



TERMS AND CONDITIONS OF SALE

1. GENERAL: No binding contract of purchase/sale shall be affected until the Purchaser's order is accepted, in whole or in part, by one of the applicable Wabtec Corporation business units or subsidiaries identified below (Wabtec). Unless otherwise agreed to in writing by an authorized Wabtec representative, it is understood and agreed that all quotations and agreements specifically incorporate all of the following Terms and conditions and are made solely on the basis of such Terms and Conditions. **PLEASE READ THEM CAREFULLY.**

These Terms and Conditions shall govern all transactions between:

WABCO Freight Car Products, a division of Wabtec Corp.
Cardwell Westinghouse, a division of Wabtec Corp.
Schaefer Equipment Inc, a subsidiary of Wabtec Corp.
Standard Car Truck Company, a subsidiary of Wabtec Corp.
ZefTek, a division of Standard Car Truck Company

These Terms and Conditions supersede all other terms, conditions, acknowledgments, or other provisions, whether express or implied, oral or in writing (including all previously distributed Wabtec price books). Any and all terms and conditions contained in any purchase order or other document (whether in hard copy or electronic form) received from Purchaser are hereby rejected by Wabtec and shall have no force or effect with respect to Purchaser's order(s).

2. PRICES: Orders will be entered with prices in effect at the time of receipt of the purchase order and are subject to the applicable scrap metal surcharge, if any, in effect at the time of receipt of such order. All prices are subject to change without notice, and quoted 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 accordingly.

Unless otherwise agreed to in writing by an authorized Wabtec representative, all prices quoted are net, F.O.B. Shipping Point. All prices and terms offered by Wabtec are and shall remain confidential.

All applicable orders are subject to surcharges in affect at time of shipment.

3. ORDER MODIFICATION OR CANCELLATION BY PURCHASER PROHIBITED: Except upon specific written approval from an authorized Wabtec representative in advance of shipment, if Purchaser modifies or cancels any purchase order, Purchaser shall pay to Wabtec all reasonable cancellation charges, as invoiced by Wabtec, for expenses incurred by Wabtec in performing, or preparing to perform, the work required by Purchaser's order, plus a surcharge not to exceed twenty percent (20%) of the amount of the order cancelled.

4. TERMS OF PAYMENT: These terms of payment apply only to shipments made to locations within the continental United States and Canada. 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 have no right of setoff or to retain payment on account of any claim that it may have against Wabtec or its affiliates. For each thirty (30) days, or part thereof, that an invoice remains overdue, Purchaser agrees to pay interest charged 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).

If Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser agrees to 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.

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.

Unless Purchaser has an established credit rating with Wabtec, cash, credit card (VISA or Master Card) or other payment method approved by Wabtec in writing, must accompany Purchaser's order. Wabtec's determination of credit worthiness and terms of credit shall be final.

If Purchaser is responsible for any delay in shipment exceeding one business day Purchaser agrees that: (1) the date of completion of goods may be treated by Wabtec as the first day of the payment term calculation and (2) completed goods shall be held at Purchaser's sole risk and expense and Wabtec shall have the right to invoice Purchaser for reasonable storage and insurance expenses.

5. 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 required to be 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.

6. DELIVERY: SHIPMENT, DELIVERY AND INSTALLATION DATES ARE ESTIMATED DATES ONLY and, unless otherwise specified, are calculated from the date of receipt Wabtec from Purchaser of complete technical data and approved drawings. Wabtec may deliver any or all of the order in advance of the estimated delivery date.

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 DOCUMENTATION AND SUPPORT, WITHIN THIRTY (30) DAYS AFTER RECEIPT. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON PURCHASER AND ALL CLAIMS FOR LOSS, DAMAGE IN TRANSIT, OR NON-DELIVERY SHALL BE MADE BY PURCHASER AGAINST THE CARRIER.

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, computer failures, system downtimes, power outages, viruses, "hacking" or other intrusion by unauthorized third parties, 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.

