

## **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. NO TERMS OR CONDITIONS ISSUED BY BUYER ARE BINDING ON SELLER AND SELLER REJECTS ANY SUCH TERMS OR CONDITIONS, 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 the goods and services sold to Buyer through this Agreement 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 may 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 OR 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. **TO THE FULLEST EXTENT ALLOWED BY LAW, 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 PARAGRAPH 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 be excused for any failure or delay in the performance of any of its obligations under this Agreement if such failure or delay is due to a strike, lockout, work stoppage, labor dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, act of God, accident, trade sanction, embargo, act of war, terrorism or threats of same; condition caused by national emergency, new or changed law; failure of suppliers to deliver or meet requirements; casualties or breakdown of or damage to plants, equipment, or facilities of Seller, any component manufacturer, repair facility, or their respective suppliers; breakdown in transportation services; any other act or cause which is unpredictable and cannot be reasonably avoided; and any act or cause which is beyond the reasonable control of Seller, whether similar to or different from the causes above enumerated, and whether affecting Seller or its agents, subcontractors, or suppliers, for as long as such circumstances prevail. Seller will undertake, as soon as practicable, to notify Buyer of any actual or anticipated failure or delay, and Buyer will use its commercially

reasonable efforts to mitigate any force majeure event and its consequences on performance hereunder. The parties shall remain liable for those obligations under this Agreement not affected by the force majeure event; provided however, that in the case of a U.S. sanction, embargo, or other trade order or rule that would prohibit or otherwise render Seller's performance under this Agreement impracticable, Seller shall be excused from the performance of any remaining obligations under this Agreement and this Agreement terminated, without cost or liability, upon written notice by Seller.

**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 these Sales Order Terms and Conditions, 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 paragraph 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 FCA 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 reconsign 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 such goods and services 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 all design and specification 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.

trade with Iran or the Government of Iran.

**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.

**18. COMPLIANCE WITH LAWS.** Buyer understands and agrees that goods and services sold by Seller, and any software, parts and components contained therein, along with any related manuals, materials, information or data, including but not limited to any parts, support or services provided by Seller (collectively, the "Product and Services"), as well as performance by the parties under this Agreement, are subject to laws, rules, regulations, directives, ordinances, orders, or statutes (the "Laws") of the United States and may be subject to the Laws of other, applicable countries (including, without limitation, Russia). Buyer agrees to comply with such Laws, as applicable, which may include but are not limited to, the U.S. Foreign Corrupt Practices Act, UK Bribery Act, anti-bribery Laws of other countries, U.S. Export Administration Regulations, U.S. International Traffic in Arms Regulations, and Laws administered by the U.S. Treasury Department Office of Foreign Assets Control and U.S. Department of State. Buyer agrees to cooperate with Seller to ensure compliance with the Laws when engaging in activities related to Buyer's performance of obligations under this Agreement and further agrees to indemnify, defend, and hold harmless Buyer, Buyer's direct and indirect parent entities and affiliates, and its and their respective directors, officers, employees, agents, successors, and assigns, against demands, liabilities, fines, penalties, losses, and damages (including costs, investigation and litigation expenses and counsel fees incurred in connection therewith) arising out of or related to Buyer's obligations under this paragraph. In the event of an enforcement action against Buyer relating to Buyer's non-compliance with the Laws that reasonably relate to Buyer's performance under this Agreement, Buyer shall provide to Seller written notice of such enforcement action prior to publication or disclosure of such enforcement action, and in no event later than ten (10) business days following such enforcement action. Notwithstanding the foregoing, Buyer agrees not to export, reexport, transmit or otherwise transfer the goods or services, whether directly or indirectly: (i) to any person or entity listed or otherwise designated as a blocked, prohibited or trade restricted person or party by the U.S. Commerce Department, U.S. Treasury Department, or U.S. Department of State; (ii) for any purpose or use prohibited by the U.S. government, such as for nuclear, chemical, or biological weapons production or proliferation, or (iii) to any destination or transit point subject to trade prohibitions by the U.S. government, as may be amended from time to time, such as the prohibition against transactions or