

TERMS AND CONDITIONS

1. **APPLICABILITY.** These Terms and Conditions of Sale ("Terms") represent the final and complete understanding of the parties and are the only terms and conditions which govern the provision of services ("Services") and ancillary parts and materials ("Goods") (collectively, "Work") by CF Rail Services, LLC ("Seller") to buyer of the Work ("Buyer") and supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms; provided, however, if a written service contract signed by both parties is in existence and governs the Work covered hereby, the terms and conditions of said contract shall prevail.
2. **ENTIRETY.** These Terms may only be modified in a writing which expressly states that it amends these Terms and is signed by an authorized representative of each party. Acceptance is expressly limited to these Terms. 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 Buyer's submission of a purchase order, confirmation of the Work by Buyer or Seller's commencement of Work will constitute acceptance of these Terms.
3. **PRICES.** Prices quoted are based on the price at the time of quotation and are subject to change without notice. Clerical errors are subject to correction without liability.
4. **TAXES.** Prices do not include any sales, use, excise, privilege, or other taxes or assessments ("Taxes") now or hereafter imposed or levied by or under the authority of any foreign, federal, state, or local law, rule, or regulation (collectively, "Law") concerning the Work or the manufacture or sale thereof. If Seller pays any Taxes, Buyer shall, upon demand, immediately reimburse Seller for such amounts.
5. **TERMS.** Orders are subject to acceptance by Seller. Unless otherwise agreed by Seller in writing, (i) all payments are Net 30, (ii) no discounts shall be taken, (iii) Work may not be returned, and (iv) all amounts due Seller shall be paid without abatement, deduction, or setoff. Invoices not paid when due are subject to a late payment service charge of the lesser of 1.5% per month or the highest rate permitted by Law, calculated daily and compounded monthly. If Buyer fails to make any payment when due, 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 then terms of payment, Seller may require full or partial payment in advance or otherwise adjust the credit terms including ceasing to supply Buyer.
6. **FREIGHT.** Unless agreed by Seller in writing, all shipments shall be F.O.B. origin. Risk of loss or damage to Work shall pass to Buyer upon being made available at the F.O.B. point.
7. **DELIVERY.** Seller shall not be liable for any claim, Loss, expense, or damage of any kind whatsoever for delays, loss or damage in transit.
8. **INSPECTION.** Buyer shall inspect the Work upon completion and delivery, and notify Seller in writing within 3 days of any claims that the Work does not conform to Seller's warranty for such Work. Failure to give such written notice during such period will constitute satisfactory shipment by Seller and irrevocable acceptance by Buyer.
9. **CHANGES.** Changes in specifications or designs relating to any Work, changes in delivery 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.
10. **STORAGE.** If, because of Buyer's inability to take delivery, the Work is not shipped, stopped in transit or returned, Seller may store them for Buyer at Buyer's expense and risk and risk of loss shall pass to Buyer when the Work is placed in storage and such date shall be the date of shipment for purposes of beginning the warranty and payment periods.
11. **LIMITED WARRANTY.** Seller will complete the Services in accordance with generally recognized industry standards and warrants Buyer against defects in workmanship of the Services for one (1) year from the date the applicable Service is completed. Seller agrees to reperform the Service at its expense and without cost to Buyer for such defect in workmanship of the Service, provided the car affected is returned to Seller at Buyer's expense or is otherwise made available for completion of warranty work at a location deemed acceptable by Seller. **SELLER PROVIDES NO WARRANTY FOR GOODS. SELLER WILL PASS ON TO BUYER THE WARRANTY FOR GOODS, IF ANY, IT RECEIVES FROM THE MANUFACTURER OF SUCH GOODS, BUT ONLY TO THE EXTENT ALLOWED BY SUCH MANUFACTURER. THIS IS SELLER'S ONLY WARRANTY AND PROVIDES BUYER'S SOLE AND EXCLUSIVE REMEDIES. SELLER MAKES NO OTHER EXPRESS WARRANTIES AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. ANY CLAIMS NOT MADE DURING THE WARRANTY PERIOD ARE DEEMED WAIVED BY BUYER.**
12. **LIMITATIONS. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS OR THE WORK, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNT PAID TO SELLER FOR THE PORTION OF THE WORK WITH RESPECT TO WHICH SUCH LIABILITY IS CLAIMED. ANY CONTRACT CREATED BETWEEN THE 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. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY FOR PRODUCT LOSS, OR LOSS OF USE, REVENUE OR PROFIT OR ENVIRONMENTAL MATTERS, OR FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES OR ANY OTHER LOSSES 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.**
13. **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 performing the Work ("Buyer's Specifications") including, without limitation, any resulting violation of intellectual property or proprietary rights; (b) Buyer's use, misuse or disposal of Work or materials including derailments; (c) Buyer's non-compliance with any Law; (d) breach of these Terms by Buyer; and (e) Work subjected to: (i) improper use, installation or storage; (ii) accident, damage, abuse or misuse; (iii) abnormal operating conditions or applications; or (iv) repairs or modifications made to all or part of the Work without the prior written consent of Seller; or (v) a use or application other than or varying in any degree from the specifications and Seller's instructions.
14. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller is confidential, solely for the use in performing hereunder and may not be disclosed, used or copied unless authorized in advance by Seller in writing.
15. **FORCE MAJEURE.** Seller shall not be liable for any delay in or failure to perform due to any cause, matter or contingency beyond its reasonable control.
16. **TERMINATION.** Seller shall have the right to cease Work or terminate 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 including for failing to pay any amount when due; (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 assurances.
17. **WAIVER.** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
18. **MISCELLANEOUS.** These Terms and the performance hereunder shall be governed by the laws of the State of Illinois. If any term or provision of these Terms is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Buyer shall not assign any of its rights or obligations hereunder without Seller's prior written consent. There are no third-party beneficiaries. 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. These Terms shall be construed in accordance with the laws of the State of Illinois without regard to any rules on conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Provisions which by their nature should survive will remain in force after any termination or expiration. Headings are included solely for the convenience of the parties.