.1.2 take such actions as may be required to cure all Defects and/or bring Goods and/or Services into conformity with all requirements of the PO, in which event all related costs and expenses (including, but not limited to, material, labour and handling costs and any required re-performance of value added machining or other service) and other reasonable charges shall be for Supplier's account; and/or carry out (or to instruct a third party to carry out) any additional work necessary to make Goods and/or Services comply with the PO and charge the costs to Supplier;
  - 5.1.3 refuse any further Goods and/or Services;
  - 5.1.4 reject and return all or any portion of such Goods and/or Services;
  - 5.1.5 claim such damages as may have been sustained by KBRS as a result of Supplier's breach of the PO; or
  - 5.1.6 terminate the PO for default and require Supplier to re-imburse KBRS all sums paid by KBRS for any defective Goods and/or Services and, in the case of Goods, to take back those Goods at Supplier's own cost and risk.
- 5.2 The remedies set out in Clause 5 shall apply to any repaired or replacement Goods supplied by Supplier and/or to any substituted or remedial Services and, for the avoidance of doubt but without limitation, Goods replaced or repaired shall be subject to a new Warranty Period commencing on the actual date of acceptance of the repaired or replaced Goods.
6. **Title and Risk**
- 6.1 Without prejudice to KBRS' rights of rejection under the Agreement, Supplier agrees that Title will transfer to KBRS when payment of the relevant invoice for such Goods and/or Services is made by KBRS.
- 6.2 Where, for the purpose of the Agreement, KBRS issues materials or equipment free of charge to Supplier, such materials or equipment shall be and remain at all times the property of KBRS. Supplier shall maintain all such materials or equipment in good order and condition and shall store such materials and/or equipment separately from its own and shall clearly label such materials or equipment as the property of KBRS. Supplier warrants and undertakes that it shall use such materials or equipment solely in connection with the Agreement.
7. **Price and Payment**
- 7.1 KBRS shall pay the Price set out in the applicable PO. Unless expressly stated otherwise in a PO, all prices are fixed and shall not be subject to change. All payments shall be in United Kingdom Pounds Sterling (GBP) unless otherwise agreed to in the PO.
- 7.2 Any Prices which are expressly stated in a PO to be "Indexed" or subject to "Indexation" shall be adjusted on an annual basis, effective on the first day of each calendar year following the year in which the Commencement Date falls and based on 60% of the increase in the Consumer Prices Index since December of the previous year and subject, in any event, to a cap of 4%.
- 7.3 The Price shall be fully inclusive of all and any costs incurred in relation to transportation, insurance, customs clearance, fees and taxes and shall be Delivered according to the Incoterms 2020 specified in the PO at the Delivery Location, or as otherwise agreed in writing between the parties. The Price shall be exclusive of VAT which may be chargeable in addition to the Price at the applicable rate and to the extent required by Applicable Law.
- 7.4 The Price for any Goods or Services shall not exceed the pricing for the same or comparable goods or services offered by Supplier to any third parties. Supplier shall promptly inform KBRS of any lower pricing levels for same or comparable goods or services and the parties shall promptly make the appropriate adjustment to the Price. Notwithstanding anything contained herein to the contrary, in the event that KBRS purchases Goods in excess of any original forecast and/or Supplier's quotation by ten percent (10%) or more, then KBRS shall be entitled to a reduction in the price on all future POs of Goods or Services equal to an amount agreed to by the parties, provided, however, in no event shall the Price be greater than ninety percent (90%) of the then current Price of Goods or Services.
- 7.5 Supplier shall submit invoices to the billing address specified in the PO in an auditable form, complying with Applicable Laws, generally accepted accounting principles and the specific requirements of KBRS, Invoices must contain the following minimum information:
- 7.5.1 Supplier's name, address and reference person including contact details;
  - 7.5.2 the PO number;
  - 7.5.3 invoice date;
  - 7.5.4 invoice number;

