

RAILSERVE, INC.
GENERAL TERMS AND CONDITIONS OF PURCHASE

1. ACCEPTANCE OF ORDERS—Acceptance of this order by Seller constitutes acceptance of all terms and conditions stated herein. Any terms and conditions of any proposal heretofore made by Seller shall be deemed superseded to the extent said terms and conditions are inconsistent herewith. If specifications of Buyer's consulting engineer or contractor are supplied herewith, they shall be deemed to be incorporated herein by reference and are a part of this Purchase Order to the same extent as if they had originated with the Buyer. No acknowledgment or acceptance of the order shall be effective which varies the terms hereof or proposes additional terms. Any such proposed variation from the terms hereof shall be deemed to be rejected unless expressly agreed to in writing by Buyer.

2. WARRANTIES—Seller expressly warrants, for a period of one year from purchase, that all material furnished on this order:

- (a) Will be in exact accordance with the description or specifications contained in such order;
- (b) Will be free from defects in workmanship and material and merchantable;
- (c) Will be fit for the particular purpose for which the goods are required, whether or not the design has been furnished by the Buyer; and
- (d) Will be, except if the design is furnished by the Buyer, free from defects in design.

These warranties are in addition to all other warranties, expressed or implied.

3. ACCEPTANCE OF MATERIAL—Final inspection prior to acceptance of material furnished under this order will be made at plant or job site of Buyer either in the U.S. or overseas. In addition, Buyer shall have the right to inspect the goods prior to shipment at Seller's plant at any reasonable time and in any reasonable manner. Payment of Seller's invoices either in full or in part prior to inspection does not constitute final acceptance by Buyer. Buyer's acceptance of material shall not be construed to relieve Seller of the warranties set forth in Section 2 above. This provision shall not affect title to or risk of loss of material and such matters shall be governed by the delivery terms, FOB Destination, unless other terms are agreed to in writing.

4. BUYER'S REMEDIES—In addition to any other remedies to which Buyer may be entitled by law. Buyer (a) prior to acceptance, at its option may (1) require Seller, entirely at Seller's expense F.O.B. job or plant site to which material was shipped, to repair, or replace the whole or any part of material found not to be in accord with the warranties mentioned herein, or (2) rescind this order and revert title in Seller if it shall have passed, return such material from inspection point to Seller entirely at Seller's expense, and be entitled to receive from Seller the whole or any part of the purchase price paid; and (b) after acceptance, proceed as in sub clause (a) (1) of this paragraph.

5. PERFORMANCE—Time is of the essence of this contract. Buyer reserves the right to cancel all or any part of this order if shipment is not made at the time specified, or in the event of any breach hereof, and to charge Seller for any loss resulting from such breach, provided, however. Seller shall not be responsible for loss to Buyer where Seller is prevented from performing by any disabling cause beyond the reasonable control of Seller and gives Buyer prompt notice thereof.

6. PATENTS—Seller warrants that the material purchased hereunder does not infringe any patent, copyright or trademark and agrees to save harmless and protect Buyer, its successors, assigns, customers and users against any expense or liability due to any claim or demand based upon such infringement, and if Buyer requests, appear and defend at Seller's own expense, any suits arising therefrom.

7. ASSIGNMENT—It is agreed that Seller shall not delegate the performance of any obligation hereunder to any person unless agreed to by Buyer in writing.

8. INDEMNIFICATION—If Seller, its agents, employees, or subcontractors enter upon property of Buyer to erect, inspect or deliver the material covered by this order, Seller shall save harmless and indemnify Buyer, its officers and employees, from and against any loss, cost, damage, expense or liability by reason of property damage or personal injury of whatsoever nature arising out of, as a result of, or in connection with such performance, occasioned in whole or in part by actions, or omissions of Seller, its employees, agents or subcontractors.

9. COMPLIANCE WITH LAWS—Seller warrants that the requirements of all applicable laws, regulations and directives. Federal, State and Local will be complied with including but not limited to all laws relating to prices, price discrimination, wages and hours, safety, compensation, etc. Seller warrants that all the requirements of all labor laws. Federal, State and Local will be complied with, including all laws relative to wages and hours, safety, compensation, etc.

10. GOVERNING LAW—This order shall be governed as to its construction, validity and performance by the laws of the State of Georgia.

11. ARBITRATION—Any dispute concerning interpretation of performance of this order shall be decided by arbitration in Atlanta, Georgia in accordance with the rules of the American Arbitration Association then in effect.

12. PAYMENT TERMS—Net 45 days unless other terms are agreed to in writing. All dates are to be calculated from date of receipt of invoice and complete shipping documents in the office of Buyer. Buyer will not be responsible for interest charges.

13. AFFILIATES—"Buyer" includes for purposes of paragraphs 2, 3, 4, 5, 6 and 8 hereof any affiliate of Buyer purchasing the material from Buyer.

14. WAIVER—Failure of Buyer to insist on full and complete compliance with any of Seller's obligations under these terms and conditions shall not be deemed to be a waiver of any of said terms and conditions and Seller shall remain obligated to fully perform Seller's obligations hereunder unless otherwise agreed to in writing by the Buyer.

15. INSURANCE—Seller shall procure and maintain at all times adequate insurance against fire and other casualties covering any and all tools, fixtures, and materials supplied by Buyer to Seller and Seller's insurance shall include a clause providing that loss, if any, shall be payable to Seller and Buyer as their interests may appear.

16. EQUAL OPPORTUNITY CLAUSE—There is incorporated herein by reference and made a part of this Contract (or Order) the 'Equal Opportunity Clause' required by regulations of the U.S. Department of Labor, Office of Federal Contract Compliance, Equal Employment Opportunity, Implementing Executive Order No. 11246.

17. NON-DISCRIMINATION CLAUSE—The Non-Discrimination clauses contained in Section 202 of the Executive Order 11246 as amended, and the U.S. Department of Labor Order No. 4 effective January 30, 1970, relative to Equal Employment Opportunity for all persons without regard to Race, Creed, Color, Sex, Age or National Origin, and implementing rules and regulations of President's Committee on Equal Employment Opportunity are incorporated herein by reference and made a part of this order.

18. SAFETY—All goods, materials, and workmanship furnished under this order must comply with the provisions of the Occupational Safety and Health Act of 1970 (OSHA), as revised and/or amended, and with all other applicable Health and Safety legislation.