

**TERMS AND CONDITIONS OF SALE**  
**All sales of goods by Wabtec Global Services**  
**and Wabtec Freight and Locomotive Pneumatics**  
**are made solely upon the following terms and conditions:**

**1. GENERAL:** No binding contract of purchase/sale shall be affected until the Purchaser's order is accepted, in whole or in part, by 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 within Terms and Conditions and are made solely on the basis of such Terms and Conditions. PLEASE READ THEM CAREFULLY.

(a) These Terms and Conditions shall govern all transactions between Wabtec (Wabtec Global Services, including the WabLink online system, and Wabtec Freight and Locomotive Pneumatics) and Purchaser;

(b) 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). Wabtec's invoice together with these Terms and Conditions shall be the sole and exclusive agreement between Wabtec and Purchaser, constituting the entire understanding between the parties and superseding all other oral or written communications.

**2. Agreement to Conduct Transactions Electronically:** Purchaser acknowledges and agrees to the following:

(a) All of Purchaser's transactions (registration, order submission, credit card payment, etc.) with or through the WabLink site may, at Wabtec's option, be conducted electronically pursuant to the within Terms and Conditions;

(b) Wabtec may determine to provide all or any part of its services non-electronically, and that those services shall be governed by these Terms and Conditions unless a different agreement is provided by Wabtec;

(c) Wabtec may communicate with Purchaser through electronic ("e-mail") messages, and Purchaser further understands that it shall be bound legally by an agreement acknowledged in whole or part by electronic communications, including e-mail. Purchaser shall contact an authorized Wabtec sales representative if Purchaser does not wish to have its transactions conducted electronically;

(d) Transactions executed within Wabtec's Managed Inventory (WMI) subsystem of WabLink are not covered by these Terms and Conditions of Sale and will be covered via separate agreement.

**3. PRICE:** Orders will be entered with prices in effect at the time of receipt of order and are subject to the applicable scrap metal surcharge, if any, in effect at the time of receipt of 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(s) for the goods accordingly.

Unless otherwise agreed to in writing by an authorized Wabtec representative, prices quoted are net, F.O.B. point of shipment, and transportation will be via lowest cost common carrier for shipments to first destination in continental United States and Canada, with transportation charges prepaid and added on the invoice.

The total sales value of each purchase order must equal or exceed \$50.00 USD. Purchaser may increase the quantity of any or all order line items or may agree to increase the selling price of any or all order line items to meet the \$50.00 USD minimum order value requirement.

Prices and terms offered by Wabtec are provided with the understanding and agreement that Purchaser shall keep the information confidential.

**Surcharge:** For goods in which metal content is used as part of the production process, the price shall be subject to adjustment, at the beginning of each month, for a scrap metal surcharge on a per pound basis. Scrap metal surcharges for ferrous and aluminum metals shall be calculated monthly, on a per pound basis, and compared to a baseline price as defined for these materials. If the average price of the base period is greater than the average price of the immediately preceding 30 day period, no adjustment shall be made.

**Brake Shoes:** Wabtec reserves the right to ship and invoice Brake Shoes for the quantity ordered plus or minus ten percent (10%) to arrive at pallet quantities; a repackaging charge per shoe style will be made on orders for less than pallet quantities. Shipments of Brake Shoes in less than pallet quantities will be made F.O.B. factory of origin with freight for Purchaser's account. Prices shown include packaging for shipment within continental United States and Canada.

**4. METHOD OF ACCEPTANCE, NOTIFICATION, AND AGREEMENT:** Unless otherwise stated, at Wabtec's sole discretion, the acceptance, acknowledgement, and confirmation of orders and agreements may be made via e-mail by an authorized Wabtec representative. By default, an order with a status of APPROVED or CLOSED in WabLink has been accepted by Wabtec. Terms and conditions on Purchaser's order form which are at variance or in conflict with the Terms and Conditions stated herein are **rejected** by Wabtec. Wabtec's invoice together with these Terms and Conditions shall be the sole and exclusive agreement between Wabtec and Purchaser, constituting the entire understanding between the parties and superseding all other oral or written communications.