- 7.5.5 order number;
  - 7.5.6 address of Delivery Location;
  - 7.5.7 quantity;
  - 7.5.8 Specification of Goods and/or Services;
  - 7.5.9 Price (total amount invoiced);
  - 7.5.10 currency;
  - 7.5.11 tax or VAT amount;
  - 7.5.12 country of origin.
- 7.6 The terms of payment are 60 (sixty) (or such other period as agreed in the PO) calendar days from the end of the month following receipt of a valid invoice.
- 7.7 KBRS may set-off or deduct from any monies payable by KBRS to Supplier under the Agreement, any amounts which are payable by Supplier to KBRS. KBRS may withhold amounts disputed in good faith while the parties attempt to resolve the dispute, and this will not constitute a breach.
- 7.8 If a party fails to pay any undisputed sum due from it to the other by the stipulated date for payment, that party shall be liable to pay interest on a daily basis at a rate of 4% above the base rate of Lloyds Bank Plc accruing until paid, whether before or after judgement.
8. **Liability and Insurance**
- 8.1 Nothing in the Agreement shall limit or exclude a party's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 8.1.2 fraud or fraudulent misrepresentation; or
  - 8.1.3 any matter in respect of which it would be unlawful for a party to exclude or restrict liability.
- 8.2 Subject to Clause 8.1 (and in the case of Supplier, subject to Supplier being in compliance with all Applicable Laws), neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential losses arising under or in connection with the Agreement.
- 8.3 Save as set out in Clause 8.1 above, the total liability of Supplier to KBRS in respect of all other losses arising under or in connection with an individual PO, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the greater of the Price of Goods and/or Services and GBP 100,000 (**Liability Cap**). Notwithstanding the foregoing, to the extent that an amount payable under an insurance policy, as described in Clause 8.4, shall exceed the Liability Cap, then the liability of Supplier shall be the amount payable under the insurance policy.
- 8.4 Subject to Clause 8.1, the total liability of KBRS to Supplier in respect of all other losses arising under or in connection with an individual PO, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall be limited to the payment of the Price for Goods provided and/or Services performed in accordance with this Agreement.
- 8.5 During the term of the Agreement and for a period of not less than six years thereafter, Supplier shall, at its own cost, maintain in force, with a reputable insurance company, employer's liability insurance, professional indemnity insurance, product liability insurance and public liability insurance to cover any liabilities that may arise under or in connection with the Agreement and shall, on KBRS' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
9. **KBRS Materials**
- 9.1 Any Documentation in connection with a PO shall remain the sole and unrestricted property of KBRS and shall be returned by Supplier to KBRS at the termination or expiration of the relevant PO, or upon KBRS' written request. Without the written consent of KBRS, the Documentation may not be passed on to third parties or made available for them to view, nor may it be copied or destroyed.
- 9.2 All KBRS Materials made available to Supplier for processing, assembly, examination or other purpose remain the unrestricted property of KBRS. Until such time as Supplier shall return such KBRS Materials, Supplier shall bear any risks associated with any damage or loss and shall ensure it has adequate insurance in place. Supplier shall be liable for all damages incurred by KBRS in connection with the Delivery to and the possession by Supplier of KBRS Materials including, without limitation, damages to the objects themselves and all direct and indirect damages resulting from the incorrect maintenance, destruction, loss or the delayed return of KBRS Materials.

