

## **APPENDIX A**

### **TERMS AND CONDITIONS OF SALE**

All sales of goods by Wabtec  
are made solely upon the following terms and conditions:

1. **GENERAL:** Any quotation by Wabtec is not an offer, and no binding contract of purchase/sale shall be effected until the Purchaser's order is accepted, in whole or in part, by Wabtec. Terms and conditions on Purchaser's order form which are at variance with the terms and conditions stated herein are rejected by Wabtec and, therefore, shall be binding upon Wabtec only if specifically accepted by Wabtec in writing. After a contract is effected, Wabtec's invoice together with these terms and conditions shall be the final written expression of agreement between Wabtec and Purchaser, constituting the entire contract between them (the "Contract") and superseding all previous oral or written communications. Purchaser may not modify or cancel Purchaser's order except upon specific written approval from Wabtec in advance of shipment. If Purchaser cancels Purchaser's order, Purchaser shall pay Wabtec reasonable cancellation charges, as invoiced by Wabtec, for expenses already incurred by Wabtec in performing, or preparing to perform, the work required by Purchaser's order, cancellation costs and Wabtec's anticipated profit. Purchaser shall comply with Wabtec's Storage and Handling procedures which include stipulation that all material supplied should be stored INDOORS. Any order amounting to less than \$50.00 shall be billed at \$50.00.
2. **PRICE:** Unless otherwise stated, prices quoted are net, F.O.B. point of shipment with freight for Purchaser's account, except that transportation will be paid via lowest cost common carrier for shipments of Renewal Parts to destination in continental United States. Prices are firm for thirty (30) days unless Purchaser's specifications are changed after prices are quoted by Wabtec, in which event Purchaser agrees that Wabtec may adjust the price(s) for the goods accordingly.
3. **TERMS OF PAYMENT:** (a) Unless otherwise stated, all invoices shall be rendered when goods are shipped and are due and payable net thirty (30) days from date thereof. Purchaser shall not retain payment on account of any claim that it may have against Wabtec or offset any such claim against the purchase price. For each thirty (30) days, or part thereof, that an invoice remains overdue, Purchaser shall be charged interest on the unpaid balance at a rate of one and one-half percent (1 1/2%) per month (but not in excess of the maximum rate allowed by law).

(b) If Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay to Wabtec the reasonable costs and expenses incurred by Wabtec in connection with all actions taken to enforce collection or preserve and protect Wabtec's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees and court costs and other expenses.

(c) Partial shipments may be made at Wabtec's option. If all items are not shipped on the same date, pro rata invoices shall be rendered. If engineering design is part of the order, monthly progress payments shall be required.

(d) Unless Purchaser has an established credit rating with Wabtec, cash must accompany Purchaser's order. Wabtec's determination of Purchaser's financial responsibility shall be final.

(e) If Purchaser is responsible for any delay in shipment, the date of completion of goods may be treated by Wabtec as the date of shipment for purposes of payment. Completed goods shall be held at Purchaser's cost and risk and Wabtec shall have the right to bill Purchaser for reasonable storage and insurance expenses.
4. **TAXES:** Prices exclude all duties, taxes or other governmental charges which now are, or hereafter may be, imposed upon the sale or use of the goods. All such duties, taxes or other charges paid by Wabtec shall be for Purchaser's account. Any exemption claimed from the application of such duties, taxes or other charges should be plainly designated on the face of orders placed with Wabtec and accompanied by exemption certificates where required.
5. **DELIVERY:** (a) Shipment, delivery and installation dates are estimated dates only and, unless otherwise specified, are calculated from the date of receipt by Wabtec from Purchaser of complete technical data and approved drawings.

(b) The date of delivery is the date of delivery by Wabtec to the initial carrier. Delivery to the initial carrier shall constitute delivery to Purchaser and, as of such delivery, risk of loss is transferred to Purchaser. Claims for errors or shortages in shipments must be submitted to Wabtec, with adequate substantiation, within thirty (30) days after receipt. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON PURCHASER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE BY PURCHASER AGAINST THE CARRIER.

