

General Terms and Conditions of Purchase

1. **Definitions:** In this Order:
 - (a) 'Order' means this document, including these terms and conditions;
 - (b) 'Vendor' means the entity specified on the first page of this Order;
 - (c) 'VicTrack' means Victorian Rail Track ABN 55 047 316 805 of Level 8, 1010 LaTrobe Street, Docklands, Victoria, 3008.
2. **Supply of Goods:** For any goods specified on the first page of this Order (**Goods**):
 - (a) the Vendor must, at its cost, deliver the Goods to the delivery address specified on the first page of this Order in a prompt and timely manner and, in any event, by any due date notified by VicTrack;
 - (b) VicTrack must inspect the Goods as soon as reasonably practicable after delivery and must, within 30 days after the date of inspection, give written notice to the Vendor, with particulars, of any claim that the Goods are not in accordance with this Order, and the Vendor must refund any delivery charges to VicTrack if VicTrack's claim that the Goods are not in accordance with this Order is found to be valid;
 - (c) the application of the *Sale of Goods (Vienna Convention) Act 1987* (Vic) is excluded; and
 - (d) risk in the Goods passes to VicTrack immediately upon delivery to VicTrack at the delivery address specified on the first page of this Order, and title passes upon acceptance by VicTrack.
3. **Supply of Services:** For any services specified on the first page of this Order (**Services**), the Vendor must supply the Services to VicTrack in a prompt and timely manner and, in any event, by any due date notified by VicTrack, and the Vendor must comply with any reasonable directions given by VicTrack from time to time.
4. **Late delivery:** Time is of the essence of this Order. Without limiting its other rights under this Order or at law, VicTrack may refuse to accept the delivery of any Goods or the performance of any Services after any due date previously notified by VicTrack and is not liable to pay for those Goods or Services.
5. **Premises:** The Vendor and its personnel enter VicTrack's premises, and any other delivery address specified on the first page of this Order, at their own risk.
6. **Price and payment:** In consideration of the supply of the Goods and Services, VicTrack must pay to the Vendor within 30 days after receipt of invoice the total price specified on the first page of this Order, which includes all applicable taxes and charges (including GST and delivery charges) and, in the case of Goods, good quality packaging to be provided by the Vendor. Payment of any monies by VicTrack to the Vendor is not evidence or an admission that the Goods and Services have been supplied in accordance with this Order, but must be taken only as payment on account. VicTrack may set off against any sum owing to the Vendor any amount owing by the Vendor to VicTrack.
7. **GST:** Capitalised expressions in this clause 7 have the same meaning as those expressions have in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). If a party makes a Taxable Supply in connection with this Order for a Consideration which represents its Value, then the Recipient of the Taxable Supply must also pay, at the same time and in the same manner as the Value is otherwise payable, the amount of any GST payable in respect of the Taxable Supply. The Recipient's obligation to pay GST is subject to a valid Tax Invoice being delivered.
8. **Warranties:** The Vendor warrants to VicTrack that:
 - (a) the Vendor has the right to sell the Goods and the Goods are free from any charge or encumbrance;
 - (b) where the Goods are supplied by reference to a sample, the Goods correspond with the sample in quality, and, where the supply is by description, the Goods correspond with the description, and if the supply is also by reference to a sample, the Goods correspond with both the description and sample;
 - (c) the Goods are of merchantable quality;
 - (d) unless otherwise specified on the first page of this Order, the Goods are new and not refurbished or second-hand;
 - (e) the Vendor will perform the Services with due skill, care and diligence and to the highest applicable professional standards and practices, and will employ personnel with qualifications and experience appropriate for the provision of the Services;
 - (f) the Vendor knows the particular purposes for which the Goods and Services are being acquired by VicTrack and the Goods and Services are reasonably fit for those purposes and that it is reasonable for VicTrack to rely on the skill and judgment of the Vendor; and
 - (g) the Goods and Services comply with all legislation, regulations and other governmental requirements in Australia relating to the Goods and Services and to any relevant "Australian standard" issued by Standards Australia.
9. **Intellectual property rights:** The Vendor warrants that the supply of the Goods and Services, and VicTrack's use of them, will not infringe the intellectual property rights of any third party. Nothing in this Order affects the ownership of any pre-existing intellectual property rights. Any intellectual property rights arising from the supply of the Goods and Services are assigned immediately upon creation to VicTrack and, in that regard, the Vendor must procure for VicTrack all necessary moral rights consents.