- 9.3 Supplier hereby agrees that KBRS may, upon reasonable notice, enter the premises where KBRS Materials may be and take possession thereof, whether at Supplier's premises or its supplier's, or request Supplier, at Supplier's cost, to deliver the KBRS Materials to a specified location.
10. **Intellectual Property Rights (IPR) and Indemnity**
- 10.1 All KBRS Background IPR shall remain vested in KBRS or its licensors and there shall be no assignment of any KBRS Background IPR to Supplier. KBRS grants to Supplier a limited, non-exclusive, royalty-free, non-transferable, [non-sublicensable] revocable licence to use such KBRS Background IPR solely to the extent required for Supplier's performance of its obligations under the Agreement. Such licence shall terminate on expiry or earlier termination of the Agreement.
- 10.2 Subject to Clause 10.5, all IPR in Goods, including drawings and documents that relate to Goods, the Deliverables and in any materials which are created by or on behalf of Supplier as a result of the provision of Goods and/or Services and which are produced for, on behalf of or at the request of, KBRS pursuant to the Agreement including a PO shall immediately vest in KBRS on creation. If by operation of law such IPR do not automatically vest in KBRS then Supplier hereby assigns or otherwise shall assign to KBRS (including by way of an assignment of future IPR), in each case at no cost to KBRS, with full title guarantee and free from all charges, liens, licences and other encumbrances all such IPR together with the right to sue for and obtain full and effective relief (including damages) in respect of any infringement of such IPR by a third party.
- 10.3 Supplier shall, promptly at request of KBRS, do (or procure to be done) all such further acts and things and the execution of all such other documents as KBRS may from time to time require for the purpose of securing for KBRS the full benefit of the PO, including all right, title and interest in and to the IPR granted to KBRS.
- 10.4 KBRS shall have the right to, without limitation, use, copy, maintain, adapt, modify, sell, transfer and exploit Goods, including drawings and documents that relate to Goods.[Supplier shall specify in writing and prior to Delivery all open source software contained in or used by Goods, if any, and request KBRS' written approval. Supplier agrees to replace, at its own cost, any open source software components rejected by KBRS with software of at least the same quality and functionality.]
- 10.5 Where any Deliverables and any other materials which are otherwise created by or on behalf of Supplier as a result of the performance of the Agreement are supplied with or have embedded in them Supplier Background IPR then Supplier shall retain ownership of such Supplier Background IPR, but hereby grants to KBRS a non-exclusive, perpetual (unless agreed otherwise in a PO), irrevocable, royalty-free licence to use such Supplier Background IPR in any way whatsoever to facilitate and/or enable full use of Goods and/or Services and Deliverables or other materials and, for this purpose, to sub-license such Supplier Background IPR to third parties.
- 10.6 All logos, trade names or trade marks (Marks) owned or used by KBRS in the course of its business are the property of KBRS or its licensors. KBRS reserves all IPR in relation to the use of such Marks. Supplier may not use or permit the use of such Marks or any similar Marks without the prior written permission of KBRS.
- 10.7 If any claim is made against KBRS that Goods or Services infringe a third party's rights, Supplier shall, at KBRS' discretion, at its own cost, either (i) procure for KBRS and its customers, as the case may be, the right to continue using Goods; (ii) modify Goods so they cease to be infringing; or (iii) replace Goods by non-infringing equivalents. The remedies set out in this Clause 10 are without prejudice to any other remedy available to KBRS, including the right to claim damages.
- 10.8 Supplier agrees that its fulfilment of the Agreement, each PO and any Goods, Deliverables, Services or materials supplied by Supplier pursuant to the Agreement and the normal use of the same in accordance with the terms of the Agreement shall not infringe any IPR of any third party (save that no liability shall attach to Supplier to the extent this results from any KBRS Background IPR provided by KBRS).
- 10.9 Supplier shall indemnify and keep indemnified KBRS and its Affiliates from and against any expense or liability, including costs, fees and all damages, arising out of any claim, suit or proceeding that the manufacture or furnishing of Goods and/or Services under a PO, or the use of such Goods and/or Services or sales of such Goods and/or Services constitutes infringement or alleged infringement of any third party's IPR suffered by KBRS or any of its Affiliates as a result or in connection with the receipt, use or possession of Goods and/ or Services by KBRS or its Affiliates whether or not such losses, costs, claims, demands, actions, proceedings, fines,

