

PROGRESS RAIL SERVICES SALES ORDER TERMS AND CONDITIONS

1. ACCEPTANCE. These terms and conditions apply to all sales by Progress Rail Services Corporation or one of its affiliates stated in any related sales order or invoice ("Seller") issued or approved by such Seller. This is an offer to sell to Buyer by Seller. Seller may revoke this offer at any point up to, an including, acceptance of the goods or services by Buyer. **BUYER'S RIGHT TO ACCEPT THIS OFFER IS LIMITED TO THESE TERMS AND CONDITIONS AND ANY PRINTED ON SELLER'S SALES ORDER OR INVOICE, AND NO TERMS OR CONDITIONS ISSUED BY BUYER ADDITIONAL TO OR DIFFERENT FROM THOSE IN THIS OFFER ARE BINDING ON SELLER UNLESS SPECIFICALLY AGREED TO IN WRITING AND SIGNED BY SELLER. THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN. ACCEPTANCE OF THESE TERMS SHALL BE EVIDENCED BY BUYER'S ACCEPTANCE OF GOODS OR SERVICES OR UPON BEGINNING OF PERFORMANCE BY SELLER.**

2. PURCHASE PRICE. The purchase price of the goods or services shall be as stated on Seller's sales order or invoice (together with these terms and conditions, the "Agreement"); provided however, that if Seller announces a general price increase, the purchase price shall be revised to include the price increase unless the goods are scheduled for shipment or services are to be performed within thirty days of the price increase.

3. LIMITED WARRANTIES. Seller warrants that services will comply with agreed upon specifications when performed. Seller warrants only its services and does not warrant any goods supplied in performance of the services. However, Seller shall assign to Buyer, at Buyer's request and to the extent they are assignable, warranties applicable to goods or services provided by third parties and supplied by Seller in performance of the services. The warranties in this Agreement are void and shall not apply if in the reasonable judgment of Seller, items on which services have been performed or goods supplied in performance of the services, have been damaged by improper application, abuse or neglect, improper maintenance or repair, subjected to inappropriate environmental or operational conditions or services by third parties without prior written authorization from Seller. **SELLER MAKES NO OTHER WARRANTIES, AND EXPRESSLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY RELATED TO PERFORMANCE OR TO THE SUITABILITY OF BUYER FURNISHED DESIGNS, MODIFICATIONS OF SPECIFICATIONS.**

4. LIMITATION OF BUYER'S REMEDIES AND SELLER'S LIABILITY. Seller's liability hereunder shall be limited to: (1) the assignable warranties referenced above with respect to goods; (2) re-performance of services; or (3) allowance of a credit, at its option. Seller's total cumulative liability in any way arising from or pertaining to any goods sold or required to be sold, or services performed or required to be performed shall NOT in any case exceed the purchase price paid by Buyer for such goods or services. **IN NO EVENT SHALL SELLER HAVE ANY LIABILITY FOR COMMERCIAL LOSS, LOST PROFITS, CLAIMS FOR LABOR, OR FOR EXEMPLARY, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY TYPE, WHETHER THE CLAIM BE BASED IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, OR OTHERWISE, AND IRRESPECTIVE IF SELLER WAS ADVISED OR AWARE THAT SUCH DAMAGES WERE POSSIBLE OR LIKELY. IT IS EXPRESSLY AGREED THAT BUYER'S REMEDIES EXPRESSED IN THIS PARAGRAPH ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. NO DELIVERY DATES ARE GUARANTEED. BUYER'S SOLE AND EXCLUSIVE REMEDIES AND SELLER'S ONLY LIABILITY FOR ANY DELAY IN DELIVERY OF GOODS OR SERVICES SHALL BE LIMITED AS SET FORTH HEREIN. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE ACCEPTANCE OF THE GOODS OR SERVICES SOLD HEREBY OR THE TERMINATION OF THIS AGREEMENT FOR ANY REASON.**

5. FORCE MAJEURE. In addition to all other limitations stated herein, Seller shall not be liable for any act, omission, result or consequence, including but not limited to any delay in delivery or performance, which is due to any act of God, the performance of any government order, any order bearing priority rating or order placed under any allocation program (mandatory or voluntary) established pursuant to law or industry; local labor shortage; fire, flood or other casualty; governmental regulation or requirement; shortage or failure of raw material, supply, fuel, power or transportation; breakdown of equipment; civil insurrection; terrorism; any strike or labor dispute or shortage, however arising; or any cause beyond Seller's reasonable control, whether of similar or dissimilar nature, to those above enumerated.