7. 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 shall constitute acceptance of goods.

8. ORDERS IN ERROR: If Purchaser desires to return goods ordered in error, Purchaser must make such request in writing to the authorized Wabtec representative within ten (10) days of delivery. If Wabtec chooses to accept the return, Wabtec will advise Purchaser in writing of the conditions of the return, including, but not limited to, a restocking fee not to exceed twenty percent (20) of the invoice value of the goods being returned, freight charges to be prepaid by the Purchaser, and a stipulation that such items must be in new condition. Credit to the Purchaser is dependent upon receipt of material, confirmation of count, and final inspection by Wabtec.

9. RETURNS: All returns, regardless of the reason, must be accompanied by the current Return Material Authorization paperwork, as provided by Wabtec and completed by the Purchaser.

10. WARRANTY: Unless otherwise provided in writing by an authorized representative of Wabtec, all goods manufactured by Wabtec and sold hereunder are warranted to conform to Wabtec's published specifications (if applicable) and shall 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 original Purchaser.

WABTEC'S LIMITED WARRANTY IS STRICTLY LIMITED TO REPAIRING OR PROVIDING A REPLACEMENT ITEM OR PART, FREE OF CHARGE F.O.B. WABTEC'S FACTORY, FOR ANY SUCH GOOD THAT WABTEC CONFIRMS TO BE DEFECTIVE IN MATERIAL OR WORKMANSHIP WITHIN SUCH ONE (1) YEAR PERIOD; PROVIDED THAT PURCHASER PROMPTLY PROVIDES WRITTEN NOTICE TO WABTEC OF SUCH DEFECT, RETURNS SUCH ITEM TO WABTEC, TRANSPORTATION CHARGES PREPAID.

PURCHASER SHALL COMPLY WITH WABTEC'S STORAGE AND HANDLING PROCEDURES, WHICH INCLUDE A STIPULATION THAT ALL MATERIAL SUPPLIED SHOULD BE STORED INDOORS. FAILURE TO DO SO MAY VOID ANY WARRANTY CLAIMS. ITEMS OF EQUIPMENT AND PARTS MANUFACTURED BY OTHERS BUT FURNISHED BY WABTEC ARE WARRANTED ONLY TO THE EXTENT OF THE WARRANTY OF THE ORIGINAL MANUFACTURER.

DISCLAIMER: Purchaser understands and agrees that Wabtec does not warrant and shall not be liable or responsible in any manner for or with respect to any goods used by Purchaser or its employees, representatives or agents under conditions varying materially from those under which such good was intended to be used; for any damage or failure to operate properly due to abrasion, corrosion, deterioration, improper maintenance, alteration or the influence of foreign matter or energy; or, absent prior specific written approval of an authorized Wabtec representative, for the suitability or operation of such good in an application of Purchaser's choosing or a system of Purchaser's design.

11. LIMITATION OF LIABILITY: THE FOREGOING LIMITED WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, GUARANTEES, OBLIGATIONS, OR LIABILITIES, EXPRESSED OR IMPLIED BY STATUTE OR OTHERWISE. IN PARTICULAR, THE WARRANTIES HEREIN SPECIFICALLY EXCLUDE THE IMPLIED WARRANTY OF MERCHANTABILITY AS WELL AS THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. WABTEC SHALL NOT 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 ANY CLAIMS ARISING OUT OF THE SUPPLY OR USE OF ITEMS AND DESIGNS FURNISHED BY WABTEC UNLESS OTHERWISE SPECIFIED HEREIN. PURCHASER FURTHER AGREES THAT WABTEC SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE, OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOST

PROFITS, WHETHER ARISING UNDER BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE. 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/OR REPLACEMENT PROVIDED IN THIS SECTION.