- penalties, awards, liabilities, damages, compensation, settlements, expenses and/or professional costs and/or charges were foreseeable at the date the parties entered into the Agreement.
- 10.10 If an alleged claim of infringement or misappropriation is made, Supplier shall procure for KBRs, and KBRs customers, the rights to continue using Goods and/or Services, modify them in a manner acceptable to KBRs to remove the claim, or with the written approval of KBRs, replace Goods and/or Services with a non-infringing one or remove Goods and/or Services and refund the Price.
11. **Confidentiality**
- 11.1 The parties each agree to treat all information exchanged under or in relation to any PO, irrespective of the nature of the information or the medium under which it is transmitted, and including the existence and detail of any PO, with strict confidentiality. Each party undertakes that it shall not at any time disclose to any other person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by this Agreement.
- 11.2 Each party may disclose the other party's Confidential Information:
- 11.2.1 to its employees, officers, representatives, sub-contractors, or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement;
- 11.2.2 entities within its corporate group; and
- 11.2.3 as may be required by law, a court of competent jurisdiction, or any government or regulatory authority and/or as required by any public body with which a customer has a contractual relationship and under that contractual relationship disclosure is required.
- 11.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Agreement.
- 11.4 Supplier acknowledges that KBRs' customers may be subject to the requirements of the FOIA and the Environmental Information Regulations 2004 'EIRS' and will, if applicable to the requirements of the Agreement, provide all necessary assistance to KBRs to enable it to comply with all information disclosure obligations thereunder; including that:
- 11.4.1 KBRs may request Supplier to provide information in its possession in a specific form and Supplier will respond within five (5) working days;
- 11.4.2 KBRs has absolute discretion, notwithstanding any other provision in the Agreement, to determine whether requested information is exempt from disclosure;
- 11.4.3 Supplier should not respond to any request for information under the FOIA or EIRS in respect of information held on behalf of KBRs, and Supplier will forward the request to KBRs promptly and notify the applicant that KBRs will respond to the request; and
- 11.4.4 Supplier acknowledges that (notwithstanding the provisions of this Clause 11.4.4), KBRs may be obliged to disclose information concerning Supplier or the Agreement in certain circumstances:
- (i) without consulting Supplier; or
- (ii) following consultation with Supplier and having taken their views into account, and where (i) above applies, KBRs will, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give Supplier advanced notice or, failing that, to draw the disclosure to Supplier's attention after any such disclosure.
12. **Data Protection**
- 12.1 Each party shall comply with the provisions and obligations imposed on it by the Data Protection Laws when processing Personal Data in connection with the Agreement.
13. **[Quality and Documentation**
- 13.1 Supplier shall apply state-of-the-art scientific and technological standards, safety provisions and KBRs' technical specifications for all Goods. For this purpose, Supplier shall establish an appropriate quality management process and provide evidence thereof to KBRs upon request.
- 13.2 Supplier shall record in its quality documentation for all Goods which are supplied, when, how and by whom a quality inspection was carried out, ensuring defect-free production. These records should be kept for fifteen (15) years as of the last time KBRs placed the final Goods on the market and shall be provided to KBRs if required. Supplier shall ensure its sub-suppliers shall be obliged to comply with the requirements of this Clause 13.]
14. **Records and Audit**
- 14.1 Supplier shall, and shall procure that its subcontractors and sub-suppliers shall, maintain a true and correct set of documents and records pertaining to all activities relating to their performance

of or compliance with the PO. Supplier agrees, and shall procure that its sub-contractors and sub-suppliers agree to maintain and retain such documentation and records for a period of not less than seven (7) years after completion of performance under the PO. Upon giving two (2) Business Days' notice, KBRS (or its professional advisers) shall have the right to enter and inspect Supplier's Premises and inspect, audit and take copies of any and all such records and other documents (as necessary to verify Supplier's compliance with the terms and conditions of the Agreement) at any time during the performance of the PO and during the seven (7) year period (or such other longer period as may be required by law) following completion of performance under the PO. Any audit referred to in this Clause 14.1 shall be conducted on an open-book basis.

15. **Assignment, Subcontracting and Change of Ownership**

15.1 KBRS may at any time assign, transfer, charge, subcontract or deal in any manner with any or all of its rights or obligations under the Agreement.

15.2 Supplier may not assign, transfer, charge, subcontract or deal in any manner with any or all of its rights or obligations under the Agreement without KBRS' prior written consent.

16. **Suspension and Termination**

16.1 KBRS may at any time, by giving five (5) Business Days' notice to Supplier, suspend performance under a PO at such time as it deems appropriate. Upon receiving notice of suspension, Supplier shall promptly suspend performance of its obligations to the extent specified, properly caring for and protecting all work in progress and materials, supplies and equipment that Supplier has on hand for performance. Upon KBRS' request, Supplier shall promptly deliver to KBRS copies of its outstanding POs, materials, equipment and take such action relative to such POs as KBRS may direct.

16.2 KBRS may terminate any or all existing POs in full or in part at any time by giving Supplier not less than thirty (30) days' prior written notice. Where KBRS exercises this right, Supplier shall cease providing Goods and/or performing Services terminated from the date specified in the notice and KBRS shall pay to Supplier the agreed Price for those Goods which have been Delivered and any Services performed but remain unpaid as well as for Supplier's properly evidenced and fair and reasonable costs incurred up to and including the date of termination in accordance with the payment provisions provided for in the Agreement. Notwithstanding the foregoing, KBRS shall not be liable for any payment in respect of Supplier's loss of anticipated profits or consequential losses.