10. **Confidentiality:** The Vendor must treat all information provided to it by or on behalf of VicTrack under or in connection with this Order (**Confidential Information**) as confidential and not disclose it to any person. All Confidential Information remains the property of VicTrack and must only be used for the purpose of supplying the Goods and Services. The Confidential Information must be returned to VicTrack after such supply. The Vendor's obligations under this clause 10 do not extend to information already in the public domain other than due to a breach of this Order or any disclosure required by law. VicTrack or the Victorian Government may publish the name of the Vendor and the amount payable under, and other terms generally of, this Order.
11. **Termination:** If the Vendor fails to perform any of its obligations under this Order, VicTrack may by notice to the Vendor specify the breach and request that the breach be remedied within 7 days after receipt of such notice. VicTrack may terminate this Order immediately by written notice if the Vendor fails to remedy the breach to the satisfaction of VicTrack within that period, or at any time if the Vendor is unable to pay its debts as they fall due. Without limiting this clause 11, if the Vendor is unable to supply VicTrack's total order, VicTrack may accept partial supply and this Order continues to apply to the Goods and Services supplied. Notwithstanding any other provision of this Order, VicTrack may terminate this Order at any time before delivery of the Goods or performance of the Services in full and is not liable to pay any amount in connection with any Goods or Services not supplied. VicTrack is not obliged to accept or pay for any Goods delivered or Services performed after termination of this Order.
12. **Indemnity:** The Vendor indemnifies VicTrack, its employees, contractors and agents against all losses, damages, costs or expenses which it or any of them may incur or sustain and all actions, proceedings, claims and demands whatsoever which may be brought or made against it or any of them by any person in respect of or arising out of any use of the Goods and Services, any breach of this Order by the Vendor, any negligence, fraud or other wrongful act or omission of the Vendor, its employees, contractors or agents, or any death, personal injury or damage to property in connection with the supply or use of the Goods and Services. The Vendor's liability under this clause 12 is reduced to the extent that any action, proceeding, claim or demand arises out of any negligence, fraud or other wrongful act or omission of VicTrack or its employees, contractors or agents. VicTrack holds the benefit of the indemnity in this clause 12 for the benefit of VicTrack, its employees, contractors and agents.
13. **Notices:** A notice under this Order (**Notice**) has no legal effect unless it is in writing. In addition to any other method of service provided by law, the Notice may be delivered at or sent by prepaid post to the address of the addressee set out in this Order or subsequently notified or sent by facsimile to the addressee's facsimile number as last notified to the sender by the addressee.
14. **Assignment:** The Vendor must not assign or subcontract any rights or obligations under, or otherwise deal with, this Order without the prior written consent of VicTrack, which consent may be withheld in its discretion.
15. **Full effect:** Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Order.
16. **Relationship:** The relationship between the parties is that of independent contracting parties. Nothing in this Order creates any joint venture, agency, partnership, trust, fiduciary, employment or other relationship between the parties.
17. **Waiver:** VicTrack's failure or delay to exercise a power or right does not operate as a waiver of that power or right. A waiver by VicTrack is not effective unless it is in writing, and only relates to the specific purpose for which it is given.
18. **Entire agreement:** Subject to clause 21, this Order is the entire agreement between the parties on everything connected with its subject matter and supersedes any prior agreement on anything connected with it. An amendment or variation to this Order is not effective unless it is in writing and signed by the parties. Any terms subsequently sought by the Vendor to be applied to this Order are of no force or effect.
19. **Acceptance of Order:** The Vendor is bound by the terms and conditions of this Order on acceptance of it. By supplying the Goods and Services to VicTrack, the Vendor is deemed to have accepted this Order.
20. **Governing law:** The law of the State of Victoria governs this Order. The parties submit to the non-exclusive jurisdiction of the State of Victoria and of the Commonwealth of Australia.
21. **Head Agreement:** If a head agreement exists between VicTrack and the Vendor ('Head Agreement'), the terms of the Head Agreement will prevail over this Order to the extent of any ambiguity, discrepancy or conflict.



The following number must appear on all related correspondence, shipping papers and tax invoices

Purchase Order No:059908

GPO BOX 1681
Melbourne VIC 3001
ABN: 55 047 316 805
www.victrack.com.au

To:

Delivery Address:

TRANS MIT PTY LTD
7 WENDY CRT
HAMPTON PARK VIC 3976

Victorian Rail Track
Level 8,
1010 La Trobe Street
DOCKLANDS, VIC 3008

VENDOR CODE 12100711957

P.O. DATE	REQUISITIONER	CONTACT DETAILS
08/09/2014	Rob Allen	robert.allen@victrack.com.au 9619 8016

Qty	UNITS OF MEASURE	DESCRIPTION	UNIT PRICE \$	TOTAL \$
1	ONLY	Virtual Logger Waurm Ponds Station Build Integration with Telmax	750.00	750.00
1	ONLY	UC Dirctory csv processing validation	150.00	150.00

Invoices to be sent to:	ATTN: Rob Allen Victorian Rail Track GPO Box 1681 Melbourne VIC, 3001	Subtotal	900.00
		GST	90.00
		TOTAL \$	990.00

The sale and purchase of the goods and/or services specified above is subject to the terms and conditions specified in the following "General Terms and Conditions of Purchase".