12. INTELLECTUAL PROPERTY INDEMNIFICATION; LIMITATION OF LIABILITY: Wabtec shall indemnify Purchaser from claims, suits, or actions by third parties that any item, or part thereof, sold by Wabtec to Purchaser hereunder in and of itself infringes any United States patent, copyright, trademark or other intellectual property right, 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 such event, Wabtec shall, at Wabtec's expense, defend any such suit and satisfy or reimburse Purchaser for any judgment therein **TO AN AMOUNT NOT EXCEEDING THE TOTAL PRICE PAID BY PURCHASER TO 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 intellectual property and indemnification.

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

13. 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 the 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 requested by Purchaser will only be conducted at Purchaser's expense.

14. SPECIAL JIGS, FIXTURES AND PATTERNS: Unless supplied by Purchaser, any jigs, fixtures, patterns, design engineering, and the like which are used for the preparation of Purchaser's order requirements 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 ninety (90) days' notice and the opportunity to buy such materials before discarding or scrapping.

15. RECORDS, AUDITS AND PROPRIETARY DATA: Unless otherwise specifically agreed to in writing signed by an authorized Wabtec representative neither Purchaser nor any representative of Purchaser, nor any other person acting for on behalf of Purchaser, shall have any right to examine or audit Wabtec's accounts, books or records, 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 Wabtec.

16. ASSIGNMENT: Purchaser shall not assign their rights under these Terms and Conditions or any purchase order associated herewith without the express written consent of an authorized Wabtec representative.

17. NO WAIVER / SEVERABILITY: No failure by Wabtec in exercising any right, power or privilege hereunder 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. A determination of invalidity of any term or condition herein shall not invalidate any other provision and the remaining terms and conditions shall be given full force and effect.

18. GOVERNING LAW, JURISDICTION, VENUE: The Terms and Conditions and the agreement of the parties 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 without reference to its conflicts of laws provisions notwithstanding delivery by Wabtec in a state or country other than Pennsylvania USA. Purchaser hereby knowingly and for due consideration submits to the jurisdiction of the United States District Court for the Western District of Pennsylvania in Pittsburgh or the Court of Common Pleas of Allegheny County, Pennsylvania, and hereby waives all rights to contest the venue or jurisdiction of such courts. Any suit or judicial proceeding brought by Purchaser for breach of contract, for any alleged tortious conduct or any claim whatsoever brought in law or equity must be filed within one year from the date the cause of action accrued or be forever barred.

19. CONFORMITY: Use of the goods ordered from Wabtec may require Purchaser to comply with various federal, state or local laws, rules, regulations, safety codes including, but not limited to, the Occupational Safety and Health Act ("OSHA"), current regulations and standards applicable under OSHA ("OSHA Standards"), or railway industry standards including, but not limited to, those of the Association of American Railroads ("AAR") and the Federal Railroad Administration ("FRA") of the United States Department of Transportation. PURCHASER HEREBY ASSUMES SOLE RESPONSIBILITY FOR COMPLIANCE WITH SUCH FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS, SAFETY CODES (INCLUDING OSHA, THE OSHA STANDARDS), OR RAILWAY INDUSTRY STANDARDS (INCLUDING THE AAR AND FRA). PURCHASER HEREBY RELEASES WABTEC

AND ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL CLAIMS ARISING FROM ANY USE OF THE PRODUCT ORDERED OR USED IN VIOLATION OF THE DICTATES OF ANY FEDERAL, STATE OR LOCAL LAWS, RULES, REGULATIONS, SAFETY CODES (INCLUDING OSHA, THE OSHA STANDARDS), OR RAILWAY INDUSTRY STANDARDS (INCLUDING AAR AND FRA).