16.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement and/or any PO with immediate effect by giving written notice to the other party if:

16.3.1 the other party commits a material breach of its obligations under the Agreement and (if such breach is remediable) fails to remedy that breach within ten (10) Business Days after receipt of notice in writing to do so;

16.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) or any analogous procedure; or

16.3.3 the other party's financial position deteriorates to such an extent that in the terminating party's reasonable opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.

16.4 KBRS may, on not less than fourteen (14) Business Days written notice terminate the Agreement, including any and all POs if Supplier:

16.4.1 fails to perform within the time specified or in any written extension granted by KBRS;

16.4.2 fails to make progress which, in the reasonable opinion of KBRS, endangers performance of the Agreement in accordance with its terms; or

16.4.3 fails to comply with any of the terms of a PO.

16.5 Such termination shall become effective if Supplier does not remedy such failure within ten (10) Business Days of being notified of the default. Upon termination under Clause 16.4, KBRS may procure at Supplier's expense and upon terms it reasonably deems appropriate, goods or services similar to those so terminated. Supplier shall continue performance of the Agreement to the extent not terminated and shall be liable to KBRS for any excess costs for such similar goods or services. As an alternate remedy and in lieu of termination for default, KBRS may, at its sole discretion, elect to extend the delivery schedule and/or waive other deficiencies in Supplier's performance, and Supplier shall be liable for any costs, expenses or damages arising from any failure of Supplier's performance. KBRS' rights and remedies in this Clause 16.5 are in addition to any other rights and remedies provided by law, equity or under the Agreement.



- 16.6 Upon expiration or after receipt of a notice of termination of the Agreement for any reason, Supplier shall immediately:
- 16.6.1 stop work as directed in the notice;
  - 16.6.2 place no further subcontracts or POs for materials, services, or facilities hereunder, except as agreed between the parties is necessary to complete any continued portion of a PO;
  - 16.6.3 refund to KBRS any progress payments or tooling payments, if any, made by KBRS;
  - 16.6.4 terminate all subcontracts to the extent they relate to work terminated;
  - 16.6.5 deliver to KBRS all completed work and work in process, including all designs, drawings, specifications, other documentation and material required or produced in connection with such work and all of KBRS' Confidential Information.; and
  - 16.6.6 Deliver to KBRS all Goods and Deliverables whether or not then complete, and return all KBRS Materials. If Supplier fails to do so, then KBRS may enter Supplier's premises and take possession of them. Until they have been returned or Delivered, Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 16.7 In the event of Supplier being unable to complete the requirements of the Agreement due to the financial adversity of Supplier then KBRS may access Supplier's Premises in order to secure any such equipment as had been or is ready to be utilised by Supplier to fulfil the Agreement.
- 16.8 Termination or expiry of the Agreement shall not affect the parties' rights and remedies which shall have accrued as at termination or expiry.
- 16.9 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
17. **Dispute Resolution**
- 17.1 If any dispute, controversy or claim arises out of or relating in any way to the Agreement, whether in contract, tort, common law, statute, equity, or otherwise, including any question regarding its existence, validity, or scope, such dispute shall be resolved in accordance with this Clause 17.
- 17.2 KBRS and Supplier shall attempt amicably to resolve any dispute by commercial negotiations. If a dispute is not resolved by commercial negotiations, either party shall, upon written notice, refer the dispute to a meeting of appropriate senior management representatives from each of the parties who will confer in good faith to attempt to resolve the matter within thirty (30) Business Days after the giving of notice, or such later date as may be mutually agreed.
- 17.3 If the parties are unable to resolve the dispute in accordance with Clause 17.2 either party may refer the dispute for mediation by a neutral advisor or mediator. If the parties are unable to agree on a mediator within seven (7) Business Days of the request by one party to refer the dispute to mediation, they shall apply to CEDR to appoint a mediator. The parties shall seek to agree directions as to how the mediation is to be conducted and, failing agreement, they shall seek and adhere to directions from the mediator.
- 17.4 If the parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.
- 17.5 Notwithstanding the provisions of this Clause 17, either party may commence or take proceedings or seek remedies before the courts or any other competent authority for interim, interlocutory or injunctive remedies in relation to the Agreement.
18. **General**
- 18.1 **Supplier's Personnel**
- 18.1.1 Performance under a PO shall be undertaken by employees of Supplier and subject to the direction, control and discipline of Supplier. Such employees shall neither become employees of KBRS nor be entitled to any rights, benefits or privileges of KBRS employees. Supplier shall ensure that its personnel adhere to the Mandatory Policies in a PO and that they have the requisite knowledge, training and ability to perform work under a PO competently and in accordance with all Applicable Laws.
  - 18.1.2 Supplier's employees are not authorised to enter into any agreements or to make any commitments financial or otherwise on behalf of KBRS.
  - 18.1.3 Supplier shall fully indemnify KBRS in the event of a TUPE event to the extent of all salaries, expenses and related costs of employment arising from such TUPE event., including all costs and damages arising from a termination of those employment contracts. The limitations set out in Clause 8 shall not apply.

