

GREENBRIER **Rail Services**

GREENBRIER AFTERMARKET PARTS TERMS & CONDITIONS

1. Construction

This Agreement is for the purchase and sale of goods and/or services described on the face hereof and is Purchaser's acceptance of Seller's offer to Purchaser. Acceptance of Seller's offer is expressly limited to the terms and conditions stated in this Agreement. Additional or inconsistent terms contained in any form are rejected and shall not become part of this Agreement unless embodied in a writing and agreed to by Seller. The terms of any purchase order referred to herein are incorporated in and made a part of this Agreement only to the extent of specifying the price, the nature and description of goods or services rendered, the terms as to payment, and time of delivery, and then only to the extent that such terms are consistent with the terms and conditions stated on both sides of this Agreement.

2. Force Majeure

In the event of the occurrence of war, invasion, fire, explosion, riot, strikes, work stoppage, acts of God, delays of carriers, energy shortages or failure in the supply of materials from third party suppliers, acts of government or governmental agencies or instrumentalities, or other contingencies or causes beyond the control of Seller, Seller shall immediately notify Purchaser of the event of force majeure and such performance shall be suspended until such contingencies or causes have been terminated. If Seller's performance is suspended as a result of such contingencies or causes for a period of sixty (60) days or longer, Seller shall have the right to cancel this Agreement upon written notice to the Purchaser to that effect at any time thereafter. In no case shall Purchaser's obligation to pay for goods or services already provided be terminated.

3. Confidential Information

Except to the employees, agents and advisors who have need to know such information, neither party shall use or disclose to any person, firm, corporation, association or other third party any confidential materials, information or knowledge obtained from the other party. All non-public materials, information and knowledge provided by the disclosing party under this Agreement shall be considered confidential by the recipient. Seller or its employees may, at Seller's option, disclose to Purchaser Seller's proprietary information including but not limited to products, methods, or manufacturing processes, or other information that is marked or indicated to be proprietary and confidential, and Purchaser will not disclose such information to third parties unless Purchaser is authorized to do so in writing by an officer of Seller. Both parties will ensure that each of its employees, agents and advisors who are involved in the performance or review of this Agreement will abide by the non-use and confidentiality obligations as set forth in this paragraph.

4. Termination

Seller may terminate this Agreement in whole or in part at any time upon Seller's written notice to Purchaser for any default by Purchaser involving (i) Purchaser's failure to pay for goods or services within the time specified by this Agreement or (ii) in the event Purchaser is insolvent, files for, or is adjudged bankrupt. In the event of such termination, Purchaser shall pay for all goods and/or services already provided and shall reimburse Seller for expenses actually incurred in the production of goods or services as of the date of termination. Seller does not waive any legal or equitable remedies it may have against Purchaser because of the exercise of such right to terminate.

Purchaser may terminate this Agreement in whole or in part at any time if Seller does not make deliveries as specified, time being of the essence to this Agreement, or if Seller breaches any of the terms hereof. Upon such termination by Purchaser, Seller will not be entitled to damages for termination. Furthermore, Seller shall stop work hereunder and the placement of subcontracts, terminate work under subcontracts outstanding hereunder, and take any necessary action to protect property in Seller's possession in which Purchaser has or may acquire an interest. Seller shall use reasonable efforts to diligently secure other purchaser(s) for all goods and services. Purchaser agrees to pay for Seller for goods or services properly delivered prior to the date of termination, at the agreed upon rates.

5. Indemnification

- (a) Seller agrees to handle and defend all claims brought against Purchaser or Purchaser's customers, including, but not limited to any claim that any goods or any resulting use or sale of the goods constitutes an infringement of any United States patent or copyright, or misappropriation of any trade secret, or intellectual property right.
- (b) If the sale or use of any of the goods is enjoined under (a) above, Seller must, at Purchaser's option and Seller's expense, either:
 - (1) procure for Purchaser and its customers the right to use such goods;
 - (2) replace such goods with equivalent non-infringing goods;
 - (3) modify such goods so they become non-infringing; or
 - (4) remove such goods and refund the purchase price, including transportation, installation, removal, and other incidental charges.