20. DEFAULT BY PURCHASER: Time is of the essence of Purchaser's obligations. Purchaser shall be conclusively deemed to be in default hereunder if, at any time or from time to time: (i) Purchaser fails to pay when due, whether by acceleration or otherwise, any amount now or hereafter owing to Wabtec; (ii) Purchaser fails to duly observe or perform any of the obligations of Purchaser, or breaches any of the covenants, terms or agreements herein or in any other agreement made between Wabtec and Purchaser; (iii) Purchaser commits or threatens to commit an act of bankruptcy or ceases or threatens to cease to carry on business as a going concern, or a proceeding in bankruptcy, receivership, insolvency, reorganization or winding-up is instituted by or against Purchaser or any of Purchaser's property, or any compromise or arrangement between Purchaser or any of Purchaser's creditors is proposed, or execution or other process of any court becomes enforceable against Purchaser or all or part of Purchaser's property, or distress or analogous process is levied upon all or part of Purchaser's property; (iv) if any representation or warranty by Purchaser herein or otherwise or any information provided at any time by Purchaser to Wabtec is false or misleading; (v) Wabtec, in good faith, believes and has commercially reasonable grounds to believe that the prospect of payment or performance is or is about to be impaired or that the goods are about to be in jeopardy; or (vi) Purchaser fails or refuses to accept delivery of the goods in accordance with these terms and conditions.

21. REMEDIES OF WABTEC: Subject to any applicable statutory provisions, if Purchaser is in default hereunder then, in addition to any other right or remedy Purchaser may have (including, without limitation, those provided to a secured party under any applicable personal property security legislation) Wabtec may, with or without legal process, notice or demand, and without any liability whatsoever to Wabtec: (i) declare all amounts owing by Purchaser hereunder to be immediately due and payable; (ii) enter upon the property wherever the goods may be, take constructive possession or actual possession of, and remove, such goods selected by Purchaser as shall in its reasonable judgment have a value sufficient to satisfy Purchaser's indebtedness and obligations; (iii) if any taxes, rates, levies, assessments or other charges become payable in respect of, or any mortgage, charge, lien, encumbrance or security interest is acquired against, goods, make such payments and take such action as is necessary in Purchaser's reasonable judgment to release, discharge, subordinate or postpone same, in whole or in part; (iv) dispose of the goods by means of public sale, private sale, lease or otherwise, at the Purchaser's option, without limiting the alternatives available to Wabtec, it shall be commercially reasonable for Wabtec to and Wabtec may, (a) lease or sell on deferred payment of any of the goods; (b) sell on a wholesale basis to any customer of Wabtec any of the goods for the amount which Wabtec's sole judgment is the best price obtainable in respect of such goods in the circumstances; (c) retain any of the goods and credit the

Purchaser with the net invoice price at which such goods were supplied to the Purchaser less any discounts or allowances granted to the Purchaser in respect thereof; (v) make any commercially reasonable repairs to the goods and charge the same to the Purchaser's account; (vi) bid at any public sale of the goods; (vii) deduct its expenses (including legal fees and costs on a full indemnity basis) incurred in enforcing and defending its rights and in repossessing, holding, repairing and disposing of the goods from the proceeds of disposition; (viii) enforce payment of any deficiency which exists after all amounts owing by the Purchaser are deducted from the net proceeds of disposition. Wabtec's rights and remedies are cumulative and Wabtec may exercise or enforce any one or more of them successively or concurrently.

21. PURCHASER'S COVENANTS: Until the price of the goods and all amounts payable by purchaser hereunder are paid in full, Purchaser covenants and agrees that, except as expressly consented to or agreed in writing by Wabtec, Purchaser shall: (i) keep goods free from all mortgages, charges, liens, encumbrances and security interests except for such in favor of Wabtec; (ii) keep the goods in good working order, condition and repair; (iii) not keep or use the goods in violation of this Contract, any insurance policy or applicable law; (iv) keep accurate and complete records concerning the goods including maintenance logs; (v) permit Wabtec to access the goods; (vi) not sell, lease or transfer the goods or any interest therein; (vii) notify Wabtec of any change in Purchaser's name or address; (viii) for so long as amounts shall remain owing by the Purchaser to Wabtec, all proceeds from any sales or disposition of the goods realized by the Purchaser or an agent of the Purchaser, and all other proceeds received in respect of the goods, shall be held in trust by the Purchaser or such agent for Wabtec and shall on demand be forthwith paid to Wabtec.