(c) In estimating dates of delivery and installation, Wabtec has not made any allowance and shall not be liable directly or indirectly, for delays of carriers or delays from labor difficulties, shortages, strikes or stoppages of any sort, fires, accidents, failure or delay in obtaining materials or manufacturing facilities, acts of government, bad weather, or any causes beyond Wabtec's reasonable control or causes designated Acts of God or force majeure by any court of law, and, when such delays arise, the estimated delivery date shall be extended accordingly. Wabtec SHALL NOT BE LIABLE FOR ANY DAMAGES OR PENALTIES WHATSOEVER, WHETHER DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL, RESULTING FROM ITS FAILURE TO PERFORM OR DELAY IN PERFORMING UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED OFFICER OF Wabtec.
6. **TITLE:** Title to the goods supplied pursuant to the terms hereof shall remain in Wabtec until the purchase price therefor (and any other sums payable hereunder) is paid in full by Purchaser. By accepting these terms, Purchaser grants in Wabtec's favor a first priority security interest in said goods until the purchase price therefor (and any other sums payable hereunder) is paid in full by Purchaser. By accepting these terms, Purchaser agrees to execute any documents (including Uniform Commercial Code financing statements) relating to said goods, as may be requested by Wabtec, to protect Wabtec's security interest in said goods.
7. **WARRANTY:** (a) Products offered for sale are designated for intended use on rail-carried vehicles. Items of equipment and parts manufactured by Wabtec are warranted to conform to Wabtec's published specifications and to be free from defects in workmanship and material, under normal and proper use and service, for a period of one (1) year after shipment to Purchaser. Wabtec's warranty obligation is strictly limited to repairing or providing a replacement item or part, free of charge and F.O.B. Wabtec's factory, any such item or part which fails within such one (1) year period, provided that Purchaser promptly gives notice to Wabtec of such failure, returns such item or part to Wabtec, transportation charges prepaid, and upon examination Wabtec finds such to have been defective. Items of equipment and parts

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manufactured by others but furnished by Wabtec are warranted only to the extent of the warranty of the original manufacturer. System designs (if any) furnished by Wabtec for this order are warranted to conform to Wabtec's published specifications the refer or to the technical description thereof prepared by Wabtec for this order and to be free from defects under normal and proper use and service for a period of one (1) year after first placing said system into service; Wabtec's obligation is strictly limited to correcting such system design which fails within such one (1) year period. All warranties shall be void as to any item, part or design that has been altered, tampered with, or attempted to be repaired by anyone except personnel authorized by Wabtec. Items repaired or replaced and designs corrected under warranty are warranted only for the remainder of the original warranty period.

(b) Wabtec shall not be liable or responsible with respect to any item or design for performance under conditions varying materially from those under which such item or design is normally used on rail-carried vehicles; for any damage or failure to operate properly due to abrasion, corrosion, deterioration, or the influence of foreign matter or energy; or for the suitability or operation of such item or design in an application of Purchaser's choosing or a system of Purchaser's design.

(c) THE FOREGOING OBLIGATIONS ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, OBLIGATIONS, OR LIABILITIES, EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE. IN PARTICULAR THERE SHALL BE EXCLUDED THE IMPLIED WARRANTY OF MERCHANTABILITY AS WELL AS THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Wabtec SHALL NOT IN ANY EVENT BE LIABLE FOR ANY COST OR EXPENSE, INCLUDING WITHOUT LIMITATION LABOR EXPENSE, IN CONNECTION WITH THE REMOVAL OR REPLACEMENT OF AN ALLEGED DEFECTIVE ITEM OR ANY PORTION THEREOF, NOR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND NOR ANY CLAIMS ARISING OUT OF THE SUPPLY OR USE OF ITEMS AND DESIGNS FURNISHED BY Wabtec, INCLUDING WITHOUT LIMITATION LOST PROFITS. PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY, TORTIOUS CONDUCT, OR ANY OTHER CAUSE OF ACTION AGAINST Wabtec SHALL BE THE REMEDY OF REPAIR AND REPLACEMENT PROVIDED IN THIS PARAGRAPH 7.