With respect to articles manufactured by Seller in accordance with Purchaser's (or its customer's) designs, blueprints, drawings, specifications, patterns or tooling Purchaser shall defend, indemnify and hold Seller, its subsidiaries, affiliates, agents, employees and customers harmless against any and all liability, damage, loss cost or expense, including, but not limited to those arising from or based upon (i) intellectual property disputes, or (ii) error, omission or negligent act by Purchaser in the completion of such designs, blueprints, drawings, samples or specifications to the extent such claims arise from Seller's compliance with Purchaser's designs, blueprints, drawings, specifications, patterns or tooling.

6. Inspection, Right Of Rejection & Acceptance

Seller shall pre-approve in writing all final inspection methods (by sample or other means) to be used by Purchaser. Inspection of products by Purchaser at Seller's plant will be permitted only insofar as it does not unduly interfere with Seller's production schedules and on condition that Purchaser submits in advance complete details of the inspection it desires and Seller grants inspection. Rejection notice must be served upon Seller within ten (10) business days after such goods have been delivered. Purchaser may not return any goods delivered without Seller's prior written consent. Purchaser agrees to cooperate with Seller and strictly follow Seller's reasonable instructions as to non-conforming goods. Further, Seller reserves the right to scrap, replace, or repair the non-conforming goods, or Seller (only upon prior written consent) may accept a back charge (in the form of a credit to Purchaser's account) for the Purchaser's repair of the goods. Any and all back charge amount(s) (including the actual price, time and work to be performed) must be mutually agreed upon in writing prior to the commencement of any repair. The Seller shall be credited or paid for the present market value in cases where the goods are authorized by Seller to be scrapped. Notwithstanding the foregoing, the Seller will not be held responsible for any machining labor or other costs including, but not limited to, scrap disposal costs. In any case, acceptance shall be deemed to have been made no later than ten (10) business days after such goods and/or services have been delivered to Purchaser.

7. Warranties

Seller warrants that the goods shall be free from defects in material and workmanship at the time the goods are delivered to Purchaser and that the goods comply with all applicable Association of American Railroad requirements. Seller's warranty will not apply in the event the goods are not installed and used by competent personnel under normal operating conditions in accordance with industry standards. Seller's instructions and warnings supplied in connection with, or affixed to, equipment relating to the proper operation, use or maintenance thereof, are consistent with the Seller's warranty and are incorporated by reference as a part of and a condition of this Agreement. This warranty shall not apply to any goods or equipment which are based upon Purchaser's (or it's customer's) design, pattern or tooling and/or, in Seller's judgment, have been repaired or altered in any way so as to affect its reliability, nor to any equipment which has been subject to misuse, abuse, and negligent handling or accident, improper application in regard to size and loading, use in excess of product's capabilities or of Seller's specifications or industry ratings or lack of periodic inspection.

SELLER'S LIABILITY AND THE EXCLUSIVE REMEDY FOR SELLER'S BREACH OF THE ABOVE WARRANTY WILL BE LIMITED TO FURNISHING OR REPAIRING GOODS, EQUIPMENT OR PARTS (WHICHEVER THE CASE), OR AT SELLER'S OPTION, REFUND OF THE COST OF THE GOODS, FOR THOSE ITEMS PROVIDED BY SELLER AND REASONABLY DETERMINED TO BE DEFECTIVE ON INSPECTION BY SELLER AND WHICH ARE RETURNED TO SELLER. Purchaser will not repair or adjust any item which is allegedly defective until Seller first has been given a reasonable opportunity to inspect such item or Seller waives such opportunity in writing. Any claim by Purchaser with reference to the goods, equipment or parts shall be deemed waived unless submitted in writing to Seller within thirty (30) days from the date Purchaser discovered the defect. Any cause of action arising out of goods, equipment, parts or this Agreement must be brought by Purchaser within one (1) year from the date such cause of action or claim accrued. In no event shall Seller's liability under this warranty exceed the purchase price paid. Seller shall have no liability whatsoever in any event

for incidental or consequential damages whether such damages are alleged to have arisen or resulting from breach of warranty, strict liability (in tort or warranty), contract or negligence, including, but not limited to, damages, losses, loss of profits or expenses of Purchaser arising from personal injury or from the operation of, compliance with, or enforcement of any Federal, State or local law, code or regulation.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE WARRANTY STATED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY IS LIMITED AND ONLY EXTENDS TO PURCHASER AND ITS SUCCESSIONS AND NOT TO ANY OTHER PURCHASERS, USERS OR THIRD PARTIES.

