

## SALES ORDER TERMS AND CONDITIONS

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**1. ACCEPTANCE.** These Terms and Conditions apply to all sales by Progress Rail Australia Pty Ltd or one of its related bodies corporate (as that expression is defined in the *Corporations Act 2001* (Cth)) 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, and 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. SUBJECT TO APPLICABLE LAW, THERE ARE NO UNDERSTANDINGS, TERMS, CONDITIONS OR WARRANTIES NOT FULLY EXPRESSED HEREIN. ACCEPTANCE OF THESE TERMS AND CONDITIONS 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.**  
For the purposes of this Agreement:

- (a) "Australian Consumer Law" means:
- (i) Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and regulations under that Act insofar as they apply to that Schedule 2; and
  - (ii) any law of any State or Territory by which the Australian Consumer Law applies as a law of that State or Territory;
- (b) "Non-Excludable Law" means any law of the Commonwealth or a State or Territory which:
- (i) provides for any guarantee, warranty, condition, remedy or other right or entitlement in respect of a supply of goods or services, including the Australian Consumer Law and any other law of the Commonwealth or a State or Territory that regulates contracts for the supply of goods or services; and

- (ii) cannot be excluded, restricted or modified.

Nothing in this Agreement shall be taken or construed as excluding, restricting or modifying any Non-Excludable Law. If any term of this Agreement is inconsistent with a provision of a Non-Excludable Law, that provision shall prevail to the extent of that inconsistency.

To the extent that a Non-Excludable Law is applicable and available to Buyer, that Non-Excludable Law applies in addition to the terms of this Agreement.

Seller warrants that the goods and services sold to Buyer through this Agreement will comply with agreed upon specifications when performed. Subject always to all and any applicable rights and remedies under the Non-Excludable Laws, Seller does not, unless specifically required by the Non-Excludable Laws or any other law, or unless agreed in writing with Buyer, give any warranty other than those warranties detailed in this paragraph 3. 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. To the extent permitted by, and consistent with, the Non-Excludable Laws, 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 or operation, 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. TO THE EXTENT PERMITTED BY, AND CONSISTENT WITH, THE NON-EXCLUDABLE LAWS, 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.**

- (a) To the extent permitted by, and consistent with, the Non-Excludable Laws, and subject to paragraphs 4(b) and 4(c) of these Terms and Conditions, 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

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NOT in any case exceed the purchase price paid by Buyer for such goods or services. TO THE EXTENT PERMITTED BY, AND CONSISTENT WITH, THE NON-EXCLUDABLE LAWS,

(i) 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.

(ii) 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.

(b) If Seller has a liability to Buyer under Division 1 of Part 3-2 of the Australian Consumer Law (other than a liability under section 51, 52 or 53 of the Australian Consumer Law), insofar as it is lawful and fair and reasonable to do so, the liability of Seller to Buyer is limited to one or more of the following, at Seller's discretion:

- (i) in relation to the supply of goods:
  - (A) the replacement of the goods or the supply of equivalent goods;
  - (B) the repair of the goods;
  - (C) the payment of the cost of replacing the goods or acquiring equivalent goods;
  - (D) the payment of the cost of having the goods repaired;

in each case above (i)(A – D) Seller is not liable for the removal of the goods to be replaced or the installation of the replacement goods.

- (ii) in relation to the supply of services:
  - (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.

(c) In the event that:

- (i) Buyer re-supplies goods to a consumer (as that expression is defined in the Australian Consumer Law); and

(ii) the Australian Consumer Law applies to the re-supply of the goods by Buyer to a consumer, to the extent permitted by and consistent with the Australian Consumer Law, and where it is fair and reasonable to do so, the liability of Seller to Buyer in respect of the goods is limited to a liability to pay to Buyer an amount equal to:

- (A) the cost of replacing goods; or
  - (B) the cost of obtaining an equivalent goods; or
  - (C) the cost of having the goods repaired,
- whichever is the lowest amount.

**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 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 the law in state in Australia where goods are supplied, or services are provided to any claims its buyer might assert against Seller with respect to goods or services provided by Seller, and requiring its buyer to submit to the non-exclusive jurisdiction of the courts of Victoria, Australia. 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. UNIT EXCHANGE (UTEX) REBUILT PARTS PROGRAM.** The purchase of UTEX parts shall be subject to the core return requirement set forth in the Seller's Standard Core Return Instructions (which may be updated from time to time and is available upon request) in effect on the date of the applicable order placed by the Buyer.

The price for any UTEX part does not include any charges related to the used core for which Buyer is purchasing a UTEX part, and the price of the UTEX part is conditioned on the Buyer returning a used core that is acceptable to the Seller.