6. BUYER'S OBLIGATION TO PASS ON LIMITATION OF WARRANTIES AND REMEDIES. In order to protect Seller against claims by any purchaser from Buyer, if Buyer resells any of the goods or services purchased under this Agreement, Buyer shall include the language contained in paragraphs 3 and 4 of this Agreement, dealing with Seller's warranties and limitations of warranties and remedies, in an enforceable agreement with Buyer's

buyer. Buyer shall also include a provision in its agreement with its buyer applying Alabama law to any claims its buyer might assert against Seller with respect to goods or services provided by Seller, and requiring its buyer to bring any such action against Seller either in the state or federal courts serving Marshall County, in Alabama. Buyer shall defend, indemnify and hold Seller harmless from any and all claims, causes of action, damages, losses or expenses (including reasonable attorney's fees) that Seller incurs by reason of Buyer's failure to comply with this paragraph. The provisions of this section shall survive the acceptance of the goods or services sold hereby or the termination of this Agreement for any reason.

7. SHIPMENT/PASSAGE OF TITLE. All goods shall be shipped Ex Works Seller's facility (Incoterms 2010). Title to the goods sold hereunder shall pass to Buyer upon delivery to the carrier at the point of shipment. Without Seller's prior, written permission, neither Buyer nor Buyer's consignee shall have the right to divert or reassign such shipment to any destination other than specified in the bill of lading. Seller reserves the right to select the mode of transportation.

8. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS. If Buyer fails to comply with any provision of the Agreement or fails to make payments pursuant to the Agreement or any other agreement between Buyer and Seller, Seller may at its option defer shipments or performance or, without waiving any other rights it may have, terminate this Agreement without liability. All offers shall be subject to the approval of Seller's Credit Department. Seller reserves the right before making any delivery, or providing any service, to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate this agreement. A late charge of 1½% monthly (18% annual rate) or the maximum allowed by state law, if less, will be imposed on all past due accounts.

9. CLAIMS BY BUYER. Buyer shall thoroughly inspect goods and services sold under this Agreement immediately upon receipt to verify that the goods conform to the specifications of the Agreement. Buyer must notify Seller of claims for failure or delay in delivery within ten (10) days after the scheduled delivery date. Buyer must notify Seller of any claims for nonconforming or defective goods or services within ten (10) days after receipt, or any claim related to such goods or services shall be waived. In addition, Seller must be given an opportunity to investigate the claim before Buyer disposes of the goods or else Buyer's claim will be barred. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless Buyer shall have entered full details thereof on its receipt to the carrier.

10. PERMISSIBLE VARIATIONS. The goods sold hereunder shall be subject to standard manufacturing variations, tolerances and classifications of the Seller and in the industry.

11. TECHNICAL ADVICE. Buyer represents that it has made its own independent determination that the goods or services it is purchasing under this Agreement meet the design requirements of Buyer's project and are suitable for Buyer's intended application. Buyer further represents that it has not relied in any respect on any written or oral statements or advice from Seller.

12. TAXES. No tax imposed in respect of the sale of the goods or services sold hereunder is included. Any such tax shall be added to, and paid by Buyer as part of, the purchase price.

13. INDEMNITY. To the fullest extent allowable by law, Buyer shall defend, indemnify and hold harmless the Seller and its officers, directors, employees, agents, representatives and affiliates from any and all loss, liability, claim, cause of action, cost, judgment, or damages, including reasonable attorney fees for any personal injury, death, property damage, or economic loss of any sort related to any act or omission of the Buyer or use or abuse of the goods by the Buyer or any third party receiving, using or abusing the goods after Buyer's receipt without regard to whether any loss is based upon breach of contract, breach of warranty, negligence, strict liability, or other tort or contract theory or cause of action.

14. WAIVER. Failure or inability of either party to enforce any right hereunder shall not waive any right in respect to any other or future rights or occurrences.

15. PERIOD OF LIMITATIONS. Buyer and Seller agree that any action by Buyer against Seller for breach of this Agreement, including any action for breach of warranty, or otherwise in connection with the goods or services sold under this Agreement, must be commenced by Buyer against Seller within one year after the cause of action accrues.

16. SEVERABILITY. In case any provision of this Agreement shall be declared invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

17. APPLICABLE LAW. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply to this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama. Buyer and Seller, each as part of the consideration hereof, agree to the exclusive venue and jurisdiction of, and specifically agree that any legal action brought relating to this Agreement or goods or services provided will be brought and tried exclusively in the state or federal courts serving Marshall County, Alabama.