

Extract from the contract

CLAUSE 36

VOLUNTARY TERMINATION OR SUSPENSION BY THE PURCHASER

36.1 Voluntary Termination by the Purchaser

- (a) The Purchaser shall have the right, at its absolute discretion, to terminate or Partially Terminate this Agreement at any time during the term of this Agreement provided that the Purchaser complies with its obligations under this clause 36.1.
- (b) If the Purchaser wishes to terminate or Partially Terminate this Agreement under this clause 36.1, it must give notice to the Manufacturer stating that:
 - (i) the Purchaser is terminating or Partially Terminating this Agreement under this clause 36.1; and
 - (ii) this Agreement will terminate or Partially Terminate on the date stated in the notice falling no earlier than 12 months after the date of such notice; and
 - (iii) in the case of Partial Termination of a Fleet or Fleets, the manner in which such Partial Termination is to take effect and which elements of the Manufacturer's obligations under this Agreement are to be terminated (and the remaining obligations shall continue regardless of any such Partial Termination),

except that, if the Purchaser wishes to terminate or Partially Terminate this Agreement under this clause 36.1 at any time prior to the Commencement Date, notwithstanding clause 36.1(b)(ii), the Purchaser shall not be required to give a minimum period of notice and this Agreement will terminate or Partially Terminate on the date stated in the notice.

- (c) This Agreement will terminate or Partially Terminate on the date set out in the notice referred to in clause 36.1 (b) above and clause 35.1 (b) shall apply.
- (d) The non-exercise by the Purchaser of any Whole Line Option shall not be taken to mean or imply an exercise by the Purchaser of any right to terminate or Partially Terminate this Agreement voluntarily under this clause 36.1.

Extract from Schedule 20 – Termination Payments

3. Consequences of Voluntary Termination or Termination for Purchaser Default/Force Majeure/Utilities Contracts Regulation

3.1 If this Agreement is terminated or Partially Terminated prior to Acceptance of all of the Trains and all of the Equipment relating to the Base Order and any Whole Line Options that have been exercised, as a result of:

- (a) the occurrence of a Purchaser Event of Default in accordance with clause 31 (Purchaser Default);
- (b) Purchaser voluntary termination in accordance with clause 36.1;
- (c) a continuing Force Majeure Event in accordance with clause 32;
- (d) an order of a court of competent jurisdiction that there has been a Substantial Modification as referred to in clause 33.4(a); or
- (e) a Purchaser Serious Infringement as referred to in clause 33.4(b)(ii),

then:

- (i) the Purchaser shall pay to the Manufacturer the fair value in respect of each partially completed Train or other item of Equipment in respect of those Fleets that have been terminated (the "Acquired WIP"), (which in respect of any Train or other item of Equipment which is not complete and ready for delivery as specified in clause 15 (Acceptance of Trains and Equipment) shall be less than the Contract Price for such Train or items of Equipment) LESS the amount of Milestone Payments made in respect of such Acquired WIP. Where this gives rise to a negative figure, the corresponding positive amount shall be paid by the Manufacturer to the Purchaser; and
- (ii) the Manufacturer shall pay to the Purchaser an amount equal to the liquidated damages payable by the Manufacturer pursuant to clause 16 (if any) as a result of applying the tests set out in clause 16.5 on or around the date of termination (rather than on Fleet Acceptance), as such tests are adjusted to take into account of the size of the relevant Fleet or Fleets at the time of termination (with any Acquired WIP).

3.2 The Purchaser may, at its own option, elect whether or not to acquire and take title to any partially completed Trains and/or other items of Equipment in respect of those Fleets that have been terminated.

3.3 Where the Purchaser elects not to acquire and take title to any partially completed Trains or other items of Equipment pursuant to paragraph 3.2, the Manufacturer shall use reasonable endeavours to dispose of such Purchased Items for a reasonable market rate and shall account to the Purchaser for the proceeds of any subsequent disposal (whether for scrap or otherwise) of any such Trains or items of Equipment or subsequently completed Trains or items of Equipment after deducting its reasonable costs and expenses in completing the Trains or items of Equipment and in effecting disposal.

3.4 If this Agreement is terminated or Partially Terminated prior to Acceptance of all of the Trains and all of the Equipment relating to the Base Order and any Whole Line Options that have been exercised, as a result of:

- (a) a Purchaser Event of Default in accordance with clause 31 (Purchaser Default);

- (b) Purchaser voluntary termination in accordance with clause 36.1; or
- (c) a Purchaser Serious Infringement as referred to in clause 33.4(b)(ii),

then in addition to the amounts payable pursuant to paragraph 3.1, the Purchaser shall (on having received from the Manufacturer evidence to substantiate any such claim acceptable to the Purchaser) pay the costs, expenses and other liabilities reasonably, properly, wholly and necessarily incurred by the Manufacturer as a direct result of the termination of this Agreement, but excluding loss of profit or any other type of indirect, consequential, economic or special loss or damage suffered by the Manufacturer, provided that the Manufacturer shall use all reasonable endeavours to mitigate such costs, expenses and/or other liabilities.

3.5 In assessing the losses in paragraph 3.4 that are incurred by the Manufacturer as a direct result of the termination of this Agreement, the Manufacturer shall not be entitled to take into account any prospective contracts or liabilities that may or would have been incurred if one or more Whole Line Options had been exercised by the Purchaser by the date of termination but nevertheless had not been exercised by that date.