

## PROGRESS RAIL SERVICES PURCHASE TERMS AND CONDITIONS

### DEFINITIONS:

- “Progress Rail” or “Buyer” means Progress Rail Services Corporation or its affiliate entering into the transaction.
- “Seller” means the person or entity providing the goods or services to Progress Rail.
- “Goods” means the products or services provided by Seller to Progress Rail.
- “Order” means the purchase order issued by Progress Rail or contract signed by the parties, including all exhibits, attachments, specifications, drawings, notes, instructions and other written materials and information specifically referred to therein.

**1. AGREEMENT DOCUMENTS.** These terms and conditions apply to and govern all purchases by Progress Rail of Goods and are incorporated and are made a part of all Orders. Each Order constitutes the entire agreement between Buyer and Seller with respect to the purchase of the Goods described therein and supersedes all prior oral and written communications and agreements relating thereto. Any additional or differing terms or conditions contained in any Order acknowledgement or in any other documents issued by the Seller, including, but not limited to, any quotation or any response to a solicitation for bids or quotations, shall not become a part of the Order and are hereby objected to by Buyer, except to the extent that such terms are additional terms which Buyer specifically requested that the Seller provide (e.g., pricing in response to a request for quotations). These terms and conditions take precedence over any additional, different or conflicting terms contained in any other document referenced or incorporated in an Order. Acceptance of an Order shall be either by beginning of performance by Seller, or by acceptance of the Order by Seller by signature thereon or otherwise. Buyer reserves the right to update or modify these terms and conditions, at its sole discretion, from time to time, without prior notice to Seller. Seller hereby assumes an affirmative obligation to request and review Buyer’s current terms and conditions. Each Order shall be subject to the terms and conditions in effect on the date of the Order.

**2. CHANGE ORDERS.** Buyer may at any time, by a written order, suspend performance hereunder, increase or decrease the ordered quantities, change the scheduled delivery date, or make changes in applicable drawings, designs, or specifications, method of shipment or packing, and/or place of delivery. If the changes cause an increase in the cost or the time required by Seller for performance of the Order, and Seller so notifies Buyer before incurring any costs associated with the change, then Buyer will make an equitable adjustment to reflect such costs, and the Order will be modified accordingly. No claim by Seller for such an adjustment will be valid unless asserted within twenty (20) days from the date of receipt by Seller of the notification of change. Nothing in this paragraph is intended to excuse Seller from proceeding with this Order as changed or amended.

**3. WARRANTIES.** In addition to all express and implied warranties, Seller warrants, for a period of twelve months following initial use, that the Goods will be (1) free from defects in design, workmanship and material, (2) compliant, and be performed in accordance, with all of Buyer’s requirements and specifications, (3) fit for Buyer’s specific use and purpose, and (4) provided to Buyer free of any lien or other encumbrance of title or otherwise. Any Seller warranty shall also apply and be transferable to Buyer’s customers. In addition to any other rights of Buyer, if the Goods delivered pursuant to this Order (or services performed) are found to be non-compliant with this warranty, Buyer may return such Goods to Seller, at Seller’s expense, for correction, replacement, reperformance, credit, or refund as Buyer may direct. Any Goods corrected, reperfomed or furnished in replacement shall also be subject to these warranty provisions to the same extent and duration as the Goods initially furnished. Buyer may require Seller to replace, reperform or rework nonconforming material or services within a reasonable time after notification by Buyer. Cost of shipping, rework, reperformance, inspection, repackaging, and any related costs shall be paid by Seller. Seller shall hold harmless, defend, and indemnify Buyer against damages for breach of this warranty or of the terms of the Order, including any epidemic failure and/or recall of the Goods.

