

## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale and all documents referenced herein (collectively, the “Terms”) govern each sale of goods (“Goods”) and/or services (“Services” and together with Goods, the “Deliverables”) by **Marmon Railroad Services LLC**, a Delaware limited liability company (“Seller”) to its customer (“Buyer”) in addition to the product and/or service descriptions, quantities, specifications, and prices as agreed by the parties and described or accepted in Seller’s sales confirmation or acknowledgement.

1. **ENTIRETY.** Seller’s acceptance of Buyer’s purchase order is expressly conditioned on Buyer’s acceptance of these Terms. These Terms supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms represent the final and complete understanding of the parties and may be amended or cancelled only by mutual written agreement. Any proposal for additional or different terms or any attempt by Buyer to vary these Terms is hereby deemed material and is objected to and rejected. No terms of any document or form submitted by Buyer shall be effective to alter or add to these Terms. The earlier of Seller’s commencement of performance or Buyer’s receipt of any of the Deliverables shall constitute acceptance of these Terms.
2. **PRICES.** Prices quoted and payable are in U.S. Dollars and based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability.
3. **TAXES.** Prices do not include any sales, use, excise, privilege, ad valorem, or other taxes, duties, tariffs or assessments now or hereafter imposed or levied (“Taxes”) by or under the authority of any foreign, federal, state, provincial, or local law, rule, or regulation (collectively, “Law”) arising from the sale, purchase, transportation, delivery, storage, use, performance or consumption of the Deliverables (other than taxes on Seller’s net income). If Seller pays any such Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts. Seller will be under no obligation to contest the validity of any such Taxes or to prosecute any claims for refunds or returns.
4. **TERMS OF PAYMENT.** All payments are due within 30 days from date of invoice. Orders are subject to acceptance in writing by Seller. All payments shall be made without abatement, deduction, discount or setoff. Late payments are subject to a service charge of the lesser of 1.5% per month or the highest rate permitted under applicable Law. Buyer shall be liable for all costs and expenses related to collection of past due amounts, including, without limitation, attorneys’ fees and costs. If, in Seller’s judgment, the financial condition of Buyer does not justify continuance on the terms of payment above, Seller may require full or partial payment in advance or otherwise adjust the terms including ceasing to supply Buyer.
5. **DELIVERY.** Delivery shall be made EXW (Incoterms 2010) Seller’s facility and title and risk of loss passes to Buyer at such time. Delivery/performance dates are estimates only. Title to any Goods will pass upon payment in full by Buyer. Seller shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for delays, or loss or damage in transit. Claims for loss or damage shall be made solely against the carrier. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.
6. **INSPECTION.** Buyer shall inspect the Goods upon receipt and Services upon performance, and Buyer shall immediately notify Seller in writing of any claims that the Deliverables are different than identified in Buyer’s purchase order whereupon Seller shall determine the remedy pursuant to Section 12. Failure to give such written notice upon receipt will constitute irrevocable acceptance by Buyer of all Deliverables.
7. **CHANGES OR CANCELLATION.** Changes in specifications or designs to any Deliverables, changes in delivery or performance schedules or reschedules or cancellations of orders are not permitted unless Seller has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by the Buyer. Once ordered, deliverables that are made to order, discontinued or custom products (“Special Order Goods”) may not be

cancelled by Buyer. Seller reserves the right to cancel any purchase orders or releases thereunder, or terminate any agreement relating to purchase of Seller's Deliverables, upon 10 days' notice to Buyer.

**8. RETURNS.** Goods may not be returned without prior written authorization of Seller and compliance with Seller's return policies and procedures then in effect.

**9. SERVICE TERMS.** (a) Services will be provided at Seller's then current service rates; (b) If the site is not prepared for the Services upon Seller's arrival, Seller may charge a service fee and for any delay and/or travel time; (c) Buyer shall provide Seller with advance notice of any rules, requirements and Laws; (d) Seller may refuse, without any liability, to provide Services and to allow Seller service personnel to suspend Services or vacate any site where, in Seller's opinion, provision of Services would pose a risk to the safety of any person. In such event, Buyer is responsible for payment of any delay and/or travel time at Seller's regular service rates; (e) Buyer is solely liable for all damages or injuries caused or contributed to by Buyer that may occur; and (f) Buyer must provide at least **24 hours** notice of cancellation of any Service order. If Buyer cancels with less than **24 hours'** notice, Buyer is responsible for any costs incurred by Seller caused by such cancellation.

