

# Rollingstock Sale Agreement

Queensland Rail Limited

**[insert name of counterparty]**

For the sale of **[insert rollingstock details]**.

*Legal Reference: 16/6304  
Form*

*Queensland Rail Limited Legal Team  
GPO Box 1429  
Brisbane QLD 4001*

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THIS AGREEMENT is made on 2016

**Parties** Queensland Rail Limited ACN 132 181 090  
of Level 14, Rail Centre 1, 305 Edward Street, Brisbane, Queensland  
(Queensland Rail)

[insert name of counterparty]  
of [insert registered address of counterparty]  
(Purchaser)

## Introduction

- A** Queensland Rail Limited (**Queensland Rail**) is an accredited rail infrastructure manager and rollingstock operator for the city and travel networks in Queensland.
- B** At the request of the Purchaser, Queensland Rail has agreed to transfer ownership in [insert rollingstock details] (**Rollingstock**) to the Purchaser.
- C** The parties wish to enter into this Agreement to record the arrangements between them

## It is agreed

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this Agreement:

- (1) **Agreement** means this Agreement together with any schedule or annexure;
- (2) **Authority** includes:
- (a) a government or semi-government authority in any jurisdiction, whether federal, state, territorial or local;
  - (b) a provider of public utility services, whether statutory or not; and
  - (c) any other person, authority, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Land or any part of it or anything in relation to it;
- (3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

- (4) **Purchaser's Representatives** means the members, volunteers, officers, advisors, employees, agents and contractors of the Purchaser;
- (5) **Law** includes any requirement of any statute, rule, regulation, proclamation, order in council, ordinance or by-law whether Commonwealth, state, territorial or local;
- (6) **Parties** means the parties to this Agreement, and a Party means each of them;
- (7) **Railway Yard** means the Queensland Rail yard situated at North Street, North Ipswich, Queensland;
- (8) **Requirement** means a requirement, notice, order, direction, recommendation, consent, stipulation or similar notification received from or given by an Authority or under a Law, whether in writing or otherwise and regardless of to whom it is addressed or directed;
- (9) **Rollingstock** means [insert rollingstock details];
- (10) **Settlement Date** means the date agreed between Queensland Rail and Purchaser but no later than 3.00pm [insert settlement date];
- (11) **Transfer Fee** means [insert amount paid by the Purchaser for the Rollingstock] (inclusive of GST).

## 1.2 Interpretation

- (1) Reference to:
  - (a) the singular includes the plural and the plural includes the singular;
  - (b) a person includes a body corporate;
  - (c) a Party includes the party's administrators, successors and permitted assigns;
  - (d) a thing includes the whole and each part of it separately;
  - (e) a statute, regulation, code or other law or a provision of any of them includes:
    - (i) any amendment or replacement of it; and
    - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
  - (f) dollars means Australian dollars unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.

- (5) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (7) If a Party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

## **2 Transfer of Rollingstock**

### **2.1 Transfer**

- (1) In consideration for the Transfer Fee, Queensland Rail agrees to transfer to and the Purchaser has agreed to acquire from Queensland Rail the Rollingstock on the terms and conditions set out in this Agreement.
- (2) Subject to the Purchaser complying with all of its obligations in this Agreement, title to the Rollingstock shall pass to the Purchaser on the Settlement Date.
- (3) Each party must execute all documents and do all things required to give effect to this clause.
- (4) Settlement shall be effected at the Railway Yard at such time, between 10.00am and 3.00pm on the Settlement Date as may be agreed upon by the parties.

### **2.2 Payment of Transfer Fee**

- (1) The Purchaser acknowledges that the Rollingstock is being sold on behalf of Queensland Rail by expression of interest. This process is being managed by Manheims.
- (2) The Purchaser must pay the Transfer Fee in accordance with the directions of Queensland Rail within 3 Business Days of the Purchaser being notified that its offer for the Rollingstock has been accepted.

### **2.3 Risk**

On and from the date of this Agreement, risk in the Rollingstock passes to the Purchaser.

## **3 Removal & Relocation**

### **3.1 Relocation**

- (1) As a condition of settlement, the Purchaser must remove and relocate the Rollingstock on the Settlement Date.
- (2) Subject to the Purchaser complying with the terms of this Agreement, Queensland Rail will grant the Purchaser or the Purchaser's Representatives access to the Rollingstock on the Settlement Date to remove and relocate the Rollingstock.
- (3) The Purchaser must comply with all directions and obey any rules made by Queensland Rail including (but not limited to) any directions or rules relating to the removal and relocation of the Rollingstock from the Railway Yard.

- (4) Queensland Rail may, at any time, exclude the Purchaser (either temporarily or permanently) from the Railway Yard by notice to the Purchaser.