**5. ORDER MODIFICATION OR CANCELLATION BY PURCHASER PROHIBITED:** Except upon specific approval (written or e-mail) from an authorized Wabtec representative in advance of shipment, if Purchaser cancels Purchaser's order, Purchaser shall pay Wabtec 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 five percent (25%) of the amount of the order cancelled.

**6. TERMS OF PAYMENT:** These terms of payment apply only to shipments made to locations within the continental United States and Canada. Contact your authorized Wabtec representative concerning international shipments.

(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 agrees not to retain payment on account of any claim that it may have against Wabtec or other third party or offset any such claim against the purchase price. 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).

(b) 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.

(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, 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.

(e) 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 (See Paragraph 8); and (2) 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.

**7. 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.

## **8. DELIVERY:**

(a) 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.

(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, DAMAGE IN TRANSIT, OR 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, 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 UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORIZED OFFICER OF WABTEC.

**9. TITLE:** Title to the goods supplied pursuant to the terms hereof shall remain in Wabtec until the purchase price therefore (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 (and any other sums payable hereunder) is paid in full by Purchaser. By clicking "Accept" below and accepting these Terms and Conditions, Purchaser agrees to execute any documents (including, but not limited to, Uniform Commercial Code financing statements) relating to said goods, as may be requested by Wabtec, to protect Wabtec's security interest in said goods. This does not preclude transfer of inventory and the responsibility of Purchaser to store the goods in an appropriate manner.

**10. 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 the goods.

**11. ORDERS IN ERROR:** If Purchaser desires to return goods ordered in error, Purchaser must make such request in writing or e-mail to the authorized Wabtec representative within thirty (30) days of delivery. If Wabtec chooses to accept the return, Wabtec will advise Purchaser in writing or email of the conditions of the return, including, but not limited to, a restocking fee not to exceed twenty five percent (25%) of the invoice value of the item(s) being returned, freight charges to be prepaid by the Purchaser, and a stipulation that items must be in new condition. Credit to the Purchaser is dependent upon receipt of material, confirmation of count, and final inspection by Wabtec.

**12. 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.

**13. WARRANTY:**

(a) **PRODUCTS:** 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 original Purchaser.

WABTEC'S WARRANTY OFFER IS STRICTLY LIMITED TO REPAIRING OR PROVIDING A REPLACEMENT ITEM OR PART, FREE OF CHARGE AND F.O.B. Wabtec's FACTORY, FOR ANY SUCH WABTEC ITEM OR PART WHICH FAILS TO FUNCTION PROPERLY BECAUSE OF DEFECTIVE MATERIAL OR WORKMANSHIP WITHIN SUCH ONE (1) YEAR PERIOD, PROVIDED THAT PURCHASER PROMPTLY GIVES WRITTEN NOTICE TO WABTEC OF SUCH FAILURE, RETURNS SUCH ITEM OR PART TO WABTEC, TRANSPORTATION CHARGES PREPAID, AND IF, UPON EXAMINATION, WABTEC FINDS SUCH TO HAVE BEEN DEFECTIVE.

PURCHASER SHALL COMPLY WITH WABTEC'S STORAGE AND HANDLING PROCEDURE, WHICH INCLUDES 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.

(b) **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 product, item or design for application used under conditions varying materially from those under which such item or design is intended to be 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, absent prior specific written approval of an authorized Wabtec representative 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) **LIMITATION OF LIABILITY:** THE FOREGOING WARRANTIES ARE 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 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 REPLACEMENT PROVIDED IN THIS PARAGRAPH.

**14. INTELLECTUAL PROPERTY INDEMNIFICATION; LIMITATION OF LIABILITY:**

(a) 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.

(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, trademarks or other intellectual property right arising from Wabtec's compliance with Purchaser's designs, specifications, or instructions, both verbal or written.

**15. 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 may be conducted at Purchaser's expense.

**16. 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.

**17. RECORDS, AUDITS AND PROPRIETARY DATA:** Unless otherwise specifically agreed to in writing signed by an authorized Wabtec corporate 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 Wabtec.

**18. ASSIGNMENT** Purchaser shall not assign this contract or any right or obligation hereunder or associated with said purchase without the express written consent of Wabtec.

**19. 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.

**20. 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.

**21. CONFORMITY:** Use of the products 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 THE AAR AND FRA).