8. Prices, Payment & Set-off

Terms are net 30 days from date of invoice unless otherwise specified by Seller. Seller may decline to deliver the goods or services except for cash on demand (C.O.D.) or stop goods in transit whenever Purchaser fails to make timely payment or if Seller has reasonable doubts as to Purchaser's financial stability. Such rights are extended to Seller and any of its affiliates. Pro-rata payments shall become due with respect to any shipments. Purchaser shall not be entitled at any time to set-off any amount owing at any time by the Seller or its affiliate companies against any amount payable to Seller at any time by Purchaser.

9. Taxes

Purchaser shall be liable for all charges, assessments or taxes, including but not limited to, local, state, federal (exclusive of Seller's income taxes) or foreign taxes incurred as a result of the execution of this Agreement or the consummation of the transactions required herein unless separately stated on this Agreement. Upon occasion, Seller may bill any tax expense as a separate item.

10. Risk of Loss, Title

Unless otherwise mutually agreed in writing, all sales shall be F.O.B. Seller's shipping point of origin. Purchaser is responsible for securing proof of delivery from its carrier. Any claims for loss or damage in transit must be entered and prosecuted by Purchaser. Title for goods covered by this order shall pass to Purchaser upon delivery to carrier. Seller warrants that title to all goods and/or services transferred hereunder shall be free and clear of all liens, claims, security interests or other encumbrances.

11. Cancellations, Changes

Any and all cancellations or changes by Purchaser must be made in writing and are subject to Seller's consent. However, in no case shall Purchaser be relieved of its payment obligations for goods or services in process except as otherwise provided for herein.

12. Packing and Shipment

Unless Purchaser specifies otherwise in writing, products will be packed as Seller may deem proper for protection against normal handling, and extra charge will be made for preservation, waterproofing, and similar added protection of goods.

13. Tools and Equipment

All patterns, tools, equipment or materials, if any, furnished to Seller by Purchaser shall be adequate and in good working order and will be stored by Seller with reasonable care without liability for their loss caused by theft, fire, acts of God, or other causes beyond its reasonable control so long as Seller is exercising a reasonable standard of care. Seller shall not be required to insure said patterns and tools. Purchaser shall be responsible for all maintenance

14. Miscellaneous Provisions

- A) This Agreement shall not constitute the Seller as the agent, partner or legal representative of the Purchaser.
- B) The terms and conditions stated in this Agreement shall be construed in accordance with the internal laws (as opposed to conflicts of law provisions) of the State of Illinois. Purchaser consents to the exclusive jurisdiction of any federal or state court located in Cook County, Illinois.
- C) Seller may not assign, delegate or subcontract all or any part of this order without the prior written approval of Purchaser, which shall not be unreasonably withheld.
- D) The terms and conditions stated on the front and back sides of this order constitute the entire Agreement between Seller and Purchaser regarding the furnishing of goods or services specified herein and shall not be modified except by way of a writing signed by authorized representatives of both parties.
- E) All rights granted to either party under this Agreement shall be in addition to and not in lieu of the party's rights arising by operation of law. Should any provision of this Agreement be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of any of the remaining provisions.
- F) Waiver by either party of a breach by the other party of any provisions of this agreement shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.

15. GREENBRIER IS A FEDERAL CONTRACTOR AND HAS AN EQUAL EMPLOYMENT OPPORTUNITY POLICY AND AN AFFIRMATIVE ACTION PROGRAM. ALL GREENBRIER CONTRACTORS AND SUBCONTRACTORS, INCLUDING SUPPLIERS AND VENDORS, SHALL ABIDE BY THE REQUIREMENTS OF 41 CFR §§ 60-1.4(A), 60-300.5(A) AND 60-741.5(A). THESE REGULATIONS PROHIBIT DISCRIMINATION AGAINST QUALIFIED INDIVIDUALS BASED ON THEIR STATUS AS PROTECTED VETERANS OR INDIVIDUALS WITH DISABILITIES, AND PROHIBIT DISCRIMINATION AGAINST ALL INDIVIDUALS BASED ON THEIR RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY OR NATIONAL ORIGIN. MOREOVER, THESE REGULATIONS REQUIRE THAT COVERED PRIME CONTRACTORS AND SUBCONTRACTORS TAKE AFFIRMATIVE ACTION TO EMPLOY AND ADVANCE IN EMPLOYMENT INDIVIDUALS WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, NATIONAL ORIGIN, PROTECTED VETERAN STATUS OR DISABILITY.