### 3.2 Purchaser's Representatives to Comply

The Purchaser must ensure that the Purchaser's Representatives do not do anything which, if done by the Purchaser, would be inconsistent with this Agreement.

### 3.3 Costs

- (1) The Purchaser is responsible for (and indemnifies Queensland Rail for and against) all expenses associated with:
  - (a) the removal of the Rollingstock from the Railway Yard; and
  - (b) the transportation of the Rollingstock to the location as decided by the Purchaser.
- (2) The Purchaser acknowledges that from the date of this Agreement, the Purchaser will be responsible for all costs and expenses associated with the removal, transportation, maintenance and disposal of the Rollingstock.

## 4 Indemnity and release

### 4.1 Indemnity

The Purchaser is responsible for and indemnifies Queensland Rail from and against any action, claim, liability and expense arising from the Purchaser's exercise of its rights under this Agreement, including liability for:

- (1) damage, death or injury to any person or property in or about the Railway Yard or otherwise in any way related to the Purchaser's access to the Railway Yard or the removal or relocation of the Rollingstock;
- (2) claims by any other person that arise as a result of a default by the Purchaser under this Agreement or any other conduct by the Purchaser on or around the Railway Yard;
- (3) any breach by the Purchaser of a Law or Requirement or any negligent act or omission by the Purchaser, its members, volunteers, employees or agents; and
- (4) all reasonable costs and expenses including legal costs and expenses actually payable by Queensland Rail to Queensland Rail's legal representatives (whether or not under a costs agreement) incurred by Queensland Rail in investigating, defending or prosecuting an action or claim in connection with subclauses (1), (2) or (3) above.

except to the extent caused or contributed by the act, omission or negligence of Queensland Rail or those for whom Queensland Rail is responsible.

## 4.2 Release

The Purchaser:

- (1) accesses the Railway Yard at its own risk; and
- (2) releases Queensland Rail and its officers, directors, employees and agents from any actions, suits, claims, demands, losses, damages, liabilities, costs and expenses arising out of any accident, death, damage or injury to any person or property in or about the Railway Yard or otherwise in any way related to the Purchaser's removal and relocation of the Rollingstock.

## 5 Condition of the Rollingstock

### 5.1 Fitness for Purpose

- (1) Queensland Rail makes no warranties or representations regarding the condition or fitness for purpose of the Rollingstock, including (but without limitation), the Purchaser's ability to register and operate the Rollingstock.
- (2) The Purchaser acknowledges that Queensland Rail will not be liable for any loss or damage however caused resulting from the use of the Rollingstock.

### 5.2 Transfer in "as is" condition

The Purchaser acknowledges that it accepts and agrees that the Rollingstock is sold in an "as is" condition, subject to all faults and defects (whether or not they are or should have been apparent).

### 5.3 No Further Assistance

The Purchaser acknowledges that:

- (1) the Rollingstock is sold without spare parts or service and maintenance documents;
- (2) the Rollingstock is sold in a deregistered and decommissioned state; and
- (3) Queensland Rail:
  - (a) will not make or pay for any repairs to the Rollingstock; and
  - (b) is under no obligation to assist the Purchaser with the maintenance or repair of the Rollingstock or otherwise provide an assessment or report outlining the works required to use and operate the Rollingstock.

### 5.4 Asbestos

The Purchaser acknowledges that the Rollingstock may contain asbestos and is:

- (1) responsible for all commercial, financial, environmental, industrial or any other liability, loss (including consequential loss), damages, demands, claims, suits, taxes (including without limitation GST) costs and expenses in respect of any claim by any person relating to the asbestos content of the Rollingstock; and
- (2) liable for all obligations stated in the *Work Health and Safety Act 2011 (Qld)* in relation to any asbestos content in the Rollingstock.

## **6 Insurance**

### **6.1 Requirement as to insurance**

The Purchaser must effect and maintain, or cause to be effected and maintained policies for:

- (1) public liability insurance covering claims in respect of:
  - (a) damage to any real or personal property including property owned by Queensland Rail; and
  - (b) the injury to, or death of, any person,  
  
caused by the removal and relocation of the Rollingstock by the Purchaser or the Purchaser's Representatives for at least \$20 million; and
- (2) worker's compensation insurance in accordance with all Laws.

### **6.2 Evidence**

The Purchaser must promptly, on request by Queensland Rail, provide evidence of the current insurance policies required to be effected and maintained by the Purchaser under clause 6.1.