- 18.2 **Ethics and Prohibited Corrupt Practices**
- 18.2.1 Supplier shall uphold the highest standards of honesty, ethics and professionalism in the conduct of its business. Supplier acknowledges and agrees that KBRS will not tolerate bribery in any form in connection with the conduct of its business. KBRS takes very seriously and will investigate any suggestion or evidence that Supplier, its employees, agents or contractors has engaged in corrupt or improper business practices, bribery, or has used any other forms of coercion, improper inducements, offers of improper inducement, or violence to obtain contractual advantage. These are practices that KBRS does not allow and KBRS shall avoid any direct or indirect dealings with Supplier to the extent that it conducts its business in that way. KBRS shall have the right to terminate the Agreement in the event that Supplier has engaged in such practices as referred to in this Clause 18.2.
- 18.2.2 Supplier shall promptly notify KBRS if, at any time during the term of the Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in this Clause 18.2.
- 18.2.3 Supplier shall, and shall procure that each of its sub-contractors shall, take reasonable steps to ensure that slavery and human trafficking (as such phrase is defined in section 54(12), Modern Slavery Act 2015) is not taking place in any of its supply chains or in any part of its own business. Supplier shall notify KBRS immediately if it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Agreement.
- 18.3 **Alcohol, Drugs, Health and Safety**  
Supplier shall comply in full with KBRS' drugs and alcohol policy, a copy of which is available upon request.
- 18.4 **Environmental Protection and Safety**
- 18.4.1 All packages shall be easily separable and recyclable, avoid compound unit packs and be made of naturally renewable materials. The corresponding information regarding product and material shall be made available.
- 18.4.2 Any persons carrying out work in performance of the Agreement on KBRS' Premises shall observe the applicable safety and environmental protection regulations. Any liability for accidents that happen to these persons on KBRS' Premises shall be excluded unless these have been caused by intentional wrongdoing or gross negligence on the part are the representatives or vicarious agents of KBRS.
- 18.5 **Variation**  
Except as otherwise set out in the Agreement, any variation, shall only be binding when agreed in writing and signed by the Authorised Representatives of KBRS and Supplier.
- 18.6 **Severance**  
If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part provision of such Clause shall not affect the validity and enforceability of the rest of the Agreement.
- 18.7 **Waiver and Rights**
- 18.7.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 18.7.2 If any provision in the Agreement is illegal, invalid or unenforceable, it shall, to that extent, be deemed not to be a part of the Agreement, but the remainder of the Agreement shall be valid and in force.
- 18.7.3 KBRS' rights and remedies under the Agreement are in addition to its rights and remedies implied by statute and common law.
- 18.8 **Third Party Rights**
- 18.8.1 Except as provided in the remainder of Clause 18.8, a person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 or otherwise to enforce any term of the Agreement.
- 18.8.2 KBRS may itself, on behalf of an Affiliate, enforce any term of the Agreement which is expressly or impliedly intended to benefit the Affiliate. KBRS shall be entitled to recover

all losses, costs, claims, demands, actions, proceedings, fines, penalties, awards, liabilities, damages, compensation, settlements, expenses and/or professional costs and/or charges on behalf of an Affiliate as if the preceding had been suffered by KBRS itself under the Agreement, subject to the exclusions and limitations set out herein.