**10. LIMITED WARRANTIES.** Unless otherwise provided by Seller in its written warranty, Seller warrants that (i) Goods designed and manufactured by Seller will be free from defects in material and workmanship for a period of **12 Months** after **date of invoice** under normal use and service for the purpose of which they were sold; and (ii) Services will be performed in a **timely and** competent manner in accordance with industry standards. This warranty shall be void if the Goods are in any way subjected to: (a) improper installation, storage, or use; (b) lack of proper preventative maintenance or service; (c) abnormal operating conditions or applications; (d) repair by the Buyer or Buyer's agent without the prior written consent of Seller; or (e) modification by the Buyer or Buyer's agent without prior written consent of Seller. This warranty shall not cover: (x) normal wear and tear or (y) external causes such as accidents, damage, abuse, misuse, or other actions or events beyond Seller's reasonable control. THESE ARE SELLER'S ONLY WARRANTIES. SELLER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED

WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. If during the warranty period, Buyer notifies Seller in writing within thirty (30) days of discovery that the Deliverables are not in conformity with the warranty and Seller agrees, after Seller's inspection (at its option), then: (a) for Goods, Seller will repair, replace or refund the total amount received by Seller therefor, at its sole option, provided Buyer returns such Goods to Seller's plant for inspection; and (b) for Services, Buyer's sole remedy is for Seller, at its sole option, to re-perform the Services or credit Buyer's account therefor. These shall be Buyer's exclusive remedies for Seller's liability. Any claims not made during the warranty period are deemed waived. Seller's warranty does not attach to Deliverables or parts not manufactured by Seller. Any contract created between Seller and Buyer is subject to the specific conditions that (a) Seller is not obligated to provide insurance or indemnify Buyer, and (b) there are no flow-downs from any person or entity including the federal government that become part of the contract.

**11. LIMITATION OF LIABILITY.** SELLER SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES, DAMAGES OR EXPENSES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT IN EXCESS OF THE PRICE RECEIVED BY SELLER FOR THE DELIVERABLES WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED.

**12. INDEMNIFICATION.** Buyer shall defend, indemnify and hold Seller, its affiliates and their respective officers, directors, members, managers, representatives, agents and employees harmless from and against all claims, suits, demands, losses, liabilities, damages (including injury and death) and expenses (including reasonable attorneys' fees)

(collectively, "Losses"), arising out of or relating to: (a) Buyer's or its agents provided specifications, design, structure, operation, material or method of making Deliverables ("Buyer's Specifications"), including without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Deliverables or materials; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Deliverables subjected to: (i) improper installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; (iv) operating conditions or applications above the rated capacity of the Deliverables; (v) repairs or modifications made to all or part of the Deliverables without the prior written consent of Seller; or (vi) a use or application other than or varying in any degree from the specifications and Seller's instructions.

**13. PATENTS.** Provided Buyer has made all payments due Seller, Seller shall defend any suit brought against Buyer based upon a claim that the Deliverables infringe any United States patent issued as of the date of Seller's quotation and shall pay any damages and costs finally awarded therein against Buyer, provided that Seller is notified promptly in writing of such suit and is given full authority, information and assistance by Buyer to defend or settle the suit. Notwithstanding anything to the contrary, Seller will have no liability to the extent that the suit is based upon: (i) modifications to any item made by or on behalf of the Buyer in a manner that causes the infringement; (ii) use of any item in combination with the Deliverables that causes the infringement; (iii) the failure of the Buyer to use corrections or enhancements to the Deliverables that are made available by Seller; (iv) Buyer's Specifications; (v) Buyer's distribution, marketing or use for the benefit of third parties of the Deliverables; or (vi) use not authorized under these Terms. If the Deliverables or any part thereof are deemed to infringe any such patent, Seller shall, at its expense and sole option either: (a) procure for Buyer the right to continue using said Deliverables or part; (b) replace them with non-infringing Deliverables or parts; (c) modify them so they become non-infringing; or (d) remove them and refund the purchase price for them depreciated over no more than 3 years.