**4. HAZARDOUS MATERIALS.** In addition to any other disclosure requirements under a federal or state statute, law, rule or regulation (including, without limitation, federal and state OSHA requirements), Seller shall advise

Buyer in writing of any hazardous or toxic substances which may be present in, or may be encountered by Buyer or its employees or customers in using, possessing or processing the Goods furnished by Seller hereunder, and Seller shall be responsible for instructing Buyer in the proper handling, transportation and disposal of such Goods. Scrap Goods shall not include any: hoses; liquids or lubricants (i.e. grease, oils, fuels, paint, antifreeze, freon, etc.); batteries or pieces of batteries; lead; mercury switches or mercury; capacitors or other electronic components containing hazardous materials; nonmetallic materials, including, but not limited to, tires, rubber, wood, dirt, insulation, rags, paper, coal, rocks, or trash; unspent airbag containers or any other explosive materials; barrels, drums, pails, or buckets; closed or pressurized vessels, such as tanks or cylinders; steel wire or cable; radioactive material; or any items (including, but not limited to, air conditioners, refrigerators, or freezers) that contain Freon or other refrigerants. Although Buyer shall have the right, at its sole discretion, to reject any scrap Goods, or any portion thereof, containing the prohibited items listed above, Seller shall indemnify and hold Buyer harmless for any damages, costs or expenses related to such Goods in accordance with Section 10 hereof. Rejected Goods or items will be returned at Seller’s expense.

**5. TERMINATION.** Buyer reserves the right to terminate any Order and/or any agreement governing or relating to an Order, in whole or in part, without cause, for Buyer’s convenience. Buyer may return, for any or no reason at its expense all or a portion of the Goods, to Seller at any time within 180 days following delivery without any penalties or restocking fees. Upon notice by Buyer, Seller shall immediately stop all work and observe any instructions from Buyer as to works-in-process. Buyer will determine an equitable adjustment for work performed as of the notification date. It is understood and agreed that time is of the essence in the fulfillment of the Order because the Goods are needed for products or services to be marketed by Buyer. Buyer may, by written notice, cancel any Order and/or any agreement governing or relating to an Order, in whole or in part, for breach or default if, in Buyer’s good-faith opinion, Seller has (i) failed to make delivery of the Goods within the specified time, or any extension thereof; (ii) failed to replace or correct defective Goods as directed by Buyer; (iii) failed to perform any of the provisions of the Order; or (iv) so failed to make progress under the Order so as to endanger performance in accordance with its terms. If an Order is canceled for Seller’s breach or default, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, substitute Goods similar or substantially similar to those canceled, and Buyer shall not be limited to procuring the least expensive substitute. Without limiting Buyer’s remedies, Seller shall be liable for, and shall hold Buyer harmless and indemnify Buyer from, any damages occasioned by Seller’s breach or default, including any difference in the cost of obtaining substitute Goods. Seller agrees to proceed with any portion of this Order not canceled. If it is determined by a court of law or similar judicial body that Buyer has improperly terminated this contract for breach or default, such termination shall be deemed to be for Buyer’s convenience.

**6. TERMS OF PAYMENT.** Unless otherwise set forth in an Order, Buyer shall pay Seller all undisputed amounts within 45 days of the date Buyer receives a correct invoice. No other payment terms or discounts are applicable unless specified in an Order signed by the Buyer.

**7. PRICE WARRANTY.** Seller warrants that the prices offered for the Goods hereunder are the lowest prices at which these, or similar, products or services are sold by Seller, and, in the event of any price reduction between the execution of the Order and delivery of the Goods that results in Seller offering the Goods to another customer at a lower price, Buyer shall be entitled to such reduction. Buyer shall be entitled to reasonable audit rights to verify this warranty.

**8. ACCEPTANCE/INSPECTION.** Payment by Buyer shall not constitute acceptance. Acceptance shall occur only when the Goods have been counted, inspected, and tested and determined by Buyer to conform to this Order. Acceptance of the Goods shall not impair or limit Buyer’s rights or Seller’s obligations under any warranty.

**9. PACKING AND SHIPMENT.** All Goods shall be packed in accordance with sound commercial practices to obtain the lowest transportation rates unless otherwise specified by Buyer in writing. Unless otherwise specified by Buyer in writing: (1) shipments shall be F.O.B. Destination (Incoterms 2010) Freight Prepaid for shipments originating in and delivered within the United States or (2) for all other shipments, delivery terms are Delivery Duty Paid (Incoterms 2010) Destination. For all shipments, Seller shall (1) provide a complete packing list attached to the outside of each shipping container, (2) mark containers or packages with necessary lifting, loading, and shipping

information, including Buyer's Order number, item number, dates of shipment, and name and addresses of consignor and consignee, and (3) ensure that bills of lading accompany each shipment and are complete with the shipment number and weight. Acceptance by Buyer of late or partial deliveries shall not be deemed a waiver of Buyer's right to hold Seller liable for any loss or damage resulting therefrom or Seller's obligation to make future deliveries in accordance with the Order. Seller shall comply with all ISM RIF industry standards and provide any related Material Safety Data Sheets, similar documentation and documentation reasonably requested by Buyer.