- 8. REJECTION:** If Purchaser rejects any goods supplied pursuant hereto, Purchaser must notify Wabtec in writing of such rejection within thirty (30) days of delivery. Failure to make such notification constitutes acceptance of the goods.
- 9. PATENTS:** (a) Wabtec shall indemnify Purchaser from claims, suits, or actions by third parties that any item, or part thereof, sold by Wabtec to Purchaser in and of itself infringes any United States patent if Purchaser notifies Wabtec in writing of any such claim within thirty (30) days after Purchaser receives notice of the same and gives Wabtec authority, information, and assistance (at Wabtec's expense) to dispose of such claim and to defend any suit that may be brought against Purchaser thereon. In that event Wabtec shall, at Wabtec's expense, defend any such suit and satisfy any judgement therein to an amount not exceeding the total price paid Wabtec for said item held to infringe. If, in any such suit, an injunction is issued against the further use of said item or any part thereof, Wabtec shall at Wabtec's option and expense either procure for Purchaser the

right to continue using said item, or shall (if Purchaser gives, at Wabtec's expense, such assistance as may be reasonably requested) replace the same with a non-infringing item or modify it so that it becomes non-infringing, or remove said item and refund the purchase price and the transportation and installation costs thereof. The foregoing expresses all of Wabtec's obligations and liabilities as to patents.

(b) Purchaser shall hold Wabtec harmless and defend and indemnify Wabtec from and against any expense, loss, or claim resulting from infringements of patents, copyrights, or trademarks arising from Wabtec's compliance with Purchaser's designs, specifications, or instructions, verbal or written.

- 10. INSPECTION AND TESTS:** Inspection of goods in Wabtec's plant by or on behalf of Purchaser shall be permitted provided that this does not interfere with production and details of the proposed inspection are submitted to Wabtec in writing at least ten (10) days in advance. Goods and components thereof shall be tested in accordance with Wabtec's standard quality assurance procedures. If acceptable to Wabtec, additional tests may be conducted at Purchaser's expense.
- 11. SPECIAL JIGS, FIXTURES AND PATTERNS:** Unless supplied by Purchaser, any jigs, fixtures, patterns, design engineering, and the like which are used for Purchaser's order shall remain Wabtec's property without credit to Purchaser. Wabtec shall have the right to discard and scrap such items after they have been inactive for one (1) year without credit to Purchaser provided that if the Purchaser supplied or paid for any of the materials associated with the item, Purchaser is given notice and opportunity to buy such materials before discarding or scrapping.
- 12. RECORDS, AUDITS AND PROPRIETARY DATA:** Unless otherwise specifically agreed to in writing signed by an authorized officer, neither Purchaser nor any representative of Purchaser, nor any other person, shall have any right to examine or audit Wabtec's cost accounts, books or records of any kind or on any matter, or be entitled to, or have control over, any engineering or production prints, drawings or technical data which Wabtec, in Wabtec's sole discretion, may consider in whole or in part proprietary to it.
- 13. SUCCESSION:** The provisions of the Contract shall bind and inure to the benefit of the respective successors and assigns of Wabtec and Purchaser.
- 14. WAIVERS:** No failure by Wabtec in exercising any right, power or privilege under the Contract shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 15. GOVERNING LAW, JURISDICTION, VENUE:** The Contract shall be deemed an agreement made under the laws of the Commonwealth of Pennsylvania, and for all purposes shall be construed and enforced in accordance with and governed by the internal laws of the Commonwealth of Pennsylvania. All actions arising hereunder shall be instituted in the Commonwealth of Pennsylvania.