At Buyer's sole cost and expense, Buyer must return the core to Seller to the location specified in the Material Return Instructions of Seller's Standard Core Return Instructions within 60 calendar days of Seller's delivery of the UTEX part to Buyer; provided, however if the core is located outside of Australia, the core must be returned within 120 calendar days.

**8. SHIPMENT/PASSAGE OF TITLE.** Unless otherwise stated in the Seller's Sales Order, 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 reconsign such shipment to any destination other than specified in the bill of lading. Seller reserves the right to select the mode of transportation. If, through no fault of the Seller, the Buyer has not taken delivery of the Goods within fourteen (14) days of the scheduled delivery date, the Buyer shall be deemed to have taken delivery of the Goods and the terms of payment shall apply from such date. In these circumstances the Buyer shall be liable for storage charges payable monthly on demand, storage being at the Buyer's risk.

For avoidance of doubt, in all other instances, title to the goods only passes upon full payment by the Buyer, and risks passes upon delivery of the goods.

**9. SERVICES.** The agreed scope of services will be performed at the agreed time(s) and/or by the agreed

date(s). Where the services are to be performed at Buyer's premises or off-site, Buyer shall provide safe and unimpeded access at the agreed times to such locations so as to allow Seller to carry out the services timely and expeditiously.

Where Buyer's items of plant and/or equipment are to be delivered by Buyer to Seller's premises to allow Seller to perform the services, Buyer shall ensure that such items of plant and/or equipment are delivered on the agreed date(s) and time(s) to allow Seller to perform the agreed services. In such instance, Buyer shall also ensure collection of serviced items of plant and/or equipment from Buyer's premises by the agreed date and time.

If Seller is responsible for collection of Buyer's items of plant and/or equipment to allow Seller to perform the services, Buyer shall ensure that the items of plant and/or equipment are available for collection at the agreed location, date and time. If Seller is responsible for the return of the serviced items of Buyer's plant and/or equipment, Buyer shall ensure its resources are available for their receipt at the agreed location, date and time. In either such instances, Buyer shall provide the resources for loading and unloading.

Any delay caused by Buyer in providing access and/or effecting delivery and/or collection of the items of Buyer plant and/or equipment for service shall entitle Seller to a time extension for the performance of the services and/or additional costs which Seller reasonably incurs as a result of such delays.

**10. PAYMENTS AND LATE CHARGES ON PAST DUE ACCOUNTS.** Unless otherwise agreed in writing by the Seller, payment terms are thirty (30) days from date of invoice. 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 law, if less, will be imposed on all past due accounts. This late charge is a genuine pre-estimate of Seller's loss as a result of the past due account and is not intended to be a penalty.

**11. CLAIMS BY BUYER.** Buyer shall thoroughly inspect goods and services sold under this Agreement immediately upon receipt to verify that the goods and

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services conform to the specifications detailed in 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.

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

**13. 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.

**14. TAXES.** Unless specifically stated otherwise in writing, the purchase price does not include GST and, if any GST is or becomes payable on any supply made by Seller, Seller may increase the purchase price for the supply by the amount of GST payable ("Additional Amount"), as calculated by Seller. The Additional Amount is payable at the same time and in the same manner as the purchase price for the supply. Seller may increase the Additional Amount if for any reason the amount of GST payable by Seller varies from the Additional Amount. In this paragraph 12, "GST" and other terms have the meaning used in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, substituted or replaced with any other relevant legislation, including regulations, unless there is a contrary intention.

**15. 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.

**16. 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.

**16. PERIOD OF LIMITATIONS.** To the extent permitted by, and consistent with, the Non-Excludable Law, 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.

**17. PRIVACY.** Each party agrees to comply with its obligations under any privacy law by which it is bound in respect of all personal information (as defined in each applicable privacy law) collected, used or disclosed under this Agreement.

**18. 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.

**19. APPLICABLE LAW.** This Agreement is governed and construed in accordance with the law in force in the State of New South Wales, Australia, excluding its choice of law provisions. Each party submits to the jurisdiction of the courts of New South Wales, Australia.

**20. 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, in addition to all applicable laws in force in the state in Australia in which goods are supplied or services are supplied, and laws of the Commonwealth of Australia from time to time (including, without limitation, the Non-Excludable Laws, the *Customs Act 1901* (Cth) (and all applicable regulations including the Customs (Prohibited Exports) Regulations 1958 and the Customs (Prohibited Imports) Regulations 1956), and Chapter 7 of the *Criminal Code Act 1995*) (**Applicable Australian Laws**), to laws, rules, regulations, directives, ordinances, orders, or, where applicable in relation to re-sale or re-export of goods, 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

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State. In addition to Buyer complying with all Applicable Australian Laws, 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 Seller, Seller'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 noncompliance with any Applicable Australian Laws or any 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, and without limiting or restricting the application of the Applicable Australian Laws in any way, 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 trade with Iran or the Government of Iran.