**10. INDEMNIFICATION / INSURANCE / LIMITATION OF LIABILITY.** To the fullest extent permitted by law, Seller agrees to indemnify, defend (with counsel reasonably satisfactory to Buyer), and save harmless Buyer and its parent company, affiliates and subsidiaries and their respective shareholders, directors, officers, employees, agents, subcontractors, and representatives and any successor in interest to the Goods which are the subject of an Order (each a "Buyer Party," and, collectively, the "Buyer Parties"), from and against any and all demands, claims, causes of action, lawsuits, losses, liabilities, judgments, fines, penalties, costs, and expenses, including reasonable attorneys' fees, expert fees, and court costs (individually or collectively "Losses/Claims"), arising by reason of the manufacture, sale, and/or use of the Goods sold hereby, or in connection with or resulting from the acts or omissions of Seller in the performance of an Order. Seller's obligation to indemnify, defend, and hold harmless, as required herein, shall include, directly or indirectly, without limitation: (a) Losses/Claims related to infringement or violation of any copyrights, patent rights, or similar rights (including, without limitation, unfair competition); (b) Losses/Claims relating to injuries or damage to property or persons, including death or injury to employees or agents, or loss or damage to property, of Seller or a Buyer Party; (c) Losses/Claims on account of the acts and/or omissions of Seller, or those for whom Seller is legally responsible or who act on Seller's behalf or who are under its control or direction including, without limitation, any of Seller's officers, agents, representatives, employees, consultants, contractors or servants; (d) Losses/Claims due to defects of any kind in the material or workmanship of the Goods, including the presence or incorporation of any hazardous, toxic, or forbidden materials into the Goods as set forth in Paragraph 4 hereof; and (e) Losses/Claims relating to, arising from, or connected with attachments, executions, and liens by creditors of Seller or others making claims arising from or related to Seller's furnishing of Goods hereunder or performance of an Order. To the fullest extent allowed by applicable law, Seller's agreement and duty to indemnify, defend, and hold harmless, as required herein, also includes: (i) the duty to do so from Losses/Claims, directly or indirectly, based on or arising from the negligence or fault of a Buyer Party, except Losses/Claims caused directly by the sole negligence or willful misconduct of Buyer Parties, and (ii) Losses/Claims related to or arising from Seller's breach of this agreement. The indemnity and limitation on the Buyer Parties' liability set forth in this paragraph shall survive any termination or fulfillment of an Order, and the indemnity shall not be limited by the insurance requirements, if any, set forth herein. Seller shall provide to Buyer a certificate of insurance evidencing coverage satisfactory to Buyer and shall at all times while performing work for Buyer maintain any statutory insurance coverage, including any related to coverage for its employees. **NOTWITHSTANDING ANYTHING ELSE IN AN ORDER OR OTHERWISE, THE BUYER PARTIES WILL NOT BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF AN ORDER UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOST DATA OR LOST PROFITS, EVEN IF ADVISED OR AWARE SUCH ARE POSSIBLE OR LIKELY (II) ANY AMOUNTS IN EXCESS OF THE AMOUNT PAID BY BUYER HEREUNDER FOR THE GOODS, OR (III) ANY MATTER BEYOND THE BUYER'S REASONABLE CONTROL.**

**11. GOVERNMENT CONTRACTS.** If a government contract ("Contract") number is related to an Order, the following special terms and conditions apply: (1) all applicable provisions of a Contract between Buyer and any government body or agency, prime contractor, or subcontractor, and all statutes, regulations, orders, or similar government contracting provisions which by law or regulations or under the terms of the Contract are required to be made a part of the Order, are incorporated herein by reference. By accepting the Order, Seller assumes toward the government, prime contractor, or subcontractor the same obligations toward Buyer that Buyer has assumed in the Contract or subcontract with the government, prime contractor or subcontractor; and, (2) any additional government contracting provisions which Buyer elects to have apply to the Order shall be referenced on the Order and are incorporated herein by reference. Seller also shall participate in and

comply with any applicable socio-economic programs related to a Contract or otherwise required by Buyer, including reporting purchases from small, disadvantaged, and minority-owned businesses.