- 18.8.3 Any Affiliate may enforce any term of the Agreement which is expressly or implicitly intended to benefit.
- 18.8.4 The parties may vary, terminate or rescind the Agreement without the consent of any third party beneficiary.
- 18.9 **No Partnership or Agency**

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 18.10 **Further Assurance**

Each party shall execute such documents and take such steps as the other party may reasonably require to fulfil the provisions of and to give to each party the full benefit of the Agreement.
- 18.11 **Force Majeure**
  - 18.11.1 Neither party shall be in breach of the Agreement nor liable for delay in performing or failure to perform any of its obligations under the Agreement if such delay or failure results from circumstances or causes beyond its reasonable control (which shall not include, in the case of Supplier, any industrial action by its employees and/or failures and delays within Supplier's supply chain). If the period of delay or non-performance continues for two (2) weeks, the party not affected by Force Majeure may terminate the Agreement by giving seven (7) Business Days' written notice to the affected party.
  - 18.11.2 KBRS may suspend payments normally due to Supplier for those parts of Services that are not performed at all by Supplier and/or engage a third party or require Supplier to engage a third party to provide or perform all of the relevant affected Services during the period of Force Majeure.
- 18.12 **Notices**
  - 18.12.1 Any notice given by one party to another under the Agreement shall be in writing, delivered by hand or by prepaid first class or special delivery post to the address given at the start of the Agreement and in all cases marked for the attention of the Authorised Representative of the relevant party.
  - 18.12.2 Notices delivered by hand shall be given on the day of receipt (unless received after 5.00 pm in which case they shall be given on the next Business Day). Notices sent by prepaid first class post or special delivery shall be deemed to have been given two (2) Business Days after the date of posting.
  - 18.12.3 A copy of a notice may be sent by email to the Authorised Representative of each party, however delivery via email shall not be valid service under the Agreement.
  - 18.12.4 Either party may vary its address and/or contact for notices by giving notice to the other party. The notice must expressly state that the new address is the address for notices and/or the new contact is the contact to whose attention all future notices should be brought, as the case may be.
- 18.13 **Advertising**

Supplier shall not without the written consent of KBRS advertise or announce that it is a Supplier to KBRS or any KBRS customer. KBRS' Marks, any logos of customers of KBRS, and Supplier's logo may not be used without prior written permission from the respective parties.
- 18.14 **Governing Law and Jurisdiction**
  - 18.14.1 The Agreement and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
  - 18.14.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with the Agreement, its subject matter or formation.

## Definitions

In the Agreement the following definitions shall mean:

**Affiliate** means the holding company of KBRS and each of the holding company's subsidiaries and KBRS' subsidiaries (with 'holding company' and 'subsidiary')

	having the meanings given to them in Section 1159 of the Companies Act 2006).
<b>Applicable Laws</b>	means any applicable law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any Regulatory Authority), guidance or industry code of practice, rule of court, delegated or subordinate legislation in force from time to time.
<b>Authorised Representative</b>	means, in relation to a party, the employee or officer of that party who is designated by that party from time to time as its representative, and of whom the other party has been notified in writing as being the other party's initial point of contact for all matters arising out of, or in connection with, the Agreement.
<b>Business Day</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>CEDR</b>	means the Centre for Effective Dispute Resolution.
<b>Commencement Date</b>	means the date upon which a PO is accepted by Supplier in the form of an OC or, if earlier, the performance of the PO.
<b>Confidential Information</b>	means all information which is disclosed by one party to the other whether before or after the Agreement commences, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a party's business including its services, operations, processes, plans or intentions, developments, trade secrets, know how, market opportunities, marketing, personnel, suppliers and customers, any information identified as Confidential Information in a PO, and all information derived from any of the above together with the existence and provisions of the Agreement and the negotiations relating to it.
<b>Data Protection Laws</b>	means any Applicable Laws relating to privacy or the use or processing of data relating to natural persons
<b>Defect</b>	means any failure of Goods and/or Services to comply in any material respect with the requirements of the Agreement or to achieve their purpose whether in consequence of their faulty or unsafe design, faulty materials, bad workmanship, or any other reason attributable to Supplier or its sub-suppliers. 'Defective' shall be construed accordingly.
<b>Deliverables</b>	means all products, materials and documents developed by Supplier or its agents or contractors and employees as part of or in relation to Services in any form or media, including without limitation, drawings, maps, plans, diagrams, designs, pictures, computer programmes, data, specifications and reports (including drafts).
<b>Delivery</b>	means the completion of the unloading of Goods at the Delivery Location. 'Deliver' and 'Delivered' shall be construed accordingly.
<b>Delivery Date</b>	means the date of Delivery as specified in the PO.
<b>Delivery Location</b>	means KBRS' Premises or such other location as set out in the PO, or as instructed by KBRS prior to the Delivery.
<b>Delivery Note</b>	means the document that accompanies the shipment of Goods and which provides a list of and the quantity of Goods included in the Delivery.
<b>Documentation</b>	means all documentation, records, drawings, models, matrices, samples, computer programmes, tools etc made available to Supplier by KBRS.
<b>FOIA</b>	means the Freedom of Information Act 2002.
<b>Force Majeure</b>	means any circumstance not in a party's reasonable control, including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), epidemic, pandemic, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or default of third party suppliers or sub-contractors.
<b>Good Industry Practice</b>	means the exercise of the same degree of skill, care, prudence, efficiency, diligence, foresight and timeliness as would reasonably be expected from a well-managed supplier highly skilled and experienced in providing services similar to Services.
<b>Goods</b>	means such tangible products as are designed, manufactured, processed and/ or delivered by Supplier to KBRS as set out in the PO.

