

RAILSERVE, INC. TERMS AND CONDITIONS

The following covers all sales of Railserve's parts divisions: Railserve Air Brake Services and Railserve Parts Manufacturing collectively referred to as Railserve Parts

1. **Acceptance; Agreement.** These Terms and Conditions supersede all other terms and conditions, oral or written, and all other communications between the parties suggesting additional or different terms. These Terms and Conditions represent the final and complete understanding of the parties and may be amended or cancelled only by written agreement signed by both parties. These Terms and Conditions expressly limit acceptance to these provisions. No order shall have any force or effect until acknowledged in writing by Railserve Parts. No terms of any document or form submitted by Customer shall be effective to alter or add to the provisions contained in these Terms and Conditions.

2. **Site Access.** Customer shall provide Railserve Parts with full, unimpeded access to the site or sites where the services and/or work ("Work") are to be performed. Customer shall provide all necessary site security so Railserve Parts can perform the Work without unreasonable interruption or interference.

3. **Warranty; Limitations on Warranty.** For a period of one year after completion of the Work, Railserve Parts warrants that the Work will be free from defects in material and workmanship. THIS IS RAILSERVE PARTS'S ONLY WARRANTY. RAILSERVE PARTS MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED. ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY RAILSERVE PARTS AND EXCLUDED. No warranty, either express or implied, is made with respect to any advice or recommendation made by Railserve Parts or its representatives to Customer.

If, during the warranty period, Customer notifies Railserve Parts in writing of a defect in the Work and if Railserve Parts determines that such Work is not in conformity with the warranty provided hereunder, Railserve Parts will repair, or replace, at its sole option, the defective Work or part thereof.

Railserve Parts's liability to Customer, or anyone claiming through or on behalf of Customer, with respect to any claim or loss arising out of the Work, whether negligent or otherwise and whether in tort, contract or otherwise, shall be limited to the amount Customer has paid Railserve Parts for the Work. IN NO EVENT SHALL RAILSERVE PARTS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOSSES, OR EXPENSES.

4. **Quote.** Price options presented by Railserve Parts are valid for 30 days from date of receipt or as written in proposal and regardless of when they are accepted are subject to credit approval.

5. **Billing.** An invoice will be processed the day the Work is completed.

6. **Payment.** All payments are due in full fifteen days from the invoice date.

7. **Completion.** All completion dates are estimates and are based upon, *inter alia*, prompt receipt of all necessary information from Customer, availability of material and supplies, supplier delays, and obtaining necessary access to the site(s). Railserve Parts shall not be liable for any claim, loss, expense, or damage of any kind whatsoever for any delay in completion of the Work.

8. **Force Majeure.** Railserve Parts shall not be liable for any delay in or failure of performance of the Work hereunder due to any contingency beyond its reasonable control.

9. **Taxes.** Prices stated herein do not include any sales, use, excise, privilege or other taxes or assessments now or here after imposed

levied or increased by or under the authority of any Federal, State, or local rule or regulation concerning the services provide hereunder.

10. **Extra Work.** No added work or change(s) in the Work shall be made without the written agreement of both Customer and Railserve Parts concerning such additional Work or changes in the Work and the costs thereof.

11. **Cancellation; Cancellation Charges.** Customer may, upon seven days' prior written notice to Railserve Parts, terminate all or any portion of the Work. If Customer so elects to terminate all or any portion of the Work for any reason other than the default of Railserve Parts in performing the Work, Customer shall pay Railserve Parts a termination charge equal to the sum of: (i) all costs and expenses incurred by Railserve Parts up to the date of termination, in performing the Work, both completed and in process; (ii) the cost of all items and special materials purchased for the Work; and (iii) all costs incurred by Railserve Parts in winding down the Work.

12. **Liens.** Railserve Parts warrants that, subject to its receipt of full payment for the Work from Customer, all Work performed by it shall be free from any and all liens arising out of the performance of the Work by Railserve Parts.

13. **Compliance With Laws.** Railserve Parts shall comply with all applicable laws in the performance of the Work, including without limitation all applicable safety and other such laws. Railserve Parts shall secure all licenses and registrations necessary to perform the Work.

14. **Indemnification.** Each party ("Indemnifying Party") hereby agrees to indemnify, defend, and hold harmless the other party and its employees, agents, officers, directors, and representatives (collectively, "Indemnified Party") from any and all loss, damage, liability, claims, or proceedings (including reasonable attorney's fees) to the extent resulting from or arising out of the negligent acts or omissions of the Indemnifying Party.

15. **Insurance.** Railserve Parts shall obtain and maintain at all times during the performance of the Work the following insurance with insurers having a current A.M. Best rating of "A-, VIII" or better:

(a) primary liability insurance with limits of at least \$2 million per occurrence and \$2 million annual aggregate combined single limit for bodily injury and property damage, including coverage for (i) Premises Operations liability, (ii) Products and Completed Operations liability, (iii) work performed on or near railroad tracks, and (iv) contractual liability obligations;

(b) comprehensive automobile liability insurance for owned, hired and non-owned motor vehicles with limits of at least \$1 million per occurrence combined single limit for bodily injury and property damage; and

(c) workers' compensation insurance with statutory limits as required by the law of the state where the Work is located and employer's liability insurance with limits of at least \$1 million each accident / \$1 million disease – each employee / \$1 million disease – policy limit.

16. **Amendment.** These Terms and Conditions may only be amended or modified by a written document signed by both parties.

17. **Miscellaneous.** Neither Customer nor Railserve Parts shall assign its interests in the agreement between them without the prior written consent of the other party; provided, however, that the agreement shall be binding on the successors and assigns of each party hereto. This agreement shall be construed in accordance with the laws of the state where the Work, or the majority of the Work, is located, without regard to any rules on conflicts of laws. The section headings contained herein are included solely for the convenience of the parties. No third party shall have any right or interest in the agreement between the parties or in any part of the Work.