## **7 Laws, permits and consents**

### **7.1 Comply with all Laws**

The Purchaser must:

- (1) at its own cost immediately notify Queensland Rail of any act, matter or thing that the Purchaser becomes aware of that may constitute or contribute towards a breach of or non-observance or non-compliance with any Law or Requirement; and
- (2) not use, occupy or permit the Railway Yard to be used or occupied or do or permit anything to be done in, on or around the Railway Yard in a manner which may breach any Requirement or Law in respect of the Railway Yard or which would, or is likely to, give rise to a claim, suit, demand, cost, expense or loss to or against Queensland Rail.

## **8 Notices**

### **8.1 Notices in writing**

A notice given under this Agreement (**Notice**) has no legal effect unless it is in writing.

### **8.2 Service of Notices**

In addition to any other method of service provided by law, the Notice may be:

- (1) sent by facsimile to the facsimile number of the addressee; or
- (2) delivered at the address of the addressee set out in this Agreement or subsequently notified.



### 8.3 Receipt of Notices

- (1) If the Notice is sent or delivered in a manner provided by clause 8.2, it must be treated as given to and received by the Party to which it is addressed:
  - (a) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
  - (b) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- (2) Despite clause 8.3(1):
  - (a) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
  - (b) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

### 8.4 Absent Addressee

A Notice sent or delivered in a manner provided by clause 8.2 must be treated as validly given to and received by the Party to which it is addressed even if the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent.

## 9 Damage

### 9.1 Notice of damage

The Purchaser must give Queensland Rail notice on becoming aware of any accident occurring in property owned or under the control of Queensland Rail, including the Railway Yard which causes damage to the Land or is a breach of applicable safety legislation.

## 10 Remedies for Purchaser's default

If the Purchaser fails to comply with any of the terms and conditions of this Agreement, including but without limitation its obligation under clause 3.1(1), then Queensland Rail may in addition to any other remedy affirm or terminate this Agreement.

## 11 Goods and services tax

### 11.1 In this clause 11:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations;

- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
  - (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member;
  - (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member; and
  - (5) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- 11.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this document for any supply made under or in connection with this document does not include GST.
- 11.3 To the extent that any supply made under or in connection with this document is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 11.4 A party's right to payment under clause 11.3 is subject to a valid tax invoice being delivered to the party who is the recipient of the taxable supply.
- 11.5 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

## **12 General**

### **12.1 Expression of Interest Conditions**

The parties agree to be bound by the terms and conditions of the Manheim 'M Series' carriages expression of interest document which forms part of this Agreement. In the event of any inconsistency between the expression of interest document and this Agreement, the terms of this Agreement shall prevail.

### **12.2 Time of the essence**

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement and except as otherwise provided in this Agreement.

### **12.3 No partnership**

Nothing in this Agreement is intended to create a partnership as between Queensland Rail and the Purchaser. Each Party acknowledges that it has no authority to bind the other Party without the other Party's specific consent.

#### 12.4 Further assurance

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 Agreement.

#### 12.5 Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

#### 12.6 Entire understanding

This Agreement:

- (1) is the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
- (2) supersedes any prior Agreement or understanding on anything connected with that subject matter.

#### 12.7 Variation

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

#### 12.8 Waiver

- (1) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (2) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (3) A waiver is not effective unless it is in writing.
- (4) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

#### 12.9 Costs and outlays

- (1) Each Party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.
- (2) The Purchaser must pay when due all duty and other government imposts payable in connection with this document, and all other documents and matters referred to in this document.

#### 12.10 Continuing obligations – no merger

Each obligation and warranty which is capable of having future operation continues in force although this Agreement has otherwise been fully performed.

#### 12.11 Governing law and jurisdiction

- (1) The law of Queensland governs this Agreement.
- (2) The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.

#### 12.12 Execution of counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original but which together will constitute one instrument.

**Executed** as an agreement on the date shown on the first page

Signed for and on behalf of **Queensland Rail Limited ACN 132 181 090** by an authorised representative in the presence of:

.....  
Signature of authorised representative

.....  
Signature of witness

.....  
Name and title of authorised representative (BLOCK LETTERS)

.....  
Name of witness (BLOCK LETTERS)

**[OPTION 1 - INDIVIDUAL]** Signed by **[insert name of individual]** in the presence of:

.....  
Signature of witness

.....  
Name of witness (BLOCK LETTERS)

**[OPTION 2 - CORPORATION]** Executed by **[insert name of company]** in accordance with section 127 of the *Corporations Act 2001*:

.....  
Director/company secretary

.....  
Director

.....  
Name of director/company secretary (BLOCK LETTERS)

.....  
Name of director (BLOCK LETTERS)

**[OPTION 3 - INCORPORATED ASSOCIATION]** Executed by **[insert entity name of counterparty]**:

.....  
President

.....  
Secretary

.....  
Name of President  
(BLOCK LETTERS)

.....  
Name of Secretary  
(BLOCK LETTERS)