<b>Intellectual Property Rights (IPR)</b>	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 rights, topography 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.
<b>KBRS</b>	Means Knorr-Bremse Rail Systems (UK) Limited (Company No. 3974921).
<b>KBRS Background IPR</b>	means IPR owned by or licensed to KBRS prior to the parties entering into the Agreement including any information KBRS provides to Supplier for the purposes of performing its obligations under the Agreement.
<b>KBRS Materials</b>	means all Documentation, materials, equipment and tools, drawings, specifications and data supplied by KBRS to Supplier in safe custody at Supplier's own risk; to be maintained by Supplier in good condition until returned to KBRS and not to be disposed of or used by Supplier other than in accordance with KBRS' written instructions or authorisation.
<b>KBRS' Premises</b>	means Westinghouse Way, Hampton Park East, Melksham, Wiltshire SN12 6TL.
<b>Mandatory Policies</b>	means KBRS' policies, codes of conduct, health and safety rules and regulations, any other security requirements that apply at KBRS' premises and quality requirements.
<b>Order Amendment</b>	means a document used to record the parties' agreement to a change to the scope of execution of a PO.
<b>Order Confirmation or OC</b>	means the document issued by Supplier to KBRS confirming acceptance of the PO in the form agreed between the parties.
<b>Personal Data</b>	has the meaning given in Data Protection Laws.
<b>Price</b>	means the price for Goods and/or Services purchased by KBRS agreed to by KBRS and Supplier and set forth in the applicable PO.
<b>Purchase Order</b>	means KBRS' order for Goods and/or Services issued by KBRS to Supplier.
<b>Serial Defect</b>	means a series of repeating, comparable and material Defects with the same or substantially similar root cause relating to the same Goods and which shall be as set out in the Specification or, if none during any twelve (12) month period within the Warranty Period is determined in at least three per cent (3%) of the Delivered Goods.
<b>Regulatory Authority</b>	means all governmental, statutory or regulatory bodies and any other competent authorities in any jurisdiction having responsibility for the regulation or governance of any of the activities of KBRS or Supplier.
<b>Services</b>	means such services, including without limitation any Deliverables, to be provided by Supplier to KBRS under a PO as set out in the Specification.
<b>Specification</b>	means the description or specification for Goods and/or Services agreed in writing by KBRS and Supplier.
<b>Supplier Background IPR</b>	means IPR owned by or licensed to Supplier prior to the parties entering into the Agreement.
<b>Supplier's Premises</b>	means the premises of Supplier from which Goods Delivered or Services provided are dispatched as specified in the PO.
<b>Terms</b>	means the terms and conditions set out in this document as amended from time to time in accordance with the variation provisions.
<b>Title</b>	means all the rights, responsibilities and duties of ownership, including maintenance, use and control.
<b>VAT</b>	means value-added tax.
<b>Warranty Period</b>	means a period of 36 months following the Delivery Date.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted, and includes all subordinate legislation made under that legislation or legislative provision.