**14. TOOLING.** In no event shall Buyer have any interest in any tools, jigs, dies, patterns, etc. (collectively, "Tooling") which is made or obtained for the

production of the Deliverables. Such Tooling shall remain the property of Seller.

**15. CONFIDENTIALITY.** All non-public or proprietary information supplied by Seller to Buyer is confidential, solely for the use in performing hereunder. Buyer will not disclose such information, in whole or in part, to any person, other than such of Buyer's employees and agents who need to know such information, unless prior written consent is obtained from Seller. Buyer will require such employees and agents to keep confidential such information, and will indemnify Seller in the event of a breach of this provision by its employees or agents.

**16. INTELLECTUAL PROPERTY.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefor, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "IP") are and will remain the property of Seller. Buyer shall have no claim to, nor ownership interest in, any IP and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any IP, other than the limited right to use the Deliverables purchased from Seller.

**17. FORCE MAJEURE.** Seller shall not be liable for delay or failure to fulfill any of its obligations to Buyer due to causes beyond Seller's reasonable control, whether foreseeable or unforeseeable, including but not limited to strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or Buyer, fires, floods, storms, earthquakes, acts of God, explosions, accidents, electrical surges or failures, theft, virus outbreaks, pandemics, quarantine restrictions, war, riot, embargoes, delays in transportation, raw material shortages, inability to obtain labor, parts, fuel, or material from usual sources or to access use of Seller's facilities, or any other events or circumstances not within the reasonable control of Seller, whether similar or dissimilar to any of the foregoing. In the event of any such delay or failure, Seller may, at its sole discretion and option, either extend the time of performance for a period equal to the time lost by reason of the delay or terminate the arrangement with Buyer without liability.

**18. TERMINATION.** Seller shall have the right to cease work or terminate these Terms or any purchase order, in whole or in part, at any time, without liability, if: (i) Buyer breaches or defaults under these Terms or any other agreement it has with Seller; (ii) a petition under any applicable law relating to bankruptcy, insolvency, or reorganization is filed by or against Buyer; (iii) Buyer executes an assignment for benefit or creditors; (iv) a receiver is appointed for Buyer or any substantial part of its assets; or (v) Seller shall have any reasonable ground for insecurity with respect to Buyer's ability to perform and Buyer is unable to provide Seller with adequate assurance within 10 days after written request therefor by Seller. In all cases, Seller's rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination.

**19. WAIVER.** All waivers by Seller shall be in writing. Failure of Seller at any time to require Buyer's performance of any obligation hereunder shall not affect Seller's right to require performance of that obligation. No delay or omission in the exercise of any right, power, or remedy hereunder shall impair such right, power, or remedy or be considered to be a waiver of any default or acquiescence therein.

**20. GOVERNING LAW.** Any dispute arising out of or related to these Terms will be governed by and construed in accordance with the laws of the State of Illinois without regard to any rules on conflicts of laws and exclusively litigated in either (i) a state or federal court located in Cook County, Illinois, or (ii) a state or federal court located in the state of Seller's principal place of business, at Seller's sole discretion.

**21. SEVERABILITY.** The unenforceability or invalidity of any clause in these Terms shall not have an impact on the enforceability or validity any other clause in these Terms. Any unenforceable or invalid clause shall be regarded as removed from these Terms to the extent of its unenforceability and invalidity.

**22. MISCELLANEOUS.** Buyer shall not assign any of its rights or obligations under these Terms or any purchase order without Seller's prior written consent. Buyer shall comply with all applicable laws. There are no third-party beneficiaries. Provisions which by their nature should survive will remain in force after any termination or expiration of any sale of Deliverables. The section headings are included solely for the convenience of the parties.