**12. IMPORTS/EXPORTS.** Unless otherwise specified in a writing signed by the Buyer, Buyer shall not be the importer/exporter of record for Goods or technical data imported into or exported from the United States. If Buyer is not the importer or exporter of record, Buyer shall not be responsible for freight costs incurred outside the United States or for any import/export duties, tariffs, fees, or any other costs associated with the import/export process ("Import/Export Costs"). If Buyer is the importer or exporter, Buyer may agree to be responsible for freight and Import/Export Costs. Seller must use the transportation, freight forwarding, and customs broker services designated by Buyer. If Seller does not use Buyer's designated service, Buyer reserves the rights not to pay for these services.

### 13. MISCELLANEOUS.

- **Assignments and Subcontracting.** No part of an Order may be assigned or subcontracted by Seller without the prior written approval of Buyer.
- **Statutory Compliance.** Seller shall comply with all applicable federal, state, and local laws and ordinances, and all lawful orders, rules, and regulations; and, the Goods, shall fully comply with such laws and regulations.
- **Taxes.** The Order price includes all applicable federal, state, and local taxes, tariffs, import duties, commissions, or other charges. Such charges shall be identified separately from the purchase price.
- **Set-Off.** Buyer shall be entitled, at all times, to set-off any amount owing from Seller to Buyer or any of its affiliated companies against any amount payable by Buyer or any of its affiliated companies to Seller.
- **Waiver and Remedies.** No waiver of any breach of an Order or the terms and conditions hereof by Buyer shall be held to be a waiver of any other or subsequent breach. All rights and remedies afforded Buyer in the Order and hereunder shall be taken and construed as cumulative; that is, in addition to every other right and remedy provided by the Order or by law.
- **Construction and Jurisdiction.** The laws of the State of Alabama, United States, shall govern all Orders, excluding its choice of law rules. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to Orders. As part of the Order consideration, Buyer and Seller agree that, and consent to, the exclusive venue and jurisdiction of the federal or state courts serving Marshall County, Alabama for the resolution of any dispute relating to an Order, or the Goods provided under an Order.
- **Gifts.** Seller shall not make or offer a gratuity or gift of any kind to Buyer's employees or their families that could be viewed as relating to an actual or potential business relationship with Buyer. Gifts include entertainment, personal services, favors, discounts, and other preferential treatment of any kind. Buyer will interpret any such action as an improper attempt to influence Buyer, which will jeopardize Buyer's business relationship with Seller and will be grounds for termination of all Orders with Seller.
- **Title and Risk of Loss.** Title to, and risk of loss of or damage to, Goods covered by an Order shall pass to Buyer upon receipt by Buyer of the Goods and acceptance thereof.
- **Tooling and Copyright.** Any tooling or other deliverables or items paid for by Buyer, including, but not limited to, designs, software, engineering, drawings, and reports (collectively, "Deliverables") shall be the property of the Buyer, and Seller shall do nothing to create any encumbrance or liens on such Deliverables and shall deliver such Deliverables to Buyer upon demand. All Deliverables shall be deemed to be a "work for hire," and, if any Deliverables are determined under the law not to be a "work for hire," Seller grants to Buyer an exclusive, irrevocable, worldwide, royalty-free license to use, sublicense, sell, copy, or distribute such Deliverables as it sees fit.
- **Force Majeure.** Buyer shall not be liable for damages and costs to Seller arising out of Buyer's delays or failures to perform if such delays or failures result from causes beyond the reasonable control of the Buyer. As soon as it is reasonably apparent that the occurrence will likely cause a delay of more than thirty (30) days, Buyer shall have the right to terminate the Order for Buyer's convenience.